

### About the Book

This Compendium, covering the summary of judgements delivered by the National Consumer Disputes Redressal Commission in the year 2014 on various issues pertaining to Consumer Protection Act, 1986, is in three volumes. This volume (Vol.II) gives a summary of 435 judgements. It is meant to serve as a ready reckoner of recent judgements on Consumer Law and will be an invaluable guide to students of law, legal practitioners and particularly the consumers, whose rights are constantly violated.

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COMPENDIUM OF NATIONAL COMMISSION JUDGMENTS  
ON CONSUMER PROTECTION ACT, 1986

CASES OF 2014  
Vol. II



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CHENNAI

**COMPENDIUM OF NATIONAL  
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CONSUMER PROTECTION ACT,1986  
[CASES OF 2014 - Vol.II]**

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## **CONTENTS**

<b>S. No</b>	<b>SUBJECT &amp; NAME OF THE CASE LAW</b>	<b>Pg. No</b>
<b>I. CONDONATION OF DELAY</b>		
1.	Narayan Kumar Khaitan and others Vs. M/s. Duncan Industries Ltd.	1
2.	M/s. Young India Engineers Vs. Badri S/o. Narayan Choudhary.	2
3.	Bonda Kasi Annapurna Vs. The Branch Manager, Bajaj Allianz General Insurance Co. Ltd. & Anr.	3
4.	M. Premalatha Vs. Arivalagan and others.	4
5.	G. Suseela and another Vs. Dr.P.L. Chary and others.	6
6.	Dr. Gabharu Govindbhai Radadiya Vs. The New India Assurance Company Ltd.	8
7.	Tirupati Construction Vs. S.G. Kumar.	9
8.	Regional Provident Fund Commissioner Vs. G.P. Srivastava.	11
9.	M/s. Abhishek Road Ways Vs. National Insurance Co. Ltd. & Ors.	12
10.	Harpreet Kaur Vs. Sahara India Commercial Corporation Ltd.	14
11.	Bawa Saranjit Singh Vs. Sahara India Commercial Corporation Ltd.	15
12.	Kapil Dev Dutta & Anr. Vs. Sahara India Commercial Corporation Ltd.	17
13.	V. Selvaraj Vs. Regional P.F. Commissioner and 2 Others.	18
14.	Mr. Anil Mittal Vs. Skoda Auto India Pvt. Ltd and another.	19
15.	Government of Rajasthan, through Collector, Jaisalmer Vs. Janak Singh and Anr.	21
16.	M/s Aviva Life Insurance Co. India Pvt. Limited Vs. Mrs. Renu.	23
17.	Haryana Urban Development Authority and another Vs. A.Ram Naik.	24
18.	M/s. BDS Nirman Vs. Satyendu Saha and another.	25
19.	Bhupendra Bhandari Vs. Kolte-Patil Developers Ltd.	27
20.	Rajinder Jassal Vs. Union Bank of India and others.	28
21.	Union of India through the General Manager, Central Railway and another Vs. Dr. Sushil Kumar Roosia and another.	30
22.	The Branch Manager, New India Assurance Company Ltd Vs. Smt. Mamta Thappa and another.	32
23.	Director, Central State Farm Vs. Virendra Singh and another	33

24.	The Regional P.F. Commissioner, EPFO Vs. Sh. Kalubhai Virabhai Patel.	34
25.	Meerut Development Authority Vs. Shri Devki Nandan Sharma.	36
26.	PSPCL (Formerly known as PSEB) and another Vs. Manoj Wadhwa.	37
27.	M/s. Krishna Plastics Vs. The United India Insurance Co. Ltd and others.	38
28.	M/s. Sahara India Commercial Corporation Ltd Vs. Ritarani Parhi.	40
29.	PNB Met Life India Insurance Co. Ltd Vs. Sukhjit Kaur and others.	41
30.	The Southern Railway Rep. by its G M & Anr. Vs. Vimal M. Mehta.	42
31.	M/s. Asian Paints Ltd Vs. K.A. Abootty Haji.	43
32.	The Assistant Provident Fund Commissioner Vs. Sh.Pradip Chandra Banik and another.	44
33.	Haryana Urban Development Authority and another Vs. Shri Rajesh Satija.	46
34.	The BEML Employees Co-op Society Ltd Vs. N.S.Balakrishna.	48
35.	National Insurance Company Ltd. Vs. Ram Veer Singh.	49
36.	National Seeds Corporation Ltd. Vs. Santosh Chandrawanshi and others.	50
<b>II. CONSUMER - DEFINITION AND SCOPE</b>		
1.	Oriental Bank of Commerce through Branch Manager Vs. M/s. Shankar Chawal Udyog & Anr.	53
2.	M/s. Max Infra (India) Ltd. Vs. M/s. Ashok Leyland Ltd. & Ors.	54
3.	Sura Rama Chandra Rao Vs. Modern Gynaec & Maternity Hospital.	56
4.	M/s. Nidhi Knitwears (P) Ltd. Vs. The Manager, Bank of Maharashtra & Anr.	58
5.	M/s. N.L.P. Organics Pvt. Ltd. Vs. The Chairman-cum-Managing Director Indian Bank & Ors.	59
6.	Vijay Kumar Vs. Haryana Urban Development Authority.	60
7.	WIPRO GE Healthcare Pvt Ltd Vs. Dr. Sunil J. Shah.	62
8.	Brig Cargo International and another Vs. Royal Carpet Industries.	63
9.	Kaveri Telecom Ltd Vs. Vijaya Bank and another.	65
10.	Delhi Development Authority Vs. Sandeep Khatri.	67
11.	Pharos Solutions Pvt. Ltd Vs. Tata Motors Ltd and others.	69

12.	M/s. Wipro GE Healthcare Pvt. Ltd Vs. M/s. Ajmer Hospital & Research Institute.	71
13.	M/s. Punj Lloyd Ltd Vs. M/s. Corporate Risks India Pvt Ltd.	72
14.	M/s. Anand Nishikawa Company Limited Vs. State Bank of Patiala and others.	74
15.	Bachan Narayan Singh Vs. Eicher Plan & Marketing Head Quarter and others.	76
<b>III. DEFICIENCY IN SERVICE</b>		
<b>(a) ACCIDENT COMPENSATION</b>		
1.	Vijay Kumar Barman and others Vs. Baghela Gas Service and others.	78
<b>(b) AGRICULTURE</b>		
1.	NU Genes Pvt. Ltd. Vs. Ishwar son of Sh. Ram Sarup and another.	79
2.	The Director, Reliance Life Sciences Pvt. Ltd. & Ors. Vs. Sh. Prakash Kashinath Nanvare.	81
<b>(c) AIRLINES</b>		
1.	M/s. Emirates (Airlines) Vs. Mr. Raj Kumar Sharma.	83
2.	The Managing Director/Chairman Indian Airlines/Air India Vs. Mrs. Maria Easter D'abreu Noronha & Anr.	85
<b>(d) AIR CARGO INSURANCE</b>		
1.	Space Overseas Pvt. Ltd. Vs. Thai Airways International Ltd.	87
<b>(e) ALLOTMENT OF HOUSE / HOUSE SITES</b>		
1.	Delhi Development Authority Vs. Mr. Rajinder Prasad.	89
2.	M/s. State Bank of Mysore Bank Employee's Welfare Society Vs. Vinodini G. Pai.	98
3.	Boddu Venkateswarlu & Anr. Vs. Khammam Municipality & Anr.	100
4.	Vivek Gyan Uday Foundation Vs. U.P. Awas Evam Vikas Parishad and another.	102
5.	Dr.Babu Lal Vs. Project Engineer, Rajasthan Housing Board and another.	103
<b>(f) ALLOTMENT OF SHOP / OFFICE SPACE / FUNCTION HALL</b>		
1.	Senior General Manager, Ordnance Factory Ministry of Defence Govt. of India Vs. Anand Swaroop.	105
2.	Kushal K.Rana Vs. DLF Commercial Complexes Ltd.	107
3.	M/s. DLF Commercial Developers Ltd and another Vs. Mr.S.C. Jain and another	109

<b>(g) AUTOMOBILES</b>		
1.	A. Sri Hari Kumar Raju Vs. The Managing Director, Anshu Automotives Pvt. Ltd. & Others.	111
2.	Subhash S/o. Bahadur Singh Vs. M/s. Gautam Automobiles Pvt. Ltd. & Anr.	113
3.	Hyundai Motor India Limited Vs. Surbhi Gupta and others.	114
4.	Rakesh Kumar Vs. M/s. Shimla Automobile Private Ltd and another.	116
5.	Manager, Vishvas Tyres Vs. Makaanji Samji Mata.	119
6.	Bajaj Tempo Ltd Vs. Shri Ajwant Singh and another.	120
<b>(h) BANKING</b>		
1.	Punjab National Bank Vs. LT. Col. Jagdeep Gehlot (Retired).	122
2.	State Bank of Mysore Vs. Amitchandra & Ors.	124
3.	Ravindra Kumar Prasad Vs. Zonal manager, Bank of India & others.	125
4.	State Bank of India Vs. Vishnu Prasad and others.	127
5.	Punjab National Bank Vs. Suresh S/o. Shivappa Bhandari & Anr.	128
6.	Punjab National Bank Vs. Sh. Budhram Sharma and another.	130
7.	M/s. Basant Parvati C.H.S. Ltd. Vs. Manager, State Bank of India.	132
8.	Laxmi Co-operative Bank Ltd. Vs. Basavaraj Sidramappa Yernale.	133
9.	Tamil Nadu Circle Postal Co-operative Bank Ltd. Vs. C.Papiah and others.	135
10.	Nirmal Arora Vs. Standard Chartered Bank.	137
11.	State Bank of India Vs. Sh.Sheo Kumar Sharma.	139
12.	Bhushan Tewari Vs. Tata Commercial Motors and another.	141
13.	HDFC Bank Ltd Vs. Kanwal Ohri and others.	142
14.	A.L. Prasad Vs. HDFC Bank and another.	144
15.	UCO Bank and another Vs. Shamsher Singh.	145
16.	The Rajasthan State Co-op. Bank Ltd Through Manager and another Vs. Kanhaiyalal Sharma.	147
17.	Shishir Tiwari Vs. M/s.Dewan Housing Finance Corporation Ltd.	148
18.	Ratan Singh Tanwar Vs. Manager, Dena Bank and another.	150
19.	Canara Bank Vs. R. S.Vasan.	151
20.	R. Muthukrishnan Vs. The Manager, Canara Bank.	153

21.	Subhash Trimbak Khedkar Vs. Syndicate Bank and another.	154
22.	Asish Kumar Dey Vs. Habibur Rahman and others.	156
23.	Branch Manager, Osmanabad District Central Co-operative Bank Ltd and another Vs. Shaikh Badar Sultana Nazir Mohammed and others.	157
24.	Standard Chartered Bank Vs. Shri Alok Aggarwal.	159
25.	HDFC Bank Ltd. Vs. R. Govardhan Reddy.	160
<b>(i) CARRIER SERVICES / CONSIGNMENT OF GOODS</b>		
1.	M/s. VRL. Logistics Ltd, Hubli Vs. M/s. Konark Textile.	162
2.	M/s. Associated Road Carrier Ltd Vs. M/s. Pioneer Products Ltd.	164
<b>(j) CONSTRUCTION</b>		
1.	Lttina Properties Pvt. Ltd. Vs. Mahesh K.R. and Others.	165
2.	Nagarwala Constructions Vs. Sunita Ashok Varma and Anr.	167
3.	M/s. TDI Infrastructure Ltd. Vs. Gautam Bahri.	168
4.	Vatika Limited Vs. Mr. Rajneesh Aggarwal.	170
5.	Dr. N.Y. Kachawalla Vs. The Orbit Corporation Ltd.	172
6.	Dinesh Chandra Joshi Vs. Shambhu Prasad Dhaundiya.	173
<b>(k) COURIER SERVICE</b>		
1.	K.N. Pareek Vs. M/s. Akash Ganga Courier Ltd. & Anr.	175
<b>(l) EDUCATIONAL SERVICES</b>		
1.	FIITJEE Ltd. Vs. Sajjan Kumar Gupta.	177
2.	M.K. Gupta Vs. Green Field Public School.	179
<b>(m) ELECTRICITY CHARGES</b>		
1.	R.N. Trivedi Vs. State of UP and others.	180
2.	Chief Engineer and others Vs. Virender Kumar.	182
<b>(n) ELECTRICITY SERVICE</b>		
1.	Ashok Kumar Vs. Uttarakhand Power Corporation Ltd and others.	183
2.	Renu Singh Vs. Prabandh Nidheshshak Pachimanchal Vidyut Vitran Nigam Ltd.	185
<b>(o) ELECTRICITY SUPPLY</b>		
1.	Vikas Gupta and another Vs. Sub Divisional Officer, U.H.B.V.N & Anr.	186
2.	Shri Radhey Shyam Vs. Sub Divisional Officer, UHBVAN	188



3.	Jaipur Vidyut Vitran Nigam Ltd. Vs. Balu Ram.	189
<b>(p) ELECTRONIC SERVICES</b>		
1.	Ortel Communications Ltd. and another Vs. Sudatta Jeevan.	191
<b>(q) EMPLOYMENT OFFER</b>		
1.	M/s. Destination One Pvt. Ltd. Vs. Ms. Punit Pal Kaur Guron and another.	193
<b>(r) FINANCIAL SERVICES</b>		
1.	Javed @ Sakir Ali Vs. Shriram Transport Finance Co. Ltd. & Anr.	194
2.	Venve Light Metal Ltd Vs. Smt. Arpitha Reddy.	196
3.	Stock Holding Corporation of India Ltd Vs. Snehlata Agarwal.	197
4.	M/s. Mahindra & Mahindra Financial Services Ltd Vs. M.Nagaraja.	198
5.	The Bileshwar Khand Udyog Khedut Sahkari Mandli Ltd and another Vs. Jyotiben Dansinh Mori.	200
<b>(s) FIRE INSURANCE</b>		
1.	Ravindra Madhava Bhat. K. Vs. M/s. Anuradha Petro & Chemicals Pvt. Ltd. & Ors.	203
2.	M/s. V.K. Kariyana Store Vs. The Oriental Insurance Co. Ltd. & Anr.	204
3.	Subhash Malhotra Vs. Divisional Manager United India Insurance Co. Ltd. & Anr.	206
4.	Ramdev Industries Vs. The New India Assurance Co. Ltd and others.	207
<b>(t) HEALTH INSURANCE</b>		
1.	New India Assurance Co. Ltd. (Though its Divisional Manager) Vs. Kuldeep Kumar Nayyar.	209
2.	Sh. Abhishek Jain Vs. HDFC Standard Life Insurance Co. Ltd & Anr.	210
3.	The New India Assurance Co. Ltd Vs. Shri. Sukhdev Singh.	212
4.	National Insurance Co. Ltd Vs. Shri. V.L.Jain.	213
<b>(u) HIRE PURCHASE</b>		
1.	Magma Fincorp Ltd Vs. Razia Khatoon.	215
2.	Rajeev Bhatia Vs. Indusland Bank Ltd and others.	217
<b>(v) HOSPITAL SERVICES</b>		
1.	Mukat Hospital and Heart Institute Vs. Mr.Dibyendu Ghara.	220

<b>(w) HOUSING</b>		
1.	Meerut Development Authority Vs. Rashmi Gahlot.	221
2.	The General Manager, A.P.Rajiv Swagruha Corporation Ltd. Vs. V.Satish Chandra.	223
3.	Sri Pradeep Kumar Diwan & Anr. Vs. Smt. Gayatri Devi Chokhani & Ors.	225
4.	Merlin Projects Ltd. Kolkata & Anr. Vs. Mr. Pandav Roy & Anr.	227
5.	Sarla Grover Vs. Delhi Development Authority.	229
6.	M/s. DLF Universal Ltd. Vs. Mr. Vijay Chopra & Mrs. Amarjeet Chopra.	230
7.	Smt. Ratna Deb Vs. Sanjay Dodhi.	232
8.	Estate Officer, HUDA Vs. Sanjay Sood.	234
9.	Sanjay Kumar Gupta Vs. Kebal Kishan Barma.	235
10.	Smt. V. Kamala & Ors. Vs. K.Rajiv & Ors.	237
11.	M/s. Shah Thakur & Sons & Anr. Vs. Mr. Anand Mahendra Shah.	239
12.	Dr. Surendra Kumar Sharma Vs. Agra Development Authority.	241
13.	Smt. Ram Pyari Vs. Lucknow Development Authority.	242
14.	Shri Om Prakash Vs. Shri Mahesh Chand Gupta.	244
15.	Maa Vaishnavi Builders & Developers Vs. Shri Ashish Vijay Satpute & Ors.	245
16.	Urban Improvement Trust, Ajmer Vs. Smt. Prakash Kanwar.	247
17.	Improvement Trust, Ludhiana Vs. Neeraj Chug and others.	249
18.	Alok Garg Vs. Ghaziabad Development Authority and Others.	250
19.	G. Subramania Pillay Vs. M. Unnikrishnan and another.	253
20.	Emaar MGF Land Ltd and another Vs. Karnail Singh and another.	254
21.	Joginder Singh Vs. M/s. Mapsko Builders Pvt. Ltd and another.	256
22.	Sovereign Developers & Infrastructure Limited Vs. Sujith Kumar Dhar.	258
23.	The Punjab State Federation of Cooperative House Building Societies Ltd Vs. Kuljit Singh and another.	260
24.	Smt. Asha Mahrotra Vs. M/s. Eldeco Housing & Industries Ltd.	262
25.	Smt. Basanti Sen Vs. Ashok Kumar Vijayvargiya.	264
26.	M/s. Chaitanya Construction Vs. Mr. Basavaraj Khajurji.	266
27.	Pooja Construction Company and others Vs. Narottambhai Ganeshbhai Patel and others.	267

28.	M/s. Ashed Properties & Investment Pvt Ltd Vs. Shri.N.M. Jayaram and another.	270
29.	Hatam Singh Vs. Ghaziabad Development Authority.	272
30.	Shivalik Co-operative House Building (First) Society Ltd Vs. Sushil Kumar.	274
31.	Shri Ran Vijay Singh Vs. Puri Construction Pvt. Ltd and others.	275
32.	M/s. Pace Builders Pvt Ltd Vs. Dr.K.Raju.	276
33.	Rajasthan Housing Board Vs. S.Raj Kumar Singh.	279
34.	Dr. E. Surender Rao and another Vs. M/s. Narne Estates Pvt. Ltd and others.	280
35.	S. Devendra Rao Vs. Housing Development Finance Corporation Ltd and others.	282
36.	Jodhpur Vikas Pradhikaran and another Vs. Pratap Singh.	284
37.	Rail Vihar Sahkari Awas Samiti Ltd Vs. Yash Pal Kochar.	286
38.	Rana Basu and others Vs. Lovely Ghosh w/o. Apurba Ghosh and others.	288
39.	Galaxy Homes Pvt. Ltd Vs. Girish N.	291
40.	M/s. Sahara India Commercial Corporation Ltd & Ors. Vs. Mukamala Nataraja Rao and another.	293
41.	Lt. Col. U. B. Dhaiya Vs. Haryana Officers & Public Enterprises Employees Welfare & Cooperative Group Housing Society.	295
42.	Madan Lal Sunger and another Vs. Rajasthan Housing Board and another.	297
<b>(x) INSURANCE CLAIM</b>		
1.	The United India Insurance Co. Ltd. Vs. Sheela and others.	299
2.	Regional (Zonal) Manager, Sahara India & Anr. Vs. Sudama Prasad Chaturvedi.	301
3.	C & M Farming Ltd., C & M House Vs. The New India Assurance Co. Ltd.	302
4.	Soniya Fabrics (Pvt.) Ltd. Vs. Central Bank of India Ltd. & Ors.	303
5.	D. John Raj & Anr. Vs. Senior Divisional Manager, LIC & Anr.	305
6.	New India Assurance Company Limited Vs. Rakesh Kumar.	306
7.	M/s. Tata AIG General Insurance Co. Ltd. Vs. M/s. Nissan Electronics Ltd.	308
8.	M/s. Jeevee Exim Vs. New India Assurance Co. Ltd.	310
9.	Baidya Nath Patra Vs. United India Insurance Co. Ltd.	312

10.	Yada Venkateswarlu Vs. The United India Insurance Company and another.	314
11.	New India Assurance Co. Ltd. Vs. M/s. G.B. Springs Pvt. Ltd.	315
12.	The New India Assurance Co. Ltd Vs. Jai Kanwar.	317
13.	SBI Life Insurance Co. Ltd Vs. Harvinder Kaur and another.	318
14.	New India Assurance Co. Ltd and others Vs. Sh. Deepak Anand.	320
15.	Life Insurance Corporation of India Vs. Sh. Sidhartha Madhavrao Dhole.	322
16.	Union Bank of India Vs. Dhara Singh Kushwah.	324
17.	The Oriental Insurance Company Ltd Vs. M/s. Rishabh Refectories Ltd.	326
18.	Medico Distributor Vs. Regional Manager, CRO-II, National Insurance Co. Ltd and others.	328
19.	Smt. Paramjit Kaur Vs. LIC of India and another.	330
20.	Om Prakash Banth and another Vs. The Oriental Insurance Co. Ltd.	331
21.	M/s. Luxra Enterprises Pvt Ltd Vs. M/s. New India Assurance Co. Ltd and another.	333
22.	M/s. B.R. Exports Vs. United India Insurance Co. Ltd and another.	335
23.	Life Insurance Corporation of India Vs. Shri Amar Lal Jaisingh through his legal heirs.	336
24.	The Chief Post Master General Vs. Mahendra Singh Meena.	338
25.	The New India Assurance Company Ltd Vs. Smt. Surekha Subhash Rathod and another.	339
26.	Jaiswal Cold Storage & Ice Factory Vs. The New India Assurance Co. Ltd.	341
27.	Dr. Murli Manohar Dubey Vs. LIC of India.	342
28.	United India Insurance Co. Ltd and another Vs. Krishan Kumar Mahajan (through his legal heirs).	344
29.	The Chairman, Birla Sun Life Insurance Co. Ltd and another Vs. Smt. Asha.	345
30.	K. Reghunathan Vs. New India Assurance Co. Ltd and another.	346
31.	National Insurance Co. Ltd Vs. Bobby Joseph and another.	348
32.	New India Assurance Co. Ltd Vs. M/s Cosboard Industries Ltd.	350
33.	Max New York Life Insurance Co. Ltd & Anr. Vs. Ms. Reena Singh & Anr.	352
34.	Export Credit Guarantee Corporation of India Ltd Vs. Pentagon Screws and Fasteners Ltd.	354

35.	Shri Vijay Somany Vs. Reliance General Insurance Co. Ltd.	356
36.	National Insurance Co. Ltd Vs. Rajan Sood.	357
37.	V.K. Manchanda and others Vs. M/s. Mohd. Ibrahim and Sons.	359
38.	Smt. Anita (Since deceased) Vs. Branch Manager, LIC of India.	361
39.	National Insurance Co. Ltd Vs. Punjab Fibres Ltd.	362
40.	M/s. Ashok Fuel Brinquetts Vs. National Insurance Co. Ltd.	364
41.	New India Assurance Co. Ltd Vs. M/s. Kamboj Ultra Sound & Diagnostic Pvt. Ltd.	365
42.	M/s ICICI Prudential Life Insurance Co. Ltd Vs. Shri Arunjeet Thakur.	366
43.	The New India Assurance Co. Ltd Vs. Sh. Kishan Chand Sharma.	368
44.	National Insurance Co. Ltd. Vs. Aparna Kahar.	371
45.	M/s. Shiva International Fashions Vs. M/s. Oriental Insurance Co. Ltd and others.	372
46.	New India Insurance Co. Ltd Vs. Smt. Bimlesh.	374
47.	Sh. Matber Singh Vs. Oriental Insurance Co. Ltd and another.	376
48.	Oriental Insurance Co. Ltd Vs. Subhash Sakhahari Pachbhai.	378
49.	Vijay Kumar Vs. Bajaj Allianz General Insurance Co. Ltd & Ors.	379
50.	Narendra Vishvanath Vyas Vs. The Chairman, Life Insurance Corpn. of India and others.	381
51.	United India Insurance Co. Ltd Vs. Shyam Lal.	383
52.	Smart Sign, Division of M/s. Crescent Chemical Vs. The United India Insurance Co. Ltd.	384
53.	Metcalf & Hodgkinson Pvt. Ltd Vs. Peace Trade Concern and others.	386
54.	Rajendra Singh Yadav Vs. National Insurance Co. Ltd.	387
55.	Life Insurance Corporation of India through its Authorized Representative & Asst. Secretary Vs. Smt. Geeta.	389
56.	Shri N. Gopal Vs. Branch Manager, The National Insurance Co. Ltd.	391
57.	M/s. Sahara India Commercial Corporation Ltd. & Anr. Vs. Smt. Gomti Devi and others.	392
58.	Shri Arvind Kumar Aggarwal Vs. The New India Assurance Co. Ltd and others.	394
59.	ICICI Bank Ltd. Vs. Prem Kishan Garg and others.	395
60.	National Insurance Co. Ltd. Vs. Arun Tiwari and another.	398
61.	M/s. Shield Tradelink Pvt Ltd Vs. United India Insurance Co. Ltd.	399

62.	Dr. Arun Kumar K Teli Vs. Oriental Insurance Co. Ltd.	401
<b>(y) LEGAL SERVICES</b>		
1.	Kuwait Airways Corporation Vs. Rajagopal & Company, Advocates & Ors.	402
2.	Dr. Harekrishna Biswas Vs. H.D.Nautiyal, Registrar, NCDRC and others.	403
<b>(z) LIFE INSURANCE</b>		
1.	Mrs. Kamla Devi Sagu Vs. Metlife India Insurance Co. Ltd and others.	405
2.	Abdul Latheef & Ors. Vs. The Life Insurance Corporation of India & Ors.	407
3.	K.D. Mandappa & Anr. Vs. Metlife India Insurance Co. Ltd. & Anr.	408
4.	Bajaj Allianz General Insurance Co. Ltd Vs. Shri. Jayanthibhai Nathanbhai Monpara and others.	410
5.	PNB MetLife India Insurance Co. Ltd Vs. Ramila Manubhai Indrekar.	411
6.	The C.E.O & Director, Sahara India Life Insurance Company Ltd and another Vs. Rayani Ramanjaneyulu.	413
7.	M/s. ICICI Prudential Life Insurance Co. Ltd Vs. Mrs. Mary Joseph.	414
8.	Life Insurance Corporation of India Vs. Smt. Santosh Devi.	415
9.	Birla Sun Life Insurance Co. Ltd Vs. Smt. Jayasheelamma.	417
10.	Darshna Devi and another Vs. Life Insurance Corporation of India & Ors.	418
<b>(aa) LPG SUPPLY</b>		
1.	Indian Oil Corporation Ltd Vs. Late Om Prakash Seth (since died) represented through his legal heirs and others.	420
<b>(ab) MAINTENANCE OF EQUIPMENT</b>		
1.	M/s. Aag India Pvt. Ltd. Vs. Bharat Sanchar Nigam Ltd.	422
<b>(ac) MANUFACTURING DEFECT</b>		
1.	Manohar Lal Vs. Raj Motors and others.	423
2.	General Motors India Pvt. Ltd Vs. Mitali Aggarwal.	425
3.	Rakesh Pathak Vs. M/s. Hindustan Aircon Pvt. Ltd.	426
4.	Jan Sewa Ashram Vs. TIL Ltd and another.	427
5.	Rakesh Kumar and another Vs. M/s. Parkshit Tractors and others.	429
6.	The Commercial Officer, M/s. Piaggio Greaves Vehicle Pvt Ltd & Anr. Vs. Ramakanta Samal & Ors.	431

<b>(ad) MARINE INSURANCE</b>		
1.	National Commission Insurance Ltd. Vs. M/S. JDR Exporters & Importers (P) Ltd.	432
<b>(ae) MEDICAL REIMBURSEMENT</b>		
1.	The Chairman/CEO, Yeshasvini Co-op. Farmers Health Care Scheme Department of Co-operation Vs. Smt. Leelamma and another.	434
2.	Shri O M Mahesree, IAS (Retd.) Vs. Union of India and others.	435
3.	Union of India and another Vs. Sri.B.M.Singh.	437
<b>(af) MEDICAL NEGLIGENCE</b>		
1.	Akhilesh Jain Vs. Nobel Hearing & Anr.	438
2.	Badam Agaiah & Ors. Vs. Dr. L. Vidya Sagar Reddy.	440
3.	Smt. Afsana Bano alias Baby Vs. Dr. Manju Verma & Anr.	442
4.	Master Abhishek Ahluwalia and others Vs. Dr. Sanjay Saluja.	444
5.	I. Ratnamala W/o. Late I.J. Divakar & Ors. Vs. Image Hospitals & Ors.	447
6.	Smt. Neeti Saluja Vs. Dr.(Mrs.) K.Batra & Ors.	448
7.	Dr. R.K. Pandey Vs. Sri Chandra Shekhar Pandey and others.	450
8.	Dr. Manpreet Kaur Vs. Laxmi Devi alias Gudiya.	452
9.	Manjeet Chawla and Others Vs. Escorts Heart Institute and Research Centre.	454
10.	Smt. Namita Chatterjee Vs. Dr. Mousami Banerjee and others.	455
11.	Dr.G.Swaminathan and others Vs. G.Rajendran.	457
12.	Md. Mahatab Alam Khan Vs. Dr. Gopinath Roy and another.	458
13.	Chief Secretary, Govt. of NCT of Delhi & Anr. Vs. Smt. Babita.	460
14.	Consumer Protection Council, Trichy and another Vs. Trichy Specialty Hospital and another.	462
15.	Sri G. Rajendra and others Vs. The City Hospital and others.	463
16.	Dr. K.K. Kakkar and another Vs. Smt. Neetu Singh and others.	465
17.	Dr. Ashok B. Patel Vs. Mansuri Kasambhai Fakir Mohammed and another.	467
18.	Subash Prasad Vs. Dr. (Mrs.) Vidya @ Vidya Rani Singh.	469
19.	Mrs. Chitrangini Ramchandra Mujmule Vs. Dr. Manoj Jain and others.	470
20.	Sau. Kirti Verma and another Vs. Dr. Manoj Rambhau Gawande and another.	472

21.	Sh. Manik Maliba Tarade Vs. Sushrut Medical Care & Research Societies Hardikar Hospital and others.	474
22.	Dr. Indira and others Vs. Muchapothula Nirmala.	475
23.	R.P. Unniyal Vs. S.V. Nursing Home & Ors.	476
24.	Narayanankutty Menon Vs. M/s. Lal Memorial Hospital and another.	479
25.	Ram Chandra Rai Vs. Dr. Md. Zaheer.	480
26.	Kadar Khan Vs. Dr.G.L. Gupta.	482
27.	Parivar Seva Sanstha and another Vs. Anil Kumar Shukla and another.	483
28.	Smt. Sarita Vs. Union of India and others .	485
29.	J. D. Bagree Hospital and another Vs. Smt. Vandana Goyal.	486
30.	Shiv Dial Singh Vs. Shree Sanatam Dharam Mahavir Dal Hospital & Ors.	489
31.	Rakesh Vs. Deep Hospital and others.	490
32.	Shri Mansing Ramu Khade Vs. Dr.Ramesh Rajaram Bhoite.	491

<b>(ag) PENSION SCHEME</b>		
1.	Regional Provident Fund Commissioner Vs. Shri Mohammad Khasim.	493
2.	Sh. Ramanayak Tiwari Vs. Regional Provident Fund Commissioner (North) and another.	496
3.	Regional Provident Fund Commissioner Vs. H.C. Shiva Rudrappa.	498
<b>(ah) POSTAL SERVICES</b>		
1.	Superintendent of Post Offices Jhunjhunu Division & Ors. Vs. Mangla Ram Jat.	502
2.	Sr. Superintendent of Post Offices & Ors. Vs. Vikesh Dogra.	504
3.	The Suptt. of Post Offices, Guntur Division & Anr. Vs. Smt. Meena Juneja.	505
4.	The Suptt. of Post Offices, Narasaraopet Dn. Vs. Shaik Hasan Ahmed & Anr.	507
5.	Post Master, Head Office and others Vs. Sanjay Gupta and another.	508
6.	The Sr. Superintendent, Post Offices Vs. Amit Kumar Sharma and another.	510
<b>(ai) POST OFFICE SAVINGS</b>		
1.	Union of India through Senior Post Master Vs. Shri. Deepak Puri.	512



2.	Sr. Supdt. Of Post Offices and another Vs. Smt. Lavanglata Sharma and another.	513
<b>(aj) PROCUREMENT SERVICES</b>		
1.	M/s. Rainbow International Vs. M/s. M.M.T.C. Ltd.	515
<b>(ak) PROVIDENT FUND</b>		
1.	Regional Provident Fund Commissioner and another Vs. Subhadraben Jayantilal Mehta and another.	517
2.	Narayandas Mundra Vs. The Post Master, Dewas.	519
<b>(al) PURCHASE / TRANSFER OF SHARES</b>		
1.	The Bombay Dyeing and Manufacturing Co. Ltd Vs. Mehmud M.Chopda (LRs) and another.	521
<b>(am) RAILWAYS</b>		
1.	Rakesh Kumar Goutam Vs. General Manager, South East Central Railway.	522
2.	Union of India through General Manager Northern Central Railway & Anr. Vs. Smt. Anjana Singh Chauhan.	524
3.	Northern Railway through its General Manager & Others Vs. Delhi Sikh Gurudwara Management Committee.	526
4.	Station Superintendent, Bhadrak Railway Station Vs. H.Bokhari and others.	527
5.	G.M. Northern Railway Vs. Manoj Kumar.	529
<b>(an) RETAIL SERVICES</b>		
1.	Harish Kumar Vs. Reliance Communications Pvt. Ltd. & Ors.	530
2.	Ankish, Laxmi Towers Vs. Dinesh Shankar Tripathy and another.	532
<b>(ao) SECURITY SERVICES</b>		
1.	M/s. Panchsheel Buildtech Pvt. Ltd Vs. Mr. Ajai Kumar Gopalia.	533
<b>(ap) SHIPPING SERVICES</b>		
1.	Singapore Airlines Ltd. Vs. M/s Beauty House (Regd) and another.	535
2.	M/s. RG2, WZ-83 Vs. ATC (Clearing & Shipping) Pvt Ltd.	537
<b>(aq) STORAGE SERVICES</b>		
1.	Manager, U. P. Co-operative Federation Ltd Vs. Rajpati Yadav.	539
<b>(ar) SUPPLY OF EQUIPMENT</b>		
1.	Dr. Nilesh G.Nimavat Vs. Medipicks and another.	540

<b>(as) SUPPLY OF SEEDS</b>		
1.	Nuziveedu Seeds Ltd. and Anr. Vs. Shri Babasaheb @ Ibrahim Pathan.	542
2.	Nuziveedu Seeds Ltd. and another Vs. Shri Prakashrao.	543
3.	The District Manager, AP State Seeds Development Corporation Vs. M. Madhusudhan Reddy and Anr.	545
4.	The Manager, AP State Seeds Development Corporation and another Vs. N. Rama Swamy and others.	548
5.	M/s. Maha Gujarat Seeds Pvt. Ltd and another Vs. Gurlal Singh.	551
<b>(at) TELEPHONES</b>		
1.	Bharat Sanchar Nigam Ltd., & Anr. Vs. Devisahay Sharma.	552
<b>(au) TRANSPORT OF GOODS</b>		
1.	M/S. Karam Cargo Logistics Pvt. Ltd. Vs. M/S. Lakra Industries Ltd.	553
<b>(av) TRAVEL AGENCY / SERVICE</b>		
1.	R. Suyambu Ananthan & Ors. Vs. M/s. Cox and Kings.	554
2.	Abhishek Sarkar and another Vs. Cox & Kings Ltd.	556
<b>(aw) VEHICLE INSURANCE</b>		
1.	Bachan Singh Vs. Oriental Insurance Co. Ltd.	558
2.	United India Insurance Co. Ltd. & Ors. Vs. Mr. Bhupinder Singh	560
3.	Kalyan Singh Chauhan Vs. National Insurance Co. Ltd.	562
4.	Didar Singh and Anr. Vs. Reliance General Insurance Company Ltd.	563
5.	Oriental Insurance Company Ltd. Vs. Ajeet Verma.	565
6.	Jagdish Prasad Bakshi Vs. Oriental Insurance Co. Ltd.	566
7.	M/s. Harpreet Motors (P) Limited Vs. Dr. Prithipal Singh Bhandari & Ors.	567
8.	ICICI Lombard General Insurance Co. Ltd. Vs. Sh. Pawan Kumar.	570
9.	Paramjit Kaur Vs. M/s. Oriental Insurance Co. Ltd.	571
10.	Puneet Phutela Vs. The Oriental Insurance Company Ltd.	573
11.	National Insurance Co. Ltd. Vs. Ashwani Kumar.	574
12.	Md. Kaimuddin Khaja Vs. Reliance General Insurance Co. Ltd. & Ors.	575
13.	Madhukantaben Mahendrabhai Mehta Vs. Future Generali India Insurance Co. Ltd.	577
14.	Satish Singh Saini Vs. M/s. Royal Sundaram Alliance Insurance Co. Ltd. & 3 Ors.	578

15.	United India Insurance Company Ltd. Vs. Diwan Chand.	580
16.	Ramchandra Khatwani Vs. IFFCO TOKIO General Insurance Company and Anr.	581
17.	National Insurance Company Vs. Kulwant Singh.	583
18.	Bajaj Allianz General Insurance Company Vs. Santhosh Singh.	584
19.	United India Insurance Co. Ltd. and Others Vs. Deepak Mathur and Anr.	586
20.	Satnam Singh Vs. Mahindra & Mahindra Ltd and another.	588
21.	New India Assurance Co. Ltd. Vs. Jatin Sachdeva.	589
22.	New India Assurance Company Ltd and another Vs. Shri Girish Gupta.	591
23.	Sh.Vishnu Singh Vs. IFFCO TOKIO General Insurance Co. and another.	592
24.	Reliance General Insurance Co. Ltd. Vs. Dr. P.S. Pramod and another.	594
25.	Oriental Insurance Co. Ltd and another Vs. Mohinder Pal and another.	596
26.	M/s. Premier Shield Pvt Ltd. Vs. Tata-AIG General Insurance Co. Ltd.	597
27.	Arjun Lal Jat Vs. M/s. HDFC Irgo General Insurance Co. Ltd and another.	598
28.	United India Insurance Co. Ltd. Vs. Mr. Dada Miyan.	600
29.	Smt. Sarla Jain Vs. United India Insurance Co. Ltd.	601
30.	National Insurance Co. Ltd and another Vs. Alam Ali.	603
31.	Naresh Kumar Vs. Oriental Insurance Company Ltd.	605
32.	Sri Monjay Das Vs. The Managing Director, The Oriental Insurance Co. Ltd and others.	606
33.	Kulwant Singh Vs. The Managing Director, United India Insurance Co. Ltd. and another.	608
34.	The IFFCO Tokio General Insurance Co. Ltd. Vs. M/s. Sheetalben Nileshbhai Surti.	609
<b>IV. EX-PARTE DECREE</b>		
1.	M/s. Accanoor Associates Vs. Akanksha Co-operative Housing Society Ltd. & 19 Others.	611
<b>V. EXECUTION PETITION</b>		
1.	Haryana Urban Development Authority and another Vs. M/s. Stanley Engineering Private Limited.	613

<b>VI. IMPLEMENTATION OF CONSUMER FORA'S ORDERS / SCOPE OF SECTION 27</b>		
1.	M/s. Shreenath Corporation and others Vs. Nilkamal V.Patel.	615
<b>VII. JURISDICTION OF CONSUMER FORA</b>		
1.	Ramesh Chand Vs. The Secretary, BHEL Employees Provident Fund Trust and others.	620
2.	Nirmala Devi Vs. Punjab State Electricity Board and another.	621
3.	Ramnath Panjiyar Vs. Electrical Executive Engineer and others.	622
4.	Ajmer Vidyut Vitran Nigam Ltd and another Vs. Sh. Madho Singh.	624
5.	Smt. Sarita Bhatnagar Vs. Shri Yogender Sharma.	625
<b>VIII. LIMITATION</b>		
1.	Arvind Pundlik Dhamne Vs. Raghuvir Wamanrao Joshi.	627
2.	Kishor Chandrakant Rathod Vs. The Managing Director, ICICI Prudential Life Insurance Co. Ltd & Anr.	628
3.	Haryana Urban Development Authority & Anr. Vs. The Vasundhara Co-operative Group House Society Ltd.	630
4.	Ram Avtaar Sastry Vs. Max Super Specialty Hospital & Anr.	631
5.	Delhi Development Authority Vs. Naresh Kumar Alag.	633
6.	Kanpur Development Authority Vs. Lt. Col. Surendra Kumar Jhingran.	634
7.	Dooab Exim Pvt. Ltd. Vs. Export Credit Guarantee Corporation of India.	636
8.	Pappu Managaratanam Vs. M/s. Sai Sha Finance and Chits and another.	637
9.	M/s. Matrumal Dhannalal Oil Mill Vs. State Bank of India and others.	639
10.	S.R. Ramesh Babu Vs. Federal Bank Ltd and another.	641
11.	G.P. Tiwari Vs. ICICI Bank Ltd and others.	642
12.	Sunita W/o. Late Suresh Kumar Vs. Managing Director, Reliance General Insurance Co. Ltd and others.	644
13.	Atam Prakash Vs. Reliance General Insurance Co. Ltd.	645
14.	Rajinder Singh Vs. Reliance General Insurance Co. Ltd and others.	647
15.	The Assistant General Manager, Reserve Bank of India Vs. Karumu Subba Reddy.	648
16.	Tara Singh Jhand Vs. Punjab Urban Development Authority.	650

17.	M/s. Global Ispat Ltd. through Director Vs. Oriental Insurance Company.	652
18.	Ms. Sudha Shrotria Vs. Fortis Healthcare Limited Through Its Managing Director.	654
19.	Vertex Securities Ltd and another Vs. T. Chacko and others.	655
20.	Dharambir Vs. Dr. Akhil Saxena and others.	657
<b>IX. MAINTAINABILITY OF A SECOND COMPLAINT</b>		
1.	Shri Prabhakar Vishnu Surte Vs. Suhas Co-op. Housing Society Ltd and others.	659
<b>X. PARALLEL PROCEEDINGS</b>		
1.	Shri. S.S. Bhatia, S/o. Lt. Sh. Sardar Jot Singh Vs. HDFC Bank Ltd. (Collections).	661
<b>XI. PECUNIARY JURISDICTION</b>		
1.	M/s. Omaxe Ltd. Vs. Iqbal Begum & Anr.	663
2.	Dr. Harekrishna Biswas Vs. The State Bank of India and others.	664
3.	Sushil Gupta Vs. International Department (Master Vintage International).	666
4.	Dr. Uttamkumar Samanta Vs. Bharti Airtel Limited and others.	667
5.	Ramesh Kumar Vs. Dr. Akhil Saxena and others.	669
6.	Varghese Silvester Vs. Dr. Archana Dhawan.	671
<b>XII. PROCEDURE ADOPTED/FOLLOWED BY THE FORA</b>		
1.	United India Insurance Co. Ltd. Vs. Oriental Rubber Works & Anr.	673
2.	Ajay Rana Vs. Ms. Shagun.	674
3.	Rajasthan Housing Board & Anr. Vs. Gyan Singh.	675
4.	The Deputy Executive Engineer Urban Sub-Division-2 Vs. Aditya Developers.	677
5.	National Seeds Corporation Ltd. Vs. Sh. Uttam Bagal.	679
6.	National Seeds Corporation Ltd. Vs. Sh. Dadaso Vishvanath Bagal & Anr.	680
7.	Shyambahadursingh Gangasingh Rajput Vs. Mahendra and Mahendra Financial Services Ltd.	681
8.	B.M. Jayeshankar Vs. B. Sharathkumar	681
9.	Shri Prasant Kumar Mishra Vs. Pratap Kumar Biswal.	682
10.	Urban Improvement Trust through its Secretary, Rajasthan Vs. Varun Gupta.	684

11.	UOI and others Vs. Rajendra Kumar and another.	690
12.	United India Insurance Co. Ltd. Vs. Smt. Lalita Devi.	691
13.	Deposit Insurance & Credit Guarantee Corpn. Vs. Fakeerappa Basavantappa Kudari.	692
14.	Sudha Rani Gupta Vs. Central Govt. Employees Welfare Housing Organization.	694
15.	Pradeep Kulsrestha Vs. Ashok Kumar R.Singh and others.	695
16.	M/s. A2Z Logistics India Pvt Ltd. Vs. M/s. DACSS Granites Pvt. Ltd.	697
17.	Union of India, Dept of Posts and others Vs. Rahul and others.	698
18.	M/s. Sarju Cold Storage Vs. M/s. Ambika Traders.	699
19.	M/s. N.M.P. Developers and another Vs. Mr. Nitin Tukaram Gavankar and another.	703
20.	Jet Lite (India) Ltd and another Vs. Dr. Surendra Nath Rana Patgiri.	704
21.	Kanpur Development Authority Vs. Smt. Ramsiya Gupta.	706
22.	M/s. Naraindas Tejpal Vs. The Branch Manager, United India Insurance Co. Ltd and others.	707
23.	M/s. Novous Abasan Pvt. Ltd. Vs. Dakshineswar Saptarshi Welfare Society and another.	709
24.	Radhey Shyam Vs. Assistant Engineer, Jaipur Vidyut Vitran Nigam Ltd and others.	710
25.	Prabhu Dayal Sharma Vs. Director (CRS), State Insurance and Provident Fund Department and others.	711
26.	Allahabad Bank and another Vs. Sri Shrawan Kumar Poddar and another.	712
27.	M/s. Indiagen Ltd. Vs. Sri.B.S. Arun Kumar and another.	714
28.	M/s. Yellow Stone Builders Pvt. Ltd and others Vs. Lalit Kumar Dhiman.	715
29.	United India Insurance Co. Ltd. Vs. Atul Metal Industries.	716
30.	M.M. Developers and Promoters Pvt. Ltd. Vs. Vinod Kumar and others.	717
<b>XIII. POWER OF REVIEW</b>		
1.	Suncity Residents Welfare Association (SRWA) Vs. M/s. Suncity Maintenance Pvt. Ltd. and others.	719
<b>XIV. UNFAIR TRADE PRACTICE</b>		
1.	M/s. Procter and Gamble Home Products Ltd. Vs. Ms. Taranjit Kaur and others.	721
2.	Satish Maniklalji Baheti Vs. Ku. Monika D/o. Shantilal Takkar.	722

3.	Fortis Health Management (North) Ltd. Vs. Smt. Meenu Jain & Anr.	724
4.	Anthonymuthu Vs. M/s. Whirlpool of India Ltd and others.	725
5.	Novartis India Ltd. Vs. J. Anto and another.	726
6.	M/s. True Zone Buildwell Pvt. Ltd. Vs. Bhoop Singh.	728

## **Condonation of Delay**

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### **I. CONDONATION OF DELAY**

#### **1. Narayan Kumar Khaitan and others Vs. M/s. Duncan Industries Ltd.**

##### **i) Case in Brief:**

Complainant/Petitioner in pursuance to order dated 16.10.2008 passed by State Commission filed execution application No.126/2008 before District Forum which vide order dated 25.09.2012 observed that Complainant has received amount as per his entitlement and not entitled to get any more amount. Appeal filed by the Complainant was dismissed by State Commission vide impugned order, as appeal was filed with a delay of 53 days. Challenging the said order, the present Revision Petition has been filed. Revision Petition allowed.

##### **ii) Order appealed against:**

From the order dated 25.07.2013 in S.C. Case No.FA/978/2012 of the West Bengal State Consumer Disputes Redressal Commission, Kolkata.

##### **iii) Parties:**

Narayan Kumar Khaitan and others - Petitioner(s)

Vs.

M/s. Duncan Industries Ltd. - Respondent(s)

##### **iv) Case No and Date of Judgement:**

Revision Petition No.3718 of 2013 & Date of Judgement: 21.05.2014.

##### **v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

##### **vi) Issues raised and decided:**

The National Commission on perusal of the records found that the delay occurred as Advocate engaged by the Complainant proceeded out of station due to Puja vacations and further took time in preparation of appeal. As such, the National Commission allowed the Revision Petition by condoning the delay of 53 days subject to the cost of Rs.5,000/- to be deposited to the Legal Aid fund of the State Commission and the matter was remanded back to State Commission to decide the appeal on merits after giving an opportunity of being heard to both the parties



relying on the decision of the Hon'ble Supreme Court in *Sanjay Panchal Vs. Indubhai Parekh Memorial Hospital and Anr.* (Civil appeal No.4226/2014).

**vii) Citation:**

III (2014) CPJ 36; 2014(2) CPR 719.

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**2. M/s. Young India Engineers Vs. Badri S/o. Narayan Choudhary**

**i) Case in Brief:**

Complainant/Respondent field complaint before the District Forum. OP/Petitioner did not appear before the Forum. District Forum allowed the complaint and directed OP to handover the possession of the flat or pay Rs.5,90,000/- with 18% p.a. interest and further awarded Rs.25,000/- as compensation Rs.2,000/- as cost. OP filed Appeal along with Application for Condonation of Delay of 475 days which were dismissed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 08.05.2013 in Misc. Application No.367/2011 in First Appeal No.625/2011 of the Maharashtra State Consumer Disputes Redressal Commission, Circuit Bench at Aurangabad.

**iii) Parties:**

M/s. Young India Engineers - Petitioners/Opp. Parties

Vs.

Badri S/o. Narayan Choudhary - Respondent/Complainant

**iv) Case No and Date of Judgement:**

Revision Petition No.2449 of 2013 with IA/4067/2013 (For Stay) & Date of Judgement: 28.05.2014.

**v) Acts and Sections referred:**

Sections 15, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The question before the Commission was whether the explanation offered by the Petitioner for the Condonation of Delay of 475 days was reasonable. The Commission observed that there was no iota evidence

### **Condonation of Delay**

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on record to prove that copy of ex-parte order was served on OP. OP claimed that they came to know about the Forum's order only in September 2011 when they were served notice of Execution. They applied for a certified copy on 08.11.2011, obtained copy on 18.11.2011 and filed appeal on 18.12.2011. Since there was a delay of only about 30 to 40 days, the National Commission held that the Stat Commission ought to have condoned delay as it was an ex-parte order against the Petitioner. Consequently the Revision Petition was allowed. Application filed before the State Commission for Condonation of Delay was also allowed subject to payment of cost of Rs.5,000/- to the Respondent. The matter was remanded back to the State Commission to decide the appeal on merits after giving an opportunity of being heard to both the parties.

**vii) Citation:**

2014(2) CPR 630.

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### **3. Bonda Kasi Annapurna Vs. The Branch Manager, Bajaj Allianz General Insurance Co. Ltd. & Anr.**

**i) Case in Brief:**

Complainant's husband had taken an Individual Personal Accident Policy of Rs.25 Lakhs for a period of 3 years from 08.12.2006 from OP/ Respondent No.1. On 03.01.2008 he slipped from stairs, sustained injuries and died while being taken to the hospital. OP was informed but the claim for insurance money was repudiated. Alleging deficiency on the part of OP, complaint was filed before the State Commission which after hearing both parties dismissed the complaint. Aggrieved by the said order, the present appeal has been filed along with application for condonation of 1163 days delay. Appeal rejected.

**ii) Order appealed against:**

From the order dated 06.12.2010 in C.C.No.33/2009 of the State Consumer Disputes Redressal Commission, Andhra Pradesh.

**iii) Parties:**

Bonda Kasi Annapurna - Appellant/Complainant

Vs.

The Branch Manager, Bajaj Allianz  
General Insurance Co. Ltd. & Anr. - Respondent/OP-1

**iv) Case No and Date of Judgement:**

First Appeal No.160 of 2013 with IA/1623/2014 (C/Delay) and IA/1624/2014 (Placing Additional Documents) & Date of Judgement: 29.05.2014.

**v) Acts and Sections referred:**

Sections 12, 13, 14, 17(b), 18, 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission observed that no reasonable explanation has been given for condonation of inordinate delay of 1163 days. Neither the fact that the Complainant was not from rural back ground nor the inability of the Complainant to come to Delhi due to financial problems was considered “sufficient cause” for condonation of delay. The Commission relied on the judgements of the Hon’ble Apex Court in *R.B.Ramlingam v. R.B.Bhavaneshwari* [2009] (2) Scale 108]; *Oriental Aroma Chemical Industries Ltd v. Gujarat Industrial Development Corporation & Anr.*, (2010) 5 SCC 459, *Anshul Agarwal v. New Okhla Industrial Development Authority* (2011) 14 SCC 578, IV (2011) CPJ 63 (SC); *Post Master General and Others v. Living Media India Ltd. & Another* [2012 3 SCC 563] and *Ram Lal and Ors. v. Rewa Coalfields Ltd.*, AIR 1962 Supreme Court 361 while rejecting the application for condonation of delay and consequently the appeal.

**vii) Citation:**

III (2014) CPJ 169; 2014(2) CPR 618.

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**4. M. Premalatha Vs. Arivalagan and others**

**i) Case in Brief:**

It was the case of the Petitioner/Complainant that she purchased a vehicle from OP-1/Respondent No.1 and planned to make a living out of the income earned from it. But the vehicle gave poor mileage and had poor pick-up. Whenever, the Complainant approached the Manager, Jayalakshmi Auto Works and Agencies (P) Ltd., (Respondent No.2/OP.2), she didn’t get a proper response. Complainant met the Marketing Manager, V.E. Commercial Vehicles Ltd., (OP.3/Respondent No.3) who sent a service engineer to carry out the repairs. Even after carrying out the repairs by the aforesaid service engineer, the vehicle gave

### **Condonation of Delay**

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mileage of 5.5 km/litre only. Aggrieved by the act of OPs, she filed complaint before the District Forum which directed the (i) OP.3/ Respondent No.3 to replace the defective vehicle and (ii) the opposite parties 1 to 3 individually or jointly to pay a sum of Rs.50,000/- as compensation for mental agony and (3) to pay a sum of Rs.5,000/- towards costs. Aggrieved by the order of the District Forum, the Respondent Nos.2 & 3 filed an appeal before the State Commission which set aside the order of the District Forum vide impugned order against which the present Revision Petition has been filed along with an application for condonation of delay. Revision Petition along with an application for condonation of delay were dismissed.

**ii) Order appealed against:**

Against the order dated 31.01.2011 in Appeal No.646 of 2007 of the Tamil Nadu State Consumer Disputes Redressal Commission, Chennai.

**iii) Parties:**

M. Premalatha - Petitioner

Vs.

Arivalagan and others - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.3998 of 2011 & Date of Judgement: 12.06.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission after perusal of records found that the certified copy of the order might have been received by the Petitioner on 07.09.2011, but thereafter, the Petitioner took more than three months to file the Revision Petition. There was no specific reason given to explain the day to day delay from 07.09.2011 to 09.12.2011. Having got the order in their favour in the District Forum, the petitioner chose not to appear before the State Commission to defend the judgment or oppose the appeal. The Commission observed that the Petitioner had shown a very casual, lackadaisical and negligent approach in pursuing this case. Further, the order in FA No. 646 of 2007 was ready on

10.03.2011 and could have been collected by the Petitioner herself or by someone authorized by her.

- b) The Commission held that there was no ‘sufficient cause’ to condone the delay of 184 days in filing the present Revision Petition and hence the Revision Petition being time barred by limitation was dismissed with cost of Rs.5,000/- (Rupees five thousand only) to be deposited into “Consumer Legal Aid Account” of the Commission within four weeks from the date of the order. Reliance was placed on the decisions of the Hon’ble Apex Court in *Anshul Aggarwal v. New Okhla Industrial Development Authority*, IV (2011) CPJ 63 (SC), *Balwant Singh Vs. Jagdish Singh & Ors.*, (Civil Appeal no. 1166 of 2006), decided by the Apex Court on 08.07.2010 & *Ram Lal and Ors. Vs. Rewa Coalfields Ltd.*, AIR 1962 Supreme Court 361.

**vii) Citation:**

III (2014) CPJ 172; 2014(2) CPR 593.

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**5. G. Suseela and another Vs. Dr.P.L. Chary and others**

**i) Case in Brief:**

Shri V.S. Prasad/Complainant (since deceased) filed a complaint against the Respondents/Opposite Parties alleging medical negligence on their part before the District Forum which dismissed the complaint as there was no representation on behalf of Complainant. Aggrieved by the order of District Forum, present petitioners (who are legal heirs of the deceased Complainant) filed an appeal before the State Commission along with an application seeking condonation of delay of 430 days. The State Commission held that the explanation given by the petitioners was not reasonable and believable and also was not sufficient. Consequently, the application for condonation of delay was rejected. With the result, the appeal was also dismissed. Aggrieved by the said order, the present Revision Petition has been filed by the legal heirs of the deceased Complainant along with an application for filing additional documents. Revision Petition dismissed.

**ii) Order appealed against:**

Against the order dated 10.7.2013 in FAIA No.538 of 2013 in FASR No.7027 of 2011 of the State Commission, Andhra Pradesh.

## **Condonation of Delay**

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**iii) Parties:**

G. Suseela and another - Petitioners

Vs.

Dr. P.L. Chary and others - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.3563 of 2013 with I.A. No.2489 of 2014 (for seeking permission to file additional documents) &

Date of Judgement: 13.06.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of records fully agreed with the reasoning given by the State Commission that there was delay of 430 days in filing the appeal before it. The Commission further observed that the conduct of the Petitioners was so negligent, that firstly, they did not pursue their complaint before the District Forum in a diligent manner, since their complaint was dismissed for non-appearance. Even thereafter, Complainants did not become wiser; they filed the appeal before the State Commission in a very careless and casual manner with a delay of 430 days. Moreover, a valuable right had accrued in favour of the Respondents which could not be taken away by the negligent act on the part of the Petitioners. Under these circumstances, State Commission had rightly refused to condone the long delay of 430 days.
- b) In view of the above, the Commission found no illegality or infirmity in the impugned order passed by the State Commission and accordingly dismissed the Revision Petition.

**vii) Citation:**

2014(2) CPR 590.

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**6. Dr. Gabharu Govindbhai Radadiya Vs. The New India Assurance Company Ltd.**

**i) Case in Brief:**

Petitioner/Complainant obtained Mediclaim Policy (from 06.01.2009 to 05.01.2010) for himself and his family members from the Respondent/ OP.1 through the OP.3/S.R.Yadav, an agent of OP.1 having a total coverage of Rs.1,20,750/-. The Petitioner on 03.08.2009 suffered from heart problem and was admitted at the Care Hospital on 04.08.2009. He underwent coronary angiogram and was discharged from the hospital on 06.08.2009. In the meantime, the insurance company had increased the sum insured from Rs.35,000/- to Rs.1,00,000/-. Complainant had claimed the expenses incurred in the hospital. But the claim of the Complainant was not honoured stating that the increase in the policy that was provided to the Petitioner pertains to the new policy, while the illness of the petitioner could not be considered under the new policy and further that at the time of the payment of the premium, the Petitioner had already discussed with regard to the additional amount to be paid by him and had paid the premium on his own wish. On complaint by the Complainant, the District Forum directed the OPs.1 & 2 excepting OP.3 to pay jointly and/or severally the rest of the amount of Rs.68,250/- along with 9% interest from the date of order, Rs.2,000/- for mental harassment and Rs.1,500/- as cost. Aggrieved by the order of the District Forum, opposite party no.1 filed an appeal before the State Commission which allowed the appeal and set aside the order of the District Forum. Against the order of the State Commission, the present Revision Petition has been filed along with an application for condonation of delay of 729 days. Revision Petition along with an application for condonation of delay was dismissed.

**ii) Order appealed against:**

Against the order dated 31.01.2012 in Appeal No.304 of 2011 of the State Commission, Gujarat.

**iii) Parties:**

Dr. Gabharu Govindbhai Radadiya - Petitioner

Vs.

The New India Assurance Company Ltd. - Respondent

## **Condonation of Delay**

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### **iv) Case No and Date of Judgement:**

Revision Petition No.1939 of 2014 with (I.A. No.2759 of 2014, for c/delay) & Date of Judgement: 01.07.2014.

### **v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

### **vi) Issues raised and decided:**

The National Commission on perusal of the records found that the application had been drafted in a most casual, careless and negligent manner. It did not mention the name of the advocate appearing for the Petitioner before the State Commission nor had it given any specific dates with regard to the receipt of the order or the date on which the Petitioner made an enquiry regarding the status of the appeal filed before the State Commission. The application also did not mention the date on which Revision Petition was filed. The application nowhere mentioned the number of days of delay to be condoned. Counsel for the petitioner had given no proper explanation for this period of delay. The only specific reason given for the delay was that the Advocate was attending to his mother, who was hospitalized from 14.01.2012 to 13.02.2012. The Commission held that this was not the sufficient explanation for the long period of delay of 729 days and accordingly dismissed the present Revision Petition with cost of Rs.5,000/- (Rupees Five Thousand Only) to be deposited in the 'Consumer Legal Aid Account' of this Commission along with the application for condonation of delay.

### **vii) Citation:**

2014(3) CPR 248.

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## **7. Tirupati Construction Vs. S.G. Kumar**

### **i) Case in Brief:**

Respondent/Complainant approached the Appellant/Opposite Party for booking a flat and made payment of part consideration of Rs.2 lacs by cheque. It was alleged that that even after accepting the amount of Rs.2 lacs, the OP had not executed the agreement for sale in the name of the Complainant nor taken any steps for construction. It was further



alleged that the Complainant had never demanded further payments while he was ready and willing to pay the balance amount of consideration towards the said flat as agreed between the parties. Alleging deficiency in service on the part of the Appellant, the Complainant filed a consumer complaint before the State Commission which directed the opponent to hand over possession of the flat to the Complainant after payment of balance amount of consideration by the Complainant within a period of 2 months from the date of the order. Being aggrieved by the order of the State Commission, Appellant had filed the present appeal along with an application for condonation of delay of 148 days. Both the application for condonation of delay and First Appeal were dismissed.

**ii) Order appealed against:**

From order dated 16.08.2013 in Consumer Complaint No.272 of 2012 of State Consumer Disputes Redressal Commission, Maharashtra, Mumbai.

**iii) Parties:**

Tirupati Construction

- Appellant

Vs.

S. G. Kumar

- Respondent

**iv) Case No and Date of Judgement:**

First Appeal No.129 of 2014 along with (I.A. No.1200 of 2014(for Stay); (I.A. No.1201 of 2014 for Condonation of Delay) &

Date of Judgement: 01.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission after perusing the records pointed out that Appellant had received notice dated 05.09.2013 from the counsel for the Respondent intimating the appellant about the order passed in the present case(CC/12/272).Admittedly, knowledge had come to the Appellant about passing of the ex parte order in this case, as early as on 05.09.2013. However, there was no explanation as to why the present appeal was filed only on 21.2.2014, i.e. after a period of more than 4

### **Condonation of Delay**

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months. Therefore, the Commission did not find any sufficient ground to condone the long delay of 148 days and dismissed the application for condonation of delay. Consequently, the present appeal was also dismissed being barred by limitation relying on the decisions of the Hon'ble Apex Court in *Ram Lal and Ors. Vs. Rewa Coalfields Ltd.*, AIR 1962 Supreme Court 361, *R.B. Ramlingam Vs. R.B. Bhavaneshwari*, 2009 (2) Scale 108, *Anshul Aggarwal vs. New Okhla Industrial Development Authority*, IV (2011) CPJ 63 (SC) and the High Court decision of *Oriental Insurance Co. Ltd. vs. Kailash Devi & Ors.* AIR 1994 Punjab and Haryana 45.

**vii) Citation:**

Not reported in CPJ and CPR.

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### **8. Regional Provident Fund Commissioner Vs. G.P. Srivastava**

**i) Case in Brief:**

Complainant/Respondent was sanctioned a pension of Rs.265/- per month on his retirement on 31.10.1997. He claimed that he was entitled to a further sum of Rs.365/- per month. The District Forum after hearing the parties directed OP to pay Rs.600/- per month as pension. Appeal filed by the OP was dismissed by the State Commission vide impugned order against which the present Revision Petition has been filed along with the application for condonation of delay of 178 days. Revision Petition as well as the application for the condonation of delay were dismissed.

**ii) Order appealed against:**

From the order dated 13.07.2011 in First Appeal No.1625/2007 of the U.P. State Consumer Disputes Redressal Commission, Lucknow.

**iii) Parties:**

Regional Provident Fund  
Commissioner

- Petitioner/OP

Vs.

G.P. Srivastava

- Respondent/Complainant

**iv) Case No and Date of Judgement:**

Revision Petition No.2649 of 2014 & Date of Judgement: 10.07.2014.

**v) Acts and Sections referred:**

Sections 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission observed that the Petitioner came to know about the impugned order in September 2013 but the Revision Petition was filed only on 30.06.2014. There was no reasonable explanation for the delay of 178 days. Relying on the decisions of the Hon'ble Apex Court in *R.B.Ramlingam v. R.B.Bhavaneshwari* [2009] (2) Scale 108]; *Post Master General and Others v. Living Media India Ltd. & Another* [2012 3 SCC 563]; *Ram Lal and Ors. v. Rewa Coalfields Ltd.*, AIR 1962 Supreme Court 361; *Oriental Aroma Chemical Industries Ltd v.Gujarat Industrial Development Corporation & Anr.*, (2010) 5 SCC 459 and *Anshul Agarwal v. New Okhla Industrial Development Authority* (2011) 14 SCC 578, IV (2011) CPJ 63 (SC), the Commission held that there was no case for condonation of delay. The application for condonation of delay and consequently the Revision Petition were both dismissed.

**vii) Citation:**

2014(3) CPR 437.

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**9. M/s. Abhishek Road Ways Vs. National Insurance Co. Ltd. & Ors.**

**i) Case in Brief:**

In August 2012, Petitioner/Complainant filed consumer complaint alleging deficiency in service on the part of the Respondent/Insurance company in respect of the insurance claim pertaining to the loss of motor spirit being carried in the tanker in the accident which occurred on the night of 22.04.1997. The District Forum allowed the complaint and directed the OPs jointly and severally to pay Rs.2,66,562/- to the Complainant for the loss of motor spirit with simple interest at 9% from the date of filing of complaint (i.e. 28.08.2012) along with compensation of Rs.10,000/- towards mental agony and litigation cost. Petitioner's appeal for enhancement and his subsequent appeal for condonation of delay were both rejected by the State Commission on grounds of limitation vide impugned orders against which the present Revision Petition has been filed. Revision Petition dismissed.

## **Condonation of Delay**

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**ii) Order appealed against:**

From the order dated 17.02.2014 in Appeal No.1297/2013 and 535/2013 of the State Consumer Disputes Redressal Commission, Orissa.

**iii) Parties:**

M/s. Abhishek Road Ways - Petitioner(s)

Vs.

National Insurance Co. Ltd. & Ors. - Respondent(s)

**iv) Case No and Date of Judgement:**

Revision Petition No.2445 of 2014 & Date of Judgement: 14.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission noted that the State Commission rejected the application for condonation of delay on the ground that the Complainant's reasons for delay in filing the application were totally unconvincing. Apart from the medical certificate issued by one Ayurvedic practitioner to the effect that Complainant was suffering from diabetes, no other document like prescription slips, pathological report etc., was filed by the Complainant. Even the doctor who treated the Complainant was not examined to establish that his ailment was such that he could not contact his lawyer or give instructions for filing the appeal. The Commission therefore found no illegality or material irregularity in the orders passed by the State Commission.
- b) Even on merits the Commission held that the Petitioner did not have any case. The Commission noted that the Consumer complaint was filed in the year 2012 although the alleged loss took place in the year 1997. It was held that the District Forum was justified in granting interest from the later date particularly when there was inordinate delay on the part of the Petitioner in filing the consumer complaint. The Commission therefore found no justification in the request for granting interest on the compensation awarded from the date of claim.
- c) Revision Petition was accordingly dismissed.

**vii) Citation:**

III (2014) CPJ 361; 2014(3) CPR 433.

**10. Harpreet Kaur Vs. Sahara India Commercial Corporation Ltd.**

**i) Case in Brief:**

Complainant/Petitioner was allotted villa by OP/respondent, but possession of villa was not handed over within the period promised in agreement. Alleging deficiency on the part of OP, Complainant filed complaint before the District Forum which directed OP to pay penalty @ Rs.10/- per sq. ft. per month for delay in delivery of possession with interest. Appeal filed by the OP was allowed by the State Commission vide impugned order against which, this Revision Petition has been filed along with application for condonation of delay of 168 days. Revision Petition along with an application for condonation of delay was dismissed.

**ii) Order appealed against:**

Against the Order dated 16.09.2013 in Appeal No.459/2013 of the State Commission Haryana.

**iii) Parties:**

Harpreet Kaur

- Petitioner

Vs.

Sahara India Commercial Corporation Ltd.

- Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.2473 of 2014 & Date of Judgement: 16.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission found that no reason had been shown in the application by the Petitioner for condoning inordinate delay of 168 days in filing Revision Petition. It was not proved that the petitioner is based in New Delhi and order was passed by the State Commission at Panchkula. At the time of decision by the State Commission both parties were present and as per judgment parties were directed to appear before District Forum on 4.10.2013. Counsel for the Petitioner had also submitted that petitioner appeared before State Commission and participated in

### **Condonation of Delay**

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the proceedings as directed by impugned order meaning thereby, he must have appeared before District Forum on 4.10.2013, whereas, this Revision Petition has been filed on 5.6.2014 almost after 8 months. Counsel for the petitioner had also not mentioned any date in application for condonation of delay, when legal advice was sought and obtained and in such circumstances.

- a) As there was no reasonable explanation of delay for the inordinate delay of 168 days, the present Revision Petition along with an application for condonation of delay was dismissed by the National Commission relying on the Hon'ble Supreme Court Judgements in *R.B. Ramlingam Vs. R.B.Bhavaneshwari* 2009 (2) Scale 108, *Ram Lal and Ors. Vs. Rewa Coalfields Ltd.* AIR 1962 Supreme Court 361, *Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation* (2010) 5 SCC 459, *Post Master General & Ors. Vs. Living Media India Ltd. and Anr.* (2012) 3 SCC 563, *Anshul Aggarwal Vs. New Okhla Industrial Development Authority* 2012 (2) CPC 3 (SC).

**vii) Citation:**

2014(3) CPR 420.

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**11. Bawa Saranjit Singh Vs. Sahara India Commercial Corporation Ltd.**

**i) Case in Brief:**

Complainant/Petitioner was allotted villa by OP/respondent, but possession of villa was not handed over within the period promised in agreement. Alleging deficiency on the part of OP, Complainant filed complaint before the District Forum which directed OP to pay penalty @ Rs.10/- per sq. ft. per month for delay in delivery of possession with interest. Appeal filed by the OP was allowed by learned State Commission vide impugned order against which, this Revision Petition has been filed along with application for condonation of delay of 168 days. Revision Petition along with an application for condonation of delay was dismissed.

**ii) Order appealed against:**

Against the Order dated 16.09.2013 in Appeal No.455/2013 of the State Commission Haryana.

**iii) Parties:**

Bawa Saranjit Singh - Petitioner

Vs.

Sahara India Commercial Corporation Ltd. - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.2472 of 2014 & Date of Judgement: 16.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- b) The Commission found that no reason had been shown in the application by the Petitioner for condoning inordinate delay of 168 days in filing Revision Petition. It was not proved that the petitioner is based in New Delhi and order was passed by the State Commission at Panchkula. At the time of decision by the State Commission both parties were present and as per judgment parties were directed to appear before District Forum on 04.10.2013. Counsel for the Petitioner had also submitted that petitioner appeared before State Commission and participated in the proceedings as directed by impugned order meaning thereby, he must have appeared before District Forum on 04.10.2013, whereas, this Revision Petition has been filed on 05.06.2014 almost after 8 months. Counsel for the petitioner had also not mentioned any date in application for condonation of delay, when legal advice was sought and obtained and in such circumstances.
- b) As there was no reasonable explanation of delay for the inordinate delay of 168 days, the present Revision Petition along with an application for condonation of delay was dismissed by the National Commission relying on the Hon'ble Supreme Court Judgements in *R.B. Ramlingam Vs. R.B.Bhavaneshwari* 2009 (2) Scale 108, *Ram Lal and Ors. Vs. Rewa Coalfields Ltd.* AIR 1962 Supreme Court 361, *Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation* (2010) 5 SCC 459, *Post Master General & Ors. Vs. Living Media India Ltd. and Anr.* (2012) 3 SCC 563, *Anshul Aggarwal Vs. New Okhla Industrial Development Authority* 2012 (2) CPC 3 (SC).

**vii) Citation:** 2014(3) CPR 417.

## **Condonation of Delay**

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### **12. Kapil Dev Dutta & Anr. Vs. Sahara India Commercial Corporation Ltd.**

#### **i) Case in Brief:**

Complainant/Petitioner was allotted villa by OP/Respondent, but possession was not handed over within the period promised in agreement. Alleging deficiency on the part of OP, Complainant filed a complaint before the District Forum which allowed the complaint and directed OP to pay penalty @ Rs.10/- per sq. ft. per month for delay in delivery of possession with interest. Appeal filed by the OP was allowed by the State Commission vide impugned order against which this Revision Petition has been filed along with application for condonation of delay of 172 days. Revision Petition along with application for condonation of delay was dismissed.

#### **ii) Order appealed against:**

Against the Order dated 16.09.2013 in Appeal No.438/2013 of the State Commission Haryana.

#### **iii) Parties:**

Kapil Dev Dutta & Anr.	- Petitioners
Vs.	
Sahara India Commercial Corporation Ltd.	- Respondent

#### **iv) Case No and Date of Judgement:**

Revision Petition No.2471 of 2014 & Date of Judgement: 16.07.2014.

#### **v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

#### **vi) Issues raised and decided:**

- a) The National Commission on perusal of the records found that no reason has been shown in the application by the Petitioner for condoning inordinate delay of 172 days in filing Revision Petition. It was not proved that petitioner is based in New Delhi and the order was passed by the State Commission at Panchkula. At the time of decision by the State Commission both parties were present and as per judgment parties were directed to appear before District Forum on 04.10.2013. Counsel for the Petitioner also submitted that the Petitioner appeared before State



Commission and participated in the proceedings as directed by impugned order meaning thereby, he must have appeared before District Forum on 04.10.2013, whereas, the present Revision Petition has been filed on 05.06.2014 almost after 8 months. Counsel for the Petitioner had also not mentioned any date in application for condonation of delay when legal advice was sought and obtained.

- b) As there was no reasonable explanation for condonation of inordinate delay of 172 days, Revision Petition along with an application for condonation of delay was dismissed by the National Commission relying on the judgments delivered by Hon'ble Apex Court in *R.B. Ramlingam Vs. R.B. Bhavaneshwari* 2009 (2) Scale 108, *Ram Lal and Ors. Vs. Rewa Coalfields Ltd.* AIR 1962 Supreme Court 361, *Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation* (2010) 5 SCC 459, *Post Master General & Ors. Vs. Living Media India Ltd. and Anr.* (2012) 3 SCC 563, *Anshul Aggarwal Vs. New Okhla Industrial Development Authority* 2012 (2) CPC 3 (SC).

**vii) Citation:**

2014(3) CPR 412.

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**13. V. Selvaraj Vs. Regional P.F. Commissioner and 2 Others**

**i) Case in Brief:**

An appeal filed by Regional Provident Fund Commissioner was admitted by the State Commission condoning the delay of 103 days subject to payment of Rs.1,000/- vide impugned order dated 07.02.2014. The present Revision Petition had been filed challenging the said interim order. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 07.02.2014 in Appeal No.269/2013 and 366/2013 of the Tamil Nadu State Consumer Disputes Redressal Commission, Chennai.

**iii) Parties:**

V. Selvaraj - Petitioner

Vs.

Regional P.F. Commissioner and 2 Others - Respondents

## **Condonation of Delay**

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**iv) Case No and Date of Judgement:**

Revision Petition No.1702 of 2014 & Date of Judgement: 18.07.2014.

**v) Acts and Sections referred:**

Sections 15, 17, 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission perused the application which the Respondent had filed before the State Commission for condonation of delay and held that, considering the cause disclosed in the said application, there was no ground to interfere with the interim order passed by the State Commission. The Commission therefore dismissed the Revision Petition as devoid of merit.

**vii) Citation:**

Not reported in CPJ and CPR.

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### **14. Mr. Anil Mittal Vs. Skoda Auto India Pvt. Ltd and another**

**i) Case in Brief:**

The Complainant/Petitioner had purchased a car SKODA Octavia for a total amount of Rs.11,32,666/- through Respondent No.2/Nummer Eins Motors (India) Pvt. Ltd., after taking a loan from HDFC Bank. After delivery of the car, the Petitioner found several complaints including some strange noise from the rear side of the car and a very low pick up. The Petitioner brought the same to the notice of Respondent No.2 who repaired defects and delivered back the car. But the Petitioner found that the complaint of noise was still subsisting. It was the case of the Complainant/Petitioner that since taking delivery in February 2003 itself, he was not satisfied with the performance of the car as the vehicle was giving some problem or the other and he could not enjoy the use of the said vehicle. Out of seven months up to August 2003, at least for three months the car was in the workshop of the dealer, i.e., Respondent No.2. Alleging deficiency in service, the Complainant preferred complaint before the District Forum which directed the OPs to pay collectively/jointly to the Complainant the cost/value of the car Rs.11,32,266/- as on 06.02.2003, along with 9% interest up to the full payment of car, Rs.10,000/- for physical and mental harassment. Rs.3,000/- as cost of the case. Aggrieved and dissatisfied with the

order of the District Forum, both the Respondents and also the Petitioner filed appeals before the State Commission which while dismissing the First Appeal No.1316 of 2008 of the petitioner allowed the appeal of the Respondent and dismissed the complaint. The present Revision Petition has been filed by the Petitioner along with an application for condonation of delay of 421 days. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 07.09.2009 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai in Appeal Nos.937 and 1316 of 2008.

**iii) Parties:**

Mr. Anil Mittal

- Petitioner

Vs.

Skoda Auto India Pvt. Ltd and another

- Respondents

**iv) Case No and Date of Judgement:**

Revision Petition Nos.690-691 of 2011 & Date of Judgement: 18.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19, 21(b) and 24(A) of the Consumer Protection Act, 1986 & Section 5 of the Limitation Act.

**vi) Issues raised and decided:**

The National Commission on perusal of the records found that there was no 'sufficient cause' to condone the inordinate delay of 421 days (from the date the order was received by the Petitioner's counsel) in filing the present Revision Petition. The application for condonation of delay was without any merit as well as having no legal basis and was dismissed. Consequently, the present Revision Petition being time barred by limitation was dismissed with cost of Rs.5,000/- (Rupees five thousand only) to be deposited to the 'Consumer Legal Aid Account'. Reliance was placed on the decisions of the Hon'ble Supreme Court in *Anshul Aggarwal v. New Okhla Industrial Development Authority*, IV (2011) CPJ 63 (SC), *Balwant Singh Vs. Jagdish Singh & Ors (Civil Appeal no.1166 of 2006)*, decided by the Apex Court on 08.07.2010, *Ram Lal and Ors. Vs. Rewa Coalfields Ltd., AIR 1962 Supreme Court 361*.

**vii) Citation:** 2014(3) CPR 387.

**Condonation of Delay**

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**15. Government of Rajasthan, through Collector, Jaisalmer Vs. Janak Singh and Anr.**

**i) Case in Brief:**

OP/Petitioner allotted land to the Complainants in the three Revision Petitions. After the allotment the Complainants came to know that there was no source of irrigation available for the land, no construction of drains and therefore prayed for exchange of land. Since their request was not accepted they filed complaint before the District Forum which allowed the complaints and directed OP to return the amounts deposited by Complainants with interest. The State Commission dismissed the appeals of Petitioners and partly allowed appeals of Respondent. The Commission observed that as proceedings regarding exchange of land were pending in the Colonization Department, the said department should issue proper orders. Aggrieved by the orders of the State Commission, the present Revision Petitions have been filed along with applications for condonation of 140 days delay. Revision Petitions and application for condonation of delay dismissed and Colonization Department directed to dispose of proceedings within 3 months.

**ii) Order appealed against:**

Revision Petition No.241 of 2013

From the order dated 30.05.2012 in First Appeal No.2019 of 2010 of the Rajasthan State Consumer Disputes Redressal Commission, Circuit Bench No.3 at Jaipur.

Revision Petition No.347 of 2013

From the order dated 30.05.2012 in First Appeal No.2017 of 2010 of the Rajasthan State Consumer Disputes Redressal Commission, Circuit Bench No.3 at Jaipur.

Revision Petition No.348 of 2013

From the order dated 30.05.2012 in First Appeal No.2018 of 2010 of the Rajasthan State Consumer Disputes Redressal Commission, Circuit Bench No.3 at Jaipur.

**iii) Parties:**

Revision Petition No.241 of 2013

Government of Rajasthan, through  
Collector, Jaisalmer

- Petitioners/Complainants

Vs.

Janak Singh and Anr.

- Respondents/OPs

Revision Petition No.347 of 2013

Government of Rajasthan, through  
Collector, Jaisalmer - Petitioners/Complainants

Vs.

Dilip Singh and Anr. - Respondents/OPs

Revision Petition No.348 of 2013

Government of Rajasthan, through  
Collector, Jaisalmer - Petitioners/Complainants

Vs.

Dalpat Singh and Anr. - Respondents/OPs

**iv) Case No and Date of Judgement:**

- i. Revision Petition No.241 of 2013
- ii. Revision Petition No.347 of 2013
- iii. Revision Petition No.348 of 2013 &

Date of Judgment: 22.07.2014

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission noted that there was no reasonable explanation for the inordinate delay of 140 days in filing Revision Petitions. Relying on the Judgments of the Hon'ble Supreme Court in i) *R.B.Ramlingam v. R.B.Bhavaneshwari* [2009] (2) Scale 108] ii) *Oriental Aroma Chemical Industries Ltd v.Gujarat Industrial Development Corporation & Anr.*, (2010) 5 SCC 459, iii) *Anshul Agarwal v. New Okhla Industrial Development Authority* (2011) 14 SCC 578, IV (2011) CPJ 63 (SC). iv) *Post Master General and Others Vs. Living Media India Ltd. & Another* [2012 3 SCC 563] and v) *Ram Lal and Ors. Vs. Rewa Coalfields Ltd.*, AIR 1962 Supreme Court 361, the Commission dismissed the application for condonation of delay.
- b) The Commission observed that instead of filing revisions, Petitioners should have decided proceedings regarding exchange of land and in case of any grievance from the orders of

### **Condonation of Delay**

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Colonisation Department, appropriate authorities should have been approached for redressal of grievance and on this count also the Revision Petition was liable to be dismissed.

- c) The Commission dismissed the Revision Petitions accordingly with the direction to the Colonisation Department to dispose of proceedings within a period of 3 months from the date of the order.

**vii) Citation:**

IV (2014) CPJ 36; 2014(3) CPR 379.

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**16. M/s. Aviva Life Insurance Co. India Pvt. Limited Vs. Mrs. Renu**

**i) Case in Brief:**

The present Revision Petition along with an application for condonation of delay has been filed challenging the order passed by the State Commission which dismissed the appeal filed by the Petitioner/ Insurance Co for the delay of 61 days and upheld the order passed by the District Forum. Revision Petition along with an application for condonation of delay was dismissed both on merits and on the ground of condonation of delay.

**ii) Order appealed against:**

From the order dated 28.11.2013 in First Appeal No.1172/2012 of the Delhi State Consumer Disputes Redressal Commission.

**iii) Parties:**

M/s Aviva Life Insurance Co. India Pvt. Limited - Petitioner

Vs.

Mrs. Renu - Respondent

**iv) Case No and Date of Judgment:**

Revision Petition No.1166 of 2014 & Date of Judgment: 23.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 17, 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission, on perusal of the records of the case, found that there was no explanation as to what action was taken by the Petitioner company after pronouncement of order on 18.9.2012. It simply stated in para 13 of the application that the order of the District Forum was received at the reception desk of the petitioner Co. on 23.10.2012 and thereafter started the due process of the case. In the follow up of the case, the Petitioner Co. had acted in a routine and casual manner rather than acting diligently. Therefore, the National Commission found no ground to interfere with the order of the State Commission both on merits and on the ground of condonation of delay. As a result, the present Revision Petition along with an application for condonation of delay was dismissed.

**vii) Citation:**

III (2014) CPJ 670; 2014(3) CPR 367.

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**17. Haryana Urban Development Authority and another Vs. A.Ram Naik**

**i) Case in Brief:**

The present Revision Petition against the impugned order of the State Commission had been filed with a delay of 112 days as per the registry and 108 days as per the Petitioner. An application for condonation of delay was also moved but the Commission did not find explanation given by the Petitioner convincing or satisfactory. It was held to be highly vague. The application for condonation of delay and consequently, the Revision Petition were both dismissed.

**ii) Order appealed against:**

From the order dated 20.12.2011 in F.Appeal No.2986 of 2012 of the State Consumer Disputes Redressal Commission, Haryana, Panchkula.

**iii) Parties:**

Haryana Urban Development Authority and another - Petitioners

Vs.

A. Ram Naik

- Respondent

## **Condonation of Delay**

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### **iv) Case No and Date of Judgement:**

Revision Petition No.2884 of 2012 & Date of Judgement: 25.07.2014.

### **v) Acts and Sections referred:**

Sections 19 and 21(b) of the Consumer Protection Act, 1986 & Regulation 14 of Consumer Protection Regulation, 2005.

### **vi) Issues raised and decided:**

It was pleaded before the Commission that the delay had occurred because of the time consumed in bureaucratic procedures, collecting relevant documents from concerned departments and preparing and filing the Revision Petition. The Commission noted that no specific dates or the time consumed at various steps had been given by the Petitioners. The Commission therefore found the explanation for the delay unconvincing. Relying on the judgements of the Hon'ble Supreme Court in *R.B.Ramlingam v. R.B.Bhavaneshwari* [2009] (2) Scale 108], *Anshul Agarwal v. New Okhla Industrial Development Authority* (2011) 14 SCC 578, IV (2011) CPJ 63 (SC), *Post Master General and Others Vs. Living Media India Ltd. & Another* [2012 3 SCC 563] & *Ram Lal and Ors. Vs. Rewa Coalfields Ltd.*, AIR 1962 Supreme Court 361, the Commission dismissed the application for condonation of delay. On merits also, the Commission did not find any material irregularity or jurisdictional error in the order of the State Commission to warrant interference. Accordingly, the Revision Petition was dismissed.

### **vii) Citation:**

IV (2014) CPJ 31; 2014(3) CPR 331.

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## **18. M/s. BDS Nirman Vs. Satyendu Saha and another**

### **i) Case in Brief:**

The District Forum, vide its order dated 27.05.2008, had directed the petitioner to execute the sale deed in favour of the Complainant after receiving the balance consideration from him. The only ground urged by the petitioner, for not executing the sale deed was pendency of some criminal case under Maharashtra Ownership of flats. The appeal filed by the petitioner came to be dismissed by the State Commission on 27.07.2011. There was a delay of as many as 571 days in filing the Revision Petition. An application was filed by the petitioner seeking



condonation of the aforesaid abnormal delay. Revision Petition along with applications for condonation of delay were dismissed.

**ii) Order appealed against:**

From the order dated 27.07.2011 in First Appeal No.A/08/603 of the Maharashtra State Consumer Disputes Redressal Commission, Circuit Bench at Nagpur.

**iii) Parties:**

M/s. BDS Nirman - Petitioner

Vs.

Satyendu Saha and another - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.1538 of 2014 with I.A/2020/2014, IA/2021/2014, IA/2022/2014 (Stay, Condonation of Delay, Exemption from filing the certified copy) & Date of Judgement: 28.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the records of the case wondered how the Petitioner which is a private entity had any difficulty in contacting its counsel for the purpose of challenging the impugned order, after it had received a copy of the order in the second week of June, 2012. The Commission did not accept the argument that the petitioner was unable to contact the local counsel during the period July, 2012 to July, 2013. The Commission wondered how the pendency of other litigation could have come in the way of the Petitioner contacting his counsel for the purpose of challenging the impugned order. The Commission was of the opinion that the reason given by the petitioner for not contacting its counsel between July, 2012 to July, 2013, for the purpose of challenging the impugned order was wholly unconvincing and unsatisfactory.
- b) Further, the Commission observed that the Petitioner received a notice dated 19.07.2013 from the State Commission in complaint No.372/2002 and an order in that matter was passed by the State Commission on 14.10.2013. The petitioner had also received a

### **Condonation of Delay**

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copy of the impugned order of the State Commission in second week of June, 2012. In fact, even after receiving the notice dated 19.07.2013, the petitioner did not take immediate steps to challenge the impugned order in the present position. The Revision Petition has been filed only on 25.03.2014, i.e. about six months after the aforesaid notice was received.

- c) In view of the above, the Commission held there was absolutely no satisfactory explanation for the abnormal delay of 571 days in filing the Revision Petition. So the Commission did not condone the delay in filing the Revision Petition and dismissed the same along with the application for condonation of delay.

**vii) Citation:**

Not reported in CPJ and CPR.

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### **19. Bhupendra Bhandari Vs. Kolte-Patil Developers Ltd**

**i) Case in Brief:**

An application was filed before the Commission on 25.07.2014 for permission to file written statement. Although the OP was served notice in the month of January, 2014, it was stated that the concerned person who had received the notice, had kept the same in the file without any disclosure or intimation to the directors. OP claimed that it was a bona fide mistake. The Commission rejected the application on the ground that no written statement can be filed after the expiry of 45 days from the date of receipt of service.

**ii) Order appealed against:**

Original Complaint

**iii) Parties:**

Bhupendra Bhandari - Complainant

Vs.

Kolte-Patil Developers Ltd - Opp. Party

**iv) Case No and Date of Judgement:**

Original Petition No.382 of 2013 & Date of Judgement: 31.07.2014 (Interim Order).

**v) Acts and Sections referred:**

Sections 12, 13, 14, 18 and 21(a)(i) of the Consumer Protection Act, 1986 & Section 5 of the Limitation Act.

**vi) Issues raised and decided:**

The Commission held that the expression 'sufficient cause' cannot be erased from Section 5 of the Limitation Act by adopting excessive liberal approach which would defeat the very purpose of Section 5 of the Limitation Act and that there must be some cause which can be termed as a sufficient one for the purpose of condonation of delay. It was further held that no exceptional circumstances were detailed in the present case and accordingly the application was dismissed.

**vii) Citation:**

Not reported in CPJ and CPR.

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**20. Rajinder Jassal Vs. Union Bank of India and others**

**i) Case in Brief:**

It is the case of the Complainant/Appellant who is in export business that he deposited cheque of \$33,000/- dated 13.5.2004 with OP No. 3 with whom he had a bank account on 19.5.2004, which was credited in his account on 19.6.2004. After 2½ years, OP intimated Complainant that aforesaid cheque of \$33,000/- had returned back as unpaid and deducted a sum of Rs.2,21,574/- from the account of Complainant and asked Complainant to arrange balance Rs.13,10,000/-. It was further alleged that Complainant deposited another cheque for \$54,800 in Complainant's account with OP No.3 which was cleared on 2.9.2004. By letter dated 31.3.2007, OP informed Complainant that amount of fraudulent cheque of \$33,000/- had been deducted from Complainant's account and further deducted Rs.2,12,515/- towards interest and Rs.32,000/- towards court fees and legal expenses. OP filed suit for recovery of Rs.13,83,675/- in DRT-III at Mumbai and after filing the suit deducted aforesaid amount from Complainant's account and withdrew suit. Alleging deficiency on the part of OP, Complainant filed complaint before State Commission which dismissed the complaint as barred by limitation against which, this appeal has been filed. Appeal allowed.

## **Condonation of Delay**

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### **ii) Order appealed against:**

From the order dated 23.07.2009 in Consumer Complaint No.103 of 2009 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai.

### **iii) Parties:**

Rajinder Jassal - Appellant / Complainant

Vs.

Union Bank of India and others - Respondents/Opp. Parties (OP)

### **iv) Case No and Date of Judgement:**

First Appeal No.376 of 2009 & Date of Judgement: 06.08.2014.

### **v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

### **vi) Issues raised and decided:**

- a) The National Commission on perusal of the facts and circumstances of the case found that OP vide letter dated 31.3.2007 intimated to the Complainant about the deductions made on the amount of \$ 33,000/- and \$54,800/- and in such circumstances, complaint could have been filed only after this intimation. Complaint was filed on 27.5.2009 and in such circumstances, there may be delay of less than 2 months in filing complaint and State Commission erroneously observed that complaint was not entertainable after 4 years of the happenings.
- b) In view of the above, National Commission was of the opinion that the limitation in the present case is a mixed question of law and facts and the State Commission ought not to have dismissed complaint as barred by limitation at the initial stage without recording evidence (as the cause of action arose on 31.3.2007 when OP deducted amount of alleged fraudulent cheque from the account of the Complainant).
- c) Consequently, appeal filed by the Complainant was allowed and impugned order passed by the State Commission was set aside

and matter was remanded back to State Commission to decide question of limitation after taking evidence of the parties together with other issues.

**vii) Citation:**

2014(3) CPR 603.

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**21. Union of India through the General Manager, Central Railway and another Vs. Dr. Sushil Kumar Roosia and another**

**i) Case in Brief:**

In all the three Revision Petitions, alleging deficiency in service on the part of the Petitioners/Railway authorities, the Complainants approached the District Forum which gave certain reliefs to the Complainants. Being aggrieved from the order of the District Forum, the Petitioners approached the State Commission which dismissed the appeals for default. On dismissal, the Petitioners have filed this Revision Petition after the delay of 566 days along with application seeking condonation of delay. Revision Petitions along with the applications seeking condonation of delay were dismissed.

**ii) Order appealed against:**

Revision Petition No.3164 of 2014

From the order dated 16.08.2012 in Appeal No.1044 of 1996 of the U.P. State Consumer Disputes Redressal Commission, Lucknow.

Revision Petition No.3165 of 2014

From the order dated 30.11.2010 in Appeal No.938 of 1998 of the U.P. State Consumer Disputes Redressal Commission, Lucknow.

Revision Petition No.3166 of 2014

From the order dated 03.12.2010 in Appeal No.1654 of 1998 of the U.P. State Consumer Disputes Redressal Commission, Lucknow.

**iii) Parties:**

Revision Petition No.3164 of 2014

Union of India through the General Manager,  
Central Railway and another - Petitioners

Vs.

Dr. Sushil Kumar Roosia and another - Respondents

**Condonation of Delay**

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Revision Petition No.3165 of 2014

General Manager, Central Railway and others - Petitioners

Vs.

Shri V.K. Banerji and others - Respondents

Revision Petition No.3166 of 2014

General Manager, Central Railway and another - Petitioners

Vs.

Virendra Pal Singh - Respondent

**iv) Case No and Date of Judgement:**

- i. Revision Petition No.3164 of 2014 with I.A.No.5261 & 5262 of 2014 (For stay, condonation of delay)
- ii. Revision Petition No.3165 of 2014 with I.A.NO.5263 & 5264 of 2014 (For stay, condonation of delay)
- iii. Revision Petition No.3166 of 2014 with I.A.NO.5265 & 5266 of 2014 (For stay, condonation of delay) &

Date of Judgement: 14.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986 & Section 5 of the Limitation Act.

**vi) Issues raised and decided:**

- a) The main contention of the Petitioners was that the certified copies of the impugned orders were received by them on 15.04.2014. The Commission rejected the said contention since the Revision Petitions were not filed immediately thereafter despite the fact that the impugned order had been passed more than one and a half years before the communication in March 2014 was received and, therefore, the Petitions had already become time barred. There was absolutely no explanation for not filing the Revision Petition soon after receiving the communication of March 2014.
- b) It was observed that the Petitioners failed to give a satisfactory explanation for the abnormal delay of 566 days in filing the Revision Petitions. Considering the failure of the petitioners to

satisfactorily explain the aforesaid delay coupled with the fact that the amount involved is a very small amount, the National Commission did not condone the abnormal delay in filing the Revision Petitions. Therefore, the Revision Petitions were dismissed as barred by limitation and the applications seeking condonation of delay were also dismissed.

**vii) Citation:**

Not reported in CPJ and CPR.

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**22. The Branch Manager, New India Assurance Company Ltd Vs. Smt Mamta Thappa and another**

**i) Case in Brief:**

Petitioner being aggrieved by the order of the State Commission dated 17.08.2013 had preferred this Revision Petition after a delay of 33 days whereas as per the report of the Registry the delay was 65 days. Petitioner, therefore, had filed an application seeking condonation of delay in filing the present Revision Petition. Revision Petition along with application for condonation of delay was dismissed.

**ii) Order appealed against:**

Against the order dated 17.08.2013 in Appeal No.1 of 2013 of the Sikkim State Consumer Disputes Redressal Commission, Gangtok.

**iii) Parties:**

The Branch Manager,  
New India Assurance Company Ltd - Petitioner

Vs.

Smt Mamta Thappa and another - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.748 of 2014 & Date of Judgement : 14.08.2014.

**v) Acts and Sections referred:**

Sections 19 and 21(b) of the Consumer Protection Act, 1986, Regulation 14 of the Consumer Protection Regulations, 2005 & Section 5 of the Limitation Act.

## **Condonation of Delay**

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### **vi) Issues raised and decided:**

The National Commission on perusal of the records found that there was no 'sufficient cause' to condone the delay of 65 days in filing the present Revision Petition and explanation given by the Petitioner for the delay caused was highly vague and devoid of basic particulars. It was also evident that the petitioner, at every stage of the litigation has been grossly negligent in pursuing the *lis*. Therefore, the present Revision Petition being barred by limitation was dismissed and the application for condonation of delay having no merit was also dismissed relying on the decisions of the Hon'ble Supreme Court in *Balwant Singh v. Jagdish Singh & Ors.*, (Civil Appeal No.1166 of 2006), decided by the Apex Court on 08.07.2010, *Ram Lal and Ors. v. Rewa Coalfields Ltd.*, AIR 1962 Supreme Court 361, *Post Master General and others v. Living Media India Ltd. and another* (2012) 3 Supreme Court Cases 563, *Anshul Aggarwal v. New Okhla Industrial Development Authority*, IV (2011) CPJ 63 (SC).

### **vii) Citation:**

IV (2014) CPJ 554; 2014 (3) CPR 482.

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## **23. Director, Central State Farm Vs. Virendra Singh and another**

### **i) Case in Brief:**

The Complainant, a farmer, filed a complaint before the District Forum alleging that he had purchased two quintals and 80 kg seeds marketed by Central State Farm, Jaitsar and sown the seeds in his fields using fertilizer but the yield of ground nut was found to be only 20%. He got the fields inspected by the Block Development Officer and lodged a complaint with the Petitioner but no compensation was paid to him. The District Forum dismissed the complaint. The State Commission on appeal, ordered Respondent No.2/OP.2, Director, Central State Farm to examine the losses within one month and pay compensation. Challenging the said order, the present Revision Petition has been filed along with an application seeking condonation of delay of 69 days. The application seeking condonation of delay was rejected and consequently the Revision Petition was dismissed.

### **ii) Order appealed against:**

From the order dated 31.01.2014 in Appeal No.1700 of 2009 of the U.P State Consumer Disputes Redressal Commission, Lucknow.



**iii) Parties:**

Director, Central State Farm - Petitioner

Vs.

Virendra Singh and another - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.2875 of 2014 with IA/4742/2014, IA/4743/2014  
(For Condonation of Delay, Stay) & Date of Judgement: 20.08.2014.

**v) Acts and Sections referred:**

Sections 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission noted that no satisfactory explanation had been given to justify the delay and that the Petitioner did not show any urgency in filing the Revision Petition even after the Competent Authority took the decision to file an appeal in May, 2014. The Commission relied on the decision of the Hon'ble Supreme Court in *Anshul Agarwal v. New Okhla Industrial Development Authority* (2011) 14 SCC 578, IV (2011) CPJ 63 (SC) & *Post Master General and Others Vs. Living Media India Ltd. & Another* [2012 3 SCC 563] and rejected the application for condonation of delay. Consequently, the Revision Petition was also dismissed.

**vii) Citation:**

2014(3) CPR 831.

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**24. The Regional P.F. Commissioner, EPFO Vs. Sh. Kalubhai Virabhai Patel**

**i) Case in Brief:**

A complaint filed by the Complainant against the Petitioner regarding payment of pension was dismissed by the District Forum. Allowing the appeal filed by the Complainant, the State Commission directed the Petitioner to pay monthly pension to the Complainant @ Rs.1914/- w.e.f 25.03.2007. The arrears to be calculated @ Rs.291/- p.m w.e.f 25.06.2007 were also directed to be paid, along with interest @ 12% p.a. The Complainant was also awarded Rs.5,000/- towards compensation, Rs.2,500/- towards cost of litigation and Rs.1,000/- towards cost of

### **Condonation of Delay**

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defending the appeal. Aggrieved by the said order, the present Revision Petition has been filed along with an application for condonation of delay of 150 days. The application was rejected and consequently, the Revision Petition was also dismissed.

**ii) Order appealed against:**

From the order dated 29.11.2013 in F.A.No.1741 of 2010 of Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.

**iii) Parties:**

The Regional P.F. Commissioner, EPFO - Petitioner

Vs.

Sh. Kalubhai Virabhai Patel - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.3177 of 2014 with I.A.No.5298 of 2014, I.A.No.5299 of 2014, I.A.No.5300 of 2014 (For Stay, Condonation of Delay, Exemption to file Certified Copy) &

Date of Judgement: 21.08.2014.

**v) Acts and Sections referred:**

Sections 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission noted that the application for condonation of delay did not disclose whether any free copy of the impugned order was received by the Petitioner or not. It was inferred that the documents evidencing receipt of certified copies from the State Commission and thereafter by the Petitioner were deliberately withheld to avoid explaining the delay. The Commission further noted that even by Petitioner's own admission, the certified copies of the order and the annexures were received by him on 13.05.2014 whereas the Revision Petition was filed on 08.08.2014. There was absolutely no worthwhile explanation for the time lag from 13.05.2014 and 08.08.2014. Relying on the decisions of the Hon'ble Supreme Court in *Anshul Agarwal v. New Okhla Industrial Development Authority* (2011) 14 SCC 578, IV (2011) CPJ 63 (SC) & *Post Master General and Others Vs. Living Media India Ltd. & Another* [2012 3

SCC 563], the Commission held that the delay in filing the application could not be condoned. Consequently, the application for condonation of delay was rejected and the Revision Petition was dismissed.

**vii) Citation:**

2014(3) CPR 820.

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**25. Meerut Development Authority Vs. Shri Devki Nandan Sharma**

**i) Case in Brief:**

Respondent/Complainant filed a complaint in the District Forum against Petitioner/OP and obtained an order in his favour. The State Commission, while allowing the appeal filed by the Petitioner/OP, partially modified the order and set aside the compensation of Rs.12,000/- and confirmed the rest of the order. Aggrieved by the order of the State Commission, the present Revision Petition along with an application for condonation of delay have been filed. Since the reasons given for filing the Revision Petition after a delay of 86 days were found to be unconvincing, the application was rejected and the Revision Petition was dismissed.

**ii) Order appealed against:**

From the order dated 12.02.2014 in F.Appeal No.767 of 2005 of Uttar Pradesh State Consumer Disputes Redressal Commission, Lucknow.

**iii) Parties:**

Meerut Development Authority - Petitioner

Vs.

Shri Devki Nandan Sharma - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No: 3175 of 2014 & Date of Judgement: 25.08.2014.

**v) Acts and Sections referred:**

Sections 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission noted that the application for condonation of delay had been filed in a most casual and careless manner. It did not even mention the number of days delay to be condoned nor did it mention the date of the receipt of the State Commission's order. The Commission

## **Condonation of Delay**

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was not convinced with the reason given namely delay in getting the documents translated into English. The Commission relied on the decisions of the Hon'ble Supreme Court in *Ram Lal and Ors. Vs. Rewa Coalfields Ltd.*, AIR 1962 Supreme Court 361, *R.B.Ramlingam v. R.B.Bhavaneshwari* [2009] (2) Scale 108], *Balwant Singh v. Jagdish Singh and others*, Civil Appeal No.1166 of 2006 decided on 08.07.2010, *Post Master General and Others Vs. Living Media India Ltd. & Another* [2012 3 SCC 563], *Anshul Agarwal v. New Okhla Industrial Development Authority* (2011) 14 SCC 578, IV (2011) CPJ 63 (SC) and observed that the present case is fully covered under the case laws cited. Consequently, the application for condonation of delay was rejected and the Revision Petition was dismissed.

### **vii) Citation:**

IV (2014) CPJ 401; 2014(3) CPR 768.

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## **26. PSPCL (Formerly known as PSEB) and another Vs. Manoj Wadhwa**

### **i) Case in Brief:**

The Petitioners/OPs had moved this application for condonation of delay of 106 days on the ground that the file was misplaced in the office of the Counsel of Revisionist who had to shift his office. Application for condonation of delay rejected since the explanation given for filing the Revision Petition late was found to be unconvincing.

### **ii) Order appealed against:**

From the order dated 02.12.2013 in F.Appeal No.1629 of 2010 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh.

### **iii) Parties:**

PSPCL (Formerly known as PSEB) and another - Petitioners

Vs.

Manoj Wadhwa - Respondent

### **iv) Case No and Date of Judgement:**

Revision Petition No.3198 of 2014 with I.A.No.5340 of 2014 (For Stay) & I.A.No.5341 of 2014 (For Condonation of Delay) &

Date of Judgement: 25.08.2014.

**v) Acts and Sections referred:**

Sections 19 and 21(b) of the Consumer Protection Act, 1986 & Section 5 of the Limitation Act.

**vi) Issues raised and decided:**

The Commission observed that the application for condonation of delay was vague and evasive. It did not explain when the Counsel shifted office. It was observed that the files of clients are very precious to an advocate and it is his bounden duty to keep the files properly and notify the dates and result of the case in his diary. The expression sufficient cause cannot be erased from Section 5 of the Limitation Act by adopting excessive liberal approach. The Commission relied on the judgements of the Hon'ble Supreme Court in *Anshul Agarwal v. New Okhla Industrial Development Authority* (2011) 14 SCC 578, IV (2011) CPJ 63 (SC), *R.B.Ramlingam v. R.B.Bhavaneshwari* [2009] (2) Scale 108], *Ram Lal and Ors. Vs. Rewa Coalfields Ltd.*, AIR 1962 Supreme Court 361, *Bikram Dass Vs. Financial Commissioner and others* AIR 1977 SC 1221, *M/s.Ambadi Enterprises Ltd v. Smt. Rajalakshmi Subramanian*, Special Leave to Appeal (Civil) No.19896 of 2013 decided on 12.07.2013. (78 days delay not condoned), *Chief Officer, Nagpur Housing & Area Development Board and another V. Gopinath Kawadu Bhagat*, Special Leave to Appeal (Civil) No.33792 of 2013 decided on 19.11.2013. (77 days delay not condoned) and *Sanjay Sidgonda Patil v. National Insurance Co Ltd and others*, Special Leave to Appeal (Civil) No.37183 of 2013 decided on 17.12.2013 (13 days delay not condoned) while rejecting the application for condonation of 106 days delay in filing the Revision Petition.

**vii) Citation:**

IV (2014) CPJ 507; 2014(3) CPR 767.

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**27. M/s. Krishna Plastics Vs. The United India Insurance Co. Ltd and others**

**i) Case in Brief:**

Complainant/Petitioner filed complaint before the District Forum and he was awarded amount of Rs.1,69,625.50/- with interest at 9% p.a. In appeal, rate of interest was enhanced by the State Commission from 9 to 12%. Thereafter, OP/Respondent issued two cheques for Rs.3,73,733/- and Rs.40,319/- after deducting Rs.28,061/- as TDS.

### **Condonation of Delay**

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Petitioner filed execution before District Forum which held that deduction of TDS was not proper and directed that it be refunded. OP filed Revision Petition before State Commission which upheld the order of the District Forum vide impugned order against which the present Revision Petition has been filed along with an application for condonation of delay of 109 days. Application allowed subject to depositing Rs.5,000/- as cost with the Legal Aid A/c of the Commission.

**ii) Order appealed against:**

From the order dated 10.01.2012 in Revision Petition No.3 of 2011 of the Jharkhand State Consumer Disputes Redressal Commission, Ranchi.

**iii) Parties:**

M/s. Krishna Plastics - Petitioner/Complainant

Vs.

The United India Insurance Co. Ltd & Ors. - Respondents/OPs

**iv) Case No and Date of Judgement:**

Revision Petition No:3113 of 2012 & Date of Judgement: 29.08.2014.

**v) Acts and Sections referred:**

Sections 12, 13, 14, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission noted that the Petitioner had claimed that he was suffering from jaundice and fever and had filed prescriptions which showed that he was suffering from ailment from 10.04.2012 to 25.05.2012 when he was found fit on 15.07.2012. He later approached the advocate and filed Revision Petition on 22.08.2012. The Commission considered it appropriate to condone the delay subject to payment of cost.

**vii) Citation:**

IV (2014) CPJ 468; 2014(3) CPR 693.

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**28. M/s. Sahara India Commercial Corporation Ltd Vs. Ritarani Parhi**

**i) Case in Brief:**

Vide impugned order, the State Commission had dismissed the application for condonation of delay in filing the appeal against the District Forum's order. Aggrieved by the said order of the State Commission, the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 18.07.2014 in Misc.Case.No.292 of 2010 in F.A.No.152 of 2010 of Orissa State Consumer Disputes Redressal Commission, Cuttack.

**iii) Parties:**

M/s. Sahara India Commercial Corporation Ltd. - Petitioner

Vs.

Ritarani Parhi - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.3279 of 2014 with IA.No.5587 of 2014 (For Stay) & Date of Judgement: 01.09.2014.

**v) Acts and Sections referred:**

Sections 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission noted that the copy of the order of the District Forum dated 25.03.2009 had been received by the Branch Manager of the Petitioner Company on 13.04.2009. But this fact was withheld while seeking condonation of delay in filing appeal and it was represented before the State Commission that the Petitioner had come to know of the order of the District Forum only on receipt of notice of the Execution Case No.15 of 2009. It was further noted that even the notice of the complaint had been received in the office of the Petitioner Company on 14.11.2008 but despite that there was no appearance. The Commission held that the delay of nine months and 23 days in filing appeal was







## **Condonation of Delay**

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**iv) Case No and Date of Judgement:**

Revision Petition No:3028 of 2014 & Date of Judgement: 08.09.2014.

**v) Acts and Sections referred:**

Sections 19 and 21 (b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission that there was delay even in filing appeal before the State Commission and the said Commission did not find any justified ground for condoning the delay in filing the said appeal. The Commission noted that no explanation was given for the inordinate delay in drafting the appeal and also in sending it for approval. Relying on the judgement of the Hon'ble Supreme Court in *Anshul Agarwal v. New Okhla Industrial Development Authority* (2011) 14 SCC 578; IV (2011) CPJ 63(SC), the Commission rejected the application for condonation of delay and dismissed the Revision Petition.

**vii) Citation:**

2014(4) CPR 254.

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### **31. M/s. Asian Paints Ltd Vs. K.A. Abootty Haji**

**i) Case in Brief:**

Respondent/Complainant filed a complaint alleging deficiency in service on the part of OP/Petitioner in not returning the machinery namely Colour World Machine which had been taken by OP for effecting repairs. Complainant alleged mental agony and financial loss and claimed refund of Rs.3,94,864/- being the price of the machine together with compensation of Rs.1,50,000/- and cost. The District Forum allowing the complaint directed OP to repair the defect or else to refund Rs.2,40,000/- and to pay an amount of Rs.20,000/- as compensation together with sum of Rs.1,000/- as cost. The State Commission, on appeal filed by the Petitioner modified the order of the District Forum to the extent of reducing the compensation to Rs.5,000/- from Rs.20,000/- and confirmed the rest of the order. Aggrieved by the State Commission's order, the present Revision Petition has been filed along with an application for condonation of delay. Both the application for condonation of delay as well as the Revision Petition were dismissed on the grounds of limitation as well as merit.

**ii) Order appealed against:**

From the order dated 01.10.2011 in Appeal No.668/2010 of the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram.

**iii) Parties:**

M/s. Asian Paints Ltd. - Petitioner

Vs.

K.A. Abootty Haji - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.4963 of 2012 & Date of Judgement: 09.09.2014.

**v) Acts and Sections referred:**

Sections 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission noted that there was an inordinate delay of 319 days in filing the Revision Petition and that the issue had been dealt in a casual and careless manner by the Petitioner Company which is a well known company in the private sector with all the necessary resources available to it. No explanation that could be regarded as convincing so as to constitute 'sufficient cause' was given by the Company to justify the delay. Relying on the decisions of the Hon'ble Supreme Court in *R.B.Ramlingam v. R.B.Bhavaneshwari* [2009] (2) Scale 108], *Anshul Agarwal v. New Okhla Industrial Development Authority* (2011) 14 SCC 578 = IV (2011) CPJ 63 SC, the National Commission dismissed the application for condonation of delay and consequently the Revision Petition as well.

**vii) Citation:**

IV (2014) CPJ 220; 2014(4) CPR 207.

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**32. The Assistant Provident Fund Commissioner Vs. Sh.Pradip Chandra Banik and another**

**i) Case in Brief:**

The Complainant/Respondent No.1 was an employee of Respondent No.2 from 22.02.1986 to 09.07.2009. He resigned his job on health grounds and his resignation was accepted. His grievance was that in

### **Condonation of Delay**

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spite of several representations, his retirement benefits including PF, Gratuity, Leave Salary etc., were not settled. Alleging deficiency in service, he filed complaint before the District Forum. The OP/Petitioner was proceeded ex-parte. The District Forum allowed the complaint and asked the Petitioner to pay the entire PF dues to the Complainant along with the contribution of the employer as per norms. Gratuity and pension were also directed to be paid along with compensation of Rs.10,000/- for mental agony and harassment. Petitioner's appeal before the State Commission as well as application for condonation of delay were dismissed vide impugned order, against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 14.05.2014 in F.A/421/2013 of the West Bengal State Consumer Disputes Redressal Commission, Kolkata.

**iii) Parties:**

The Assistant Provident Fund Commissioner - Petitioner

Vs.

Sh.Pradip Chandra Banik and another - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.3355 of 2014 with I.A No.5782/2014 (For Stay) & Date of Judgement: 10.09.2014.

**v) Acts and Sections referred:**

Sections 15, 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission noted that the advocate, whom the Petitioner consulted after receiving the order of the District Forum, had given a categorical advice on 08.05.2012 to challenge the said order. But the appeal before the State Commission came to be filed only on 22.04.2013, nearly a year after the advice to file an appeal was given. The National Commission held that the explanation given in the application for condonation of delay was neither satisfactory nor did it inspire confidence. It was further held that the officials of the Petitioner should have taken the matter with utmost seriousness as the appeal had already become barred by limitation by the time the legal advice from the advocate was received on 08.05.2012 and that the State

Commission was absolutely justified in taking a view that the delay of 429 days in preferring appeal had not been satisfactorily explained. It was further held that the State Commission had rightly dismissed the application seeking condonation of delay and consequently the appeal filed before it. Accordingly, the Revision Petition filed by the Petitioner was dismissed.

**vii) Citation:**

Not reported in CPJ and CPR.

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**33. Haryana Urban Development Authority and another Vs. Shri Rajesh Satija**

**i) Case in Brief:**

Petitioner/Opposite party challenged the order passed by the State Commission (whereby the State Commission has partly accepted the appeal filed by the Petitioner Authority and modified the order passed by the District Forum in favour of the Respondent/Complainant) by filing this Revision Petition along with an application for condonation of delay in filing the Petition. Application for condonation of delay was dismissed as the Petitioner had failed to offer any cogent explanation for the delay of 344 days, as a result of which, Revision Petition was also dismissed as barred by limitation.

**ii) Order appealed against:**

From the order dated 15.02.2011 in F.A. No.867/2006 of the Haryana State Consumer Disputes Redressal Commission, Panchkula

**iii) Parties:**

Haryana Urban Development Authority and another - Petitioner

Vs.

Shri Rajesh Satija

- Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No: 2462 of 2012 & Date of Judgement: 10.09.2014.

**v) Acts and Sections referred:**

Section 19, 21(b) and 24-A of the Consumer Protection Act, 1986 & Section 5 of the Limitation Act.

## **Condonation of Delay**

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### **vi) Issues raised and decided:**

- a) Perusal of the records revealed that in the entire application, no dates had been given by the Petitioner to indicate how much time was taken by each official involved in the processing of the proposal for filing of the revision. Further, Petitioner Authority could not give any break-up of the time taken by different functionaries in the office of the Petitioner Authority so as to justify the delay caused. The Petitioner Authority had also failed to offer any cogent explanation for the delay of 344 days. In the light of the above circumstances, the Commission observed that the Petitioner Authority had not acted diligently to ensure that the Revision Petition was filed within the time limit prescribed.
- b) The Commission further observed that it is well settled that sufficient cause for seeking condonation of delay in each case is a question of fact and as such it is incumbent on the part of the petitioner to satisfy the Fora concerned with necessary details in support of the delay. As the Petitioner had failed to give cogent and acceptable reasons to condone such a huge delay, Revision Petition along with an application were dismissed as being barred by limitation. The Commission relied on the following cases in support of its decision:
- a. *New Bank of India Vs. M/s. Marvels (India)*, 93 (2001) DLT 558.
  - b. *Ram Lal and Ors. Vs. Rewa Coalfields Ltd.*, AIR 1962 Supreme Court 361.
  - c. *R.B. Ramlingam Vs. R.B. Bhavaneshwari*, 2009 (2) Scale 108.
  - d. *Anshul Aggarwal vs. New Okhla Industrial Development Authority*, IV (2011) CPJ 63 (SC).
  - e. *Post Master General and Others Vs. Living Media India Ltd. & Another* [2012 3 SCC 563].

### **vii) Citation:**

IV (2014) CPJ 530; 2014(4) CPR 100.

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**34. The BEML Employees Co-op Society Ltd Vs. N.S.Balakrishna**

**i) Case in Brief:**

In a consumer complaint filed by the Respondent against the Appellant's society, the Karnataka State Commission directed the OP/Society to refund the entire amount of Rs.18.10 lakhs received from the Complainant with 18% interest from respective dates of deposit and cost of Rs.5,000/-. The present appeal was filed by the OP/Society with a delay of 131 days. The appeal was dismissed since the Appellant failed to show "sufficient cause" in support of its prayer for condonation of long delay of 131 days.

**ii) Order appealed against:**

From the order dated 12.11.2013 in Complaint No.22 of 2012 of the Karnataka State Consumer Disputes Redressal Commission, Bengaluru.

**iii) Parties:**

The BEML Employees Co-op Society Ltd. - Appellant

Vs.

N.S.Balakrishna - Respondent

**iv) Case No and Date of Judgement:**

First Appeal No:284 of 2014 & Date of Judgement: 11.09.2014.

**v) Acts and Sections referred:**

Sections 19, 21(a)(ii) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission observed that the appellant failed to appreciate that delay in filing of an appeal cannot be condoned as a matter of routine and that sufficient cause should be cited for such condonation. The Commission relied on the judgements of the Hon'ble Supreme Court in *Oriental Aroma Chemical Industries Ltd v. Gujarat Industrial Development Corporation & Anr.*, (2010) 5 SCC 459, *N.Balakrishnan v. M.Krishnamurthy*, (1998) 7 SCC 123 & *Anshul Agarwal v. New Okhla Industrial Development Authority* (2011) 14 SCC 578, and dismissed the application for condonation of delay and consequently the appeal as well.

**vii) Citation:**

2014(4) CPR 79.

## **Condonation of Delay**

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### **35. National Insurance Company Ltd. Vs. Ram Veer Singh**

#### **i) Case in Brief:**

Complainant/Respondent filed complaint before District Forum which directed Opposite Party No.1 & 3-Petitioners to pay Rs.4,40,000/- with 6% p.a. interest to the Complainant and further directed to pay Rs.5,000/- for mental agony and Rs.2,000/- for litigation charges. Opposite Party filed appeal before State Commission along with application for condonation of delay. State Commission dismissed appeal along with the application for condonation of delay as barred by limitation against which this Revision Petition has been filed. Revision Petition allowed on cost.

#### **ii) Order appealed against:**

Against the order dated 12.3.2014 in Appeal No.512 of 2014 of U.P. State Commission, Lucknow.

#### **iii) Parties:**

National Insurance Company Ltd - Petitioner

Vs.

Ram Veer Singh - Respondent

#### **iv) Case No and Date of Judgement:**

Revision Petition No.2298 of 2014 & Date of Judgement: 12.09.2014.

#### **v) Acts and Sections referred:**

Sections 19, 21(b) and 24-A of the Consumer Protection Act, 1986 & Section 5, of the Limitation Act.

#### **vi) Issues raised and decided:**

- a) The issue was whether the delay of 14 days in filing the appeal could be condoned or not.
- b) The State Commission dismissed the above said appeal by relying on the decision in *Chief Post Master General and Ors. v. Living Media India Ltd. & Anr.*, (2012) 3 SCC 563 wherein the Hon'ble Supreme Court observed that there is no need to accept usual explanation that file was kept pending for several months/years due to considerable degree of procedural red tape in the process and Government Departments are under special obligation to ensure that they perform their duties with diligence and commitment.



- c) It was observed by the National Commission that the act of State Commission was right but in the case of *Chief Post Master General and Ors v. Living Media India Ltd. & Anr.*, (2012) 3 SCC 563 there was considerable delay of 427 days whereas in the case in hand, there was delay of only 14 days which occurred due to handling of file by different Regional Offices and in such circumstances the delay could have been condoned by the State Commission subject to cost.
- d) Consequently, the delay of 14 days was condoned subject to the cost of Rs.5,000/- and Revision Petition was allowed. The orders of the fora below were set aside and the State Commission was directed to decide the appeal on merits after giving opportunity of being heard to both the parties.

**vii) Citation:**

2014(4) CPR 55.

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**36. National Seeds Corporation Ltd. Vs. Santosh Chandrawanshi and others**

**i) Case in Brief:**

Complainant in Revision Petition No.3450 of 2014 purchased 14 kg. of hybrid dhan seeds for a consideration of Rs.1318.10/- from a cooperative society, on the directions of the Agriculture Department, for sowing those seeds in his agricultural land. According to the Complainant he was told by the seller as well as by the Deputy Director of the Agriculture Department that seeds should be planted at 6 kg/acre and the productivity could be 60 quintals per acre. According to the Complainant, he cultivated the land through tractor, planted the seeds and used the requisite fertilizers and insecticides. Despite that, only 25% of the plants grew and the remaining plants got damaged. The Complainant claimed damages to the extent of Rs.40,000/- per acre, besides other expenses incurred by him, thereby making a total compensation of Rs.1,25,000/-. The District Forum allowed the complaint. Being aggrieved from the order of the District Forum the petitioner approached the State Commission by way of an appeal. The State Commission partly modified the order of the District Forum and subject to the said modification the appeal filed by the petitioner was

### **Condonation of Delay**

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dismissed. Being aggrieved from dismissal of its appeal the petitioner has filed this Revision Petition. Since there was a delay of 133 days in filing the Revision Petition, I.A.No.6065 of 2014 has been filed seeking condonation of delay in filing the Revision Petition. Revision Petition dismissed as barred by limitation.

**ii) Order appealed against:**

Revision Petition No.3450 of 2014

From the order dated 23.01.2014 in FA No.12/767 of Chhattisgarh State Consumer Disputes Redressal Commission at Raipur.

Revision Petition No.3451 of 2014

From the order dated 23.01.2014 in FA No.12/766 of Chhattisgarh State Consumer Disputes Redressal Commission at Raipur.

**iii) Parties:**

Revision Petition No.3450 of 2014

National Seeds Corporation Ltd. - Petitioner

Vs.

Santosh Chandrawanshi and others - Respondents

Revision Petition No.3451 of 2014

National Seeds Corporation Ltd. - Petitioner

Vs.

Pradeep Kumar and others - Respondents

**iv) Case No and Date of Judgement:**

i. Revision Petition No.3450 of 2014 with I.A.No.6064 of 2014, I.A.No.6065 of 2014 & I.A.No.6066 of 2014 (For Stay, Condonation of Delay, Exemption from Filing Translated Documents).

ii. Revision Petition No.3451 of 2014 With I.A.No.6067 of 2014, I.A.No.6068 of 2014 & I.A.No.6069 of 2014 (For Stay, Condonation of Delay, Exemption From Filing Translated Documents) &

Date of Judgement: 15.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19, 21(b) and 24-A of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) It was noted that the facts in both the Revision Petition were similar and the Complainants in both had a common grievance against the petitioner corporation.
- b) It was pointed out by the National Commission that the application under consideration did not give day to day explanation for the delay between 25.01.2014 and 16.06.2014. Once the copy of the impugned order had been received by the petitioner on 25.01.2014, the file should have moved swiftly and appropriate decision in consultation with the law department of the petitioner corporation could easily have been taken within three-four weeks. The petitioner-corporation certainly did not require more than four months to take a decision in a matter of this nature where the stake for the corporation cannot be said to be high. Consequently, the applications seeking condonation of delay were dismissed for the abnormal delay of 133 days. Since the applications seeking condonation of delay had been dismissed, the Revision Petitions were also dismissed as barred by limitation.

**vii) Citation:**

IV (2014) CPJ 486.

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**II. CONSUMER – DEFINITION & SCOPE**

**1. Oriental Bank of Commerce through Branch Manager Vs. M/s.Shankar Chawal Udyog & Anr.**

**i) Case in Brief:**

Complainant/Respondent No.1 sold paddy to M/s. Vinayak Agro Products, who issued account payee cheque of Rs.4,00,000/- on 03.08.2009 in favour of the Complainant. It was claimed that cheque was dropped by a messenger in the drop box of the Bank/OP No.2/ Respondent No.2. As cheque was not credited in the account of Complainant till 10.8.2009, inquiry was made and it was found that someone made overwriting on the cheque and converted it into a bearer cheque and encashed it. FIR was lodged. Alleging deficiency on the part of OPs, Complainant filed complaint before District Forum which directed OP No.1 to pay Rs.4,00,000/- along with 6% p.a. interest, Rs.3,000/- as compensation and Rs.500/- towards litigation expenses. Appeal filed by the OP No.1 was dismissed by State Commission vide impugned order against which, this Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

Against the Order dated 14.08.2012 in Appeal No.140/2012 of the State Commission Chhattisgarh.

**iii) Parties:**

Oriental Bank of Commerce  
through Branch Manager

- Petitioner

Vs.

M/s. Shankar Chawal Udyog & Anr.

- Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.4315 of 2012 & Date of Judgement: 20.05.2014.

**v) Acts and Sections referred:**

Sections 2(1)(d)(ii), (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission observed that the Complainant was a customer vis-à-vis State Bank of India but he cannot be treated as a

customer of Petitioner Bank as aforesaid clearance of cheque was without any consideration, paid or promised to be paid and in such circumstances, it was held that complaint filed by the Complainant was not maintainable. Only M/s. Vinayak Agro Products who was account holder of the Petitioner could have filed complaint against the Petitioner. The Commission relied on the earlier decisions of the Commission in Appeal No.54 of 2007 *Himkath Sales Depot Vs. Branch Manager, State Bank of Patiala* and *The Gauhati Co-operative Urban Vs. Santosh Kumar Tewari & Ors.* (1997) 5 CompLJ 607 NCDRC.

- b) The National Commission on perusal of the records of the case pointed out that someone crossed endorsement of Account Payee cheque and got it encashed meaning thereby, forgery was alleged and criminal case was still pending regarding this forgery. In such circumstances, no liability should have been fastened on the Petitioner/Bank for encashment of cheque on the basis of forged cancellation of endorsement.
- c) The Commission further observed that the District Forum should have dismissed complaint and directed Complainant to approach to the Civil Court for redressal of his grievances and State Commission further committed error in dismissing appeal. Consequently, the present Revision Petition was allowed and the impugned order passed by the fora below were set aside and the Complainant was given the liberty to approach the civil court for redressal of its grievance.

**vii) Citation:**

III (2014) CPJ 38; 2014(2) CPR 740.

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**2. M/s. Max Infra (India) Ltd. Vs. M/s. Ashok Leyland Ltd. & Ors.**

**i) Case in Brief:**

The Complainant Company placed a purchase order dated 17.08.2011 on M/s. Automotive Manufacturers Pvt. (OP No.5) for the supply of 10 Tipper vehicles manufactured by OP for a total price of Rs.2,85,92,665/-. Alleging that the vehicles were defective, he filed the Consumer complaint seeking a direction to the OPs either to replace the defective vehicles with new ones or to refund the amount paid by the Complainant

### **Consumer - Definition & Scope**

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along with interest. He also sought compensation for mental harassment, loss of time etc., and costs. Complaint was dismissed on the ground that Complainant did not come under the definition of consumer.

**ii) Order appealed against:**

Original Complaint.

**iii) Parties:**

M/s. Max Infra (India) Ltd.

- Complainant

Vs.

M/s. Ashok Leyland Ltd. & Ors.

- Opposite Parties

**iv) Case No and Date of Judgement:**

Consumer Complaint No.93 of 2014 & Date of Judgement: 22.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (d) and 21(a)(i) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission noted that the definition of term “consumer” had undergone change following the Amendment Act 62 of 2002 of CP Act, 1986 which was brought in force, w.e.f 15.03.2003. As per section 2(d)(i) of the Act, the term Consumer does not include a person who obtained goods for resale or for any commercial purpose. The term commercial purpose, as per the explanation given in the section 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. Relying on the decisions of the Commission in *Monstera Estate Pvt. Ltd. Vs. Ardee Infrastructure Pvt. Ltd.* IV (2010) CPJ 299 (NC); *M/s. Purusharth Associates Pvt. Ltd. Vs. Uppal Housing Ltd. Plaza & Anr.* dated 05.07.2012 and *Shika Birla Vs. DLF Retailers Developers Ltd.* in Consumer Complaint No.183 of 2012 decided on 01.02.2013 and that of the Hon’ble Supreme Court in *Kalpavruksha Charitable Trust Vs. Toshniwal Brothers (Bombay) Pvt. Ltd.* AIR 1999 SC 3356, it was held that the Complainant does not come under the definition of the term “consumer”. The Complaint was accordingly dismissed giving liberty to the Complainant to approach the proper forum/civil court for redressal of his grievance.

**vii) Citation:**

III (2014) CPJ 81.

### **3. Sura Rama Chandra Rao Vs. Modern Gynaec & Maternity Hospital**

#### **i) Case in Brief:**

It was the case of the Complainant/Petitioner that on 11.04.2006, his wife approached OP/Respondent for her gynaec problem and OP after check-up suggested an operation which was done on 25.04.2006 and after that his wife's condition worsened. Soon after the operation, OP proceeded on camp and discharged the patient on 30.04.2006. Patient suffered a paralytic attack and was admitted in another hospital. The doctor therein opined that due to the negligent operation by OP, patient had suffered. Ultimately, Complainant's wife died on 02.05.2006. It was also alleged by the Complainant that operation was conducted without conducting prior tests like sugar, biopsy, etc. that too without any consent. OP on his part alleged that the operation was conducted free of cost on the recommendation of known person and so the complaint was not maintainable and there was no consideration between the parties. Alleging deficiency on the part of OP, Complainant filed complaint before the District Forum which directed OP to pay Rs.1,00,000/- as compensation, Rs.5,000/- as cost and Rs.1,000/- as legal expenses. Both the parties filed an appeal before the State Commission which dismissed the appeal of the Complainant for enhancement of compensation, but allowed appeal of OP and complaint was dismissed against which, these Revision Petitions have been filed. Revision Petitions dismissed.

#### **ii) Order appealed against:**

Revision Petition No.3407 of 2012

From the order dated 06.06.2012 in First Appeal No.1384/2010 of the A.P. State Consumer Disputes Redressal Commission, Hyderabad.

Revision Petition No.3408 of 2012

From the order dated 06.06.2012 in First Appeal No.501/2011 of the A.P. State Consumer Disputes Redressal Commission, Hyderabad.

#### **iii) Parties:**

Revision Petition No.3407 of 2012

Sura Rama Chandra Rao - Petitioner/Complainant

Vs.

Modern Gynaec & Maternity Hospital - Respondent/OP

### **Consumer - Definition & Scope**

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Revision Petition No.3408 of 2012

Sura Rama Chandra Rao - Petitioner/Complainant

Vs.

Modern Gynaec & Maternity Hospital - Respondent/Opp. Party

**iv) Case No and Date of Judgement:**

- i. Revision Petition No.3407 of 2012;
- ii. Revision Petition No.3408 of 2012 &  
Date of Judgement: 23.05.2014.

**v) Acts and Sections referred:**

Sections 2(1)(d)(ii), (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission after perusal of the records found that the operation was conducted after going through investigation report dated 11.04.2006 and in such circumstances, it could not be said that operation was conducted without investigations. As far as biopsy was concerned, it was done only after operation and biopsy could not have been done before operation. Perusal of discharge summary also revealed that the patient was discharged on 29.04.2006 and not on 30.04.2006 and in such circumstances, it could be inferred that Complainant had unnecessarily mentioned wrong facts in the complaint and had not come with clean hands. It was held that Complainant failed to prove any negligence on the part of OP in conducting operation.
- b) It was also held that as Complainant had neither adduced any oral evidence nor any documentary evidence to prove that any consideration was paid by Complainant or his wife for availing services of OP, Complainant did not fall within purview of consumer under the Consumer Protection Act and complaint was not maintainable and District forum committed error in entertaining and in allowing complaint.
- c) In view of the above, the Commission did not find any illegality, irregularity or jurisdictional error in the impugned order of the State Commission. Consequently, both the Revision Petitions were dismissed.

**vii) Citation:**

III (2014) CPJ 190.



**4. M/s. Nidhi Knitwears (P) Ltd. Vs. The Manager, Bank of Maharashtra & Anr.**

**i) Case in Brief:**

The Complainant is an MSME unit and registered under the Companies Act. The Complainant used to have loans from the Bank of Patiala for various facilities of Rs.6 crores. In January 2011 OPs approached the Complainant and offered to provide enhanced credit facility at lower rate of interest and proposed to take over the existing facilities. OP/ Bank opened the current account of the Complainant. Complainant submitted the proposal for enhanced credit facility of Rs.9.5 crores in April 2011. OP sanctioned the credit facility, fund based and non-fund based and on the basis of the enhanced facility assured by OP, Complainant approached foreign and domestic customers. The disbursement of loan was started by the OPs on 12.08.2011 and after allowing the Complainant to operate their account only for one day, OPs put on hold the operations without any notice allegedly resulting in heavy losses to the tune of Rs.45.24 crores during the period 13.08.2011 to 23.08.2011 to the Complainant. On the advice of OP, Complainant applied for restructuring and rehabilitation which was declined by OP. Alleging deficiency in service this original complaint has been filed seeking payment of Rs.45.24 crores as damages with interest at 12% p.a. Complaint was dismissed on the ground that the Complainant is not a Consumer within the definition of the Act.

**ii) Order appealed against:**

Original Complaint.

**iii) Parties:**

M/s. Nidhi Knitwears (P) Ltd. - Complainant

Vs.

The Manager, Bank of Maharashtra & Anr. - Opposite parties (OP)

**iv) Case No and Date of Judgement:**

Consumer Complaint No.143/2014 & Date of Judgement: 23.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (d) and 21(a)(i) of the Consumer Protection Act, 1986.

## **Consumer - Definition & Scope**

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### **vi) Issues raised and decided:**

The Commission held that the law as it stood on the date of the complaint (following the amendment introduced with effect from 15.03.2003) did not include a person who availed of banking service for any commercial purposes. The Commission relied on the earlier judgements of the Commission in i) *Monstera Estate Pvt. Ltd. Vs. Ardee Infrastructure Pvt. Ltd.* – IV (2010) CPJ 299 (NC); ii) *M/s. Purusharth Associates Pvt. Ltd. Vs. M/s. Uppal Housing Ltd. Plaza Anr.* dated 05.07.2012 which was upheld by the Hon'ble Supreme Court iii) *Shika Birla Vs. DLF Retailers Developers Ltd.* in Consumer Compliant No.183 of 2012 decided on 01.02.2013 and that of the Hon'ble Supreme Court in *Kalpavruksha Charitable Trust Vs. Toshniwal Brothers (Bombay) Pvt. Ltd.* AIR 1999 SC 3356. The Commission held that the Complainant would not be covered under explanation to Section 2(1)(d)(ii) of the Consumer Protection Act 1986. The Complaint was accordingly dismissed.

### **vii) Citation:**

III (2014) CPJ 147.

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## **5. M/s. N.L.P. Organics Pvt. Ltd. Vs. The Chairman-cum-Managing Director Indian Bank & Ors.**

### **i) Case in Brief:**

Complainant who used to enjoy credit facilities from the Respondent Bank, became a sick unit and requested OP-5 (Chief Manager, Indian Bank, South Extension, New Delhi) to sanction a rehabilitation package. OP-5 did not agree to provide the package with the cutoff date as on 31.03.1995. However, OP-5 sanctioned open cash credit limit and export packing credit limit which fell short of the Complainant's requirements. It was the Complainant's grievance that OP charged higher rate of interest and penal interest on the balance outstanding in cash credit limit affecting his business further. He filed the present complaint seeking a compensation of Rs.70 lakhs along with interest at 24% p.a. OP resisted complaint on the ground that the Complainant was not a consumer. Complaint dismissed with liberty to approach the appropriate forum or civil court for getting redressal of its grievance.

### **ii) Order appealed against:**

Original Complaint

**iii) Parties:**

M/s. N.L.P. Organics Pvt. Ltd. - Complainant

Vs.

The Chairman-cum-Managing Director

Indian Bank & Ors. - Opposite Parties

**iv) Case No and Date of Judgement:**

Original Petition No.158 of 1999 & Date of Judgement: 14.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (d) and 21(a)(i) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission relying on the decision of the Hon'ble Supreme Court in *Laxmi Engineering Works Vs. PSG Industrial Institute* – (1995) 3 SCC 583 observed that the Act provided for “business-to-consumer” disputes and not for “business-to-business” disputes. It was further observed that the Complainant in this case was transacting business and therefore he cannot be said to be a consumer. Reliance was also placed on the decisions in *Lucknow Development Authority Vs. M.K. Gupta*, (1994) 1 SCC 243; and *Morgan Stanley Mutual Fund Vs. Kartick Das*, (1994) 4 SCC 225.
- b) The Commission imposed cost of Rs.25,000/- on the Petitioner to be paid to “Pay and Accounts Officer, Ministry of Consumer Affairs, New Delhi through the Registrar of the Commission within 45 days for wasting the time of the Commission for nearly 15 years.
- c) The Commission however gave liberty to the Complainant to approach the appropriate forum or civil court for getting redressal of his grievance as per law.

**vii) Citation:**

III (2014) CPJ 350; 2014(3) CPR 468.

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**6. Vijay Kumar Vs. Haryana Urban Development Authority**

**i) Case in Brief:**

Petitioner applied for allotment of plot/flat to the Respondent under Ashiyana/JNNURM scheme and deposited a sum of Rs.8,000/-. He was not allotted a plot or flat under the scheme. He claimed to have made a number of visits to HUDA office and for each visit incurred expenditure

## **Consumer - Definition & Scope**

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of Rs.4,400/-. Claiming the failure of the Respondent to allot plot/flat as deficiency in service he filed complaint seeking a direction to HUDA to allot him a flat and also pay compensation. District Forum dismissed the complaint. The Complainant filed appeal before the State Commission which was also dismissed vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

### **ii) Order appealed against:**

From the order dated 15.03.2013 in Appeal No.159/2013 of the State Consumer Disputes Redressal Commission, Haryana, Panchkula.

### **iii) Parties:**

Vijay Kumar - Petitioner

Vs.

Haryana Urban Development Authority - Respondent

### **iv) Case No and Date of Judgement:**

Revision Petition No.2110 of 2013 & Date of Judgment: 22.07.2014.

### **v) Acts and Sections referred:**

Sections 2(1) (d), (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

### **vi) Issues raised and decided:**

- a) The Commission observed from the perusal of the application form that the Petitioner did not satisfy one of the conditions for allotment namely that he should have been a resident of Azad Bharat Colony. Under the circumstances it was held that the Respondent Authority cannot be faulted for not allotting plot/flat to the Complainant.
- b) The Commission also noted that the State Commission relying upon the Judgment of the National Commission in Punjab Urban Planning and Development Authority and Anr. Vs. Krishan Pal Chander 2010 CTJ 415 had taken the view that since the Petitioner was only an applicant, he did not fall within the definition of consumer because allotment of plot/flat was yet to be done. The Commission held that the aforesaid view of the State Commission cannot be faulted.

c) Consequently Revision Petition was dismissed as devoid of merits.

**vii) Citation:**

IV (2014) CPJ 109; 2014(3) CPR 382.

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**7. WIPRO GE Healthcare Pvt Ltd Vs. Dr. Sunil J. Shah**

**i) Case in Brief:**

The case of the Complainant/Respondent, a doctor, is that the ultrasound scanning machine which he purchased from the Petitioner for a consideration of Rs.8,50,000/- stopped working within a week of its installation. Though some repairs were carried out by the Petitioner, the machine did not work properly. When the Complainant made a representation to the Petitioner, he was asked to pay Rs.4,00,000/- for replacing the machine with an advanced version. Not accepting the offer, Complainant approached the District Forum which directed the Petitioner to pay a sum of Rs.8,50,000/- to the Complainant against return of the machine and to pay a further sum of Rs.10,000/- towards compensation and Rs.1,500/- as cost. Petitioner's appeal to the State Commission was dismissed vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed with cost of Rs.25,000/- to be deposited with the Consumer Legal Aid A/c of NCDRC.

**ii) Order appealed against:**

From the order dated 21.04.2014 in Appeal No.6 of 2010 of Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.

**iii) Parties:**

WIPRO GE Healthcare Pvt Ltd - Petitioner

Vs.

Dr. Sunil J. Shah - Complainant

**iv) Case No and Date of Judgement:**

Revision Petition No:3037 of 2014 & Date of Judgement: 08.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (d), (g), (o), 19, 21(b) and 26 of the Consumer Protection Act, 1986.

## **Consumer - Definition & Scope**

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### **vi) Issues raised and decided:**

- a) The Petitioner contended that the machine was purchased for a commercial purpose and therefore the Complainant was not a consumer within the meaning of Section 2(1)(d) of the Act. The Commission rejected this argument on the ground that the Complainant being a M.D in Gynaegology used the ultrasound machine as a diagnostic tool while visiting several clinics/nursing homes towards self-employment and therefore, it cannot be said that it was purchased by him for a commercial purpose.
- b) The Commission also refused to entertain the submission that the Complainant suppressed the fact that he owns several nursing homes and hospitals on the ground that no material was produced before the District Forum to that effect and that scope of the Commission's in a Revision Petition is extremely limited.
- c) The Commission also rejected the contention of the Petitioners that there was no defect in the machine and therefore there was no deficiency in service. Considering the facts and circumstances of the case including the offer made by the Petitioner to replace the machine with the higher version at a special price of an additional Rs.4 lakhs, it was held that there was no ground to interfere with the concurrent finding of the fora below that there was deficiency in service.
- d) Consequently, Revision Petition was dismissed with cost assessed at Rs.25,000/- to be deposited with the Consumer Legal Aid A/c of the NCDRC within four weeks.

### **vii) Citation:**

Not reported in CPJ and CPR.

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## **8. Brig Cargo International and another Vs. Royal Carpet Industries**

### **i) Case in Brief:**

Complainant which is in the business of woolen carpets received an export order from an overseas buyer for the consignments to be delivered at Hamburg, Germany. It hired the services of the Appellant which is a clearing and forwarding agent for the purposes of facilitating shipment of the goods. The Appellant availed services of Dolphin Container Line

operated by Transea Shipping Agency Pvt Ltd. The case of the Complainant was that after the shipment of goods, the Bills of Lading were sent by it to the banker of a foreign buyer through its banker M/s. Punjab National Bank. According to the Complainant, it did not receive any intimation from the Bank with respect to the payment for goods. But the Appellant informed the Complainant in March, 2002 that the enquiry with the shipping line had revealed that the shipment had been delivered in December, 2000. The case of the Complainant is that the goods were delivered by the shipping line to the overseas buyer without any instructions from the Complainant and without taking any originals of the Bills of Lading from him. There was a dispute between the Appellant and the Complainant regarding the number of originals of the Bills of Lading, the former maintaining there were four and the later maintaining that there were only three originals. The present first appeals have been filed challenging the order of the State Commission which decided the case in favour of the Complainant. Appeals allowed.

**ii) Order appealed against:**

From the order dated 27.06.2008 in C.C.No.180 of 2002 & C.C.No.181 of 2002 of Uttar Pradesh State Consumer Disputes Redressal Commission, Lucknow.

**iii) Parties:**

Brig Cargo International and another - Appellants

Vs.

Royal Carpet Industries - Respondent

**iv) Case No and Date of Judgement:**

First Appeals No:417-418 of 2008 & Date of Judgement: 12.08.2014.

**v) Acts and Sections referred:**

Sections 2(1), (d), (g), (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The first issue that came up for consideration was whether the Complainant is a consumer of the Appellant. Since the Appellant was merely a customs clearing and forwarding agent and was an agent of the Complainant and not of the overseas buyer or even

### **Consumer - Definition & Scope**

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of the shipping line, it was held by the Commission that the Complainant cannot be said to a consumer of the Appellant.

- b) The Commission came to the conclusion that there were four original Bills of Lading of which three were sent by the Complainant to the bankers and that there was a strong possibility of the fourth original having been sent by it directly to the overseas bank and the same having been utilized by the overseas buyer for the purpose of taking delivery of the consignment from the shipping line.
- c) The Commission noted that the duty assigned to the Appellants was to engage the shipping line and to deliver the goods to the shipping line. It was not the case of the Appellant that the goods were not handed over to the shipping line for being shipped to Germany. Therefore, there was no case of deficiency in service provided by the Appellant to the Complainant.
- d) The Commission therefore set aside the impugned order to the extent it was directed against the Appellant.

#### **vii) Citation:**

Not reported in CPJ and CPR.

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### **9. Kaveri Telecom Ltd Vs. Vijaya Bank and another**

#### **i) Case in Brief:**

Vijaya Bank, OP.1 sanctioned working capital facility to the Complainant at an interest rate of prime lending rate (PLR) + 2.5% + interest tax. It was alleged that OP.1 illegally debited an excess interest of Rs.27,56,684/- on the amount drawn by the Company in the loan account for the period from 01.04.1997 to 31.03.2002. The Complainant gave a representation dated 03.10.2000 to the Bank and it is alleged that in spite of several reminders/representations including to the Chairman and Managing Director, Vijaya Bank (OP.2), no action was taken. Ultimately, Complainant received a letter dated 02.05.2001 that rechecking of interest has been entrusted to an outside agency. Since the matter was getting delayed, Complainant approached the Bank Ombudsman but to no avail. Finally, the Complainant received a letter dated 19.12.2001 from OP.1 informing that according to the auditor's report, the Bank did not charge any excess interest. Aggrieved by the



decision, the Complainant has filed the present complaint before the National Commission seeking a direction to the OPs to pay Rs.46,45,990/- along with cost. Complaint dismissed with cost of Rs.10,000/- to be paid to the Consumer Legal Aid Account of the Commission.

**ii) Order appealed against:**

Original Complaint

**iii) Parties:**

Kaveri Telecom Ltd - Complainant

Vs.

Vijaya Bank and another - Opp. Parties

**iv) Case No and Date of Judgement:**

Consumer Complaint No:288 of 2002 & Date of Judgement: 21.08.2014.

**v) Acts and Sections referred:**

Sections 2(1)(d), (g), (o) 21(a)(i) and 26 of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The first question that came up for consideration was whether the Complainant was a consumer. OP had contested the case on the ground that the Complainant is not a consumer because the dispute falls within the bracket of 'business to business dispute' as characterized by the Hon'ble Supreme Court in *Laxmi Engineering Works v. P.S. Industrial Institute*, 1995 (3) SCC 583. However, the Commission going by the decision of the three-Judges Bench of the Hon'ble Supreme Court in *Kishore Lal v. Chairman, Employees' State Insurance Corporation*, (2007) 4 SCC 579, wherein it was held that by virtue of the definition of Consumer in the C.P. Act 'the person who obtains goods for resale or any commercial purpose is excluded but the services hired for consideration even for any commercial purposes are not excluded', held that the Complainant is a consumer.
- b) As regards the rate of interest, the Commission rejected the argument of the Complainant that he was made to sign some blank documents stating that if he had done so he did the same at his own peril. The Commission did not find any violation of any

### **Consumer - Definition & Scope**

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notification issued by the Reserve Bank of India regarding the interest rates. Moreover, the loan document showed that the bank was at liberty to alter the terms of sanction to withdraw or cancel the limit partially or in full or to recall the advances at any time without any notice and without assigning any reason. The Commission also referred to some documents where the Complainant had agreed to pay interest @ 4.35% above the term lending rate of interest.

- c) The Commission also noted that there was inordinate delay in filing the complaint.
- d) The Commission therefore dismissed the complaint as frivolous and vexatious and imposed cost of Rs.10,000/- under Section 26 of the C.P. Act to be deposited by the Complainant with the Consumer Legal Aid A/c of the Commission within a period of 45 days.

#### **vii) Citation:**

IV (2014) CPJ 302.

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### **10. Delhi Development Authority Vs. Sandeep Khatri**

#### **i) Case in Brief:**

Petitioner Authority floated housing scheme 2006 for sale of constructed flats on "as is where is basis" in various localities of Delhi. The Complainant submitted an application dated 03.10.2006 and deposited earnest money of Rs.1,50,000/-. On draw of lot, the petitioner Authority allotted MIG Flat to the Respondent/Complainant and issued him demand cum allotment letter dated 19.01.2007. In response to the demand letter, the Complainant paid balance consideration amount of Rs.18,30,786/- on 17.04.2007. The Complainant on 26.04.2007 deposited the requisite documents needed before the delivery of possession with the petitioner Authority on 14.04.2007 and 26.04.2007. The delivery of possession was however delayed and the physical possession was delivered on 07.04.2008. Thereafter, the conveyance deed was executed in favour of the Complainant on 03.06.2008. The case of the Complainant is that he was entitled to physical possession of the flat in April 2007 and that the petitioner Authority by delaying the delivery of possession has committed deficiency in service. He filed a complaint before the

District Forum claiming interest on the consideration amount from 18.04.2007 till 07.04.2008 when the possession was delivered along with other reliefs. The District Forum directed the petitioner to pay to the Complainant interest on the deposited amount of Rs.18,30,786/- @ 15% from the date of deposit till the date of delivery of possession of the flat to the Complainant. The petitioner Authority preferred an appeal and the State Commission while maintaining the order of the District Forum reduced the amount of interest payable for the delayed payment from 15% p.a. to 10% p.a. against which the present Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

Against the order dated 25.10.2013 in Appeal No.569/2011 of the State Commission, Delhi.

**iii) Parties:**

Delhi Development Authority - Petitioner

Vs.

Sandeep Khatri - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.710 of 2014 with I.A.No.406 OF 2014( For Stay) & Date of Judgement: 25.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (d), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission pointed out that the Respondent/ Complainant was allotted ready built MIG flat on 'as is where is basis' for consideration. On perusal of allotment letter Ex.PW1/ 3, it was evident that the petitioner Authority had not promised to render any service in respect of the subject flat to the Complainant. As such, there being no element of service in the contract, the respondent was not covered under the definition of consumer reproduced above. The relationship between the parties in the Commission's view was of purchaser and seller of the flat, which would be governed by the law of contract and not under the Consumer Protection Act.

## **Consumer - Definition & Scope**

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b) In view of the above, it was held that Respondent/Complainant was not a consumer as defined under section 2 (1) (d) of the Act. As such he could not have maintained the consumer complaint. Both the fora below had assumed the jurisdiction ignoring the aforesaid aspect of the matter. The present Revision Petition was therefore allowed and the orders of the fora below were set aside.

### **vii) Citation:**

IV (2014) CPJ 407; 2014(3) CPR 776.

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## **11. Pharos Solutions Pvt. Ltd Vs. Tata Motors Ltd and others**

### **i) Case in Brief:**

The Complainant purchased a premium segment car for its principal Legal Director from OPs. The car was got registered in 2013 and the Complainant got the RC during the end of January, 2014. When the car insurance had to be renewed, it came to light that the car was manufactured in 2012 and not in 2013. The Complainant protested that he had been overcharged. He also alleged that the car was defective and unstable. Claiming deficiency in service and unfair trade practice, he filed the present complaint seeking directions to supply/deliver Range Rover Evoque manufactured in 2014 and also damages of Rs.3 crores for himself and Rs.25 crores as punitive damages to be paid to the State. Complaint dismissed and Complainant given liberty to seek remedy before any other appropriate forum or civil court as per law.

### **ii) Order appealed against:**

Original Complaint

### **iii) Parties:**

Pharos Solutions Pvt. Ltd - Complainant

Vs.

Tata Motors Ltd and others - Opp.Parties

### **iv) Case No and Date of Judgement:**

Consumer Complaint No:306 of 2014 & Date of Judgement: 01.09.2014.

### **v) Acts and Sections referred:**

Sections 2(1) (d), (r) and 21(a)(i)of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission noted that the car in hand was not purchased exclusively for the purpose of earning livelihood by means of self employment for the Legal Director of the company. It was not for the personal use of the Director, he had to use the car only for commercial purposes. The Commission therefore, dismissed the complaint as not maintainable.

The Commission relied on the following judgements:

- a) *Monstera Estate Pvt Ltd v. Ardee Infrastructure Pvt Ltd* IV (2010) CPJ 299 (NC);
- b) *Shika Birla v. DLF Retailers Developers Ltd*, Consumer Complaint No.183 of 2012, (Civil Appeal No.5458 of 2013 dated 08.07.2013.
- c) *Satish Kumar Gajanand Gupta v. M/s.Srushti Sangam Enterprises (I) Ltd and another*, Consumer Complaint No.296 of 2011 decided by the NC on 03.07.2012 (upheld by the Hon'ble SC in Civil Appeal No.6229 of 2012 decided on 14.09.2012.
- d) *M/s. Purusharth Associates Pvt Ltd v. M/s. Uppal Housing Ltd Plaza and Another*, Consumer Complaint No.112 of 2012 decided on 05.07.2012 (upheld by the Hon'ble SC in Civil Appeal No.8990-91/2012 vide order dated 07.01.2013.
- e) *Subhash Motilal Shah (HUF) and others v. Malegaon Merchants Co-operative Bank Ltd* decided by the NC on 12.02.2013 (SLP in Civil Appeal No.39200/2013 dismissed on 13.01.2014.
- f) *Manager Mapsko Builders Pvt. Ltd and others v. Sunil Dahiya* (Civil Appeal No.30699 of 2013 SC dated 07.10.2013 against the order of NC dated 05.08.2013 in R.P.No.3479 of 2011).
- g) *M/s. Amla Processing Pvt Ltd v. M/s. Best Engineering Technologies* (Civil Appeal No.2229 of 2014 SC dated 20.01.2014 against order of NC dated 15.04.2013 in F.A.No.619/2012).
- h) *Cadila Healthcare Ltd v. Anuradha Enterprises* (Civil Appeal No.19843 of 2009 SC filed against the order of NC dated 17.03.2009 in R.P.No.1999 of 2005.

**vii) Citation:**

IV (2014) CPJ 525.

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## **Consumer - Definition & Scope**

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### **12. M/s. Wipro GE Healthcare Pvt. Ltd Vs. M/s. Ajmer Hospital & Research Institute**

#### **i) Case in Brief:**

The Complainant/Respondent who had purchased an Echo Cardiography machine worth Rs.22,50,000/- filed a complaint before the Consumer Forum seeking refund of the said amount from the OP/Petitioner for deficiency in service. The complaint was allowed and the Petitioner/OP was directed to refund the amount with interest at 9% p.a and pay cost of Rs.2,000/-. Aggrieved by the said order, the present Revision Petition has been filed mainly on the ground that the Respondent had purchased the machine for commercial purpose and was therefore not a consumer within the meaning of the Act. Revision Petition allowed and the Complainant was directed to seek redressal of his grievance in the appropriate forum as per law.

#### **ii) Order appealed against:**

From the order dated 22.08.2013 in F.Appeal No.411 of 2007 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

#### **iii) Parties:**

M/s. Wipro GE Healthcare Pvt. Ltd - Petitioner

Vs.

M/s. Ajmer Hospital & Research Institute - Respondent

#### **iv) Case No and Date of Judgement:**

Revision Petition No:912 of 2014 & Date of Judgement: 01.09.2014.

#### **v) Acts and Sections referred:**

Sections 2(1)(d), 19 and 21(b) of the Consumer Protection Act, 1986.

#### **vi) Issues raised and decided:**

The argument of the Respondent that, it is a public and charitable trust and that the aim and object was to provide facilities of updated cardiology to the general public was not accepted by the National Commission. It was noted that the Complainant charged fees for the said machine in order to run the hospital and the service was not provided free of cost. Relying on the decision of the Hon'ble Supreme Court in *Kalpavruksha Charitable Trust v. Toshniwal Brothers (Mumbai) Pvt Ltd and another* (2001) SCC 512, it was held that the Complainant was

not a consumer as the machine had been installed for a commercial purpose. The law laid down in *Birla Technologies Ltd Vs. Neutral Glass & Allied Industries Ltd* (2011) 1 SCC 525 and *M/s. Amla Processing Private Ltd and M/s. Best Engineering Technologies*, special leave to appeal (Civil) No.2229 of 2014 decided on 20.01.2014 was also cited in support of the decision. The Revision Petition was accordingly allowed, the order of the State Commission was set aside and the Complainant given liberty to seek redressal from the appropriate forum as per law.

**vii) Citation:**

IV (2014) CPJ 535.

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**13. M/s. Punj Lloyd Ltd Vs. M/s. Corporate Risks India Pvt Ltd**

**i) Case in Brief:**

The Complainant company was a contractor in the execution of Uran Trombay Pipeline Project. As per the terms of the contract between the Complainant Company and ONGC, the Complainant Company was required to arrange insurance, covering risks that could crop up during the construction process. The Respondent Company approached the Complainant and offered to arrange the said insurance and the Complainant company agreed to avail its services. The case of the Complainant is that there had been gross negligence and deficiency on the part of the Respondent Company in rendering the services as an agent for obtaining the insurance on its behalf from Oriental Insurance Co. Ltd. It is also their case that had Respondent company performed its duty diligently and promptly, it could have able to enter into a contract of insurance with Oriental Insurance Co. Ltd at the premium which they had quoted in their letter dated 17.08.2005 and which on account of the said offer having not been accepted till 26.08.2005 had resulted in the premium going substantially higher. The Complainant therefore filed this original complaint seeking compensation amounting to Rs.5,26,70,654/- the sum representing the difference in cost of insurance cover in August, 2005 as against the cost at which it was available in September, 2005 along with interest on that amount @ 12% p.a. Complaint dismissed.

**ii) Order appealed against:**

Original Complaint

## **Consumer - Definition & Scope**

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### **iii) Parties:**

M/s. Punj Lloyd Ltd - Complainant

Vs.

M/s. Corporate Risks India Pvt Ltd - Respondent

### **iv) Case No and Date of Judgement:**

Consumer Complaint No:81 of 2006 & Date of Judgement: 01.09.2014.

### **v) Acts and Sections referred:**

Sections 2(1) (d)(ii), (g), (o) and 21(a)(i) of the Consumer Protection Act, 1986.

### **vi) Issues raised and decided:**

- a) The first question that arose for consideration was whether the Complainant was a consumer of the Respondent within the meaning of Section 2(1)(d)(ii) of the Act. It was noted that no consideration was either paid or promised by the Complainant company to the Respondent Company. No payment was made by the insurance company either to the Respondent Company. It was held that the insurance company would have paid a percentage of insurance premium to the Respondent Company as commission only in the event of the Complainant company actually obtaining the insurance cover from the Oriental Insurance Co. Ltd. It was therefore held that the Complainant was not a consumer of the Respondent Company within the meaning of Section 2(1)(d) of the Act.
- b) It was the contention of the Complainant that the Respondent company had failed to inform the Complainant company at the offer made by Oriental Insurance company in their letter dated 17.08.2005 was a time bound offer and that they should act with promptitude and accept the same without any delay, failing which the offer may lapse on account of reinsurance premium in the international market going higher. The Commission also held that the Complainant Company did not accept even the offer dated 25.08.2005 of the insurance company unconditionally. The reservation with respect to the requirement of approval from ONGC to the terms and conditions of the policy agreement, by



itself was held to be sufficient to prove that the offer made by the insurance company was not accepted by the Complainant Company in toto. Therefore, it was held that on merits also the Respondent Company could not be held responsible for the increase in premium demanded by the insurance company.

- c) Revision petition was accordingly dismissed both on the ground that the Complainant was not a consumer of the Respondent Company and on merits.

**vii) Citation:**

IV (2014) CPJ 209.

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**14. M/s. Anand Nishikawa Company Limited Vs. State Bank of Patiala and others**

**i) Case in Brief:**

The Complainant company had a current account each with State Bank of India, opposite party in Consumer Complaint No.95 of 2006 and Punjab National Bank, opposite party in Consumer Complaint No.210 of 2006. Operation of these accounts was required to be done by the Directors/Officials of the company in accordance with the resolutions of the Board from time to time. The grievance of the Complainant company was that pursuant to connivance of an officer of the company namely opposite party No.3-Mr.Rakesh Thapar and certain officers of the banks, the banks allowed operation of the aforesaid accounts beyond the limit of Rs.3,00,000/-, authorized by the Board. It was also the case of the Complainant that the aforesaid transactions did not pertain to government dues like excise, sales tax, income tax, provident fund, etc which was another violation of the directions of the Board. The Complainant company claimed to have suffered loss to the extent of Rs.1,94,56,398/- on account of the transactions allowed by the State Bank of India and Rs.1,67,61,255/- on account of the transactions allowed by the Punjab National Bank. Aggrieved by the act of OPs, the Complainant filed this complaint seeking various reliefs. Complaint was dismissed.

**ii) Order appealed against:**

Original Complaint

## **Consumer - Definition & Scope**

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### **iii) Parties:**

Consumer Complaint No.95 of 2006

M/s. Anand Nishikawa Company Limited - Complainant

Vs.

State Bank of Patiala and others - OPs

Consumer Complaint No.210 of 2006

M/s. Anand Nishikawa Company Limited - Complainant

Vs.

Punjab National Bank and others - OPs

### **iv) Case No and Date of Judgement:**

- i. Consumer Complaint No.95 of 2006 ;
- ii. Consumer Complaint No.210 of 2006 &  
Date of Judgement: 12.09.2014.

### **v) Acts and Sections referred:**

Sections 2(1) (d) and 21(a) (i) of the Consumer Protection Act, 1986.

### **vi) Issues raised and decided:**

- a) The question was whether a company operating a current account with a bank availed the banking services for commercial purpose or not.
- b) It was pointed out by the National Commission that the accounts with the bank were opened much before the Act came to be amended, while the transactions being questioned by the Complainant company admittedly took place after the said amendment had already come into force. Therefore, though the Complainant company initially hired or availed services of the aforesaid bank prior to coming into force of the Act it continued to avail such services even after the said amendment had come into force. Hence, it was held that the Complainant company was not a consumer within the meaning of Section 2(1)(d) of the Act. Accordingly, the complaints were dismissed. However, liberty was granted to the Complainant to approach the civil court for redressal of its grievance. The Complainant was permitted to take benefit of the provisions of Section 14 of the Limitation Act, in case such a benefit was otherwise available to it in law.

### **vii) Citation:**

Not reported in CPJ and CPR.

**15. Bachan Narayan Singh Vs. Eicher Plan & Marketing Head Quarter and others**

**i) Case in Brief:**

Complainant/Petitioner purchased Eicher Truck from OP No.2/ Respondent No.2 on 16.05.2007. The truck broke down on 30.06.2008 and again on 17.10.2008. While it took 45 days at the time of first repair, the Complainant claimed that on the second occasion he did not get the vehicle back till date of filing complaint i.e 07.11.2008. Alleging deficiency in service, he filed complaint before the District Forum which allowed the complaint and directed OP.1 & 2 to replace engine with the new one, to refund repair charges and pay loan interest and Rs.10,000/- as compensation. Appeal filed by the OP was allowed by the State Commission vide impugned order against which this Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 23.11.2012 in Appeal No.79 of 2010 of the Jharkhand State Consumer Disputes Redressal Commission, Ranchi.

**iii) Parties:**

Bachan Narayan Singh - Petitioner/Complainant

Vs.

Eicher Plan & Marketing  
Head Quarter and others - Respondents/OPs

**iv) Case No and Date of Judgement:**

Revision Petition No.4856 of 2012 & Date of Judgement: 16.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (d), (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission observed that the first break down took place after 13 months of purchase and the vehicle had run 34,000 kms. Therefore, it was held that no manufacturing defect could be presumed. It was also held that since the vehicle had run 34,000 kms without any fault, it cannot be inferred that parts of

### **Consumer - Definition & Scope**

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engine were weak. The order of the State Commission was therefore upheld.

b) The National Commission also upheld the decision of the State Commission that the petitioner had purchased vehicle for commercial purposes and therefore he did not fall within the purview of the consumer.

c) Revision Petition was accordingly dismissed.

#### **vii) Citation:**

IV (2014) CPJ 348; 2014(4) CPR 40.

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**III. DEFICIENCY IN SERVICE**

**(a) ACCIDENT COMPENSATION**

**1. Vijay Kumar Barman and others Vs. Baghela Gas Service and others**

**i) Case in Brief:**

Appellants 1 & 3 are the sons and Appellant.2 is the daughter, whose parents died in a fire explosion while lighting LPG stove. While the mother died on 01.09.2000, the father who tried to save her died of burns on 05.09.2000. There was damage to the house as well. Matter was reported to the Police immediately and Respondent.1 who was the gas distributor was also informed. It was the contention of the Appellants that the Gas Cylinder supplied by Respondent No.1 and filled up by IOC, Respondent No.2, did not have nozzle pin which stand was confirmed by the Police investigation. Alleging deficiency in service on the part of Respondents, they filed a complaint before the State Commission which held that the cylinder supplied by Respondents No.1 & 2 was defective and that Respondent.3 (National Insurance Co. Ltd) being the insurer was also liable to indemnify them for their third party liability towards the Appellant. The State Commission directed all the three Respondents to pay jointly and severally Rs.5,25,000/- as compensation and Rs.5,000/- as cost of litigation. Not being satisfied with the quantum of compensation, the present appeal has been filed. Appeal allowed and total compensation payable was enhanced to Rs.7 lakhs.

**ii) Order appealed against:**

From the order dated 11.10.2007 in Complaint No.13 of 2001 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

**iii) Parties:**

Vijay Kumar Barman and others	- Appellants
Vs.	
Baghela Gas Service and others	- Respondents

**iv) Case No and Date of Judgement:**

First Appeal No:226 of 2008 & Date of Judgement: 29.08.2014.

**Deficiency in Service - Accident Compensation**

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**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission noted that in so far as the three Respondents were concerned, the findings and directions by the State Commission had attained finality in as much as none of them had challenged the impugned order. As regards the question of enhancement of compensation, the Commission noted that except for the information regarding the age of the deceased (50 year old father and 45 old mother) and the number of dependents, no other material has been placed on record to prove what was the income of the deceased. Keeping in mind the observations of the Hon'ble Supreme Court in *State of Haryana and another v. Jasbir Kaur and others* (2003) 7 SCC 484, regarding award of 'just' compensation, it was held that it would be fair and reasonable to enhance the compensation awarded by the fora below by Rs.1,75,000/- making the total compensation payable to Rs.7,00,000/-

**vii) Citation:**

IV (2014) CPJ 362; 2014(3) CPR 694.

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**(b) AGRICULTURE**

**1. NU Genes Pvt. Ltd. Vs. Ishwar son of Sh. Ram Sarup and another**

**i) Case in Brief:**

The Complainant/Respondent No.1 purchased 3 Kgs. Nitya RH-10, Hybrid Paddy Seeds at Rs.500/- per Kg from Opposite Party No.1/ Respondent No.2/M/s. India Sales Corporation on the assurance that they were good quality seeds. The seeds were purchased on 08.05.2009 and were sown in their fields after necessary preparation. However, after some time, he found that the paddy plants were mixed with some other crops/varieties and the percentage of variety RH-10 was very little. It had further been stated in the complaint that the seeds were sown in 3 acres of land. The Complainant then brought the matter to the notice of the OP-1/Respondent No.2 who visited the spot along with the representatives of Petitioner/OP-2 and after seeing the crop, assured to give proper compensation. However, later on, they refused

to pay the same, following which the Complainant filed the consumer complaint before the District Forum which, after considering the report of a technical committee constituted as per its direction, directed the OPs to pay compensation of Rs.30,000/- along with Rs.3,300/- as cost of litigation. An appeal was made against the order of District Forum by both the opposite parties and vide impugned order dated 05.9.2012, the said appeal was dismissed on the ground of limitation as well as on merits. It is against this order that the present Revision Petition has been filed by O.P.No.2/Petitioner/NU Genes Pvt. Ltd. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 05.09.2012 in First Appeal No.1458/2011 of Haryana State Consumer Disputes Redressal Commission, Panchkula.

**iii) Parties:**

NU Genes Pvt. Ltd. - Petitioner

Vs.

Ishwar son of Sh. Ram Sarup and another - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.4275 of 2012 & Date of Judgement: 21.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission allowed the Revision Petition and set aside the orders of the fora below for the following reasons:

- i. The Complainant purchased 3 Kg. of paddy seeds and planted them in 3 acres of land; whereas according to the petitioner, 6 to 8 Kg. of seeds are required for one acre of land. The quantity of seeds purchased, was therefore, highly insufficient for the purpose and so, it becomes clear that there must be vacant spaces/patches where other plants or weeds etc., must have grown.
- ii. Perusal of the inspection report indicated that the Committee found 34% to 38% of plants of different kind. However, the

### **Deficiency in Service - Agriculture**

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committee has nowhere given the description of such plants of different kind. It is normally expected from a Committee consisting of Experts in Agriculture to indicate about the plants/variety which was found mixed with the main crop.

- iii. Further, a farmer is required to grow nursery plants of paddy before transplantation of paddy in the main fields. If the Complainant had grown such nursery plants, the mixing in the seeds of paddy would have come to his notice instantaneously and he would have refrained from transplanting the mixed plants in the main fields. Even after the transplantation, if the farmer found some mixed plants or inferior quality plants, he could have removed the same and done the transplantation again, during the sowing period, but nothing of this sort was done.
- iv. The inspection must have been done on or after 06.11.2009. As stated in the instruction booklet made by the opposite parties, the ripening time for the said variety of paddy is 110 to 117 days. If the crop had been transplanted in the month of May or June, it would have ripened before October and hence, the inspection carried out in the month of November has no significance. Further, the inspection report suffered from a major lacuna that it was not made in the presence of both the parties, as directed by the District Forum.
- v. In view of the above, the Commission held that inspection report lacked credibility and should not have been relied upon by the consumer fora below. In view of the above, the present Revision Petition was allowed and the orders of the fora below were set aside.

**vii) Citation:**

III (2014) CPJ 33.

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**2. The Director, Reliance Life Sciences Pvt Ltd & Ors. Vs. Sh.Prakash Kashinath Nanvare**

**i) Case in Brief:**

Complainant/Respondent purchased tissue culture banana plants from Shri Dhanya Kumar Dagadu Salvithal, Petitioner/OP.3 and paid Rs.21,150/-. The Petitioner – Reliance Life Sciences Pvt Ltd/OP.1 and



Plant Tissue Culture Division (OP.2) together grow those plantations. It is the Complainant's allegation that he had planted the plants in his agricultural land as per the instructions but there was no proper growth of the plants and 90% of them died. On his representation to the District Agricultural Officer, a Committee visited the Complainant's land and after inspection concluded that 90% of the plants died since OP had not provided hardened tissue plants and 10% living plants were not as per standard of the tissue cultured plants. Complainant therefore approached the District Forum which held the OPs responsible for deficiency in service and directed them to pay Rs.5,40,000/- jointly and severally, Rs.50,000/- for manures, wages and cultivation costs along with interest @ 9% p.a from 10.09.2007 and to pay a sum of Rs.21,150/- being the cost of seeds and another Rs.5,000/- as cost of litigation. OPs' appeal was dismissed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 05.09.2012 in F.Appeal No.744 of 2009 of the State Consumer Disputes Redressal Commission, Mumbai.

**iii) Parties:**

The Director, Reliance Life Sciences Pvt Ltd & Ors.- Petitioners

Vs.

Sh. Prakash Kashinath Nanvare

- Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No:4865 of 2012 & Date of Judgement: 04.08.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 11(2) (c ), 19 and 21(b)of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission rejected the contention of the OPs regarding territorial jurisdiction of the District Forum. It was noted that OP.3 was the authorized representative of OPs.1&2 and the purchase order and supply was processed through him at Solapur. Hence, as per Section 11(2)(c ) of the CP Act, the cause of action partly arose in Solapur.

### **Deficiency in Service - Airlines**

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- b) The Commission also rejected the contention of the OPs that the Complainant cultivated the crops for commercial purpose. It is observed that India is a country of agriculturists and the cultivated crop or produce will be for his and his family livelihood through a commercial sale in the market and that one should not go by mere technical language of 'commercial purpose'.
- c) The Commission also relied on the Committee's report which stated that despite proper cultivation, irrigation and manual treatment, the banana plants were not properly hardened. The OPs did not produce cogent evidence about the salinity of soil or any shortcomings on the part of the Complainant.
- d) The Commission accordingly endorsed the concurrent view taken by the Fora below and dismissed the Revision Petition.

#### **vii) Citation:**

IV (2014) CPJ 1; 2014(1) CPR 658.

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#### **(c) AIRLINES**

##### **1. M/s. Emirates (Airlines) Vs. Mr. Raj Kumar Sharma**

###### **i) Case in Brief:**

Complainant/Respondent who was working as a contract worker in Libya came to India on leave in 1989 and got confirmed return tickets to Djerba from Air Malta, who had flight agreement with OP/Appellant. Complainant had reservation tickets for i) Delhi to Dubai on 06.05.1999 ii) Dubai to Malta on 07.05.1999 and iii) Malta to Djerba on 07.05.1999. On 06.05.1999 when Complainant reached the Delhi Airport he was informed that reservation from Dubai to Malta was not on the list and the flight from Malta to Djerba was also cancelled. Only reservation from Delhi to Dubai was existing. Complainant contacted OP who asked him to get fresh confirmed tickets on payment of Rs.35,000/- but Complainant refused. Complainant got new reservation for 13.05.1999 which was further extended to 17.05.1999 by OP. But the visa authorities in Libya refused to extend emergency visa to the Complainant. Alleging deficiency Complainant filed complaint before the State Commission claiming Rs.18,70,000/- as compensation under different heads. The State Commission allowing the complaint awarded

a compensation of Rs.5,00,000/- to be paid to the Complainant vide impugned order against which the present appeal had been filed. Appeal allowed and the order of the State Commission was set aside.

**ii) Order appealed against:**

From the order dated 09.03.2009 in Complaint No.C/127/2001 of the State Consumer Disputes Redressal Commission, Delhi.

**iii) Parties:**

M/s. Emirates (Airlines)

- Appellant/OP

Vs.

Mr. Raj Kumar Sharma

- Respondent/Complainant

**iv) Case No and Date of Judgement:**

First Appeal No.473 of 2009 & Date of Judgement: 23.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission observed that Complainant was to fly from Delhi to Dubai by OP Airlines. His ticket was confirmed and he had nowhere pleaded that he was not allowed to board the flight on 06.05.1999 by OP. In such circumstances, no deficiency could be attributed on the part of OP as regards flight from Delhi to Dubai.
- b) As regards flights from Dubai onwards, it was held that tickets were not issued by OP and OP was not under any obligation to arrange flight from Dubai to Malta and Malta to Djerba merely because of arrangement of Air Malta with OP. It was therefore held that there was no deficiency on the part of OP in cancelling or rescheduling the flights from Dubai onwards.
- c) The Commission disagreed with the State Commission's observation that there was code sharing agreement between Air Malta and OP since no document had been placed on record to substantiate that claim. It was further held that there was no evidence to substantiate that Air Malta and OP were partners and OP was under an obligation to board Complainant in another flight without charges as Air Malta had rescheduled its flights.

### **Deficiency in Service - Airlines**

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- d) The Commission also observed that the Complainant should have impleaded Air Malta as a party in the Complainant.
- e) The Commission also held that OP was not under an obligation to inform Complainant regarding rescheduling of flights by Air Malta.
- f) Consequently the appeal was allowed, the order of the State Commission was set aside and the complaint was dismissed.

#### **vii) Citation:**

III (2014) CPJ 187.

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### **2. The Managing Director/Chairman Indian Airlines/Air India Vs. Mrs. Maria Easter D'abreu Noronha & Anr.**

#### **i) Case in Brief:**

Complainants/Respondents travelled from Mumbai to Goa on 14.03.2009 by Flight No. IC 613 operated by OP/Petitioner. Since Complainant No.1 was about 76 years of age, wheelchair was requested. When Complainant No.1 was being wheeled by the attendant, the right hand arm rest of the wheelchair gave way and the Complainant No.1 fell down and suffered fracture around her right hip joint. Complainant was taken by ambulance to Grace Cardiac Care Hospital as wished by her. She was discharged from the hospital on 28.03.2009 and underwent physiotherapy from 30.03.2009 to 29.05.2009. Complainant asked OP to reimburse Rs.1,03,671.75 as medical expenses and Rs.4,00,000/- as compensation. OP was ready to settle the legitimate medical bills within the framework of their rules and regulations. Alleging deficiency, Complainant approached the District Forum which allowed the complaint partly and directed OP to pay Rs.79,692/- as hospitalization charges and Rs.25,000/- as compensation. On appeal filed by the Complainant the State Commission enhanced medical expenditure to Rs.1,03,680/- and compensation to Rs.2,00,000/- and further awarded Rs.5,000/- as cost. Aggrieved by the said order the present Revision Petition has been filed. Revision Petition was allowed and the order of the State Commission was set aside.

#### **ii) Order appealed against:**

From the order dated 03.05.2012 in First Appeal No.02/2012 of Goa State Consumer Disputes Redressal Commission, Panaji.

**iii) Parties:**

The Managing Director/Chairman  
Indian Airlines/Air India - Petitioner/OP

Vs.

Mrs. Maria Easter D'abreu Noronha  
& Anr. - Respondents/Complainants

**iv) Case No and Date of Judgement:**

Revision Petition No.2668 of 2012 & Date of Judgement: 27.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission observed that no bill of Grace Hospital for Rs.1,30,000/- was available in the records and in such circumstances the State Commission committed error in allowing Rs.1,03,680/-, the amount claimed by the Complainant. The Commission held that the amount awarded by the District Forum was correct.
- b) The Commission noted that under Clause 1A of the Condition of the contract relating to non-international carriage, in case of injury to passenger, he/she was entitled to get Rs.750/- per day during the period he/she remained disabled subject to maximum of Rs.1,50,000/-. Since the Complainant remained hospitalized for a period of 14 days, she was entitled to Rs.10,500/- whereas District Forum had already awarded Rs.25,000/- as compensation. In such circumstances it was held that there was no justification for the State Commission enhancing the compensation to Rs.2,00,000/-.
- c) The Commission held that the District Forum's order allowing medical expenses and compensation was most appropriate and accordingly set aside the order of the State Commission. The Revision Petition was allowed accordingly.

**vii) Citation:**

Not reported in CPJ and CPR.

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**(d) AIR CARGO INSURANCE**

**1. Space Overseas Pvt. Ltd. Vs. Thai Airways International Ltd.**

**i) Case in Brief:**

Complainant/Space Overseas Pvt. Ltd. received an order from M/s. T.Singh Brothers, Kuala Lumpur for supply of 18,872 kgs of cotton knitted fabric valued at US \$ 65,515.95. The goods were to be delivered in Rangoon, Myanmar. The Exporter handed over the goods to Thai International Airways Ltd., Appellant in First Appeal No.384 of 2009 for being delivered at Rangoon. The goods were consigned to Malayan Banking Berhad and not to the purchaser. Four Airways bills were issued to the Complainant in respect of the aforesaid goods. The grievance of the Complainant is that contrary to the instructions issued to it and the contract between the parties, the carrier released the goods to the purchaser though it was required only to intimate the purchaser of the arrival of the goods in Rangoon. However, the carrier claimed that according to the rules of the Airport Authority at Yangon International Airport the Cargo had to be unloaded from the aircraft and handed over to the Myanmar Customs Warehouse which they did and handed over the Airway bills to M/s. 7-star company Ltd. who was notified by the carrier as acting on behalf of the buyer. Claiming deficiency in service, a complaint was filed before the State Commission which held that the carrier had been negligent and caused financial losses to the Complainant. The State Commission however awarded a sum of only Rs.50,000/- as compensation including the cost of litigation. Aggrieved from the quantum of compensation, the exporter Space Overseas Pvt. Ltd. filed First Appeal No.189 of 2009. Being aggrieved from the compensation awarded against it, the carrier filed First Appeal No.384 of 2009. FA/384/2009 was dismissed whereas FA/189/2009 filed by the exporter was partly allowed.

**ii) Order appealed against:**

First Appeal No.189 of 2009 and First Appeal No.384 of 2009

From the order dated 27.01.2009 in Complaint No.298/2000 of the Delhi State Consumer Disputes Redressal Commission, New Delhi.

**iii) Parties:**

First Appeal No.189 of 2009

Space Overseas Pvt. Ltd. - Appellant

Vs.

Thai Airways International Ltd. - Respondent

First Appeal No.384 of 2009

M/s. Thai Airways International Ltd. - Appellant

Vs.

Space Overseas Pvt. Ltd. - Respondent

**iv) Case No and Date of Judgement:**

First Appeal No.189 of 2009 and First Appeal No.384 of 2009 & Date of Judgement: 04.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986 & Regulation 30 in Schedule II of the Carriage by Air Act, 1972.

**vi) Issues raised and decided:**

- a) Though the Complainant contended that the goods were delivered to the buyer M/s. T. Singh Brothers, the documents produced by Thai International Airways Ltd. clearly showed that the goods were delivered to the local customs authority as per rules and regulations applicable in Myanmar. It was held that the carrier was justified in doing so.
- b) The Commission observed that the carrier delivered the documents i.e. the Airways bills to M/s. 7-star Company Ltd. which was the agent of the purchaser M/s. T. Singh Brothers and not of the consignee Malayan Banking Berhad. It was therefore held the carrier was guilty of deficiency in providing services.
- c) The Commission noted that the complaint was filed more than two years after the arrival of first two consignments and it was therefore barred by limitation prescribed in Regulation 30 in Schedule II of the Carriage by Air Act, 1972 in respect of the said two consignments. However the claim in respect of the other two consignments was within limitation.

**Deficiency in Service - Allotment of House / House sites / Flats**

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- d) The Commission held that, considering the weight of goods in respect of the two consignments which was within limitation the claim of Rs.9,50,752/- sought to by the Complainant cannot be said to be exaggerated and that the Complainant was entitled to be compensated in the form of interest.
- e) The Commission therefore dismissed FA/384/2009 filed by the carrier and allowed FA/189/2009 filed by the Complainant to the extent that the carrier Thai Airways International Ltd. should pay a sum of Rs.9,50,752/- towards the principal and Rs.1,52,110/- as interest upto 08.11.2000 to the Complainant. The carrier was also directed to pay *pendente lite* and future interest at 8% p.a, on the principal amount if the payment made within 2 weeks and 12% p.a. otherwise.

**vii) Citation:**

III (2014) CPJ 500; 2014(3) CPR 85.

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**(e) ALLOTMENT OF HOUSE / HOUSE SITES / FLATS**

**1. Delhi Development Authority Vs. Mr. Rajinder Prasad**

**i) Case in Brief:**

Respondents/Complainants had been allotted flats by Petitioner/DDA on payment of the demanded amount which included the cost of flat, conversion charges, share money and service charges. Possession of the flats was handed over on the basis of demand letters dated 15.09.2013. It is the case of the Respondents/Complainant that the Petitioner/DDA had demanded lesser amount from subsequent allottees under the same scheme by not charging service charges and share money and thereby had reduced cost of flats to the extent of Rs.20,000/- per flat. Alleging discrimination and deficiency in service they filed complaints before the District Forum demanding refund of service charge and share money and compensation. The District Forum allowed the complaint and directed the Petitioner to refund a sum of Rs.33,665/- to the Respondents/Complainants. Appeals filed by the Petitioner/DDA were dismissed by the State Commission vide impugned order against which the present Revision Petitions had been filed. By a majority order, the National Commission upheld the orders of the State Commission.



**ii) Order appealed against:**

From the order dated 19.12.2007 in Appeal No.930 to 982/2007 of the State Consumer Disputes Redressal Commission, Delhi.

**iii) Parties:**

Revision Petition No.1262/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. Rajinder Prasad - Respondent/Complainant

Revision Petition No.1263/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. A.P.Narnoliya - Respondent/Complainant

Revision Petition No.1264/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. M.K. Chaturvedi - Respondent/Complainant

Revision Petition No.1265/2008

Delhi Development Authority - Petitioner/OP

Vs.

Ms. Parvati Kumari - Respondent/Complainant

Revision Petition No.1266/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. Kumar Anand - Respondent/Complainant

Revision Petition No.1267/2008

Delhi Development Authority - Petitioner/OP

Vs.

Ms. Veena Kumari - Respondent/Complainant

**Deficiency in Service - Allotment of House / House sites / Flats**

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Revision Petition No.1268/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. Amit Bhatia - Respondent/Complainant

Revision Petition No.1269/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. Ravinder Bageja - Respondent/Complainant

Revision Petition No.1270/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. Shahbudin Khan - Respondent/Complainant

Revision Petition No.1271/2008

Delhi Development Authority - Petitioner/OP

Vs.

Ms. Renu Mehta - Respondent/Complainant

Revision Petition No.1272/2008

Delhi Development Authority - Petitioner/OP

Vs.

Ms. Pratibha Sharma - Respondent/Complainant

Revision Petition No.1273/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. Inder Mohan Khanna - Respondent/Complainant

Revision Petition No.1274/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. Ravinder Singh Thakur - Respondent/Complainant

**Compendium of National Commission Judgements – 2014 – Vol.II**

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Revision Petition No.1275/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. Radhey Shyam Verma - Respondent/Complainant

Revision Petition No.1276/2008

Delhi Development Authority - Petitioner/OP

Vs.

Ms. Elizabeth Ekka - Respondent/Complainant

Revision Petition No.1277/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. Suresh Chand Saxena - Respondent/Complainant

Revision Petition No.1278/2008

Delhi Development Authority - Petitioner/OP

Vs.

Ms. Nisha Sharma - Respondent/Complainant

Revision Petition No.1279/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. Gian Chand - Respondent/Complainant

Revision Petition No.1280/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. Bhabataran Samat & Aroti Samat - Respondent/Complainant

Revision Petition No.1281/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. Rajbir Singh - Respondent/Complainant

**Deficiency in Service - Allotment of House / House sites / Flats**

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Revision Petition No.1282/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. Muksh Singh Pilahwala - Respondent/Complainant

Revision Petition No.1283/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. Satish Kumar - Respondent/Complainant

Revision Petition No.1284/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. Kamal Garg - Respondent/Complainant

Revision Petition No.1285/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. L.R.Arya - Respondent/Complainant

Revision Petition No.1286/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. S.S.Negi - Respondent/Complainant

Revision Petition No.1287/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. Amar Singh - Respondent/Complainant

Revision Petition No.1288/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. J.S.Adhikari - Respondent/Complainant

**Compendium of National Commission Judgements – 2014 – Vol.II**

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Revision Petition No.1289/2008

Delhi Development Authority - Petitioner/OP

Vs.

Ms. Rekha Garg - Respondent/Complainant

Revision Petition No.1290/2008

Delhi Development Authority - Petitioner/OP

Vs.

Ms. Neelu Gupta - Respondent/Complainant

Revision Petition No.1291/2008

Delhi Development Authority - Petitioner/OP

Vs.

Ms. Vidya Sharma - Respondent/Complainant

Revision Petition No.1292/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. Jagdish Kumar Arora - Respondent/Complainant

Revision Petition No.1293/2008

Delhi Development Authority - Petitioner/OP

Vs.

Ms. Savita Raj - Respondent/Complainant

Revision Petition No.1294/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. Mukesh Gupta - Respondent/Complainant

Revision Petition No.1295/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mrs. Raj Rani Vashist - Respondent/Complainant

**Deficiency in Service - Allotment of House / House sites / Flats**

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Revision Petition No.1296/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mrs. Vidya Wati - Respondent/Complainant

Revision Petition No.1297/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mrs. Manjula Sood - Respondent/Complainant

Revision Petition No.1298/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. Shantnu Shah - Respondent/Complainant

Revision Petition No.1299/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. Malik Raj - Respondent/Complainant

Revision Petition No.1300/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. Brahm Pal Singh - Respondent/Complainant

Revision Petition No.1301/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. Neeraj Sharma - Respondent/Complainant

Revision Petition No.1302/2008

Delhi Development Authority - Petitioner/OP

Vs.

Dr. Munshi Sharma - Respondent/Complainant

**Compendium of National Commission Judgements – 2014 – Vol.II**

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Revision Petition No.1303/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. S.K.Narang - Respondent/Complainant

Revision Petition No.1304/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. Bharat Bhushan - Respondent/Complainant

Revision Petition No.1305/2008

Delhi Development Authority - Petitioner/OP

Vs.

Ms. Krishna - Respondent/Complainant

Revision Petition No.1306/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. Surender Pal - Respondent/Complainant

Revision Petition No.1307/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. S.D.Nautiyal - Respondent/Complainant

Revision Petition No.1308/2008

Delhi Development Authority - Petitioner/OP

Vs.

Mr. Santosh Gupa - Respondent/Complainant

Revision Petition No.1309/2008

Delhi Development Authority - Petitioner/OP

Vs.

Ms. Suman Rani - Respondent/Complainant

**Deficiency in Service - Allotment of House / House sites / Flats**

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Revision Petition No.1310/2008

Delhi Development Authority

- Petitioner/OP

Vs.

Ms. Gurinder Kaur

- Respondent/Complainant

Revision Petition No.1311/2008

Delhi Development Authority

- Petitioner/OP

Vs.

Mr. Anil Kumar Kalra

- Respondent/Complainant

Revision Petition No.1312/2008

Delhi Development Authority

- Petitioner/OP

Vs.

Mr. Janak Nayyar

- Respondent/Complainant

Revision Petition No.1313/2008

Delhi Development Authority

- Petitioner/OP

Vs.

Mr. K.Balasubramaniam

- Respondent/Complainant

Revision Petition No.1314/2008

Delhi Development Authority

- Petitioner/OP

Vs.

Mr. Manoj Kumar Rajwania

- Respondent/Complainant

**iv) Case No and Date of Judgement:**

Revision Petition No.1262-1314 of 2008 & Date of Judgement:  
17.09.2013.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19, 20(1A)(iii) and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) This batch of cases was heard by a two member bench. Since there was disagreement between the members the case was referred to a third member as provided under Section 20(1A)(iii) of the Consumer Protection Act.
- b) The difference of opinion was on the following issues:



- (i) Whether the complaints can be adjudicated under the provisions of Consumer Protection Act, 1986 in view of several judgements cited by the Petitioner by which it was concluded that complaints dealing with pricing cannot be gone into by Consumer Fora.
- (ii) Whether the action of DDA to dispense with service charge, share money, conversion charge etc., under Clause 26 of the scheme which resulted in one set of allottees in the same scheme having to pay less than another set of allottees, was legally and constitutionally tenable and did not amount to discrimination.
- c) On the first issue it was held that the complaints did not pertain to the pricing of the flat but to deficiency in service on the part of the Petitioner because of its discriminatory and arbitrary action and that the Respondents/Complainants were consumers and were within their rights to file complaints under the Act.
- d) On the second issue it was held that any arbitrary, unauthorized act by a statutory authority against the concept of the equality before law amounted to deficiency in service under the Act. Relying on the judgements of Hon'ble Supreme Court in *Dakshin Haryana Bijil Vitran Vs. Bachan Singh* [(2009) 14 SCC 793] and *Michigan Rubber (India) Ltd. Vs. State of Karnataka* [(2012) 8 SCC 216], it was held that the action of the Petitioner was whimsical, arbitrary and discriminatory and was against the principles of "equality" enshrined in Article 14 of the Constitution of India.

**vii) Citation:**

III (2014) CPJ 489.

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**2. M/s. State Bank of Mysore Bank Employee's Welfare Society Vs. Vinodini G. Pai**

**i) Case in Brief:**

The Respondent/Complainant, a member of the Appellant society, intending to purchase a site measuring 40ft x 60ft, deposited Rs.90,000/- with the said society in installments. However, despite accepting the aforesaid amount from her, the appellant society did not allot any site to the Respondent/Complainant. Having failed in her

**Deficiency in Service - Allotment of House / House sites / Flats**

efforts to get a site allotted from the society, the Complainant/ Respondent filed a complaint claiming a direction to the society to give a site measuring 40 ft x 60 ft to her and compensation amounting to Rs.2 lakhs and cost of the proceedings before the District Forum which decided the case in favour of the Complainant. It was further confirmed by the State Commission vide impugned order against which the present Revision Petition has been filed by the Appellant society. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 31.01.2014 in Appeal No.11 of 2014 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore.

**iii) Parties:**

M/s. State Bank of Mysore Bank  
Employee's Welfare Society - Petitioner

Vs.

Vinodini G. Pai - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.2559 of 2014 with IA/4076/2014 (For Stay) & Date of Judgement: 09.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The issue raised in the present case was whether the site was not allocated to the Complainant as she failed to perform her part of the obligation in making the balance payment of Rs.30,000/- in time as stipulated by the Appellant society.
- b) The National Commission on perusal of the records found that there was no material to show that any such amount was ever demanded by the Appellant society from the Complainant. In addition to that, the Appellant Society had accepted the delayed payment of Rs.20,000/- (out of Rs.90,000/-) from the Complainant without any demur or protest. The Commission further observed that the very fact that the Complainant approached the District Forum for a direction to the society to allot the site booked by

her clearly showed that she was interested in getting the site and not the money which she had deposited with the society. Therefore, the plea taken by the Appellant Society that they would be auctioning the remaining sites available with them and the Complainant could also participate in that auction was not accepted by the Commission.

- c) In view of the above, the present Revision Petition was dismissed and the Commission found no ground to interfere with the views taken by the District Forum and the State Commission.

**vii) Citation:**

Not reported in CPJ and CPR.

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**3. Boddu Venkateswarlu & Anr. Vs. Khammam Municipality & Anr.**

**i) Case in Brief:**

Complainant in RP.No.3433 gave the highest bid for purchase of a plot measuring 533.33 sq. yards in the Grain Market area of Kammam in a public auction. He paid Rs.10,000/- towards earnest money. He approached the Municipality with a request to receive the balance amount and register the sale deed in his favour. Since it was not done, he filed complaint before the District Forum alleging deficiency in service. The District Forum directed the Municipality to obtain permission from the concerned Government Authority within two months and execute the sale deed in favour of the Complainant. On an appeal filed by the Respondent, the State Commission allowed the appeal to the extent that the direction of the Forum to execute the sale deed in favour of the Complainant was set aside. However, the direction to refund the amount of the Rs.10,000/- which it had received from the Complainant with interest at 9% p.a. was confirmed. The State Commission further directed payment of Rs.5,000/- as compensation and Rs.1,000/- towards cost. A similar order was passed by the State Commission in Revision Petition No.4434 of 2013 in which the facts were similar. Aggrieved by the orders of the State Commission the present Revision Petitions have been filed. Revision Petitions dismissed.

**ii) Order appealed against:**

From the order dated 04.06.2007 in Appeal No.550/2007 of the Andhra Pradesh State Consumer Disputes Redressal Commission.

**Deficiency in Service - Allotment of House / House sites / Flats**

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**iii) Parties:**

Boddu Venkateswarlu & Anr. - Petitioners

Vs.

Khammam Municipality & Anr. - Respondents

**iv) Case No and Date of Judgement:**

Revision Petitions No.4433 of 2013 and 4434 of 2013 &

Date of Judgement: 17.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission noted that the State Commission had passed the orders in the two cases after considering the following facts; (i) the Municipality had sought permission of the Government for execution of the sale deed in favour of the Complainants, (ii) the said permission had not been granted and (iii) Government had vide memo dated 19.09.2005 had stated that the plots situated in Grain market area of Kammam Municipality were for trading of foodgrains only and as such the transaction of the sale of the plots will not come under the direction of housing construction.
- b) The Commission observed that the Municipality cannot execute any sale deed in favour of the Complainants/Petitioners in the absence of permission from Government. Since the Municipality had taken efforts to obtain such permission, there was no deficiency in service on their part.
- c) Since the Revision Petitions were filed along with applications for condonation of delay of more than 6 years, both the applications for condonation of delay as well as the Revision Petitions were dismissed.

**vii) Citation:**

Not reported in CPJ and CPR.

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**4. Vivek Gyan Uday Foundation Vs. U.P. Awas Evam Vikas Parishad and another**

**i) Case in Brief:**

Petitioner Society/Complainant participated in an auction conducted by Respondent No.1 for sale of plot. His bid was accepted for a consideration of Rs.2,22,64,210/- in addition to a sum of Rs.41,50,000/- towards cost of old structure, boundary wall, standing trees etc. Later the Complainant claimed that the amount of Rs.41,50,000/- towards cost of old structure, boundary wall etc was on the higher side and should be revised. Meanwhile, according to him, there was a dispute between Respondent.1 and the Government of Uttarakhand with respect to ownership of certain property. The Government stayed the auction and sale of properties of Respondent.1 until further orders. Respondent.1 filed a writ petition in the High Court of Uttarakhand challenging the aforesaid order. The Respondent vide order dated 06.03.2013 decided to cancel the allotment order given to the Complainant and refund the amount deposited by it after deducting 10% of the amount towards token money on the ground that there was persistent default in making payment. The Complainant asked for payment of interest of 24% on the amount refunded. Since Respondent No.1 failed to pay interest, he filed complaint before the National Commission claiming a total sum of Rs.4,75,93,349/-. Complaint dismissed as premature.

**ii) Order appealed against:**

Original Complaint

**iii) Parties:**

Vivek Gyan Uday Foundation - Complainant

Vs.

U.P. Awas Evam Vikas Parishad and another - Respondents

**iv) Case No and Date of Judgement:**

Consumer Complaint No:248 of 2014 & Date of Judgement: 20.08.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o) and 21(a)(i) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission noted that the Complainant committed umpteen defaults in making payment to Respondent No.1 and substantial amount was still payable by him at the time of cancellation of the allotment. Some of these defaults had occurred even before the Government of Uttarakand had stayed the auction and sale of Respondent.1's property. The Commission therefore rejected the contention of the Petitioner that the default occurred because of the stay. The Commission held that the Respondent was justified in cancelling the allotment because of the default in payment of installments. It was also held that there was no obligation on the part of Respondent.1 to pay interest to any person who defaulted in making payment as per the terms and conditions of the bid given by him.
- b) As regards dispute to the title of the plot, it was noted by the Commission that the matter had not been adjudicated either by the High Court of Uttarakand where the writ petition filed by Respondent No.1 was pending or any other adjudicatory authority such as a Civil Court. Therefore, it was held that the Commission cannot entertain the complaint seeking interest on the amount deposited by the Complainant and that the Complaint was premature. It was accordingly rejected granting liberty to the Complainant to file fresh complaint in case it was decided by the Competent Forum that Respondent No.1 had no legal right to put the property to auction.

**vii) Citation:**

2014(3) CPR 827.

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**5. Dr.Babu Lal Vs. Project Engineer, Rajasthan Housing Board and another**

**i) Case in Brief:**

Petitioner/Complainant deposited a sum of Rs.5,000/- as registration money in the year 1984 to the Respondent Board for allotment of an MIG house. A letter was issued to the Petitioner on 13.08.1993 asking him to deposit the seed money in three installments viz. within one month, within seven months and within thirteen months respectively

of the issue of the said letter. While the Complainant deposited the first installment as required, the second and third instalments were delayed. The Respondent Board allotted a shell house to the Complainant in the year 2000 for a price of Rs.6,37,892/- payable in 156 installments. The Complainant took possession of the house after making initial payment. It is his case that the aforesaid house developed cracks. Alleging deficiency in service, he filed complaint before the District Forum seeking refund of the excess amount alleged to have been recovered from him along with interest and cost of litigation. The District Forum directed Respondent Board to reduce a sum of Rs.1,77,500/- with interest towards the cost of the house and also to pay a sum of Rs.20,000/- for inferior construction, Rs.10,000/- towards compensation and Rs.5,000/- towards cost of litigation. The order of the District Forum was modified by the State Commission on appeal. Only the compensation of Rs.20,000/- on account of poor quality of the material used in the construction was allowed as also interest at 9% p.a from the date of order till realization and cost of litigation amounting to Rs.3,000/-. Aggrieved by the said order, the Complainant/Petitioner has filed this Revision Petition. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 12.12.2007 in Appeal No.66/2005 of Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

**iii) Parties:**

Dr.Babu Lal - Petitioner

Vs.

Project Engineer, Rajasthan Housing Board and another - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.2066 of 2008 & Date of Judgement: 17.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission noted that though the Complainant was registered for allotment of house from the Respondent Board, no time frame for such allotment was stipulated in the scheme.

**Deficiency in Service - Allotment of Shop / Office Space / Function Hall**

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- b) The National Commission observed that since the Complainant/petitioner did not deposit the requisite seed money in terms of the letter dated 13.08.2013, no benefit from the said letter accrued to him and he cannot claim allotment at the price prevailing on 13.08.1993.
- c) It was held that in case the price sought to be charged by the Respondent Board was not acceptable to the Complainant, he could have refused to accept allotment or alternatively he could have challenged the price demanded by the Respondent Board before a Civil Court or by way of writ petition.
- d) It was also held that the price of the house cannot be disputed before a consumer forum which is concerned only with the deficiency in service if any provided to the consumer.
- e) On the above grounds, the Revision Petition was dismissed.

**vii) Citation:**

Not reported in CPJ and CPR.

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**(f) ALLOTMENT OF SHOP / OFFICE SPACE / FUNCTION HALL**

**1. Senior General Manager, Ordnance Factory Ministry of Defence Govt. of India Vs. Anand Swaroop**

**i) Case in Brief:**

It is the case of the Complainant/Respondent that he had booked Barat Ghar, ilan Mandir of Ordnance Factory Estate Dehradun on 10.06.2010 for the marriage of his daughter which was to be solemnized on 27.11.2010 and had paid a sum of Rs.500/- as advance. He saw a notification in the newspaper on 19.11.2010 that a three day convention of the All India Defense Employees Federation was going to be held in ilan Mandir from 25.11.2010 to 27.11.2010. He immediately gave a letter to the Petitioner on 22.11.2010 to confirm the authenticity of the said notification but did not get any reply. On the date of the marriage i.e. 27.11.2010 he went ilan Mandir but was shocked to find that it had been booked by the Petitioner in the name of the All India Defense Employees Federation. Disappointed and helpless he went to several places to fix the venue of the marriage and as a last resort got it solemnized in the open compound of the junior club located in the



factory. Claiming that he was put to mental and social loss besides financial loss and alleging gross negligence and deficiency in service on the part of the Petitioner, he filed complaint in the District Forum. The Forum allowing the complaint ordered the Petitioner to pay a sum of Rs.25,000/- as compensation besides Rs.5,000/- as cost. The appeal filed by the Petitioner before the State Commission was dismissed vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed with punitive damages of Rs.50,000/- to be paid to the Respondent.

**ii) Order appealed against:**

From the order dated 22.01.2014 in Appeal No.339/2013 of the State Consumer Disputes Redressal Commission, Uttaranchal.

**iii) Parties:**

Senior General Manager, Ordnance Factory  
Ministry of Defence Govt. of India - Petitioner

Vs.

Anand Swaroop - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.1886 of 2014 with I.A.No.2672 of 2014 (For Stay) & Date of Judgement: 19.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission noted that ilan Mandir had been booked by the Respondent for the marriage of his daughter only after paying an advance of Rs.500/-. The Petitioner had unilaterally cancelled the booking without giving any intimation in writing to the Respondent, with the result the Respondent suffered great humiliation, mental agony and social trauma. It was held that this act on the part of the Petitioner certainly amounted to deficiency in service. Moreover there was nothing on record to show that Petitioner had refunded the amount of advance to the Respondent till date. The Commission observed that there was no infirmity, irregularity or jurisdictional error in the order

**Deficiency in Service - Allotment of Shop / Office Space / Function Hall**

of the fora below and dismissed the Revision Petition with punitive damages of Rs.50,000/- to be paid to the Respondent within six weeks of the date of the order.

**vii) Citation:**

III (2014) CPJ 427.

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**2. Kushal K.Rana Vs. DLF Commercial Complexes Ltd**

**i) Case in Brief:**

The Complainant applied for allotment of commercial office space/ parking space to the OP in March, 2008. He paid installments in March and July, 2008 in the sum of Rs.85,94,000/-. It is his grievance that without starting construction work OP demanded payment of further amounts. On 03.09.2008, OP sent a letter cancelling the allotment on the ground that a sum of Rs.34,37,600/- was not paid in accordance with the agreement. However, on 05.09.2008, OP sent another letter accompanied by Space Buyer's agreement in triplicate. On 23.12.2008, Space Buyer's agreement was executed between the two parties and it was agreed that the premises would be given within a period of 36 months from the date of the agreement. Since construction work had not commenced even by February, 2009, Complainant asked for refund of the amount paid by him with interest. Despite several reminders, the money was not refunded. Vide letter dated 17.03.2012, OP informed Complainant that his money was forfeited. Complainant therefore approached the National Commission with the present complaint on 04.04.2012 seeking a direction to the OP to refund Rs.85,94,000/- with 36% interest p.a and a compensation of Rs.1 crore for mental agony, financial loss, business loss etc. Complaint allowed with a direction to OP to refund the amount with 18% interest and further cost of Rs.2,00,000/- towards harassment and litigation expenses.

**ii) Order appealed against:**

Original Complaint

**iii) Parties:**

Kushal K.Rana

- Complainant

Vs.

DLF Commercial Complexes Ltd

- Opp. Party

**iv) Case No and Date of Judgement:**

Consumer Complaint No:88 of 2012 & Date of Judgement: 09.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (d), (g), (o), 19 and 21(a)(i) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The first question that came up for consideration was whether the Complainant was a consumer within the definition of Section 2(1)(d) of the Act. It was held by the Commission that an individual proprietor can run the business for his own and his family benefits or he can earn his livelihood by transacting any business as per explanation appended to Section 2(1) (d)(ii) of the Act. Since the Complainant had mentioned in the complaint that he required the office space for his own personal use and for carrying out his business work therein, he fell within the four corners of Section 2(1)(d) of the CP Act, 1986.
- b) The next question was whether the Complainant was entitled to claim benefit of refund since it was alleged that he had not adhered to the terms and conditions of the agreement and deposited the first five installments. The Commission held that the terms and conditions of the agreement is not a one way traffic. Both the parties are bound by it. There was no dispute that the construction was badly delayed. The Commission noted that the building was not ready even after expiry of three years as promised and till the filing of the complaint.
- c) The Commission also held that OP was guilty of contracting its stand every now and then. Sometimes it cancelled the plot and immediately by another letter wanted to restore it subject to further conditions. The retrading scheme announced by OP was not in accordance with the terms and conditions of the agreement. The Commission further held that OP had withheld a large amount for nearly five and half years with mala fide intention and that deficiency on his part stood proved.
- d) Relying on the decisions of the Hon'ble Apex Court in *K.A.Nagamani v. Karnataka Housing Board*, Civil Appeal Nos.6730-31 of 2012; decided on 1.09.2012, the Commission held that OP was

### **Deficiency in Service - Allotment of Shop / Office Space / Function Hall**

liable to refund the entire amount of Rs.85,94,000/- with interest at 18% p.a from 20.02.2008 till realization. The Commission also imposed cost of Rs.2,00,000/- towards harassment, mental agony and litigation charges to be paid within 90 days from the date of receipt of the order.

#### **vii) Citation:**

IV (2014) CPJ 287; 2014(4) CPR 222.

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### **3. M/s. DLF Commercial Developers Ltd and another Vs. Mr. S.C.Jain and another**

#### **i) Case in Brief:**

The Respondent/Complainant was allotted a shop in DLF Galleria, a commercial complex developed by the appellant/OPs. An Agreement of Sale was executed on 09.10.1997, under which the total consideration agreed was Rs.23,12,820/-. Shortly thereafter, on 07.01.1998, the Income Tax Department issued notices to both sides-the OPs as the transferor and the Complainant as the transferee-asking them to show cause why the Form 37-I filed by them on 17.10.1997 should not be rejected for belated filing. It was followed by the order of 29.01.1998, rejecting the Form 37-I. In the meanwhile, within a few days of the notice from the Income Tax department, the Respondent/Complainant wrote to the Appellant/OP on 09.01.1998 expressing his concern and asking for deferment of the installment of Rs.1,37,445/- as well as for not charging penal interest till the problem of Form 37-I was solved. In reply, he received a letter from the OPs, assuring that all necessary steps for filing of Form 37-I had been taken. The OPs also asked for the outstanding amount of Rs.1,37,445/- at the earliest, on the ground that all the delayed payments were subject to recovery of interest at 24% per annum for the period of delay. Soon thereafter, reminders were sent by the OPs on 11.12.1998 and 08.02.1999. This was followed by a letter of 17.02.1999 in which cancellation of allotment of shop was communicated by the appellant/OPs to the respondent/Complainant. As per this letter, a deduction of Rs.4,74,368/- was to be made and the remaining amount of Rs.14,75,973/- was offered to be refunded, leaving still an opportunity with the Complainant to pay the entire amount as per the demand notice to avoid cancellation. Eventually, on 26.04.2000, Appellants/OPs sent him a cheque for Rs.14,75,973/- informing that all

original agreements and receipts between the parties in respect of the shop stood cancelled. Aggrieved by the act of the OPs, the Appellants filed complaint before the State Commission which directed OPs to refund the deducted amount with 12% interest and also pay interest at the same rate on the refunded amount from the respective dates of payment and cost of Rs.10,000/- was also awarded. Against the decision of the State Commission, this First Appeal has been filed. Appeal was partially allowed.

**ii) Order appealed against:**

Against the order dated 10.9.2007 in Complaint Case No.63/2000 (Hry)/RBT No.81/2007 of the State Commission, UT, Chandigarh.

**iii) Parties:**

M/s. DLF Commercial Developers Ltd & Anr. - Appellants

Vs.

Mr. S.C.Jain and another - Respondents

**iv) Case No and Date of Judgement:**

First Appeal No. 611 of 2007 & Date of Judgement: 12.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The main issue involved in this dispute was whether the OPs were justified in making the following deductions: a) towards interest for delayed payments - Rs.2,02,009/- b) towards earnest deposit - Rs.2,72,359/- (totaling Rs.4,74,368).
- b) Perusal of the records revealed that the receipt of the notice from the Income Tax authorities fell within its purview. Accordingly, the provision on which charge of penal interest at 24% was sought to be justified would itself have remained in abeyance from 7.1.1998 when the notice was issued by the Income Tax department until 23.9.1999 when the matter was resolved with the decision of the same department. Therefore, it was held that the State Commission was right in disallowing penal interest on the outstanding installment.

### **Deficiency in Service - Automobiles**

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- c) Towards the deduction of the earnest money, it was held that the Complainant was already aware that the problem of Form 37-I had been resolved. Therefore, the subsequent offer of 24.2.2000 from the OPs would have made no difference to his decision to treat the entire Agreement as *non-est*. Therefore, it was held that the forfeiture of the Earnest Money by the OPs was justified under the Agreement between the parties.
- d) In the light of the above circumstances, the appeal was partially allowed. Forfeiture of Rs.2,72,359/- by the Appellants/OPs towards the earnest money was allowed and rest of the directions of the State Commission were confirmed. The statutory deposit of Rs.35,000/- by the Appellants was ordered to be transferred to the Consumer Welfare Fund of the Central Government in terms of the provision in Rule 10 A of the Consumer Protection Rules, 1987.

**vii) Citation:**

IV (2014) CPJ 410; 2014(4) CPR 60.

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**(g) AUTOMOBILES**

**1. A. Sri Hari Kumar Raju Vs. The Managing Director, Anshu Automotives Pvt. Ltd. & Others**

**i) Case in Brief:**

The Complainant/Petitioner purchased a four wheeler from OP.1/Anshu Automotives Pvt. Ltd., a dealer of Force Motors Ltd on 15.12.2009. According to the Complainant, on taking delivery of the vehicle, he noticed several defects such as failure of brakes, vibration, wobbling and skidding of the vehicle, etc., and the matter was reported to the dealer as well as to the manufacturer. It was also the case of the Complainant that he served a legal notice on the dealer as well as the manufacturer on 26.07.2010, pointing out several defects to their knowledge but the said notice was not responded and it rather resulted in another dealer refusing service of the vehicle on 26.05.2011. The vehicle was under limited warranty for three years. Alleging deficiency of service, the Complainant/Petitioner filed a complaint before the District Forum which directed the manufacturer, M/s. Force Motors

and opposite party No.5-Sri Durga Motors to pay a sum of Rs.10,000/- to the Complainant on account of deficiency in service. The complaint against opposite parties Nos.1, 3 & 4 (Managing Director, Anshu Automotive Pvt. Ltd.; Director, ARAI; Transport Commissioner, AP) was dismissed. Being aggrieved from the order of the District Forum, the petitioner approached the State Commission which dismissed the appeal vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

Against the order dated 24.02.2014 in Appeal No.995/2012 of the State Commission Andhra Pradesh.

**iii) Parties:**

A. Sri Hari Kumar Raju - Petitioner

Vs.

The Managing Director,  
Anshu Automotives Pvt. Ltd. & Others - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.2346 of 2014 & Date of Judgement: 16.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the records found that admittedly, out of 12 services stipulated by the manufacturer, the Complainant had not availed 7 services at the authorised workshop/dealer of the manufacturer. As regards service No.1, 4 and 6, there was no explanation from the Complainant as to why they were not availed at the authorised workshop/service centre of the manufacturer. The Commission also held that the contention of the Complainant that the service centre had refused to undertake the service of his vehicle was not proved by the Complainant. Since the services Nos.1, 4, 6 & 9 to 12 were not availed by the Complainant from the authorised workshop/service centre, it was quite obvious that he had been getting the vehicle serviced/repaired at workshops other than the authorised service

## **Deficiency in Service - Automobiles**

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centres/workshops of the manufacturer. Therefore, in view of clause 13 of the terms & conditions of warranty, the Commission held that he was not entitled to raise any claim against the manufacturer of the vehicle. Further, the Commission was of the view that the defects pointed out by the Complainant could not be considered to be manufacturing defects so as to justify the replacement of any part from the manufacturer.

- b) In view of the above, the present the Revision Petition was dismissed and the order of the State Commission was confirmed.

### **vii) Citation:**

Not reported in CPJ and CPR.

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## **2. Subhash S/o. Bahadur Singh Vs. M/s. Gautam Automobiles Pvt Ltd and another**

### **i) Case in Brief:**

It was the case of the Petitioner that the Respondent No.1/OP.1 had delivered Model of 2005 of Ecomet vehicle while he had purchased the Model of 2007 for a sum of Rs.7,96,000/-. He also alleged that there were several defects in the vehicle at the time of delivery. Alleging deficiency in service, Petitioner invoked the jurisdiction of the District Forum which after hearing the parties dismissed the complaint. Petitioner's appeal before the State Commission was also dismissed vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed with cost of Rs.10,000/-.

### **ii) Order appealed against:**

From the order dated 10.12.2012 in F.Appeal No.1334 of 2012 of State Consumer Disputes Redressal Commission, Panchkula.

### **iii) Parties:**

Subhash S/o. Bahadur Singh - Petitioner

Vs.

M/s. Gautam Automobiles Pvt Ltd and another - Respondents

### **iv) Case No and Date of Judgement:**

Revision Petition No:1169 of 2013 & Date of Judgement: 08.08.2014.



**v) Acts and Sections referred:**

Sections 2(1), (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission noted that the Petitioner had purchased the vehicle on 07.01.2007 but the consumer complaint was filed in the District Forum only on 30.10.2007. There was no explanation as to how after using the vehicle for ten months, the Petitioner suddenly realized that the vehicle was of the year 2005. It was also observed that if the vehicle was not in good condition at the time of delivery, there was no explanation as to why the Petitioner took delivery of the vehicle. As per the Registration Certificate issued by Statutory Authority, the year of the model of the vehicle in question was '2007'. Since there were concurrent findings of the fora below that there was no deficiency in service and the evidence also did not show any deficiency, the Commission saw no case to warrant interference. Accordingly, the Revision Petition was dismissed with cost of Rs.10,000/- to be paid by the Petitioner by way of Demand Draft in the name of Consumer Legal Aid A/c.

**vii) Citation:**

IV (2014) CPJ 564; 2014(3) CPR 541.

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**3. Hyundai Motor India Limited Vs. Surbhi Gupta and others**

**i) Case in Brief:**

The case of the Complainant was that right from the time of the purchase, there was a problem with the vehicle which she had purchased with two year warranty. The Complainant also alleged that the vehicle was taken to KLG, Hyundai/OP several times for resolution of the problem from which it was suffering, but no resolution could be found. Alleging deficiency in the services rendered to her, the Complainant approached the District Forum which directed the opposite party No.1 and 2 to replace the car purchased by the Complainant with a brand new car of the same make and model at their own cost. It was further directed that if another car of the same model was not available, a new model car be supplied to her after charging/refunding the difference of price of the old model car and the new model car. The

## **Deficiency in Service - Automobiles**

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opposite party No.1 and 2 were also directed to pay Rs.22,472/- to PEC University of Technology, Chandigarh for getting the vehicle checked, Rs.1 lakh for mental agony and Rs.25,000/- as cost. Being aggrieved from the order of the District Forum, the Manufacturer as well as the KLG, Hyundai approached the State Commission by way of separate appeals. The State Commission confirmed the order of District Forum except the payment of compensation. The appeal filed by the dealer KLG was however allowed by the State Commission. Against the order of the State Commission, both the Petitioner and the car manufacturer have filed the present Revision Petitions. Order of the State Commission was modified only to the extent that no ground for replacement of the vehicle was made out. The Complainant's Revision Petition dismissed.

### **ii) Order appealed against:**

Revision Petition No.2854 of 2014

From the order dated 01.05.2014 in First Appeal No.89/2014 of U.T. Chandigarh State Consumer Disputes Redressal Commission.

Revision Petition No.3186 – 3187 of 2014

From the order dated 01.05.2014 in First Appeal No.80 & 89/2014 of U.T. Chandigarh State Consumer Disputes Redressal Commission.

### **iii) Parties:**

Revision Petition No.2854 of 2014

Hyundai Motor India Limited - Petitioner

Vs.

Surbhi Gupta and others - Respondents

Revision Petition No.3186 – 3187 of 2014

Surbhi Gupta - Petitioner

Vs.

Hyundai Motor India Limited and another - Respondents

### **iv) Case No and Date of Judgement:**

- i. Revision Petition No.2854 of 2014
- ii. Revision Petition No.3186 – 3187 of 2014 &  
Date of Judgement: 14.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the records found that some parts of the vehicle had a defect in it but the vehicle remained in drivable condition despite that defect. It further affirmed that had the suspected defect been serious, the owner of the vehicle would not have been able to drive it for more than 3½ years and to the extent of 48,689 kms.
- b) The plea taken by the Complainant that despite replacement of the assembly the problem in the vehicle continued to persist could not be accepted in view of the affidavit of the Service Manager/Manufacturing Company which confirmed the fact after change of the gear and linkage assembly, the car had been driven on the road for 6 kms and Senior Officers of the Company had found it to be running in perfect running condition though it had already run more than 4080 kms. The Commission further pointed out that as per the warranty given by the manufacturer, it was liable to replace only that part, which it acknowledged to be defective.
- c) In view of the above, the Commission held that there was no ground for replacement of the new vehicle was made out. Therefore, it confirmed the order of the State Commission except the replacement of the vehicle and the amount of Rs.4 lakhs which the manufacturer had deposited with this Commission was directed to be refunded to the Manufacturer.

**vii) Citation:**

Not reported in CPJ and CPR.

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**4. Rakesh Kumar Vs. M/s. Shimla Automobile Private Ltd and another**

**i) Case in Brief:**

The petitioner/Complainant purchased a Mahindra Xylo E-6 vehicle from the Respondent/M/s. Shimla Automobiles Pvt. Ltd., for a

### **Deficiency in Service - Automobiles**

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consideration of Rs.7,55,000/-. It was his case that he encountered a series of problems for which he had to take the vehicle to the workshop time and again. The Complainant/petitioner had two primary complaints, the first being that a vehicle manufactured in the year 2009 was sold to him as a vehicle manufactured in the year 2010 and the second complaint was that the vehicle required frequent replacement of various components which indicated that it had some manufacturing defect in it. Yet another, though small complaint was that he was charged for replacing the components. Alleging deficiency in service, Petitioner/Complainant approached the District Forum which directed the opposite parties to refund the price of the vehicle to the Complainant along with interest on that amount at the rate of 12% per annum from the date of filing of the complaint till the date of payment along with Rs.1,00,000/- as compensation and Rs.5,000/- as cost. Both the Respondents filed separate appeals before the State Commission which were allowed and the order passed by the District Forum was set aside. Challenging the orders of the State Commission, the present Revision Petition has been filed. Revision Petition dismissed.

#### **ii) Order appealed against:**

From the order dated 04.03.2014 in Appeal No.281 of 2013 & Appeal No.325 of 2013 of Himachal Pradesh State Consumer Disputes Redressal Commission at Shimla.

#### **iii) Parties:**

Rakesh Kumar - Petitioner

Vs.

M/s. Shimla Automobile Private Ltd and another - Respondent

#### **iv) Case No and Date of Judgement:**

Revision Petition No.2154 of 2014 with I.A.NO.5120 of 2014 (For placing record) & Date of Judgement: 25.08.2014.

#### **v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

#### **vi) Issues raised and decided:**

- a) As regards the complaint that the vehicle manufactured in 2009 was sold to the Petitioner in the year 2010, the National

Commission found no evidence in support of the contention. It transpired during course of hearing before the District Forum that one component of the vehicle i.e. inter cooler of the turbocharger had been manufactured in October 2009 whereas the hosepipes of the engine were also manufactured in the year 2009. The fact that a few components of the vehicle were manufactured in the year 2009 did not mean that the vehicle itself was produced only in that year.

- b) As regards the complaint of defects in the vehicle, the Commission held that the Petitioner/Complainant had not been able to point out any manufacturing defect in the vehicle or in any component which still needed replacement. The petitioner had not filed any job card issued at the time of repair/servicing of the vehicle, to show that any component of the vehicle was found to be having a manufacturing defect. This was further confirmed by the fact that though the vehicle was required to be serviced after running every 5000 kilometers, the Complainant/petitioner got it serviced after it had run for 20000 kilometers.
- c) As regards the charging for replacement of components, the Commission observed that the vehicle did not have any major defect and the Complainant was charged only for carrying out routine repairs and replacement of the components which needed replacement, having got worn out.
- d) In view of the above, the National Commission came to the conclusion that there was no material to prove that the vehicle suffered from any particular manufacturing defect. Had there been some manufacturing defect in the vehicle it would not have run for as much as 85016 kilometers as on 17.12.2011. At a later date it was found that the vehicle had run 97,488 kilometers. The vehicle was still in possession of the Complainant at the time the order was passed. Therefore, the National Commission held that the finding of fact recorded by the State Commission could not be said to be perverse so as to warrant interference. Hence, the present Revision Petition was dismissed.

**vii) Citation:**

2014(3) CPR 783.

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**5. Manager, Vishvas Tyres Vs. Makanji Samji Mata**

**i) Case in Brief:**

Respondent/Complainant and his brother who owned separate trucks contacted the Petitioner for purchase of 14 tyres and deposited a sum of Rs.38,000/- in cash. The balance amount of Rs.2 lakhs was paid by taking a loan from Sundaram Finance Ltd. It is the Complainant's case that in spite of taking the money, the Petitioner failed to deliver the tyres. The District Forum before whom a complaint was filed, directed the Petitioner to deliver the tyres and also pay Rs.3,000/- towards compensation and Rs.2,000/- towards cost of litigation. The appeal filed by the Petitioner was dismissed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition as well as application for condonation of delay dismissed.

**ii) Order appealed against:**

From the order dated 24.06.2013 in F.A.No.1330 of 2013 of Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.

**iii) Parties:**

Manager, Vishvas Tyres - Petitioner

Vs.

Makanji Samji Mata - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No:1935 of 2014 with I.A.No.2755 of 2014, I.A.No.2756 of 2014 and I.A.No.2757 of 2014 (Condonation of Delay, Interim Relief, Exemption from filing typed copies) &

Date of Judgement: 27.08.2014.

**v) Acts and Sections referred:**

Sections 2(1), (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission observed that the Petitioner having admitted the receipt of the sale consideration, the onus was on him to prove that tyres were duly delivered by him. But no documentary evidence of the tyres having been delivered to the Complainant

or his brother was produced by the Petitioner. Since the concurrent finding of fact had been recorded by the District Forum as well as the State Commission, the National Commission found no ground to interfere with the orders of the fora below.

- b) Consequently, the application for condonation of delay in filing the Revision Petition was rejected and the Revision Petition was dismissed.

**vii) Citation:**

2014(3) CPR 743.

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**6. Bajaj Tempo Ltd Vs. Shri Ajwant Singh and another**

**i) Case in Brief:**

The Complainant purchased one Tempo tractor, manufactured by the Petitioner/OP.2, Bajaj Tempo Ltd, from opposite party No.1, M/s. Gill Brothers, on 27.12.1999 for a consideration of Rs.3,10,000/-. According to the Complainant, although the vehicle carried warranty of 24 months, it started giving problems from January 2000 itself. In the month of March/April 2000, at the time of service of the vehicle, several other defects were noticed. It was also noticed that the tractor was of 1998 model and had been changed to 1999 model by replacing the tyres. Alleging deficiency in service, the Complainant approached the District Forum seeking replacement of the tractor or in the alternative refund of the price of the tractor with interest at the rate of 18% per annum. The District forum directed the opposite parties to replace the tractor or refund the price paid by the Complainant, along with interest at the rate of 12% per annum and also directed to pay Rs.20,000/- as compensation and Rs.1,000/- as cost of the litigation. Being aggrieved from the order of the District Forum, the manufacturer as well as the dealer filed two separate appeals. The appeals having been dismissed by the State Commission vide impugned order dated 04.10.2007, the manufacturer-M/s. Bajaj Tempo Ltd has filed this Revision Petition. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 04.10.2007 in Appeal Case No.1260/2001(Pb)/RBT No.139/2007 & Appeal Case No.1319/2001(Pb)/RBT No.122/2007 of

**Deficiency in Service - Automobiles**

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Chandigarh State Consumer Disputes Redressal Commission at UT Chandigarh.

**iii) Parties:**

Bajaj Tempo Ltd - Petitioner

Vs.

Shri Ajwant Singh and another - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.429 of 2008 & Date of Judgement: 28.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission observed that based on the terms & conditions contained in the letter of allotment whereby M/s. Gill Brothers was appointed as a dealer of the petitioner-company for sale of tractors, it is evident that the relationship between the manufacturer and the dealer was on Principal to Principal basis and no relationship of agency of any sort was sought to be created. As a result, the petitioner-company would not be liable to the Complainant on account of a 1998 model tractor having been sold with a misrepresentation that it was a 1999 model tractor or on account of the said tractor having been re-painted before it was delivered to the Complainant.
- b) Regarding the defects in vehicle, the Commission pointed out that no expert opinion was produced by the Complainant before the District Forum to prove that the tractor sold to him had some inherent manufacturing defect in it. In any case, none of the snags/problems noted by the representative of the petitioner-company could be said to be a manufacturing defect.
- c) As per the warranty conditions, the manufacturer could at its option either repair the part supplied or replace it free of charge, in case the part was recognized to be defective. In the present case, the representative of the petitioner-company carried out the repairs required from time to time. Therefore, no deficiency



in the services provided by the petitioner-company could be proved by the Complainant.

- d) Consequently, the Commission held that the decision of the State Commission was not justified in directing replacement of the tractor or refund of the price paid by the Complainant, by the manufacturer of the tractor. Since no defect or shortcoming in the services provided by the petitioner-company could be made out, there was no justification for awarding any compensation against it.
- e) The Revision Petition was therefore allowed and the orders of the fora below were set aside.

**vii) Citation:**

2014(3) CPR 724.

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**(h) BANKING**

**1. Punjab National Bank Vs. LT. Col. Jagdeep Gehlot (Retired)**

**i) Case in Brief:**

Complainant/Respondent had two savings bank accounts with the Petitioner Bank jointly with his wife, Mrs. Sarla Gehlot. It is his case that on 04.11.2008, while he was on a business trip to Chandigarh, he received a phone call from the Deputy Manager of the Bank stating that two transactions, one for Rs.19,000/- and another for Rs.26,000/- had been made on internet banking and the said amounts had been transferred to some account in Punjab National Bank, Moradabad. He went to the bank on 05.11.2008 and he was assured that his money would be safe and would be returned. Since the bank did not return the money despite a request to that effect and sent him a letter on 09.10.2009 that the bank was not accountable for the loss, he filed Consumer complaint before the District Forum. The Forum, allowing the complaint, directed the Petitioner/OP to refund Rs.45,000/- along with 9% interest till realization, Rs.25,000/- as compensation for harassment and Rs.10,000/- as litigation charges. The appeal filed by the Petitioner was dismissed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition allowed.

**Deficiency in Service - Banking**

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**ii) Order appealed against:**

From the order dated 24.01.2013 in Appeal No.564/2011 of the State Consumer Disputes Redressal Commission, Delhi.

**iii) Parties:**

Punjab National Bank - Petitioner

Vs.

LT. Col. Jagdeep Gehlot (Retired) - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.2139 of 2013 & Date of Judgement: 16.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Petitioner had taken the stand that they had provided the user ID, and two passwords, one internet password and the other transaction password, for each account to the Complainant. The Petitioner produced documents to prove that the internet password as well as the transaction password were duly changed on 05.11.2008. The Bank therefore claimed that it was not responsible for the transactions made on internet banking. The Commission noted that the Complainant was not able to explain how the two passwords were changed on 05.11.2008. The Commission held that the Complainant's contention that the bank had manipulated the screen-shorts etc., was not substantiated by any evidence or record. On the other hand the bank was able to give a convincing explanation that their internet banking system was not hacked in any manner. Had there been any hacking, the loss would have run to crores of rupees and not a small amount of only Rs.45,000/-. The Commission held that deficiency on the part of the bank towards the Complainant had not been proved anywhere and that the fora below had erred in providing relief to the Complainant. Consequently Revision Petition was dismissed and the orders of the fora below were set aside.

**vii) Citation:**

II (2014) CPJ 716.

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**2. State Bank of Mysore Vs. Amitchandra & Ors.**

**i) Case in Brief:**

Late Dr. S.K. Chandrasekar, father of Respondent/Complainant No.1, his wife and daughter (Respondents No.2 and 3) had separate savings bank accounts in the petitioner bank. Since there was a huge balance in the said accounts, the Petitioner Bank had issued FDs for Rs.2,00,000/- in the name of Dr. Chandrasekar on 25.08.2006 and Rs.1,00,000/- each in the name of Respondents No.2 and 3. It is the case of the Respondents that when they approached the Bank for encashment of the deposits, the Bank informed them that their Savings Bank Accounts had not been debited and that there was no funding available for payment. There was no satisfactory explanation as to how the FDRs were issued. After exhausting their efforts to get the money back, the Complainants filed complaint before the District Forum which directed the opposite party/Bank to release the amount with interest in respect of FD in favour of 2<sup>nd</sup> Complainant and to release the amount with interest in respect of FD in favour of 3<sup>rd</sup> Complainant along with the cost of Rs.1000/-. Aggrieved by the order of the District Forum, the petitioner/opposite party filed an appeal before the State Commission which dismissed the appeal vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed with cost of Rs.20,000/-.

**ii) Order appealed against:**

Against the Order dated 05.01.2011 in Appeal No.2890/2010 of the State Commission, Karnataka.

**iii) Parties:**

State Bank of Mysore - Petitioner

Vs.

Amitchandra & Ors. - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.1402 of 2011 & Date of Judgement: 20.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

## **Deficiency in Service - Banking**

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### **vi) Issues raised and decided:**

The National Commission dismissed the present Revision Petition with cost of Rs.20,000/- (Rs.5,000/- to each respondent and remaining Rs.5,000/- to the Consumer Legal Aid A/c) sustained the order of the State Commission by assigning the following reasons:

- a) It was admitted by the Bank that three FDs have been issued in the name of late Dr. S.K.Chandrashekar, Smt. Parimala and Ms. Sweta.
- b) The Bank departed from the prescribed procedure and issued the FDRs without ensuring that the amount of the FDs had been collected.
- c) It also failed to prove as to how it has escaped notice at all levels in the Bank for over two years that FDs receipts had been issued without collecting the money.
- d) The laid down procedure and guidelines were not being followed by the Bank at any level and more particularly by the Manager.
- e) There was no internal audit and no checking of the balances in the saving accounts.
- f) Hence, deficiency of service on the part of the Bank was clearly established and onus of proof with regard to funding of FDs cannot be shifted by the Petitioner on the respondent once the FDs have been issued and handed over to the respondent after a long gap of more than two years when the respondents have applied to encash their deposits.
- g) The negligent careless and casual manner in which the Petitioner Bank has functioned could not be justified.

### **vii) Citation:**

III (2014) CPJ 5; 2014(2) CPR 748.

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## **3. Ravindra Kumar Prasad Vs. Zonal manager, Bank of India & Ors.**

### **i) Case in Brief:**

Complainant presented cheques aggregating Rs.20,04,994/- to the OP/ Bank which dishonoured cheques on the ground of insufficient fund, since Complainant had only Rs.17,45,925.17 in his account. Alleging

deficiency on the part of OP, Complainant filed complaint before State Commission which by dismissing the complaint held that if on a particular date several cheques were presented and the balance was less than the total amount of cheques, the Bank could not choose to honour or dishonour one or the other cheque. Against the order of the State Commission, the present first appeal has been filed. First Appeal dismissed.

**ii) Order appealed against:**

Against the Order dated 24.03.2014 in Complaint No.25/2013 of the State Commission Jharkhand

**iii) Parties:**

Ravindra Kumar Prasad - Appellant

Vs.

Zonal manager, Bank of India & others - Respondent

**iv) Case No and Date of Judgement:**

First Appeal No.256 of 2014 & Date of Judgement: 20.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission on perusal of the records found that it was not disputed that Complainant issued cheques aggregating to Rs.20,04,994/- which were presented to OP on 7.4.2012 and on that day, balance in Complainant's Account was Rs.17,47,925.70. As per OP letter dated 12.2.2013, the actual available balance with the Bank was only Rs.16,93,513.70. Admittedly, Bank could not have cleared all the cheques and it was not within the domain of the Bank to choose to honour some of the cheques and dishonour some of the cheques and in such circumstances, Bank was right in dishonouring all the cheques. Therefore, the National Commission held that the State Commission had not committed any error in dismissing complaint at initial stage. Consequently, appeal filed by the appellant before the National Commission was also dismissed at admission stage.

**vii) Citation:**

III (2014) CPJ 37; 2014(2) CPR 739.

**4. State Bank of India Vs. Vishnu Prasad and others**

**i) Case in Brief:**

Complainant/Respondent No.1 was a holder of a SBI Card issued by the State Bank of India. He received a letter on 24.02.2007 from opposite party No.3, Royal Sundaram Alliance Insurance Co. Ltd., stating that the Complainant had given his telephonic consent for being enrolled in 'Medisafe Insurance Policy' with premium at Rs.4,331/-. According to the Complainant, he never gave any consent for availing the said policy, neither he gave any application for insurance coverage. The Petitioner/OP-2 debited various sums from time to time for the said insurance. The Complainant requested the OPs to return the amount so deducted and also pay him compensation for mental harassment on this score. Alleging that the OPs turned a deaf ear to the demands of Complainant, he filed complaint before the District Forum which directed OPs.1&2 to refund Rs.133.52, Rs.4,331/-, Rs.780/- with 12% interest from 02.03.2007 till payment. The opposite party No.1, Opposite Party No.2 and Opposite Party No.3 were jointly and severally directed to pay to the Complainant Rs.50,000/- towards punitive compensation along with Rs.3,500/- being the cost of the proceedings and advocates fee within one month from the date of the order. Against this order of the District Forum, as per record, two appeals were filed before the State Commission. Appeal No.940 of 2008 was filed by the present Petitioner/State Bank of India which was dismissed vide impugned order dated 26.5.2008. Another appeal 944 of 2008 was filed by Royal Sundaram Alliance Insurance Co. Ltd/O.P.No.3 which was decided vide order dated 19.08.2008 of the State Commission and the direction to pay Rs.50,000/- as compensation was set aside. Further, the cost of Rs.3,500/- imposed upon the OPs was reduced to Rs.1,000/-, but made payable by OP-1 and OP-2 only. The present Revision Petition has been filed by Opposite Party No.2/State Bank of India only, seeking reversal of the impugned order dated 26.5.2008. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 26.05.2008 in First Appeal No.940/2008 of Karnataka State Consumer Disputes Redressal Commission, Bangalore.

**iii) Parties:**

State Bank of India	Vs.	- Petitioners
Vishnu Prasad and others		- Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.3426 of 2008 & Date of Judgement: 21.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of records found that the credit card in question was issued to the Complainant by SBI Cards & Payment Services Pvt. Ltd/OP.1. The version of the Complainant that he had never given his consent for obtaining the 'Medisafe Insurance Policy' had not been controverted anywhere. The District Forum directed joint liability upon the OPs for making the required payment to the Complainant, along with compensation. The Commission also held that as compliance of order dated 19.08.2008 had been made by Respondent No.2/ OP No.1/SBI Cards & Payment Services Pvt. Ltd., it became clear that no liability could be pasted on the petitioner to fulfil. Therefore, the stand of the Petitioner that they had no privity of contract with the Complainant was accepted.
- b) In view of the above, the present Revision Petition was allowed, the impugned order passed by the State Commission on 26.05.2008 was modified and the Petitioner stood absolved of his liability to make any payment to the Complainant since the order dated 19.08.2008 passed by the State Commission stood implemented.

**vii) Citation:**

III (2014) CPJ 30.

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**5. Punjab National Bank Vs. Suresh S/o. Shivappa Bhandari & Anr.**

**i) Case in Brief:**

Respondent No.1/Complainant filed a Consumer complaint against Canara Bank, Respondent No.2/OP-1 as well as Petitioner on the ground of deficiency on the part of OPs. Petitioner was duly served with the notice before the District Forum but remained *ex parte*. The District Forum partly allowed the complaint directing the Petitioner to pay a

### **Deficiency in Service - Banking**

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sum of Rs.83,000/- with interest at 8% p.a, from the date of complaint along with Rs.10,000/- compensation towards physical and mental agony. The second Respondent was directed to pay cost of Rs.3,000/- within 3 months. Petitioner's appeal before the State Commission as well as the application for condonation of delay were both dismissed. Aggrieved by the said order the present Revision Petition has been filed. Revision Petition dismissed with cost of Rs.10,000/-.

#### **ii) Order appealed against:**

From the order dated 05.06.2013 in First Appeal No.517/2013 of the State Consumer Disputes Redressal Commission, Karnataka.

#### **iii) Parties:**

Punjab National Bank - Petitioner

Vs.

Suresh S/o. Shivappa Bhandari & Anr. - Respondents

#### **iv) Case No and Date of Judgement:**

Revision Petition No.2490 of 2013 with I.A.No.4165 of 2013 (For Stay) & Date of Judgement: 04.07.2014.

#### **v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

#### **vi) Issues raised and decided:**

- a) The Petitioner's Counsel contended that the Petitioner had not received any notice and the District Forum had passed an *ex parte* order. The Commission after going through the records of District Forum found that the Petitioner had been duly served the notice by Registered Post along with AD Card. The notice had been received by the manager on 28.07.2012. The next date of hearing was also mentioned as 08.08.2012 on the AD Card.
- b) On merits also the Commission observed that the Petitioner, though it had received the purchase amount from the proprietor of Shanti Traders had not passed on the same to Canara Bank, the second Respondent, which it was supposed to do. The State Commission had observed that there was no *prima facie* case to admit the appeal.



- c) The National Commission held that there was no infirmity or illegality in the impugned order passed by the State Commission and that the Revision Petition was not maintainable. Accordingly it was dismissed with cost of Rs.10,000/- to be deposited in the name of the “Consumer Legal Aid Account” of the Commission within four weeks from the date of the order.

**vii) Citation:**

Not reported in CPJ and CPR.

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**6. Punjab National Bank Vs. Sh. Budhram Sharma and another**

**i) Case in Brief:**

Complainant took a loan of Rs.29,40,000/- from the Appellant Bank for setting up a poly house. As per the agreement between the parties, the borrower was required to keep the poly house insured against loss or damage by fire and other risks, as might be required by the Bank and deliver the insurance policies to the bank. The agreement between the parties provided that it shall be lawful, though not obligatory, for the bank to insure the security items by debiting the amount of insurance premium to the account of the borrower. On 08.01.2012, the poly house of the Complainant got damaged in heavy snowfall. The Complainant informed the bank about the damage caused to his assets. The Appellant Bank informed the Complainant that though insurance for the first year had been taken, the same had not been renewed by the Oriental Insurance Company for the second year, as intimated by them, vide their letter dated 17.02.2011, because the agreement between the bank and the Insurance company did not provide for insurance of poly houses. The case of the Complainant was that the aforesaid letter dated 17.02.2011 was never delivered to him and that had he been intimated that the Insurance Company had refused to insure the poly house, he would have made arrangements for the insurance with some other Insurance Company. The Complainant, alleging deficiency in the services provided by the bank, filed a complaint before the State Commission which awarded compensation of Rs.1,41,750/- to the Complainant. Against the order of the State Commission, the present First Appeal has been filed the Appellant Bank. Appeal dismissed.

**Deficiency in Service - Banking**

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**ii) Order appealed against:**

From the order dated 30.07.2013 in Consumer Complaint No. 10 of 2012 of the H.P. State Consumer Disputes Redressal Commission, Shimla.

**iii) Parties:**

Punjab National Bank - Appellant

Vs.

Sh. Budhram Sharma and another - Respondents

**iv) Case No and Date of Judgement:**

First Appeal No.635 of 2013 with IA/5563/2013; IA/5845/2013 (For Stay, Condonation of Delay) & Date of Judgement: 08.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission after perusing all the records of the case sustained the order of the State Commission and dismissed the appeal for the following reasons:

- a) when the policy was taken by the Bank, it remained in the custody of the Bank and its copy was never sent to the borrower. The obligation would be of the Bank to get the policy renewed from time to time. This may not be a contractual obligation, but would nevertheless be expected from the Bank, on account of its having taken the policy in the first year and having not sent a copy of the said policy to the borrower, thereby giving him no occasion to get the policy renewed.
- b) The Appellant Bank should either have sent the letter of Oriental Insurance Company dated 17.02.2011 to the Complainant with a request to him to make alternate arrangements for obtaining insurance for his poly house or it should have written separately to the Complainant, requesting him to make his own arrangements for the insurance of the security assets.

**vii) Citation:**

Not reported in CPJ and CPR.

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**7. M/s. Basant Parvati C.H.S. Ltd. Vs. Manager, State Bank of India**

**i) Case in Brief:**

The Complainant/Petitioner has alleged that the Respondent cleared its forged cheque in the sum of Rs.70,000/- on 15.09.2004. The watchman reported the matter on 16.12.2004 i.e. after a lapse of 3 months. A Report was given to the Police by the Secretary of the Complainant society whose signature was forged along with that of the Treasurer. A complaint was also filed before the District Forum which was allowed with a direction to the OP to reimburse to the society the sum of Rs.70,000/- along with interest at 9% p.a. w.e.f. from 15.04.2009 till realisation. Cost of Rs.5,000/- towards litigation was also awarded. The appeal filed by the Respondent was allowed by the State Commission based on the opinion given by the handwriting expert that forgery could not be detected in the normal course and that due diligence had been shown by the Bank while clearing the cheque. Aggrieved by the said order the present Revision Petition has been filed. Revision Petition partly allowed.

**ii) Order appealed against:**

From the order dated 20.03.2014 in First Appeal No.A/11/482 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai.

**iii) Parties:**

M/s. Basant Parvati C.H.S. Ltd. - Petitioner

Vs.

Manager, State Bank of India - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.2546 of 2013 with I.A.No.7304 of 2013 (for modification of order & Date of Judgement: 14.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission did not accept of the contention of the Bank that the case is barred by time since the amount was disbursed on 15.09.2004 whereas the complaint before the District Forum was filed in the year 2007. It was held that the cause of action

### **Deficiency in Service - Banking**

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started only after the Police investigation ended and that the Bank itself had asked the Complainant to await the outcome of the Police investigation.

- b) The Commission noted that the Petitioner could not keep its cheque book in safe custody. It observed that cheque leaves of bearer's cheque are more vulnerable than the crossed cheques. After perusing the records requisitioned from the District Forum the Commission found that there was a marked difference in the specimen signatures of the Secretary of the society. The Commission therefore concluded that it was a case of contributory negligence by the society as well as the Bank.
- c) The Commission observed that the possibility of a few employees of the society and the Bank official/Clerk working in collusion cannot be ruled out. Relying on the decision of the Apex Court in *Canara Bank Vs. Canara Sales Corporation & Ors.* 1987 (2) SCR 1138, it was observed that the responsibility of the bank with regard to clearing the cheque cannot be taken away even if there was fault on the part of the customer.
- d) Fastening the liability on both the parties, the Commission held that the Bank was liable to reimburse Rs.35,000/- to the Complainant within 45 days with interest at the rate of 4% p.a. from 15.09.2004 failing which it will carry interest at 10% p.a. It was further directed that the said amount be deducted from the salary of the clerk/official who cleared the cheque.

#### **vii) Citation:**

III (2014) CPJ 367; 2014(3) CPR 474.

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### **8. Laxmi Co-operative Bank Ltd. Vs. Basavaraj Sidramappa Yernale**

#### **i) Case in Brief:**

The Complainant, a rickshaw puller and a member of the OP Co-operative Bank Ltd stood as guarantor for one Chandra Shekhar, who had taken a loan of Rs.50,000/- from the Appellant Bank on 09.03.1996. The Complainant wrote to the appellant bank on 08.08.2008 claiming excess payment. Later in December, 2010, when he sought to sell his property and published an advertisement in the local newspaper,

the Appellant bank objected to the same and threatened to get the property seized. The Complainant asked the bank to furnish details of the repayment of loan, but no such information was provided. He also approached the Deputy Registrar, who also directed the Appellant bank to furnish the requisite information, but despite the directions, the petitioner bank did not provide the same. Consequently, alleging deficiency in service on the part of the bank, the Complainant preferred a complaint before the District Forum which directed the petitioner bank to pay a sum of Rs.10,000/- to the Complainant towards physical and mental torture along with interest at the rate of 9% per annum and Rs.5,000/- towards the cost of litigation along with interest at the same rate. Being aggrieved with the order of the District Forum, the Complainant preferred an appeal before the State Commission which dismissed the appeal filed by the Petitioner. Being still aggrieved, the Petitioner has filed this Revision Petition. Revision Petition dismissed.

**ii) Order appealed against:**

Against the Order dated 20.02.2014 in Appeal No.813/2012 of the State Commission Maharashtra.

**iii) Parties:**

Laxmi Co-operative Bank Ltd. - Petitioner

Vs.

Basavaraj Sidramappa Yernale - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.2375 of 2014 & Date of Judgement: 16.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of complaint found that Complainant wrote to the Petitioner bank demanding the details of the rickshaw loan. He also approached the District Deputy Registrar who directed the petitioner bank to provide the details regarding the loan to the Complainant, but the bank still did not provide the requisite information. There was also no material on record to show that the request of the Complainant for providing

### **Deficiency in Service - Banking**

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details was granted by the bank. There is no material to indicate that the direction of the District Deputy Registrar to provide the requisite information with respect to the loan account was provided to the Complainant. Further, the contention of the Appellant Bank that the information sought by the Complainant was not available with him was also not tenable as the Complainant in this case was a guarantor and not the borrower or the account holder. In view of the above said findings, the Commission held that there was a clear cut case of deficiency on the part of the Appellant Bank in providing service to the consumer.

- b) In view of the above, the present Revision Petition was dismissed and orders of the fora below were confirmed.

#### **vii) Citation:**

Not reported in CPJ and CPR.

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### **9. Tamil Nadu Circle Postal Co-operative Bank Ltd. Vs. C.Papiah and others**

#### **i) Case in Brief:**

Complainant/Respondent No.1 had stood as guarantor for one Mr.Chellan who had taken loan from the Petitioner Bank. The principal borrower had authorized the Petitioner Bank to recover the amount of loan from his death cum retirement gratuity (DCR). Since the principal borrower had committed default in repayment of the loan, a communication dated 08.01.1992 was sent by the Bank to the Senior Superintendent of Post Offices (Respondent-2) with the a copy to the Senior Post Master (Respondent-3) to deduct a sum of Rs.3,485/- from his DCR. The case of Respondent 2 and 3 was that the aforesaid letter was not received by them. Since the Petitioner Bank could not recover its dues from Mr.Chellan, it recovered the same from the loan account which the Complainant had with it. Complainant filed complaint before the District Forum which directed the Bank to refund the said amount to the Complainant along with interest at 9% p.a. All the OPs i.e. the Bank and Post Office were directed to pay Rs.250/- as compensation and Rs.1,000/- as cost of litigation. Appeal filed by the Bank was dismissed by the State Commission. Aggrieved by the said order the present Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 23.11.2008 in Appeal No.465/2000 of the Tamil Nadu State Consumer Disputes Redressal Commission.

**iii) Parties:**

Tamil Nadu Circle Postal Co-operative Bank Ltd. - Petitioner

Vs.

C. Papiiah and others - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.2093 of 2008 & Date of Judgement: 17.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission did not accept the contention of the Complainant that the Bank should have recovered the amount from the principal borrower before he superannuated on 30.06.1992. The Commission observed that the Bank had taken appropriate steps to recover the loan from the principal borrower by taking up the matter with the Postal Authorities and it was only on account of the default on the part of the post office that the aforesaid amount could not be recovered from the DCR of Mr.Chellan. The Commission held that since funds of the Complainant were available with petitioner bank in his loan account, the Petitioner bank was fully justified in recovering the due amount of loan taken by Mr.Chellan from those funds. The Commission therefore, allowed the Revision Petition and the impugned order to the extent of direction to refund a amount to the Complainant was set aside. The Commission noted the submission of the Counsel for Respondents 2 and 3 that the amount of compensation with cost of litigation had already been paid to the Complainant.

**vii) Citation:**

Not reported in CPJ and CPR.

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**10. Nirmal Arora Vs. Standard Chartered Bank**

**i) Case in Brief:**

The Complainants in both the Revision Petitions opened fixed deposit accounts in the year 1998 for Rs.40,000/- each with the OP along with zero balance saving accounts. It is the Complainants' case that on maturity of the last FDR, the OP, without any authorization from them, renewed the respective FDRs for the face value and unilaterally transferred the interest accrued i.e Rs.9,293.24 on each FDR in their respective saving bank accounts. Thereafter, OP made quarterly deduction of Rs.750/-, Rs.830/- and Rs.830/- each by making debit entry in their respective accounts on the ground that they had failed to maintain a minimum balance of Rs.10,000/- in their saving bank account. The Complainants closed the accounts and filed complaints in the District Forum which allowed the complaints and directed the Respondent to refund the interest and also pay compensation of Rs.15,000/- and litigation expenses of Rs.10,000/- to the Complainants. The Respondent filed an appeal before the State Commission and during the pendency of the appeal, the bank made an offer to pay to the Petitioners a sum of Rs.10,792.24 each. Taking note of the offer, the State Commission modified the order of the District Forum and directed the Bank to pay Rs.10,792.24 to the Complainant towards refund of accumulated interest amount on FDR along with interest at 3.5% p.a. from 01.01.2005 to 25.05.2006. The compensation and litigation amounts ordered by District Forum were reduced from Rs.25,000/- to Rs.3,000/-. Aggrieved by the reduction, the Petitioners filed the present Revision Petitions. Revision Petitions allowed.

**ii) Order appealed against:**

Revision Petition No.3124 of 2013

From the order dated 19.03.2013 in First Appeal No.353/2010 of the State Consumer Disputes Redressal Commission, Delhi.

Revision Petition No.3125 of 2013

From the order dated 19.03.2013 in First Appeal No.354/2010 of the State Consumer Disputes Redressal Commission, Delhi.



**iii) Parties:**

Revision Petition No.3124 of 2013

Nirmal Arora - Petitioner

Vs.

Standard Chartered Bank - Respondent

Revision Petition No.3125 of 2013

Surinder Pal Arora - Petitioner

Vs.

Standard Chartered Bank - Respondent

**iv) Case No and Date of Judgement:**

- i. Revision Petition No.3124 of 2013 with IA No.5498 of 2013 (Stay)
- ii. Revision Petition No.3125 of 2013 with IA No.5499 of 2013 (Stay).

Date of Judgement: 21.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission noted that at the time the savings bank accounts were opened by the Petitioners with zero balance in the year 1998, there was no rule of charging service charges from the account holder if a minimum balance of Rs.10,000/- was not maintained. The said rule was introduced only in April 2002. The Commission observed that the Respondent had failed to lead any evidence to prove that the change in the rules was intimated to the Petitioners. It was therefore held that the Respondent bank, by levying service charges, had committed an act amounting to deficiency in service.
- b) The Commission further noted that the consumer complaints were filed in the year 2005 and because of the wrong act of the OP, the Petitioners had been forced to undergo the rigours of protracted litigation for 9 years before various Fora. Taking into account the expenses that they might have incurred, it was held that the compensation amount awarded by the District Forum was reasonable. It was further held that the State Commission had acted arbitrarily in reducing the amount to Rs.3,000/-.

### **Deficiency in Service - Banking**

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- c) Accordingly the Commission allowed the Revision Petitions, set aside the orders of the State Commission and upheld the compensation and litigation expenses awarded by the District Forum.

**vii) Citation:**

III (2014) CPJ 658; 2014(3) CPR 391.

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### **11. State Bank of India Vs. Sh.Sheo Kumar Sharma**

**i) Case in Brief:**

Complainant was maintaining a SB A/c with the Respondent Bank at its branch office at Railway Colony, Gorakpur wherein he used to deposit his pensionary benefits. In December, 2000, he informed the Bank that a sum of Rs.2,71,800/- had been fraudulently withdrawn from his A/c between the period from 09.03.2000 to 07.12.2000 by means of 19 cheques and that the cheques used for withdrawal were not issued from the cheque book supplied to him nor did he sign any of the cheques. A complaint was also lodged by him with the Police. Since his efforts to get the said amount reimbursed were unsuccessful, he filed complaint before the District Forum which allowed the complaint and directed bank to pay a sum of Rs.2,71,800/- to the Complainant along with interest @ 9% p.a from the date of filing of the complaint and cost. The Bank's appeal to the State Commission was dismissed by the State Commission with the modification that the amount to be paid to the Complainant would be reduced by Rs.14,500/- since one cheque for that amount had not been sent to the Forensic Science Laboratory. Aggrieved by the order of the State Commission, both the parties have filed the present Revision Petitions. Revision Petition filed by the Complainant was allowed while the Revision Petition filed by the Bank was dismissed.

**ii) Order appealed against:**

Revision Petition No.1879 of 2009

From the order dated 19.02.2009 in Appeal No.2450/SC/04 of State Consumer Disputes Redressal Commission, U.P.

Revision Petition No.3754 of 2009

From the order dated 19.02.2009 in Appeal No.127/SC/05 of State Consumer Disputes Redressal Commission, U.P.

**iii) Parties:**

Revision Petition No.1879 of 2009

State Bank of India - Petitioner

Vs.

Sh.Sheo Kumar Sharma - Respondent

Revision Petition No.3754 of 2009

Sh.Sheo Kumar Sharma - Petitioner

Vs.

State Bank of India - Respondent

**iv) Case No and Date of Judgement:**

- i. Revision Petition No.1879 of 2009
- ii. Revision Petition No.3754 of 2009 &  
Date of Judgement: 12.08.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission noted that the factum of issue of cheque book to one Krishan Kant Sharma on a requisition letter which was not in dispute, was in violation of the guidelines/circular issued by RBI and that issuing cheque book without a requisition slip to an unauthorized person which resulted in cheating and forgery, constituted deficiency in service. It was further noted that even the requisition letter was not traceable from the records of the bank.
- b) The Commission however held that the State Commission should not have reduced the amount payable to the Complainant by Rs.14,500/- since the Complainant was in no way responsible for not sending the cheque to the Forensic Science Laboratory. The Commission observed that the entire amount of Rs.2,71,800/- was payable to the Complainant.
- c) As regards the interest payable on the said amount, the Commission observed that since the Complainant had deposited the said amount in the SB A/c, he was entitled for payment of interest at the prevailing SB interest rate and not @ 9% as ordered by the Fora below.

**Deficiency in Service - Banking**

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d) With the above said modification, the Complainant Revision Petition was allowed and the Revision Petition filed by the Bank was dismissed.

**vii) Citation:**

IV (2014) CPJ 167.

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**12. Bhushan Tewari Vs. Tata Commercial Motors and another**

**i) Case in Brief:**

Complainant, an educated unemployed youth, had applied for a bus permit for local routes under self-employment scheme and got the same approved on 16.06.2009. In the letter of approval, it was mentioned that he should submit all connected papers within two months i.e 16.08.2009, failing which the permit was liable to be cancelled. Complainant met OP.1, obtained quotation for taking loan from SBI, Haldwani and handed over a cheque in the sum of Rs.10,000/- to OP.1 as booking advance for TATA Marcopolo vehicle. OP assured him that the bus would be delivered to him by 06.08.2009 and asked to deposit the balance amount. Complainant obtained a loan of Rs.11,17,200/- from SBI and deposited the amount with OP.1 on 03.08.2009 but the bus was not delivered till 06.08.2009. Complainant's permit was cancelled and he was deprived of employment. He filed a complaint before the District Forum which directed OP.1 to refund the amount of Rs.11,17,200/- with simple interest @ 9% p.a and pay Rs.5,000/- for mental agony and another Rs.5,000/- towards litigation expenses. The Forum dismissed the complaint against OP.2. Complainant's appeal for enhancement of compensation was dismissed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 18.04.2012 in F.A.No.170 of 2011 of the Uttarakhand State Consumer Disputes Redressal Commission, Dehradun.

**iii) Parties:**

Bhushan Tewari	- Petitioner
Vs.	
Tata Commercial Motors and another	- Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No:2502 of 2012 & Date of Judgement: 12.08.2014.

**v) Acts and Sections referred:**

Sections 2(1), (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission observed that OP.1 should have supplied the bus immediately since it was a question of providing employment to an educated youth. Even if there was short supply, it was held that the making of false promises amounted to deficiency and unfair trade. It was observed that the OPs should have told the Complainant point blank that they needed more time and would not be able to supply the bus in such a short time. It was also observed that the compensation allowed by the lower courts was very low and that they should have taken into account the fact that the Complainant, a poor person had to pay 12% compound interest while paying back the money to the bank. Taking note of the fact that the Complainant remained unemployed for 2-3 years, the Commission enhanced the compensation amount to Rs.2,15,000/- to be paid within 45 days failing which 12% interest was payable by OP.1.

**vii) Citation:**

IV (2014) CPJ 606; 2014(3) CPR 510.

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**13. HDFC Bank Ltd Vs. Kanwal Ohri and others**

**i) Case in Brief:**

The case of the Complainants/Respondents is that the Petitioner Bank offered to take over the original loan of the Respondents from GE Money and issue further loan to the Respondents @ 11% p.a. It was alleged that the Bank had informed the Respondents that they had to pay only 2% towards foreclosure charges over the total amount outstanding with GE Money. On the Complainant accepting the offer, the Bank sanctioned a loan of Rs.88 lakhs to the Respondents of which a sum of Rs.61,36,000/- was to be paid to GE Money towards closure of the loan account and the balance Rs.26,64,000/- was to be disbursed to the Respondents directly. The bank took a cheque for Rs.97,064/- from the

### **Deficiency in Service - Banking**

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Respondents towards 1% processing charges and service tax. Subsequently, the Bank informed the Respondents that GE Money was demanding 4% foreclosure charges whereupon Respondents requested the bank to cancel the loan agreement and refund Rs.97,064/- paid by them. Though the bank cancelled the loan, it refused to refund the processing fee. Alleging negligence in service, the Respondents filed complaint before the District Forum. The complaint was allowed and the Petitioner Bank was directed to pay Rs.97,064/- along with Rs.10,000/- towards compensation and litigation cost. Petitioner's appeal before the State Commission was dismissed vide impugned order against which the present Revision Petition has been filed. Revision Petition allowed.

#### **ii) Order appealed against:**

From the order dated 18.04.2012 in First Appeal No.53 of 2012 of the State Consumer Disputes Redressal Commission, U.T, Chandigarh.

#### **iii) Parties:**

HDFC Bank Ltd - Petitioner

Vs.

Kanwal Ohri and others - Respondents

#### **iv) Case No and Date of Judgement:**

Revision Petition No:2001 of 2012 & Date of Judgement: 12.08.2014.

#### **v) Acts and Sections referred:**

Sections 2(1), (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

#### **vi) Issues raised and decided:**

The Commission noted that the application for loan submitted by the Respondents had been processed by the Petitioner, time and money was spent for processing the loan, sanctioning the same and preparing the instrument for disbursement of loan as per the instructions of the Respondent. It is the Respondents who asked for cancellation of the loan because they did not want to pay 4% foreclosure charges as against 2% they were willing to pay. It was held that any prudent person while signing a contract for loan agreement should have been aware of the percentage of foreclosure charges and that the Respondent should have taken a decision as to whether they would like to foreclose

the loan at the cost involved. The Commission observed that it was not the case of the Respondent that the Petitioner had agreed or promised to absorb the foreclosure charge in part or full. The Commission therefore did not agree with the conclusions of the fora below, set aside their orders and dismissed the complaint.

**vii) Citation:**

IV (2014) CPJ 610; 2014(3) CPR 503.

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**14. A.L. Prasad Vs. HDFC Bank and another**

**i) Case in Brief:**

Petitioner/Complainant, a senior citizen made an application with the Respondent Bank for change of both his permanent as well as correspondence address which was not accepted by the bank. Subsequently, he informed the Bank over phone but he had lost two depository instruction slip and hence the bank should not honour the same. The Bank refused to take action on telephonic instructions and asked the Petitioner to come in person. When the Petitioner visited the Bank, he was asked to provide his identity proof. Alleging negligence in service and unfair trade practice, Petitioner filed complaint before the District Forum which was dismissed. Petitioner's appeal to the State Commission was also dismissed vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 27.09.2012 in F.Appeal No.413 of 2012 of the Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.

**iii) Parties:**

A.L. Prasad - Petitioner

Vs.

HDFC Bank and another - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No:4696 of 2012 & Date of Judgement: 12.08.2014.

## **Deficiency in Service - Banking**

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### **v) Acts and Sections referred:**

Sections 2(1), (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

### **vi) Issues raised and decided:**

The Commission noted that the Respondents were only following the procedure prescribed in the circulars of NSDL and SEBI for change of address as also for other transactions. The Commission further noted that as per the condition for issue and use of instruction book 'to stop processing of a lost/stolen instruction slip, the drawer should immediately instruct the bank, in writing to stop processing the instruction slip, giving the instruction slip number date, amount, ISIN and the receiver's name' and that the Petitioner chose not to give any proof of address and insisted that the bank should not ask for any proof of identity. It was held that in the light of the rules and procedures laid down by SEBI and NSDL, there was no deficiency in service or unfair trade practice in the Respondent insisting on following the rules. The Revision Petition was accordingly dismissed and the orders of the fora below were upheld.

### **vii) Citation:**

IV (2014) CPJ 589; 2014(3) CPR 496.

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## **15. UCO Bank and another Vs. Shamsher Singh**

### **i) Case in Brief:**

Complainant/Respondent applied for a grant of a loan of Rs.5 lakhs under scheme called "Kisan Credit Card" mortgaging his agricultural land with the Petitioner Bank. A loan of Rs.4 lakhs was sanctioned to him by the Petitioner Bank. However, later, the Bank refused to disburse the loan. Complainant approached the District Forum which directed the Petitioner Bank disburse the loan and also pay Rs.20,000/- as compensation for deficiency in service besides Rs.5,000/- as cost. Petitioner's appeal was dismissed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

### **ii) Order appealed against:**

From the order dated 03.04.2014 in F.A.No.796 of 2013 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.



**iii) Parties:**

UCO Bank and another - Petitioners

Vs.

Shamsher Singh - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No:3206 of 2014 with I.A.No.5360/2014 (For Stay) & Date of Judgement: 27.08.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) One of the contentions of the Petitioner was that the Complainant's accounts with the Gramin Bank was not regular. The Commission observed that the Petitioner had not made out the case that there was default by the Complainant in timely repayment of the dues and therefore the said contention of the Petitioner was rejected.
- b) The other argument was that the Complainant had failed to furnish document showing possession of the land measuring 41 Kanals and 13 Marlas. However, a perusal of the declaration submitted by the Complainant showed that he had submitted copies of several documents based on which the Petitioner Bank had sanctioned the loan. It was held that the Petitioner Bank failed to show that the said documents did not pertain to land measuring 41 Kanals and 13 Marlas.
- c) The Petitioner had also contended that the land in question was situated 32 kilometers away and was beyond the bank's territorial jurisdiction. It was held by the Commission that the Bank should have gone into this aspect at the time of sanctioning the loan and having sanctioned it, it was not justified in refusing to disburse the amount on this ground.
- d) Consequently, the Revision Petition was dismissed as devoid of merit.

**vii) Citation:**

2014(3) CPR 744.

**Deficiency in Service - Banking**

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**16. The Rajasthan State Co-op. Bank Ltd Through Manager and another Vs. Kanhaiyalal Sharma**

**i) Case in Brief:**

Complainant/Respondent deposited Demand Draft No.336032 of Oriental Bank of Commerce for Rs.5.00 lakhs and Demand Draft No.030170 of Indian Bank Branch Kota for Rs.5.00 lakhs in his Account No.862 of the Opposite Party-Petitioner Bank on 05.07.2008 by delivering Demand Drafts to Smt. Suman Jain, Assistant Manager. On 22.07.2008, it was found that the aforesaid amount of Rs.10.00 lakhs was not credited in his bank A/c and on enquiry, the Opposite Party/Manager informed that payment of both the Demand Drafts had been made from Thar Gramin Bank, Jhotwara on 12.07.2008 in the name of one Kanhaiyalal and he had withdrawn the amount. Complainant lodged FIR against the Opposite Party on 26.07.2008 and legal notice was also issued for refund of money. Alleging deficiency on the part of Opposite Party, the Complainant filed complaint before District Forum which directed Opposite Party to pay Rs.10.00 lakhs with 12% p.a. interest from 05.07.2008 and further ordered to pay Rs.10,000/- as compensation and Rs.1,500/- as cost. Appeal filed by the Opposite Party was dismissed by State Commission vide impugned order against which this Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

Against the order dated 3.6.2014 in First Appeal No.683 of 2013 of the State Commission, Rajasthan, Jaipur.

**iii) Parties:**

The Rajasthan State Co-Op. Bank Ltd  
Through Manager and another - Petitioners/Opp. Parties

Vs.

Kanhaiyalal Sharma - Respondent/Complainant

**iv) Case No and Date of Judgement:**

Revision Petition No.2996 of 2014 & Date of Judgement: 27.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National commission on perusal of the records found that the two Demand Drafts of Rs.5.00 lakhs each were deposited by the Complainant in the branch of Opposite Party No.1 and they were handed over to Smt. Suman Jain, Assistant Manager, which fact found corroboration from criminal Revision Petition filed by Smt. Suman Jain before the Session Judge, Jaipur. In such circumstances, by no stretch of imagination, it can be inferred that Demand Drafts were not deposited by the Complainant with Opposite Party for collection.
- b) Consequently, Revision Petition filed by the Petitioner was dismissed and the orders of the fora below were confirmed.

**vii) Citation:**

2014(3) CPR 738.

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**17. Shishir Tiwari Vs. M/s. Dewan Housing Finance Corporation Ltd**

**i) Case in Brief:**

Petitioner who is the original Complainant in this case took a home loan of Rs.25,50,000/- from the respondent/opposite party on 1.12.2007 at 10.5% floating interest. Six months later, the respondent increased the rate of interest by 1.5%. Thereafter, again in the month of March, 2009 the interest was reduced to 11%. It is alleged that even though the interest rate was reduced by the RBI at 4%, the respondent did not reduce interest proportionately. It was the grievance of the Complainant/petitioner that rate of interest fixed for the new loans was 8.5% to 9% but the respondent/opposite party was charging 11% from the Complainant who was an old customer. According to the petitioner, the same rate of interest as was applicable to the new customers should have been charged from the old customer also. It was stated that the Complainant/petitioner pre-closed the account as he got the loan from another bank which charged lesser rate of interest. His grievance was that at the time of pre-closure, the respondent/opposite party collected an amount of Rs.54,670/- as penalty which was not proper. This led to the petitioner filing a consumer complaint before the District Forum which allowed the complaint in part and also directed Opposite Party to refund Rs.54,670/- (Rupees fifty four

### **Deficiency in Service - Banking**

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thousand six hundred and seventy) to the Complainant with interest at 9% p.a. from 8.12.2009 until actual payment and Rs.5,000/- as cost. The prayer of the Complainant for reducing the rate of interest and to award compensation were rejected. Aggrieved of the aforesaid order of the District Forum, the respondent/opposite party filed an Appeal before the State Commission which set aside the order of the District Forum. It is against the order of the State Commission that the present Revision Petition has been filed by the petitioner. Revision Petition dismissed.

#### **ii) Order appealed against:**

Against order dated 11.11.2011 in First Appeal No.4614 of 2010 the Karnataka State Consumer Disputes Redressal Commission, Bangalore.

#### **iii) Parties:**

Shishir Tiwari - Petitioner

Vs.

M/s. Dewan Housing Finance Corporation Ltd - Respondent

#### **iv) Case No and Date of Judgement:**

Revision Petition No.239 of 2012 with I.A.No.5513 of 2013 (Placing on record documents ) & Date of Judgement: 27.08.2014.

#### **v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

#### **vi) Issues raised and decided:**

The National Commission relying on the decisions of the Commission in Revision Petition No.2163 of 2011 in *Nitin Vashishth* and *Gagan Vashishth Vs. Central Bank of India*, Revision Petition No.1629 of 2008 in *S. Seshadri & Another Vs. The Housing Development Finance Corporation Ltd* held that the parties are bound by the terms and conditions of the loan agreement and as such charging of pre-closure penalty by the concerned bank/finance companies could not be termed as illegal. The Commission also opined that situation would be different if levying of such pre-closure is removed or declared as irregular/illegal by the concerned regulatory authority. The Commission also pointed out that both the RBI and the National Housing Bank have already issued instructions for removal of pre-payment penalty on the foreclosure of housing loans to the

respective institutions under their control but these instructions are applicable for foreclosures of housing loans prospectively, i.e., during the period from the date of issue of those circulars. The issue in question, therefore, is no longer *res integra*. In view of the above, the present Revision Petition was dismissed and the orders of the State Commission were confirmed.

**vii) Citation:**

IV (2014) CPJ 398; 2014(3) CPR 735.

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**18. Ratan Singh Tanwar Vs. Manager, Dena Bank and another**

**i) Case in Brief:**

Petitioner/Complainant had deposited two fixed deposit amounts with OP/Respondent Bank. The first FDR was issued on 09.05.1996 in the sum of Rs.10,000/- @ 13% p.a with maturity date 31.12.2001 and the second FDR was issued for Rs.5,000/- @ 12% interest with maturity date 01.05.2003. It is the Complainant's case that at the time of the renewal of RDs, the interest rate was changed. His another grievance is that at the time of premature withdrawal of both the FDRs, 1% was deducted illegally. Alleging deficiency in service, he filed complaint before the District Forum which partly allowed the complaint. The Complainant's appeal was dismissed by the State Commission against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 25.10.2013 in F.Appeal No.647/2013 of the State Consumer Disputes Redressal Commission, Rajasthan, Jaipur.

**iii) Parties:**

Ratan Singh Tanwar - Petitioner

Vs.

Manager, Dena Bank and another - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No:4554 of 2013 with IA/2246/2014 (For Legal Aid) & Date of Judgement: 01.09.2014.

## **Deficiency in Service - Banking**

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### **v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

### **vi) Issues raised and decided:**

The Commission did not accept the contention of the Complainant that prior notice should have been given by the bank about change of interest rates. It was held that the Petitioner is entitled to the interest which is prevalent at the time of renewal of FDRs and that there is no rule that the bank will pay the same rate of interest at the time of renewal of the FDR. It also held that it is not the duty of the bank to give prior notice to the depositor about the change of interest. Revision Petition was accordingly dismissed.

### **vii) Citation:**

IV (2014) CPJ 251.

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## **19. Canara Bank Vs. R.S. Vasan**

### **i) Case in Brief:**

The case of the Complainant, Shri R.S. Vasan was that he introduced one Shri C.K. Prabhakaran to the Canara Bank (Opposite Party) on 22.6.1996 and the bank extended an overdraft facility to Shri C.K.Prabhakaran in the sum of Rs.1,00,000/- against immovable property to the extent of 12 ½ cents owned by Shri Vilasini, the wife of Shri C.K. Prabhakaran. The Complainant claimed that he had no intention to be a guarantor or a surety for the said overdraft facility. However, the term deposit receipt of the Complainant was with the opposite party bank in safe custody. The Complainant was made to sign some blank papers. Shri Prabhakaran expired on 7.6.2001. The opposite party, Bank informed the Complainant vide letter dated 22.6.2003 that the overdraft facility had been given on Complainant's security and a sum of Rs.1,36,135.50 could be liquidated against his term deposit. The Complainant immediately replied denying his liability. In the meantime, the bank further issued another letter on 26.11.2003 mentioning the amount due as Rs.1,45,799.30. Subsequently, the bank informed the Complainant that the amount under overdraft had been adjusted against term deposit of the Complainant. Both the fora have decided the case in favour of the Complainant. The bank was directed to pay the Complainant a sum of Rs.1,48,698/- and Rs.1,000/- as costs from the

date of the order. Against the order of the fora below, this Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

From order dated 30.10.2013 in First Appeal No.651 of 2012 of the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram.

**iii) Parties:**

Canara Bank - Petitioner

Vs.

R. S. Vasani - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No: 914 of 2014 & Date of Judgement: 03.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the records found that Complainant deposited the said FDRs with the bank. He should have kept the FDR with him. The deposit of the FDR clearly showed that it was a case of mortgage by deposit of title deed. Moreover, the Complainant signed the blank papers at his own peril. The Complainant signed the blank papers, if any, with his open eyes and on his own volition.
- b) In view of the above, it was held that it was the choice of the bank to recover the money either from the guarantor or the borrower. The Commission relying on the decisions of Hon'ble Supreme Court in *Mrs.Margret Lalita Samuel Vs. Indo Commercial Bank* AIR 1979 SC 102, *Syndicate Bank vs. Vijay Kumar* AIR 1992 SC 1066, *Kuldeep Singh Vs. Nanak Singh* 2008 IV PLR 276, and *Grasim Industries Vs. Aggarwal Steel* 2009 Part IV SCC 598, observed that the burden of proving that the Complainant was made to sign the blank papers fraudulently or under coercion is on him only.
- c) Therefore, the orders of the fora below were set aside and Revision Petition was disposed of accordingly.

**vii) Citation:** IV (2014) CPJ 557.

**20. R. Muthukrishnan Vs. The Manager, Canara Bank**

**i) Case in Brief:**

Petitioner/Complainant, a practicing advocate had made four RFC deposits in 2003 with the Respondent in the status of 'Resident but not ordinarily resident'. The deposits were renewed periodically up to the year 2005. On maturity, the bank deducted a sum of Rs.1,301/- equivalent to US \$ 16.64 + GBP 6.30 towards income-tax in spite of the Petitioner requesting them not to deduct income tax on the plea that, being non-resident, interest payable on the deposits, did not form part of its total income in terms of Section 10(15)(fa) of the Income Tax Act, 1961. Since the bank declined to do as requested, the Petitioner filed complaint before the District Forum which dismissed the complaint. Petitioner's appeal was dismissed by the State Commission also vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 22.01.2013 in Appeal No.21/2012 of State Consumer Disputes Redressal Commission, Tamil Nadu.

**iii) Parties:**

R. Muthukrishnan - Petitioner

Vs.

The Manager, Canara Bank - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No:1910 of 2013 & Date of Judgement: 03.09.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986 & Section 10(15)(fa) and 193 of the Income Tax Act, 1961.

**vi) Issues raised and decided:**

The National Commission observed that if on facts it was found that the person or authority rendering service had taken all precautions and considered all relevant facts and circumstances in the course of the transaction and that their action or final decision was in good faith, it cannot be said that there had been deficiency of service. In the present case, it was held that the Petitioner had failed to establish any



willful default or action on the part of the bank in deducting tax at source. Under Section 193 of the Income Tax Act, 1961 the bank was obliged to deduct income tax at the time of renewal of deposits and failure to do so could invite penal action against it. It was further held that if the Petitioner was indeed eligible for exemption, he could claim refund at the time of filing his return of income. Stating that mere inconvenience did not amount to deficiency in service entitling compensation under the Act, the Commission dismissed the Revision Petition.

**vii) Citation:**

IV (2014) CPJ 207.

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**21. Subhash Trimbak Khedkar Vs. Syndicate Bank and another**

**i) Case in Brief:**

Appellant approached the Respondent Bank for availing loan for a project pertaining to plantation of orange costing Rs.12,41,710/- and submitted the necessary documents in the month of Jan. 2011. The respondent sanctioned the loan of Rs.9,00,000/- and issued sanction letter, dated 17.02.2011 asking the appellant to submit the mortgage deed of the said agricultural land for disbursement of the same. The appellant, immediately on 18.02.2011 got the mortgage deed in favour of the respondent and submitted the same to it. Thereafter, in spite of continuous follow up for disbursement of the loan amount from April to June 2011, there was no positive response from the respondent. The appellant complained to the Regional Office, then the Head Office of the respondent bank and finally the Banking Ombudsman. On 02.03.2012, the Banking Ombudsman intimated the appellant of his rejection of the complaint. On 01.06.2012 appellant received official written communication from the respondent regarding reasons of rejection of the loan proposal. The appellant claiming that he had suffered huge loss amounting to Rs.20,20,156/- on account of preparation of Project report and Search report, loss of orange production etc filed complaint before the State Commission claiming compensation for the loss and also for mental agony and harassment caused by the Respondent. The State Commission, vide impugned order partly allowed the complaint and directed the respondent to pay to the Complainant, a compensation of Rs.23,000/- (Rupees Twenty three

### **Deficiency in Service - Banking**

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thousand only) towards the expenditure incurred by him for submitting the loan proposal with required documents along with interest @ 6% p.a. from 18.02.2011 (date of registration of mortgage deed) within a period of 30 days, failing which the opponent bank shall pay additional interest at 1% till the entire amount is paid. Appellant not satisfied with the order of the State Commission, has filed this present appeal for enhancement. Appeal dismissed.

#### **ii) Order appealed against:**

Against the order dated 20.3.2014 in Complaint Case No.28/2012 passed by Maharashtra State Consumer Disputes Redressal Commission, Mumbai Circuit Bench at Aurangabad.

#### **iii) Parties:**

Subhash Trimbak Khedkar - Appellant

Vs.

Syndicate Bank and another - Respondents

#### **iv) Case No and Date of Judgement:**

First Appeal No.356 of 2014 with I.A. No.3994/2014 (For condonation of delay) & Date of Judgement: 05.09.2014.

#### **v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

#### **vi) Issues raised and decided:**

- a) The National Commission observed that the claims made by the appellant in the complaint and projected profitability statement filed by him contradicted each other and the entire case of appellant was based upon uncertainties, conjecture and surmises. The project profitability statement as relied by the appellant, was of no help to him, since it pertained to 3rd and 4th year, respectively.
- b) In the light of the above, the State Commission had rightly observed, that the actual loss suffered by the appellant was only the amount of expenditure which it had incurred for the purpose of preparation of the project report, search report and registration of mortgage deed, which comes to Rs.23,000/-. Therefore, in the

present case, the actual loss as suffered by the appellant, was only to be reimbursed. In addition, reasonable amount of compensation can be awarded.

- c) Consequently, it was held that the impugned order of the State Commission was a well reasoned one. There was no infirmity or illegality in it. Accordingly, the appeal was dismissed *in limine* as it was found to be devoid of merit.

**vii) Citation:**

IV (2014) CPJ 552; 2014(4) CPR 259.

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**22. Asish Kumar Dey Vs. Habibur Rahman and others**

**i) Case in Brief:**

Petitioner was having a SB A/c with Respondent's Bank/OPs. It is his case that on 18.05.2009, he went to the Respondent Bank to encash a cheque for Rs.56,000/- issued by another account holder of the same bank. But the cheque was not honoured and Respondent No.2 refused to issue cheque return memo in spite of making a request. Alleging deficiency in service, he filed a consumer complaint before the District Forum which was dismissed. His appeal to the State Commission was also dismissed vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed with cost of Rs.5,000/-.

**ii) Order appealed against:**

From the order dated 17.02.2014 in S.C. Case No.221 of 2013 of State Consumer Disputes Redressal Commission, West Bengal, Kolkata.

**iii) Parties:**

Asish Kumar Dey - Petitioner

Vs.

Habibur Rahman and others - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No: 2281 of 2014 & Date of Judgement: 09.09.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

## **Deficiency in Service - Banking**

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### **vi) Issues raised and decided:**

The National Commission observed that in the present case there are concurrent findings of fact given by both the fora below that the signature of the person who issued the cheque in question did not tally with the signature on record of the bank. Moreover, as per findings recorded by both the fora below, the cheque in question was dishonoured on the ground of 'insufficient funds'. It was therefore held that there was no deficiency in service on the part of the Respondents and there was no jurisdictional or legal error in the impugned order to call for interference under Section 21(b) of the Act. Since the orders of the fora below were challenged in spite of sound reasoning, the Commission imposed cost of Rs.5,000/- to be paid to the 'Consumer Legal Aid A/c' of the Commission.

### **vii) Citation:**

IV (2014) CPJ 217; 2014(4) CPR 110.

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## **23. Branch Manager, Osmanabad District Central Co-operative Bank Ltd and another Vs. Shaikh Badar Sultana Nazir Mohammed and others**

### **i) Case in Brief:**

Late Sh.Nazir Mohammed Haji Fakir Mohammed deposited a sum of Rs.65,000/- with the Petitioner Bank on 10.07.1998 for a period of 13 months. The said deposit carried interest at 15% p.a. On 24.08.1998, he deposited a sum of Rs.55,000/- for a period of three months with another bank namely, Osmanabad Janta Sahakari Bank Ltd which carried interest at 14.5 % p.a. The maturity amounts were not paid to the Complainant and he was asked to produce a legal heir certificate. Sh.Nazir Mohammed had gone missing since 28.04.1999 and the Civil Court declared him dead on 28.07.2008. However, the maturity amount was not paid to the Complainant. The Complainant again approached the bank with the order of the Civil Court seeking payment as per double benefit scheme but no payment was made to her. Complainants filed two separate complaints against the two banks seeking payment of the deposited amount with interest besides compensation for mental agony and cost of litigation. The District Forum dismissed the complaints since the deposited amounts had been paid to the

Complainants. The State Commission on appeal directed the banks to pay interest at the rate of 6% p.a on the maturity amount of FDR from the date of maturity till date of payment. Aggrieved by the said order of the State Commission, the present Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 18.03.2014 in F.Appeal No.290 of 2010 of the Maharashtra State Consumer Disputes Redressal Commission, Circuit Bench, Aurangabad.

**iii) Parties:**

Branch Manager, Osmanabad District  
Central Co-operative Bank Ltd and another - Petitioners

Vs.

Shaikh Badar Sultana Nazir Mohammed and others - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No:2730 of 2014 with IA/4454/2014, IA/4455/2014  
(For Stay, Exemption for filing translation of documents) &

Date of Judgement: 10.09.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission noted that the principal amount of Rs.65,000/- along with interest which had accrued till the date of maturity was paid to the Complainant. In addition, a sum of Rs.82,028/- representing interest that accrued subsequent to the maturity date was also credited to her savings account on 27.06.2009. It was therefore held that the State Commission erred in directing payment of interest at savings bank account rate. Consequently, the impugned order to the extent it related to Osmanabad District Central Co-operative Bank was set aside.

**vii) Citation:**

Not reported in CPJ and CPR.

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**24. Standard Chartered Bank Vs. Shri Alok Aggarwal**

**i) Case in Brief:**

Complainant/Respondent and his wife obtained one credit card each from the Petitioner Bank. It was his grievance that without sending him monthly statements of the credit card on a regular basis the Bank started levying interest and certain charges in the bills of the Complainant. A settlement was arrived at between the parties as per which Complainant paid Rs.1,954/- to the Bank and discontinued the use of credit card. Subsequently, when Complainant applied to American Express Bank for issue of a platinum credit card, his application was rejected on the ground that there was an overdue payment of Rs.69,891/- from him as on 31.01.2009, which information was provided by Credit Information Bureau India Ltd (CIBIL). The Complainant approached the District Forum which directed the Petitioner Bank to inform CIBIL that the Complainant had settled all outstanding dues and was no more a defaulter. The Forum also awarded compensation of Rs.1,00,000/- and another Rs.10,000/- as cost of litigation. Appeal filed by the Petitioner Bank was dismissed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition disposed of by modifying the order of the fora below and reducing the compensation amount including the cost of litigation to Rs.25,000/-.

**ii) Order appealed against:**

From the order dated 18.03.2014 in F.Appeal No.595 of 2011 of Delhi State Consumer Disputes Redressal Commission, New Delhi.

**iii) Parties:**

Standard Chartered Bank - Petitioner

Vs.

Shri Alok Aggarwal - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No:3040 of 2014 with I.A No.4932 of 2014 (For Stay) & Date of Judgement: 11.09.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986 & Section 17 of Credit Information Companies (Regulation) Act, 2005.

**vi) Issues raised and decided:**

The National Commission observed that the Petitioner Bank did not produce any document before the District Forum which would show that the amount of Rs.1,954/- paid by the Complainant was only for the purpose of not initiating legal proceedings against the Complainant and agreed with the concurrent findings of the District Forum and State Commission. It was also observed that that the Petitioner Bank could not rely on Section 17 of Credit Information Companies (Regulation) Act, 2005 since the settlement dated 31.03.2004 took place much before the Act came into force on 23.06.2005. It was held that the provisions of the Act are prospective and not retrospective. It was further held that the act of the petitioner in informing CIBIL that there were amounts outstanding against the Complainant and his wife against the Credit Cards issued to them was an act of deficiency in service. If the Petitioner Bank was not satisfied with the amount of Rs.1,954/- - nothing prevented the bank from not entering into a settlement. However, considering the facts and circumstances of the case including that the Petitioner Bank could have been under a misconception with respect to the scope of the Act, the amount of compensation awarded by the District Forum including the cost of litigation was reduced to Rs.25,000/- at 12% interest p.a from the date of the order. The Revision Petition was dismissed with the said modification.

**vii) Citation:**

Not reported in CPJ and CPR.

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**25. HDFC Bank Ltd. Vs. R. Govardhan Reddy**

**i) Case in Brief:**

The Complainant/Respondent purchased a tractor for a consideration of Rs.6,01,100/-, to earn his livelihood. He made down payment of Rs.1,38,100/- and the balance amount of Rs.4,63,000/- was paid by raising a loan of Rs.4,63,000/- from the Petitioner /Bank. The loan amount was agreed to be paid in half yearly installments of Rs.55,800/- during the period from January 2009 to December, 2011. The case of the Complainant was that in February 2012, the Petitioner forcibly seized the vehicle in question in his absence and without giving any notice to him. When he approached the Petitioner/Bank for release

### **Deficiency in Service - Banking**

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of the vehicle they required him to pay the entire loan amount. Alleging deficiency in service on the part of the Petitioner, he filed complaint before the District Forum. Petitioner Bank claimed that the Complainant had surrendered the tractor on 15.02.2012 by executing a surrender letter and therefore loan termination notice dated 16.02.2012 was issued to the Complainant, requiring him to take back the vehicle by paying Rs.3,43,447/-. It was also the case of the petitioner that after that the vehicle was sold in an open auction for a consideration of Rs.2,50,000/- and the aforesaid amount was adjusted in the loan account of the Complainant. District Forum directed the petitioner-bank to refund a sum of Rs.2,79,000/- to the Complainant along with compensation amounting to Rs.1,000/- and cost of legal proceedings amounting to Rs.500/-. Being aggrieved from the order passed by the District Forum, the Petitioner/Bank approached the State Commission by way of an appeal. The said appeal was partly allowed and the amount payable by the petitioner to the Complainant was reduced from Rs.2,79,000/- to Rs.1,50,000/- against which the present Revision Petition has been filed by the Petitioner/Bank. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 23.05.2014 in FA No.317 of 2013 of Andhra Pradesh State Consumer Disputes Redressal Commission at Hyderabad.

**iii) Parties:**

HDFC Bank Ltd. - Petitioner

Vs.

R. Govardhan Reddy - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.3354 of 2014 & Date of Judgement: 12.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The orders of the fora below were confirmed and the present Revision Petition was dismissed by the National Commission for the following reasons:



- i. Despite the Complainant having denied execution of the aforesaid letter, no credible evidence was produced by the Petitioner/Bank to prove that the said letter was in fact signed and thumb marked by the Complainant.
- ii. No handwriting expert was produced by the petitioner-bank to compare the signatures on the letter dated 15.02.2012 with the admitted signatures of the Complainant.
- iii. No person acquainted with the handwriting and signature of the Complainant was produced to prove that the aforesaid letter dated 15.02.2012 had been signed by him.
- iv. Petitioner/Bank did not produce any documentary evidence of having served the termination notice dated 16.02.2012 upon the Complainant.
- v. The proposed auction did not get adequate publicity and, therefore, it could not be said with a fair amount of certainty, that the tractor fetched the prevailing market price in the auction, which the Petitioner/Bank claimed to have held.

**vii) Citation:**

IV (2014) CPJ 452.

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**(i) CARRIER SERVICES / CONSIGNMENT OF GOODS**

**1. M/s. VRL. Logistics Ltd, Hubli Vs. M/s. Konark Textile**

**i) Case in Brief:**

Respondent had booked two bales of cotton with the Petitioner Company for being transported to consignee, M/s. Vaibhav Apparels, Hyderabad vide forwarding note dated 16.03.2010. The transportation fare and miscellaneous expenses were to be recovered from the consignee after the delivery of the consignment to him. When the goods did not reach the destination within the stipulated period, Respondent repeatedly questioned the Petitioner. A notice was also sent to the Petitioner on 03.03.2011. Respondent alleged that he came to know from the reply received from the Petitioner that the goods sent by the Respondent were auctioned on 20.11.2010 for a sum of Rs.17,000/- without any

**Deficiency in Service - Carrier Services / Consignment of Goods**

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intimation to the Respondent. Alleging deficiency in service, he filed complaint before the District Forum which dismissed the same. The appeal filed by the Respondent/Complainant before the State Commission was allowed with a direction to the OP to pay to the Appellant company a sum of Rs.30,000/- towards cost of the bale of cotton and Rs.10,000/- as compensation. Aggrieved by the said order, the present Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 05.11.2012 in Appeal No.71 of 2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

**iii) Parties:**

M/s. VRL Logistics Ltd, Hubli - Petitioner

Vs.

M/s. Konark Textile - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No:528 of 2013 & Date of Judgement: 24.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission observed that the Respondent could not give any information regarding the attempts made with the consignee to collect the consignment. He had also not mentioned in the complaint or during the arguments as to when he came to know that the goods had not been delivered as also regarding the attempts made by him to get the goods delivered either through contacting the consignee or the Petitioner. On the other hand, the Petitioner was able to show letters regarding non-delivery intimation to the Respondent which stated that the goods were still lying in the godown attracting demurrage charges. The Respondent did not deny the receipt of the letters nor the receipt of the auction notice dated 12.08.2010 from the Petitioner. It was therefore held that the Respondent/Complainant had failed to prove any deficiency on the part of the Petitioner Company. Hence the appeal was allowed and the order of the State Commission was set aside.

**vii) Citation:**

III (2014) CPJ 457; 2014(3) CPR 341.

**2. M/s. Associated Road Carrier Ltd Vs. M/s. Pioneer Products Ltd**

**i) Case in Brief:**

The Respondent entrusted to the Appellant, a 'Common Carrier', a consignment comprising 296 cases of pesticides, a seasonal commodity valued at Rs.3,79,458/- for transportation from Delhi to Salem (Tamil Nadu). The Appellant had assured the Respondent that the consignment would reach Salem by 25.09.1997. However, the said consignment was neither transported to the destination nor returned to the Appellant. After issuing a legal notice to the Appellant from whom he did not get any response, the Respondent filed complaint before the State Commission alleging deficiency in service. Allowing the complaint, the State Commission directed the Appellant to pay a sum of Rs.3,79,458/- with interest @ 12% p.a from the date of booking of the consignment till payment along with punitive damages of Rs.25,000/-. Aggrieved by the said order, the present appeal has been filed. Appeal dismissed.

**ii) Order appealed against:**

From the order dated 06.08.2007 in Complaint No.C-175/98 of the Delhi State Consumer Disputes Redressal Commission.

**iii) Parties:**

M/s. Associated Road Carrier Ltd - Appellant

Vs.

M/s. Pioneer Products Ltd - Respondent

**iv) Case No and Date of Judgement:**

First Appeal No:43 of 2008 & Date of Judgement: 04.08.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986 & Section 10 of the Carriers Act.

**vi) Issues raised and decided:**

- a) The main ground cited by the Appellant in his appeal was the alleged non-compliance with the requirement of notice under Section 10 of the Carriers Act. After going through the said Section, the Commission noted the provision would not be attracted when the goods were not transported by the Common Carrier and were intentionally kept with themselves. The

## **Deficiency in Service - Construction**

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Commission relied on the decision of the Hon'ble Supreme Court in *Transport Corporation of India v. Veljan Hydrair Ltd* (2007) 3 SCC 142 in which the scope and purport of Section 10 of the Carriers Act had been explained. It was observed that "where there is no loss or injury to the goods, but the common carrier wrongly or illegally refuses to deliver goods and the person entitled to delivery initiates action on non-delivery, obviously Section 10 will not apply". The Commission observed that even assuming that prior notice in terms of Section 10 before filing the complaint was required to be issued, that requirement was also met as the Complainant had sent two letters prior to sending the legal notice.

- b) Consequently, the appeal was found to be bereft of any merit and was dismissed. The Appellant was directed to deposit a sum of Rs.25,000/- in the Consumer Welfare Fund within four weeks.

### **vii) Citation:**

III (2014) CPJ 604; 2014(3) CPR 655.

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## **(j) CONSTRUCTION**

### **1. Lttina Properties Pvt. Ltd. Vs. Mahesh K.R. and Others**

#### **i) Case in Brief:**

Complainants/Respondents had entered into an agreement with the petitioner to purchase one apartment each in a building constructed by the petitioner in Bangalore. The sale deed was executed between August 2005 and November 2005 in the three cases. However, possession of the apartment was not given to the Complainants. The case of the Complainants is that the Petitioner coerced them to pay a sum of Rs.3,84,786/- in one case, Rs.3,18,379/- in the second case and Rs.3,57,578/- in the third case claiming the same to be towards payment of VAT and other Taxes. The possession of the apartment was given after the payment was made. Alleging deficiency in service, the Complainants filed separate complaint before the District Forum. The District Forum directed the petitioner to pay compensation and litigation costs in the three cases. The petitioner's appeals in the three cases were dismissed by the State Commission vide impugned orders against

which the present Revision Petitions had been filed. The State Commission's orders were set aside by the National Commission and the matter remanded back to the State Commission for rendering a fresh decision on the question whether the amount of VAT was included in the price paid to the Petitioner.

**ii) Order appealed against:**

From the order dated 06.12.2007 in Appeal No.2643-2645/2006 of State Consumer Disputes Redressal Commission, Karnataka.

**iii) Parties:**

Lttina Properties Pvt. Ltd.	-	Petitioner
Vs.		
Mahesh K.R. and Others	-	Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.3113 – 3115 of 2007 &

Date of Judgement: 17.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The issues that fell for consideration were (i) whether VAT was payable by the Complainant or the Petitioner and (ii) whether the amount of the VAT was included in the price paid by the Complainants to the Petitioner.
- b) On the first question the Commission noted that Clause 5 of the agreement for sale stipulated that sales tax or any other statutory levies will be borne by the purchaser. Since VAT is in lieu of the sales tax only it was held that the Complainants were liable to pay VAT in terms of Clause 5 of the agreement.
- c) On the second question the Commission noted that there was no finding of either of the District Forum or of the State Commission on the question whether VAT was included in the amounts paid by the Complainants to the Petitioner. It was therefore considered necessary to remand the matter back to the State Commission to permit the parties to file documents on this aspect and return a finding on the question.

## **Deficiency in Service - Construction**

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- d) The Commission accordingly set aside the order of the State Commission and remanded the matter back to the State Commission to give a decision on the question whether the amount of VAT was included in the price paid to the Petitioner on or before the registration of sale deed or not.

### **vii) Citation:**

Not reported in CPJ and CPR.

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## **2. Nagarwala Constructions Vs. Sunita Ashok Varma and Anr.**

### **i) Case in Brief:**

Petitioner had allotted an apartment to the Complainant in the building constructed by it pursuant to the agreement it had with the owners of the land on 25.11.1995. The case of the Complainant is that the Petitioner had agreed to give vacant possession of the apartment within 18 months. However, possession was given on 28.02.2011 when the construction was still incomplete. Complainant alleged that she had spent Rs.50,000/- for completing the construction. She filed complaint before the District Forum alleging deficiencies on the part of the Petitioner. The District Forum vide its order dated 29.04.2006 allowed the complaint and gave a number of directions to the builder. The Petitioner preferred an appeal before the State Commission. When the appeal was pending, the Complainant filed execution application before the District Forum which was allowed. Petitioner filed an appeal against this order also. Both the appeals filed by the Petitioner were disposed of by the State Commission with a common order partly allowing the same. The direction to execute the sale deed in favour of the Complainant and the direction to complete the work described in Clause 4 of the order were maintained subject to proportionate recovery from the Complainant and adjustment of Rs.10,000/- and Rs.5,000/- which he had paid. The direction to pay Rs.20,000/- as compensation and Rs.2,000/- as cost of litigation was also maintained. Aggrieved by the said order the present Revision Petition has been filed. Revision Petition dismissed.

### **ii) Order appealed against:**

From the order dated 14.03.2014 in Appeal No.1154/2006 and 562/2009 of the Maharashtra State Consumer Disputes Redressal Commission.

**iii) Parties:**

Nagarwala Constructions

- Petitioner

Vs.

Sunita Ashok Varma and Anr.

- Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.2669 – 2670 of 2014 &

Date of Judgement: 17.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission noted that possession of the flat in question was handed over to the Complainant on 28.02.2001. One of the owners of the building expired on 08.12.2005. But for more than 4 years, the Petitioner did not make any efforts to execute the sale deed in favour of the Complainant. It was held that it was a clear case of deficiency in providing service to the Complainant and therefore, the Petitioner was rightly directed to pay compensation and cost of litigation to the Complainant.
- b) The Commission did not find anything wrong in the order of the State Commission directing the Petitioner to complete the incomplete work described in Clause 4 of the order of the District Forum.
- c) The Commission did not also find anything wrong with the direction given by the State Commission regarding permanent Electric supply and water supply.
- d) The Commission accordingly rejected the Revision Petition as devoid of merit.

**vii) Citation:**

Not reported in CPJ and CPR.

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**3. M/s. TDI Infrastructure Ltd., Vs. Gautam Bahri**

**i) Case in Brief:**

Respondent booked a residential flat in the township developed by the Petitioner and entered into a buyer agreement on 26.02.2007 after

### **Deficiency in Service - Construction**

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paying Rs.5,00,000/-. As per the said agreement possession of the flat was to have been handed over within three years. On 07.02.2011, Respondent sent a notice to the Petitioner to either deliver possession within 15 days or refund double the amount with interest. Having failed in his efforts, he filed a Consumer complaint before the District Forum. In the meantime Respondent offered an alternative flat to the Complainant in the existing tower S/W in lieu of the Flat No.G9-0604 which the Complainant had booked. The said offer was rejected by the Complainant. The District Forum directed the Petitioner to refund the amount paid by the Complainant along with interest at 18% p.a. from the dates of deposit till payment and cost of litigation amounting to Rs.10,000/-. Petitioner's appeal to the State Commission having been dismissed, the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 15.04.2014 in First Appeal No.909 of 2013 of State Consumer Disputes Redressal Commission, Delhi.

**iii) Parties:**

M/s. TDI Infrastructure Ltd., - Petitioner

Vs.

Gautam Bahri - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.2342 of 2014 with I.A./3646/2014 (Stay) &  
Date of Judgement: 22.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission made a distinction between development/ construction of plots/flats by a Development Authority like the Bangalore Development Authority or Delhi Development Authority and that by Private Developers. It was observed that a Private Developer is under a contractual obligation to make available the flat which he had agreed to sell to the buyer and he cannot insist upon the buyer accepting an alternative flat. The choice would be entirely on the buyer to accept or reject the offer of an alternative flat.



- b) The Commission held that if the buyer does not accept the alternative flat offered to him by the Private Developer and the said Developer does not make available the flat which he has booked for the buyer within the stipulated period, the buyer would be entitled to take refund of the money which he had paid to the Developer with appropriate interest.
- c) In the present case it was noted that the Developer had not disclosed as to what were the unavoidable circumstances due to which construction of Tower G-9 was delayed. Though the agreement between the parties envisaged charging of interest by the Petitioner at the rate 24% p.a. in case of delay beyond 90 days, it was noted that in practice the Petitioner had been charging interest at the rate of 18% p.a. Since the State Commission had also awarded to the Complainant interest at the rate of 18% p.a. which was not higher than the interest the Petitioner was recovering from the buyer, it was held that there was no reason to interfere with the view taken by the Fora below.
- d) The Revision Petition was accordingly dismissed.

**vii) Citation:**

Not reported in CPJ and CPR.

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**4. Vatika Limited Vs. Mr. Rajneesh Aggarwal**

**i) Case in Brief:**

The Complainant had purchased a flat and paid a total consideration of Rs.28,35,190/-. As per clause 11.4 of Buyers' Agreement dated February 2004, the possession of the flat was to be given in three years' time i.e by February 2007. However, possession of flat was given on 27.10.2008 i.e. after a delay of one year and eight months. The OP/ Petitioner was to pay Rs.5/- per sq. ft. per month as penalty for the delay in handing over possession which worked out to Rs.1,95,540/-. The Complainant/Respondent had also deposited Rs.3,88,919/- as Registration amount on 21.10.2008 but registration got done only on 13.02.2009. Alleging deficiency in service, the Complainant approached the District Forum which allowed the complaint and directed the OP to pay Rs.1,75,950/- to the Complainant along with interest at 9% per annum, besides awarding Rs.20,000/- for harassment to the

**Deficiency in Service - Construction**

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Complainant and Rs.5,000/- towards cost. The Appeal filed by the Petitioner was dismissed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 09.10.2012 in First Appeal No.1502/2010 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

**iii) Parties:**

Vatika Limited - Petitioner

Vs.

Mr. Rajneesh Aggarwal - Respondent

**iv) Case No and Date of Judgement:**

Revision No:525 of 2013 & Date of Judgement: 22.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) One of the grounds taken by the Petitioner was that the Respondent was a second allottee of the original allotment and that therefore he was not a consumer. The Commission noted that the Respondent/Complainant had purchased the apartment in question from the first transferee on 29.04.2006 when the construction had not been completed and purchase/transfer of the apartment was duly approved by the Petitioner Company after charging Rs.65,840/- as transfer charges. It was therefore held that the Petitioner Company was a service provider to the Respondent/Complainant and was liable for any deficiency in service with reference to the terms and conditions of the agreement.
- b) The Commission agreed with the findings of the fora below that there was deficiency on the part of the Petitioner in not handing over possession of the flat as per the agreement and not paying compensation of Rs.5/- per sq. ft. per month for the delay in delivering possession.

c) The Commission accordingly found no merit in the Revision Petition and dismissed the same.

**vii) Citation:**

III (2014) CPJ 452; 2014(3) CPR 370.

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**5. Dr. N.Y. Kachawalla Vs. The Orbit Corporation Ltd.**

**i) Case in Brief:**

An agreement was entered into between the Complainant, a doctor and the OP regarding the allotment of an apartment admeasuring 695 sq. ft with parking space. The allotment letter was issued by the OP on 21.10.2009. The grouse of the Complainant is that till the filing of the complaint on 07.10.2013, the said apartment was not given to him, although he had paid Rs.1,16,11,340/-. The Complainant's request for payment of interest made through several letters was also refused by the OP. Hence, the present complaint has been filed seeking a direction to the OP to return the amount with interest or in the alternative allot another apartment in Orbit Grand with car parking space and also pay compensation and cost. Complaint allowed.

**ii) Order appealed against:**

Original Complaint

**iii) Parties:**

Dr. N.Y. Kachawalla - Complainant

Vs.

The Orbit Corporation Ltd - Opp. Party

**iv) Case No and Date of Judgement:**

Consumer Complaint No:321 of 2013 & Date of Judgement: 05.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o) and 21(a)(i) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

a) The Commission noted that OP had originally agreed to deliver possession of the finished flat and car parking by 31.08.2013. It rejected the contention of the OP that due to *force majeure*, the

### **Deficiency in Service - Construction**

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OP could not raise the construction and there were problems like eviction of shopkeepers. The Commission observed that before allotment of flats, OP should have anticipated such problems and that eviction of tenants from the said shops had no bearing with the complaint since foundation had already been laid.

- b) The Commission also observed that it was not explained why there was a re-development plan, why and how OP could change the rehabilitation area to be given to tenants from 225 sq. ft to 300 sq. ft etc. There was no evidence as to whether it was brought to the notice of the consumers and they had agreed to the proposal. It was held that the action of OP was arbitrary, despot, unreasonable and unfair.
- c) Relying on the judgement of the Hon'ble Supreme Court in *K.A.Nagamani v. Karnataka Housing Board*, Civil Appeal Nos. 6730-31 of 2012 decided on 19.09.2012, the Commission allowed the complaint and since OP was unable to give the premises in dispute, it directed OP to return the sum of Rs.1,16,11,340/- to the Complainant with interest @ 18% from the date of deposit till the date of realization with litigation charges in the sum of Rs.1,00,000/-. The entire amount was directed to be paid within 45 days.

#### **vii) Citation:**

III (2014) CPJ 568; 2014(3) CPR 638.

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### **6. Dinesh Chandra Joshi Vs. Shambhu Prasad Dhaundiyal**

#### **i) Case in Brief:**

The Complainant entered into a contract with the Petitioner/Opposite Party for construction of his house. It was agreed that construction work would be completed within six months and the cost of construction was agreed @ Rs.550/- per sq. ft over an area of 1700 sq. ft. Accordingly a total sum of Rs.9,35,000/- was to be paid by the Complainant to the opposite party which was paid. During the construction it transpired that the total area to be constructed was 2000 sq. ft. The opposite party asked the Complainant to pay extra amount, failing which, he threatened the Complainant to stop the construction work. Consequently, the Complainant gave three post dated cheques in the

sum of Rs.50,000/- each to the opposite party. It was alleged by the Complainant that the opposite party did not complete the construction work and also took away the construction material from the site. The opposite party also did not return the cheques to the Complainant but the Complainant got the payment of the said cheques stopped through his banker. The opposite party filed a complaint against the Complainant under Section 138 of the Negotiable Instruments Act. The constructed house actually measured 2170 sq. ft. and the total amount recoverable from the Complainant was Rs.11,93,500/-. Alleging deficiency in service, the Complainant filed a complaint before the District Forum which visited the site for inspection and reported that the work was still to be carried out in the house and thereafter directed the opposite party to pay Rs.1,04,546/- to the Complainant. Aggrieved by that order, an appeal was filed before the State Commission which dismissed the same. Challenging the said order, the present Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 29.08.2013 in Appeal No.422 & 423 of 2010 of the Uttarakhand State Consumer Disputes Redressal Commission, Dehradun.

**iii) Parties:**

Dinesh Chandra Joshi

- Petitioner/OP

Vs.

Shambhu Prasad Dhaundiyal

- Respondent/Complainant

**iv) Case No and Date of Judgement:**

Revision Petition No.1125 of 2014 with I.A. 1026 of 2014(For Stay) &

Date of Judgement: 25.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the case pointed out that in the proceedings before the District Forum both parties admitted that the construction of house was to be made at Rs.550/- per sq. feet and total constructed area came 2170 sq. feet and thus

### **Deficiency in Service - Courier Service**

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the total construction cost as per O.P. was Rs.11,93,500/-. But as per Complainant cost of area of 2000 sq. total cost Rs.9,50,000/- was paid and the O.P. has not completed the entire construction work.”

- b) The State Commission had not given any finding regarding 2170 sq. ft. There was no deficiency on the part of the petitioner/ opposite party. He stopped the work because the petitioner had refused to pay the balance amount and cheques issued by him got bounced. These things were not considered by both the fora.
- c) The National Commission noted that an amount of Rs.93,500/- was reduced from Rs.11,93,500/- payable by the Complainant. Out of the remaining Rs.11 lakhs, Complainant had paid Rs.9,35,000/- leaving a balance of Rs.1,65,000/-. It was further noted that Complainant had given three cheques of Rs.50,000/- each for a total amount of Rs.1,50,000/-. He still had to pay Rs.15,000/- to OP.
- d) The record also revealed that the Complainant had spent Rs.1,04,546/- for which he was given the concession of Rs.93,500/-. The difference is of Rs.11,046/- but he had to account for Rs.15,000/-. It was therefore held that the Complainant stood benefited.
- e) In the circumstances, the Revision Petition was allowed and the orders of the fora below were set aside. Complaint was dismissed.

#### **vii) Citation:**

2014(3) CPR 788.

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#### **(k) COURIER SERVICE**

##### **1. K.N. Pareek Vs. M/s. Akash Ganga Courier Ltd. & Anr.**

##### **i) Case in Brief:**

It is the case of the Petitioner/Complainant that he handed over an envelope addressed to M/s. A. Adarsh Law Firm, Delhi to Respondent No.2/OP.No.2 on 27.01.2009 and obtained receipt. The Respondent returned the letter undelivered to the Petitioner on 01.02.2009

mentioning “always closed”. On receipt back of the envelope, the Petitioner sent another copy of the letter with the same address through Post Office under Registered AD and it was properly delivered. Alleging deficiency in service Complainant approached the District Forum which dismissed the complaint. Petitioner’s appeal to the State Commission was also dismissed vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 14.12.2012 in Appeal No.217/2011 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

**iii) Parties:**

K.N. Pareek - Petitioner

Vs.

M/s. Akash Ganga Courier Ltd. & Anr. - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.494 of 2013 & Date of Judgement: 27.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g),(o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Petitioner had alleged in the Revision Petition that the concerned staff of the Respondent did not go to the address, may be because it was located far away from the Respondent’s office in Delhi. The Commission observed that the Petitioner had placed no evidence on record to support the same. He had also not placed on record proof of letter sent through Registered AD. There was also no proof that both the envelopes were addressed to the same addressee and at the same address.
- b) The Commission agreed with the District Forum that merely because the envelope was returned after 4 days, it cannot be stated that the time was too short to effect delivery and it did not prove that the Respondents made no attempt to deliver the envelope.

**Deficiency in Service - Educational Services**

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c) The Commission found no jurisdictional error, illegality or infirmity in the order passed by the fora below warranting their interference. The Revision Petition was accordingly dismissed as devoid of merit.

**vii) Citation:**

III (2014) CPJ 159.

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**(1) EDUCATIONAL SERVICES**

**1. FIITJEE Ltd. Vs. Sajjan Kumar Gupta**

**i) Case in Brief:**

The case of the Complainant was that his son had got All India Rank 34 in the FIITJEE Talent Reward Examination (FTRE) 2011 and as per FIITJEE prospectus he was eligible for the cash award of Rs.1,25,000/- for the coming three sessions but was denied by FIITJEE because of fictitious terms and conditions. In the year 2012 also, his son again got 38<sup>th</sup> All India Rank in FTRE 2012 and became eligible for cash award of Rs.1,00,000/- for the next two sessions and was again denied the award. He also alleged that these awards were neither given to old students nor given to new students but were advertised only as business tactics. Aggrieved by the act of OPs, Complainant did not want to continue his studies with FIITJEE and hence demanded refund of the money paid for the session 2013-14-2015, well before the commencement of the next session. However, the Petitioner refused to refund the said fees, following which, a consumer complaint was filed before the District Forum which found the complaint devoid of any merit and dismissed the same. However, on an appeal filed by him, the State Commission directed refund of Rs.51,831/- and Rs.5,000/- as cost of litigation vide impugned order against which the present Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 20.08.2013 in First Appeal No.261/2013 of State Consumer Disputes Redressal Commission, U.T. Chandigarh.

**iii) Parties:**

FIITJEE Ltd.

- Petitioner /OP

Vs.

Sajjan Kumar Gupta

- Respondent/Complainant



**iv) Case No and Date of Judgement:**

Revision Petition No.4476 of 2013 & Date of Judgement: 21.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the records found that out of the total tuition fee of Rs.82,000.00, a rebate of Rs.73,800/-, amounting to 90% of the fees was given to the son of the Complainant. The examination fees of Rs.8,000/- and (AITS + GMP + RTPF) fee of Rs.4,000/- was completely waived, based on the performance of the student in the FTRE Examination. The only amounts charged from the student were Rs.33,000/- as admission fee, Rs.32,000/- as Infrastructure cost fee and 10% of the tuition fee. It made it clear therefore, that the contention made by the Complainant in his complaint that awards were only promised, but not given, based on performance in FTRE, was not substantiated from the facts on record. The Complainant had stated in his complaint that in the subsequent years as well, the student appeared in FTRE and based on its performance; he was entitled to be given Rs.1.25 lakhs in FTRE-2011 and another Rs.1.00 lakh for FTRE-2012 which were also not substantiated. The Petitioners had only charged the infrastructure cost fee and admission fee and 10% of the tuition fees from the student.
- b) Relying on the decision of Hon'ble Supreme Court in *Islamic Academy of Education Vs. State of Karnataka* (2003) 6 SCC 697, it was held that there was no justification for the refund of the fee, if the student had left the course midstream.
- c) In view of the above, the present Revision Petition was allowed and the order passed by the State Commission was set aside and the order passed by the District Forum was confirmed.

**vii) Citation:**

III (2014) CPJ 27;

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**2. M.K. Gupta Vs. Green Field Public School**

**i) Case in Brief:**

Complainant/Petitioner's son, Aman Gupta, who was a student of OP's school appeared in the All India Secondary Examination in 2008. After the examination, he received certificate with photograph of a girl instead of Aman Gupta. Complainant approached OP.1 for correction of certificate from O.P.3. OP.1 asked Complainant to deposit Rs.15,000/- as expenses for the said work. Complainant's visit to OP.3's office for correction of certificate did not yield the desired result. He filed complaint before the District Forum which allowed the complaint and directed OP.1 to get the SSE Certificate from the Board with the photograph of Aman Gupta and issue the same to the Complainant. It also awarded Rs.25,000/- as compensation and Rs.2,000 as cost. Appeal filed by the OP was allowed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 09.04.2013 in F.Appeal No.329/2012 of the U.P State Consumer Disputes Redressal Commission, Lucknow.

**iii) Parties:**

M.K. Gupta - Petitioner/Complainant

Vs.

Green Field Public School - Respondent/Opp. Party

**iv) Case No and Date of Judgement:**

Revision Petition No:2583 of 2013 & Date of Judgement: 11.08.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) During the course of arguments, Counsel for the CBSE handed over fresh certificate to the Counsel for the Petitioner with photograph of Aman Gupta. The Certificate was complete in all respects.
- b) The Commission noted that on complaint being made by Complainant to OP.1, OP.1 sent examination certificate for correction to OP.3 and had extended full co-operation to get fresh

certificate from CBSE. It was therefore held that OP.1 was not at fault and no deficiency could be imputed on the part of OP.1. Since there was no illegality or irregularity or jurisdictional error in the State Commission's order, it was upheld and the Revision Petition was dismissed.

- c) The Commission observed that there was mistake on the part of OP.3 in issuing the certificate to Aman Gupta with photo of a girl and since District Forum did not allow complaint against OP.3 and since the Complainant also did not prefer any appeal against the order of District Forum, no compensation for negligence on the part of OP.3 was payable to the Complainant.

**vii) Citation:**

III (2014) CPJ 561; 2014(3) CPR 539.

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**(m) ELECTRICITY CHARGES**

**1. R.N. Trivedi Vs. State of UP and others**

**i) Case in Brief:**

Complainant/Petitioner was provided electricity connection for the tube well in his village by the OP/Respondent. Complainant used to pay Rs.250/- per month @ Rs.50/- per horse power per month for the meter for 5 horse power and Rs.15/- per month for light and fan. OP vide bill dated 11.12.1999 demanded Rs.1,93,179/- for 56,438 units for the period from 15.07.1994 to 30.11.1999. OP disconnected the power connection on 11.03.2000 and sent another bill dated 10.01.2001 for Rs.2,63,806/- on the basis of 725 units from 30.11.2000 to 31.12.2000 whereas in the bill last reading was shown as zero. It is the Complainant's contention that no electricity was used since 11.03.2000 as supply was disconnected. Alleging deficiency in service, he filed complaint before the District Forum which allowed the complaint and quashed bills dated 11.12.1999 and 10.01.2001 as also the demand notice dated 25.06.2002 for Rs.4,21,138/-. The Forum also allowed compensation of Rs.20,000/- and Rs.1,000/- as cost. Appeal filed by the OP was allowed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition allowed.

**Deficiency in Service - Electricity Charges**

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**ii) Order appealed against:**

From the order dated 29.11.2007 in F.Appeal No.913/03 of State Consumer Disputes Redressal Commission, Uttar Pradesh.

**iii) Parties:**

R.N. Trivedi

- Petitioner

Vs.

State of UP and others

- Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No:3006 of 2008 & Date of Judgement: 08.09.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission noted that rate schedule of LMV-5 was applicable to power consumers getting supply as per rural schedule in the private tube well/pumping sets for irrigation purposes and LMV-6 was applicable to consumers having contracted load upto 100 HP for industrial/processing or agro industrial purposes, pumping sets getting supply other than rural schedule. It was held that Petitioner's case fell under rate schedule LMV-5 and that the District Forum had rightly quashed demands raised by bills dated 11.12.1999 and 10.01.2001 and that the State Commission committed error in allowing the appeal and dismissing the complaint.
- b) However, the National commission held that the District Forum was not correct in quashing the demand notice dated 25.06.2002 for Rs.4,21,138/- when no such prayer was made by the Complainant. To this extent the order of the District Forum was modified and Respondent was directed to charge @ Rs.265/- per month from the Petitioner till the rate schedule is revised and the rest of the order of the District Forum was confirmed.

**vii) Citation:**

IV (2014) CPJ 262; 2014(4) CPR 252.

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## **2. Chief Engineer and others Vs. Virender Kumar**

### **i) Case in Brief:**

Complainant/Respondent was residing as tenant along with other two tenants who received bill No.14203 dated 04.01.2007 for Rs.15,488/- including Rs.14,245/- as sundry charges for the period 04.10.2006 to 04.12.2006. Sundry charges were levied as average charges on account of meter dead stop, but there was no mention as to which period the charges pertained to and when meter remained dead and replaced. Alleging deficiency on the part of Opposite Party, Complainant filed complaint before the District Forum which dismissed the complaint. Appeal filed by the Complainant before the State Commission was allowed vide impugned order against which this Revision Petition has been filed. Revision Petition partly allowed.

### **ii) Order appealed against:**

Against the order dated 05.03.2008 in Appeal No.632 of 2007 of State Commission, UT Chandigarh.

### **iii) Parties:**

Chief Engineer and others - Petitioners

Vs.

Virender Kumar - Respondent

### **iv) Case No and Date of Judgement:**

Revision Petition No:1977 of 2008 & Date of Judgement: 10.09.2014.

### **v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986 & Sales Manual Instructions No.115.

### **vi) Issues raised and decided:**

- a) The National Commission relied on Sales Manual Instructions No.115 which makes it crystal clear that in case of defective, dead stop or burnt meter, firstly, it should be replaced immediately and secondly, on the basis of average consumption of last 4 or 6 months or average of the same months of the previous year or the actual recorded consumption, whichever is higher, is to be charged. Perusal of records showed that the Petitioner had charged @ 473 units per month on the basis of

### **Deficiency in Service - Electricity Service**

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average consumption for the period 04.02.2006 to 04.08.2006 which was contrary to the Manual Instructions No.115.

- b) It was pointed out by the National Commission that perusal of meter reading showed that meter was defective as there was nil reading from 4.4.2005 to 4.6.2005. Only one unit was recorded from 4.8.2005 to 4.10.2005 and similarly, less units were recorded in comparison to previous and subsequent months reading and in such circumstances, grant of compensation of Rs.5,000/- to Complainant by the State Commission was not justified and rest of the order i.e awarding Rs.1,100/- as litigation cost was upheld. The Revision Petition was thus partly allowed.

**vii) Citation:**

2014(4) CPR 98.

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**(n) ELECTRICITY SERVICE**

**1. Ashok Kumar Vs. Uttarakhand Power Corporation Ltd and others**

**i) Case in Brief:**

The Complainant had obtained an electricity connection for running a tube-well in his field. No meter for the aforesaid connection was installed by the Respondent prior to 07.02.2008. At the time of installation of the meter on 07.02.2008, there were arrears of Rs.15,430/- against the aforesaid connection. A reading was taken on 28.02.2008 and the consumption was found to be 360 units for which a bill of Rs.252/- was raised. However, the total amount payable at that time was Rs.15,688/-, since the arrears of Rs.15,430/- was still payable at that time. Thereafter, no reading of the meter was taken for more than one year. A perusal of the bill for the period from 30.10.2010 to 30.11.2010 payable on 27.12.2010 would show that the Respondents had been raising bills for 700 units each. It was also the case of the Complainant that the respondent had not been taking reading of the meter installed at the tube-well of the petitioner/Complainant on a monthly basis. On the ground of deficiency in service against the OP, the present Revision Petition had been filed. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 01.12.2010 in FA No.109 of 2010 of Uttarakhand State Consumer Disputes Redressal Commission at Dehradun

**iii) Parties:**

Ashok Kumar

- Petitioner

Vs.

Uttarakhand Power Corporation Ltd and others

- Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.824 of 2011 & Date of Judgement : 07.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission held that the respondent was under an obligation to take reading of the meter and raise bill accordingly on a regular basis. That having not been done and no justification having been shown for not taking the reading on a regular basis, there was a clear case of deficiency on the part of the Respondents in providing services to the petitioner/Complainant
- b) The National Commission after perusal of the records directed the Respondent to pay Rs.10,000/- as compensation to the Petitioner/Complainant for the deficiency in services rendered to him, by not taking reading of the meter on a regular basis, between 28.02.2008 to 30.03.2009 and then 30.03.2009 to 30.11.2009. The Commission also directed the Respondent to supply copies of all the bills of electricity for the period 07.02.2008 onwards, till the time the connection was disconnected, to the Petitioner, within four weeks from the date of the order. The payment of Rs.10,000/- shall be made within four weeks from the date of order failing which it would carry interest at the rate of 12% per annum. The Commission also permitted the Petitioner to apply for restoration of the said meter as per the rules of the Respondent, since the electricity meter was disconnected after filing of the complaint. The Revision Petition was accordingly allowed.

**vii) Citation:**

Not reported in CPJ and CPR.

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**Deficiency in Service - Electricity Service**

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**2. Renu Singh Vs. Prabandh Nidheshshak Pachimanchal Vidyut Vitran Nigam Ltd**

**i) Case in Brief:**

The Complainant opened a Ladies Beauty Parlour Shop at Civil Lines for her livelihood. She applied for 1KW electricity connection on 11.09.2008 and deposited an amount of Rs.2,350/-. The electricity connection was given on the same day, but the meter was not installed instantaneously. In the meantime, on 15.10.2008, the electricity connection of the Beauty Parlour was disconnected by the Prabandh Nidheshshak Pachimanchal Vidyut Vitran Nigam Ltd/OP1. Alleging deficiency in service, she filed the complaint before the State Commission which dismissed the same. On dismissal of the complaint, the Complainant/Petitioner has filed this Revision Petition. Revision Petition dismissed.

**ii) Order appealed against:**

From order dated 13.12.2011 in First Appeal Nos.210/2011 & of the State Consumer Disputes Redressal Commission, U.P., Lucknow.

**iii) Parties:**

Renu Singh - Petitioner

Vs.

Prabandh Nidheshshak Pachimanchal Vidyut Vitran Nigam Ltd - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.1396 of 2012 & Date of Judgement: 14.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the records of the case found that as per Rule 4.1 of U.P. Electricity Supply Code, 2005, the Complainant was not entitled to electric connection as there was outstanding on the previous connection. The main covenant of the agreement entered into between the parties in para No.5, clearly mentioned that the Board shall supply LT



electrical energy to the successor consumer at the premises on the same terms and conditions as are contained in the said agreement.

- b) In view of the above, the Commission held that there was no merit in the Revision Petition filed by the Complainant and it was dismissed. The Commission also imposed a cost of Rs.10,000/- to be paid by the Complainant to the OP/ Electricity Board, within a period of 45 days, from the date of receipt of the order failing which it will pay interest @ 9% p.a., till its realization for filing a vexatious, frivolous and misleading suit. Further, direction was given to the OP to disconnect the electricity immediately, installed due to interim order passed by the Commission on 11.09.2013. After paying the due amount of Rs. Rs.5,88,000/-, the Electricity Board could resume the services to the Complainant.

**vii) Citation:**

Not reported in CPJ and CPR.

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**(o) ELECTRICITY SUPPLY**

**1. Vikas Gupta and another Vs. Sub Divisional Officer, U.H.B.V.N & Anr.**

**i) Case in Brief:**

Petitioners' father was a consumer of the Respondent/OPs' having an Electricity connection (Domestic) for his residence. Though he had cleared all his dues, the Respondents issued a letter dated 25.08.2010 vide which they transferred a sum of Rs.2,15,710/- which was outstanding in another account in the name of M/s. B.R. Spintex Pvt. Ltd. in the account of the Complainant. The Complainant challenged the action of the Respondent by filing a complaint before the District Forum. The Respondents claimed that the Complainant was the Proprietor/Authorised signatory through Power of Attorney of M/s. B.R. Spintex Pvt. Ltd. and he had sole liability of the alleged connection. The District Forum dismissed the Complaint. The appeal filed by the legal heirs of the Complainant was also dismissed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition allowed.

**Deficiency in Service - Electricity Supply**

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**ii) Order appealed against:**

From the order dated 05.06.2012 in Appeal No.670/2012 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

**iii) Parties:**

Vikas Gupta and another - Petitioners

Vs.

Sub Divisional Officer, U.H.B.V.N and Anr. - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No:2415 of 2012 & Date of Judgement: 22.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission observed that though the late father of the Petitioners had signed the documents in connection with the Electricity connection for and on behalf of the Company M/s. B.R. Spintex Pvt. Ltd. as its director and authorized signatory, it would be wrong and against the provisions of law to treat the Petitioners' father as an individual having a separate domestic connection on the same footing as the signatory on the documents for and on behalf of the separate legal entity. The Commission held that Respondents committed a mistake in mixing up the two separate accounts which happened to held by the same person but in different legal capacity. Consequently the Commission set aside the impugned orders of the fora below. The memo dated 25.08.2010 whereby the amount of Rs.2,15,710/- had been transferred by the Respondents in the account of the Petitioners was also set aside. The Respondents were directed to pay an amount of Rs.25,000/- to the Petitioners as compensation for the agony and harassment caused to them besides Rs.10,000/- towards cost of legal proceedings within a period of four weeks from the date of the order.

**vii) Citation:**

III (2014) CPJ 467; 2014(3) CPR 374.

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**2. Shri Radhey Shyam Vs. Sub Divisional Officer, UHBVAN**

**i) Case in Brief:**

Complainant/Petitioner was having two electricity connections, one bearing account no. NR-13-766 of single phase for domestic purpose and another bearing account no. NR-3/2 of three phase for non-domestic purpose. On 24.06.2001, the shop as well as the residential portion of the Complainant was damaged by the administration due to which the meter of the Complainant was broken. The new meter installed two days later also stopped working within a few days. The Complainant alleged that on 19.04.2002, officials of the O.P removed the meter and the cable without any notice with the help of police and that the meter in respect of connection No.NR-3/2 was also running fast. A check meter was installed by the OP on 01.12.2000 on Complainant's request. The Complainant alleged that the meter installed at his premises was running 52% faster than the parallel/check meter. Complainant asked OP to correct the consumption bills or to charge on average basis of previous consumption but OP failed to pay any heed. Alleging deficiency in service and unfair trade practice, he filed complaint before the District Forum which dismissed the complaint. Appeal filed by the Complainant before the State Commission was also dismissed vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 26.07.2010 in F.Appeal No.1776/2003 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

**iii) Parties:**

Shri Radhey Shyam - Petitioner/Complainant

Vs.

Sub Divisional Officer, UHBVAN - Respondent/OP

**iv) Case No and Date of Judgement:**

Revision Petition No:3706 of 2010 & Date of Judgement: 21.08.2014.

**v) Acts and Sections referred:**

Sections 2(1), (g), (o), ( r), 19 and 21(b) of the Consumer Protection Act, 1986.

## **Deficiency in Service - Electricity Supply**

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### **vi) Issues raised and decided:**

The Commission noted from the order of the State Commission that under the instruction of the civil administration, encroachments in the area were removed due to which the meter installed at the premises of the Complainant was got damaged. It was the Complainant who did not comply with the directions of the Nigam despite the fact that the officials of the Nigam requested the Complainant to handover the meter in question. Complainant neither handed over the meter nor allowed the officials to enter his premises and as such OPs had no other option except to issue bills on average basis. Moreover, the Complainant failed to produce the clearance certificate that was asked for. The National Commission also noted that the Petitioner could not place on record any evidence to substantiate his argument that his meter was running fast compared to the check meter. The Commission did not find any illegality, irregularity or jurisdictional error in the impugned order to warrant interference and accordingly dismissed the Revision Petition.

### **vii) Citation:**

IV (2014) CPJ 130; 2014(3) CPR 807.

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## **3. Jaipur Vidyut Vitran Nigam Ltd Vs. Balu Ram**

### **i) Case in Brief:**

Respondent/Complainant is a resident of village Dholavas, Tehsil Lalsot and he had lands situated at village Ramsar and Dholavas. He applied for agricultural connection on his land situated at village Ramsar on 01.09.1993. After a number of years, when his turn came, a demand notice dated 10.04.2008 was issued for depositing Rs.22,260/- which amount was deposited on 08.05.2008. Respondent claimed that he deposited the amount while the Petitioner claimed that the amount was paid by the present owner, Manna Lal, who had purchased the said land from the Respondent. Thereafter, Respondent made an application for shifting the electric connection which stood in his name from the present location Ramsar to agricultural land situated at Village, Dholavas for which he paid application fee of Rs.75/-. The Petitioner however did not issue the demand notice and did not shift the connection on the ground that respondent was not in possession of the land. Respondent filed a complaint before the District Forum which

dismissed the complaint. On appeal by the Respondent, the State Commission set aside the District Forum's order and ordered that the connection of the Complainant be shifted to village Dholavas. It was further ordered that the Complainant would be entitled for a sum of Rs.20,000/- as compensation for mental agony and Rs.5,000/- towards litigation cost. Aggrieved by the said order, the present Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 27.09.2013 in Appeal No.817 of 2011 Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

**iii) Parties:**

Jaipur Vidyut Vitran Nigam Ltd - Petitioner

Vs.

Balu Ram - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No: 4875 of 2013 with I.A No.8119 and 8120 of 2013 (For Stay and Exemption from filing translation documents) &

Date of Judgement: 09.09.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission noted that the Patwari in his report dated 25.04.2008 had identified the owner of the land as Manna Lal and four others. Therefore, Respondent's claim that the land was still in his name in the revenue record was rejected.
- b) The National Commission upheld the decision of the State Commission that the purchasers should have been made necessary parties and in the interest of justice, the Respondent should have impleaded them as their right would be affected by the transfer of the electricity connection. It was also noted that no affidavit containing their 'no objection' was filed by the Respondent. The Commission held that the Respondent was trying to take advantage of the fact that the connection continued in his name as the present owners had not got it transferred in their

### **Deficiency in Service - Electronic Services**

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name and was trying to go behind their back to get the connection transferred to the small piece of land subsequently purchased by him.

- c) The National Commission accordingly allowed the Revision Petition, set aside the order of the State Commission and upheld the order of the District Forum that 'by not shifting the electric connection from Ramsar to Dholavas, Petitioner has not committed any deficiency of service'. The Complaint was dismissed.

#### **vii) Citation:**

IV (2014) CPJ 338; 2014(4) CPR 234.

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#### **(p) ELECTRONIC SERVICES**

##### **1. Ortel Communications Ltd and another Vs. Sudatta Jeevan**

#### **i) Case in Brief:**

Complainant, a student of Electronics & Telecommunication Engineering, obtained an internet connection from the Petitioner, which was activated on 01.10.2005. At about 2.00 PM on 09.10.2005, the modem which the petitioner had supplied to the Complainant, exploded, as a result of which the entire computer unit including the UPS, cable LAN and the modem got burnt. The case of the Complainant was that at the time the explosion took place the computer system was not in operation and the power had been switched off. Based upon the report of its technical team, the petitioner informed the Complainant that the explosion was not on account of any power leakage in the cable network. Being aggrieved from the stand taken by the Petitioner, the Complainant approached the State Commission which directed the petitioner to pay a consolidated sum of Rs.1,00,000/- to the Complainant towards price of the computer system, compensation for mental agony and cost of litigation. Being aggrieved from the order of the State Commission, the petitioner has filed this present First Appeal. First Appeal allowed.

#### **ii) Order appealed against:**

From the order dated 26.10.2007 in CC No.88 of 2005 of Orissa State Consumer Disputes Redressal Commission at Cuttack.

**iii) Parties:**

Ortel Communications Ltd and another - Appellants

Vs.

Sudatta Jeevan - Respondent

**iv) Case No and Date of Judgement:**

First Appeal No:706 of 2007 & Date of Judgement: 21.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The issue involved in this case was whether the explosion took place because of the leakage in the internet cable provided by the OPs.
- b) The National Commission on perusal of the records found that RF port of the UPS, through which internet signals were received by the modem, was found intact after the explosion. Neither it had burnt nor had it got damaged. Had the electric current passed from the electric pole to the RF port through the internet cable wire as was claimed by the Complainant, the RF port would have got burnt or fully damaged.
- c) The Commission further pointed out that incident of explosion occurred due to back flow of the current from the UPS which the Complainant had installed for the purpose of providing uninterrupted power supply to her computer system and the said back flow from the UPS entered the CPU which admittedly was connected to the UPS. Such back flow could be due to some malfunctioning or fault in the UPS.
- d) As regards the contention of the Complainant that the other gadgets and appliances available in her premises had not got burnt or damaged, the Commission observed that nothing really turns on it since only those appliances would be affected which receive electric current at a rather high voltage. In case the appliances are switched off and/or were not receiving electric current at a high voltage, there could be no question of their getting burnt or damaged.

**Deficiency in Service - Employment Offer**

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e) In view of the above, the Commission held that the Complainant had failed to prove that Complainant's system got damaged on account of some negligence or deficiency in service. Therefore, the Commission allowed the present appeal and set aside the order of the State Commission.

**vii) Citation:**

IV (2014) CPJ 97.

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**(q) EMPLOYMENT OFFER**

**1. M/s. Destination One Pvt. Ltd Vs. Ms. Punit Pal Kaur Guron and another**

**i) Case in Brief:**

Respondent No.1/Complainant had taken admission at the Institute of the Petitioner and Respondent No.2/Opposite Party No.2, vide agreement dated 18.07.2005. According to the said agreement, there was training of six months and after conclusion of the training, petitioner was to provide job to respondent No.1, within 9 months of the signing of the contract, failing which it was liable to refund the whole amount to her. Respondent No.1 completed six months training on 18.01.2006, starting from 18.07.2005. A certificate in this regard was issued by the petitioner. However, as per terms and conditions of the agreement, it failed to provide her job. Alleging deficiency in service, a complaint was filed by Respondent No.1 before the District Forum which directed OP-1 to refund Rs.75,000/- along with interest @ 9% from the dates of respective deposits till realization, Rs.5,000/- as compensation for mental agony and harassment, Rs.2,500/- as costs of litigation. Aggrieved by the order of the District Forum, Petitioner filed an appeal before the State Commission, which dismissed the appeal. Against the order of the State Commission, the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

Against order dated 15.11.2007 in First Appeal No.547 of 2007 of the State Consumer Disputes Redressal Commission, U.T., Chandigarh.



**iii) Parties:**

M/s. Destination One Pvt. Ltd - Petitioner

Vs.

Ms. Punit Pal Kaur Guron and another - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.670 of 2008 & Date of Judgement: .08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National commission on perusal of the records agreed with concurrent findings of fact given by both the fora below that no job was offered by the petitioner to respondent no.1, during the period specified in the agreement. Therefore, the present Revision Petition was dismissed as devoid of merit and orders of the fora below were confirmed.

**vii) Citation:**

IV (2014) CPJ 473.

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**(r) FINANCIAL SERVICES**

**1. Javed @ Sakir Ali Vs. Shriram Transport Finance Co. Ltd. & Anr.**

**i) Case in Brief:**

The Petitioner purchased Truck for a sum of Rs.5,35,000/- on 30.01.2008 after availing finance from Respondent company. However he committed default in payment of installments. It is his case that he had paid as much as Rs.7,00,000/- to the Respondent but possession on the truck was taken forcibly from him on 20.08.2011. It is also his case that the Respondent demanded Rs.5,00,000/- from him for release of the vehicle. He filed complaint before the District Forum which allowing the complaint directed the Respondent to pay a sum of Rs.6,15,084/- towards the cost of the vehicle along with litigation expenses amounting to Rs.20,000/- along with interest at 12% p.a. from

**Deficiency in Service - Financial Services**

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the date of complaint. On appeal filed by the Respondents the Forum's order was set aside by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 26.03.2014 in First Appeal No.21/2014 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

**iii) Parties:**

Javed @ Sakir Ali - Petitioner

Vs.

Shriram Transport Finance Co. Ltd. & Anr. - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.2548 of 2014 & Date of Judgement: 11.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission observed that a release order was issued on 13.04.2012 in compliance with the order passed by the District Forum on 10.04.2012 directing the Respondent to handover the vehicle to the Complainant within three days. The Complainant/Petitioner had signed the letter and noted in his own hand that he was receiving the release order and had been asked to take delivery of the vehicle from Nangal yard. From the records made available the Commission concluded that the Petitioner/Complainant had taken the delivery of the vehicle on 16.04.2012. The Commission did not believe the version of the Complainant that he did not take delivery of the vehicle. The Commission found no reason to interfere with the order of the State Commission and dismissed the Revision Petition.

**vii) Citation:**

Not reported in CPJ and CPR.

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**2. Venva Light Metal Ltd Vs. Smt. Arpitha Reddy**

**i) Case in Brief:**

It was the case of the Respondent/Complainant that she paid an amount of Rs.1.00 lakh by way of cheque and Rs.1.40 lakh by way of cash in installments for allotment of shares and the same had been acknowledged by Petitioner in their Board Meeting held on 31.01.2001. But petitioner did not allot the shares nor refund of the amount. Therefore, respondent got issued legal notice dated 11.04.2002 demanding to pay Rs.2.40 lakhs with interest @ 24% p.a. from 31.01.2001. Petitioner replied on 25.04.2002 expressing its inability to pay on the ground that they did not have particulars and requested the respondent to furnish them. Accordingly, Respondent furnished a copy of the Board Resolution dated 31.01.2001 and Bank Statement showing withdrawal of an amount of Rs.1.00 lakh by the petitioner. In response to Respondent's notice dated 04.05.2002, Petitioner issued reply dated 16.05.2002 admitting receipt of Rs.1.00 lakh and stated that the cheques issued by the Respondent, bearing Nos.200509 and 200510 of Andhra Bank, Malakpet could not be realized. Alleging deficiency in service on the part of OPs, she filed complaint before the District Forum which dismissed the complaint. Being aggrieved, Complainant filed an appeal before the State Commission which directed the petitioner to pay Rs.2,40,000/- to the Complainant with interest @ 9% on Rs.1,00,000/- from 31.01.2000 and on Rs.1,40,000/- from 31.01.2001 and Rs.2,000/- as cost. Against the order of the State Commission, the present Revision Petition has been filed by the OP. Revision Petition dismissed.

**ii) Order appealed against:**

Against order dated 10.09.2007 in First Appeal No.306 of 2005 of A.P. State Consumer Disputes Redressal Commission, Hyderabad.

**iii) Parties:**

Venva Light Metal Ltd

- Petitioner

Vs.

Smt. Arpitha Reddy

- Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.3941 of 2007 & Date of Judgement : 01.08.2014.

**Deficiency in Service - Financial Services**

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**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the Board Resolution dated 31.01.2001 (produced by Petitioner himself) found that they had received the entire consideration from the Complainant and had also allotted Rs.2.40 Lakhs worth of shares of their Company, to the Complainant. However, Petitioner after having received the entire consideration amount did not send shares worth Rs.1.40 Lakhs to the Complainant. Therefore, deficiency on the part of the Petitioner-Company was clearly made out. Further, the Commission rejected the contention of the Petitioner that the Complainant is not a consumer stating that the Complainant has not been indulging in trading of the shares.
- b) In view of the above, the Commission dismissed the present Revision Petition with cost of Rs.10,000/- to be deposited to the 'Consumer Legal Aid Account' and the orders of the fora below were confirmed.

**vii) Citation:**

III (2014) CPJ 621; 2014(3) CPR 291.

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**3. Stock Holding Corporation of India Ltd Vs. Snehlata Agarwal**

**i) Case in Brief:**

Complainant/Respondent opened Demat A/c in the name of M/s. Snehlata Agarwal and Bharat Kumar Agarwal in the office of OP. On 25.07.2000, Complainant deposited 500 shares of M/s. Antarkita Graphics Ltd for Demat but after three months OP informed Complainant that Demat application had been rejected by M/s. Antarkita Graphics Ltd. Alleging deficiency on the part of OP, Complainant approached the District Forum which allowed the complaint and directed OP to pay Rs.21,120/- which was the alleged loss sustained by the Complainant due to increase in price of shares. Appeal filed by the Petitioner/OP was dismissed by the State Commission vide impugned order, against which the present Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 31.01.2008 in F.Appeal No.2631 of 2002 of the U.P State Consumer Disputes Redressal Commission, Lucknow.

**iii) Parties:**

Stock Holding Corporation of India Ltd - Petitioner/OP

Vs.

Snehlata Agarwal - Respondent/Complainant

**iv) Case No and Date of Judgement:**

Revision Petition No:1425 of 2008 & Date of Judgement: 11.08.2014.

**v) Acts and Sections referred:**

Sections 2(1), (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission observed that the role of the Petitioner was only to transmit the shares to NSDL for the dematerialization and the concerned company whose shares were to be dematerialized were to accept or to refuse the request. In the present case, the Complainant had deposited the Share Certificate for Demat on 25.07.2000 and OP/ Petitioner had dispatched them on 01.08.2000. It was seen from records that Petitioner had given repeated reminders for earliest dispatch of the rejected share certificate but since the concerned company did not send them, Petitioner could not have returned shares to the Complainant. The Commission found nothing on record to show that the Petitioner either delayed in dispatching the share certificates for dematerialization or retained them after rejection of request for a considerable period. Consequently, the Revision Petition was allowed and orders of the fora below were set aside.

**vii) Citation:**

III (2014) CPJ 632; 2014(3) CPR 538.

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**4. M/s. Mahindra & Mahindra Financial Services Ltd Vs. M.Nagaraja**

**i) Case in Brief:**

Complainant purchased a Renault car for a consideration of Rs.6,10,000/- out of which Rs.4,90,000/- was financed by the Petitioner. The loan was to be repaid in 48 equated monthly installments of

### **Deficiency in Service - Financial Services**

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Rs.14,685/-. The Complainant paid Rs.2,87,698/- between 12.03.2009 & 23.12.2010. On 14.01.2011, the Petitioner required Complainant to pay arrears of Rs.73,000/- and warned that vehicle would be seized in case it was not done. The Complainant's case is that the vehicle in question was seized and despite the notice issued by him on 31.03.2011 to release the vehicle, the vehicle was eventually sold by the Petitioner on 26.05.2011. The Complainant approached the District Forum which directed the Petitioner to pay a sum of Rs.4,00,000/- to the Complainant towards damages, Rs.50,000/- on account of deficiency in service and Rs.5,000/- as cost. On appeal, the State Commission vide impugned order, reduced the amount payable to Rs.1,00,000/- along with Rs.5,000/- towards cost, against which the present Revision Petition has been filed. Revision Petition dismissed.

#### **ii) Order appealed against:**

From the order dated 25.04.2014 in F.A.No.321of 2012 of Andhra Pradesh State Consumer Disputes Redressal Commission, Circuit Bench at Tirupati.

#### **iii) Parties:**

M/s. Mahindra & Mahindra Financial Services Ltd - Petitioner

Vs.

M.Nagaraja

- Respondent

#### **iv) Case No and Date of Judgement:**

Revision Petition No:2679 of 2014 with I.A.No.4322 of 2014 & I.A.No.5646 of 2014 (For Stay, Waiver of Cost) &

Date of Judgement: 27.08.2014.

#### **v) Acts and Sections referred:**

Sections 2(1), (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

#### **vi) Issues raised and decided:**

The Commission noted that there was no public auction held for the sale of the vehicle in question. No notice was published in the newspaper either. The Commission held that no reasonable opportunity was given to the members of the Public including the Complainant to participate in the process of sale and consequently, it cannot be said that the vehicle sold by the Petitioner fetched an optimum price. Since

it was not known on what basis the bidders from whom quotations were invited were selected by the Petitioner Company, the Commission found no reason to interfere with the order of the State Commission holding the Petitioner Company deficient in rendering service. Accordingly, the Revision Petition was dismissed.

**vii) Citation:**

Not reported in CPJ and CPR.

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**5. The Bileshwar Khand Udyog Khedut Sahkari Mandli Ltd and another Vs. Jyotiben Dansinh Mori**

**i) Case in Brief:**

Petitioner/OP is a co-operative society engaged in the business of production of sugar. OP used to collect deposits from Public for several years and paid interest on those deposits. The case of the Complainant/ Respondent is that they deposited the money with the OP but OP failed to return the maturity amount with interest. Alleging deficiency in service, they filed complaints before the District Forum which dismissed the complaints. Appeals filed by the Complainants were allowed by the State Commission by impugned order directing the OPs to pay respective amounts with interest at 9% p.a from the date of maturity till payment. OPs were also directed to pay Rs.20,000/- towards mental harassment and Rs.5,000 towards cost. Aggrieved by the said order, these Revision Petitions have been filed. Revision Petitions partly allowed.

**ii) Order appealed against:**

Revision Petition No.1207 of 2012

From the order dated 16.01.2012 in Appeal No.441 of 2010 of the Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.

Revision Petition No.1208 of 2012

From the order dated 16.01.2012 in Appeal No.442 of 2010 of the Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.

Revision Petition No.1209 of 2012

From the order dated 16.01.2012 in Appeal No.443 of 2010 of the Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.

**Deficiency in Service - Financial Services**

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Revision Petition No.1210 of 2012

From the order dated 16.01.2012 in Appeal No.444 of 2010 of the Gujarat State Consumer Disputes Redressal Commission, Ahmedabad

Revision Petition No.1211 of 2012

From the order dated 16.01.2012 in Appeal No.445 of 2010 of the Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.

Revision Petition No.1212 of 2012

From the order dated 16.01.2012 in Appeal No.446 of 2010 of the Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.

**iii) Parties:**

Revision Petition No.1207 of 2012

The Bileshwar Khand Udyog Khedut  
Sahkari Mandli Ltd and another - Petitioners/OPs

Vs.

Jyotiben Dansinh Mori - Respondent/Complainant

Revision Petition No.1208 of 2012

The Bileshwar Khand Udyog Khedut  
Sahkari Mandli Ltd and another - Petitioners/OPs

Vs.

Jaysinhbhai  
@ Jesingbhai Sidibhai Mori - Respondent/Complainant

Revision Petition No.1209 of 2012

The Bileshwar Khand Udyog Khedut  
Sahkari Mandli Ltd and another - Petitioners/OPs

Vs.

Ranvirbhai Naranbhai Vainsh & Ors. - Respondents/Complainants

Revision Petition No.1210 of 2012

The Bileshwar Khand Udyog Khedut  
Sahkari Mandli Ltd and another - Petitioners/OPs

Vs.

Dansinhbhai Mulabhai Mori - Respondent/Complainant



**Compendium of National Commission Judgements – 2014 – Vol.II**

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Revision Petition No.1211 of 2012

The Bileshwar Khand Udyog Khedut  
Sahkari Mandli Ltd and another - Petitioners/OPs

Vs.

Jayaben Dansinhbhai Mori - Respondent/Complainant

Revision Petition No.1212 of 2012

The Bileshwar Khand Udyog Khedut  
Sahkari Mandli Ltd and another - Petitioners/OPs

Vs.

Danabhai Bhimabhai Chauhan & Ors. - Respondents/Complainants

**iv) Case No and Date of Judgement:**

Revision Petition No.1207-1212 of 2012 &  
Date of Judgement : 08.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The main contention of the OPs was that since there was no production in the factory on account of drought for three years, the deposits could not be refunded and the same was explained to the depositors at a meeting called by the Board of Directors on 26.01.2008 which was also attended by Complainant Dansingbhai Mulabhai Mori and it was decided in the meeting that the amount deposited as on 31.03.2001 will be refunded in equal installments. This argument was rejected by the Commission since the OPs themselves had admitted that the Complainant did not agree with the repayment scheme framed by OP. The Commission also noted that the other Complainants did not attend the meeting. It was held that in the absence of the written consent from the Respondents, the State Commission had not committed any error in allowing appeals. However, looking into the facts and circumstances of the case, it was decided that the award of Rs.20,000/- towards mental harassment to the Complainant was not justified and it was set aside. With this modification, the order of the State Commission was upheld and the Revision Petitions were partly allowed.

**vii) Citation:**

IV (2014) CPJ 182; 2014(4) CPR 244.

**Deficiency in Service - Fire Insurance**

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**(s) FIRE INSURANCE**

**1. Ravindra Madhava Bhat. K. Vs. M/s. Anuradha Petro & Chemicals Pvt. Ltd. & Ors.**

**i) Case in Brief:**

Complainant/Petitioner, an employee of OP No.5/Respondent No.5 was provided quarter by the latter for his residence along with electricity and gas connection. On 17.02.2004, OP No.1/Respondent No.1 who is a retailer of gas cylinder supplied a gas cylinder to the Complainant but the regulator was not fixed properly by the employee of OP No.1. The cylinder burst on 18.02.2004 resulting in burn injury to the Complainant and damage to the articles kept near the cylinder. OP Nos.2 and 3/Respondents 2 and 3 were suppliers of gas and OP No.4/Respondent No.4 was insurer of OP No.2. Complainant remained in the hospital for some time and claimed to have spent more than Rs.10 Lakhs. OP refused to entertain Complainant's claim. Alleging deficiency on the part of OPs, Complainant approached District Forum which directed OPs No.1, 2 and 3 to pay Rs.1,25,000/- to the Complainant. OP was directed to indemnify the amount to OPs No.2 and 3. The Forum also allowed cost of Rs.5,000/- and interest at 9% p.a. Complainant and OPs filed separate appeals before the State Commission. Partly allowing the appeal of the Complainant, the State Commission enhanced the compensation to Rs.2,00,000/- and dismissed the appeal filed by the OPs. Not satisfied with the impugned order, the Complainant has filed the Revision Petition. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 12.02.2008 in First Appeal No.1341/2007 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore.

**iii) Parties:**

Ravindra Madhava Bhat. K. - Petitioner/Complainant

Vs.

M/s. Anuradha Petro &  
Chemicals Pvt. Ltd. & Ors. - Respondents/OPs

**iv) Case No and Date of Judgement:**

Revision Petition No.2211 of 2008 & Date of Judgement: 21.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission observed from perusal of record that the Complainant produced bills for about Rs.7,000/- only but claimed Rs.4,13,582.75 from OP No.1 and in such circumstances District Forum allowed Rs.1,25,000/- as per insurance coverage. The State Commission had observed that the insurance coverage was for Rs.1,25,00,000/- for one incident and in the circumstances enhanced compensation from Rs.1,25,000/- to Rs.2,00,000/-. The National Commission did not find any justification to enhance the compensation further. Holding that there was no illegality, irregularity or jurisdictional error in the order or the State Commission, the National Commission dismissed the Revision Petition.

**vii) Citation:**

III (2014) CPJ 180.

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**2. M/s. V.K. Kariyana Store Vs. The Oriental Insurance Co. Ltd. & Anr.**

**i) Case in Brief:**

Complainant/Petitioner got his shop insured with stocks from OP.No.1/ Respondent No.1 for a period of one year from 23.02.2005 to 22.02.2006. In the intervening night of 14/15 to 2016, fire broke out in the shop and caused loss of Rs.5 lakhs to the Complainant. Surveyor appointed by OP assessed loss at Rs.2,55,647/- but the claim was repudiated on the ground that loss had occurred by fire in Shop No.29/1, Main Bazar, Ram Nagar, whereas premises insured was 31/9, Ram Nagar. Complainant had obtained loan from OP.No.2/Respondent No.2 and hypothecated goods. Alleging deficiency on the part of the OP, Complainant approached District Forum which allowed the complaint and directed OP No.1 to pay Rs.2,55,647/- to the Complainant with 8% p.a. interest and further allowed compensation of Rs.5,000/-. The complaint against OP No.2 was dismissed. Appeal filed by the OP was allowed by the State Commission vide impugned order against which the present Revision Petition had been filed. Revision Petition dismissed.

**Deficiency in Service - Fire Insurance**

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**ii) Order appealed against:**

From the order dated 31.01.2011 in Appeal No.1318/2008 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

**iii) Parties:**

M/s. V.K. Kariyana Store - Petitioner/Complainant

Vs.

The Oriental Insurance Co. Ltd. & Anr. - Respondents/OPs

**iv) Case No and Date of Judgement:**

Revision Petition No.1289 of 2011& Date of Judgement: 21.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission observed that in the cover note issued by the insurance company, the address of the Complainant's business had been given as 31/9, Ram Nagar and OP No.2 as proposer had also shown name of Complainant's business at 31/9, Ram Nagar. The Commission further observed that the incident of fire had occurred at shop No.29/1, Ram Nagar, which shop/premises had not been insured with the insurance company. The Commission therefore held that there was no deficiency in repudiating claim and did not find any infirmity, illegality or jurisdictional error in the impugned order which was based on the judgement of the Hon'ble Supreme Court in *Suraj Mal Ram Niwas Oil Mills (P) Ltd. Vs. United India Insurance Co. Ltd. & Anr.* 2011 CPJ 11 (SC) (CP). The Apex Court had held therein that "in a contract of a insurance, the rights and obligations are governed by the terms of the said contract. Therefore the terms of a contact of insurance have to be strictly construed and no exception can be made on the ground of equity...". The Revision Petition was accordingly dismissed by the National Commission.

**vii) Citation:**

III (2014) CPJ 182.

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**3. Subhash Malhotra Vs. Divisional Manager United India Insurance Co. Ltd. & Anr.**

**i) Case in Brief:**

Petitioner, whose firm deals in footwear business, had insured his shop, stocks, furniture, signboard etc., with the Respondents/United India Insurance Co. Ltd. for Rs.6.08 lakhs against fire, theft burglary and other such calamities. On 01.02.1999, when the policy was in currency, a major fire broke out in the shop of the Petitioner which was controlled by the fire brigade after a lot of struggle. According to the Petitioner, about 1600 pairs of footwear, electric fittings, furniture etc., were completely damaged causing a loss of about Rs.6 Lakhs. The Branch Manager, State Bank of Patiala with whom the Petitioner had an account, was informed on the same day. The Bank in turn requested the Respondent to compensate the loss of Complainant. The Petitioner informed the Police on 04.02.1999 about the fire accident. Respondent's Surveyor assessed the loss at Rs.3,43,900/-. Since the Complainant's claim was not settled in spite of repeated requests by the Complainant as well as the Bank, Complainant sent a legal notice on 22.09.1999 to pay loss of Rs.5,71,150.29. Respondent No.1 sent a disbursement voucher of Rs.1,91,162/- followed by a cheque for the same amount which was received by the Petitioner under protest on 05.11.1999. Another legal notice sent by the Petitioner on 13.11.1999 remained unanswered. Complainant approached the District Forum which ordered to pay a total amount of Rs.3,69,367.16 (including the amount already paid) along with interest at 12% p.a from 01.03.1999 to 16.10.1999 along with Rs.20,000/- as damages. Petitioner's appeal for enhancement was dismissed by the State Commission vide impugned order against which the present Revision Petition had been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 04.10.2007 in First Appeal No.3160/2001 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

**iii) Parties:**

Subhash Malhotra

- Petitioner

Vs.

Divisional Manager

United India Insurance Co. Ltd. & Anr.

- Respondents

## **Deficiency in Service - Fire Insurance**

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### **iv) Case No and Date of Judgement:**

Revision Petition No.533 of 2008 & Date of Judgement: 26.05.2014.

### **v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

### **vi) Issues raised and decided:**

- a) The Commission noted that the Respondent had paid initially Rs.1,91,162/- vide voucher dated 14.10.1999 which had been encashed. Subsequently a further amount of Rs.1,78,205/- along with interest at 12% p.a from 16.10.1999 till date of realisation had also been paid. Interest at 12% p.a on the total compensation amount of Rs.3,69,367.16 had been paid from 01.03.1999 to 16.10.1999. The Commission found that the Petitioner had not filed any evidence to support his claim that he was forced to sign the discharge voucher under undue influence and coercive bargaining.
- b) The Commission observed that the orders of both the Fora below were well reasoned and since there was no jurisdictional error, illegality or infirmity in the orders passed by the State Commission warranting their interference, the Revision Petition was dismissed.

### **vii) Citation:**

III (2014) CPJ 123.

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## **4. Ramdev Industries Vs. The New India Assurance Co. Ltd and others**

### **i) Case in Brief:**

Complainant's factory for production of groundnut oil which was inaugurated on 09.03.1999, was gutted by fire on the night of 26/27.03.1999. The fire engulfed the factory, godown, office, open land and goods kept therein. Necessary power supply had not been made available from Gujarat State Electricity Board to the Complainant and he had purchased a diesel engine on 12.03.1999 for production of oil. Information about the fire was given to the police and the fire brigade which extinguished the fire on 27<sup>th</sup> morning. OP was informed on the

same day. A surveyor was appointed by the insurance company to assess the loss. Since the claim was not settled despite repeated requests from the Complainant, he had filed the present original petition alleging deficiency in service and claiming a total compensation of Rs.1,15,50,000/-. Complaint partly allowed.

**ii) Order appealed against:**

Original Complaint

**iii) Parties:**

Ramdev Industries - Complainant

Vs.

The New India Assurance Co. Ltd and others - Opp. Parties

**iv) Case No and Date of Judgement:**

Original Petition No:151 of 2000 & Date of Judgement: 02.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o) and 21(a)(i) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The OPs contended that as stated by the surveyors/investigator in tandem, there was no evidence of short circuit. However, the Commission held that there was no solid or unflappable evidence that the fire was stage-managed. The Commission went by Panchnama which revealed that the cause of fire was short circuit.
- b) The Commission also rejected the contention of the OPs that the ownership and construction of the Complainant's building was illegal and the electricity connection also was not legal. The Commission observed that the insurance company should not have issued the policy and accepted the premium if they had doubts about the legality of the building. The Commission further noted that permission was granted by the Gram Panchayat and the plan for the factory was approved by the BDO's office. The Co-operative Bank had also advanced a loan of Rs.30,00,000/- to the Complainant.
- c) The Commission further noted that the surveyor had assessed the loss at Rs.21,50,000/- which was considered to be on the

### **Deficiency in Service - Health Insurance**

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lower side. The Commission also observed that the Complainant had made inflated claims and did not co-operate fully with the Surveyors and the document produced by him were not satisfactory.

- d) Keeping in view all the facts and circumstances of the case, the Commission enhanced the loss to Rs.25,00,000/-. OPs 1&2 were directed to pay Rs.25,00,000/- jointly and severally with interest at 9% p.a from the date of complaint. OPs 1 & 2 were further directed to pay Rs.2,50,000/- for acting laggardly to the Complainant within 90 days.

#### **vii) Citation:**

IV (2014) CPJ 224.

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#### **(t) HEALTH INSURANCE**

##### **1. New India Assurance Co. Ltd. (Though its Divisional Manager) Vs. Kuldeep Kumar Nayyar**

#### **i) Case in Brief:**

During the currency of the medi-claim policy, Complainant was admitted in Indraprashtha Apollo Hospital and was diagnosed as a case of superficial femoral Artery. Necessary procedure was conducted by the doctor and Complainant was discharged from the hospital. Complainant incurred an expenditure of Rs.1,24,013/-. Claim was submitted to the OP which was repudiated by OP/petitioner on the ground that Heart Disease/Diabetic Mellitus (HD/DM) was excluded from the mediclaim policy. Alleging deficiency on the part of OP, Complainant filed complaint before District Forum which directed OP to pay Rs.1,24,013/- towards medical expenses, Rs.35,000/- as compensation for mental harassment and Rs.5,000/- as cost of litigation. Appeal filed by the petitioner was dismissed by State Commission vide impugned order against which, this Revision Petition has been filed. Revision Petition partly allowed.

#### **ii) Order appealed against:**

From the order dated 08.04.2008 in Appeal No.FA-08/124 of the State Consumer Disputes Redressal Commission, Delhi.



**iii) Parties:**

New India Assurance Co. Ltd.  
(Though its Divisional Manager) - Petitioner/OP

Vs.

Kuldeep Kumar Nayyar - Respondent/Complainant

**iv) Case No and Date of Judgement:**

Revision Petition No.2655 of 2008 & Date of Judgement: 23.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the records of the case found that the Complainant's treatment pertaining to RFSA (Right Superficial Femoral Artery) was not under exclusion clause in the insurance policy and insurance company had committed deficiency in repudiating the claim to this extent. The Commission noted that the Complainant had incurred Rs.10,296/- from 08.10.2003 to 14.10.2003 which were not related to RFSA and the District Forum committed error in allowing Rs.1,24,013.45 instead of Rs.1,13,087.45 and to that extent the Revision Petition was allowed. It was noted that the Complainant had bifurcated his claim and claimed only Rs.1,24,013.45 against expenses of Rs.3,94,972.29 incurred for Angioplasty and Stent to RFSA.
- b) Consequently, Revision Petition filed by the Petitioner was partly allowed and the amount of Rs.1,24,013.45 in the order of District Forum was substituted by the figure 1,13,087.45. Rest of the order of the State Commission was upheld.

**vii) Citation:**

III (2014) CPJ 192.

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**2. Sh. Abhishek Jain Vs. HDFC Standard Life Insurance Co. Ltd & Anr.**

**i) Case in Brief:**

The Complainant purchased two life insurance policies under Policy Plan HDFC Young Star from the Respondents, one on 10.01.2006 and the other on 05.06.2006. The death benefit was Rs.5,00,000/- each and

### **Deficiency in Service - Health Insurance**

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Rs.5,00,000/- for extra Health Rider Benefit as a yearly premium. The said policies were issued after pathological test and examination by panel of doctors. In June, 2007, the Complainant suffered a stroke and the entire right half of the body was paralysed. He submitted the claim for Rs.5,00,000/- under the Extra Health Rider Benefit. The claim was repudiated and both the policies were declared null and void. OP offered only surrender value of Rs.1,62,612/- & Rs.1,52,125.78 under the two policies. Alleging deficiency in service, Complainant approached the District Forum which allowed the complaint and directed OPs to pay Rs.5,00,000/- under each policy along with interest @ 9% p.a and Rs.1,500/- as cost. The appeal filed by the OP was allowed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 12.06.2013 in F.Appeal No.1571 of 2010 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

**iii) Parties:**

Sh. Abhishek Jain

- Petitioner

Vs.

HDFC Standard Life Insurance Co. Ltd & Anr.

- Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No:3236 of 2013 & Date of Judgement: 07.08.2014.

**v) Acts and Sections referred:**

Sections 2(1), (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The main contention of the OP was that the Complainant was suffering from Becker's Muscular Dystrophy (BMD) at the time of taking the policy which had been concealed intentionally by him at the time of taking the policies. The Commission after going through the exhibits produced by the Complainant as well as OP and other records like discharge summary which were available with the District Forum and the evidence of the neurologists who treated the Complainant, came to the conclusion that the Complainant was not suffering from Muscular Dystrophy (MD) but was suffering from Left Hemiplegia/Right Basal Ganglia Hemorrhagic Infarct and that the OP was wrong in repudiating

the claim of the Complainant. Hence, the order of the State Commission was set aside and the order of the District Forum was restored. The Revision Petition was allowed.

**vii) Citation:**

IV (2014) CPJ 144.

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**3. The New India Assurance Co. Ltd Vs. Shri. Sukhdev Singh**

**i) Case in Brief:**

Complainant/Respondent obtained mediclaim policy from the Petitioner/ Insurance Company for the period from 14.10.2011 till 13.10.2012. At the time of taking the policy, the Complainant was subjected to pre-acceptance health check up. The policy contained a waiting period for certain specified diseases/ailments including hypertension in respect of which benefits of the policy would not be available for a period of two years. The policy was later renewed for one more year from 14.10.2012 till 13.10.2013. Complainant was admitted to Ace Heart & Vascular Institute on 01.04.2013 and was treated for hypertension, unstable angina and single vessel disease. He was subjected to echocardiography followed by angiography and angioplasty and was discharged on 04.04.2013. Complainant's claim for reimbursement in terms of the policy was repudiated by the insurance company on the ground he had misrepresented that his problem of hypertension was a recent one. Complainant took his grievance to the District Forum which directed the insurance company to pay a sum of Rs.3,85,235/- to the Complainant with 9% interest along with Rs.20,000/- towards compensation and Rs.11,000/- towards legal expenses. Petitioner's appeal with State Commission was dismissed vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 05.06.2014 in F.A.No.204 of 2014 of Chandigarh State Consumer Disputes Redressal Commission, UT Chandigarh.

**iii) Parties:**

The New India Assurance Co. Ltd	- Petitioner
Vs.	
Shri. Sukhdev Singh	- Respondent

## **Deficiency in Service - Health Insurance**

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### **iv) Case No and Date of Judgement:**

Revision Petition No:3163 of 2014 with I.A.No.5260 of 2014 (For Stay) & Date of Judgement: 22.08.2014

### **v) Acts and Sections referred:**

Sections 2(1), (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

### **vi) Issues raised and decided:**

The Commission held that the onus was on the insurance company to prove that the claim rejected by it was within the purview of exclusion clause 4.3 of the policy as per which the Petitioner would not be liable to make payment if the treatment that the Petitioner had undergone at the hospital was for a disease caused by hypertension. The Commission held that no medical literature was produced to show that hypertension was the only cause for a person developing coronary artery disease (CAD) at a later date. It was further held that CAD can be caused by several factors which inter alia would include hypertension. The Commission also relied on the opinion of the doctor who treated the Complainant that hypertension was not the cause of the Complainant developing CAD. The Commission therefore held that the ailment of the Complainant was not covered by the exclusion clause contained in the insurance policy, upheld the orders of the fora below and dismissed the Revision Petition.

### **vii) Citation:**

2014(3) CPR 802.

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## **4. National Insurance Co. Ltd Vs. Shri. V.L.Jain**

### **i) Case in Brief:**

The Complainant and his wife took a mediclaim policy from the Petitioner/Insurance Company for the period from 18.08.2004 to 17.08.2005. It is his case that he had been taking the policy continuously since 1998. On 09.12.2004, the wife of the Complainant was admitted in G.B.Pant Hospital with complaint of angina class II. She was diagnosed as a case of HTN, CAD AOE II. She was treated with PTCA and discharged on 14.12.2004. The claim submitted to the

insurance company was repudiated on the ground that it came under the exclusion Clause 4.1 of the policy. The Complainant approached the District Forum which directed insurance company to pay the claim amount of Rs.1,41,126/- along with compensation of Rs.5,000/- including cost. The appeal filed by the insurance company was partly allowed by reducing the claim to Rs.1,00,000/- which was the sum insured in respect of the wife of the Complainant. Aggrieved by the said order, both the parties filed the Revision Petitions. The National Commission modified the order of the State Commission by directing the insurance company to pay interest at 9% p.a on the amount of Rs.1,00,000/- from the date of filing of complaint till the date of payment. Revision Petition filed by the insurance company was dismissed.

**ii) Order appealed against:**

Revision Petition No.2648 & 2660 of 2008

From the order dated 31.01.2008 in F.A.No.07/926 of Delhi State Consumer Disputes Redressal Commission, New Delhi.

**iii) Parties:**

Revision Petition No.2648 of 2008

National Insurance Co. Ltd - Petitioner

Vs.

Shri. V.L.Jain - Respondent

Revision Petition No.2660 of 2008

Shri. V.L.Jain - Petitioner

Vs.

National Insurance Co. Ltd - Respondent

**iv) Case No and Date of Judgement:**

i. Revision Petition No:2648 of 2008

ii. Revision Petition No:2648 of 2008 &

Date of Judgement: 26.08.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

## **Deficiency in Service - Hire Purchase**

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### **vi) Issues raised and decided:**

- a) The National Commission after perusing the documents relating to the treatment of the wife of the Complainant came to the conclusion that the hospitalization was for treatment of coronary artery disease and not for hypertension. It was held that even if she was suffering from hypertension, at the time the policy was first taken, that would not absolve the insurance company from its liability to reimburse him for the cost of treatment for angina unless it is shown that she was suffering from angina at the time the policy was first taken in August, 1998. The Commission noted that no evidence was produced that she was suffering from angina in August, 1998. The Commission also rejected the argument of the insurance company that the coronary artery disease is caused by hypertension. It was held that hypertension may be one of possible causes of CAD but not the only cause.
- b) The Commission also held that the policy provided for medical cover of Rs.1,00,000/- each in respect of Complainant and his wife and therefore, the State Commission was justified in restricting the claim to Rs.1,00,000/-. However, the Commission observed that it would be unjust and unfair to deny payment of interest to the insured. Accordingly, the Commission ordered payment of interest at 9% p.a on the amount of Rs.1,00,000/- from the date of filing of complaint till the date of payment.
- c) Consequently, the Revision Petition filed by the insurance company was dismissed.

### **vii) Citation:**

2014(3) CPR 760.

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## **(u) HIRE PURCHASE**

### **1. Magma Fincorp Ltd Vs. Razia Khatoon**

#### **i) Case in Brief:**

Complainant/Respondent purchased a truck for a total price of Rs.6,97,418/- out of which Rs.38,534/- was contributed by her and the balance amount was got financed from the Petitioner under Hire Purchase Agreement. The loan taken by the Complainant was payable

in equal monthly installments. The Complainant committed default in payment of loan on several occasions and despite receiving a notice from the Petitioner, she paid only a small amount and not the entire outstanding. The Petitioner seized the truck once and released it on payment of Rs.58,000/- by the Complainant. Since there was an arbitration clause in the hypothecation agreement, arbitration proceedings were held and arbitrator passed an award on 29.07.2006 directing the Complainant to pay a sum of Rs.4,61,354/- to the Petitioner. The Complainant's case is that there was an One Time Settlement (OTS) between the parties whereby the total dues payable by her were settled at Rs.2,38,460.31/-. However, without giving time to the Complainant to pay the amount, the Petitioner again seized the truck on 25.05.2007 and sold it for a sum of Rs.3,35,000/- on 11.07.2007. Being aggrieved by the Petitioner's action, Complainant approached the District Forum. The Forum assessed the market value at Rs.5.5 lakhs and deducting the OTS amount of Rs.2,70,867.58/- directed the Petitioner to refund Rs.2,79,132/- along with cost of Rs.20,000/- for the Maurang and interest @ 12% p.a. besides Rs.1,00,000/- towards compensation and Rs.10,000/- towards cost of litigation. The Petitioner's appeal was dismissed by the State Commission on account of delay in filing the appeal vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 04.02.2014 in Appeal No.108/2014 of Uttar Pradesh State Consumer Disputes Redressal Commission.

**iii) Parties:**

Magma Fincorp Ltd - Petitioner

Vs.

Razia Khatoon - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No:1891 of 2014 with I.A.No.2677 & 4329/2014 (For Stay & For Stay) & Date of Judgement: 23.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

## **Deficiency in Service - Hire Purchase**

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### **vi) Issues raised and decided:**

- a) The Commission observed that in the petition filed by the Petitioner before the District Forum, neither the One Time Settlement was denied nor did the Petitioner claim that the expression OTS used in the computer generated system stood for 'On Top Securitization'. It was held that since the Complainant had specifically pleaded One Time Settlement and that the amount due from her did not exceed Rs.2,70,867.58/-, it was obligatory for the Petitioner to controvert the aforesaid averment. In the absence of any dispute in that regard, it was held that the District Forum was justified in concluding that there was actually a One Time Settlement.
- b) The Commission further observed that having entered into One Time Settlement on 25.05.2007, the Petitioner ought to have given reasonable time to the Complainant to make payment. His action in seizing the vehicle on the same day showed a total disregard of the settlement and gross highhandedness in dealing with the consumer.
- c) The Commission agreed with the assessment of the market value done by the District Forum based on the insured value. The Commission further noted that the sale of the truck was made without issuing any advertisement in any newspaper and without informing the Complainant that the truck was going to be sold for Rs.3,35,000/-.
- d) In the circumstances, the Commission agreed with the order of the District Forum and dismissed the Revision Petition.

### **vii) Citation:**

Not reported in CPJ and CPR.

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## **2. Rajeev Bhatia Vs. Indusland Bank Ltd and others**

### **i) Case in Brief:**

The Complainant purchased a truck from M/s. Ashok Leyland/OP.3 in January, 2006 which was financed by Indusland Bank Ltd/OP.1 and Alfine Services & Solutions/OP.2. The Complainant paid the monthly instalments regularly till June, 2007. Thereafter, the OPs started



making demand for Rs.33,830/- on account of money overdue. The Complainant issued a cheque for the instalment but the cheque was dishonored as the Complainant was not having enough funds in the Bank. It was alleged by the Complainant that truck was seized by the goondas sent by the OPs on 31.8.2007 and was sold. Aggrieved by the act of OPs, the Complainant filed a complaint before the District Forum which allowed the complaint in part. Being aggrieved, OPs preferred an appeal before the State Commission which allowed the appeal and dismissed the complaint. Aggrieved by the said order, the Complainant has filed this Revision Petition. Revision Petition dismissed.

**ii) Order appealed against:**

Revision Petition No.2525 of 2012

From order dated 11.04.2012 in First Appeal No.60 of 2010 of the H. P. State Consumer Disputes Redressal Commission, Shimla.

Revision Petition No.2526 of 2012

From order dated 11.04.2012 in First Appeal No.149 of 2010 of the H. P. State Consumer Disputes Redressal Commission, Shimla.

**iii) Parties:**

Revision Petition No.2525 & 2526 of 2012

Rajeev Bhatia

- Petitioner

Vs.

Indusland Bank Ltd and others

- Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.2525 & 2526 of 2012 &

Date of Judgement: 01.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the records found that Complainant paid the installments for January, March, April, May, June, July & August, 2006. However, he did not pay the

### **Deficiency in Service - Hire Purchase**

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installment due in February, 2006. Thus, the plea of the opposite parties that a sum of Rs.27,950/- was due on account of one installment upto 01.09.2006, was proved from the aforesaid document produced & relied upon by the Complainant himself. Further, Complainant also placed on record a copy of his bank account with HDFC bank which reflected that Complainant had deliberately withheld the record of the transactions prior to April, 2006. The Commission therefore held that the Complainant's plea that nothing was due from him to the opposite parties, when a demand for Rs.33,830/- was raised by the opposite parties in July, 2007 could not be accepted.

- b) In view of the above, the Commission dismissed the present Revision Petition and orders of the fora below were confirmed.
- c) For arriving the above said decision, reliance was placed on the decisions of the Hon'ble Supreme Court in *Surya Pal Singh v. Siddha Vinayak Motors & Another*, III (2012) CPJ 4 (SC), *Trilok Singh & Ors Vs. Satya Deo Tripathi*, AIR 1979 SC 850, *K.A. Mathai @ Babu & Anr Vs. Kora Bibbikutty & Anr* 1996 (7) SCC 212; *Jagdish Chandra Nijhawan Vs. S. K. Saraf*, IX (1998) SLT 477 = IV (1998) CCR 118 (SC) = 1999 (1) SCC 119; *Charanjit Singh Chadha & Ors Vs. Sudhir Mehra*, VI (2001) SLT 883=III (2001) CCR 232 (SC) = 2001 (7) SCC 417, following the earlier judgment of this Court in *Sundaram Finance Ltd Vs. The State of Kerala & Anr* AIR 1996 SC 1178; *Smt. Lalmuni Devi v. State of Bihar & Ors* I (2001), SLT 26 = I (2001) CCR 9 (SC) = 2001(2) SCC 17 and *Balwinder Singh v. Asstt. Commissioner*, V (2005) SLT 195= III (2005) CCR 8 (SC) = CCE 2005 (4) SCC 146. In all these cases, the Supreme Court had categorically held that "Under the Hire Purchase Agreement, it is the financier who is the owner of the vehicle and the person who takes the loan retains the vehicle only as a bailee/trustee, therefore, taking possession of the vehicle on the ground of non-payment of instalment has always been upheld to be a legal right of the financier".

#### **vii) Citation:**

III (2014) CPJ 562; 2014(3) CPR 443.

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**(v) HOSPITAL SERVICES:**

**1. Mukat Hospital and Heart Institute Vs. Mr.Dibyendu Ghara**

**i) Case in Brief:**

Complainant's wife was admitted in OP hospital, one of the hospitals empanelled under the CGHS Rules, on 26.12.2011 for abdominal pain and was discharged on 29.12.2011. A single operation was carried out and it was alleged that OP asked Complainant to pay Rs.69,000/- towards approximate expenses without providing copy of the bill. Ordnance Cable Factory sent draft of Rs.69,000/- to OP. It was the Complainant's case that OP issued final bill showing more than one operation to cover up amount of Rs.69,000/-. The Principal Controller of Accounts who scrutinized the bill directed that Rs.33,630 be recovered from Complainant on account of excess bill from the package amount which the OP should have charged. Since OP did not refund the amount, Complainant filed complaint before the District Forum which directed OP to refund Rs.28,107/- with 9% interest besides awarding Rs.10,000/- as compensation and Rs.7,500/- as litigation expenses. Appeal filed by the OP was dismissed by the State Commission vide impugned order against which the present Revision Petition had been filed. Revision Petition partly allowed setting aside only compensation of Rs.10,000/-.

**ii) Order appealed against:**

From the order dated 01.07.2013 in Appeal No.270 of 2013 of State Consumer Disputes Redressal Commission, UT, Chandigarh.

**iii) Parties:**

Mukat Hospital and Heart Institute - Petitioner/OP

Vs.

Mr.Dibyendu Ghara - Respondent/Complainant

**iv) Case No and Date of Judgement:**

Revision Petition No: 3231 of 2013 & Date of Judgement:  
11.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

## **Deficiency in Service - Hospital Services**

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### **vi) Issues raised and decided:**

The National Commission dismissed the argument that the CGHS facilities are available only to employees of Ordnance Factory Board Head Quarters, Calcutta and Ordnance Equipment Factories Head Quarters, Kanpur and not to other units. The Commission agreed with the District Forum and the State Commission that as Complainant's wife was under in-patient treatment, amount of medicines, x-ray, ECG, laboratory charges and ultrasound were to be included in the package rate and Petitioner was not justified to charge the aforesaid rates from the Complainant. The Commission therefore held that there is no illegality or irregularity or jurisdictional error in the order of the State Commission and dismissed the Revision Petition. However, the order of the State Commission was partly modified and order upholding compensation of Rs.10,000/- towards mental agony and harassment was set aside and the rest of the order was upheld.

### **vii) Citation:**

IV (2014) CPJ 380; 2014(4) CPR 77.

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## **(w) HOUSING**

### **1. Meerut Development Authority Vs. Rashmi Gahlot**

#### **i) Case in Brief:**

The case of the Complainant/Respondent was that with regard to the plot allotted to him by the OP/Petitioner, he had deposited the last installment on 13.1.1996 with the Petitioner. But from 1996 till the date of filing of this case, he had not been given the possession of the plot of land in question or any other plot in lieu of that. Therefore, alleging deficiency in service on the part of the Petitioner/OP, he filed a complaint before the District Forum which held that there was deficiency of service on the part of the Petitioner/OP and the OP was directed to pay to the Complainant her deposits along with 15% interest rate from the date of their deposits to the date of payment within one month along with Rs.10,000/- as fine and Rs.5,000/- as litigation expenses. Aggrieved by the order of the District Forum, petitioner filed an appeal before the State Commission. State Commission, vide their order dated 26.4.2011, dismissed the appeal vide impugned order

against which the present Revision Petition has been filed by the Petitioner/OP. Revision Petition dismissed with cost of Rs.10,000/-.

**ii) Order appealed against:**

Against the Order dated 26.04.2011 in Appeal No.388/2005 of the State Commission Uttar Pradesh.

**iii) Parties:**

Meerut Development Authority - Petitioner/OP

Vs.

Rashmi Gahlot - Complainant/Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.2907 of 2011 & Date of Judgement: 21.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the records found that during the pendency of the proceedings before the District Forum, the Petitioner/OP had issued a letter dated 21.7.2003 calling upon the Complainant/Respondent for compromise and two options were offered firstly, the Respondent shall be allotted plot in any other scheme on the same terms and conditions if she consents, and secondly, she would withdraw the deposited amount coupled with the maximum amount of interest. However, Respondent did not reply to the letter. It was also evident from the proceedings that the Petitioner was willing to refund the amount as per order of the District Forum which was upheld by the State Commission. The only dispute was regarding the rate of interest. The District Forum had awarded interest @ 15% p.a. whereas the State Commission was of the view that the respondent was eligible for getting refund of her entire deposits with interest @ 15% - 18% p.a. and dismissed the appeal of the Petitioner. Since, the respondent did not appeal against the order of the District Forum before the State Commission, her demand for plot cannot be entertained at this stage and the District

### **Deficiency in Service - Housing**

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Forum/State Commission order qua the respondent as their issue is final.

- b) In view of the above, since there was no jurisdictional or legal error in the order of the State Commission, the present Revision Petition was dismissed with cost of Rs.10,000/- of which Rs.5,000/- should be paid by way of demand draft in the name of the Complainant and the remaining cost of Rs.5,000/- in the name of consumer Legal Aid Account of the Commission, within four weeks from the date of order.

**vii) Citation:**

III (2014) CPJ 55; 2014(3) CPR 55.

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**2. The General Manager, A.P.Rajiv Swagruha Corporation Ltd. Vs. V.Satish Chandra**

**i) Case in Brief:**

It was the case of the Complainant/Respondents that the Petitioner Corporation allotted them a flat at the tentative cost of Rs.10,30,000/- to be paid in instalments. The Respondent V. Satish Chandra deposited the entire consideration amount of Rs.10,30,000/- whereas the Respondent M.Vishveshwer Rao deposited a sum of Rs.8,30,000/- against the cost of the flat. It was the case of the Respondents that on their visit to the site, they found that the construction of the flats was sub-standard. Therefore, Respondents applied for refund of money paid by them along with interest. The Petitioner Corporation, however, refunded a sum of Rs.9,08,000/- to the Respondent V.Satish Chandra after deducting a sum of Rs.1,22,000/- . Similarly, the Respondent M.Vishveshwer Rao was refunded Rs.8.00 lakhs after deducting Rs.30,000/-. Being aggrieved by the deduction made by the Petitioner Corporation, the Respondents filed complaints before the District Forum which held that there was no deficiency in service on the part of the Petitioner qua the Respondents/Complainants and dismissed both the complaints. The Respondents/Complainants being aggrieved by the orders of the District Forum preferred separate appeals before the State Commission which directed the Petitioner/OP to the refund the amount wrongly deducted to the respective Complainants with 9% interest thereon w.e.f. 17.02.2010 and also to

pay Rs.2,000/- each as cost vide impugned order against which the present Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

Revision Petition No.417 of 2013

Against the order dated 14.11.2012 in Appeal No.570/2011 of the A.P. State Consumer Disputes Redressal Commission Hyderabad.

Revision Petition No.418 of 2013

Against the order dated 14.11.2012 in Appeal No.750/2011 of the A.P. State Consumer Disputes Redressal Commission Hyderabad.

**iii) Parties:**

Revision Petition No. 417 of 2013

The General Manager,  
A.P.Rajiv Swagruha Corporation Ltd. - Petitioner

Vs.

V.Satish Chandra - Respondent

Revision Petition No.418 of 2013

The General Manager,  
A.P.Rajiv Swagruha Corporation Ltd. - Petitioner

Vs.

M.Vishveshwer Rao - Respondent

**iv) Case No and Date of Judgement:**

Revision Petitions No.417 & 418 of 2013 &

Date of Judgement: 21.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the hand receipts executed by the Complainants found that V. Satish Chandra had received a sum of Rs.9,08,000/- towards refund of four instalments paid by him in full and final settlement of his claim. Similarly, Respondent V.Vishveshwer Rao had also received a

### **Deficiency in Service - Housing**

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sum of Rs.8.00 lakhs from the Petitioner towards refund of three full instalments and fourth part instalment paid by him in full and final settlement of his claim. On perusal of the above noted refund policy, it became clear that amount of refund paid to the respective Complainants was in terms of the refund policy. The Commission also pointed out that there was no allegation in the complaint either of Respondent V. Satish Chandra or M.Vishveshwer Rao to the effect that full and final discharge receipts were obtained from them by misrepresentation, fraud or coercion.

- b) In view of the above, the National Commission allowed the Revision Petition and set aside the order of the State Commission by pointing out that the State Commission had committed a grave error in holding that it was coercive bargaining, ignoring the fact that there was no such allegation in the respective complaints.

#### **vii) Citation:**

III (2014) CPJ 77.

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### **3. Sri Pradeep Kumar Diwan & Anr. Vs. Smt. Gayatri Devi Chokhani & Ors.**

#### **i) Case in Brief:**

Petitioner No.1 booked a flat in February 2006 at a cost of Rs.4,59,828/- and paid Rs.31,000/- as earnest money vide cheque dated 26.12.2005 and another cheque for Rs.38,000/- on 05.04.2006. His home loan of Rs.4,20,000/- was sanctioned by Oriental Bank of Commerce vide letter dated 23.02.2007. Petitioner claimed that a self cheque dated 08.02.2006 for Rs.30,000/- was issued from the account of the 2<sup>nd</sup> Petitioner, Sujata Diwan in Oriental Bank of Commerce and the amount was drawn in cash by the Developer/Respondent but no receipt was issued. A number of issues cropped up between the parties regarding the readiness of the flat. The Petitioner alleged that the Respondent wanted to make some illegal construction on the premises and that no arrangement had been made to install generator, electrical meter etc. On 15.03.2007, Petitioner received a legal notice from the Respondents Advocate alleging non-performance of contract on his part and enclosing a Bank Pay Order of Rs.69,000/- purported to be the



entire amount of earnest money. Petitioner responded asking the OP to obtain the completion certificate. Thereafter another notice was received by the Petitioner on 18.05.2007 cancelling the agreement for sale. Petitioner complained before the District Forum which dismissed the complaint on the ground that the said agreement was non-existent as it was impoundable under the Stamp Act and that there no cogent evidence regarding further payment of Rs.30,000/- as claimed by the Complainant. The Petitioner filed appeal before the State Commission which was allowed in part directing the OPs jointly and severally to pay compensation of Rs.50,000/- to the Complainants. When the case was pending before the State Commission, the Respondents transferred the property in favour of Smt. Surajmoni Mishra (Respondent-7). Aggrieved by the State Commission's order the Petitioner filed the present Revision Petition. Revision Petition dismissed and the order of the State Commission was set aside.

**ii) Order appealed against:**

From the order dated 18.04.2013 in Appeal No.161/2011 of the State Consumer Disputes Redressal Commission, West Bengal.

**iii) Parties:**

Sri Pradeep Kumar Diwan & Anr. - Petitioners

Vs.

Smt. Gayatri Devi Chokhani & Ors. - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.2175 of 2013 with IA.No.3615 of 2013 & Date of Judgement: 23.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The State Commission, while agreeing with the District Forum that there was no evidence to prove that an additional Rs.30,000/- was paid to the Respondent by self cheque, observed that the Respondent had retained the earnest money of Rs.69,000/- for a long time and while making a refund no interest was paid. It further observed that the sale of the flat which had earlier been allotted to the Petitioner to Respondent No.7 was not

### **Deficiency in Service - Housing**

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correct and such conduct on the part of OPs was sufficient to award compensation to the Complainants. The National Commission did not agree with this view and held that Petitioner's acceptance of the Pay Order for Rs.69,000/- and his silence and failure to conclude the sale of concerned flat proved his reluctance and unwillingness to purchase the flat at that point of time. It was further held that the sale of the said flat to Respondent No.7 vide deed dated 20.02.2009 cannot be taken as deficiency of service or unfair trade practice.

- b) The Revision Petition was accordingly dismissed. The order of the State Commission was set aside and the order of the District Forum was upheld.

#### **vii) Citation:**

III (2014) CPJ 42.

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#### **4. Merlin Projects Ltd. Kolkata & Anr. Vs. Mr. Pandav Roy & Anr.**

##### **i) Case in Brief:**

Appellants allotted to the Respondents/Complainants a flat for a total consideration of Rs.14,25,000/-. Respondents paid a sum of Rs.50,000/- as earnest money by cheque 01.05.2003. A supplementary agreement was executed on the same day. A further sum of Rs.2,00,000/- was payable as contribution to the corpus fund for the facilities noted in the agreement. On sanction of housing loan of Rs.15 lakhs by Union Bank of India, a Tripartite Agreement was executed between the Appellant Company and the Respondents. The Complainants paid a further sum of Rs.1,93,750/- towards the balance earnest money. The Bank also released a sum of Rs.13,81,250/-. The Respondents were given possession of the house on 24.04.2004 but on certain issues, the relationship between the parties soured and the Appellant issued a letter on 23.10.2006 cancelling the allotment citing default in payment of instalments to the Bank and dishonouring of cheque for Rs.1,93,750/- issued on 22.09.2003 as reasons. Since all the facilities were withdrawn Respondents had to shift the house on 23.10.2006. Respondent filed complaint before the State Commission which directed the Appellants to execute and register the Deed of Conveyance within 60 days besides awarding compensation of

Rs.50,000/- and Rs.5,000/- as cost. Aggrieved by the said order the present appeal had been filed. Appeal was disposed of directing the Appellant to pay Rs.50,00,000/- with interest @ 9% p.a. from the expiry of 60 days of the date of the impugned order till date of realization. Appellants were directed to pay Rs.50,000/- as costs.

**ii) Order appealed against:**

From the order dated 24.02.2009 in Complaint No.07/0/2007 of the West Bengal State Consumer Disputes Redressal Commission.

**iii) Parties:**

Merlin Projects Ltd. Kolkata & Anr. - Appellants

Vs.

Mr. Pandav Roy & Anr. - Respondents

**iv) Case No and Date of Judgement:**

First Appeal No.128 of 2009 & Date of Judgement: 23.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission observed that the main issue was whether the Appellants were justified in refusing to execute the Conveyance Deed in favour of the Respondents and forcing them to shift from the flat on the allegation that they had failed to pay the agreed consideration for the flat and had defaulted in discharging their debt towards the Bank.
- b) The Commission noted that the Tripartite agreement dated 21.01.2004 did not contemplate possession first and payment later. It was further noted that payment of Rs.2,43,750/- to the Appellants had been recorded in the Tripartite agreement and a further sum of Rs.13,81,250/- was released by the Bank on 25.02.2004 and possession of the flat handed over on 20.04.2004.
- c) The Commission also observed that the claim of Rs.1,93,750/- raised by the Appellant in 2006 in lieu of the cheque dishonoured in the year 2003 was a ruse to avoid execution of Conveyance Deed. The fact that the claim of Rs.1,93,750/- was made for the

### **Deficiency in Service - Housing**

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first time on 15.09.2006 i.e. two and half years after delivery of possession destroyed the credibility of the claim.

- d) The Commission held that the alleged default in repayment of loan by the Respondent to the Bank relied upon as one of the grounds for cancellation of the agreement on 07.11.2006 was wholly unjustified. The Commission therefore agreed with the findings of the State Commission.
- e) As regards compensation, it was noted that during the pendency of the complaint the flat in the possession had been auctioned by the Bank in proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). Keeping in view the comparative Housing Price Index for the year 2007 and 2011, the value of the flat was taken as Rs.50,00,000/- and the Appellants were directed to pay the said amount with interest @ 9% p.a. as also a sum of Rs.50,000/- as costs.

#### **vii) Citation:**

III (2014) CPJ 94.

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### **5. Sarla Grover Vs. Delhi Development Authority**

#### **i) Case in Brief:**

Complainant booked a flat with OP/DDA under the registration scheme of 1979. On payment of the registration amount of Rs.4,500/- she was allotted a flat in Dwarka locality on 03.12.1999 on cash-down basis. A demand was sent to her on 17.03.2000 indicating the disposal value of the flat as Rs.7,95,800/-plus other allied charges. The Complainant vide letter dated 30.03.2000 requested OP to change the mode of payment from cash-down to hire purchase basis but the said request was turned down. The allotment of the flat was cancelled and the registration money was refunded with simple interest at 10% p.a. The Complainant claimed compound interest which was declined by OP. Complainant filed complaint in the District Forum which directed OP to pay a sum of Rs.1 lakh to the Complainant as compensation for harassment including cost of litigation. Two appeals were filed before the State Commission which were decided by the impugned order, dismissing the appeal of the Complainant with cost of Rs.5,000/- and

accepting the appeal of the OP. The present Revision Petition had been filed by the Complainant challenging the State Commission's order. Revision Petition was allowed and the matter was remanded back to State Commission for a fresh hearing.

**ii) Order appealed against:**

From the order dated 20.04.2012 in First Appeal No.FA-240/2011 of the Delhi State Consumer Disputes Redressal Commission.

**iii) Parties:**

Sarla Grover - Petitioner/Complainant

Vs.

Delhi Development Authority - Respondent/OP

**iv) Case No and Date of Judgement:**

Revision Petition No.2152 of 2012 & Date of Judgement: 23.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission observed that the prayer in the complaint was regarding the interest to be paid and it was necessary therefore that the issue was examined with regard to the policy/instructions on the subject. It was held that the issue was not examined with reference to the entitlement of the Complainant. The Revision Petition was therefore allowed and the matter was remanded back to the State Commission for hearing the parties afresh, and examining the relevant records/policy instructions and passing orders again.

**vii) Citation:**

III (2014) CPJ 145.

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**6. M/s. DLF Universal Ltd. Vs. Mr. Vijay Chopra & Mrs. Amarjeet Chopra**

**i) Case in Brief:**

Complainant/Respondent booked a flat with the OP by paying initial amount of Rs.65,000/-. An agreement to sell was entered into between the parties on 18.08.1990. Respondent deposited the due amounts in time and delayed amount was deposited with interest. Whenever additional demands were raised, Respondent deposited additional

### **Deficiency in Service - Housing**

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demands pertaining to escalation charges, electrical connection charges etc. As per the agreement possession of the flat was to be delivered within three and a half years but possession was delivered after about seven years. There was a delay of three and a half years in handing over possession. Complainant alleged that there were defects which had to be rectified and filed a consumer complaint before the State Commission seeking a direction to OP to rectify the defects, refund escalation charges with interest and pay interest on the deposited amount as well as registration charges and stamp duty along with Rs.50,000/- as compensation. The State Commission allowed complaint partly and directed OP to pay a sum of Rs.2,00,000/- to the Complainant against which this appeal had been filed. Appeal dismissed and the State Commission's order was upheld.

**ii) Order appealed against:**

From the order dated 17.07.2007 in C.C.No.C-255/1997 of the Delhi State Consumer Disputes Redressal Commission.

**iii) Parties:**

M/s. DLF Universal Ltd.

- Appellant/OP

Vs.

Mr. Vijay Chopra &  
Mrs. Amarjeet Chopra

- Respondents/Complainants

**iv) Case No and Date of Judgement:**

First Appeal No.603 of 2007 & Date of Judgement: 23.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19, 20(1A)(iii) and 21(a)(ii) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) In this case since there was difference of opinion between the two members who constituted the Bench, matter was referred to a third member as per the provision in Section 20(1A) (iii) of the Consumer Protection Act. The issue before the third member was "whether the Respondent/Complainant would be entitled to any compensation, in view of the letter of possession dated 17.03.1997 considered together with the provision in Clause 19 of the agreement between the parties".
- b) The Appellant referred to the letter dated 17.03.1997 sent by the Respondent which showed that the latter had accepted possession

of the flat unconditionally and in such circumstances it was claimed that he was estopped from making any claim against the Appellant regarding defects in the flat. The Commission held that the undertaking of unconditional acceptance of possession was only to exclude any possibility of dispute or claim arising from design, specification or quality of construction and that there was nothing in the letter to extend its application to claims or disputes on any other ground.

- c) The Appellant argued that the only remedy open to the Respondent was to seek refund under Clause 19 of the Agreement and not compensation. The Commission held that Clause 19 of the Agreement cannot be considered in isolation and it needed to be seen in conjunction with other relevant Clauses in the Agreement. Clause 19 would apply only when the builder failed or was unable to deliver possession within the agreed or extended period. But in this case since possession had already been delivered, there was neither a need nor any occasion for resort to Clause 19.
- d) Consequently the Commission rejected the contentions of the Appellants that i) in view of letter dated 17.03.1997, the Respondent/Complainant would not be entitled to any compensation and ii) the only option available to the Respondent/Complainant was to seek refund under Clause 19. Consequently the award of lumpsum compensation by the State Commission was upheld.

**vii) Citation:**

Not reported in CPJ and CPR.

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**7. Smt. Ratna Deb Vs. Sanjay Dodhi**

**i) Case in Brief:**

The Complainant/Petitioner had purchased a house/cottage from the Respondent/OP for her own living and had paid a total amount of Rs.8,50,000/- for the same on 31.03.2002. However, when Respondent finally handed over possession of the cottage to the Petitioner on 16.10.2002 with a delay of about four months from the stipulated date, she found that it was unfinished and the materials used, including the tiles and plywood, were of very inferior quality. The shutters had not

### **Deficiency in Service - Housing**

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been properly installed and the electrical fittings were incomplete. Despite all requests to redress the various deficiencies noted by her, the Respondent failed to do so and instead raised a demand of Rs.1,18,483/-. She, therefore, filed a complaint before the District Forum which held that the Petitioner would not be liable to pay the entire amount of Rs.1,18,483/- for the additional works done by the Respondent and the amount of Rs.50,000/- already paid by her would be taken as full and final payment of the bills on that account and also ordered payment of Rs.5,000/- as costs to the Petitioner. Being aggrieved, the Petitioner filed an appeal before the State Commission which while maintaining the relief granted to the Petitioner by the District Forum directed the Respondent to also pay Rs.60,000/- within a period of 30 days. Still not satisfied with the enhanced relief given by the State Commission, the Petitioner has filed the present Revision Petition. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 25.07.2013 in Appeal No.495/2011 of the Delhi State Consumer Disputes Redressal Commission.

**iii) Parties:**

Smt. Ratna Deb

- Petitioner

Vs.

Sanjay Dodhi

- Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.1484 of 2014 & Date of Judgement : 02.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission after perusal of the records agreed with the finding of the State Commission that, except for some termite infestation in the frames of windows and doors, which had been made of natural wood, there were no other defects or deficiencies, as alleged, and the cottage was constructed in terms of the construction and layout plans and as per the agreement entered into between the parties. Apart from verbal submissions made vehemently by the Petitioner, she had not been able to produce



any independent or credible evidence to displace the report of the Local Commissioner who after due inspection in the presence of the parties, as per the directions of the State Commission, had reported that most of the specifications agreed between the parties were complied with and the deficiencies as alleged by the Petitioner did not exist.

- b) Accordingly, the present Revision Petition was dismissed and the order of the State Commission was confirmed.

**vii) Citation:**

III (2014) CPJ 262; 2014 (3) CPR 239.

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**8. Estate Officer, HUDA Vs. Sanjay Sood**

**i) Case in Brief:**

The grievance of the Complainant was that the Petitioner had charged interest from him on the ground that he had committed delay in taking possession of the plot allotted to him. Alleging deficiency in service and unfair trade practice, he approached the District Forum for redressal of his grievance. The Forum directed the Petitioner to refund the amount charged from the Complainant by way of interest along with interest on that amount @ 12% p.a. A sum of Rs.3,300/- was awarded as compensation and Rs.2,200/- as litigation expenses. The Petitioner's appeal having been dismissed by the State Commission, the present Revision Petition has been filed along with an application for condonation of delay. Both the Revision Petition and the application for condonation of delay were dismissed.

**ii) Order appealed against:**

From the order dated 04.02.2011 in F.Appeal No.2191 of 2005 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

**iii) Parties:**

Estate Officer, HUDA

- Petitioner

Vs.

Sanjay Sood

- Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No: 2456 of 2014 & Date of Judgement: 03.07.2014.

## **Deficiency in Service - Housing**

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### **v) Acts and Sections referred:**

Sections 2(1) (g), (o), (r ), 19 and 21(b) of the Consumer Protection Act, 1986.

### **vi) Issues raised and decided:**

- a) The National Commission observed that the Complainant was justified in not taking possession on the following grounds:
  - i. The Petitioner was not able to complete the approach road to the plot due to some litigation and did not provide an alternative road
  - ii. The school had not been constructed and there were no wire on the polls
  - iii. The sewerage system was not working
- b) The Commission observed that it is the duty of the Urban Development Authority to complete the external development work in all respects before it calls upon the allottees to take possession. It will be highly unfair on the part of such an authority not to complete the work and then penalize the allottee by charging interest on account of delay in taking possession.
- c) The Commission found no ground to interfere with the orders passed by the Fora below and dismissed the Revision Petition as well as the application for condonation of delay.

### **vii) Citation:**

Not reported in CPJ and CPR.

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## **9. Sanjay Kumar Gupta Vs. Keval Kishan Barma**

### **i) Case in Brief:**

On 21.11.2003 the Respondents 1&2 entered into an Agreement for Sale of a flat on the first floor of a property developed by them to the Complainant for a total consideration of Rs.2,88,900/-. Though the entire amount was paid by 27.11.2003, possession of the plot was not handed over by 31.05.2004 as per agreement. Subsequently Complainant learnt that the said respondents had inducted Respondent No.3 in the said flat without his knowledge and consent. Alleging deficiency in service and unfair trade practice, Complainant approached the District

Forum which allowed his complaint and directed to the respondents to refund the amount paid by the Complainant with interest at 18% p.a. Rs.20,000/- as compensation and cost of litigation was also awarded. However, the complaint against Respondent No.3 was dismissed. Respondent No.1 and 2 preferred an appeal before the State Commission which accepted their contention that they were not afforded an opportunity to adduce evidence. It further held that the Agreement for Sale was not properly stamped and that it should have been impounded and remanded the case back to the District Forum. Aggrieved by the order of the State Commission the present Revision Petition has been filed by the Complainant. Revision Petition allowed with cost of Rs.10,000/-.

**ii) Order appealed against:**

From the order dated 17.06.2008 in SC Case No.130/A/2007 of State Consumer Disputes Redressal Commission, West Bengal.

**iii) Parties:**

Sanjay Kumar Gupta

- Petitioner

Vs.

Kebal Kishan Barma

- Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.3956 of 2008 & Date of Judgement:  
03.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o) and (r), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission held that in the absence of cogent material on record the State Commission was not justified in remanding the case back to the District Forum for fresh adjudication especially when the factum of execution of the documents filed by the Complainant was not questioned.
- b) The National Commission further held that the State Commission committed a serious illegality in non-suiting Complainant on a technical ground that requisite stamp duty on Agreement for Sale had not been paid. It was observed that the alleged non-payment

### **Deficiency in Service - Housing**

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of sufficient stamp duty was not material for the purpose of determining whether there was deficiency in service.

c) The National Commission held that the Respondents had indulged in unethical conduct and unfair trade practice, having pocked the money from the Complainant and then reselling the flat to Respondent No.3 without giving notice to the Complainant.

d) The Revision Petition was accordingly allowed with cost of Rs.10,000/- and the impugned order was set aside.

#### **vii) Citation:**

III (2014) CPJ 279; 2014(3) CPR 236.

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### **10. Smt.V. Kamala & Ors. Vs. K.Rajiv & Ors.**

#### **i) Case in Brief:**

Appellants along with Respondents 3 and 4 (P.Narsingh Rao and Zahed Ali) were the owners of a piece of land measuring 790 sq. yards. On 05.07.1997 they entered into an agreement with Respondent No.2 (M/s. Kamala Builders) for the development of the said land as per which Respondent No.2 had the right to retain 60% of the super built up area in the building and to sell and collect advances in respect of their share. Subsequently, Respondent No.2 entered into an Agreement of Sale for their entire share in favour of the Complainant/Respondent No.1 for a total consideration of Rs.45 Lakhs. Despite the entire consideration having been paid and possession of property delivered, Respondent No.2 did not execute the sale deed in favour of Respondent No.1 citing non-cooperation of land owners as the reason. Respondent No.1 filed a complaint before the State Commission which was allowed giving a direction to the Appellants and to Respondents 2 to 4 to execute the sale deed in favour of Respondent No.1 and also pay him a compensation of Rs.1 Lakh. Aggrieved by the said order the present Appeal has been filed. Appeal dismissed.

#### **ii) Order appealed against:**

From the order dated 05.12.2008 in Consumer Dispute No.32/06 of the Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad.

**iii) Parties:**

Smt. V. Kamala & Ors. - Appellants

Vs.

K.Rajiv & Ors. - Respondents

**iv) Case No and Date of Judgement:**

First Appeal No.70 of 2012 & Date of Judgement: 03.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The main contention of the Appellants was that there was no contract between the Appellants as the owners of the land and the Complainant and that in the absence of any privity of contract between them, the Complainant was not a “consumer” qua them and there was no question of deficiency of service on their part. This argument was rejected by the Commission in the light of the documents forming part of the record and relying on the decision of the Hon’ble Supreme Court in *Bhupinder Singh Gill & Anr. Vs. Swaroopa Rani @ Susan Charles & Anr.* (SLP (C) No.17330 of 2013). The Commission observed that an *inter-se* dispute between the owners and the builder, if any, cannot be permitted to be used as a ploy to wriggle out of obligations under the agreements and leave the buyer in the lurch.
- b) The Commission was not inclined to examine the question whether Respondent NO.1 was a “consumer” vis-à-vis the owners since the Agreement of Sale for the subject property was entered into way back in the year 2004 and the order of the Hon’ble Supreme Court in *Bhupinder Singh Gill supra*, the facts of which were identical to the present case, was delivered in the year 2013.
- c) Consequently the appeal was dismissed.

**vii) Citation:**

III (2014) CPJ 333; 2014(3) CPR 91.

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**Deficiency in Service - Housing**

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**11. M/s. Shah Thakur & Sons & Anr. Vs. Mr. Anand Mahendra Shah**

**i) Case in Brief:**

Complainant/Appellant in FA No.98 of 2014 booked a flat with M/s. Shah Thakur & Sons through its partner Shri Chittranjan D. Shah in the building being constructed by them. He made an initial deposit of Rs.10,000/- by cheque on 28.09.2007 and after confirmation of allotment, made a further payment of Rs.3,97,000/- on 06.04.1996 by cheque. It is his case that he and his father had entered into a formal agreement with the builders but the possession of the flat was not handed over despite several requests made to them. The Complainant approached the State Commission which vide impugned order partly allowed the complaint and directed the builder to refund Rs.4,27,700/- along with interest at the rate of 18% p.a, from the date of filing of the complaint, Rs.15,000/- towards mental agony and Rs.10,000/- towards the cost of litigation. Aggrieved by the said order both the parties have filed cross appeals before the National Commission. Appeals disposed of with the direction to the builder/appellant in FA No.827 of 2013 to pay Rs.4,48,075/- to the Complainant along with interest at the rate of 12% p.a, from the date the amount was paid.

**ii) Order appealed against:**

First Appeal No.827 of 2013 and First Appeal No.98 of 2014

From the order dated 08.10.2013 in Consumer Complaint No.300/1999 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai.

**iii) Parties:**

First Appeal No.827 of 2013

M/s. Shah Thakur & Sons & Anr. - Appellants

Vs.

Mr. Anand Mahendra Shah - Respondent

First Appeal No.98 of 2014

Mr. Anand Mahendra Shah - Appellant

Vs.

M/s. Shah Thakur & Sons & Anr. - Respondents

**iv) Case No and Date of Judgement:**

- i. First Appeal No.827 of 2013 with IA/7547/2013 (For Stay)
- ii. First Appeal No.98 of 2014 with IA/841/2014 (Condonation of Delay) &

Date of Judgement: 07.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19, 21(b) and 24A of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The first question that arose for consideration was whether there was an agreement between the builder and the Complainant. While the builder denied any such agreement, the Commission based on the documents made available held that the appellants in FA No.827 of 2013 had entered into an agreement with the Complainant and his father for sale of Flat No.C-111 at Satyam and had received from them a sum of Rs.4,27,700/-
- b) On the issue of limitation raised by the builders, the Commission held that the last payment was made on 06.04.1996. The Complainant claimed that the flat was to be delivered by 31.12.1996. It was held that a Consumer who books a flat to the builder would not rush to the consumer forum immediately on expiry of the date stipulated for handing over possession. In the normal course of human conduct, the consumer would approach the builder a number of times before coming to the Consumer Forum. It was noted that in the present case the Complainant had written letters to the builder on 16.01.1999 and on 01.03.1999 before filing the complaint on 24.06.1999 i.e. within three years from the date by which the possession of the flat was promised. It was held that the consumer should give a reasonable time of one year to the builder for honoring his contractual obligation. Since the one year expired on 31.12.1997 and the complaint was filed within a period of 2 years thereafter i.e. in June 1999, the Commission held that Section 24A of the Act was not attracted.
- c) Consequently the Commission held that the builder should pay to the Complainant the money deposited by the Complainant along with interest plus the expenditure incurred on stamp duty and

## **Deficiency in Service - Housing**

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registration of documents. The amount payable was computed at Rs.4,48,075/- with interest 12% p.a from the date the amount was paid till the date payment was made.

### **vii) Citation:**

Not reported in CPJ and CPR.

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## **12. Dr. Surendra Kumar Sharma Vs. Agra Development Authority**

### **i) Case in Brief:**

Complainant/Petitioner was allotted M.I.G. house by OP/Respondent for a sum of Rs.1,89,000/- which was deposited as per schedule of payment shown in the allotment letter but possession of Flat was not given to him in spite of notice. Alleging deficiency on the part of OP, Complainant filed complaint before District Forum which directed OP to refund deposited amount with interest at 12% p.a. and further allowed Rs.5,000/- as compensation for mental torture and cost of the case. Appeal filed by the OP was partly allowed by State Commission vide impugned order and grant of interest by District Forum was set aside against which, this Revision Petition has been filed along with application for condonation of delay. Revision Petition dismissed but delay in filling the Revision Petition was condoned.

### **ii) Order appealed against:**

From the order dated 28.11.2011 in First Appeal No.2179 of 2003 of the U.P. State Consumer Disputes Redressal Commission, Lucknow.

### **iii) Parties:**

Dr. Surendra Kumar Sharma - Petitioner/Complainant

Vs.

Agra Development Authority - Respondent/Opp. Party

### **iv) Case No and Date of Judgement:**

Revision Petition No.2175 of 2012; Date of Judgement: 07.07.2014.

### **v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.



**vi) Issues raised and decided:**

- a) The National Commission after perusing all the records of the case pointed out that in spite of repeated reminders, Complainant had failed to deposit due amount and consequently, allotment of flat was cancelled by the respondent. In ordinary course, if allotment was cancelled on account of non-payment of dues, some amount should be forfeited. But in the present case, no amount had been forfeited and in such circumstances, grant of interest by District Forum was not justified and State Commission had not committed any error in modifying the order.
- b) In view of the above, Revision Petition was dismissed and the Commission found no illegality, irregularity or jurisdictional error in the impugned order of the State Commission.

**vii) Citation:**

III (2014) CPJ 381; 2014(3) CPR 25.

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**13. Smt. Ram Pyari Vs. Lucknow Development Authority**

**i) Case in Brief:**

The Complainant/Petitioner was allotted Plot No.SS-302 in Sector-B, Azadnagar, Lucknow, vide allotment letter dated 16.11.1999. However, the possession of the aforesaid plot was not handed over to the Petitioner/Complainant. The grievance of the Complainant was that the Respondent illegally allotted the aforesaid plot to one Mohd. Usman. Alleging deficiency in service, the Complainant filed a complaint before the District Forum which, on coming to know that there was a civil dispute regarding the said plot, directed the said Authority to allot an alternative plot to the Complainant in case she was willing for such an allotment or to refund the amount deposited by her along with interest at the rate of 12% per annum in case she did not consent for the alternative allotment. Being aggrieved from the order passed by the District Forum, the Respondent preferred an appeal before the State Commission which enhanced the rate of interest from 12% to 18% per annum, but did not direct allotment of an alternative plot to the Complainant. Being aggrieved from the order of the State Commission, the Complainant has filed the present Revision Petition. Revision Petition allowed.

**Deficiency in Service - Housing**

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**ii) Order appealed against:**

From the order dated 21.11.2007 in Appeal No.1372/SC/2005 of the U.P. State Consumer Disputes Redressal Commission, Lucknow.

**iii) Parties:**

Smt. Ram Pyari - Petitioner

Vs.

Lucknow Development Authority - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.932 of 2008 & Date of Judgement: 08.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission after perusing all the records of the case passed the following orders:

- a) The Respondent/Lucknow Development Authority should allot either a plot of land measuring about 400 sq. ft. or a residential flat/tenement having at least two rooms to the Petitioner/Complainant within eight weeks from the date of the order.
- b) The allotment should be made in Azad Nagar or in a locality which is at par with Azad Nagar in terms of the value of the land.
- c) In case, the Respondent Authority decides to allot the flat/tenement of two rooms and not a vacant plot, it shall be entitled to recover from the Complainant/Petitioner an amount equivalent to the amount, which he had paid to the Lucknow Development Authority for allotment of plot no. SS-302 in Sector-B, Azadnagar, Lucknow.
- d) The Revision Petition was decided accordingly and the order of the State Commission was modified.

**vii) Citation:**

Not reported in CPJ and CPR.

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**14. Shri Om Prakash Vs. Shri Mahesh Chand Gupta**

**i) Case in Brief:**

It was the case of the Complainant that on a verbal proposal from him, the Respondent, a Civil Engineer, agreed to complete the construction of the house within 6 months as per the specification of the Complainant. Respondent started the construction work on 17.11.2005 but the construction work had not been completed by the Respondent even after the period of two years. Finally, the construction was completed by the Respondent but not as per the specifications made by the Complainant for which the Respondent had received the payment of Rs.1,25,000/- and issued receipt only for Rs.1,05,600/- and balance amount had not been returned to the Complainant despite repeated requests. Therefore, the Complainant sent a legal notice for completing the deficient construction work and compensating the Complainant for the substandard construction work as he had spent Rs.8 lakhs on it. But the Respondent had neither compensated the Complainant nor replied to the same. Aggrieved by the act of OP, he filed complaint before the District Forum which dismissed the complaint. The appeal filed by the Complainant before the State Commission was also dismissed vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed with cost of Rs.10,000/-.

**ii) Order appealed against:**

Against the order dated 12.03.2014 in Appeal No.428/2012 of the State Commission, Rajasthan.

**iii) Parties:**

Shri Om Prakash - Petitioner

Vs.

Shri Mahesh Chand Gupta - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.2531 of 2014 & Date of Judgement: 08.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

## **Deficiency in Service - Housing**

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### **vi) Issues raised and decided:**

- a) The National Commission, after perusing all the records of the case, found that Counsel for Complainant/Petitioner had failed to show any Agreement/Contract with the respondent for construction of house. In fact, in his complaint, he had admitted that he had supplied the entire material for construction and also claimed that he had spent a sum of Rs.8 lakhs on the construction of the house. Out of this, as per the complaint only Rs.1,25,000/- had been given to the respondent. He had also admitted that he had receipts only for Rs.1,05,600/-. As per respondent, Rs.1,05,600/- had been paid to him for providing good labour for the construction work. In the absence of any Agreement or Contract for construction of well-established, modern house, it could not be said that the Respondent was a service provider. Thus, the Petitioner could not claim compensation for the amount expended in the construction of his house and for deficient work.
- b) The Petitioner had also failed to provide any evidence to support his contention that the Respondent was a Civil Engineer engaged in the business of construction of houses and shops on contract basis.
- c) In view of the above, the present Revision Petition was dismissed and the Complainant was directed to pay the cost of Rs.5,000/- (Rupees Five Thousand only) by way of demand draft in the name of the Respondent and another Rs.5,000/- (Rupees Five Thousand only) to be deposited by way of demand draft in the name of 'Consumer Legal Aid Account' of the Commission, within four weeks from the date of order.

### **vii) Citation:**

III (2014) CPJ 382; 2014(3) CPR 33.

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## **15. Maa Vaishnavi Builders & Developers Vs. Shri Ashish Vijay Satpute & Ors.**

### **i) Case in Brief:**

Complainants/Respondents paid a sum of Rs.2,92,000/- to the Petitioner on 09.05.2008 out of a consideration of Rs.11,71,000/- for purchase of a flat in their housing scheme. Their grievance is that the petitioner,

in spite of repeated requests and legal notice, did not supply sanction map and NOC from Nagpur Improvement Trust to enable them to get a loan from HDFC Bank. They filed a complaint before the District Forum which directed the Petitioner to supply the documents and execute the sale deed in their favour after receiving the balance sale consideration from them. Meanwhile the Petitioner had issued a cheque dated 24.12.2008 for Rs.2,92,000/- to the Complainants refunding the entire amount paid by them. The appeal filed by the Petitioner was dismissed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed with cost.

**ii) Order appealed against:**

From the order dated 28.04.2014 in First Appeal No.A/09/689 of Maharashtra State Consumer Disputes Redressal Commission, Circuit Bench at Nagpur.

**iii) Parties:**

Maa Vaishnavi Builders & Developers	- Petitioner
Vs.	
Shri Ashish Vijay Satpute & Ors.	- Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.2736 of 2014 with I.A.s Nos.4469 of 2014, 4470 of 2014 & 4471 of 2014 (For Stay, Exemption from filing translation, Exemption from filing certified copy) &

Date of Judgement: 11.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The main issue was whether the amount of Rs.2,92,000/- was refunded by the Petitioner to the Complainants on their request or it had, on its own, deposited the aforesaid amount in the bank account of the Complainants. The Counsel for the Petitioner submitted that the Complainants had made an oral request for refund. The Commission observed that the Petitioner was not likely to entertain an oral request when it had already been served with the legal notice seeking copy of the map and NOC from Nagpur Improvement Trust. The fact that the Petitioner did

### **Deficiency in Service - Housing**

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not take any receipt on delivering a cheque of Rs.2,92,000/- was also held against the Petitioner. The Commission therefore held that the Complainants did not get the flat cancelled and it was the Petitioner who of its own cancelled the booking and deposited the amount of Rs.2,92,000/- by way of cheque in the bank account of the Complainants.

- b) The Revision Petition was dismissed as devoid of merit with cost assessed at Rs.25,000/-.

**vii) Citation:**

Not reported in CPJ and CPR.

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### **16. Urban Improvement Trust, Ajmer Vs. Smt. Prakash Kanwar**

**i) Case in Brief:**

Respondents/Complainants in the three Revision Petitions filed complaints before the District Forum alleging that the Petitioner trust had collected excess amount from them towards regularization charges and was refusing to refund the same. The complaints were resisted by the Petitioner on the ground that the regularization charges had been enhanced from Rs.250 to 450/- per sq. yard at the meeting of the trust held on 23.12.2009. The District Forum allowing the complaints directed to refund the amount collected in excess of Rs.150/-per sq. yard. The Petitioner's appeal was dismissed by the State Commission vide impugned orders against which the present Revision Petitions have been filed. Revision Petitions dismissed with cost.

**ii) Order appealed against:**

Revision Petitions Nos.2605-2607/2014

From the order dated 09.05.2014 in Appeal Nos.207-209/2014 of Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

**iii) Parties:**

Revision Petitions No.2605/2014

Urban Improvement Trust, Ajmer - Petitioner

Vs.

Smt. Prakash Kanwar - Respondent

Revision Petitions No.2606/2014

Urban Improvement Trust, Ajmer - Petitioner

Vs.

Nirmaljeet Singh - Respondent

Revision Petitions No.2607/2014

Urban Improvement Trust, Ajmer - Petitioner

Vs.

Pritam Bhatnagar - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition Nos.2605-2607 of 2014 &  
Date of Judgement: 11.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission on perusal of the resolution dated 23.12.2009 noted that the Petitioner was charging Rs.150/- per sq. yard as development charges for the purpose of regularization. The Petitioner could not place any document fixing the regularization charges at Rs.250/- per sq. yard. It was held that the Petitioner was not entitled to charge from the Complainants, the charges revised in the meeting held on 23.12.2009 for the simple reason that the applications of the Complainants for regularization of the respective land had been received prior to the date. No statutory rule permitting the petitioner to charge regularization charges on the rates prevailing on the date of regularization and not on the date of application was produced before the Commission. The Commission therefore found no reason to interfere with the order of the State Commission. The Revision Petitions were accordingly dismissed with cost of Rs.10,000/- each.

**vii) Citation:**

Not reported in CPJ and CPR.

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**17. Improvement Trust, Ludhiana Vs. Neeraj Chug and others**

**i) Case in Brief:**

The Petitioner company allotted a plot to the Complainant on 09.05.1993. Vide resolution No.359 dated 17.11.1994, the petitioner Improvement Trust decided to collect Non-Construction Fees (NCF) from the allottees but the Government of Punjab, vide its letter dated 22.04.1999, directed all the Improvement Trusts, including the petitioner not to charge the said fee in respect of the plots which had remained under stay or were subject matter of the litigation. After getting the building plan sanctioned on 16.10.1997, the Complainant raised construction but till the year 2001, there was no development in the area. However, the sale deed in favour of the Complainant was not executed and he was asked to submit Completion Certificate along with Non Construction Fee amounting to Rs.1,39,100/-, enhancement amounting to Rs.17,080/- and development charges amounting to Rs.52,800/-. Despite protest from the Complainant, the demand was not withdrawn, as a result of which the Complainant made the aforesaid payment, whereupon the sale deed in his favour was executed on 29.05.2007. Being aggrieved that the amount was recovered from him, the Complainant approached the District Forum which directed the Petitioner to refund the Non Construction Fee of Rs.1,39,200/- and Rs.2,300/- and development charges amounting to Rs.52,800/-. The refund of management charges however was declined. The petitioner was also directed to pay interest at the rate of 9% per annum from the date of deposit till the date of payment. Being aggrieved from the order of District Forum, the petitioner approached the State Commission which dismissed the appeal filed by the petitioner, leading to the filing of the present Revision Petition. Revision Petition dismissed.

**ii) Order appealed against:**

Revision Petition No.1876 of 2014

From the order dated 16.09.2013 in First Appeal No.1278/2009 of Punjab State Consumer Disputes Redressal Commission.

**iii) Parties:**

Improvement Trust, Ludhiana

- Petitioner

Vs.

Neeraj Chug and others

- Respondents



**iv) Case No and Date of Judgment:**

Revision Petition No.1876 of 2014 with I.A.No.2650 and 2651 of 2014 (for Stay, Exemption from filing the certified copy) &

Date of Judgment: 23.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The issue involved in this case was whether the collection of Non-Construction Fees by the Petitioner Company was justified or not.
- b) The National Commission held that the Non-Construction Fees was paid by the Complainant under protest, she having been left with no option, in view of the stand taken by the petitioner Trust which insisted upon the payment of the aforesaid amount before sale deed in favour of the complainant was executed.
- c) The Commission further noted that no material was placed by the petitioner before the District Forum to show that the construction was not completed, even within two years from the date on which the complete services were provided by it in the locality where the plot was allotted to the Complainant.
- d) As regards the development charges, it was held that the said development charges were payable by the society and not by individual members. Therefore, recovery of development charges from the Complainant was also wholly unjustified.
- e) In view of the above, the Commission found no ground to interfere with the orders of the State Commission and District Forum. Accordingly, the present Revision Petition dismissed.

**vii) Citation:**

Not reported in CPJ and CPR.

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**18. Alok Garg Vs. Ghaziabad Development Authority and Others**

**i) Case in Brief:**

Complainant applied for a flat on the ground floor facing the wide road with the OP Project at Shipra Sun City. He was issued a letter dated

### **Deficiency in Service - Housing**

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13.02.2001 allotting flat No.534-A Regent Ground Floor, Shipra Sun City. On receipt of allotment letter, the petitioner visited the site and found that flat No.534-A was not facing the wide road but it was facing the service lane. The petitioner being aggrieved lodged protest with the opposite parties on 24.02.2001 but kept on paying the installments as per the payment schedule without prejudice to his rights. Aggrieved by the act of OPs, he filed a complaint before the District Forum which dismissed the complaint holding that there was no deficiency in service on the part of the OPs. Aggrieved from the order of the District Forum, the Complainant preferred an appeal before the State Commission which directed the OPs to allot to the appellant/Complainant a flat which was facting wide road as per their own undertaking endorsed on the application form in lieu of the flat bearing no.534-A Service Lane facing Ground Floor, Shipra Sun City after adjusting the payment made by the Complainant in respect of the aforesaid flat. The respondent/opposite party was further directed to pay an amount of Rs.10,000/- towards mental tension and harassment of the Complainant and a sum of Rs.2,000/- for legal expenses". The Complainant not being satisfied with the amount of compensation awarded for mental tension and harassment has filed Revision Petition No.2320 of 2013 seeking enhancement of compensation which was dismissed. Opposite Parties No.3 & 4 being aggrieved of the reversal of the order of the District Forum, have preferred Revision Petition No.3817 of 2013 seeking setting aside of order of the State Commission which was allowed.

#### **ii) Order appealed against:**

##### Revision Petition No.2320 Of 2013

Against the order dated 28.2.2013 in First Appeal No.806/2011 of the U.P. State Consumer Disputes Redressal Commission, Lucknow.

##### Revision Petition No.3817 Of 2013

Against the order dated 28.2.2013 in First Appeal No.806/2011 of the U.P. State Consumer Disputes Redressal Commission, Lucknow.

#### **iii) Parties:**

##### Revision Petition No.2320 Of 2013

Alok Garg

- Petitioner

Vs.

Ghaziabad Development Authority and Others

- Respondents

Revision Petition No.3817 Of 2013

Shipra Estate Limited and another - Petitioners

Vs.

Alok Garg and others - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.2320 of 2013;

Revision Petition No.3817 of 2013 with IA No.4769 of 2013 and 4749 of 2014 (for Condonation of Delay & Correction of Order) &

Date of Judgment: 23.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

Revision Petition No.2320 of 2013 filed by Complainant seeking enhancement of compensation was dismissed holding that failure of the opposite parties to allot to the Complainant a flat facing wide road could not be termed as deficiency in service particularly when the possession of allotted flat No. 534-A was admittedly offered to the Complainant in the year 2002. Revision Petition No.3817 of 2013 filed by Opposite Parties No.3 & 4 was allowed by the National Commission by assigning the following reasons:

- a) On perusal of the terms and conditions of allotment of flat, particularly Condition No.2, it was clearly evident that as per the terms and conditions, the allotment of flat was in the absolute discretion of the developer company and the applicant could not claim flat of his choice. It was further evident from the fact that while applying for the flat it was made clear to the Complainant that he may not get the flat of his choice.
- b) The Commission further observed that if the Complainant was interested only in a flat facing wide road, he on receipt of allotment letter, which could be termed as a counter offer by the opposite parties, should have rejected the counter offer and asked for the refund of his money. The Complainant instead of withdrawing from the scheme kept on paying the installments as per the payment schedule which means that the counter offer of the opposite parties to allot flat no.534-A to the Complainant was

## **Deficiency in Service - Housing**

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accepted by him. Further, records revealed that on receipt of the allotment letter, the Complainant wrote to the opposite parties requesting for issue of No-objection-certificate for obtaining loan from the bank which clearly showed that the Complainant had actually accepted the allotment of flat no.534-A.

### **vii) Citation:**

IV (2014) CPJ 26; 2014(3) CPR 357.

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## **19. G. Subramania Pillay Vs. M. Unnikrishnan and another**

### **i) Case in Brief:**

It is the case of the Complainant that he had entrusted the work of constructing a residential building at the cost of Rs.6.2 lakhs and a compound wall at a cost of Rs.20,000/- to the Respondents/Opposite Parties on 23.6.2008. As per the agreement between the parties, the construction of the building was to be completed by January, 2009 but was extended by another six months. Since there was delay in the completion of the construction within the stipulated time, the Complainant filed a consumer complaint before the District Forum which directed the opposite parties jointly and severally to pay to the Complainant an amount of Rs.50,000/- as compensation for mental agony and pay Rs.3,000/- as cost of the proceedings. Both the Complainant and Opposite Parties had challenged the order of the State Commission which reduced the amount of compensation awarded by the District Forum in favour of the Complainant/petitioner from Rs.50,000/- to Rs.30,000/- but confirmed the rest of the order. Aggrieved by the order of the State Commission, the Petitioner/Complainant has now filed the present Revision Petition. Revision Petition dismissed.

### **ii) Order appealed against:**

From the order dated 17.4.2013 in Appeal Nos.252 & 608 of 2012 of the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram.

### **iii) Parties:**

G. Subramania Pillay	- Petitioner
Vs.	
M. Unnikrishnan and another	- Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.2959-2960 of 2013; Date of Judgement: 24.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The issues involved in this case were (i) whether the Petitioner/ Complainant has paid excess amount to the Respondents/Opposite Parties and (ii) whether the compensation awarded in the matter by the District Forum was excessive or not.
- b) The National Commission on perusal of the orders of fora below found that both the Fora have returned their concurrent finding on the first point and have concluded that the claim of the Complainant/petitioner regarding excess amount is not established. Regarding the second point the State Commission modified the amount of compensation by reducing it from Rs.50,000/- to Rs.30,000/-. The State Commission passed this order keeping in view the report of the Local Commissioner, terms & conditions of the agreement between the parties and other evidence adduced by them before it. The State Commission recorded reasons in support of its impugned order. Therefore, the National Commission was of the view that there was no other legal issue involved for consideration in this Revision Petition.
- c) In view of the above, the present Revision Petition was dismissed as devoid of merit and orders of the State Commission were confirmed.

**vii) Citation:**

IV (2014) CPJ 46; 2014(3) CPR 353.

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**20. Emaar MGF Land Ltd and another Vs. Karnail Singh and another**

**i) Case in Brief:**

The Respondents applied to the appellants for the allotment of a residential plot and paid a sum of Rs.5,00,000/- by cheque on 12.02.2011. They were allotted a plot for a total sale consideration of Rs.65,30,250/-. Provisional allotment letter was issued on 25.02.2011.

### **Deficiency in Service - Housing**

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It is the Respondent's case that despite getting part payment till the month of May, 2011, the Appellant did not execute the Plot Buyers Agreement as promised. After further payment and a lot of correspondence, the Plot Buyers Agreement was executed on 22.11.2011. Due to the delay in executing the said agreement, the Respondents could not avail the housing loan in time from the Bank. The Respondents were able to get a loan from HDFC only in March 2012 and by August, 2012 they had paid Rs.62,60,750/- i.e about 95% of the sale consideration. As per the agreement, the appellants were liable to pay compensation/penalty @ Rs.50 per square yard per month for the period of delay beyond 18 months. Neither this penalty was paid nor the plot handed over to the Respondents. They filed a complaint before the State Commission which vide impugned order directed OP to refund the amount of Rs.62,60,750/- to the Complainants along with 12% interest from the respective date of deposits within a period of 45 days. Compensation of Rs.2,00,000/- for causing mental agony and harassment and Rs.20,000/- towards cost of litigation were also awarded. Aggrieved by the said order, the present first appeal has been filed. Appeal dismissed with punitive damages of Rs.5,00,000/-.

#### **ii) Order appealed against:**

From the order dated 9.4.2014 in Complaint Case No.05 of 2014 of State Consumer Disputes Redressal Commission, Chandigarh.

#### **iii) Parties:**

Emaar MGF Land Ltd and another - Appellants

Vs.

Karnail Singh and another - Respondents

#### **iv) Case No and Date of Judgement:**

First Appeal No:342 of 2014 with I.A.No.3876 of 2014 (For Stay), I.A.No.3877 of 2014 (For Condonation of Delay) &

Date of Judgement: 25.07.2014.

#### **v) Acts and Sections referred:**

Sections 2(1) (g), (o), (r ) 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

#### **vi) Issues raised and decided:**

- a) The Commission noted that it was an admitted fact that the possession of the flat in question had not been handed over to

the Respondent within a period of 12 months or 18 months from the date of execution of the buyers agreement. The Appellants had not given any explanation with regard to not handing over possession of the plot and they were not sure when they would handover. It was noted that the Appellants after grabbing 95% of the cost of plot were sitting over it whereas Respondents were made to run from pillar to post to get their hard earned money back. It was held that the act of the Appellants in asking the Respondents to pay a sum of Rs.5,00,000/- as booking amount and Rs.5.78 lakhs as part payment towards provisional amount in the year 2011 without giving them any firm date of handing over possession of the plot was a 'deceptive practice' which fell within the meaning of 'unfair trade practice' as defined in the Act. The Commission observed that unscrupulous builders like the Appellant should not be spared. Relying on the decisions of the Hon'ble Apex Court in *Ravinder Kaur v. Ashok Kumar*, AIR 2004 SC 904 & *Ramrameshwari Devi and others Vs. Nirmala Devi and others* (Civil Appeal Nos.4912 – 4913 of 2011 decided on July, 4, 2011), the Commission held that the present appeal was nothing but gross abuse of process of law and the same was required to be dismissed with punitive damages.

- b) Accordingly, the appeal was dismissed with punitive damages of Rs.5,00,000/- of which Rs.2,50,000/- was to be deposited in the name of Consumer Legal Aid A/c of the Commission within four weeks and the balance of Rs.2,50,000/- was to be deposited in equal share in the name of both the Respondents.

**vii) Citation:**

IV (2014) CPJ 188; 2014(3) CPR 318.

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**21. Joginder Singh Vs. M/s Mapsko Builders Pvt. Ltd and another**

**i) Case in Brief:**

The Petitioner/Complainant booked a plot with the Respondents/OPs by paying Rs.1,97,500/- on 11.01.2010. As per the payment plan agreed between the parties, the Complainant/Petitioner was required to make payment to the builder in a time bound manner and 95% of the payment had to be made by 13.03.2011. Only 5% of the basic price

### **Deficiency in Service - Housing**

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amounting to Rs.1,06,255/- was to be paid at the time of handing over possession to the Complainant. The Petitioner made delayed and incomplete payments of the second and third installments and did not pay the subsequent installments. On completion of the development work, the Respondent/builder issued a letter dated 31.07.2013 to him demanding the outstanding amount along with interest for the belated payment. However, instead of making the aforesaid payment and taking possession, the Complainant approached the District Forum seeking a direction to the Respondents not to charge interest and award of compensation for delayed completion of work. The Forum directed the Respondent/Builder to refund the amount which the Complainant/Petitioner had deposited with it, along with interest at the rate of 9% p.a. Aggrieved from the order of the District Forum, the Petitioner/Complainant preferred an appeal before the State Commission which dismissed the appeal vide order dated 02.05.2014. Against the order of the State Commission, the present Revision Petition has been filed. Revision Petition dismissed.

#### **ii) Order appealed against:**

From the order dated 02.05.2014 in Appeal No.313/2014 of Haryana State Consumer Disputes Redressal Commission.

#### **iii) Parties:**

Joginder Singh - Petitioner

Vs.

M/s Mapsko Builders Pvt. Ltd & Anr. - Respondents

#### **iv) Case No and Date of Judgement:**

Revision Petition No.3042 of 2014 with I.A.No.4939 of 2014 (For Stay) & Date of Judgement : 31.07.2014.

#### **v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

#### **vi) Issues raised and decided:**

- a) The National Commission on perusal of Clause 14(a) of the agreement between the parties noted that the builder did not commit a definite time frame to handover possession of the plot to the Complainant. The obligation of the builder to complete development was subject to the plot buyers making timely payment



as per the payment plan given in the Schedule II of the agreement. Since the petitioner failed to perform his part of agreement by making timely payment in terms of Schedule II of the agreement, the builder was not obliged to handover possession to him within a period stipulated in the agreement.

- b) Regarding the arrangement of the loan to be made by the OPs for the purchase of the flat, the Commission observed that the Petitioner had not been able to satisfy the Commission that under the terms of the agreement, the builder was required to furnish some document which it failed to furnish to him for the purpose of getting a loan from a bank or a financial institution.
- c) In view of the above, the present Revision Petition was dismissed as devoid of merit and the orders of the fora below were confirmed.

**vii) Citation:**

Not reported in CPJ and CPR.

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**22. Sovereign Developers & Infrastructure Limited Vs. Sujith Kumar Dhar**

**i) Case in Brief:**

It is the case of the Complainants/Respondents that in the year 2010, Petitioner/Opposite Party offered a Flat at total cost of Rs.14 lacs and they had paid requisite amount. The delivery of the flats was to be given on or before 30.05.2013. However, Petitioner failed to complete the construction of the flats in time. Meanwhile, the Petitioner had issued letter to the Respondents stating that due to increase in cost of material and labour charges etc, base price of the apartment had been revised from Rs.14,00,000/- to Rs.22,51,000/-. Therefore, Complainants filed complaint before the District Forum on the ground that the demand of difference of Rs.8,51,000/- plus taxes, amounted to deficiency in service. During the pendency of the proceedings before the District Forum, the Complainant applied for appointment of Local Commissioner for settling the matter amicably but withdrew it later. Subsequently, the OP filed application for appointment of Local Commissioner which was allowed by the District Forum despite objection by the Complainant. District Forum directed OP to meet the

### **Deficiency in Service - Housing**

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expenditure of Commissioner's work on production of his report and the bill including all incidental expenses. Being aggrieved, Complainants filed Revision Petitions before the State Commission which directed the District Forum to record further evidence of both parties if any, by receiving the documentary evidence, additional documents if any and dispose of the cases expeditiously on priority basis. Against the order of the State Commission, the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

Revision Petition No.2447 & 2485 of 2014

Against order dated 05.05.2014 in Revision Petition Nos.09 and 10 of 2014 of the State Consumer Disputes Redressal Commission, Karnataka.

**iii) Parties:**

Revision Petition No.2447 of 2014

Sovereign Developers & Infrastructure Limited - Petitioner

Vs.

Sujith Kumar Dhar - Respondent

Revision Petition No.2485 of 2014

Sovereign Developers & Infrastructure Limited - Petitioner

Vs.

Rachit Garg - Respondent

**iv) Case No and Date of Judgement:**

- i. Revision Petition No.2447 of 2014 with I.A.No.3850 of 2014 (for Stay);
- ii. Revision Petition No.2485 of 2014 with I.A.No.3925 of 2014 (for Stay) &

Date of Judgement: 01.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 13(4) (iv), 19 and 21(b) of the Consumer Protection Act, 1986 & Order 26 of the Civil Procedure Code.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the case pointed out that the issue whether there has been any increase in the cost of the raw materials, labour and other charges etc should have been proved by the OP by producing evidence to this effect, before the District Forum. By seeking appointment of a Court Commissioner for this purpose, the Petitioner just wanted to shift that burden of proof which the District Forum also erroneously allowed. (From the findings of the State Commission).
- b) In view of the above, the Commission dismissed the present Revision Petition and the orders of the State Commission were confirmed.

**vii) Citation:**

IV (2014) CPJ 4; 2014(3) CPR 294.

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**23. The Punjab State Federation of Cooperative House Building Societies Ltd Vs. Kuljit Singh and another**

**i) Case in Brief:**

Respondent/Complainant was allotted a flat by the Petitioner vide letter dated 30.06.2009. Rs.1,01,000/- was paid as initial deposit (5% of the total tentative cost of Rs.20,00,000/-) and no date bound time table for payment of other installments was mentioned. On enquiry, he was also informed by the OP that payment could be made with interest at any time. The Respondent paid the allotment money of Rs.2,02,000/- and two installments of Rs.1,13,500/- each thereafter. The Respondent, thereafter, received a letter dated 27.12.2010 informing him that since 3 consecutive installments amounting to Rs.1,13,500/- each have not been deposited, the allotment of the flat was cancelled and 100% amount already deposited was also forfeited as per Clause No. 6 of the application form(which enables the OP to cancel the allotment due to misrepresentation/suppression of facts by the Applicant). The Complainant approached the office of the Petitioner/OP on 21.02.2011 for payment of all money due from him and moved an application, but there was no restoration of flat despite the willingness of the Respondent to make the payment along with interest on the ground that 60 days had been lapsed (calculated from the date of passing of

### **Deficiency in Service - Housing**

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cancellation order, i.e., 16.12.2010) as per Clause 7, while actually it was received much later by the Respondent on 27.12.2010. Aggrieved by the act of OP, he filed complaint before the District Forum which directed the Complainant to pay the defaulted amount to OP no. 1 along with interest @ 18% per annum for the defaulted period, whereupon the OP no. 1 shall restore the flat in question in the name of the Complainant forthwith. No order was given as to compensation or cost. Aggrieved by the order of the District Forum, the Appellant filed an appeal before the State Commission which dismissed the appeal and upheld the order of the District Forum. Against the decision of the State Commission, the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

Against the order dated 08.10.2012 in First Appeal No.210 of 2012 of the State Consumer Disputes Redressal Commission, Union Territory Chandigarh.

**iii) Parties:**

The Punjab State Federation of  
Cooperative House Building Societies Ltd - Petitioner

Vs.

Kuljit Singh and another - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.552 of 2013; Date of Judgement: 05.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission found that that the cancellation of the flat on default of payment was not automatic. As per Clause 7, OP/the Managing Director, Housefed was empowered to revoke the cancellation of the allotment flat at any stage after charging interest @ 18% per annum for the defaulted period within 60 days from the date of cancellation of flat. In this regard, the Commission observed that when the cancellation was not automatic, the Respondent should have given notice before the cancellation.

- b) Further, regarding the ambiguity involved in the calculation of 60 days, the Commission held that 60 days period should be counted not from the date of unilateral cancellation of the allotment by the Petitioner or the date of dispatch, i.e., 20.07.2010, but the date on which knowledge came to the Respondent No.1, i.e. 27.12.2010. The Commission also pinpointed that the Respondent had applied for restoration of the flat within 60 days of the receipt of the letter vide his letter dated 21.02.2011 which was also admitted by the Petitioner.
- c) In view of the above, the Commission held that there was a gross violation of clauses 6 and 7 by the OP/Petitioner to deny restoration of the flat to the Complainant/Respondent. Hence, the present Revision Petition was dismissed and orders of the State Commission were confirmed.

**vii) Citation:**

IV (2014) CPJ 70; 2014(3) CPR 62.

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**24. Smt. Asha Mahrotra Vs. M/s Eldeco Housing & Industries Ltd**

**i) Case in Brief:**

The case of the Complainants/Petitioners was that under the Scheme entitled “Udyan Scheme” floated by OP/M/s. Eldeco Housing & Industries Ltd they were allotted houses No.1085 and 1086 at a total cost of Rs.71,000/- each. On 15.10.1989 Petitioners were informed that on account of increase in the land area, an additional amount of Rs.15,750/- each was to be paid by them. Petitioners had paid Rs.35,200/- each by 1991. The Respondent vide letter dated 26.02.1993 informed the Petitioners that they were unable to allot houses No.1085 and 1086 to them and instead suggested four other units, out of which two could be selected by the Petitioners in lieu of earlier ones but at an enhanced cost of Rs.1,08,020/- each. They were informed that they should pay the balance amount of Rs.73,420/- in case they were willing to accept these units within 18 months from the date of that letter. Complainants/Petitioners were willing to purchase the (new) units No.416 and 430 offered by the Respondent but raised some queries regarding the additional amount demanded for these units and sought some more time to pay the increased amount in lump-sum. Respondent, however, without heeding to the request of the Complainants and

### **Deficiency in Service - Housing**

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before the period of 18 months cancelled the allotment vide their letter dated 14.02.1994 unilaterally and without notice. Being aggrieved by this action, Petitioners filed their complaints before the District Forum which directed the OP to provide possession of the allotted House No.416 or 430 in Udyan Part II within 60 days and to pay interest @ 18%, on the amount deposited from 31.12.1991 till the date of possession. The District Forum also held that in case handing over possession was not possible, the principal amount Rs.35,200/- along with interest @ 18% from 31.12.1991 till date of payment to each petitioner and Rs.10,000/- and Rs.10,000/- towards damages and Rs.1,000/- and Rs.1,000/- towards cost should be paid to each Complainant. Being aggrieved by this order, both Petitioners as also the Respondent filed appeals before the State Commission. The State Commission after considering the appeals partially modified the order of the District Forum directing the Respondents to refund the amount paid by the Complainants with 9% simple interest. Dissatisfied with the order of the State Commission, Petitioners have filed the present Revision Petitions. Revision Petitions partially allowed.

#### **ii) Order appealed against:**

Revision Petition No.4067 & 4083 of 2008

Against the order dated 27.08.2008 in Appeals No.2901, 2902, 2878 & 2879 of 2001 of the U.P. State Consumer Disputes Redressal Commission.

#### **iii) Parties:**

Revision Petition No.4067 of 2008

Smt. Asha Mahrotra - Petitioner

Vs.

M/s Eldeco Housing & Industries Ltd - Respondent

Revision Petition No.4083 of 2008

Sri Pramod Wahal - Petitioner

Vs.

M/s Eldeco Housing & Industries Ltd - Respondent

#### **iv) Case No and Date of Judgement:**

Revision Petition No.4067 & 4083 of 2008 &

Date of Judgement: 06.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), (r ) 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the entire transactions involved in the case found that the conduct of the Respondent in initially not adhering to their assurance of handing over the first set of units within the stipulated period and thereafter offering alternative units which was also cancelled arbitrarily and without waiting for the 18 months period offered by them to the Petitioners for making the enhanced payment was both deficiency in service and unfair trade practice. Therefore, the Commission directed the Respondent to allot one built up unit to each of the Petitioners of the same area and dimensions as offered under the Udyan Scheme from among one of their existing Projects/Schemes in Lucknow, on the Petitioners paying the outstanding amount of Rs.79,000/- along with 9% interest.
- b) Consequently, the Revision Petitions were partially allowed and the order of the State Commission was modified on the above said lines by the National Commission.

**vii) Citation:**

III (2014) CPJ 618; 2014(3) CPR 599.

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**25. Smt. Basanti Sen Vs. Ashok Kumar Vijayvargiya**

**i) Case in Brief:**

Petitioner, owner of some land in Ranchi entered into a development agreement with the builder namely Park Sarvamangala Projects Pvt Ltd whereby the builder undertook to construct a multistoried building over the land of the Petitioner. Some of the flats including Flat No.101 to be constructed by the builder were to come to the share of the Petitioner. Vide an agreement of sale executed on 14.08.2007, the Petitioner agreed to sell Flat No.101 to the Complainant for a consideration of Rs.17,74,800/- including the cost of generator etc. The case of the Complainant is that when he went to pay an installment on 31.07.2008, the Petitioner refused to accept the same and demanded

### **Deficiency in Service - Housing**

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enhanced amount an account of escalation in the price of the building material. Being aggrieved from the aforesaid demand, Complainant approached the District Forum which directed the Petitioner to execute the sale deed after accepting the balance consideration from the Complainant as per the agreement dated 14.08.2007 and hand over the possession of the flat to him. Petitioner was also directed to pay Rs.2,00,000/- as compensation and Rs.5,000/- as cost. Petitioner's appeal was dismissed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

#### **ii) Order appealed against:**

From the order dated 25.04.2014 in F.Appeal No.82 of 2012 of the Jharkhand State Consumer Disputes Redressal Commission, Ranchi.

#### **iii) Parties:**

Smt. Basanti Sen - Petitioner

Vs.

Ashok Kumar Vijayvargiya - Respondent

#### **iv) Case No and Date of Judgement:**

Revision Petition No:2581 of 2014 & Date of Judgement: 08.08.2014.

#### **v) Acts and Sections referred:**

Sections 2(1), (d), (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

#### **vi) Issues raised and decided:**

- a) The Commission rejected the contention of the Petitioner that the Complainant cannot be said to be a consumer of the Petitioner as she was not to construct any flat for the Complainant and therefore there was no question of any deficiency in service provided by her. The Commission observed after going through clauses (2) and (3) of the agreement between the Petitioner and the Complainant dated 14.08.2007 that whether the Petitioner was constructing the Flat herself or got it constructed from the builder, since 'service' as per Section 2(o) of the Consumer Protection Act includes housing construction, the Complainant would certainly be a consumer.



- b) The Commission also noted that there was no clause for escalation/revision of the price in the agreement between the parties in case there was increase in the cost of building material and/or the wages of the labourers. Consequently, it was held that she had no right to ask for enhancement from the Complainant.
- c) The Revision Petition was accordingly dismissed as devoid of merit.

**vii) Citation:**

Not reported in CPJ and CPR.

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**26. M/s. Chaitanya Construction Vs. Mr. Basavaraj Khajurji**

**i) Case in Brief:**

Complainant/Respondent booked a flat with the Petitioner on 03.03.2004 for a sale consideration of Rs.6,50,000/-. Complainant paid an advance of Rs.1,00,000/-. As per the agreement between the parties, possession of the flat was to be given within 9 months. Complainant raised a loan of Rs.5,50,000/- for acquiring the flat. Since possession was not given as per the agreement, Complainant approached District Forum. When the matter was pending before the District Forum, a compromise was reached between the parties and the Complaint was disposed of by the District Forum in terms of the compromise vide order dated 30.09.2006. Alleging non-implementation of the aforesaid order, Complainant filed Execution Petition. Vide order dated 07.09.2013, the District Forum directed the Petitioner to complete the lift work within two months of the order. Petitioner preferred a Revision Petition before the State Commission which was dismissed vide impugned order against which the second Revision Petition has been filed before the National Commission. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 22.04.2014 in R.P./13/816 of Maharashtra State Consumer Disputes Redressal Commission.

**iii) Parties:**

M/s. Chaitanya Construction	-	Petitioner
	Vs.	
Mr. Basavaraj Khajurji	-	Respondent

**Deficiency in Service - Housing**

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**iv) Case No and Date of Judgement:**

Execution Revision Petition No:47 of 2014 with I.A.No.4966 of 2014 (For Stay) & Date of Judgement: 11.08.2014.

**v) Acts and Sections referred:**

Sections 2(1), (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The main contention of the Petitioner was that neither in the order of the District Forum dated 30.09.2006 nor in the execution application was there any reference to the lift work being executed by the Petitioner and the Forum had erred in directing the Petitioner to complete the work within two months. The Commission observed that in the order of the District Forum dated 30.09.2006, there was an omission to refer not only to the lift work but also to the terrace work, drinking water tank work, tiling work in the parking, colouring of the building etc., It was further observed that either the District Forum did not consider it necessary to refer to all the terms of compromise or there was an inadvertent omission to refer to the unfinished works. It was held that the Petitioner cannot be allowed to take advantage of the omission in the order dated 30.09.2006. The terms of the compromise were never disputed or repudiated by the Petitioner at any point of time. Therefore, it was required to complete all the works referred to in the settlement based on which the District Forum passed its order.
- b) Consequently, the Commission held that there was no merit in the Revision Petition and it was disposed of with a direction to complete all the remaining works within a period of six months.

**vii) Citation:**

Not reported in CPJ and CPR.

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**27. Pooja Construction Company and others Vs. Narottambhai Ganeshbhai Patel and others**

**i) Case in Brief:**

Under a tripartite agreement in 1994/1995 between the owners of land (in plot No.242 in Memnagar, T.P. Scheme, Ahmedabad), the Co-operative

Housing Society and the Appellants (the builder), construction of houses was to be carried out by the builders and they were to be paid by the society. On completion of the construction, they entered into separate agreement in respect of the individual flats constructed by them. Four blocks of flats were constructed by the Appellants. Seventy occupants of the four blocks filed four separate complaints before the State Commission alleging that the construction was of inferior quality and defective since the buildings suffered huge damage in the earth quake on 26.01.2001. It was also alleged that the Appellants had not executed the sale deeds in favour of the Complainants. The State Commission vide impugned order directed the Appellants to pay Rs.10,000/- each to every member of the four blocks along with interest at 6% p.a with a further direction to execute the sale deed in favour of the Complainants and pay Rs.2,000/- to each of them towards compensation. Aggrieved by the said order, the four Revision Petitions have been filed. Revision Petitions partly allowed.

**ii) Order appealed against:**

First Appeal Nos.110 to 113 of 2014

From the order dated 17.01.2014 in CC Nos.163/2002, 164/2002, 165/2002 & 166/2002 of Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.

**iii) Parties:**

First Appeal Nos.110 of 2014

Pooja Construction Company and others - Appellants

Vs.

Narottambhai Ganeshbhai Patel and others - Respondents

First Appeal Nos.111 of 2014

Pooja Construction Company and others - Appellants

Vs.

Jadishchandra Atmaram Patel and others - Respondents

First Appeal Nos.112 of 2014

Pooja Construction Company and others - Appellants

Vs.

Nimishaben Harshadbhai Patel and others - Respondents

**Deficiency in Service - Housing**

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First Appeal Nos.113 of 2014

Pooja Construction Company and others - Appellants

Vs.

Navinbhai Ishwarbhai Patel and others - Respondents

**iv) Case No and Date of Judgement:**

First Appeals Nos:110 – 113 of 2014 & Date of Judgement: 13.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission held that when a massive earthquake had taken place and defects were noticed only after such an earthquake, the onus would be on the Complainants to prove by producing technical evidence that the construction was of poor quality and that the provisions of the Building Code had been violated. In the case before the Commission, there was no evidence of the flat owners having noticed any defect in the flats between the date on which they took possession of their respective flats and the date the earthquake struck Ahmedabad. It was therefore held that there was no deficiency in service and that the State Commission erred in concluding that the damages to the plinth would not have occurred on account of earthquake.
- b) After going through the bilateral agreement executed by the Appellants with the flat buyers, the Commission gave a finding that the sale deed in favour of the buyers should be executed by way of a tripartite document wherein the society would be the vendor, the Appellants would be the confirming party and the flat buyer would be the vendee and that the entire cost of execution of the sale deed including the stamp duty, registration charges, typing charges etc should be borne by the flat buyer. The Appellants were directed to pay compensation of Rs.2,000/- to all the flat buyers in terms of the order of the State Commission.
- c) The Revision Petitions were disposed of on the above lines.

**vii) Citation:**

Not reported in CPJ and CPR.

**28. M/s. Ashed Properties & Investment Pvt Ltd Vs. Shri. N.M.Jayaram and another**

**i) Case in Brief:**

The Complainants in the two Revision Petitions had paid Rs.25,00,000/- each through one Mr. Nicky Sawhney and booked an apartment each in the residential apartments constructed by the Appellant on the property of Mrs.Mahajabeen Nazri. The allotment letters were issued on 13.07.2005 as per which if vacant position of land was not obtained within a period of six months, the purchaser had the option to have his money refunded. The amount deposited by the Complainants was refunded to them with interest on 14.02.2006 through Mr. Nicky Sawhney. The case of the Complainants is that the tenants in the property namely Mrs. Mary French and Mr. Infant Sunil Kumar had vacated the portion occupied by them on 17.12.2005 by executing a declaration, that the aforesaid fact was concealed from them by the agent of the Appellant Mr. Nicky Sawhney and that had they been informed about the said fact, they would not have accepted refund of money. The State Commission decided in favour of the Complainants through impugned orders against which the present Revision Petition has been filed. The orders of the State Commission were set aside and the matter remanded back to the State Commission for a fresh adjudication.

**ii) Order appealed against:**

First Appeal No.18 of 2008

From the order dated 12.12.2007 in C.C.No.09/2007 of Karnataka State Consumer Disputes Redressal Commission, Bangalore.

First Appeal No.19 of 2008

From the order dated 12.12.2007 in C.C.No.10/2007 of Karnataka State Consumer Disputes Redressal Commission, Bangalore.

**iii) Parties:**

First Appeal No.18 of 2008

M/s. Ashed Properties & Investment Pvt Ltd - Appellant

Vs.

Shri.N.M. Jayaram and another - Respondents

**Deficiency in Service - Housing**

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First Appeal No.19 of 2008

M/s. Ashed Properties & Investment Pvt Ltd - Appellant

Vs.

Shri Bangalore R. Suresh and another - Respondents

**iv) Case No and Date of Judgement:**

First Appeal No:18 & 19 of 2008 & Date of Judgement: 20.08.2014.

**v) Acts and Sections referred:**

Sections 2(1), (g), (o) and 21(a)(ii) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission noted that the Complainants had filed a photocopy of the declaration dated 17.12.2005 before the State Commission and the Appellant had placed on record with the appeal, a copy of the above said declaration and a comparison of the two showed a significant discrepancy in para 6. The Commission observed that i) the original document was not available with the State Commission; ii) the copy filed by the Complainant before the State Commission is different from the copy filed by the Appellant before the National Commission; iii) the Complainants had not disclosed the source from which they received the copy that they filed before the State Commission and the date on which the said copy was received by them; iv) the original which the Appellant produced before the National Commission was as per the copy filed by the Appellant and not as per the copy filed by the Complainant and v) there was no reference to the copy filed before the State Commission in the complaints. It was therefore decided by the National Commission to remit the matter back to the State Commission for a fresh decision after examining the tenants namely Mrs. Mary French and Mr. Infant Sunil Kumar regarding the correctness of the copy filed by the Appellant and the date on which they vacated the property in question.
- b) Consequently, the impugned order passed by the State Commission was set aside and the matter remitted back to the State Commission for fresh adjudication.

**vii) Citation:**

Not reported in CPJ and CPR.

**29. Hatam Singh Vs. Ghaziabad Development Authority**

**i) Case in Brief:**

The Petitioner booked a flat with the Respondent in its Govindapuram Housing Scheme for which allotment was made at the tentative price of Rs.1,10,000/-. The entire estimated cost of the flat was deposited by the Petitioner in installments. Since there was delay in constructing the flats in the said scheme, it was decided by the Respondent to allot the flats in the said scheme to Shanti Suraksha Bal instead of allotting the same to individual registrants. Aggrieved by the same, Complainant filed complaint before the District Forum. During the pendency of the complaint before the Forum, Respondent authorities offered LIG flat in Indirapuram as well as EWS flats in Vaishali to the Petitioner which were not accepted by him. The District Forum directed the Respondent to refund the amount deposited by the Petitioner with interest @ 18% p.a from the date of deposit till the date of payment. Petitioner was also awarded Rs.2,000/- towards compensation and Rs.200/- towards cost of litigation. The appeal filed by the Respondent Authority was partly allowed by the State Commission which vide impugned order reduced the rate of interest from 18% to 9% p.a with a further direction that the interest be paid from the date of deposit of the last deposit till the date of payment. Aggrieved by the said order, Complainant has filed this Revision Petition. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 27.03.2006 in F.A.No.3343 of 1999 of Uttar Pradesh State Consumer Disputes Redressal Commission, Lucknow.

**iii) Parties:**

Hatam Singh - Petitioner

Vs.

Ghaziabad Development Authority - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No:2200 of 2006 & Date of Judgement: 21.08.2014.

**v) Acts and Sections referred:**

Sections 2(1), (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**Deficiency in Service - Housing**

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**vi) Issues raised and decided:**

- a) The first issue that came up for consideration was whether the Petitioner was entitled to interest from the date on which each installment was deposited or only from the date on which the last installment was paid. The Commission held that the money deposited by the Petitioner/Complainant was utilized by the authority from the date on which it was deposited and therefore, the authority should pay interest on the amount deposited from that date.
- b) The second question which arose for consideration was as to what would be the appropriate rate at which interest should be paid to the Petitioner. It was held by the Commission that the alternative offer made to the Complainant, after he filed a complaint before the District Forum, which was made at a higher price cannot be said to be a fair and reasonable offer. It was noted that the Complainant had booked a flat in the year 1988 and the alternative offer was made in the year 1996. Had the Petitioner known that he was not likely to get a flat in Govindapuram, he would have made booking in some other scheme or would have gone for purchase of private accommodation. Considering the steep increase in the price of immovable property during the last 20-30 years, the appreciation in the property which the Petitioner would have purchased utilizing the money that he deposited with Respondent authority, would have been much more than the amount of interest @ 18% p.a. Relying on the decision of the Hon'ble Supreme Court in *Ghaziabad Development Authority V. Dhanesh Chand Goel*, SLP (C) No.11315 of 2000 decided on 12.01.2001, the Commission held that Petitioner ought to be paid interest @ 18% p.a.
- c) Consequently, the impugned order was set aside and the Respondent was directed to pay interest @ 18% p.a from the date of deposit till the date the amount was actually paid or deposited.

**vii) Citation:**

2014(3) CPR 815.

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**30. Shivalik Co-operative House Building (First) Society Ltd Vs. Sushil Kumar**

**i) Case in Brief:**

Complainant/Respondent is a member of OP/Petitioner Society. OP was allotted land by Chandigarh Housing Board in the scheme of 1991 and Complainant was one of the beneficiaries of the said allotment. Complainant deposited cost of land and construction but OP raised a further demand of Rs.1,47,500/- which was set aside by the Arbitrator. The order of the Arbitrator was also upheld by the Joint Registrar of Co-operative Societies. It is the case of the Complainant that no particular flat was allotted to him while possession of flat had already been given to other allottees in 2001-2002. Alleging that he was deprived of rent of Rs.7,500/- for month since August, 2001 and claiming Rs.2,00,000/- as compensation, Rs.3,97,500/- as loss of rent and Rs.11,000/- as cost, he filed complaint before the District Forum. The Forum allowed complaint partly and directed OP to pay Rs.50,000/- as compensation for mental agony and Rs.2,500/- as cost. Both the parties filed appeals before the State Commission. The State Commission vide impugned order dismissed the Appeal No.496 of 2011 filed by OP with cost of Rs.10,000/- and accepted Appeal No.528 of 2011 filed by the Complainant and directed OP to pay rent @ Rs.7,500/- p.m from March, 2002 till handing over the possession and further awarded Rs.20,000/- for mental agony against which the present Revision Petition has been filed. Revision Petition partly allowed.

**ii) Order appealed against:**

From the order dated 12.03.2008 in F.Appeal No.496 of 2007 of State Consumer Disputes Redressal Commission, UT, Chandigarh.

**iii) Parties:**

Shivalik Co-operative House  
Building (First) Society Ltd

- Petitioner/OP

Vs.

Sushil Kumar

- Respondent/Complainant

**iv) Case No and Date of Judgement:**

Revision Petition No:2585 of 2008 & Date of Judgement: 21.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

## **Deficiency in Service - Housing**

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### **vi) Issues raised and decided:**

- a) The Commission observed that the Complainant has not adduced any evidence before the District Forum regarding rate of rent per month and the District Forum had rightly declined to grant rent @ Rs.7,500/- per month. However, the State Commission, though it had before it, the affidavit evidence submitted by Brij Sharma, Proprietor of M/s. Kuber Estate that the rent was between Rs.4,500/- to Rs.5,000/- per month in the year 2002, had passed the impugned order granting rent of Rs.7,500/- per month from March, 2002 which was liable to be set aside.
- b) The National Commission also held that there was unnecessary delay in delivery of possession to the Respondent by the Petitioner and therefore, Respondent is entitled to compensation for mental agony and physical harassment. It was deemed proper to allow compensation of Rs.2,00,000/- for mental agony, physical and mental harassment due to unreasonable delay in handing over possession of the flat.
- c) Consequently, the impugned order was set aside and modified directing the Petitioner to pay Rs.2,00,000/- to the Respondent within two months.

### **vii) Citation:**

2014(3) CPR 813.

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## **31. Shri Ran Vijay Singh Vs. Puri Construction Pvt. Ltd and others**

### **i) Case in Brief:**

Complainant booked a three BHK apartment with OP.1 through its channel partner. He had paid Rs.10,00,000/- and had given his preference for allotment of a flat in Tower-A4. But OP allotted a flat in Tower-A3. The Complainant made further payments to the builder from time to time. He filed present consumer complaint seeking a direction for allotment of a flat in Tower-A4 along with damages to the extent of Rs.10,00,000/- and Rs.50,000/- towards litigation expenses. He also sought Rs.10,000/- for visit for travelling and Rs.35,000/- towards cost of notice sent to OP. Complaint dismissed.

### **ii) Order appealed against:**

Original Complaint

**iii) Parties:**

Shri Ran Vijay Singh - Complainant

Vs.

Puri Construction Pvt. Ltd and others - Opp. Parties

**iv) Case No and Date of Judgement:**

Consumer Complaint No:270 of 2014 & Date of Judgement: 22.08.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o) and 21(a)(i) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission noted that the Complainant had accepted the terms of allotment as stated in OP's allotment letter dated 11.02.2013. It was held that having accepted the allotment, it was not open to the Complainant to insist upon allotment of a flat in Tower-A4 as a matter of right. The Commission further noted that the Complainant had made several payments after the allotment order was issued clearly indicating that the allotment was acceptable to him. It was held that if the Complainant was not interested in obtaining allotment of a unit in Tower A3, he should have refused allotment and asked for refund of the amount already paid. The Commission accordingly dismissed the complaint as devoid of merit.

**vii) Citation:**

2014(3) CPR 805.

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**32. M/s. Pace Builders Pvt Ltd Vs. Dr.K.Raju**

**i) Case in Brief:**

The Complainant/Respondent negotiated with the appellants for acquiring a flat measuring 700 sq.ft. in a commercial complex. The price of the flat was fixed at Rs.3,000/- per sq.ft. The Complainant paid Rs.20,01,001/- to the appellant on various dates between 14.04.1997 to 15.12.1998. A sale deed dated 14.05.1997, was executed, transferring undivided share in land measuring 320 sq. ft. in favour of the Complainant. Thereafter, on 01.06.1997 the parties entered into a construction agreement whereby the constructed flat was to be

### **Deficiency in Service - Housing**

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delivered to the Complainant on or before 01.06.1998, subject to a grace period of three months. The consideration for the purpose of construction was shown as Rs.5,33,760/- in the agreement. In the event of delay in construction, the builder was to pay interest at the rate of 24% p.a. to the Complainant on the payments made by him whereas in case of delay on the part of the Complainant in making payment, the appellant was entitled to interest at the rate of 24% per annum, on the belated payment. The case of the Complainant was that the appellant failed to deliver possession on one pretext or the other and did not complete the construction, demanding an extra payment of Rs.1,00,000/-. Alleging deficiency in the services provided by the appellant, the Complainant filed complaint before the State Commission which directed the appellant to pay a sum of Rs.5,60,280/- to the Complainant towards interest on the amount of Rs.20,01,000/- for the period from 01.01.1999 to 01.03.2000 together with further interest on the said amount, at the same rate till payment, Rs.25,000/- as compensation and Rs.2,500/- towards cost. Being aggrieved from the impugned order, the Appellant has filed this First Appeal. Appeal partly allowed.

#### **ii) Order appealed against:**

From the order dated 19.10.2005 in OP No.41 of 2000 of Tamil Nadu State Consumer Disputes Redressal Commission at Chennai.

#### **iii) Parties:**

M/s. Pace Builders Pvt Ltd - Appellant

Vs.

Dr.K.Raju - Respondent

#### **iv) Case No and Date of Judgement:**

First Appeal No.312 of 2007 & Date of Judgement: 22.08.2014.

#### **v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

#### **vi) Issues raised and decided:**

The issues involved in this case were:

- a) Whether the Complainant requested the appellant/builder to carry out additions and alterations, beyond the scope of the agreement

dated 01.06.1997 and if so, to what effect. The Commission held that there was absolutely no document to show that the Complainant had, at any point of time, asked the appellant to carry out any addition or alterations in the premises, which the appellant was to construct for the Complainant.

- b) Whether the failure of the appellant to complete construction, within the time stipulated in the agreement dated 01.06.1997, was attributable to some act or omissions on the part of the Complainant and if so, to what effect. Regarding this, the Commission held that there was no clause in the agreement that permitted the appellant to delay the completion on account of deficiency in payment on the part of the Complainant, though he could have, after completing the construction in all respects, withheld the possession till the time the aforesaid deficient amount was paid to him. Therefore, there was no act or omission on the part of the Complainant to attribute for the delay.
- c) Whether the Complainant committed default in making payment to the builder, as per the schedule stipulated in the agreement dated 01.06.1997 and if so, to what effect. Regarding this, the Commission opined that there was no documentary evidence of the appellant having asked the Complainant to pay the aforesaid amount so as to enable it to complete the remaining work. For the delay in making payment of the balance amount of Rs.79,000/-, the appellant was entitled only to interest in terms of clause 4 of the agreement, but it could not have delayed the construction of the flat on account of the said delay.
- d) After computing the total amount payable by the Complainant, as Rs.99,000/- (Rs.79,000/- plus Rs.20,000/- towards last installment) the National Commission directed the appellant to pay Rs.4,39,160/- as against the amount awarded by the State Commission along with interest on the aforesaid amount at the rate of 12% per annum from the date of filing of the complaint till the date of payment.

**vii) Citation:**

IV (2014) CPJ 423; 2014(3) CPR 795.

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**Deficiency in Service - Housing**

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**33. Rajasthan Housing Board Vs. S.Raj Kumar Singh**

**i) Case in Brief:**

Complainant got himself registered for allotment of a house in the category of Economically Weaker Section (EWS) by depositing Rs.500/- with the Petitioner in the year 1990. Later on he deposited a sum of Rs.4,100/- and got it changed from EWS to MIG(B). Since no allotment was made, he filed complaint in 2003 before the District Forum. The said complaint was allowed and the Petitioner Board was directed to allot a MIG(B) house to the Complainant on payment of Rs.3,35,253/- after setting off the amount of Rs.4,600/- already paid by the Complainant. The State Commission on appeal remanded the matter to District Forum for consideration of the matter afresh. Meanwhile on 20.11.2003, a letter was issued by the Petitioner to the Complainant allotting a house at Rs.3,64,286/-, the cost prevalent in the year 1998. The District Forum disposed of the complaint vide its order dated 18.03.2010. The Complainant approached the State Commission again. The State Commission noted that the Petitioner Board had illegally demanded a sum of Rs.15,84,788/- from the Complainant on 08.06.2010 and directed handing over of possession on payment of Rs.5,21,850/- vide impugned order against which the present Revision Petition has been filed along with application for condonation of delay. Application for condonation of delay was rejected. The Petitioner Board was directed to handover the possession of the house to the Complainant on receipt of the amount mentioned in the letter dated 20.11.2003 along with interest.

**ii) Order appealed against:**

From the order dated 10.02.2014 in F.Appeal No.712 of 2010 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

**iii) Parties:**

Rajasthan Housing Board

- Petitioner

Vs.

S.Raj Kumar Singh

- Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No:2707 of 2014 with IA/4406/2014(For Stay), IA/4407/2014 (For Condonation of Delay) &

Date of Judgement: 26.08.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

1. The National Commission noted that there was no explanation for delay of each day between 13.02.2013 and the date the copy of the State Commission's order was received by the Petitioner i.e. first week of June, 2014 and the matter was handed over for filing the Revision Petition. It was further noted that even after the first week of June, 2014, no promptness was shown by the Petitioner since the Revision Petition came to be filed only on 07.07.2014. Relying on the decision of the Hon'ble Supreme Court in *Anshul Agarwal v. New Okhla Industrial Development Authority* (2011) 14 SCC 578, IV (2011) CPJ 63 (SC), *Post Master General and Others Vs. Living Media India Ltd. & Another* [2012 3 SCC 563], the Commission declined to condone the delay in filing the Revision Petition.
2. On merits, the Commission directed the Petitioner Board to handover the possession of the house to the Complainant on receipt of the amount mentioned in the letter dated 20.11.2003 along with interest after adjusting the amount already deposited by him.

**vii) Citation:**

2014(3) CPR 763.

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**34. Dr. E. Surender Rao and another Vs. M/s. Narne Estates Pvt. Ltd and others**

**i) Case in Brief:**

Complainants/Petitioners were allotted plot No.323 measuring 500 sq. yards by the OP/Respondents. However, vide letter dated 13.03.2004, the allotment made to the Complainant was cancelled on the ground that as per the Scheme they were to pay Rs.10,500/- per month, but there had been no response from them. Later, the opposite party offered to restore the allotment made to the Complainant subject to payment of arrears along with interest. Pursuant thereto, the Complainants made payment of Rs.1,96,760/- on 19.06.2004 and they also paid

### **Deficiency in Service - Housing**

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Rs.22,572/- as interest on 16.7.2004. The total amount paid by the Complainants, thereby reached Rs.4,96,332/-. However, the opposite party vide letter dated 21.08.2004, changed the plot allotted to the Complainants from plot No.323 to GH 335. Vide letter dated 14.09.2004, the Complainants were informed that the plot No.323 had been sold to another person, before the said plot was restored in their names. Being aggrieved from the aforesaid act of the opposite party, the Complainant approached the District Forum which directed the OPs to execute and register the Sale Deed in respect of Plot No.323 in favour of the Complainant after receiving Rs.4,80,000/- (Rupees four lakhs eighty thousand only) (the Original cost of the Plot) from the Complainant within thirty days from the date of receipt of this Order and to pay Rs.50,000/- to the Complainant as compensation for causing mental agony and inconvenience, and Rs.1,000/- as costs. Being aggrieved from the order of the District Forum, the opposite party preferred an appeal before the State Commission. While it was pending, the Complainants/petitioners filed an application, seeking impleadment of the purchaser of plot No.323 namely Smt. Rita Garg as respondent No.3. The said application was dismissed by the State Commission vide impugned order dated 25.09.2013. Being aggrieved from the aforesaid order of the State Commission, the Complainants have, therefore, now filed this Revision Petition. Revision Petition dismissed.

#### **ii) Order appealed against:**

From the order dated 25.09.2013 in FAIA No.1859/2013 IN F.A. No.333/2008 of the A.P. State Consumer Disputes Redressal Commission, Hyderabad.

#### **iii) Parties:**

Dr. E. Surender Rao and another - Petitioners

Vs.

M/s. Narne Estates Pvt. Ltd and others - Respondents

#### **iv) Case No and Date of Judgement:**

Revision Petition No.3211 of 2014 & Date of Judgement: 28.08.2014.

#### **v) Acts and Sections referred**

Sections 2(1) (g) & (o), 14, 19 and 21(b) of the Consumer Protection Act, 1986.



**vi) Issues raised and decided:**

- a) The National Commission on perusal of the records found that the sale deed in favour of Smt. Rita Garg has already been executed by the opposite party on 19.05.2006. The Commission therefore held that it is not in the power of the District Forum to cancel the aforesaid sale deed in exercise of the powers conferred upon it by Section 14 of the Act. This would be more so, when the purchaser is a transferee for consideration without any notice of the claim of the Complainants and the pendency of the complaint before the District Forum. If the State Commission comes to the conclusion that cancellation of allotment of plot No.323 to the Complainants was not justified, it can suitably compensate the Complainants in this regard, taking into account, the difference if any between the value of plot No.323 and that of plot No.GH-335. But, it cannot cancel the registered sale deed executed in favour of a bonafide purchaser.
- b) Therefore, the Commission held that no useful purpose would have been served by impleading Smt. Rita Garg as a party to the appeal which the opposite party has filed before the State Commission. Therefore, the present Revision Petition was dismissed as devoid of merit.

**vii) Citation:**

2014(3) CPR 728.

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**35. S. Devendra Rao Vs. Housing Development Finance Corporation Ltd and others**

**i) Case in Brief:**

Complainant, a Head Constable, was allotted a site by the Bangalore City Police Housing Co-operative Society/Respondent No.2. He entered into an agreement with the builder, who was the owner of the site, to buy the site for a consideration of Rs.2,88,000/-. The amount was to be paid to the seller within 90 days failing which the vendor had the right to forfeit the advance money paid by the purchaser. Complainant took a loan of Rs.1,50,000/- from OP.1/Respondent No.1 and entered into an agreement as per which the loan amount with interest were to be paid in equated monthly installments from the salary of the

### **Deficiency in Service - Housing**

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Complainant and remitted to OP.1. However, the sale deed of the site was not registered in the name of the Complainant. On receipt of documents from OP.1, Complainant came to know that the builder had refunded the loan amount of Rs.1,50,000/- to OP.1 which had accepted the same without any notice to the Complainant. The employer of the Complainant kept on deducting the amount of EMI from his salary and remitting the same to OP.1. A sum of Rs.1,16,888/- got accumulated in his account which OP.1 later remitted to him by way of cheque. The Complainant refused to accept the same and filed a complaint before the State Commission against OP.1, Society and the employer of the Complainant which was dismissed vide impugned order against which the present appeal has been filed. Appeal partly allowed.

#### **ii) Order appealed against:**

From the order dated 13.10.2008 in C.No.58 of 2007 of Karnataka State Consumer Disputes Redressal Commission, Bangalore.

#### **iii) Parties:**

S. Devendra Rao - Appellant

Vs.

Housing Development  
Finance Corporation Ltd and others - Respondents

#### **iv) Case No and Date of Judgement:**

First Appeal No:478 of 2008 & Date of Judgement: 02.09.2014.

#### **v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

#### **vi) Issues raised and decided:**

- a) The first question that arose for consideration was whether there was any deficiency on the part of the society in providing services to the Complainant. Since there was no evidence of the society allotting the site in question to OP.No.4, the Commission held that there was no deficiency in service on the part of the society.
- b) The second question was whether there was any deficiency on the part of OP.1 in providing services to the Complainant. The Commission held that acceptance of pre-payment of loan amount of Rs.1,50,000/- by OP.1 from the builder without any request to

this effect from the Complainant was clearly a case of deficiency in service. Moreover, even after the receipt of the said amount of Rs.1,50,000/- from the builder, OP.1 continued to encash the cheques, it had received from the employer of the Complainant towards payment of EMI. Even while refunding the amount of Rs.1,50,000/- to the Complainant, OP.1 did not offer appropriate interest to the Complainant on that amount. This was held to be yet another deficiency committed by OP.1.

- c) The third question was whether there was any deficiency on the part of the builder in providing services to the Complainant. It was held that there was no deficiency on his part since the Complainant failed to pay the balance sale consideration within a period of 90 days as per the agreement and builder was therefore justified in forfeiting the advance amount and not executing the sale deed in favour of the Complainant. However, the Commission held that since the builder had utilized the amount of Rs.1,50,000/- received from the Complainant through OP.1, he should pay interest @ 12% p.a. from the date of receipt of money till the date it was paid to OP.1.
- d) The Commission further directed OP.1 to refund the amount which it had received from the employer of the Complainant along with interest on that amount @ 12% p.a. OP.1 was also directed to pay a sum of Rs.25,000/- to the Complainant for deficiency in rendering services to him.

**vii) Citation:**

IV (2014) CPJ 152.

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**36. Jodhpur Vikas Pradhikaran and another Vs. Pratap Singh**

**i) Case in Brief:**

Complainant/Respondent registered for allotment of a plot from the Petitioner and deposited the price of the plot on receiving intimation about the allotment. However, the possession was not handed over to him. In response to the public notice issued by the Petitioner to all allottees, Complainant represented that the plot allotted to him had been occupied for cremation ground. Since no action was action on its representation, he sent a legal notice on 14.12.2007 and subsequently

### **Deficiency in Service - Housing**

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preferred a complaint before the District Forum. The Forum directed the Petitioner to hand over possession of the plot originally allotted to the Complainant or possession of another plot of the same value and the same measurement under any other scheme. Petitioner was also directed to pay Rs.5,000/- as compensation and Rs.2,000/- as cost of litigation. Petitioner's appeal was dismissed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition and the other applications dismissed.

#### **ii) Order appealed against:**

From the order dated 07.05.2014 in Appeal No.213 of 2011 of the Rajasthan State Consumer Disputes Redressal Commission, Circuit Bench, Jodhpur.

#### **iii) Parties:**

Jodhpur Vikas Pradhikaran and another - Petitioners

Vs.

Pratap Singh - Respondent

#### **iv) Case No and Date of Judgement:**

Revision Petition No:3284 of 2014 with IA/5608/2014, IA/5609/2014, IA/5610/2014 (For Stay, Exemption from filing translation of documents, Condonation of Delay) &

Date of Judgement: 02.09.2014.

#### **v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

#### **vi) Issues raised and decided:**

- a) The National Commission did not accept the contention of the Petitioner that the complaint was barred by limitation since it was filed in the year 2009 when the allotment had been made in 1998. The Commission noted that the Petitioner had issued a public notice on 25.05.2002 inviting application from the allottees who had not been given possession of the plots allotted to them. It was held that the aforesaid notice gave a fresh cause of action to the Complainant to make a representation. Since the Complainant had given a representation, he was justified in waiting for an appropriate decision on his representation. The Commission held that the Petitioner being a public authority and

‘State’ within the meaning of Article 12 of the Constitution was expected to take appropriate decision on the representation. It was not open to the Petitioner Board not to decide on their representation.

- b) The Commission further noted that the Complainant had sent a legal notice to the Petitioner on 14.12.2007 which also did not elicit any response from the Petitioner.
- c) The Commission further noted that the Petitioner neither claimed in their written statement before the District Forum or in the Revision Petition that the plot had been handed over to the Complainant nor produced any document to that effect. Therefore, on merit also it was held that the Petitioner’s case was liable to be dismissed.
- d) Accordingly, the Commission dismissed the Revision Petition as well as the accompanying application for condonation of delay of 14 days.

**vii) Citation:**

IV (2014) CPJ 257.

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**37. Rail Vihar Sahkari Awas Samiti Ltd Vs. Yash Pal Kochar**

**i) Case in Brief:**

The respondent/Complainant, a member of the petitioner society, made payment of Rs.60,000/- in the year 1989, towards booking of a plot measuring 400 sq. yard at the rate of Rs.300/- per square yard. The sale consideration was to be paid in six equal instalments. According to the Complainant, he paid three instalments in time. By way of an undated letter issued in the year 1994, the petitioner society required the Complainant to deposit Rs.4,05,120/-, which inter-alia, included interest on the principal sum of Rs.1,30,400/- at the rate of 18%. Aggrieved from the demand of Rs.4,05,120/-, the Complainant approached the District Forum seeking various reliefs. The case of the Complainant was that during pendency of the complaint, the society settled the matter with him by agreeing to accept a sum of Rs.2,88,000/- comprising Rs.1,10,400/- towards principal sum, Rs.1,38,000/- as interest at the rate of 12% per annum and Rs.40,000/- towards development charges. Admittedly, an amount of

### **Deficiency in Service - Housing**

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Rs.2,88,000/- was deposited with the society on the same date by way of a receipt dated 27.10.2008. However, the possession of the plot was not given to him despite the payment of the aforesaid amount. The District Forum, vide order dated 24.04.2012, directed the petitioner to handover possession of the plot in question to the Complainant without any encumbrances and charges over it. Being aggrieved from the order of the District Forum, the society approached the State Commission by way of an appeal. The said appeal having been dismissed vide impugned order dated 06.05.2014, the Society has filed this Revision Petition. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 06.05.2014 in First Appeal No.853 of 2012 of State Consumer Disputes Redressal Commission, Delhi.

**iii) Parties:**

Rail Vihar Sahkari Awas Samiti Ltd - Petitioner

Vs.

Yash Pal Kochar - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.3309 of 2014 with IA/5681/2014 (stay) & Date of Judgement: 03.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The question involved in this case was whether there was any settlement between the parties, whereby the petitioner agreed to accept Rs.2,88,000/- towards payment from the Complainant, in full and final settlement of all the dues.
- b) The National Commission on perusal of the records observed that by no logic or reasoning evidence, can the aforesaid documents be said to be a document evidencing part payment made by the Complainant. Had it been a part payment, neither the principal amount would have been reduced to Rs.1,10,400/-, as against Rs.1,30,400/-, claimed in the earlier letter nor the rate of interest would have been reduced from 18% per annum to 12%

per annum. Moreover, in that case, the receipt would have indicated that the aforesaid amount was being made as a part payment. In fact when the part payment is made, there is no question of giving breakup of the said payment under different heads. Ordinarily, no one makes a part payment dividing it under several heads.

- c) Further, the receipt dated 27.10.2008 was in the hand of an employee of the society namely Mr. Manoj. No affidavit of Mr. Manoj was filed by the petitioner society before the District Forum to show that the aforesaid payment was received by him as a part payment and not as a full and final payment.
- d) Another circumstance was that the complaint was already pending before the District Forum at the time, payment of Rs.2,88,000/- was made. There could be no logic behind the Complainant making a part payment of his own during the pendency of the complaint before the District Forum, when he had already assailed the demand of Rs.4,05,120/- in the said complaint.
- e) In view of the above, the present Revision Petition was dismissed and the orders of fora below were confirmed.

**vii) Citation:**

IV (2014) CPJ 244.

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**38. Rana Basu and others Vs. Lovely Ghosh w/o. Apurba Ghosh and others**

**i) Case in Brief:**

Complainants/Respondent Nos.1 & 2 in RP No.2799 of 2011 on 16.10.2007 entered into an agreement with the petitioners for purchase of flat measuring 755 sq. ft for a consideration of Rs.8,30,000/- on the first floor of the building proposed to be constructed. It was the case of the Complainants that they paid a sum of Rs.3,50,000/- against the consideration amount as agreed. It was alleged by the Complainants that the petitioners instead of giving possession of the constructed flat within the stipulated period of 18 months proposed enhancement of price. As the Complainants did not agree to pay the escalated price, the petitioners declined to accept the balance consideration and did not

### **Deficiency in Service - Housing**

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deliver possession of the flat in question. Claiming this to be deficiency in service, the Complainants filed complaint before the District Forum. The District Forum directed OPs 1 to 3 to refund the earnest money of Rs.3,60,000/- with interest @ 12% p.a. with effect from 16.10.2007 till the payment was made. OPs were also directed to pay compensation of Rs.5 lacs and litigation cost of Rs.5,000/- to the Complainants within 30 days from the date of order. The case against OP-4 was dismissed without cost.

In Revision Petition No.2227 of 2012, the Complainants entered into an agreement of sale with the Petitioners for purchase of flat measuring 755 sq in the second floor of the same building. As per the agreement, the consideration amount of the flat was fixed at Rs.8,92,000/-. It was the case of the above said Complainants that pursuant to the agreement, they have paid Rs.2,00,000/- as earnest money, besides further payment of Rs.1,60,000/- against the consideration amount. The petitioners on completion of brick work of the above stated flat in April 2008, proposed to revise the price of the flat on the pretext of abnormal increase in the cost of building material. When the Complainants did not accede to the demand of enhancement by the petitioners, the Petitioners refused to accept further payment offered towards the consideration amount and threatened to sell the flat to some other purchaser. Claiming this to be deficiency in service, the Complainants filed consumer complaint in District Consumer Forum. The District Forum directed the Complainants to pay balance consideration money to the OPs within 15 days from the date of order. The OPs were also directed to execute and register the deed of conveyance in respect of the subject flat at second floor and car parking space in the ground floor after receiving the balance consideration money i.e. Rs.5,32,000/- within 30 days from the date of order. OPs were directed to hand over the completion certificate copy of building plan to the Complainants within further 60 days failing which after expiry of 60 days, each of the OPs would pay penalty of Rs.50/- per day to the Complainants till the order was complied with.

Being aggrieved of the orders in the respective complaints, the petitioners filed separate appeals being FA No.319 of 2010 and 480 of 2010 respectively before the State Commission which dismissed both the appeals vide separate impugned orders against which these Revision Petitions have been filed. Revision Petitions were dismissed.



**ii) Order appealed against:**

Revision Petition No.2799 of 2011

From the order dated 14.07.2011 in F.A. No.319/2010 of the W.B. State Consumer Disputes Redressal Commission, Kolkata.

Revision Petition No.2227 of 2012

From the order dated 30.03.2012 in F.A. No.FA/480/2010 of the W.B. State Consumer Disputes Redressal Commission, Kolkata.

**iii) Parties:**

Revision Petition No.2799 of 2011

Rana Basu and others - Petitioners

Vs.

Lovely Ghosh w/o. Apurba Ghosh and others - Respondents

Revision Petition No.2227 of 2012

Rana Basu and others - Petitioners

Vs.

Jati Ranjan Gope and others - Respondents

**iv) Case No and Date of Judgement:**

- i. Revision Petition No.2799 of 2011
- ii. Revision Petition No.2227 of 2012 &  
Date of Judgement: 05.09.14.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) As far as RP No.2227 of 2012 was concerned, the National Commission on perusal of the records found that that the petitioners had agreed to allocate flat at second floor to the Complainants of the said Revision Petition. That being the case, it was impossible that the petitioners might have entered into the agreement of sale of second floor flat with the Complainants in Revision Petition No.2799 of 2011 because same flat could not have been allotted to the Complainants of two Revision Petitions. It was held that petitioners were trying to take benefit of the fact

### **Deficiency in Service - Housing**

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that the cuttings in the copy of the agreement supplied to the respondents/Complainants were not initialled or signed by the parties. Therefore, it was held that the orders of the fora below were in terms of the agreement between the parties and could not be faulted.

- b) As far as Revision Petition No.2799 of 2011 was concerned, the National Commission on perusal of purchasers copy of the agreement of sale found that in the clause pertaining to identity of flat to be allocated to the respondents, typed words "second floor" have been scored off and converted into first floor with ink and the said cutting was not signed or initialed by either of the parties. The Commission held that respondents/Complainants could not have fabricated the documents.
- c) Based on the above findings, the Revision Petitions were dismissed as devoid of merit and the orders of the fora below were confirmed.

**vii) Citation:**

2014(4) CPR 343.

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### **39. Galaxy Homes Pvt. Ltd Vs. Girish.N**

**i) Case in Brief:**

Respondent/Complainant had booked a flat in the apartment project of the Petitioner. As per the agreement entered into between the parties, Petitioner was to construct the flat on or before 31.08.2008 which was revised to February, 2009 with mutual consent. But the Petitioner failed to complete the construction as per schedule. Complainant approached the District Forum for relief which partly allowed the complaint and directed the Petitioner to pay Rs.1,00,000/- as compensation to the Respondent. Appeal filed by the Petitioner before the State Commission was dismissed vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed being barred by limitation as well as on merits.

**ii) Order appealed against:**

From the order dated 17.01.2013 in F.Appeal No.271 of 2012 of the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram.

**iii) Parties:**

Galaxy Homes Pvt. Ltd - Petitioner  
Vs.  
Girish.N - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No:2649 of 2013 with I.A.No.4500 of 2013, I.A.No.4501 of 2013 (For Condonation of Delay) &

Date of Judgement: 08.09.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21 (b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission noted that the certified copy of the order of the State Commission was received by the Petitioner's counsel on 18.03.2013 whereas the Revision Petition was filed only 17.07.2013. No explanation was given as to why counsel took four months for filing the Revision Petition. Moreover, name of the counsel was not mentioned. Not satisfied with the reason given for filing the Revision Petition with so much delay, the Commission rejected the application for condonation of delay going by the judgement of the Hon'ble Supreme Court in *Anshul Agarwal v. New Okhla Industrial Development Authority* (2011) 14 SCC 578; (2011) CPJ 63 (SC).
- b) On merits also, the Commission noted that the District Forum had appointed an expert commissioner to ascertain the condition of the flat. The said commissioner visited the flat on 13.09.2010, found it to be in an inhabitable condition and opined that it would take another three months to complete the construction. Since the Petitioner did not handover the possession within the revised schedule period, it was held that it was unreasonable to expect the Respondent to make full payment. It was therefore held that deficiency on the part of the petitioner was writ large in this case.
- c) Consequently, the Revision Petition was dismissed being barred by limitation as well as merits with cost of Rs.10,000/-.

**vii) Citation:**

IV (2014) CPJ 239; 2014(4) CPR 247.

**Deficiency in Service - Housing**

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**40. M/s. Sahara India Commercial Corporation Ltd & Ors. Vs. Mukamala Nataraja Rao and another**

**i) Case in Brief:**

Sahara States Owners Welfare Association had filed consumer complaints on behalf of purchasers of flats and houses in a newly constructed housing township. These complaints related to not only quality defects but also to the alleged failure to provide infrastructural facilities, expressly assured in the brochure of the Appellant company. The State Commission awarded compensation of Rs.1,00,000/- to each Complainant for construction defects in their residential units and compensation of Rs.40,000/- to each towards cost of marble flooring and teakwood doors and windows. In addition, the Commission had directed OPs to complete handover facilities such as parks, play grounds, club house, shopping plaza, health centre, school building and the entire township. Challenging the above order, the developers Sahara India Commercial Corporation India Ltd have filed 21 appeals and one Revision Petition. Simultaneously 13 appeals have been filed by the Complainants. The National Commission upheld the award of compensation to individual Complainants. However, the direction in the impugned order to handover the maintenance and control over certain specific assets/facilities to the Complainant association was set aside. Punitive damages of Rs.50,00,000/- was imposed on the OPs/Sahara India Commercial Corporation Ltd. to be deposited to the Consumer Welfare Fund of the Central Government.

**ii) Order appealed against:**

First Appeal No.393, 452 of 2006

From the order dated 30.06.2006 in CD Nos.52/2003, 76/2003 to 88/2003, 90/2003 & 92/2003 to 95/2003 of the State Consumer Disputes Redressal Commission, Andhra Pradesh.

Revision Petition No.2978 of 2006

Against the order dated 30.06.2006 in F.Appeal No.1827 & 1828 of 2005 of the State Commission, Andhra Pradesh.

**iii) Parties:**

First Appeal No.393 of 2006

M/s.Sahara India Commercial Corporation Ltd & Ors. - Appellants

Vs.

Mukamala Nataraja Rao and another

- Respondents

**Compendium of National Commission Judgements – 2014 – Vol.II**

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First Appeal No.394, 438, 395, 455, 396, 397, 444, 398, 457, 399, 445, 400, 401,402, 403, 446, 404, 405, 447, 406, 407, 448, 408, 452, 456, 409, 449, 410, 411, 450, 412, 451, 413 of 2006 & Revision Petition No.2978 of 2006.

Mukamala Nataraja Rao and another - Appellants

Vs.

M/s.Sahara India Commercial Corporation Ltd & Ors. - Respondents

Revision Petition No.2978 of 2006

The Project Manager, Sahara States and Others - Petitioners

Vs.

Shri.M.Bala Showry - Respondent

**iv) Case No and Date of Judgement:**

First Appeal No.393 of 2006, First Appeal No.452 of 2006 along with First Appeal Nos.393, 394, 438, 395, 455, 396, 397, 444, 398, 457, 399, 445, 400, 401, 402, 403, 446, 404, 405, 447, 406, 407, 448, 408, 456, 409, 449, 410, 411, 450, 412, 451, 413 of 2006 & Revision Petition No.2978 of 2006 &

Date of Judgement: 09.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), (r), 19, 21 (a) (ii) and 21(b) of the Consumer Protection Act, 1986 & Rule 10 A of the Consumer Protection Rules, 1987.

**vi) Issues raised and decided:**

The Commission noted that the State Commission had considered the report of the Advocate Commissioner appointed by it before pronouncing the impugned order and that the following developments took place after the impugned order was passed.

- i. The agreement for enhancement of supply of potable water to the residents and for handing over the sewerage system was executed with Hyderabad Metropolitan Water Supply and Sewerage Board on 23.07.2007.
- ii. Parks and Gardens were completed and transferred to the Greater Hyderabad Metropolitan Corporation by a gift deed executed on 09.12.2009

### **Deficiency in Service - Housing**

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- iii. Through an affidavit filed on 12.02.2013, the National Commission was informed that the construction of the Hospital, a major facility promised to the flat buyers, was yet to start making it a delay of more than 10 years.

The Commission accordingly held that defects in the construction of the apartments and long delays in provision of services like potable water, external electrification, parks and gardens etc amounted serious deficiency in service under Section 2(1)(g) of the Act. Consequently, the award of compensation to individual Complainants in the impugned order was upheld. At the same time, the direction in the impugned order to handover the maintenance and control over certain specific assets and facilities (ambulance, club building, shopping plaza and school building) to the Complainant association was set aside

The Commission took serious note of the complete failure on the part of the Appellants/OPs to construct and provide the hospital making it a clear case of deficiency in service as well as unfair trade practice within the meaning of the provisions in Section 2(1) (g) and (r) of the Act. Holding that this lapse was compounded by their attempt to mislead the fora through a false affidavit, the Commission imposed punitive damages of Rs.50,00,000/- on the OPs/Sahara India Commission Corporation Ltd. It was ordered that the same shall be deposited into the Consumer Welfare Fund of the Central Government in terms of the provision in Rule 10 A of the Consumer Protection Rules, 1987.

#### **vii) Citation:**

IV (2014) CPJ 172; 2014(4) CPR 212.

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### **41. Lt. Col. U. B. Dhaiya Vs. Haryana Officers & Public Enterprises Employees Welfare & Cooperative Group Housing Society**

#### **i) Case in Brief:**

Respondent/Cooperative Society was engaged in the development and construction of flats for its members. The petitioner originally was not a Member of the Cooperative Society which commenced the development and construction work in 1993. He was enrolled as a member vide letter dated 28.07.1995 subject to certain conditions. The petitioner fulfilled all the conditions and paid the demanded sum of Rs.9.5 lakh along with interest of Rs.4,75,643/- calculated at the rate of 30% on

the principal amount and he was enrolled as a Member. Subsequent to the enrollment, Flat No. 139 Hope Apartments, Pocket X, Sector 15 II, was allotted to the Petitioner. Subsequently, in view of the order of the State Commission in *Haryana v. Haryana Officer and Public Enterprises Employees Welfare Cooperative Group Housing Society*, the Respondent/ Cooperative Society revised rate of interest from 24% to 30% to 12% to be compounded after six months through the resolution passed in the General Body meeting on 15.03.1998. So, Petitioner sought refund of the excess interest charged from him at the time of enrollment as a Member. The request was declined. Claiming deficiency in service, petitioner approached the District Forum which directed the respondent to pay to the petitioner a sum of Rs.4,64,812/-. Being aggrieved by the order of the District Forum, the society preferred an appeal and the State Commission vide its impugned order dismissed the complaint as barred by limitation against which this Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 21.05.2012 in First Appeal No.3660 of 2001 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

**iii) Parties:**

Lt. Col. U. B. Dhaiya

- Petitioner

Vs.

Haryana Officers & Public Enterprises  
Employees Welfare & Cooperative Group  
Housing Society

- Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.2590 of 2012 & Date of Judgement: 12.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19, 21(b) and 24-A of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The question which needs determination is whether the petitioner can claim benefit of General Body Resolution of the Respondent Society dated 15.03.1998?

### **Deficiency in Service - Housing**

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- b) Perusal of the records revealed that the request of the Petitioner for enrolment as a member of the Society was contingent upon his fulfilling certain formalities and also paying estimated cost of the flat i.e. Rs.9.5 lakhs including the cost of land and other facilities plus 30% interest thereon compounded on six monthly basis. Admittedly, the petitioner paid the said amount and thereafter became member. Therefore, it was held that 30% interest along with the principal amount was paid by the petitioner as consideration amount for becoming member of the Society and not as a member of the Society on account of late payment of any installment due from him. In the light of the above circumstances, the above resolution dated 15.03.1998 was of no avail to the petitioner. As such the Society could not be held deficient in service in declining to refund the interest component over and above the 12% interest.
- c) Consequently, Revision Petition was dismissed. The order of the State Commission dismissing the complaint as barred by limitation was held not sustainable and the order of the District Forum was also set aside on merits.

**vii) Citation:**

IV (2014) CPJ 343.

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**42. Madan Lal Sunger and another Vs. Rajasthan Housing Board and another**

**i) Case in Brief:**

Complainant/Petitioner applied for a house in the year 1981. OP vide letter dated 23.11.1992 informed Complainant that possession of skeleton house would be given for which Complainant gave consent in October, 1995. On 19.03.1997, allotment letter was issued by OP with details of rates and amount to be deposited. Complainant made representation and fresh allotment letter was issued on 06.10.1997, calculating price of the land of the year 1993 and price of the construction of the year 1996. Alleging deficiency on the part of OP, Complainant approached District Forum which after hearing the parties, dismissed the complaint. Complainant filed appeal before State Commission which allowed appeal and directed OP to issue fresh



allotment letter with direction to charge price of land and construction of the year 1992 and further directed to charge simple interest as fixed by RBI from 19.03.1997. Rs.50,000/- as compensation for mental agony and Rs.25,000/- as cost of litigation was also awarded. Aggrieved by the order of the State Commission, both the parties have filed Revision Petitions which were both dismissed.

**ii) Order appealed against:**

From the order dated 01.10.2012 in Appeal No.1483 of 2006 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

**iii) Parties:**

**Revision Petition No.4422 of 2012**

Madan Lal Sunger and another - Petitioners/Complainant

Vs.

Rajasthan Housing Board and another - Respondents/OPs

**Revision Petition No.4814 of 2012**

Rajasthan Housing Board and another - Petitioners/OPs

Vs.

Madan Lal Sunger and another - Respondents/Complainants

**iv) Case No and Date of Judgement:**

- i. Revision Petition No:4422 of 2012
- ii. Revision Petition No.4814 of 2012 &

Date of Judgement: 17.09.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) As Complainant agreed to take skeleton house and OP incurred cost in construction of skeleton house, it was held that the order of the State Commission directing to charge price of skeleton house of the year 1992 cannot be said to be unreasonable or illegal. It was further held that OP cannot be directed to remove debris and charge only price of plot and in such circumstances, Revision Petition filed by the Complainant was dismissed.

**Deficiency in Service - Insurance Claim**

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- b) Revision Petition filed by the OP was also dismissed on the ground that no construction was raised after 1992 and since OP intimated Complainant to take possession of skeleton house vide letter dated 23.11.1992, there was no occasion for OP to charge cost of skeleton house of the year 1996.
- c) The Commission found no irregularity or illegality in the order of the State Commission and dismissed both the Revision Petitions.

**vii) Citation:**

IV (2014) CPJ 354; 2014(4) CPR 21.

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**(x) INSURANCE CLAIM**

**1. The United India Insurance Co. Ltd. Vs. Sheela and others**

**i) Case in Brief:**

The Complainant, Smt. Sheela, wife of deceased Kalleppilly Sasidharan, filed a complaint before the District Forum alleging deficiency in service by the United India Insurance Company/OP/Petitioner, who had repudiated the death claim contending that the deceased committed suicide, that it was not accidental and that he was under the influence of alcohol, at the time of his death on 17.01.2014. The District Forum dismissed the complaint, but the State Commission allowed the appeal and directed the OPs to pay Rs.5,00,000/- being the policy claim, Rs.2,500/- under Clause-1(g) of the policy, Rs.10,000/- under Clause-(h) (b) of policy by 3rd and 4th Opposite Parties and Rs.25,000/- as compensation and all the benefits under the policy. Aggrieved by the order of State Commission, the Petitioner preferred this Revision Petition. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 06.02.2013 in First Appeal No.24/12 & 25/12 of State Consumer Disputes Redressal Commission, Kerala, Thiruvananthapuram.

**iii) Parties:**

The United India Insurance Co. Ltd.	- Petitioner
Vs.	
Sheela and others	- Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.2481-2482 of 2013 &

Date of Judgement: 21.05.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The issue was whether the whether the cause of death was due to drowning or due to the influence of alcohol.
- b) The National Commission after perusal of the post mortem report and other medical reports found that there was nothing suggestive of alcohol-related death in the post mortem report. Further, there were several fatal errors in the Post mortem reports, like, name and age of deceased was mentioned as “Sasi, 44 years” instead of “Shashidharan, 42 years”. Also, same mistakes were carried further, while sampling of all the specimens during postmortem. The final Post Mortem Certificate issued by Dr. Pleasant Sunny, had also erroneously mentioned about the concentration of alcohol as “220 mg per ml”, instead of “220mg per 100ml of blood”. The Forensic Medicine and Chemical Analysis department had made a casual approach to the PM investigations. The PM certificate contained a lot of errors which raised many doubts.
- c) In view of the above, the Commission held that the Complainant should get the benefits. Accordingly, the National Commission dismissed the present Revision Petition and upheld the impugned order of State Commission relying on the decision of *Life Insurance Corporation of India v. Ranjit Kaur*, 2011(30) CPR 266 (NC) in which it was held that presence of alcohol, even usually prescribed limits, is not a conclusive proof of intoxication.

**vii) Citation:**

III (2014) CPJ 64.

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**Deficiency in Service - Insurance Claim**

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**2. Regional (Zonal) Manager, Sahara India & Anr. Vs. Sudama Prasad Chaturvedi**

**i) Case in Brief:**

The Complainant/Respondent was a member of the Sahara Silver Year Benefit Scheme. He invested a sum of Rs.27,000/-, with the OPs/ Sahara India Commercial Corporation Limited which provided various benefits to the subscribers. The company had taken a Group Insurance Policy for the benefit of its subscribers which could be availed by the subscribers at their discretion. The Complainant suffered acute chest pain on 29.1.2005, took treatment at Siddhartha Hospital and on 2.2.2005 at S.M.S. Hospital. Thereafter, on 26.2.2005, Coronary Artery Bypass Surgery (CABG) was performed on him at Escorts Heart Institute at New Delhi. The Complainant submitted a reimbursement claim for Rs.2,12,482/- towards critical illness cover from the OP, along with the bills of the expenses incurred. The OP denied the claim; hence the Complainant filed a complaint before the District Forum which dismissed the complaint observing that, the Complainant was not a consumer, as the service was provided free of cost to the Complainant and secondly, that the critical illness cover was provided only for a period of one year and there was nothing on record to show that the same was valid for a period of 10 years. Aggrieved by order of District Forum, the Complainant approached the State Commission which remanded the matter back to the District forum with certain directions. The District Forum partly allowed the complaint and directed the OPs to pay the amount of Rs.2,12,482/-, with Rs.500/- as litigation charges to the Complainant, within a period of one month. Aggrieved by the said order of District Forum, the Petitioner preferred appeal before the State Commission, which was dismissed. Against the order of the State Commission, this present Revision Petition had been filed. Revision Petition was dismissed with cost.

**ii) Order appealed against:**

Against order dated 05.02.2013 in First Appeal No.378/2011 of the State Consumer Disputes Redressal Commission, Rajasthan, Jaipur.

**iii) Parties:**

Regional (Zonal) Manager, Sahara India & Anr.	- Petitioners
Vs.	
Sudama Prasad Chaturvedi	- Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.1868 of 2013 & Date of Judgement: 21.05.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission after perusal of the terms and conditions of the scheme pointed out that the treatment expenses from Rs.1,00,000/- to Rs.10,00,000/- in case of critical illness was payable to the subscribers. As per the insurance company, the risk was covered for only one year, since the Petitioner/OPs did not renew it thereafter. It was held that there was no mistake on part of the Complainant and it was the responsibility of the OP Company to renew the policy which was being further confirmed by the advertisement published on 18.05.2010.
- b) In view of the above, the present Revision Petition was dismissed as devoid of merit with the cost of Rs.10,000/- to be paid to the Complainant within 90 days from the date of order.

**vii) Citation:**

III (2014) CPJ 66.

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**3. C & M Farming Ltd., C & M House Vs. The New India Assurance Co. Ltd.**

**i) Case in Brief:**

In the company of the Complainant, along with plant and machinery, silos were installed. The case of the Complaint was that on 05.08.1998, there was an explosion of silo. As he had insured the plant and machinery and other things in the company, he submitted a claim to the insurance company/OP. Many persons appointed by the OPs made inspection. But the claim was repudiated by the insurance company on the ground that the damage of Silo was due to unsymmetrical loading conditions caused by arching and piping only and therefore the said cause of damage was not covered under the policy. Aggrieved by the act of OPs, he filed the complaint before the National Commission seeking a compensation of Rs.49,63,000/-. Complaint allowed.

**Deficiency in Service - Insurance Claim**

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**ii) Order appealed against:**

Original Complaint

**iii) Parties:**

C & M Farming Ltd., C & M House - Complainant

Vs.

The New India Assurance Co. Ltd. - Opp. Parties

**iv) Case No and Date of Judgement:**

Original Petition No.324 of 2000 & Date of judgement : 21.05.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o) and 21(a)(i) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The main issue was whether silos were damaged by explosion/implosion/centrifugal forces, for which the Complainant would get compensation from the insurance company.
- b) The Commission after perusal of the relevant records found that the reports of all the four experts including the Surveyors were vague, evasive and led the Commission nowhere. Their reports were based on 'ifs and buts'. They had wavering and flickering minds. A report should not be based on hypothetical views. Therefore, the Commission came to the conclusion that the case clearly fell within the exception clause of the insurance policy. Accordingly, the Commission passed the decree in the sum of Rs.19,80,000/-, along with interest @ 9% p.a. from 01.02.1999, till its deposit with the Commission and costs of Rs.50,000/- in favour of the Complainant to be paid to the Complainant, within 90 days from the date of the order, otherwise, it would carry interest @ 12% p.a., till its realization.

**vii) Citation:**

III (2014) CPJ 70.

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**4. Soniya Fabrics (Pvt.) Ltd. Vs. Central Bank of India Ltd. & Ors.**

**i) Case in Brief:**

The Complainant, Soniya Fabrics Pvt. Ltd. held cash credit facility in Central Bank of India, for the security of which the Bank took hypothecation of stock of all silk fabrics. The Bank/OP-1 took insurance

of their stock from New India Assurance Company Ltd/OP-3 which issued the policy for the period 23.02.2005 to 22.02.2006. During the subsistence of the policy the Complainant's shops were transferred from shop Nos.682/683 to shop Nos.J-3212 and J-3235 in the New Textile Market. The Complainant intimated the matter to the Bank vide letter dated 26.04.2005. On 05.07.2005 a fire broke out in the said premises and the stock of all the silk fabrics was gutted in the fire. Some of the goods were partially damaged. FIR was lodged and Panchnama was prepared which mentioned the loss of fabrics in the sum of Rs.30.80 lakhs. The Bank and the Insurance Company were informed immediately. Though the Surveyor visited the premises on 06.07.2005, the claim was repudiated on the ground that the change of place was not covered under the policy. A complaint was filed before the District Forum which allowed the complaint and directed OP 1 and 2 (Managers of the Bank) to deposit Rs.6,22,646/- in the cash credit account of the Complainant along with interest at 9% p.a. and Rs.10,000/- as cost. Complaint against OPs 3 and 4 (Insurance Company) was dismissed. On appeal filed by OPs 1 and 2, the State Commission set aside order of the District Forum vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 29.11.2013 in Appeal No.1225/2011 of the State Consumer Disputes Redressal Commission, Gujarat.

**iii) Parties:**

Soniya Fabrics (Pvt.) Ltd. - Petitioner

Vs.

Central Bank of India Ltd. & Ors. - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.2184 of 2014 & Date of Judgement: 23.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission held that it was the bounden duty of the Complainant to inform the Insurance Company that it was going to shift its premises

### **Deficiency in Service - Insurance Claim**

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and taken its permission. The Insurance Company would have seen the new place and found whether the same stock had been transferred there. The Commission held that the attitude of the Complainant was not of a prudent person and showed his negligence, inaction and passivity. The Commission also held that the Bank cannot be said to be the agent of the Petitioner/Complainant and it only facilitated the payment of loan in favour of the Complainant. The Revision Petition was accordingly dismissed.

#### **vii) Citation:**

III (2014) CPJ 196.

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### **5. D. John Raj & Anr. Vs. Senior Divisional Manager, LIC & Anr.**

#### **i) Case in Brief:**

Complainants/Petitioners had taken two different policies from LIC one for Rs.25,000/- in the name of Complainant No.1 and the other for Rs.50,000/- in the name of Complainant No.2 for which monthly premium of Rs.61.30 and Rs.171/- respectively totaling Rs.232.30 was being paid through one consolidated cheque. Complainant No.2 had raised housing loan of Rs.75,000/- from OP. The OPs claimed that because of default/irregular payment of installment of housing loan they got the policy in favour Complainant No.2 surrendered. Complainant filed complaint before District Forum as O.P. No.149 of 2004, OP meanwhile liquidated the policy on 11.11.2003, adjusted the dues towards interest and sent intimation to the Complainant. It is the Complainants' case that though they continued to make the payment of consolidated cheque of Rs.232.30 as premium for both policies, some of these cheques had not been accounted for. They filed complaint before the District Forum seeking a direction to accept the cheques towards both the policies and demanding compensation. The District Forum dismissed the complaint in the light of the evidence produced before them. The Appeal filed by the Petitioner having been dismissed vide impugned order, the present Revision Petition has been filed. Revision Petition dismissed.

#### **ii) Order appealed against:**

From the order dated 30.06.2011 in First Appeal No.334/2007 of the Tamil Nadu State Consumer Disputes Redressal Commission, Chennai.



**iii) Parties:**

D. John Raj & Anr. - Petitioners

Vs.

Senior Divisional Manager, LIC & Anr. - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.230 of 2012 & Date of Judgement: 29.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission noted that Consumer Complaint No.149 of 2004 filed by Complainant No.2 had been dismissed by the District Forum on 29.03.2006. It was therefore clear that the surrender of the policy taken by Complainant No.2 had been upheld by the District Forum.
- b) As regards Policy No.61928731 in favour of Complainant No.1, the said policy matured on 28.12.2007 but the maturity value which was Rs.23,343/- had not been paid to the Complainant. It was noted that the premium of the said policy had remained unpaid from July 2005 till December 2007 and that the OP had adjusted the dues against the payment of Rs.232.30 from time to time. The Commission did not find any negligence on the part of the OP in dealing with the premium cheques sent by the Complainant.
- c) The Commission upheld the orders of the fora below and directed the OP to pay the maturity amount of Rs.23,343/- to Complainant No.1 along with interest at 12% from the date of maturity. The Revision Petition was disposed of accordingly.

**vii) Citation:**

III (2014) CPJ 166.

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**6. New India Assurance Company Limited Vs. Rakesh Kumar**

**i) Case in Brief:**

Complainant took Mediclaim Policy 2007 (Hospital Benefit Policy) from New India Assurance Company Limited/OP/Petitioner for total cover of Rs.11 lakhs. During subsistence of policy, the Complainant suffered

### **Deficiency in Service - Insurance Claim**

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severe chest pain on 19.10.2012 and got admitted in Mukat Hospital, Chandigarh. On the same day, an angiography was performed in the said hospital. Thereafter, he took further treatment at Delhi Heart & Lung Institute, New Delhi where he underwent Coronary Artery Bypass Graft/surgery on 23.10.2012 and was discharged on 31.10.2012. Complainant's claim was repudiated by the OP on the basis of exclusion clause 4.3 of the terms and conditions of the policy, stating that Complainant was suffering from pre-existing diseases like Hypertension, Diabetes Mellitus etc., which are known risk factors of Coronary Artery Disease. Alleging deficiency in service, the Complainant filed a complaint before the District Forum which directed the OP to reimburse the medi-claim amount of the Complainant to a tune of Rs.2,24,929/- and to pay Rs.50,000/- as compensation for mental agony and harassment and Rs.7,000/- as cost with interest @ 18% p.a. OP/Petitioner Company's appeal against the order of the District Forum was dismissed by the State Commission. Aggrieved by the order of State Commission, this Revision Petition has been filed. Revision Petition dismissed.

#### **ii) Order appealed against:**

Against order dated 27.03.2014 in First Appeal No.96/2014 of the State Consumer Disputes Redressal Commission, Chandigarh.

#### **iii) Parties:**

New India Assurance Company Limited - Petitioner

Vs.

Rakesh Kumar - Respondent

#### **iv) Case No and Date of Judgement:**

Revision Petition No.2157 of 2014 & Date of Judgement: 01.07.2014.

#### **v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

#### **vi) Issues raised and decided:**

- a) The National Commission after perusing the necessary medical records observed that no doubt the medical literature states that the Hypertension and Diabetes are risk factors for Coronary Artery Disease, but OP had failed to prove that those diseases

were pre-existing in this case. It was just a hypothetical presumption of OP to repudiate the claim of Complainant.

- b) The Commission after referring to the medical literature noted that in some cases of diabetes, there are no symptoms. People can live for months, even years, without knowing they have the disease and it's often discovered accidentally after routine medical check-ups or following screening tests for other conditions.
- c) The Commission held that there was no concealment of any pre-existing disease by the Complainant. OPs had failed to prove which medicine and for how long the Complainant was taking for diabetes/hypertension. It was further held that there was no justification in repudiation of the claim and it was a clear case of deficiency in service.
- d) In view of the above, the present Revision Petition was dismissed and the order of the State Commission was confirmed.

**vii) Citation:**

III (2014) CPJ 340; 2014(3) CPR 289.

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**7. M/s. Tata AIG General Insurance Co. Ltd. Vs. M/s. Nissan Electronics Ltd.**

**i) Case in Brief:**

Complainant/Respondent is engaged in manufacture of electronic consumer durables. On 03.08.2004, when the unit was closed, the town where the factory was situated was lashed by heavy rains and the factory was submerged up to 8 ft. resulting in heavy losses to the stocks in process, finished goods and packing materials. The Company lodged a claim with the Appellant insurance company for Rs.3,22,22,066/-. The Surveyor appointed by a insurance company assessed the loss at Rs.1,81,18,271/-. The amount was paid in four installments and Complainant company issued a discharge voucher on 19.07.2005 after receiving the last installment of Rs.3,70,900/-. Subsequently alleging that they were forced to accept the said amount the company filed a complaint before the State Commission seeking a direction to the insurance company to pay a further sum of Rs.35,11,430/- along with interest at 12% and compensation of Rs.25,00,000/-. The State

### **Deficiency in Service - Insurance Claim**

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Commission partly allowed the complaint to the extent of Rs.26,78,410/- vide impugned order against which the present appeal has been filed. Appeal allowed and the order of the State Commission set aside.

**ii) Order appealed against:**

From the order dated 29.08.2008 in Consumer Complaint No.FA 01/07 of the State Consumer Disputes Redressal Commission, UT of Daman, Diu, Dadara and Nagar Haveli at Silvassa.

**iii) Parties:**

M/s. Tata AIG General Insurance Co. Ltd. - Appellant

Vs.

M/s. Nissan Electronics Ltd. - Respondent

**iv) Case No and Date of Judgement:**

First Appeal No.424 of 2008 & Date of Judgement: 03.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission observed that the law on the question whether or not an insured is estopped from making any further claim after accepting the amount offered by the insurer in full and final settlement of all the claims, by executing the discharge voucher, is well settled (*United Insurance Co. Ltd. Vs. Ajmer Singh Cotton and General Mills & Ors.* – (1999) 6 SCC 400 and *National Insurance Co. Ltd. Vs. Nipha Exports (P) Ltd.* – (2006) 8 SCC 156).
- b) The Commission noted that in none of the documents on record the Complainant had alleged fraud, coercion, or undue influence in the execution of the discharge voucher. The Complainant was therefore estopped from questioning the correctness of the Surveyor's report and making a further claim.
- c) The Commission noted that the State Commission had clearly returned a finding that the full and final settlement voucher, signed by the Managing Director of the Complainant on 19.07.2005 after receiving a huge amount of Rs.1,81,17,371/- was without

any duress or coercion. The Commission held that having arrived at the said conclusion which had not been challenged by either of the parties, the State Commission committed a serious error in law and on facts in proceeding to examine the correctness of the Surveyor's report relating to the balance claim of the Complainant.

- d) Consequently the appeal was allowed and the order of the State Commission was set aside.

**vii) Citation:**

III (2014) CPJ 285; 2014(3) CPR 222.

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**8. M/s. Jeevee Exim Vs. New India Assurance Co. Ltd**

**i) Case in Brief:**

M/s. Jeevee Exim, a partnership firm, the Complainant herein, obtained an insurance policy from New India Assurance Co. Ltd /OP in order to cover the risk of its jewellery business. On 24.11.2001, when the policy was in currency, the Complainant gave various kinds of diamonds to their broker, Mr.Jyotin Bhatt, in the usual and normal course of business, to show it to the customers. When Jyotin Bhatt and his sub-broker, Amit Kapoor were on a visit to Banaras, it is alleged that Amit Kapoor pulled down Jyotin Bhatt to the ground and snatched away/robbed the pouch which contained diamonds and some money. The matter was reported to the Police and the OP/Insurance Company. A Surveyor was appointed. The claim made by the Complainant was repudiated on 10.06.2002 citing Clause 8 of the Policy conditions. It was alleged by the Complainant that OP never gave that part of the policy containing the terms and conditions of the policy. Against the repudiation of claim by the OPs, he filed the present complaint. Complaint dismissed.

**ii) Order appealed against:**

Original Complaint

**iii) Parties:**

M/s. Jeevee Exim		- Complainant
	Vs.	
New India Assurance Co. Ltd		- OP

**Deficiency in Service - Insurance Claim**

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**iv) Case No and Date of Judgement:**

Original Petition No.59 of 2003 & Date of Judgement: 08.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), and 21(a)(i) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The issue involved in the case was whether the Complainant was not aware of Clause No.8 of the Policy and Section II of the Schedule.
- b) Negating the contention of the Complainant that he was not aware of the said provisions, the National Commission dismissed the complaint for the following reasons:
  - i. The Complainant had not come to the Commission with clean hands as he did not state from which year it had started the business. It did not obtain the policy for the first time. Even if it did not receive the terms and conditions, there was no evidence that it had insisted for the same. It, however, stood proved that this case fell within Clause 8 of the policy, irrespective of the fact whether it was aware of the same or not.
  - ii. Most importantly, the case of the Complainant did not fall within the four parameters of Section II because a proviso of Section II clearly, specifically and unequivocally mentioned that if the insured property with any person specified in Section II of the Schedule exceeds Rs.2 lakhs, the same shall be placed in an inbuilt locker of a steel cupboard. But if the property exceeds Rs.10 Lakhs, it must necessarily be secured in a safe of standard make". These ingredients were conspicuously missing in the present case.
  - iii. Further, this was an admitted case of the Complainant that the valuable diamonds were kept in a pouch. The possibility of broker Jyotin Bhatt and his companion, Amit Kapoor, working in cahoots with each other, could not be ruled out. There was no evidence that Jyotin Bhatt was authorized to have a sub-broker.

- c) In view of the above, the Commission dismissed the complaint stating that the Insurance Company was justified in rejecting the claim of the Complainant.

**vii) Citation:**

III (2014) CPJ 472; 2014(3) CPR 40.

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**9. Baidya Nath Patra Vs. United India Insurance Co. Ltd.**

**i) Case in Brief:**

The Complainant/Appellant, owner of a jewellery shop, had taken an insurance policy which covered gold ornaments, cash, lock, safe, etc., for a total sum of Rs. 15,36,000/- from the OP/United India Insurance Company. The case of the Complainant was that in the night intervening 4/5.03.1993, there was a burglary in his shop. The iron chest kept in the shop was found broken and the gold jewellery kept there had been stolen. The Surveyor appointed by the Insurance Company did not accept the claim, holding that the insured had failed to prove an established quantum of the loss. Since the Insurance Company rejected the claim of the Appellant/Complainant, a complaint alleging deficiency of service on the part of the Insurance Company was filed by the Complainant before the State Commission which initially allowed the claim of Rs. 14,76,045/- as prayed by the Complainant along with interest at the rate of 12% per annum for the period from July, 1993 till the date of the payment. However, on an appeal filed by the insurance company, the matter was remanded back to the State Commission for re-examination. A second Surveyor was appointed and based on his report, the State Commission directed the insurance company to pay Rs.3,74,069/- to the Complainant. Being aggrieved from the order passed by the State Commission, the Complainant has filed this present First Appeal before this Commission. Appeal partly allowed.

**ii) Order appealed against:**

Against the Order dated 19.11.2007 in Complaint No.259/1996 of the State Consumer Disputes Redressal Commission West Bengal.

**iii) Parties:**

Baidya Nath Patra	- Appellant
Vs.	
United India Insurance Co. Ltd	- Respondents

**Deficiency in Service - Insurance Claim**

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**iv) Case No and Date of Judgement:**

First Appeal No.269 of 2008 & Date of Judgement : 10.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) It was the Complainants case that out of 3503.410 gms of gold stolen from his shop, 87.82 gms belonged to him and rest of the gold weighing 3415.59 gms belonged to the persons who had deposited the same for the purpose of making jewellery. But the affidavits of only 9 such persons were filed before the second Surveyor. The Commission was unable to accept the contention of the Complainant that the remaining persons who had deposited gold were not traceable. The Commission accepted the report of the second Surveyor according to which gold weighing only 825.3 gms valued at Rs.3,25,374/-was deposited by third parties for the purpose of making new jewellery.
- b) The Commission found that in addition to the gold deposited by third parties, the Complainant had his own gold weighing 37.802 gms valued at Rs.34,769/- which was also stolen from his premises.
- c) The Commission noted that the Complainant did not raise any objection against the report of the second Surveyor and submitted that orders may be passed on the basis of the said report.
- d) Accordingly the appeal was disposed of with the order that the Complainant/Appellant was entitled to only Rs.4,08,838/- (Rs.3,74,069/-assessed by the second Surveyor plus Rs.34,769/- being the value of Complainant's own gold) from the Respondent/ Insurance company.

**vii) Citation:**

Not reported in CPJ and CPR.

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**10. Yada Venkateswarlu Vs. The United India Insurance Company and another**

**i) Case in Brief:**

The Complainant had taken a fire insurance policy for a sum of Rs.76,50,000/- from the Respondent/United India Insurance Company. The case of the Complainant was that he had entered into a Lease Agreement with one Sri Sai Ram Rice Industries, Balaji Nagar, Kodad for milling of paddy and for storing purposes. On 11.10.2008, a fire took place in the above said premises as a result of which the gunny bags got fire. The surveyor appointed by the insurance company visited the spot and estimated the loss at Rs.32,00,000/-. Later on another surveyor was appointed who estimated the loss at Rs.58,80,000/-. Eventually, the appellant accepted a sum of Rs.14,38,408/- from the insurance company in full and final settlement of his claim and handed over an affidavit to this effect to the insurance company. Later, the Complainant reported the matter to the IRDA. However, no intervention was made by IRDA. Alleging that the loss of paddy has not been counted by the surveyor and the loss of rice had also been wrongly calculated, the Complainant filed a complaint before the State Commission which dismissed the complaint vide impugned order against which the present First Appeal has been filed. First Appeal dismissed.

**ii) Order appealed against:**

From the order dated 27.11.2013 in Complaint Case No.94 of 2012 of Andhra Pradesh State Consumer Disputes Redressal Commission at Hyderabad.

**iii) Parties:**

Yada Venkateswarlu

- Appellant

Vs.

The United India Insurance Company & Anr. - Respondents

**iv) Case No and Date of Judgement:**

First Appeal No.332 of 2014 with I.A.No.3803/2014 (Condonation of delay) & Date of Judgement: 10.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

## **Deficiency in Service - Insurance Claim**

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### **vi) Issues raised and decided:**

- a) The National Commission, on perusal of the records, pointed out that the Complainant having accepted Rs.14,38,408/- from the insurance company and having undertaken not to claim any further amount and not to raise any litigation in respect of the loss which occurred on 11.10.2008, he was precluded from filing a complaint claiming a higher amount. As such, the complaint filed by him was not maintainable. The Commission further observed that it could not allow any insured firstly to accept the amount offered by the insurance company without demur or protest, give an undertaking not to litigate and not to raise any further claim and then file a complaint seeking a higher amount.
- b) In view of the above, the Commission held that the State Commission was fully justified in dismissing the complaint filed by the Complainant and hence the present First Appeal along with an application for condonation of delay was dismissed.

### **vii) Citation:**

Not reported in CPJ and CPR.

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## **11. New India Assurance Co. Ltd. Vs. M/s. G.B. Springs Pvt. Ltd.**

### **i) Case in Brief:**

The Complainant, M/s. G.B. Springs Pvt. Ltd, Manufacturer of springs for the Indian Railways, Ordnance Factories etc., had got its assets including the stock of raw material, finished products etc. insured with the Appellant company. A claim was lodged by the Complainant with the Insurance company alleging therein that on 19.02.2009, when the cooling plant was on, some anti social element damaged its pipe line, causing loss of Rs. 21,79,590/- to them. The matter was also reported to the police and the Insurance Company deputed a surveyor namely Sh. Preetesh Joshi who inspected the spot and submitted a preliminary report accepting the case of the Complainant that the incident in question was a clear case of malicious damage. He was of the view that there was no connivance or misrepresentation on the part of the insured. However, the extent of the loss could not be ascertained by Sh. Preetesh Joshi since the insured was not available at that time. The appellant company, thereafter appointed another surveyor

S.K.Agarwal & Co. who submitted the report dated 20.07.2009. According to it, the incident in question was not a malicious act and was an accidental act, as a result of metal failure due to abnormal vibrations, which resulted in the cast iron elbow getting cracked and the quenching oil splitting and leaking from there. Based upon the report of S.K. Agarwal & Co., the claim was rejected by the Insurance Company. Being aggrieved from the rejection of its claim, the Complainant preferred a complaint before the State Commission which directed the Appellant to pay compensation amounting to Rs.6,35,589/- to the Respondent, along with interest at the rate of 6 % per annum from the date of filing of the complaint and Rs.5,000/- towards cost of litigation. Being aggrieved from the order of the State Commission, the Appellant has filed this present first appeal. Appeal dismissed.

**ii) Order appealed against:**

Against the Order dated 16.05.2014 in Complaint No.8/2009 of the State Commission Uttaranchal.

**iii) Parties:**

New India Assurance Co. Ltd. - Appellant(s)

Vs.

M/s. G.B. Springs Pvt. Ltd. - Respondent(s)

**iv) Case No and Date of Judgement:**

First Appeal No.365 of 2014 & Date of Judgement: 16.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission on perusal of the report of the police and the report of the first surveyor Sh. Preetesh Joshi coupled with the fact that the report of the second surveyor was not based on any expert opinion, held that the second surveyor was not an expert to opine that excess vibrations could have resulted in the cast iron elbow developing cracks, resulting in the spilling and leakage of the oil from the points of cracks. Therefore, the Commission held that it was actually a mischievous act either on the part of the Complainant's employee(s) or some other person who wanted to damage the plant of the Complainant company.

**Deficiency in Service - Insurance Claim**

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b) In view of the above, the present appeal was dismissed and the order of the State Commission was confirmed.

**vii) Citation:**

IV (2014) CPJ 54

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**12. The New India Assurance Co. Ltd Vs. Jai Kanwar**

**i) Case in Brief:**

On 03.08.2004, due to floods, water entered into the showroom of the Complainant, M/s. Shyam & Co, as a result of which, the goods of the Complainant were damaged when the same were lying in the godown. The claim made by the Complainant was repudiated by the Petitioner/ OP on the ground that those premises were of his son, in the name of M/s. Shyam & Co. Sales and not of the insured, M/s. Shyam & Co. The District Forum and the State Commission decided the case in favour of the Complainant. Challenging the order of the State Commission, the present Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 23.7.2012 in First Appeal No. 82 of 2007 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

**iii) Parties:**

The New India Assurance Co. Ltd - Petitioner

Vs.

Jai Kanwar - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.4021 of 2012 with IA/1/2012 (For Stay) & Date of Judgement: 18.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission, on perusal of the Surveyor's Report, found that Shyam & Co. Sales, owned by the Complainant's son, was functioning from the same address and had stored its goods. The counsel for the Complainant had also admitted that both the companies work from the same premises. The goods of both the companies were lying there. The Complainant did not give any notice to the insurance company that he was allowing his son's company to store the goods in the same premises. There was no evidence that the goods imported and owned by M/s. Shyam & Co. Sales were insured. The Commission pointed out that the counsel for the Complainant had admitted that all the goods belonging to the Complainant were destroyed but the goods belonging to his son, remained unaffected. The Commission observed that the aforesaid contention of the Complainant's counsel was not tenable and the Commission opined that the Complainant had not come to the Commission with clean hands. The Commission further observed that there was also a possibility that the goods of the Complainant might also have also been destroyed, but there was no clear-cut evidence about the same.
- b) In view of the above, the present Revision Petition was dismissed and the orders of the fora below were set aside.

**vii) Citation:**

IV (2014) CPJ 66.

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**13. SBI Life Insurance Co. Ltd Vs. Harvinder Kaur and another**

**i) Case in Brief:**

It was the case of the Complainant/Respondent that her husband, Sukhwinder Singh had obtained a life insurance policy from the Petitioner/OP for a sum of Rs.1,00,000/- appointing the Complainant as the nominee. During the currency of the said policy, the insured suffered an attack of breathlessness on 17.11.2007 which persisted for 2/3 days. The insured, was, therefore admitted in the Hospital and was discharged on 07.12.2007 but he died on 08.12.2007. The intimation of the death of the insured was given to the Petitioner who repudiated the claim on the ground that insured while obtaining the insurance policy

### **Deficiency in Service - Insurance Claim**

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concealed that he was already suffering from pulmonary hypertension. Aggrieved by the act of OPs, she filed the consumer complaint before the District Forum which directed the Petitioner to pay to the Complainant a sum of Rs.1.00 lakh with benefits along with interest of 9% p.a. from the date of repudiation i.e. 14.07.2008 till realization and also to pay additional sum of Rs.3,000/- as compensation. Being aggrieved from the order of the District Forum, the Petitioner preferred an appeal before the State Commission which dismissed the appeal vide the impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

Against the order dated 14.12.2012 in Appeal No.55/2009 of the State Commission Punjab, Chandigarh.

**iii) Parties:**

SBI Life Insurance Co. Ltd - Petitioner

Vs.

Harvinder Kaur and another - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.380 of 2013 & Date of Judgement: 18.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the records found that the concerned doctor who allegedly treated the insured from 14.06.2007 to 21.06.2007 and recorded that the patient was admitted with the history of pulmonary hypertension for the last two years was not examined by the Petitioner to prove the photocopy of the discharge card relied upon by the Petitioner. Nor the affidavit of the said doctor had been filed. Even the original record of the concerned Hospital had not been produced to prove the discharge card, which obviously was a secondary evidence. Since the Petitioner had failed to produce primary evidence to establish the ground for repudiation of the claim, the National Commission was of the view that the fora below were right in declining to rely upon the photocopy of the discharge

card produced by the Petitioner to establish that the insured while obtaining the insurance had concealed the fact that he was suffering from pulmonary hypertension.

b) In view of the above, the Revision Petition was dismissed and the orders were the fora below.

**vii) Citation:**

III (2014) CPJ 552; 2014(3) CPR 401.

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**14. New India Assurance Co. Ltd and others Vs. Sh. Deepak Anand**

**i) Case in Brief:**

The Complainant/Respondent had obtained from the Appellant a Marine Insurance Policy for a sum of US \$7435/- covering exports of slates, granites and other types of stones from India. The Respondent dispatched 29 number of wooden pallets, containing slate tiles (16" X 16" and 12" x 12") for export to the United States. While transporting the said consignment to the port for shipment, the trailer met with a road accident. The material was completely damaged and was rendered unfit for export. The Respondent claimed Rs.2,59,000/- while the Surveyor assessed the loss at Rs.1,47,707/-, albeit subject to Appellant's acceptance of liabilities and policy terms and conditions. The Surveyor appended a note to his report to the effect that "as per description of packing mentioned in the policy, the contents have to be firstly packed into corrugated boxes, crates but the same was found packed into crates only not in corrugated boxes and hence the matter is subjected to the underwriters consideration." Taking into consideration the said note, the Appellant repudiated the claim against the said policy. Being aggrieved, alleging deficiency in service on the part of the Appellant in not honouring its claim, the Respondent filed complaint before the District Forum which dismissed the complaint holding that there was no deficiency in service or unfair trade practice on the part of the Appellant. The State Commission allowed the Appeal filed by the Respondent and directed the Appellant to pay a sum of Rs.1,47,707/-, as assessed by the Surveyor besides Rs.25,000/- as lump sum compensation for mental agony and costs. Aggrieved by the said order, the Petitioners have filed the present Revision Petition. Revision Petition allowed.

**Deficiency in Service - Insurance Claim**

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**ii) Order appealed against:**

From the Order dated 05.05.2008 in FA No.550/2004 of State Consumer Disputes Redressal Commission, Delhi.

**iii) Parties:**

New India Assurance Co. Ltd and others - Petitioners

Vs.

Sh. Deepak Anand - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.3952 of 2008 & Date of Judgement: 18.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the Insurance Certificate issued by the insurance company found that it is manifest from the afore-extracted packing description that the slates had to be first packed in corrugated boxes; crates and "then" in containers. The packing instructions were clear and unambiguous. The Appellant was bound to comply with the same and pack the consignment strictly as per the description/instructions which he failed to do.
- b) The National Commission further held that the view of the State Commission, that since the damage was caused due to accident and not due to some weather conditions the mode of packing could not have avoided the damage, was perverse. Suffice it to say that the necessity of packing in a particular manner depended on a host of factors, like the nature of the product, mode of transportation, place of destination etc; and is to be decided by the parties to the contract and not by the Courts. Therefore, the Commission held that there was no deficiency in service or unfair trade practice on the part of the Appellant in repudiating the claim of the Respondent as there was a fundamental breach of the packing instructions noted on the Insurance Certificate on the part of the Respondent.



c) In view of the above, the present Revision Petition was allowed and the order of the State Commission was set aside.

**vii) Citation:**

III (2014) CPJ 373; 2014(3) CPR 394.

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**15. Life Insurance Corporation of India Vs. Sh. Sidhartha Madhavrao Dhole**

**i) Case in Brief:**

Respondent/Complainant obtained Jeevan Mitra (Triple Cover Endowment Plan) policy for a sum of Rs.1,50,000/- from the Petitioner/Life Insurance Corporation of India, for the period from 2005 to 2006. During the currency of the policy, the Complainant had a heart attack and was admitted in Government Hospital where his angiography, followed by angioplasty was performed. After discharge from the hospital he submitted a claim with the petitioner seeking reimbursement of the medical expenses amounting to Rs.1,50,000/-. Vide letter dated 12.03.2007, the Petitioner informed the Complainant that he had not been granted critical illness rider benefit and premium for the critical illness had not been charged from him and, therefore, he was not entitled to any claim. Alleging deficiency in providing service on the part of the Petitioner/LIC, the Complainant filed a complaint before District Forum which directed the Petitioner to pay a sum of Rs.1,50,000/- to the Complainant along with interest at the rate of 9% p.a. from 23.01.2008 and Rs.2,000/- towards the cost of litigation. Being aggrieved from the order of the District Forum, the Petitioner preferred an appeal before the State Commission which dismissed the appeal vide impugned order against which the Petitioner has filed this present Revision Petition. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 26.02.2014 in First Appeal No.1431 of 2008 of Maharashtra State Consumer Disputes Redressal Commission, Circuit Bench at Aurangabad.

**iii) Parties:**

Life Insurance Corporation of India	- Petitioner
Vs.	
Sh. Sidhartha Madhavrao Dhole	- Respondent

**Deficiency in Service - Insurance Claim**

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**iv) Case No and Date of Judgement:**

Revision Petition No.2535 of 2014 with I.A.No.4031 of 2014 (For stay) & Date of Judgement: 21.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the terms and conditions of the policy found that nowhere did the policy exclude the critical illness rider which the Complainant had sought in the proposal form. If the policy/Rules of the petitioner did not permit coverage against critical illness, on account of the age of the Complainant, either it should have altogether rejected the proposal or it should have, while issuing the policy, expressly excluded the critical illness benefit. That having not been done, the irresistible inference would be that the proposal of the Complainant was accepted by the LIC in toto, including the benefit of insurance cover against the critical illness.
- b) Further, in case, the insurance company, by mistake had accepted the proposal in toto including the coverage against critical illness on discovering the mistake it ought to have refunded the premium charged towards coverage of critical illness with clear information to the Complainant that he had not been granted any coverage against such illness. Had that been done, the Complainant could have opted for some other policy if not of LIC, of some other insurance company, instead of accepting the policy which did not cover the critical illness. That having not been done, the insurance company could not be allowed to deny the benefit of the policy after the Complainant had suffered critical illness and had incurred expenditure in undergoing angiography and angioplasty.
- c) In the circumstances, the Revision Petition was dismissed with cost of Rs.10,000/-.

**vii) Citation:**

Not reported in CPJ and CPR.

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**16. Union Bank of India Vs. Dhara Singh Kushwah**

**i) Case in Brief:**

Complainant/Petitioner in Revision Petition No.2371/2014 took a loan of Rs.4,75,000/- from the Respondent for the purpose of starting a furniture business. However he did not get the hypothecated goods insured against the loss or damage by fire. It was the bank that got the said goods insured and debited the insurance premium to the account of the Complainant. The goods hypothecated with the bank were got insured by it for the year 2009-10 and 2010-11 but for the year 2011-12, the goods were not got insured either by the bank or the Complainant. It is the Complainant's case that a fire broke out in his shop in the night intervening 06/07.11.2012 and he suffered loss of Rs.15,00,000/-. Since the insurance was not renewed, no claim could be made with the insurance company. Alleging deficiency in service on the part of the bank the Complainant approached the District Forum which dismissed the complaint. The appeal filed by the Complainant was partly allowed by the State Commission directing the bank to pay a sum Rs.25,000/- to the Complainant vide impugned order. Aggrieved by the said order the bank as well as the Complainant have filed the present Revision Petitions. The grievance of the bank was against awarding of compensation against it whereas the grievance of the Complainant was that though he suffered loss of Rs.15,00,000/-, even the amount of Rs.5,00,000/- for which the goods were got insured for the previous year was not paid to him. Both the Revision Petitions dismissed.

**ii) Order appealed against:**

Revision Petition No.1597 & 2371 of 2014

From the order dated 03.02.2014 in Appeal No.593 of 2013 of Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

**iii) Parties:**

Revision Petition No.1597 of 2014

Union Bank of India - Petitioner

Vs.

Dhara Singh Kushwah - Respondent

**Deficiency in Service - Insurance Claim**

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Revision Petition No.2371 of 2014

Dhara Singh Kushwah - Petitioner

Vs.

Union Bank of India - Respondent

**iv) Case No and Date of Judgement:**

- i. Revision Petition No:1597 of 2014 with I.A.No.2100/2014 (For Condonation of Delay)
- ii. Revision Petition No:2371 of 2014 with I.A.No.3699/2014 (For Condonation of Delay) &

Date of Judgement: 23.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission observed that though in view of Clause 10 of the Hypothecation Agreement, it was for the Complainant to keep the hypothecated goods insured against loss of damage by fire, lighting etc., it was the bank which had got the hypothecated goods insured in the years 2009-10 and 2010-11. It was also noted that the insurance policies for the year 2009-10 and 2010-11 were retained by the bank and even a copy of the said policy was not sent to the Complainant. Since the bank did not send a copy to the Complainant, he was not in a position to get the policy renewed. The Commission also noted that, at no point of time, did the bank ask the Complainant to get the policy renewed, though it had debited the insurance premium to his account. Details such as the date of insurance, number of policy, name and address of the insurance company were not provided to the Complainant. It was therefore held that the bank was deficient in providing services to the Complainant and State Commission had, rightly awarded compensation in favour of the Complainant.
- b) As regards the claim for enhanced compensation made by the Complainant, the Commission noted that at the time of inspection of premises of the Complainant after the alleged fire, it was found that only a sign board had been fixed there and there was

no furniture inside the premises. Moreover, when the fire was alleged to have broken out on the night intervening 06/07.11.2012, the Bank was informed in this regard vide notice dated 16.11.2012. There was no plausible explanation as to why intimation was not sent immediately to the Bank which in the opinion of the Commission rendered the claim of the Complainant highly suspicious. It was therefore held that there was sufficient cause for the District Forum to take the view that no worthwhile loss of the hypothecated goods was sustained by the Complainant.

- c) For the aforesaid reasons, the Commission found no ground to interfere with the orders of the State Commission and accordingly dismissed both the petitions.

**vii) Citation:**

Not reported in CPJ and CPR.

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**17. The Oriental Insurance Company Ltd Vs. M/s. Rishabh Refectories Ltd**

**i) Case in Brief:**

Complainant Company, in the business of manufacturing clay refractory bricks and other clay insulators, took three policies in 2004, with the Oriental Insurance Co. Ltd/OP for a total insurance cover of Rs.100 lakhs. Meanwhile, the Company took term loan of Rs.85 lakhs for modernization from the State Bank of Patiala which also extended cash credit limit of Rs.25 lakhs to the Complainant Company. The modernization plan was implemented under the continuous scrutiny and supervision of the lending Bank. On the night intervening 02/03.08.2004, there was torrential rain of 330 mm which caused huge damage to the machinery as well as the material lying in the factory premises and office records. The Complainant claimed that apart from the loss of Rs.80.74 lakhs suffered due to damage to the insured items, it has further suffered financial loss to the tune of Rs.33.90/- lakhs. The stock position of the Complainant Company, on 31.07.2004 was, according to him, Rs.1,01,34,849/-. But OP granted the claim of Rs.6.77 lakhs only as per the report of the Surveyor. Aggrieved by the act of OPs, the Complainant filed complaint before the State Commission which awarded Rs.19.54 lakhs as compensation. Against the order of

### **Deficiency in Service - Insurance Claim**

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the State Commission, FA No.109 of 2008 was filed by the Oriental Insurance Company Ltd to reconsider the award of State Commission, FA No.110 of 2008 was filed by the Complainant Company for enhancement of the award. FA/109/2008 filed by M/S Oriental Insurance Co was dismissed and F.A.No.110/2008 was partially allowed.

#### **ii) Order appealed against:**

##### First Appeal No.109 of 2008

Against the order dated 31.01.2008 in RBT No.40 of 2007 in Complaint Case No.22 of 2005 of the State Commission, UT Chandigarh.

##### First Appeal No.110 of 2008

Against the order dated 31.01.2008 in RBT No.40 of 2007 in Complaint Case No.22 of 2005 of the State Commission, UT Chandigarh.

#### **iii) Parties:**

##### First Appeal No.109 of 2008

The Oriental Insurance Company Ltd - Appellant

Vs.

M/s. Rishabh Refectories Ltd - Respondent

##### First Appeal No.110 of 2008

M/s. Rishabh Refectories Ltd - Appellant

Vs.

The Oriental Insurance Company Ltd - Respondent

#### **iv) Case No and Date of Judgment:**

First Appeal No.109 & 110 of 2008 & Date of Judgment: 23.07.2014.

#### **v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

#### **vi) Issues raised and decided:**

- a) The issue involved in the present First Appeals was how much compensation was justified; whether the loss of Rs.80.74/- lakhs as claimed by the Complainant or the amount of Rs.9.60 lakhs as recommended by the Surveyor (before adjustment under the excess clause and sub-standard clause) or the amount of Rs.19.54 lakhs awarded by the State Commission or any other amount.

- b) The National Commission pointed out there was no rationale on the following assumptions which were relied on by the Surveyor:
- i. that its operation remained at 60% as was in the previous years (without taking into account enhancement of manufacturing capacity).
  - ii. that the premises did not have enough storage space for the quantum/volume of stocks claimed by the Complainant. No bank would have funded loan for modernization and expansion of a manufacturing unit which did not have requisite storage space.
  - iii. He assessed the loss on his visual/physical evaluation of what remained after the damage.
- c) Therefore, the National Commission held that the State Commission was right in rejecting the assessment of loss in the Surveyor's report but was not right on limiting the stock figure to 'whichever is less'.
- d) In view of the above, FA/109/2008 filed by M/S Oriental Insurance Co was dismissed as devoid of merit and with cost of Rs.50,000/- to be paid to the Complainant. FA/110/2008 filed by M/s. Rishabh Refractories Ltd was partially allowed and the insurance company was directed to pay the Complainant an enhanced sum of Rs.33,50,472/- at 9% interest per year from 04.08.2005. Delay, if any, shall carry additional interest at 2% for the duration of the delay.

**vii) Citation:**

III (2014) CPJ 445; 2014(3) CPR 360.

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**18. Medico Distributor Vs. Regional Manager, CRO-II, National Insurance Co. Ltd and others**

**i) Case in Brief:**

The Petitioner, a dealer in medicine had obtained cash credit facility from State Bank of India (Respondent No.4) to the extent of Rs.6 lakhs by hypothecating the business stock. He also obtained an insurance policy from the Respondent/National Insurance Company for a sum of Rs.8,00,000/-. It is the Petitioner's case that a dacoity took place in his

### **Deficiency in Service - Insurance Claim**

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business premises. The matter was reported to the Police on 29.07.2005 and a criminal case was instituted before the CJM, Krishna Nagar. The insurance company was intimidated about the loss on 18.08.2005. Since the claim was not paid, Petitioner/Complainant approached the District Forum which dismissed the complaint. On appeal made by the Petitioner, the State Commission directed the Insurance Company to appoint a surveyor and investigate the matter. As per directions a surveyor was appointed by the Respondent and on receiving his report, the claim was repudiated. The Petitioner's appeal to the State Commission was dismissed vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 24.01.2014 in S.C.Case No.FA/673/12 of the West Bengal State Consumer Disputes Redressal Commission, Kolkata.

**iii) Parties:**

Medico Distributor - Petitioner

Vs.

Regional Manager, CRO-II,  
National Insurance Co. Ltd and others - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No:2859 of 2014 & Date of Judgement: 28.07.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The main issue was whether the theft actually took place. The Commission noted that no FIR was registered when the theft was alleged to have taken place on 29.07.2005. Though information was given to the Police which was recorded vide GDD No.1685, the Police did not register an FIR. Secondly, the first surveyor Mr. S.N.Ghosh who visited the spot on 20.08.2005, did not find any trace of broken doors, windows or walls to prove forceful entry by burglars. His local enquiry with the neighbours also revealed that there was no burglary or theft. The report submitted by the second surveyor also confirmed the finding of the first surveyor. The Commission also noted that though the alleged



dacoity/burglary took place on 29.07.2005, the insurance company was intimated on 18.08.2005. It was mandatory for the Petitioner, under the terms of the policy to inform the insurance company immediately after the said burglary/dacoity took place. There was therefore suspicion with regard to the authenticity of the incident as claimed by the Complainant.

- b) The Commission therefore did not find any reason to interfere with the orders of the fora below. The Revision Petition was accordingly dismissed with cost assessed at Rs.10,000/- to be deposited in the Consumer Welfare Fund within four weeks.

**vii) Citation:**

Not reported in CPJ and CPR.

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**19. Smt. Paramjit Kaur Vs. LIC of India and another**

**i) Case in Brief:**

It is the case of the of the Complainant that her husband, Hardev Singh purchased a life insurance policy for Rs.2 lakhs w.e.f. 28.2.2004 under plan 75-20 and another policy for Rs.3,05,000/- under plan 14-13 w.e.f. 28.12.2004 from the OP insurance company. The Complainant was the nominee in the two policies. Due to sudden illness, Hardev Singh died on 20.7.2006. The Complainant lodged claim under the two policies with the OPs but the claim under both the policies were repudiated by the OP insurance co. on the ground that the deceased was suffering from diabetes mellitus, pulmonary tuberculosis etc. and the fact that he was suffering from these pre-existing diseases was not disclosed. Alleging that the repudiation of her claim on the ground of pre-existing disease after lapse of 2 years from the purchase of the policy was against law and constituted unfair trade practice, the Complainant filed a consumer complaint before the District Forum which dismissed the complaint on the ground of concealment of pre-existing illness. Aggrieved by the order of the District Forum, the Complainant filed Appeal before the State Commission which dismissed the appeal and upheld the order of the District Forum. The present Revision Petition has been filed challenging the aforesaid order of the State Commission. Revision Petition dismissed.

**Deficiency in Service - Insurance Claim**

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**ii) Order appealed against:**

From the order dated 21.1.2013 in First Appeal No.1366/2012 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

**iii) Parties:**

Smt. Paramjit Kaur - Petitioner

Vs.

LIC of India and another - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.1308 of 2013 & Date of Judgement: 28.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission on perusal of the records found that the insured had suffered from various pre-existing ailments for seven years i.e long before he took the two insurance policies. The Commission also held that the contention of the Complainant that no investigation could be done regarding death of the insured as the insured had died after 3 years of purchase of the policies was also not accepted. The Commission corroborated the above said points from the findings of the State Commission. Therefore, in view of the above, the present Revision Petition was dismissed and the order of the State Commission was confirmed relying on the decisions of the Hon'ble Supreme Court in *Satwant Kaur Sandhu Vs. New India Assurance Co. Ltd* [2009 CTJ 956 (Supreme Court)] and *Mithoo Lal Vs. Life Insurance Corporation of India* [AIR 1962 Supreme Court 814.

**vii) Citation:**

IV (2014) CPJ 132; 2014(3) CPR 316.

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**20. Om Prakash Banth and another Vs. The Oriental Insurance Co. Ltd**

**i) Case in Brief:**

Petitioners/Complainants insured their house for a sum of Rs.16,00,000/- declaring that it was being used as a dwelling house.

The house was let out by them to a Pharmaceutical Firm namely Noel Pharma. A fire broke out in the aforesaid house on 15.04.2010 damaging fittings, fixtures, wiring, etc. Complainants submitted a claim of Rs.11,92,345/- with the Respondent/Insurance Company. The claim was repudiated by the insurance company after receiving the surveyor's report on the ground that the house was not used for a residential purpose. Petitioners approached the District Forum which dismissed the complaint. The appeal filed by them before the State Commission was also dismissed vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 26.05.2014 in F.Appeal No.23 of 2014 of Himachal Pradesh State Consumer Disputes Redressal Commission, Shimla.

**iii) Parties:**

Om Prakash Banth and another - Petitioners

Vs.

The Oriental Insurance Co. Ltd - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No:3031 of 2014 & Date of Judgement: 01.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission noted that the fora below had found that not only was a part of the house being used as a guest house of the tenant, substantial material including packing material comprising wrappers and cardboards had been stored in a part of the said house. It was held that the storage of the aforesaid inflammable material substantially increased the risk of damage on account of fire involving the aforesaid packing material. The Commission held that the insurance company was relieved of its obligations on two grounds: firstly, on account of the house in question having been used for non-residential purpose despite getting it insured for use as a dwelling house and secondly on account of having been used as a store for keeping material including

### **Deficiency in Service - Insurance Claim**

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inflammable packing material. The Commission therefore found no ground to interfere with the order of the fora below and accordingly dismissed the Revision Petition.

#### **vii) Citation:**

Not reported in CPJ and CPR.

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### **21. M/s. Luxra Enterprises Pvt Ltd Vs. M/s. New India Assurance Co. Ltd and another**

#### **i) Case in Brief:**

The Complainant company which is in the business of manufacturing readymade garments got an export order for 34,800 pieces/shirts through its agent M/s. Sirdanwal Overseas. The Company obtained credit facility from Canara Bank, OP.2 to the tune of Rs.50,00,000/-. The stock of goods lying in the factory of the Complainant stood hypothecated with OP.2. Bank also got insured the above said factory premises, building, plant and machinery and stocks with OP.1 for a total IDV amount of Rs.85,00,000/-. During the subsistence of the policy, on 11-12 July, 2000, a major fire broke out in the Complainant's factory causing major damage to the building, electrical fittings, fixtures, plant and machinery and the entire stock. Both the Police and OP.1 were informed. Complainant assessed the loss at Rs.1,16,96,023/- and claimed it from OP.1 who sent a surveyor, M/s. R.N.Sharma & Co to the spot. Subsequently, Head Office of OP.1 appointed M/s. Sunil J.Vohra & Associates, Mumbai as another surveyor. While M/s. Sharma & Co assessed the loss at Rs.75-80 lakhs, the second surveyor assessed the loss at Rs.54,93,865/- after deductions. However the claim was not settled and after asking for more documents, a third surveyor, M/s. ABM Engineers and Consultants, was deputed for reworking and investigation of the claim. Meanwhile, OP.1 offered an amount of Rs.34 – 35 lakhs in full settlement which was refused by the Complainant. A fourth surveyor Shri. R.G.Verma was sent in 2002 who gave his report that the claim was a fraudulent one. Aggrieved by the denial of claim, this present original complaint has been filed. Complaint allowed.

#### **ii) Order appealed against:**

Original Complaint

**iii) Parties:**

M/s. Luxra Enterprises Pvt Ltd - Complainant

Vs.

M/s. New India Assurance Co. Ltd and another - OPs

**iv) Case No and Date of Judgement:**

Original Petition No:182 of 2002 & Date of Judgement: 01.08.2014.

**v) Acts and Sections referred:**

Sections 2(1), (g), (o) and 21(a)(i) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission found no evidence to show that the appointment of surveyor Nos.2, 3 and 4 was with the consent of the headquarters. It was held that the insurance company cannot be permitted to change surveyor after surveyor on the ground that full documents were not made available. No reasoning was given as to why third and fourth surveyor was appointed.
- b) The Commission held that all the first three surveyors had admitted in one voice that the fire broke out in the premises of the Complainant. Even the fourth surveyor did not deny the happening of the incident. However, the Commission held that the first surveyor had prepared his report in a hurry and his report could not be said to be a final report. Therefore, it was held to be liable for rejection. The Commission also held that the report of the second surveyor M/s. Sunil J.Vohra appeared to be reliable and trust worthy. Accepting the said report, the Commission partly allowed the complaint and directed OP.1 to pay a sum of Rs.54,93,865/- to the Complainant within 45 days from the receipt of the order, otherwise it will carry 10% interest till realization.

**vii) Citation:**

III (2014) CPJ 633; 2014(3) CPR 545.

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**Deficiency in Service - Insurance Claim**

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**22. M/s. B.R. Exports Vs. United India Insurance Co. Ltd and another**

**i) Case in Brief:**

The Complainant, a partnership firm in the business of import and export of emerald jewellery, obtained an insurance policy from OP.1. The firm had three partners comprising father and two sons who had other sister concerns besides B.R.Exports. All the companies were in the same building. A theft was committed in the premises of the Complainant firm between 23<sup>rd</sup> and 25<sup>th</sup> December, 1995. Police was informed immediately on 25.12.1995. OP was also informed telephonically followed by a letter. Mr. S.C.Jain, Respondent No.2 who was Surveyor and Assessor of OP.1 inspected the premises on 26.12.1995. He assessed the value of loss at Rs.16,11,238/-. A second surveyor Mr.G.L.Yadav, visited the premises on 26.01.1996. However, the Complainant's claim was repudiated by the Respondent No.1 vide letter dated 26.03.1997 mainly on the grounds that (a) the stocks were not kept in a locked burglar proof safe (b) there was suppression of material fact that goods of M/s. Bombay Enterprises Pvt Ltd and other sister concerns were also kept in the same premises (c) the company had not transacted any business in the previous one year (d) the documents furnished by the Complainant were not convincing. Aggrieved by the Respondent's stand, the present original complaint had been filed. Complaint allowed.

**ii) Order appealed against:**

Original Complaint

**iii) Parties:**

M/s. B.R. Exports - Complainant

Vs.

United India Insurance Co. Ltd and another - OPs

**iv) Case No and Date of Judgement:**

Original Petition No:215 of 2002 & Date of Judgement: 01.08.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o) and 21(a)(i) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission observed that the Complainant should have disclosed the fact that the same premises were used by other two sister concerns and that job workers did not return their goods. It was held that in a contract of insurance policy anything which would influence the mind of the prudent insurer in deciding whether to accept or not to accept the risk, is a material fact.
- b) The Commission however noted that there was no reason to discard the report of the surveyor and that in the absence of ill-will or malice or animosity, report of the surveyor has to be given due weight. Reliance was placed on the decisions of the Hon'ble Supreme Court in *United India Insurance Co. Ltd and others Vs. Roshan Lal Oil Mills Ltd and others.*, (2000) 10 SCC 19 & *D.N.Badoni V. Oriental Insurance Co. Ltd* , 1 (2012) CPJ 272 (NC).
- c) The Commission held that it has been established that the theft had taken place and therefore, the Complainant was entitled to the value assessed by the Surveyor. Accordingly, the Commission directed OP.1 to pay Rs.16,11,238/- with interest at the rate of 9% p.a from the date of complaint i.e 19.11.1998 within 45 days from the receipt of the copy of the judgement. Compensation in the sum of Rs.50,000/- was also imposed on OP.1 for its laggard approach in settling the case.

**vii) Citation:**

IV (2014) CPJ 7; 2014(3) CPR 557.

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**23. Life Insurance Corporation of India Vs. Shri Amar Lal Jaisingh through his legal heirs**

**i) Case in Brief:**

Complainants were the nominees of two different policies issued by the Petitioner/Corporation to Meena Devi who had a fall on 08.04.2008 and fractured her left hip ball. On 09.04.2008, she underwent hip bone surgery and her left hip ball was replaced by an artificial one and she was discharged on 13.04.2008. However, she suffered further dislocations and was re-admitted on 07.06.2008. On 10.06.2008 she was shifted to the ICU. Her condition did not improve due to continuous

### **Deficiency in Service - Insurance Claim**

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bleeding and she died on the same evening. Therefore, complaints were filed because the OP repudiated the claim on the ground that it was a case of natural and not accidental death. OP contested the complaint stating that the basic claim had already been paid and therefore, there was no deficiency in service. The District Forum did not accept that the cause of death was not the accidental fall. It held that the fractured hip itself was evidence of it. If accidental fall had not taken place, assured Meena Devi would not have died. On appeal by the Insurance Company, the State Commission held that the cause of death of the deceased had a nexus with the injuries sustained by her and immediate cause of her death was her fracture on hip bone. Aggrieved by the order of the State Commission, these Revision Petitions were therefore filed by the insurance company challenging the award of DAB (Double Accident Benefit) by the fora below. Revision Petitions dismissed.

#### **ii) Order appealed against:**

Revision Petition No.1627 of 2014

Against the order dated 30.12.2013 in FA No.13/273 & 13/276 of the State Commission, Chhattisgarh.

Revision Petition No.1628 of 2014

Against the order dated 30.12.2013 in FA No.13/274 & 13/277 of the State Commission, Chhattisgarh.

#### **iii) Parties:**

Revision Petition No.1627 of 2014

Life Insurance Corporation of India - Petitioner

Vs.

Shri Amar Lal Jaisingh through his legal heirs - Respondents

Revision Petition No.1628 of 2014

Life Insurance Corporation of India - Petitioner

Vs.

Smt.Namrata Wadhwa - Respondent

#### **iv) Case No and Date of Judgement:**

Revision Petition No.1627 of 2014 & Date of Judgement: 01.08.2014.



**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the records submitted before the fora below found that there was a clear nexus of fall and fracture with death of the insured. Therefore, the case of the Complainants in the two Revision Petitions clearly arose from the fall and hip fracture suffered by the insured. The complaint itself was filed after the DAB claim was repudiated by the LIC. Evidence of fracture and treatment was fully considered by the fora below.
- b) In view of the above, the present Revision Petitions were dismissed and the orders of the fora below were confirmed.

**vii) Citation:**

III (2014) CPJ 578; 2014(3) CPR 605.

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**24. The Chief Post Master General Vs. Mahendra Singh Meena**

**i) Case in Brief:**

In September 2004, the Respondent/Complainant took Postal Life Insurance Policy which was to mature on 22.09.2012 for a sum of Rs.1,60,000/-. The Respondent paid a premium of Rs.1,688/- per month up to August 2007. Thereafter, due to financial constraints, the Respondent surrendered the insurance policy in terms of condition No.4. The Petitioner/OP offered to pay a sum of Rs.45,180/- against surrender value which amount was Rs.17,276/- less than the actual surrender value. The amount was accepted by the Respondent under protest. Claiming the wrongful deduction as deficiency in service, the Respondent filed consumer complaint before District Forum which directed OP to pay a sum of Rs.17,276/- to the Respondent. Aggrieved of the order of the District Forum, the Petitioner preferred an appeal before the State Commission which dismissed the appeal. On dismissal of the appeal, the Petitioner has filed this Revision Petition. Revision Petition dismissed.

**ii) Order appealed against:**

Against the order dated 18.08.2011 in Appeal No.470/2011 of the State Commission Rajasthan, Jaipur.

**Deficiency in Service - Insurance Claim**

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**iii) Parties:**

The Chief Post Master General - Petitioner

Vs.

Mahendra Singh Meena - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.3055 of 2012 & Date of Judgement: 01.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The issue involved in this case was about the calculation of surrender value by the Insurance Company based on the table captioned as "ANNEXTURE IV POST OFFICE INSURANCE FUND, TABLE FOR CALCULATION OF SURRENDER VALUE."
- b) The Commission on perusal of the records found that it was not clear on which date this calculation chart came into force and whether this chart was applicable in September 2007 when the respondent requested for surrender value of his insurance policy. Therefore, the Commission was of the view that this calculation chart was of no avail to the Petitioner.
- c) In view of the above, the present Revision Petition was dismissed and the orders of the fora below were confirmed.

**vii) Citation:**

2014(3) CPR 662.

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**25. The New India Assurance Company Ltd Vs. Smt. Surekha Subhash Rathod and another**

**i) Case in Brief:**

Shri Subhash Rathod, husband of Respondent No.1 got his vehicle insured for the period from 09.07.2008 to 08.07.2009. He deposited Rs.1,100/- with OP.1/State Bank of India as the premium for renewal of the insurance policy. Accordingly, the State Bank of India issued a demand draft in favour of the insurance company/OP.2 and handed

over the same to the insurance company's authorized agent, Shri Mohan Chinchole. According to the bank, Shri Mohan Chinchole had issued the receipt for having received the demand draft for Rs.1,100/- in respect of the premium of insurance policy in the name of Shri Subhash Rathod. Meanwhile, Shri Rathod died in motorcycle accident on 08.11.2009. Legal representatives of the deceased claimed insurance amount of Rs.1,00,000/- but the claim was repudiated by the insurance company on the ground that there was no insurance policy in respect of Shri Subhash Rathod as on 08.11.2009 with the insurance company as the bank did not send the money for renewal of the insurance policy till 10.11.2009. Alleging deficiency in service, a complaint was filed with the District Forum which decided the case in favour of the Complainant which was further confirmed by State Commission. Against the decision of the State Commission, this Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 08.07.2013 in First Appeal No.143/2012 of the State Consumer Disputes Redressal Commission, Maharashtra, Mumbai, Circuit Bench at Aurangabad.

**iii) Parties:**

The New India Assurance Company Ltd - Petitioner

Vs.

Smt. Surekha Subhash Rathod and another - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.3977 of 2013 with IA/7111/2013, IA/7112/2013 (For stay and condonation of delay) & Date of Judgement: 01.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission dismissed the present Revision Petition with cost of Rs.10,000/- and the orders of the fora below were confirmed for the following reasons:

- a) There was no dispute that Shri Mohan Chinchole is the authorized agent of the Petitioner and received the demand draft on

### **Deficiency in Service - Insurance Claim**

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03.08.2009 but there was no explanation as to why the insurance company sat over the matter for three months. On the other hand, they tried to mislead the Commission by stating that the premium was received on 10.11.2009 when they had received a sum of Rs.1,100/- on 3.8.2009.

- b) Further, the Insurance Company should have enquired why the money for renewal of policy was sent, why the amount was less by 23 rupees and it should have also asked Shri Subhash Rathod to appear for filling up the proposal form for new insurance policy and get the vehicle inspected. However, all these things were not done.
- c) On the contrary, on perusal of the records, the Commission found the proposal form was filled up and signed by the insured on 10.11.2009 after his death. Counsel for the Petitioner also could not explain as to who has signed the proposal form on 10.11.2009. It was clearly evident that the insurance company has not come to the Commission with clean hands. They had suppressed the material facts.

#### **vii) Citation:**

2014(3) CPR 661.

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### **26. Jaiswal Cold Storage & Ice Factory Vs. The New India Assurance Co. Ltd**

#### **i) Case in Brief:**

Complainant obtained an insurance policy from OP for storing his potatoes in his cold storage plant for a sum of Rs.56,25,000/-. The machinery was also insured. On 30.08.1996, when the policy was in currency, Complainant informed OP that one compressor had broken down on 27.08.1996. In October, 1996, Complainant informed OP that there was damage to 13,398.70 quintals of potatoes valued at Rs.40,20,000/-. The claims submitted by the Complainant were repudiated by the OP, after making an assessment of loss through the surveyor, citing gross violation of the terms and conditions of the policy, lack of basic maintenance and procedure and precaution in running the refrigeration plant and delayed intimation which led to deterioration of stocks. Aggrieved by the rejection of the claim, the present complaint has been filed. Complaint dismissed.

**ii) Order appealed against:**

Original Complaint

**iii) Parties:**

Jaiswal Cold Storage & Ice Factory - Complainant

Vs.

The New India Assurance Co. Ltd - Opp. Party

**iv) Case No and Date of Judgement:**

Consumer Complaint No: 404 of 2000 & Date of Judgement: 04.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o) and 21(a)(i) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission noted that the insurance company cannot be made liable for any loss occasioned by the failure of electricity undertaking to ensure uninterrupted supply. The policy clearly and unequivocally warranted that the temperatures in the cold chamber were brought down to 34 degrees F in all the floors of all the chambers before loading commenced. The readings in the log book confirmed that during the periods of load shedding, the DG set was not run. The consequent temperature fluctuations caused sprouting and excessive shrinking. Attributing the incident to poor maintenance as also negligence, inaction and passivity on the part of the Complainant, the Commission did not see any merit in the Complaint and dismissed it accordingly.

**vii) Citation:**

IV (2014) CPJ 18; 2014(3) CPR 648.

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**27. Dr. Murli Manohar Dubey Vs. LIC of India**

**i) Case in Brief:**

Petitioner's life insurance policy carried accidental benefit. He claimed to have met with an accident on 04.04.1998 when a ceiling fan in his bed room fell on his head resulting in loss of sight of both his eyes. Intimation of the accident was given by the Petitioner to the Respondent on 10.07.2001. A claim was later submitted on 23.08.2001 which was repudiated by the Respondent on the ground that no timely intimation

### **Deficiency in Service - Insurance Claim**

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of the accident was given. Petitioner took the matter to the District Forum and later to the State Commission. His complaint and appeal were both dismissed. Aggrieved from the order of the State Commission, the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 21.02.2006 in Appeal No.207 of 2005 of M.P State Consumer Disputes Redressal Commission, Bhopal.

**iii) Parties:**

Dr. Murli Manohar Dubey - Petitioner/Complainant

Vs.

LIC of India - Respondent/OP

**iv) Case No and Date of Judgement:**

Revision Petition No:672 of 2006 & Date of Judgement: 05.08.2014.

**v) Acts and Sections referred:**

Sections 2(1), (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission noted that in terms of Condition No.8 of the policy, the insured was under a contractual obligation to inform the incident resulting into disability to the Respondent/Corporation within 120 days of the accident. The Commission, after going through the record, rejected the contention of the Petitioner that he was not aware of Condition No.8 of the policy or that the said term did not form part of the policy document which the Respondent Corporation had supplied to him. Relying on the earlier decision of the Commission in *Sri Sanat Kumar Hudati v. LIC of India and others*, R.P.No.2823 of 2005 decided on 23.11.2009, the Commission held that the Corporation was justified in rejecting the claim. The Revision Petition was accordingly dismissed.

**vii) Citation:**

Not reported in CPJ and CPR.

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**28. United India Insurance Co. Ltd and another Vs. Krishan Kumar Mahajan (through his legal heirs)**

**i) Case in Brief:**

The Complainant, since deceased, had been awarded a contract for construction of a bridge over Pathankote – Jemon Road by the Himachala Pradesh PWD. In this connection, he had taken an insurance policy which covered damage to construction equipments and materials to the extent of Rs.184.62 lakhs. During the currency of the policy, the construction material got washed away due to heavy rains and floods and the Complainant claimed to have suffered loss of the order of Rs.38,24,018/-. The Surveyor appointed by the Insurance Company visited the site on 20.02.2003 for assessment of loss. Since the claim was not settled till November, 2003, despite legal notice, Complainant approached the State Commission which allowed the entire claim of Rs.38,71,928/- with 6% interest from the date of filing of the complaint and awarded compensation of Rs.25,000/- and cost of Rs.5,000/-. Aggrieved by the said order, the present appeal has been filed. Appeal partially allowed. Amount awarded in the impugned order was reduced to Rs.28,05,409.21/-.

**ii) Order appealed against:**

From the order dated 14.12.2007 in Original Complaint No.6 of 2003 of State Consumer Disputes Redressal Commission, Himachala Pradesh.

**iii) Parties:**

United India Insurance Co. Ltd and another - Appellants

Vs.

Krishan Kumar Mahajan (through his legal heirs) - Respondents

**iv) Case No and Date of Judgement:**

First Appeal No: 106 of 2008 & Date of Judgement: 05.08.2014.

**v) Acts and Sections referred:**

Sections 2(1), (g), (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission observed that though the surveyor visited the site in February, 2003, he submitted his report nearly 14 months

### **Deficiency in Service - Insurance Claim**

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later, on 08.04.2004, when the complaint had already been filed before the State Commission. His report did not contain any explanation for the inordinate delay. The Commission rejected the contention of the Appellants that the Complainant did not co-operate fully with the surveyor.

- b) Secondly, though the Surveyor had listed 18 items in which total loss was claimed by the Complainants, his own assessment was given only in 9 items. The other items were disallowed by the Surveyor without any explanation. Therefore, the Commission found itself unable to accept the plea of the Appellant for acceptance of the Surveyor's assessment in totality. The Commission observed that the State Commission had swung to the other extreme by rejecting the surveyor's report totally. The Commission felt that in the interest of justice and equity, the figures of specific assessment of loss made by the Surveyor should be accepted and in respect of the remaining 9 items, the loss estimated by the Complainant should be accepted. Consequently, the total award in respect of the 18 items was arrived at Rs.28,05,409.21/-. The first appeal was partially allowed accordingly.

#### **vii) Citation:**

III (2014) CPJ 654; 2014(3) CPR 632.

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### **29. The Chairman, Birla Sun Life Insurance Co. Ltd and another Vs. Smt. Asha**

#### **i) Case in Brief:**

Complainant/Respondent's husband obtained life insurance policy from OP/Petitioner on 18.12.2002 for a sum of Rs.1,00,000/-. Insured died on 11.02.2005 due to hypertension and diabetes. Complainant's claim was repudiated by the OP. A complaint was filed before the District Forum which was allowed directing OP to pay all the benefits under the policy with 9% p.a interest. A compensation of Rs.4,000/- and cost of Rs.2,000/- were also awarded. Appeal filed by the OP was dismissed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition allowed.



**ii) Order appealed against:**

From the order dated 12.11.2007 in Appeal No.A-07/609 of the State Consumer Disputes Redressal Commission, Delhi.

**iii) Parties:**

The Chairman, Birla Sun Life  
Insurance Co. Ltd and another - Petitioners/OPs

Vs.

Smt. Asha - Respondent/Complainant

**iv) Case No and Date of Judgement:**

Revision Petition No:930 of 2008 & Date of Judgement: 05.08.2014.

**v) Acts and Sections referred:**

Sections 2(1), (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission after going through the records found that the insured was diagnosed with Pulmonary Koch's with IDDM in the year 1995 and he died due to the same disease and Pulmonary Tuberculosis and that he had suppressed these facts in the proposal form and gave false reply regarding his health. The policy was therefore voidable in terms of Clause 2 of the policy. Relying on the judgement of the Hon'ble Supreme Court in *P.C. Chacko and another Vs. Chairman, LIC of India*, (2008) 1 SCC 321, it was held that there was no deficiency on the part of the Petitioner in repudiating the claim. Consequently, the orders of the State Commission and the District Forum were set aside and Revision Petition was allowed.

**vii) Citation:**

III (2014) CPJ 580; 2014(3) CPR 636.

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**30. K. Reghunathan Vs. New India Assurance Co. Ltd and another**

**i) Case in Brief:**

The Complainant/Appellant got his JCB vehicle insured with the Respondent/Insurance Company for a sum of Rs.16,38,750/-. On 02.02.2004, when the machine was engaged in removing the earth, a

### **Deficiency in Service - Insurance Claim**

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big heap of rubble with soil fell on the machine and completely damaged it and it became unfit for use. After the inspection of the damaged vehicle, the officer of the insurance company directed the Complainant to dismantle the JCB which was done at the cost of Rs.53,000/-. The service engineer of India Tech Limited inspected the dismantled parts of the JCB on 19.02.2004 and gave estimate of Rs.19,54,556.53/- for carrying out the repairs of the machine and ultimately advised to settle the claim on total loss basis. On joint inspection by the Divisional Manager of the insurance company, surveyor and a representative of the dealer on 19.02.2004, the surveyor asked the Complainant to handover the engine fitted on the machine to the workshop of M/s. Nirmala Automobiles for repairs. On suspicion, whether a repaired engine would perform well or not, the Complainant requested the insurance company to allow him to purchase a new machine. However, finally, the insurance company estimated the total loss at Rs.8,18,204.16/-. Since, the claim submitted by the appellant/ Complainant was not being allowed by the insurance company, a complaint was filed before the State Commission which directed the insurance company to pay a sum of Rs.10,00,000/- to the Complainant failing which it will attract interest at the rate of 9% per annum from the date of the order. Aggrieved by the order of the State Commission, the Complainant has filed this appeal. Appeal allowed.

#### **ii) Order appealed against:**

From the order dated 26.07.2008 in OP No.15 of 2005 of Kerala State Consumer Disputes Redressal Commission at Thiruvananthapuram.

#### **iii) Parties:**

K. Reghunathan - Appellant

Vs.

New India Assurance Co. Ltd and another - Respondents

#### **iv) Case No and Date of Judgement:**

First Appeal No.538 of 2008 & Date of Judgement: 06.08.2014.

#### **v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The issue involved in this case was as to whether the machine which met with the accident on 02.02.2004 could be conveniently repaired at the cost of Rs.8,18,204.46/- or not.
- b) The National Commission on perusal of the case pointed out that primarily it is for the manufacturer and/or its authorized service center to opine whether the said parts could be conveniently repaired so as to maintain the rated efficiency and efficacy of the machine, or not. In the present case, admittedly, the entire machine except the engine was taken to the premises of the authorized dealer M/s. India Tech Ltd. The very fact that they gave an estimate seeking replacement of the aforesaid parts was a clear indicator that in their opinion the aforesaid parts required replacement and not repairs.
- c) Further, since payment in terms of the order of the State Commission was not made, and the order of the State Commission, has not been challenged by the insurance company, the amount payable to the appellant/Complainant would be more than Rs.15,40,000/-, considering that the State Commission had awarded the interest at the rate of 9% per annum on the amount of Rs.10,00,000/- from the date of its order.
- d) In view of the above, the National Commission allowed the appeal and directed the insurance company to pay a sum of Rs.16,00,000/- inclusive of interest, to the Complainant/appellant within four weeks from the date of order, failing which it would attract interest at the rate of 12% per annum from the date of order till its payment.

**vii) Citation:**

Not reported in CPJ and CPR.

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**31. National Insurance Co. Ltd Vs. Bobby Joseph and another**

**i) Case in Brief:**

The Complainant, a contractor, entered into a contract with the Southern Railways to execute earth filling and allied works in connection with the construction of Kottayam - Ernakulam Railway

### **Deficiency in Service - Insurance Claim**

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Line. On 09.01.2008 during the course of work the tipper lorry that belonged to the Complainant hit OHE/Mast at Kottayam, 555/1 between Kottayam and Ernakulam section at 16.30 hours and damaged it. The Divisional Railway Manager (works), Southern Railways calculated the loss including materials and cost of labour at Rs.1,06,000/- and realized the same from the Complainant. As the vehicle of the Complainant was insured with the National Insurance Co. Ltd. at the time of accident, he approached the insurance company for indemnifying the loss recovered from the Complainant. As the needful was not done, the Complainant filed a complaint before the District Forum which directed the insurance company to pay the Complainant an amount of Rs.1,06,000/-, as also Rs.5,000/- as compensation and Rs.3,000/- as cost. The insurance company filed an appeal before the State Commission which dismissed the appeal vide impugned order against which present Revision Petition has been filed. Revision Petition dismissed.

#### **ii) Order appealed against:**

From order dated 24.05.2012 in First Appeal No.736 of 2011 of the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram.

#### **iii) Parties:**

National Insurance Co. Ltd - Petitioner

Vs.

Bobby Joseph and another - Respondents

#### **iv) Case No and Date of Judgement:**

Revision Petition No.4668 of 2012 & Date of Judgement: 06.08.2014.

#### **v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

#### **vi) Issues raised and decided:**

- a) The National Commission on perusal of Clause (iii) of the insurance policy in question pointed out that the claim of the Complainant clearly fit within the square of the policy and therefore, he is a consumer and his claim lies with the consumer fora. Both the fora have given concurrent findings in favour of the

Complainant. The only mistake which the Complainant committed was that he did not inform the insurance company after the occurrence of the accident immediately. However, delay in this case was not considered as fatal though the Complainant had committed a mistake.

- b) Further, no allegation was made against the Railway authorities that the Railway Authorities were working in cahoots with the Complainant and that is why they had raised an increased amount. There was no possibility of any ulterior motive.
- c) In view of the above, the Revision Petition was dismissed as devoid of merit with costs of Rs.10,000/- under Section 26 of the Consumer Protection Act, 1986, which was ordered to be deposited with the Consumer Legal Aid Account of the Commission within a period of thirty days from the date of the order, failure of which would attract interest @10% per annum till its realization.

**vii) Citation:**

IV (2014) CPJ 360.

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**32. New India Assurance Co. Ltd Vs. M/s Cosboard Industries Ltd**

**i) Case in Brief:**

The Respondent/Complainant's company owning an industrial unit based on waste paper as raw material obtained two Standard Fire & Special Perils Policies, with permitted "add-on cover" for the period from 08.09.2003 to 07.09.2004 and 12.03.2004 to 11.03.2005. Thus, the total sum assured in respect of the stock of waste paper, under the two Policies, stored in the open and in the shed, was Rs.1,75,00,000/-. Unfortunately, on 28.08.2004 a fire took place in the premises of the Respondent due to electric short circuiting, as a result of which, the stock of waste paper stored in the shed, including electrical equipments, were damaged. On being informed about the incident, the Insurance Company appointed a preliminary surveyor-cum-loss assessor who confirmed that the fire was due to short-circuiting. Later on, the Insurance Company appointed another surveyor who endorsed the findings of the preliminary surveyor with regard to the cause of fire and taking into account the damage caused to the waste paper, building,

### **Deficiency in Service - Insurance Claim**

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electric fittings, due to fire, the Surveyors assessed the loss of raw material in fire at Rs.91,07,390/- and for building at Rs.15,000/-. Thus the total loss on account of fire was assessed at Rs.91,22,390/-. However, the surveyor recommended settlement on this account at Rs.25,87,111/-. The Insurance Company offered to the Respondent a sum of Rs.26,01,020/- as full and final settlement against the claim but the same was declined by the Respondent as being inadequate. Having failed to elicit further response, the Respondent filed a complaint against the Insurance Company before the State Commission which directed the Insurance Company to pay to the Complainant/ Respondent a consolidated amount of Rs.70,00,000/- towards all the claims in addition to the amount of Rs.26,01,020/- already withdrawn by an interim order. Against the order of the State Commission, the Appellant has filed the present Appeal. Appeal dismissed.

#### **ii) Order appealed against:**

From the order dated 12.10.2007 in CD Case No.107/2004 of the State Consumer Disputes Redressal Commission, Orissa.

#### **iii) Parties:**

New India Assurance Co. Ltd - Appellant

Vs.

M/s Cosboard Industries Ltd - Respondent

#### **iv) Case No and Date of Judgement:**

First Appeal No.698 of 2007 & Date of Judgement: 06.08.2014.

#### **v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

#### **vi) Issues raised and decided:**

- a) The National Commission on perusal of the proposal form found that subject to the overall cap for the amount assured, the entire stock of the waste paper was insured, irrespective of the fact whether it was lying in the open or stored in a shed, and therefore, had to be taken into consideration for assessment of loss. Moreover, the Respondent had opted for Special Coverage for stocks on Floater Policy, which specifically covered stores at various locations which included the premises where the fire

took place. In so far as the question whether the claim preferred by the Respondent was within the limit of sum assured, it has been clearly found by the Surveyor that the same was well within the limit of sum assured.

- b) In view of the above, the Commission held that the stand of the Insurance Company was wholly unjustified. The Appeal was dismissed as devoid of any merit. Reliance was placed on the decision of the Supreme Court in *Vikram Greentech (I) Ltd. and Anr. Vs. New India Assurance Co. Ltd.* 2009 5 SCC 599 wherein the Hon'ble Supreme Court held that "since upon issuance of insurance policy, the insurer undertakes to indemnify the loss suffered by the insured on account of risks covered by insurance policy, its terms have to be strictly construed to determine the extent of the liability of the insurer."

**vii) Citation:**

2014(3) CPR 616.

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**33. Max New York Life Insurance Co. Ltd & Anr. Vs. Ms. Reena Singh & Anr.**

**i) Case in Brief:**

Complainants/Respondents purchased Capital Builder 15 years Unit Linked Policy from OPs/Petitioners and paid regular premium of Rs.50,000/- in each complaint. It is claimed that OP assured that Complainant's premium would be doubled after three years. It is the Complainant's case that when he visited OP's office for withdrawal of the amount after the expiry of three years, she was informed that the amount would be refunded after deduction of more than 50% of the amount deposited. On the assurance of OP, in order to get full paid up premium, she invested another Rs.20,000/- in another policy. But the deposited amount was still not refunded. She filed complaint before the District Forum which dismissed the complaint. But the State Commission allowed the appeal filed by the Complainant and directed OP to pay Rs.1,46,000/- in Complaint No.370 of 12 & Rs.1,71,000/- in C.No.371 of 12 and further allowed Rs.10,000/- as compensation and Rs.5,000/- as cost in both the complaints against which the present Revision Petitions have been filed. Revision Petitions allowed.

**Deficiency in Service - Insurance Claim**

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**ii) Order appealed against:**

Revision Petition No.2394 of 2013

From the order dated 21.03.2013 in F.Appeal No.17 of 2013 of State Consumer Disputes Redressal Commission, UT, Chandigarh.

Revision Petition No.2395 of 2013

From the order dated 21.03.2013 in F.Appeal No.18 of 2013 of State Consumer Disputes Redressal Commission, UT, Chandigarh.

**iii) Parties:**

Revision Petition No.2394 & 2395 of 2013

Max New York

Life Insurance Co. Ltd & Anr. - Petitioners/OPs

Vs.

Ms. Reena Singh & Anr. - Respondents/Complainants

**iv) Case No and Date of Judgement:**

Revision Petition No:2394 & 2395 of 2013 &

Date of Judgement: 07.08.2014.

**v) Acts and Sections referred:**

Sections 2(1), (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission noted that the Complainant purchased two policies from OP and deposited premium for three years and after that premium was not deposited. The Complainant did not place any material to show that the premium was paid to continue the policy. The Commission therefore inferred that the policies lapsed and the Complainant was entitled to get only paid up value of the policy as per rules and not the full deposited amount. The Commission observed that the Insurance Regulatory and Development Authority (Treatment of Discontinued Linked Insurance Policy) Regulations, 2010 which were notified vide notification dated 01.07.2010, on which the State Commission had given its judgement, was applicable to the policies cleared by the Authority after 1<sup>st</sup> July, 2010 whereas policies issued in favour of the Complainant pertained prior to 1<sup>st</sup> July, 2010. It was therefore held that the said notification was not applicable to the lapsed policies of the



Complainant. Consequently, the impugned orders of the State Commission were set aside and the Revision Petitions were allowed.

**vii) Citation:**

I (2015) CPJ 214; 2014(3) CPR 441.

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**34. Export Credit Guarantee Corporation of India Ltd Vs. Pentagon Screws and Fasteners Ltd**

**i) Case in Brief:**

Complainant, Pentagon Screws and Fasteners Ltd had taken an insurance policy from the ECGC/OP for Rs.50,00,000/- to insure its business of export of screws and fasteners to buyers in several countries. On 31.07.1996, a shipment worth Rs.9,99,415/- was made to a buyer in UK who failed to honour the same by not making the required payment in foreign currency, despite several efforts made by the Complainant. It therefore filed an insurance claim with the OP which was repudiated on the grounds that i) shipment had been declared late ii) credit limit as required had not been approved on the buyer and iii) the default was reported late by 4 or 5 months. Complainant therefore filed a complaint before the State Commission which allowed the complaint and directed ECGC to pay the Complainant Rs.12,68,050/- towards the actual loss suffered together with Rs.50,000/- as compensation and Rs.10,000/- as litigation cost. Being aggrieved, both the parties have filed the present first appeals, Complainant limiting its appeal to payment of 18% interest. Appeal No.458 of 2008 filed by OP was allowed while First Appeal No.16 of 2009 filed by the Complainant was dismissed. The State Commission's order was also set aside.

**ii) Order appealed against:**

First Appeal No.458 of 2008 & 16 of 2009

From the order dated 11.09.2008 in Complaint No.C-48/2000 of the Delhi State Consumer Disputes Redressal Commission.

**iii) Parties:**

First Appeal No.458 of 2008

Export Credit Guarantee Corporation of India Ltd - Appellant

Vs.

Pentagon Screws and Fasteners Ltd - Respondent

### **Deficiency in Service - Insurance Claim**

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First Appeal No.16 of 2009

Pentagon Screws and Fasteners Ltd - Appellant

Vs.

Regional Manager, Export Credit

Guarantee Corporation of India Ltd - Respondent

**iv) Case No and Date of Judgement:**

- i. First Appeal No: 458 of 2008
- ii. First Appeal No: 16 of 2009 &  
Date of Judgement: 12.08.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission noted that as per the insurance policy issued by ECGC, the insured was required to observe several terms and conditions laid down therein. These included the procedure pertaining to credit limit on buyers as also the time within which the declaration of shipments and payments was required to be made. The Commission observed that there was a clear breach by the Complainant of the terms and conditions of the insurance policy. The Commission rejected the contention of the Complainant that acceptance of premium by ECGCs amounted to condonation of delay, particularly since the receipt issued while accepting the premium had clarified that it was the only an acknowledgement of the cash/cheque received. The Commission relying on the judgments of the Hon'ble Supreme Court in *P.C. Chacko and Anr Vs. Chairman, LIC of India* [III (2008) CPJ 78 (NC)] and *Oriental Insurance Co. Ltd v. Sony Cheriyan* [(1996) 6 SCC 451] held that a contract of insurance is based upon utmost good faith and in case there is breach of the same, the insurance company would be justified in not allowing the claim.
- b) Consequently, the order of the State Commission was set aside. First Appeal No.458 of 2008 filed by ECGC was allowed and First Appeal No.16 of 2009 filed by the Complainant was dismissed.

**vii) Citation:**

I (2015) CPJ 181; 2014(3) CPR 524.

**35. Shri Vijay Somany Vs. Reliance General Insurance Co. Ltd**

**i) Case in Brief:**

Complainant/Petitioner got his vehicle, SKODA Activa, insured from OP/Respondent for a period of one year from 09.10.2010. On 25.11.2010, the vehicle met with an accident and suffered damage. Complainant's claim was repudiated by the insurance company on the ground that Complainant had suppressed material fact that he had received bonus from previous insurer. Alleging deficiency on the part of OP, Complainant filed complaint before the District Forum which dismissed the complaint. Appeal filed by the Complainant was dismissed by the State Commission also vide impugned order against which the present Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 23.05.2013 in F.Appeal No.329 of 2013 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

**iii) Parties:**

Shri Vijay Somany - Petitioner/Complainant

Vs.

Reliance General Insurance Co. Ltd - Respondent/Opp. Party

**iv) Case No and Date of Judgement:**

Revision Petition No:3134 of 2013 & Date of Judgement: 13.08.2014.

**v) Acts and Sections referred:**

Sections 2(1), (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission after perusing the proposal cum cover note observed that it did not bear signatures of the Complainant on declaration and in the absence of any signatures it cannot be inferred that the Complainant had given any false declaration regarding non-receipt of claim from earlier insurer. It was further observed that the counsel for the Respondent could not place any document to substantiate the argument that the Petitioner had declared before the concerned agent that he had not received any claim from the earlier insurer. Relying on the decision of the Hon'ble Supreme Court in

### **Deficiency in Service - Insurance Claim**

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*Mrs.Rubi (Chandra) Dutta v. M/s. United India Insurance Co Ltd*, in Civil Appeal No.2588 of 2011, in para 23 of which, it was held that the revisional powers can be exercised if there is prima facie jurisdictional error in the impugned order, the Commission set aside the impugned order and allowed the Revision Petition filed by the Petitioner. Respondent was directed to process the claim within 30 days and make payment with interest @ 12% p.a from the date of filing complaint till the date of payment.

**vii) Citation:**

IV (2014) CPJ 576; 2014(3) CPR 492.

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### **36. National Insurance Co. Ltd Vs. Rajan Sood**

**i) Case in Brief:**

Complainant/Respondent got insured his household articles kept in his rental house for the period from 23.12.2005 to 26.12.2006 for a sum of Rs.4,00,000/-. On 15.08.2006, fire broke out and entire household goods of the Complainant were destroyed. Surveyor assessed the loss to the tune of Rs.1,76,000/-. Even after the lapse of one year, the claim of the Complainant was not settled, so he approached the office of the insurance company wherein signatures of the Complainant were allegedly obtained on several documents and blank papers on the pretext that it was necessary to finalise the insurance claim. Thereafter, on 23.01.2008, the OP sent a cheque of Rs.1,67,515/- along with a letter advising the Complainant to accept the aforesaid payment and the Complainant was told that his case was being forwarded to the zonal office for seeking opinion regarding the balance payment. Believing the OP, the Complainant encashed the cheque. Thereafter, despite several visits to the office of the OP, the balance amount of Rs.2,33,000/- was not paid. Alleging deficiency in service and unfair trade practice, he filed a complaint before the District Forum which directed OP to pay Rs.89,985/- with interest @ 9% per annum from the date of filing of the complaint till payment is made, Rs.5,000/- for causing harassment and inconvenience and Rs.2,500/- as cost. Being aggrieved of the order of the District Forum, the Petitioner preferred appeal No.62/2012 seeking dismissal of the complaint and the Complainant preferred appeal No.58/2012 seeking enhancement of the award amount. The State Commission vide common order allowed the appeal of the

Complainant and enhanced the amount of compensation to Rs.4.00 lacs with interest @ 9% p.a. from the date of filing of complaint. The appeal filed by the petitioner was dismissed. Aggrieved of the dismissal of his appeal and enhancement of compensation in the appeal preferred by the Complainant, the Petitioner has preferred these Revision Petitions. Revision Petitions dismissed.

**ii) Order appealed against:**

Revision Petition No.4 of 2013

From the order dated 03.10.2012 in Appeal No.58/2012 of the H.P. State Consumer Disputes Redressal Commission, Shimla.

Revision Petition No.5 of 2013

From the order dated 03.10.2012 in Appeal No.62/2012 of the H.P. State Consumer Disputes Redressal Commission, Shimla.

**iii) Parties:**

Revision Petitions No.4 & 5 of 2013

National Insurance Co. Ltd

- Petitioner

Vs.

Rajan Sood

- Respondent

**iv) Case No and Date of Judgement:**

- i. Revision Petition No.4 of 2013 with I.A.No.4 of 2013 (For Exemption from filing the certified copy);
- ii. Revision Petition No.4 of 2013 & Date of Judgement: 19.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (r), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The issue involved was whether signatures of the Complainant were obtained on the discharge voucher by practicing coercion, fraud or misrepresentation.
- b) The National Commission on perusal of the records held that the receipt in question signed by the Complainant was not a discharge voucher signed voluntarily by the Complainant in full and final settlement of his claim but signed by him under coercion and in

### **Deficiency in Service - Insurance Claim**

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pursuance of misrepresentation and false assurances given by representatives of the Petitioner company to consider the remaining claim separately. In the instant case, there was neither a formal letter of offer from the Petitioner company nor a prior consent given by the Complainant agreeing to accept an amount which was substantially lower than his claim. Simply because the Complainant encashed the cheque received by him after a long period of wait from the Petitioner, it could not be stated that he had accepted the part payment in full and final settlement of his claim.

- c) The National Commission agreed with the observation of the State Commission that the Surveyor ought not to have reduced the value of the insured articles even on account of depreciation and that reduction in the amount of insured household articles which were gutted in fire is not only an act of deficiency in service but also amounts to unfair trade practice.
- d) In view of the above, the National Commission upheld the orders of the State Commission and dismissed the Revision Petitions relying on the decision of the National Commission in *National Insurance Co. Ltd Vs. Vasavi Traders* and of the Hon'ble Supreme Court in *National Insurance Co. Ltd Vs. M/s Boghara Polyfab Pvt. Ltd.*

#### **vii) Citation:**

IV (2014) CPJ 415; 2014(3) CPR 847.

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### **37. V.K. Manchanda and others Vs. M/s. Mohd.Ibrahim and Sons**

#### **i) Case in Brief:**

Complainant/Respondent got insured export of goods upto Rs.10 lakhs for a period of two years from 01.09.1991 to 31.08.1993. He obtained credit limit from OP.1/Petitioner, exported goods within the limit and paid premium charges. Since buyer refused to receive exported goods, Complainant was forced to sell the goods to another person at a discounted price after intimation to OP and sustained loss. He made four separate claims which were repudiated by OP. Alleging deficiency in service, he filed four complaints before the District Forum which were allowed and OP was directed to make payment with interest. Appeals filed by the OP were dismissed by the State Commission vide

impugned order against which the present Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 23.10.2007 in Appeal No.1054-1057/1996 of U.P State Consumer Disputes Redressal Commission, Lucknow.

**iii) Parties:**

V.K. Manchanda and others - Petitioners/Opp. Parties

Vs.

M/s. Mohd. Ibrahim and Sons - Respondent/Complainant

**iv) Case No and Date of Judgement:**

Revision Petition No:51-54 of 2008 & Date of Judgement: 19.08.2014.

**v) Acts and Sections referred:**

Sections 2(1), (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission noted that as per the conditions of the policy, the Complainant was under an obligation to deliver declaration on the form prescribed by OP on or before the 15<sup>th</sup> day of each calendar month in respect of all shipment made by him during the previous month and also pay premium for that shipment. It was noted that between 14.03.1990 and 14.11.1991 as many as 104 shipments were not declared by the Complainant and it was therefore held that OP had not committed deficiency in repudiating the claim. The Commission relied on an earlier decision of the Commission in F.A.No.90 of 2004, *M/s. Mohamed Ibrahim and Sons v. Branch Manager, Export Credit Guarantee Corporation of India Ltd, ECGC* decided on 17.09.2009 and that of the Hon'ble Supreme Court in *Export Credit Guarantee Corporation of India Ltd v. Garg Sons International* in C.A.No.1557 of 2004 and others and held that it was not permissible for the lower fora to substitute terms of contract when Complainant had violated the terms and conditions of the policy. Consequently, the Revision Petitions were allowed and the orders of the fora below were set aside. The complaints were dismissed.

**vii) Citation:**

III (2014) CPJ 624; 2014(3) CPR 837.

**Deficiency in Service - Insurance Claim**

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**38. Smt. Anita (Since deceased) Vs. Branch Manager, LIC of India**

**i) Case in Brief:**

The husband of the Petitioner/Complainant took a policy, called Bima Gold Policy, from the Respondent, LIC of India for a sum of Rs.5,00,000/-. The quarterly premium which fell due on 28.12.2010 was not paid by him and it was still due and he died on 05.02.2011. On the death of the insured, an amount of Rs.5,00,000/- was paid to the Complainant but the benefit of accident cover was denied. Petitioner moved the District Forum seeking payment of accidental cover amount along with cost of litigation. District Forum allowed the complaint and directed the payment of the amount in question along with interest @ 9% p.a. and cost of Rs.2,500/-. The appeal filed by the Respondent was allowed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 09.04.2014 in Appeal No.876 of 2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

**iii) Parties:**

Smt. Anita (Since deceased)	Vs.	- Petitioner
Branch Manager, LIC of India		- Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No:3176 of 2014 with IA/5288/2014, IA/5289/2014 (For exemption for filing translation documents and Condonation of Delay) &

Date of Judgement: 20.08.2014.

**v) Acts and Sections referred:**

Sections 2(1), (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission noted that the husband of the Complainant had paid more than two full years payment and thereafter defaulted in payment of the quarterly premium and therefore, the death cover continued for



a further period of two years(Auto Cover Period) as per clause 4 of the policy and the amount of Rs.5,00,000/-was correctly paid to her. As far as the payment of accident rider benefit is concerned, it was clearly stated in clause 4 of the policy that during Auto Cover Period the accidental benefit rider shall not be available. Since the policy was in Auto Cover Period at the time the deceased died, it was held that the Complainant was not entitled to the accidental cover amount. The order of the State Commission was upheld and the application for condonation of delay as well as the Revision Petition were dismissed.

**vii) Citation:**

2014(3) CPR 835.

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**39. National Insurance Co. Ltd Vs. Punjab Fibres Ltd**

**i) Case in Brief:**

Complainant/Respondent obtained insurance policy for its factory buildings, plant and machinery and stocks from OP/Petitioner for a period commencing from 02.12.2013 to 01.12.2004 for a sum of Rs.10.25 crores. On 21.10.2004, fire broke out in the factory and the Complainant's premises suffered heavy loss. Intimation was given immediately to fire brigade, Police and OP. The Surveyor appointed by the OP inspected the premises immediately. Complainant lodged the claim for Rs.34,05,698/- which was subsequently reduced to Rs.30,41,272/-. OP finalized the claim for a sum of Rs.6,64,300/- in full and final settlement. Complainant lodged his protest and filed complaint before the State Commission which allowed the complaint and directed OP to pay balance of Rs.15,76,844/- with 6% p.a interest from 25.04.2006 till payment and Rs.20,000/- as cost. Aggrieved by the said order, the present appeal has been filed. Appeal partly allowed. Respondent held entitled to receive Rs.3,51,233.10/- as against Rs.15,76,844/- awarded by the State Commission.

**ii) Order appealed against:**

From the order dated 20.04.2007 in Consumer Complaint No.88/2006 of the State Consumer Disputes Redressal Commission, UT, Chandigarh.

**Deficiency in Service - Insurance Claim**

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**iii) Parties:**

National Insurance Co. Ltd. - Appellant/Opp. Party  
Vs.  
Punjab Fibres Ltd - Respondent/Complainant

**iv) Case No and Date of Judgement:**

First Appeal No:409 of 2007 & Date of Judgement: 20.08.2014.

**v) Acts and Sections referred:**

Sections 2(1), (g), (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission observed that OP had not compensated loss to the rotary filter and upheld the order of the State Commission allowing Rs.3,19,869/- as per actual repair bills.
- b) The National Commission further observed that the dispute pertained only to the loss or damage to the blow room building. The Surveyor had allowed Rs.2,58,798.10 whereas State Commission had allowed Rs.14,84,406/- on depreciation basis. The Commission noted that the Appellant himself had claimed only Rs.6,98,976/- for repair of the blow room. The Commission noted that the Complainant had not reinstated property and as per Annexure-A of the policy, reinstatement of the property had to be completed within 12 months after destruction or damage. It was therefore held the Complainant was not entitled to loss on reinstatement basis but was entitled for reimbursement on depreciation basis which came to Rs.2,61,383/- which had been allowed by Surveyor and paid by OP. It was therefore held that the State Commission had committed error in allowing an additional Rs.12,25,610.90 on account of loss to the blow room building.
- c) Consequently, the appeal was partly allowed and it was held that the Respondent is entitled to receive Rs.3,51,233.10 from the Appellant instead of Rs.15,76,844/-.

**vii) Citation:**

IV (2014) CPJ 51; 2014(3) CPR 824.

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**40. M/s. Ashok Fuel Brinquetts Vs. National Insurance Co. Ltd**

**i) Case in Brief:**

Complainant/Petitioner is a producer of fuel brickets. It is his case that the heap of mustard and paddy straw (which is a basic raw material in production) got blown away in heavy wind storm on 09.06.2005. Respondent/OP allowed the claim for Rs.35,750/- with deduction of Rs.150/- towards reinstatement premium. Petitioner filed consumer complaint claiming balance of unpaid loss and compensation. District Forum allowed the claim for Rs.1,02,615/- less Rs.35,750/- already received. The State Commission allowed the appeal filed by the Respondent vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 18.03.2011 in First Appeal No.2333 of 2007 of State Consumer Disputes Redressal Commission, Haryana.

**iii) Parties:**

M/s. Ashok Fuel Brinquetts	-	Petitioner
Vs.		
National Insurance Co. Ltd	-	Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No: 1036 of 2012 & Date of Judgement: 26.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission after perusing the report of the surveyor dated 05.12.2005 noted that the loss position was discussed in detail and the rate was negotiated and that it contained a clear computation of how the figure of Rs.35,750/- was arrived at. It was therefore held that the Revision Petition was devoid of merit and was dismissed.

**vii) Citation:**

IV (2014) CPJ 445; 2014(3) CPR 757.

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## **Deficiency in Service - Insurance Claim**

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### **41. New India Assurance Co. Ltd Vs. M/s. Kamboj Ultra Sound & Diagnostic Pvt. Ltd**

#### **i) Case in Brief:**

Complainant/Respondent had purchased "CT MX 640 whole Body CT Scanner with 8 x 10 multi format camera, voltage stabilizer, lead glass and frame for lead class" from M/s. Wipro G.E. Medical System Ltd for a sum of Rs.65,75,000/- with a warranty for one year and installed the aforesaid machine on 25.11.1995. He got the machine insured by OP/Appellant for a period of one year from 9.1.1997 to 8.1.1998 on replacement basis. On 25.10.1997, scanning procedure came to standstill at about 5.00 p.m. Engineer from M/s. Wipro GE was informed about stoppage of functioning of machine. M/s. Wipro G.E. quoted cost of Rs.9,15,200/- for replacement of defective tube. Complainant lodged claim with OP who appointed surveyor, but OP failed to settle the claim. OP again approached Complainant for renewal of policy on its expiry and Complainant paid Rs.99,823/- towards renewal charges of the aforesaid policy, but even then OP did not issue policy and Complainant claimed refund of the aforesaid premium. OP vide letter dated 16.1.1998, informed Complainant that OP was not liable to any claim in respect of X-Ray tube, as it had undergone 100% depreciation which was illegal. Alleging deficiency on the part of OP, Complainant filed complaint before the State Commission which directed the OP to pay cost of tube, Rs.50,000/- compensation along with cost. Against the decision of the State Commission, the present appeal has been filed. Appeal dismissed.

#### **ii) Order appealed against:**

From the order dated 10.09.2007 in Consumer Complaint No.C-90/99 of the State Consumer Disputes Redressal Commission, Delhi.

#### **iii) Parties:**

New India Assurance Co. Ltd	- Appellant/Opp. Party
Vs.	
M/s. Kamboj Ultra Sound & Diagnostic Pvt. Ltd	- Respondent/Complainant

#### **iv) Case No and Date of Judgement:**

First Appeal No.741 of 2007 & Date of Judgement : 27.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission by perusing the pre-inspection report pointed out that the appellant was well aware about the fact that X-Ray tube had already completed 42470 slices; even then, appellant granted insurance policy in favour of respondent for the aforesaid machine and in such circumstances, it was held that no reliance can be placed on the endorsement filed by the appellant before the Commission. It was further observed that had it been a part of policy, this should have been given by the appellant to the respondent along with policy and further it should have been filed by the appellant before State Commission along with reply.
- b) Further, perusal of Clause 1 on page 2 of the policy revealed that this policy was issued on replacement basis. When the policy was issued on replacement basis, there was no question of endorsement regarding compensation on depreciation basis based on number of exposures.
- c) The Commission also noted that the policy was renewed by the appellant for the next year after charging 30% extra premium on account of the claim which showed that the respondent was entitled to the benefit of insurance under the policy.
- d) In view of the above, the appeal filed by the appellant was dismissed and the order of the State Commission was confirmed.

**vii) Citation:**

IV (2014) CPJ 299; 2014(3) CPR 732.

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**42. M/s ICICI Prudential Life Insurance Co. Ltd Vs. Shri Arunjeet Thakur**

**i) Case in Brief:**

The Respondent on 10.08.2010 unfortunately suffered a cobra bite on his left hand. He was admitted in the Late Mangeshkar Hospital, Nagpur for emergency treatment and thereafter shifted to Aditya

### **Deficiency in Service - Insurance Claim**

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Hospital in Nagpur for further treatment and then to IGMC, Shimla for specialized treatment. Respondent/Complainant had got himself insured under the Hospital Care Policy of the petitioners which was to remain in force for a period of 20 years. During that period the Respondent was to be provided Annual Limit Benefit of Rs.4,00,000/- and Life Time Limit of Rs.20,00,000/-. The Complainant who underwent several surgeries, claimed a sum of Rs.6,50,378/- as relief in terms of the policy. However, OP made payment of Rs.31,500/- only by cheque which was not presented by the Complainant. Aggrieved by the act of OPs, he filed complaint before the District forum which held that OPs had indulged in unfair trade practice and committed deficiency in service for not settling the just and fair claim of the Complainant and directed the OPs to pay Rs.6,50,378/- to the Complainant with pending and future rate of interest @ 9% per annum till payment is made and Rs.1,00,000/- for having caused harassment and inconvenience to him and Rs.15,000/- as cost. Aggrieved by the order of the District Forum the petitioner filed an appeal before the State Commission which partly allowed the appeal and ordered that instead of Rs.6,50,378/-, appellants shall pay a sum of Rs.3,71,000/-, on account of insurance money. Order of District Forum with regard to payment of compensation and litigation expenses, remained unchanged. Against the order of the State commission, the present Revision Petition has been filed. Revision Petition dismissed.

#### **ii) Order appealed against:**

Against the order dated 29.04.2013 in First Appeal No.241 of 2012 of the Himachal Pradesh State Consumer Disputes Redressal Commission, Shimla.

#### **iii) Parties:**

M/s ICICI Prudential Life Insurance Co. Ltd - Petitioner

Vs.

Shri Arunjeet Thakur - Respondent

#### **iv) Case No and Date of Judgement:**

Revision Petition No.2935 of 2013 & Date of Judgement: 28.08.2014.

#### **v) Acts and Sections referred:**

Sections 2(1)(g), (o), (r), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The issue involved was whether surgical procedures conducted in Aditya Hospital, Nagpur and IGMC Shimla were grade 2 or 3 as that would decide the entitlement of the respondent and whether the other claims made by the Complainant were admissible.
- b) The District Forum had held that nine grade 3 surgeries had been performed upon the Complainant for which he was entitled to Rs.75,000/- per surgery subject to a maximum of Rs.3,00,000/-. The Forum had allowed all other expenses as claimed by the Respondent but the State Commission held that reimbursement should be as per list of grade 2 surgeries and since there was an upper cap of Rs.3,00,000/-, the Respondent was entitled to Rs.3,00,000/-. As regards other benefits, the State Commission had held that the Appellants had correctly worked out the entitlement at Rs.71,000/-. The State Commission therefore determined the total eligibility at Rs.3,71,000/-. The National Commission after a detailed examination of the orders of the fora below agreed with the State Commission's order and dismissed the Revision Petition.

**vii) Citation:**

IV (2014) CPJ 388; 2014(3) CPR 704.

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**43. The New India Assurance Co. Ltd Vs. Sh. Kishan Chand Sharma**

**i) Case in Brief:**

The Complainant, K.C. Sharma who owned a colour lab at Bhager, obtained a Standard Fire Peril Policy, in respect of the machinery and equipment therein to the extent of Rs.24,37,200/-. A blast, followed by fire, occurred in the premises where the aforesaid colour lab was being run by the Complainant. The said premises had been taken by the Complainant on rent from one Sh. Kedar Nath. The first floor of the building was badly damaged by an explosion, followed by fire and resulted in the entire machinery as well as the stock lying in the premises getting burnt. FIR was lodged against Raj Kumar, one of the guarantor of the loan taken from HP State Co-operative Bank Ltd and three other persons. Raj Kumar is said to be the nephew of the Complainant. A primary survey of the damaged premises was carried

### **Deficiency in Service - Insurance Claim**

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out by Mr. Deepak Sood, Surveyor cum Loss Assessor, appointed by the Insurance Company on 16.08.2002 itself. The report of Mr. Deepak Sood indicated that the first floor of the building, all the furniture and fixtures, the printing and developing unit, one A/c unit, raw material comprising printing papers, the contents of the studio comprising camera, both the umbrella lights, a few albums lying in the rack and three neon sign boards were damaged. Thereafter, the Insurance Company appointed another surveyor, Mr. Rakesh K.Khanna who assessed the loss by the aforesaid fire at Rs.14,01,669/-. Further, as suggested by him, one Sh.R.L. Vashishta, was appointed by the Insurance Company as investigator. He submitted his report stating that the claim did not appear to be genuine. Since, the Insurance Company refused to honor the claim, the Complainant approached the State Commission which directed the appellant company to pay the amount of Rs.14,01,669/-, as per the assessment made by its surveyor along with interest on that amount at the rate of 12% per annum w.e.f. 01.03.2003. The appellant company was also directed to pay Rs.2 lakhs as compensation, for the harassment and mental torture of the Complainant. A sum of Rs.50,000/- was also awarded to the Complainant towards punitive damages. Being aggrieved from the order of the State commission, the Insurance Company has filed this appeal. Appeal partly allowed.

#### **ii) Order appealed against:**

From the order dated 24.09.2008 in Original Complaint No.4 of 2004 of the H.P. State Consumer Disputes Redressal Commission, Shimla.

#### **iii) Parties:**

The New India Assurance Co. Ltd - Appellant

Vs.

Sh. Kishan Chand Sharma - Respondent

#### **iv) Case No and Date of Judgement:**

First Appeal No.480 of 2008 & Date of Judgement : 29.08.2014.

#### **v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.



**vi) Issues raised and decided:**

- a) The National Commission on perusal of the records noted that no evidence was produced by the Insurance Company, before the State Commission, to prove that the explosion which took place in the Colour Lab was caused by Raj Kumar and his associates. Since the Insurance Company had repudiated the claim on the ground that the explosion was the handiwork of the nephew of the Complainant, it ought to have produced evidence before the State Commission, to prove the plea taken by it.
- b) The Investigator Sh.R.L. Vashishta suspected that the insured may have replaced the machine installed in the premises where the fire took place, by the re-conditioned machines, which he had installed at his another unit at Ghumarvin. However, there was absolutely no evidence of the machine at Bhager having been actually replaced by the re-conditioned machine installed at Ghumarvin. In the absence of any such proof, mere suspicion of the Investigator could not have justified the rejection of the claim on the aforesaid ground.
- c) Another suspicion expressed by the Insurance Company was that no insurance was obtained for the equipment etc. installed at the other two units, set up by the Complainant. In this regard, the National Commission observed that as rightly pointed out by the counsel for the Complainant, the insurance of the Colour Lab at Bhager was necessitated on account of the fact that equipment installed there was got financed from the bank and it is a practice of the banks to insist upon the insurance of the equipments financed by them, so that in the event of loss/damage, they were able to realise their dues, by submitting a claim with the Insurance Company. Therefore, the Commission found nothing suspicious in the Complainant insuring only the equipment installed at Bhager, while not obtaining any insurance in respect of the equipments installed at the other two units.
- d) In the light of the above circumstances, allowing the appeal, the National Commission confirmed the order of the State Commission except reducing the rate of interest from 12% to 9% on the principal amount of Rs.14,01,669/- and cancelling compensation of Rs.2,00,000/-.

**vii) Citation:** Not reported in CPJ and CPR.

**Deficiency in Service - Insurance Claim**

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**44. National Insurance Co. Ltd. Vs. Aparna Kahar**

**i) Case in Brief:**

Complainant/Respondent's Husband, Tinku Kahar obtained Group Janata Personal Accident Insurance Policy for Rs.5,00,000/- from OP/Petitioner. During the subsistence of the policy, on 17.9.2008 insured fell down while dancing on the occasion of Viswakarma Puja and sustained injuries and ultimately he died. Complainant submitted claim which was repudiated by OP on the plea that it was not an accident case and insured died due to coronary heart disease. Alleging deficiency on the part of OP, Complainant filed complaint before District Forum which directed OP to pay Rs.5,00,000/- with 10% p.a. interest. Appeal filed by OP was dismissed by State Commission vide impugned order against which, this Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 19.07.2013 in S.C. Case No.FA/107/2012 of the West Bengal State Consumer Disputes Redressal Commission, Kolkata.

**iii) Parties:**

National Insurance Co. Ltd.	-	Petitioner/Opp. Party (OP)
Vs.		
Aparna Kahar	-	Respondent/Complainant

**iv) Case No and Date of Judgement:**

Revision Petition No.3932 of 2013 & Date of Judgement: 29.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the records found that it is not disputed that deceased Tinku Kahar obtained Group Janata Personal Accident Insurance Policy for Rs.5,00,000/- for 7 years from 23.10.2002 to 22.10.2009 and insured died on 17.9.2008. As per post-mortem report dated 18.9.2008, neither injury on the external part of the body nor any fracture on his body was found and as per report cause of death was Coronary Heart Disease associated with pulmonary oedema".

- b) As per terms and conditions of the policy, claim was payable only when death was result of accident caused by external visible and violent means. In the case on hand as there was no external injury on the body of the deceased and death was not caused by accident due to external visible and violent means and the cause of death was coronary disease which was not covered under the policy.
- c) In view of the above, the National Commission held that the claim was not payable and observed that District Forum committed error in allowing complaint and State Commission further committed error in dismissing appeal. Consequently, the Revision Petition filed by the petitioner was allowed and the orders of the fora below were set aside.

**vii) Citation:**

IV (2014) CPJ 464; 2014(3) CPR 697.

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**45. M/s. Shiva International Fashions Vs. M/s. Oriental Insurance Co. Ltd and others**

**i) Case in Brief:**

Complainant is in the business of export of readymade fashion garments to various countries and primarily to South Africa. He had taken a marine insurance policy for the period from 07.07.1995 to 06.07.1996 for a total value of Rs.2 crores with the OPs which permitted all shipments to remain covered under transit risks. On 23.02.1996 and 28.02.1996, Complainant dispatched a consignment consisting of 29 bales of 100% yarn, 451 boxes containing power loom readymade garments and 46 boxes containing garments such as velvets, rayon skirts etc to a buyer in Durban, South Africa. The consignment reached Durban on 11.04.1996 and within three days of arrival at the port of destination, the consignment was shifted by the Port authorities to the yard maintained by M/s. Container Link. On 30.07.1996, the Complainant was informed that the consignment had been stolen from the yard. Complainant informed OP.2 (City Branch Office of the Insurance Company) of the theft immediately. The Complainant on 10.08.1996, requested the forwarding agent to lodge a claim with the shipping company since the theft occurred while the consignment was

### **Deficiency in Service - Insurance Claim**

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in the custody of the agent of the shipping company. However, the claim was repudiated by the OPs on a legal notice sent by the Complainant. Aggrieved by the non-settlement of the claim, the present original petition has been filed before the National Commission. Petition partly allowed and OP directed to pay 50% of the amount assessed by the Surveyor.

**ii) Order appealed against:**

Original Petition

**iii) Parties:**

M/s. Shiva International Fashions - Complainant

Vs.

M/s. Oriental Insurance Co. Ltd and others - Opp. Parties

**iv) Case No and Date of Judgement:**

Original Complaint No:425 of 2000 & Date of Judgement: 03.09.2014.

**v) Acts and Sections referred:**

Sections 2(1), (g), (o) and 21(a)(i) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission held both the Complainant and the OP equally responsible for the loss.
- b) It was noted that the Complainant did not furnish to the OP the certified copy of the FIR and the original non-delivery certificates granted by Port/Ships agents. The original sets of three bills of lading in respect of three consignments were also not produced. He did not produce two bills of exchange dated 03.04.1996 and 20.10.1996. The Complainant did not send certified copies of purchase order placed by the consignees and the original insurance policy. It was also held that no effort was made by the Complainant to identify the required goods when some of the stolen goods were allegedly recovered.
- c) The Commission also noted that OPs were negligent and passive in several respects. They did not send the surveyor in time to Durban and no effort was made to solve the case at Durban. The Surveyor's report was prepared in India. Even when the Surveyor came to know that the stolen goods were recovered, OPs took no

steps to get the same identified by the insured. It was observed that both the insured and the insurer should have gone to Durban and identified the goods which was not done. The OPs did not make any effort to get the non-delivery certificate from the Port authorities/Ships agents. OPs did not make any investigation regarding the stolen goods. Efforts if any made by them were not put in writing.

- d) Holding that OPs were partly liable for the loss, the Commission directed OPs to pay to the Complainant, within 90 days, 50% of the amount assessed by the surveyor which came to US \$ 54,383.00 (to be converted to Indian rupees) with 6% interest from the date of filing of complaint i.e from 18.12.2000, failing which interest would be payable at 9% p.a.

**vii) Citation:**

IV (2014) CPJ 231.

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**46. New India Insurance Co. Ltd Vs. Smt. Bimlesh**

**i) Case in Brief:**

The respondent/Complainant obtained an insurance policy for her car from the petitioner-company for the period from 08.04.2005 to 07.04.2006. On 02.11.2005, the said vehicle caught fire and got totally damaged along with its original papers. A report was lodged with the police in this regard on the same date. On being informed, a surveyor was also appointed by the petitioner/company for assessment of the damage to the vehicle, but the claim was later repudiated by the insurance company, on the ground that the vehicle had not been registered in the name of the Complainant. Being aggrieved from the rejection of her claim, the Complainant approached the District Forum which directed that the opposite party would pay the whole of the insurance amount of Rs.2,26,100/- to the Complainant, Rs.40,000/- to the Complainant as mental agony, harassment and deficiency in service and Rs.2,000/- as cost of litigation. Being aggrieved from the order passed by the District Forum, the insurance company approached State Commission by way of an appeal. The said appeal having been dismissed vide impugned order, the present Revision Petition has been filed. Revision Petition dismissed.

**Deficiency in Service - Insurance Claim**

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**ii) Order appealed against:**

From the order dated 08.01.2008 in FA-07/764 of Delhi State Consumer Disputes Redressal Commission at New Delhi.

**iii) Parties:**

New India Insurance Co. Ltd - Petitioner

Vs.

Smt. Bimlesh - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.1347 of 2008 & Date of Judgement : 03.09.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986 & Forms Nos.29 and 30 Motor Vehicle Rules, Section 50(1) of the Motor Vehicle Act, Section 19, 20 of the Sale of Goods Act, 1930.

**vi) Issues raised and decided:**

- a) The first issue for consideration was whether the ownership of the vehicle in question had been transferred to the Complainant at the time the vehicle got damaged. The National Commission on perusal of the records held that the Petitioner company had already issued an insurance policy much before the vehicle in question came to be damaged without even obtaining written application coupled with a written declaration from the insured to the effect that he had purchased the vehicle in respect of which insurance was being sought and he had accordingly become the owner of the said vehicle; therefore, it would be liable to reimburse the insured provided he has been able to show that he had an insurable interest in the vehicle which was subject matter of the insurance policy.
- b) The next issue for consideration was whether the Complainant had an insurable interest in the vehicle at the time it got damaged. As far as the transfer of vehicle in the name of the purchaser in the record of the RTO is concerned, the National Commission was of the view that it is a requirement for the purpose of the Motor Vehicles Act but that does not postpone the transfer of ownership in the vehicle to the purchaser till the vehicle is transferred in the name of the purchaser in the record

of RTO. The Commission took the view that the ownership of the vehicle was transferred on execution of the sale letter and the requirement of informing the transfer to the registering authority is only post-transfer statutory requirement. The Commission on perusal of the records held that since the Complainant had acquired ownership of vehicle in question, on account of the transfer of the said vehicle in her name by way of execution of a sale letter from the previous owner on 02.04.2004 she became its owner with effect from that date and consequently had an insurable interest in it, at the time it got damaged.

- c) In view of the above, the Revision Petition was dismissed and the orders of the fora below were confirmed.

**vii) Citation:**

IV (2014) CPJ 569.

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**47. Sh. Matber Singh Vs. Oriental Insurance Co. Ltd and another**

**i) Case in Brief:**

Late Sh. Narendra Singh, son of the Complainant was employed by a company in the Republic of Sudan on a construction project. The employer of the deceased had obtained an Overseas Medi-claim Business and Holiday policy from the opposite party, Oriental Insurance Co. Ltd. for the period from 07.02.2006 to 06.06.2006. Late Sh. Narendra Singh drowned in a river and died in Sudan on 15.03.2006. Intimation of death was immediately given to the Insurance Company and the matter was pursued with the Insurance Company. The agent of the opposite party company referring to the claim sent a cheque of Rs.49,940/- to the Complainant towards full and final settlement. Admittedly, the aforesaid cheque was sent towards re-imbusement of the air transport expenses for repatriation of the mortal remains of the deceased. However, no payment was offered to the Complainant under the section 'Personal Accident'. Complainant came to know informally that the claim under personal accident section was declined on the ground that the death of the insured was not caused by any bodily injury resulting solely and directly from accident caused by external, violent and visible means. However, according to the Complainant, the aforesaid communication was never sent to him either by the opposite

### **Deficiency in Service - Insurance Claim**

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party or by the employer of the deceased. Being aggrieved from the failure of the Insurance Company to make payment under the policy, the Complainant has filed this complaint. Complaint allowed.

**ii) Order appealed against:**

Original Complaint

**iii) Parties:**

Sh. Matber Singh - Complainant

Vs.

Oriental Insurance Co. Ltd and another - Respondents

**iv) Case No and Date of Judgement:**

Consumer Complaint No.223 of 2006 & Date of Judgement: 05.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The only question involved in this complaint was whether the death of Narendra Singh took place on account of any bodily injury resulting solely and directly from accident caused by external, violent and visible means or not.
- b) The National Commission on perusal of the death certificate of the deceased Narendra Singh found that he died due to drowning which was the sole and direct cause of his death. The Commission observed that it was not a case where someone swimming in a pool or a river suffered heart attack and died while swimming. In the present case, the death occurred when the deceased accidentally fell into the Nile River and got drowned. Therefore, his death was definitely covered by the policy under the section 'Personal Accident'. Therefore, the Insurance Company was under a contractual obligation to pay a sum of \$25,000 to the Complainant, he being the assignee under the policy, without any deduction. Reliance was placed on the decisions of the National Commission in Revision Petition No.973 of 2007, *Rita Devi @ Rita Gupta vs. National Insurance Co. Ltd. & Ors.*, decided on 24.10.2007 and the decision dated 29.04.2008 in Original Petition No.173 of 2000, *Mrs.Padma Ramanathan vs. National Insurance Co. Ltd.*



c) The complaint was disposed of with the following directions:-

- i. The opposite party, Oriental Insurance Company shall pay a sum equivalent to \$25,000 to the Complainant, along with interest on that amount at the rate of 9% p.a. from the date of filing of the complaint till the date of the payment. In case, payment is not made within eight weeks, it shall carry interest at the rate of 12% per annum.
- ii. The Insurance Company shall also pay Rs.49,940/-, that being the amount of the cheque, which the Complainant did not get encashed. However interest at the rate of 12% per annum shall be payable in case, the aforesaid amount is not paid within eight weeks.

**vii) Citation:**

IV (2014) CPJ 126; 2014(4) CPR 348.

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**48. Oriental Insurance Co. Ltd Vs. Subhash Sakhahari Pachbhai**

**i) Case in Brief:**

Complainant/Respondent obtained insurance of his truck from Opposite Party-Petitioner for a period of one year from 11.9.2009 to 10.9.2010 for IDV of Rs.4,50,000/-. On 27.4.2010, truck met with an accident and was damaged totally. Intimation was given to Opposite Party and Opposite Party asked Complainant to repair the truck. Complainant informed Opposite Party that due to financial inability he couldn't get the truck repaired and requested for settlement of the claim. As claim was not settled, alleging deficiency on the part of Opposite Party, Complainant filed complaint before District Forum which directed Opposite Party to pay Rs.3,02,608/- with 9% p.a. interest. Appeal filed by Opposite Party was dismissed by State Commission vide impugned order against which this Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

Against the order dated 6.9.2013 in First Appeal No.74 of 2013 of the Maharashtra State Commission, Mumbai Circuit Bench at Aurangabad.

**Deficiency in Service - Insurance Claim**

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**iii) Parties:**

Oriental Insurance Co. Ltd - Petitioner/Opp. Party

Vs.

Subhash Sakhahari Pachbhai - Respondent/Complainant

**iv) Case No and Date of Judgement:**

Revision Petition No.1210 of 2014 & Date of Judgement: 05.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) Perusal of record revealed that complaint was filed on 9.12.2010 and Opposite Party obtained 2<sup>nd</sup> Surveyor's report on 4.3.2011 without any basis and 2<sup>nd</sup> Surveyor opined cash loss of Rs.1,60,000/- and Opposite Party asked the Complainant to accept Rs.1,30,000/- as full and final settlement without any justification.
- b) It was held that there was no occasion to appoint 2<sup>nd</sup> surveyor and District Forum rightly relied on the survey report of 1<sup>st</sup> Surveyor. It was further held that based on the circular dated 06.07.2006, the Complainant could not be deprived from getting loss assessed by 1<sup>st</sup> Surveyor and rightly awarded compensation. State Commission rightly observed that Insurance Co. appointed one surveyor after another to prolong the assessment of loss and committed deficiency in service and rightly dismissed the appeal. Therefore, the present Revision Petition was dismissed and the orders of the fora below were upheld.

**vii) Citation:**

IV (2014) CPJ 551; 2014(4) CPR 342.

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**49. Vijay Kumar Vs. Bajaj Allianz General Insurance Co. Ltd & Ors.**

**i) Case in Brief:**

Complainant/Petitioner hypothecated his tractor with OP No.4/ Respondent No.4. This tractor was insured with OP No.1, 2 & 3/ Respondent No.1, 2 & 3 and OP No.4 was responsible for getting it

insured. On 12.03.2007, tractor met with an accident which was seized by Police and was given on 'spurdari' to petitioner. On 05.01.2008, this tractor along with trolley was stolen and FIR was lodged on 15.01.2008 and intimation was also given to OPs. As claim was not settled, alleging deficiency on the part of OPs, Complainant filed complaint before District Forum which dismissed the complaint. Appeal filed by the petitioner was dismissed by State Commission vide impugned order against which, this Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 26.09.2013 in Appeal No.1036/2009 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh.

**iii) Parties:**

Vijay Kumar - Petitioner/Complainant

Vs.

Bajaj Allianz General Insurance Co. Ltd  
& Ors. - Respondents/OP

**iv) Case No and Date of Judgement:**

Revision Petition No.4853 of 2013 with IA/8085/2013 (For Exemption from filing certified copy) &

Date of Judgement: 05.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission dismissed the Revision Petition and confirmed the order of the State Commission for the following reasons:

- a) Petitioner's tractor was insured by Respondent No.1, 2 & 3 under farmer's package policy and third party coverage was given along with coverage to owner, driver and paid driver.
- b) Trolley was not covered under the policy. This policy did not contain coverage for theft.
- c) As tractor was not insured comprehensively and theft of tractor was not under cover of the insurance policy, Complainant was not entitled to any claim on account of theft of tractor.

### **Deficiency in Service - Insurance Claim**

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- d) Complainant also could not place any document to claim compensation for theft of the tractor under the Clause 1(e) of the Tractor Welfare Fund Scheme.
- e) Further, theft occurred on 05.01.2008, but FIR was lodged on 15.01.2008 and no specific date had been given regarding intimation to respondents. On account of delay in lodging FIR and intimation to Insurance Company, complaint was liable to be dismissed.

#### **vii) Citation:**

IV (2014) CPJ 544; 2014(4) CPR 336.

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### **50. Narendra Vishvanath Vyas Vs. The Chairman, Life Insurance Corpn. of India and others**

#### **i) Case in Brief:**

Complainant/petitioner obtained Jeevan Dhara Policy on 23.10.1990 from OP/respondent for Gross Insurance Value Element (GIVE) amount of Rs.1,19,660/- with a deferment period of 15 years. It was further stated that benefits of the policy included (i) an annuity payment of Rs.3,506.50 (ii) Bonus in two stages "firstly, at the end of deferment period as addition to the GIVE proportionately increasing the annuity; and secondly, as addition to the GIVE payable on death. These bonuses will be at the rates declared by the Corporation at the valuation immediately preceding the relevant date and will be subject to such condition or restrictions as specified in such declaration," and (iii) an additional increase in the GIVE amount on the vesting date by Rs.3,590/- subject to the policy being kept in full force by payment of all premiums, which would result in an increase in the annuity as per the terms endorsed in the policy. OP started paying annuity of Rs.1,233/- per month consisting of Rs.1,000.20 as per policy plus increase in annuity by Rs.232.50. Complainant alleged that though he was also entitled to bonus at the end of deferment period, OP did not give bonus in the first stage at the end of deferment period in 2005 in addition to GIVE. Alleging deficiency on the part of OP, Complainant filed complaint before District Forum which directed OP to give bonus at the first stage by adding the bonus amount to the GIVE amount w.e.f. 28.03.2005 with 9% p.a. interest and further allowed

Rs.20,000/- as compensation and Rs.5,000/- as cost of the complaint. OP filed appeal and State Commission vide impugned order allowed appeal and dismissed complaint against which, this Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 01.04.2008 in Appeal No.49/2008 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai.

**iii) Parties:**

Narendra Vishvanath Vyas - Petitioner/Complainant

Vs.

The Chairman,  
Life Insurance Corpn. of India & Ors. - Respondents/Opp. Parties

**iv) Case No and Date of Judgement:**

Revision Petition No.2768 of 2008 & Date of Judgement: 05.09.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The issue involved was whether the Complainant was entitled to bonus or not under the above said policy.
- b) It was held that Respondent had granted relief to the petitioner in the Jeevan Dhara Policy for which he was entitled and respondent had not committed any deficiency in refusing to declare bonus on this policy because no bonus had been declared to Jeevan Dhara Policy holders after 1998. Petitioner being holder of Jeevan Dhara Policy cannot call upon the respondent to declare bonus on this policy. The Commission upheld the contention of the Respondent that declaring bonus is a matter of discretion and cannot be demanded as a matter of right even if the company makes profit. Revision Petition was accordingly dismissed.

**vii) Citation:**

IV (2014) CPJ 260; 2014(4) CPR 268.

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**Deficiency in Service - Insurance Claim**

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**51. United India Insurance Co. Ltd Vs. Shyam Lal**

**i) Case in Brief:**

Complainant/Respondent/Sole Proprietor got his stock insured from OP/Petitioner for Rs.60,00,000/- for a period of one year from 10.03.2003 to 09.03.2004. In the intervening night of 1-2 May, 2003, a fire took place in the insured's premises and a loss of Rs.9,00,000/- was caused. The Surveyor appointed by the OP assessed the loss at Rs 54,545. Since Complainant's claim was not settled by OP, he filed complaint before the District Forum which allowed the complaint and directed OP to pay Rs.6,52,480/- as loss, Rs.1,00,000/- as compensation for mental agony and Rs.20,000/- towards cost of litigation. Appeal filed by the OP was allowed by the State Commission vide impugned order reducing the compensation from Rs.6,52,480/- to Rs.54,545/-and upholding rest of the order. Aggrieved by the said order, this Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 19.09.2013 in F.Appeal No.FA/740/08 of State Consumer Disputes Redressal Commission, Delhi.

**iii) Parties:**

United India Insurance Co. Ltd	- Petitioner
Vs.	
Shyam Lal	- Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No:4527 of 2013 & Date of Judgement: 08.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission noted that the surveyor had assessed the loss at Rs.54,545/- and that the Respondent had not challenged the order of the State Commission which meant that he accepted the loss as assessed by the Surveyor. The Commission held that when the compensation had been reduced from Rs.6,52,480/- to Rs.54,545/-,

there was no justification for upholding grant of compensation of Rs.1,00,000/- for mental agony and another Rs.20,000/- as cost of litigation. Consequently, the Revision Petition was allowed and the compensation of Rs.1,00,000/- was set aside and the amount towards cost of litigation was reduced to Rs.5,000/-.

**vii) Citation:**

IV (2014) CPJ 547; 2014(4) CPR 241.

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**52. Smart Sign, Division of M/s. Crescent Chemical Vs. The United India Insurance Co. Ltd**

**i) Case in Brief:**

Complainant Company obtained a Standard Fire & Special Perils Policy bearing no. 0941 in the name of Smart Sign for a sum of Rs.1,00,00,000/- for the period from 13.11.2002 to 12.11.2003 which covered the stock of the insured in Godown No.6, Survey No.172 in Purna Village, Bhiwandi. The nature of the stock which was covered under the policy was not specified. The Petitioner obtained another policy, bearing no.1221, in the name of Smart Sign (a division of Crescent Chemical) in the sum of Rs.1 crore for the period from 14.01.2003 to 12.07.2003 which covered only Self-Adhesives PVC Vinyls Film & Flex Sheeting in the same godown. On 08.03.2003, a fire broke out in the adjoining godown which spread fast and engulfed the godown of the Complainant company. Complainant submitted claim of Rs.1,14,85,745/- against policy No.0941 and claim of Rs.1,09,38,369.23/- against policy no.1221. The Surveyor appointed by the OP assessed the loss at Rs.98,90,000/- against policy no: 0941 and Rs.40,91,531 against policy no.1221. The Insurance Company appointed a second surveyor who submitted the report on 07.07.2005. They were of the view that Smart Sign had insurable interest only in Vinyl flex sheeting and Polycarbonate Sheets whereas Crescent Chemical had insurable interest in Polycarbonate Resin. Aggrieved by the non-settlement of claim, the Complainant had filed this complaint. Complaint allowed.

**ii) Order appealed against:**

Original Complaint

## **Deficiency in Service - Insurance Claim**

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### **iii) Parties:**

Smart Sign, Division of M/s. Cresnet Chemical - Complainant

Vs.

The United India Insurance Co. Ltd - Opp. Party

### **iv) Case No and Date of Judgement:**

Consumer Complaint No:3 of 2006 & Date of Judgement: 09.09.2014.

### **v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(a)(i) of the Consumer Protection Act, 1986.

### **vi) Issues raised and decided:**

- a) Perusal of Sales Tax Returns of various months in 2002-03 showed that Smart Sign was one of the seven divisions of Cresnet Chemical and that it was not independent legal entity. The Commission therefore held that the insured and the beneficiary of the insurance policy would be Cresnet Chemical alone.
- b) The Commission rejected the contention of the OP that since the insurance policy was taken by an entity which was not a legal entity, the contract of insurance itself would be void.
- c) The Commission also held that what was insured under policy no.1221 was only Self-adhesive PVC Vinyl Films and Flex Sheeting and that no claim in respect of Polycarbonate Plastic Sheets is admissible against policy no.1221.
- d) The Commission held that PVC Self Adhesive Vinyl Films worth about Rs.20,54,383/- sold by the Complainant to one M/s. Shah Polymers, who had not lifted the goods from the godown at the time of the fire, could not be included in the claim since the Complainant did not have an insurable interest in these goods.
- e) The Commission held that the amount payable to the Complainant in respect of the policy No.0941 would be Rs.67,27,763/- (after adding Rs.26,763/- for debris removal charges and deducting policy excess of Rs.10,000/-) and that the amount payable in respect of policy No.1221 would be Rs.53,56,514/- (after adding Rs.13,846 for debris removal charges and deducting policy excess of Rs.10,000/-). Thus the total amount payable in respect of both the policies was Rs.1,20,84,277/-.



- f) Considering the schedule laid down in Regulation 9 of the IRDA (Protection of Policyholders' Interests) Regulations, 2002 in respect of settlement of claims, it was held that interest should be paid by the insurance company to the Complainant at the rate of 12% p.a w.e.f 01.10.2003 till the date of payment.

**vii) Citation:**

Not reported in CPJ and CPR.

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**53. Metcalfe & Hodgkinson Pvt. Ltd Vs. Peace Trade Concern and others**

**i) Case in Brief:**

The Complainant, Peace Trade Concern, placed an order with the Suppliers/Shippers in China who dispatched 98 drums containing 9,800 kgs of Calcium Carbide by ship from Xingang, China to Kolkata Port. The goods were transported from Kolkata to Nepal by Tirupati Carrying Corporation-OP.2, a road carrier and for this purpose an insurance was obtained from OP.1 namely Ping An Property Insurance Company of China Ltd. The goods on reaching Nepal were found to be in a damaged condition and a survey was conducted by M/s. Marine Commercial Claims (Nepal) on two days i.e 20.07.2007 to 21.07.2007. It came to light that the quantity damaged was 5987 out of 9800 kgs. Since the OPs did not respond to the legal notices, Complainant approached District Forum which allowed the complaint and directed OPs.1 & 2 to pay the Complainant jointly and severally a sum of Rs.1,65,988/- together with interest at 9% p.a from the date of consignment along with compensation of Rs.10,000/- for harassment and mental agony and Rs.5000 towards cost. The appeal before the State Commission, which was dismissed, as well as the present Revision Petitions were filed by the Petitioner who claimed that he was the surveyor who was competent to conduct the survey. Revision Petition was dismissed as vexatious and frivolous with cost of Rs.10,000/- to be paid to the Complainant.

**ii) Order appealed against:**

From the order dated 12.02.2013 in S.C.Case No.FA/201/2012 of State Consumer Disputes Redressal Commission, West Bengal, Kolkata.

**Deficiency in Service - Insurance Claim**

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**iii) Parties:**

Metcalfe & Hodgkinson Pvt. Ltd. - Petitioner

Vs.

Peace Trade Concern and others - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No:2473 of 2013 with IA/4122/2013, IA/4750/2013  
(For Stay and Condonation of Delay) & Date of Judgement: 09.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

Petitioner claimed that he is a Surveyor/Simpliciter and his name appeared in the policy wherein it had been shown that the survey was to be conducted only by him. This contention was rejected by the National Commission. It was also noted that Petitioner had suppressed the agreement between it and Ping An Property Insurance Co. Ltd (OP.1) and that he had gone on to represent OP.1 till the decree was passed by the District Forum. The Commission therefore held that the Revision Petition was therefore vexatious and frivolous and dismissed the same with cost of Rs.10,000/- to be paid to the Complainant along with other amounts within a period of 45 days.

**vii) Citation:**

2014(4) CPR 210.

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**54. Rajendra Singh Yadav Vs. National Insurance Co. Ltd**

**i) Case in Brief:**

Complainant/Petitioner's truck which was insured with the Respondent/OP overturned on 04.02.2010 and damages were caused. Intimation was given to OP. Surveyor assessed loss of Rs.18,000/- towards parts and Rs.1,800/- towards labour charges as against the Complainant's claim that he spent Rs.1,50,000/- on repairs. Alleging deficiency in service, he filed complaint before the District Forum which allowed the complaint and directed the OP to pay Rs.1,00,000/- as damages and Rs.3,000/- for mental agony. Appeal filed

by the OP was dismissed by the State Commission. However, the National Commission in Revision Petition filed by OP, set aside the order of the State Commission and remanded the case to the State Commission to pass speaking order. After remand, the State Commission passed the impugned order setting aside the order of the District Forum and directing OP to pay amount as per surveyor's report. Aggrieved by the said order, the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 12.04.2013 in Appeal No.1568 of 2011 of the Rajasthan State Consumer Disputes Redressal Commission, Circuit Bench No.3, Jaipur.

**iii) Parties:**

Rajendra Singh Yadav - Petitioner/Complainant

Vs.

National Insurance Co. Ltd - Respondents/Opp. Party

**iv) Case No and Date of Judgement:**

Revision Petition No:2634 of 2013 & Date of Judgement: 09.09.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

Perusal of records revealed that the surveyor had mentioned all the items for which estimate was submitted by the Complainant in his survey report and assessed the total loss at Rs.22,988.10 including labour charges. The Commission noted that the Petitioner could not place any document on record to substantiate that the assessment made by the Surveyor was not in accordance with law or that he had underestimated the cost of any part or labour charges. It was therefore held that the State Commission had rightly directed the Respondent to make payment as per surveyor's report. Consequently, the Revision Petition was dismissed.

**vii) Citation:**

IV (2014) CPJ 269; 2014(4) CPR 205.

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**Deficiency in Service - Insurance Claim**

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**55. Life Insurance Corporation of India through its Authorized Representative & Asst. Secretary Vs. Smt. Geeta**

**i) Case in Brief:**

Late Shri Rajesh Kumar, husband of the Complainant took a policy of Rs.50,000/- from the Petitioner on 27.01.2005. The case of the Complainant was that the aforesaid policy was a money back policy for 20 years whereas the case of the Petitioner was that the policy was an endowment policy and not a money back policy. The husband of the Complainant died on 25.11.2006. A claim was then submitted by the Complainant to the Petitioner/LIC of India. However, no payment was made to her. As a result, she preferred a complaint before the District Forum which directed the petitioner to pay Rs.1,00,000/- to the Complainant towards the policy along with interest from the date of the death of the husband of the Complainant, Rs.3,000/- towards compensation for mental agony and Rs.2,000/- towards the cost of the litigation. Being aggrieved from the order of the District Forum, the Petitioner/LIC of India preferred an appeal before the State Commission which was dismissed vide impugned order against which this Revision Petition has been filed. Revision Petition partly allowed.

**ii) Order appealed against:**

From the order dated 20.02.2014 in FA No.1082 of 2012 of Uttar Pradesh State Consumer Disputes Redressal Commission at Lucknow.

**iii) Parties:**

Life Insurance Corporation of India  
through its Authorized Representative  
& Asst. Secretary

- Petitioner

Vs.

Smt. Geeta

- Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.2489 of 2014 with I.A.No.4696 of 2014 &  
Date of Judgement: 10.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) It was pointed out by the National Commission that perusal of the policy on record showed that it was an endowment policy with profit and accident benefit and not a money back policy. However, neither the order of the District Forum nor the order of the State Commission indicated on what basis they had directed payment of Rs.1,00,000/- to the Complainant despite the policy amount being Rs.50,000/-. No finding was recorded by the District Forum or the State Commission that the amount of profit which was payable under the policy was Rs.50,000/- and that was why they were awarding a total sum of Rs.1,00,000/- to the Complainant. In the absence of such a finding, the District Forum and the State Commission could not have directed payment of Rs.1,00,000/- to the Complainant.
- b) Further, the affidavit filed by the petitioner also showed that on the date, the husband of the Complainant expired, the amount of the profit payable on the aforesaid policy came to Rs.4,500/-. Thus, the total amount payable under the policy, on the date the husband of the Complainant expired, was Rs.54,500/-.
- c) In view of the above, the present Revision Petition was partly allowed by directing that as against Rs.1,00,000/- awarded by the District Forum and the State Commission, the petitioner was liable to pay a sum of Rs.54,500/- to the Complainant along with interest on the said amount at the rate of 9% per annum. The Complainant, however, was held to be entitled to the amount of Rs.3,000/- awarded towards mental agony and Rs.2,000/- towards the cost of litigation. The Commission also directed that since no one was present for the Respondent, the Petitioner while complying with this order should also pay the cost of Rs.10,000/- to the Complainant as had been directed earlier.

**vii) Citation:**

Not reported in CPJ and CPR.

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**Deficiency in Service - Insurance Claim**

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**56. Shri N. Gopal Vs. Branch Manager, The National Insurance Co. Ltd.**

**i) Case in Brief:**

Petitioner/Complainant had purchased for his own use a car from the Managing Director of M.K. Agro Tech Pvt. Ltd on 03.11.2007. After purchasing, he informed the Traffic Officer to transfer the ownership of the vehicle to his name by producing all the documents. The authority concerned had transferred the aforesaid vehicle to the name of the petitioner on 14.01.2008. Thus, according to the petitioner, he became the absolute owner of the said vehicle on that day. The previous owner of the vehicle had taken the policy from 01.12.2007 to 30.11.2008 of the vehicle from the Respondent/Insurance company. All the dues and premium of the policy were paid by the previous owner of the vehicle without any delay. On 25.01.2008, the aforesaid vehicle met with an accident and the vehicle was fully damaged. The petitioner informed the respondent about the accident. The Respondent/Opposite party/Insurance company appointed a surveyor and got a survey report. Despite several requests, the claim was not settled and the respondent issued a letter on 09.03.2010 with untenable reasons. Aggrieved by the activities of the insurance company, the Complainant filed complaint before the District Forum which by partially allowing the complaint directed the insurance company to pay Rs.2,90,170/- to the Complainant along with an interest of 9% per annum. Against the order of the District Forum, appeal was filed before the State Commission which set aside the order of the District Forum. Against the decision of the State Commission, this Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

Against the order dated 12.12.2011 in Appeal No.226/2011 of the State Commission, Karnataka.

**iii) Parties:**

Shri N. Gopal

- Petitioner

Vs.

Branch Manager, The National Insurance Co. Ltd - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No:1437 of 2012 & Date of Judgement: 10.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986 & Section 50, 157 of the Motor Vehicles Act, 1988.

**vi) Issues raised and decided:**

The National Commission noted that the Petitioner had failed to 'apply within 14 days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour' as stipulated in Section 157(2) of the Motor Vehicles Act, 1988. The Commission therefore held that at the time of the accident neither was the Petitioner the registered owner of the vehicle nor had the insurance policy been transferred to his name as per Section 50 read with Section 157 of the Motor Vehicles Act, 1988. As the Petitioner had no insurable interest in the said vehicle, there was no privity of contract between the Petitioner and Respondent. Therefore, the present Revision Petition was dismissed and the order of the State Commission was confirmed.

**vii) Citation:**

IV (2014) CPJ 275; 2014(4) CPR 104.

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**57. M/s. Sahara India Commercial Corporation Ltd. & Anr. Vs. Smt.Gomti Devi and others**

**i) Case in Brief:**

Shri Pyare Lal, husband of Respondent No.1 and father of Respondents/ Complainants No.2 and 3 deposited a sum of Rs.10,000/- in a branch of M/s. Sahara India Commercial Corporation Ltd on 28.11.2003 under the Sahara Swarn Yojana Scheme. A passbook was issued by the opposite parties. According to the terms and conditions, the legal representatives of the policy holder were to get Rs.1,50,000/- in case his death occurred due to accident after three years and within a period of four years. Unfortunately, Shri Pyare Lal expired on 30.09.2007 in an accident which happened after a period of three years but before the expiry of four years of obtaining of the insurance policy. The information was given to the insurance company. The insurance company refused to pay the compensation on the grounds that the information of death was not given within 15 days from the date of death/before the last rites were performed and that under special

### **Deficiency in Service - Insurance Claim**

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circumstances, it was mandatory to give information within 30 days from death; that the deceased-policy holder was not consumer because the death help, after the accident, was provided free of cost; that the relevant documents, like FIR, death certificate, post mortem report, medical report, age certificate, claim forms etc, were not deposited within 30 days but the same were provided subsequently etc,. The Petitioner company had sent these papers to the National Insurance company with whom it had a tie-up. The National Insurance Company, Respondent No.4/OP.No.3, provided a cheque in the sum of Rs.50,000/- but the Complainants refused to accept the same. The defence by the National Insurance Company was that they had entered into a contract with the opposite parties No.1 and 2. Therefore, they were liable to pay Rs.50,000/-. The District Forum accepted the complaint against opposite parties No.1 and 2 and directed the opposite parties 1 and 2 to pay a sum of Rs.1,00,000/- with all the benefits to the Complainants due to the accidental death of Shri Pyare Lal. Rs.5,000/- as compensation and Rs.2,000/- as cost of litigation was also awarded to the Complainants besides payment of interest @9% p.a. Aggrieved by that order, the OP.1 & 2 approached the State Commission which dismissed the appeal against which this Revision Petition has been filed. Revision Petition dismissed.

#### **ii) Order appealed against:**

From order dated 21.11.2013 in First Appeal No.817/2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

#### **iii) Parties:**

M/s. Sahara India Commercial Corporation Ltd.  
& Anr.

- Petitioners

Vs.

Smt. Gomti Devi and others

- Respondents

#### **iv) Case No and Date of Judgement:**

Revision Petition No:1162 of 2014 with IA/1148/2014, IA/1149/2014  
(For stay, exemption from filing official translation of documents) &  
Date of Judgement: 10.09.2014

#### **v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19, 21(b) and 26 of the Consumer Protection Act, 1986 & Para 11, 18 of the Terms and Conditions of the Insurance Policy.



**vi) Issues raised and decided:**

- a) It was pointed out by the National Commission that perusal of the records revealed that as per the policy, the petitioners were liable to pay Rs.1,00,000/- as ordered by the District Forum. Accordingly, the petitioners No.1 and 2 will pay Rs.1,00,000/- along with interest, litigation charges and compensation to the Complainants. It was also held that the insurance company was liable to pay a sum of Rs.50,000/- if not already paid.
- b) Consequently, the present Revision Petition was dismissed with costs of Rs.10,000/- which was payable to the Complainant No.1 through demand draft directly under Section 26 of the Consumer Protection Act, 1986.

**vii) Citation:**

IV (2015) CPJ 255; 2014(4) CPR 95.

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**58. Shri Arvind Kumar Aggarwal Vs. The New India Assurance Co. Ltd and others**

**i) Case in Brief:**

Petitioner/Complainant purchased a truck and got it insured with the Respondent Insurance Company for IDV Value of Rs.7,20,000/-. The truck came to be stolen after about 9 months of the insurance being taken. Since his claim was not settled, he preferred a complaint before the District Forum seeking the payment of Rs.10,00,000/- along with interest, compensation, etc. The District Forum directed the Respondent/Insurance company to pay a sum of Rs.6,92,000/- along with interest at 9 % p.a w.e.f 14.05.2006. The Petitioner's appeal was dismissed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition allowed directing the insurance company to pay a Rs.7,19,000/- to the Complainant along with interest at 9% p.a w.e.f 14.05.2006.

**ii) Order appealed against:**

From the order dated 06.02.2008 in F.A.No.A-08/16 of Delhi State Consumer Disputes Redressal Commission, New Delhi.

**Deficiency in Service - Insurance Claim**

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**iii) Parties:**

Shri Arvind Kumar Aggarwal - Petitioner

Vs.

The New India Assurance Co. Ltd and others - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No:1389 of 2014 & Date of Judgement: 11.09.2014

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986

**vi) Issues raised and decided:**

The National Commission noted that the insurance company vide letter dated 31.10.2007 had informed the Complainant that his claim had been approved for Rs.7,19,000 on total loss basis as per IDV. It was held that having approved the claim based on its own assessment of loss, it was not open to the insurance company to restrict the claim to Rs.6,93,447. Consequently, the Revision Petition was allowed and the respondents were directed to pay Rs.7,19,000 to the Complainant with interest at 9% p.a w.e.f 14.05.2006.

**vii) Citation:**

Not reported in CPJ and CPR.

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**59. ICICI Bank Ltd. Vs. Prem Kishan Garg and others**

**i) Case in Brief:**

Complainant/Respondent was an account holder of Bank of Rajasthan. OP No.1 & 2/petitioner launched a Group Medi-Claim Insurance Policy of account holders of Bank of Rajasthan. Complainant got medi-claim insurance policy on 07.04.2008 from OP to the extent of Rs.5,00,000/- after payment of premium of Rs.7,315/. Policy was renewed for the year 2009-2010 and 2010-2011 after paying aforesaid premium amount. On 29.03.2011, Complainant got a letter from Insurance Co. whereby Complainant was informed by OP No.3/petitioner that Bank of Rajasthan had merged with OP No.3 and Complainant must send premium by demand draft to OP for continuation of policy. Complainant sent demand draft of Rs.7,181/-, but Insurance Co. vide

letter dated 08.04.2011 demanded Rs.26,999/- from Complainant for renewal of policy which was contrary to previous terms & conditions of the policy. Alleging deficiency on the part of OPs Complainant filed complaint before the District Forum which dismissed the complaint. Appeal filed by Complainant was allowed by the State Commission vide impugned order and the State Commission directed all the OPs jointly and severally to renew the medi-claim insurance policy every year till Complainant attains age of 85 years after receiving premium of Rs.7,181/- and further directed that in case policy is not issued they have to pay Rs.5,00,000/- and further awarded Rs.50,000/- as compensation for mental agony and cost of proceedings. Aggrieved by the order of the State Commission, these Revision Petitions have been filed. Revision Petitions allowed.

**ii) Order appealed against:**

Revision Petition No.3338 of 2013

From the order dated 23.07.2013 in Appeal No.32/2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

Revision Petition No.3766 of 2013

From the order dated 23.07.2013 in Appeal No.32/2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

**iii) Parties:**

Revision Petition No.3338 of 2013

ICICI Bank Ltd. - Petitioner/OP

Vs.

Prem Kishan Garg and others - Respondents/Complainants

Revision Petition No.3766 of 2013

United India Insurance Co. Ltd - Petitioner

Vs.

Prem Kishan Garg and others - Respondents/Complainants

**iv) Case No and Date of Judgement:**

- i. Revision Petition No.3338 of 2013
- ii. Revision Petition No.3766 of 2013 &  
Date of Judgement: 12.09.2014.

## **Deficiency in Service - Insurance Claim**

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### **v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

### **vi) Issues raised and decided:**

The revision petition was allowed and the order of the State Commission was set aside by citing the following reasons:

- a) As per scheme of amalgamation all contracts between the Bank of Rajasthan and Insurance Company stood terminated and petitioner/insurance company was not under obligation to renew insurance policy on the basis of the previous premium amount on which, earlier renewals were made. There was no question of fastening liability on ICICI Bank on the basis of earlier agreement entered into between the Bank of Rajasthan and Insurance Company
- b) There was no illegality or irregularity in this letter by which Complainant was given an offer to get the policy renewed subject to payment of premium of Rs.26,999/- and State Commission committed error in directing OPs to renew policy on initial premium.
- c) It was also pointed out that State Commission directed OPs to pay Rs.5,00,000/- in case they do not wish to continue the scheme of Medi-claim Policy which is apparently not proper. Complainant got Medi-Claim policy for Rs.5,00,000/- subject to payment of premium every year up to the age of 85 years. By this policy, at the most Insurance Company was liable to pay Rs.5,00,000/- at any time, but not beyond this amount. By this order, the State Commission asked the Insurance Company to pay Rs.5,00,000/- even without getting any premium which is prima facie contrary to spirit of insurance policy itself because it was renewable subject to payment of premium.

### **vii) Citation:**

IV(2014) CPJ 333.

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**60. National Insurance Co. Ltd. Vs. Arun Tiwari and another**

**i) Case in Brief:**

Complainant/Respondent No.1 who was engaged in exporting semi-precious stones obtained marine policy from the Appellant Company on 26.12.2000 for a sum of Rs.23,00,000/-. On the same day, he exported semi-stones by parcel post valued at US \$44,700 (equivalent to Rs.23,00,000/-) to USA through its banker, Bank of America which was also the consignee of the goods as per the Airway bill. The goods however did not reach the destination. The Postal department issued certificate dated 13.05.2002 admitting non-delivery of goods in question and paid a sum of Rs.3,115/- to the Complainant as per the rules. Complainant made a claim of Rs.20,84,267/- with the Appellant company who appointed a surveyor to assess the loss. The Surveyor submitted his report on 25.11.2002. Another surveyor firm was appointed on 31.05.2004 and based on their report, the claim was repudiated. Being aggrieved from the rejection of the claim, Complainant approached the State Commission. The State Commission vide impugned order allowed the complaint and directed the appellant company to pay Rs.20,87,490/- along with interest at 9% p.a. Another Rs.20,000/- was awarded as cost. No compensation was awarded against the Postal department. The present appeal has been filed by the appellant company challenging the order of the State Commission. Appeal dismissed.

**ii) Order appealed against:**

From the order dated 17.03.2008 in C.No.15 of 2004 of Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

**iii) Parties:**

National Insurance Co. Ltd - Appellant

Vs.

Arun Tiwari and another - Respondents

**iv) Case No and Date of Judgement:**

First Appeal No:345 of 2008 & Date of Judgement: 16.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

## **Deficiency in Service - Insurance Claim**

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### **vi) Issues raised and decided:**

- a) The Commission noted that the appellant had not filed any terms and conditions along with the copy of the insurance policy in support of its claim that the Complainant committed breach of the terms and conditions of the policy. Even along with the affidavit filed by the insurance company, no terms and conditions were attached. It was held that in the absence of the said terms and conditions, it cannot be said that the insured was required to intimate the loss of the goods to the insurance company immediately on occurrence of the loss assessed. The Commission further held that it was only on issue of loss certificate issued by the Postal Company that the Complainant would be under an obligation to intimate the insurance company. Another point held against the insurance company was that the second surveyor came to be appointed much after expiry of the period within which the whole process should have been completed by the insurance company in terms of Regulation 9 of the IRDA (Protection of Policyholder's Interests) Regulation, 2002.
- b) In view of the above reasons, the appeal was dismissed and the State Commission's order was upheld.

### **vii) Citation:**

Not reported in CPJ and CPR.

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## **61. M/s. Shield Tradelink Pvt Ltd Vs. United India Insurance Co. Ltd.**

### **i) Case in Brief:**

Complainant company imported kerosene oil from Bahrain, UAE along with other importers. When the stock belonging to the Complainant company was unloaded, it was allegedly found to have a shortage of 121.518 MT, against the purchased quantity of 2906.71 MT. The shortage was confirmed by the company that supervised the unloading. The Surveyor appointed by the Respondent/OP separately ascertained that at Bahrain as against the total quantity of 23,888.71 MTs, the shippers had short-loaded by 119.904 MT. In this background, consumer complaint was filed by the District Forum on 29.04.2003, claiming that all the consignees should be treated as "tenants in common" and the

shortage should be proportionately distributed. The District Forum dismissed the complaint on the ground that it was a case of short loading at Bahrain and not of loss during transit. The State Commission to whom appeal was filed by the Complainant agreed with the District Forum and held that the insurance company cannot be held liable for short supply of goods. Aggrieved by the order of the State Commission, the present Revision Petition had been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 14.07.2008 in Appeal No.2122 of 2006 State Consumer Disputes Redressal Commission, Madhya Pradesh.

**iii) Parties:**

M/s. Shield Tradelink Pvt Ltd - Petitioner

Vs.

United India Insurance Co. Ltd. - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No:4031 of 2008 & Date of Judgement: 17.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission dismissed the contention of 'clean loading' of the entire contracted quantity made on the basis of the twelve bills of lading containing details of quantity loaded. It was held that the District Forum had rightly relied on the certificate of the Directorate of Oil, State of Bahrain which on verification had found the actual loading to be 23768.806 MT which was, in other words, official confirmation of the loading shortage of 119.104 MT.
- b) The National Commission also held that the State Commission had rightly rejected the contention that the total shortage should have been apportioned proportionately among all the importers. It observed that apportionment of loss among individual consignees is not a function of the insurer.

**Deficiency in Service - Insurance Claim**

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c) Consequently, the National Commission agreed with the findings of the fora below and dismissed the Revision Petition as devoid of merit.

**vii) Citation:**

IV (2014) CPJ 564; 2014(4) CPR 25.

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**62. Dr. Arun Kumar K Teli Vs. Oriental Insurance Co. Ltd.**

**i) Case in Brief:**

Complainant/Petitioner obtained mediclaim policy from Respondent/OP for a period of one year from 30.04.2010 to 29.04.2011 and another mediclaim policy from 30.04.2011 to 29.04.2012 for Rs.3,00,000/-. Complainant's wife who was covered under the policy was admitted in Hospital on 06.07.2011 and discharged on 18.08.2011. An expenditure of Rs.1,27,254/- was incurred. As claim was not paid, complaint was filed before the District Forum which allowed the complaint. Appeal filed by the OP was allowed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 09.10.2013 in F. Appeal No.3543 & 3544/2012 of the State Consumer Disputes Redressal Commission, Gujarat.

**iii) Parties:**

Dr. Arun Kumar K Teli - Petitioner

Vs.

Oriental Insurance Co. Ltd . - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No:4701 of 2013 & Date of Judgement: 17.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission noted that the Complainant had obtained two policies one for a period of one year upto 29.04.2011 and another for the period



from 30.04.2011 to 29.04.2012 for the same amount of Rs.3,00,000/- along with coverage for his wife. The State Commission had wrongly observed that as Complainant's claim had already been considered in another complaint No.240 of 2011 and full sum insured had been exhausted, he was not entitled to any amount in Complaint No.285 of 2011. This observation was held to be contrary to record because Complainant filed two separate complaints for reimbursement of medical expenses in two different policies in two different years. It was therefore held that the Complainant was entitled to reimbursement of medical expenses and the Revision Petition had to be allowed. Consequently, the order of the State Commission was set aside and the order of the District Forum allowing complaint was upheld.

**vii) Citation:**

IV (2014) CPJ 337; 2014(4) CPR 20.

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**(y) LEGAL SERVICES**

**1. Kuwait Airways Corporation Vs. Rajagopal & Company, Advocates & Ors.**

**i) Case in Brief:**

Complainant took on lease a flat on the first floor of a building called Chateau Windsor vide tenancy agreement dated 06.09.1967 from the erstwhile owners of the building. On 15.02.1998 Complainant received a notice from the Assistant Engineer (Building) that without taking permission, necessary under the MR&TP Act, use of the land had been changed from residential to commercial. Complainant approached OPs for legal advice in the matter who advised the Complainant to pay off the tax and penalty at the earliest to avoid eviction/demolition. It is alleged that OPs demanded payment of Rs.33 Lakhs towards tax and professional fees for the regularization. It is the Complainant's case that OPs did not give details of the taxes deposited by them. On meeting the Ward Officer, Complainant came to know that neither the user had been restored nor any document authorizing commercial use had been submitted. It is further alleged that OPs did not render any service for which they had taken remuneration in advance. Alleging unfair trade practice and demanding refund of the money collected as taxes and professional fees, this Original Petition has been filed. Original Petition dismissed.

**Deficiency in Service - Legal Services**

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**ii) Order appealed against:**

Original Complaint

**iii) Parties:**

Kuwait Airways Corporation - Complainant

Vs.

Rajagopal & Company, Advocates & Ors. - Opposite Parties

**iv) Case No and Date of Judgement:**

Original Petition No.403 of 2000 & Date of Judgement: 04.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(a)(i) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission noted that the Complainant was not in a position to submit the original documents but had only produced photocopies/true copies, simpliciter. Complainant had failed to produce the receipts for the amount of Rs.33 Lakhs allegedly signed by the staff of OPs. The Commission wondered why the amount was sent by cash. Complainant was not in a position to give any explanation as to why payment was not made by cheque. It was noted that the Complainant did not produce even secondary evidence like the receipts issued by the office staff of OPs. Due to lack of submission of original documents the Commission held that the Complainant had not proved its case and accordingly dismissed the complaint.

**vii) Citation:**

III (2014) CPJ 441.

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**2. Dr. Harekrishna Biswas Vs. H.D.Nautiyal, Registrar, NCDRC and others**

**i) Case in Brief:**

The grievance of the Complainant was that OPs 1 & 2 had deliberately registered the Revision Petitions filed by him on 03.12.2012 vide diary numbers 21, 966 and 23, 235 of year 2012 as appeals and did not give proper receipt. The Complainant further alleged that when he wanted

to file another petition on 04.03.2013, OPs 1 & 2 declined to accept the petition forcing him to send it by Speed Post. He further alleged that the Assistant Registrar had demanded bribe when he wanted to file a consumer complaint on 04.03.2013 and OP 1 & 2 misbehaved with him and declined to accept the complaint. Complainant made several other allegations against OPs 1 & 2. Complainant sought a compensation of Rs.6,00,000/- per day w.e.f 0403.2013 with compound interest of 24% p.a. Complaint was dismissed as devoid of merit.

**ii) Order appealed against:**

Original Complaint

**iii) Parties:**

Dr. Harekrishna Biswas - Complainant

Vs.

H.D.Nautiyal, Registrar, NCDRC and others - Opp. Parties

**iv) Case No and Date of Judgement:**

Consumer Complaint No.406 of 2013 & Date of Judgement: 16.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o) and 21(a)(i) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission observed that all the five matters raised by the Complainant have been duly registered in the commission. It was held that the action of the registry in registering the petitions as First Appeals and not as Revision Petitions cannot be termed deficiency in service.
- b) As regards other allegations, they were found to be in the nature of administrative complaints of misconduct against officials and such misconduct can be dealt on the administrative side and cannot be termed as deficiency in service under the Consumer Protection Act.
- c) The Commission further noted that the principal amount of relief claimed by the Complainant was more than Rs.12 crore which was highly disproportionate to the alleged deficiency narrated in

### **Deficiency in Service - Life Insurance**

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the complaint. The conduct of the Complainant was viewed as amounting abuse of process of law with a view to avoid the hierarchy of fora in terms of pecuniary jurisdiction.

d) Consequently, the complaint was dismissed as devoid of merit.

#### **vii) Citation:**

IV (2014) CPJ 331; 2014(4) CPR 42.

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#### **(z) LIFE INSURANCE**

##### **1. Mrs. Kamla Devi Sagu Vs. Metlife India Insurance Co. Ltd and others**

###### **i) Case in Brief:**

Petitioner/Complainant and her husband had obtained a Life Insurance Policy with Metlife India Insurance Co. Ltd. (OP-1), through its authorized representative Network Wealth Solutions Ltd., i.e. OP-2 and 3. OP-2 is head office of Network Wealth Solutions at Mumbai, and OP-3 is the branch office at Hisar. The first premium receipt No.416650840 for Rs.89,000/- was issued by OP-3. Thereafter, the payment of second premium of Rs.89,000/- was made by Complainant, to one Sarita, who was the agent of the OP-3. She issued the receipt for the same, but did not deposit the said premium amount of Rs.89,000/- with the OPs, hence the policy lapsed after the grace period of 30 days. The Complainant filed a complaint before the District Forum for deficiency in service on the part of the OPs and sought the direction to keep the policy in force and to refrain from closing the same. The District Forum allowed the complaint. Against it, the OP-2 filed a first appeal. The State Commission condoned the delay of 118 days in filing the appeal and accepted the first appeal by setting aside the order of District Forum. Against this impugned order of the State Commission, the Complainant had filed this Revision Petition. Revision Petition allowed.

###### **ii) Order appealed against:**

Against order dated 29.03.2013 in First Appeal No.117 of 2013 of the State Consumer Disputes Redressal Commission, Haryana, Panchkula.

**iii) Parties:**

Mrs. Kamla Devi Sagu - Petitioner

Vs.

Metlife India Insurance Co. Ltd and others - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.2597 of 2013 & Date of judgement : 21.05.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the investigation report (submitted by OP-1) found that OP-1 clearly admitted that the OP2 and 3 were their agents, but the Hisar branch of Networth was closed and the concerned person of Networth, who looked after this channel, was absconding. Hence, in such a situation, it was the duty of Metlife (OP-1) to inform the Complainant and its other customers that the agent Networth was closed. The OP-1 should have passed the information through a public notice or emails to all of its customers to avoid such cheating by their agents. The Commission observed that it was surprising that after receiving the first installment on 31.01.2010, the OP-3 (authorized rep. of the OP-1) again collected the 2<sup>nd</sup> installment of the said policy and also issued a receipt against Rs.89,000/- on 28.02.2011, but thereafter, tried to avoid its liability by expressing that the Networth was closed. It made it clear that the OPs were working in cahoots with each other and playing hide and seek game with the Complainant.
- b) In view of the above, the National Commission held that OP-1 was vicariously liable for the acts of their agents. Also, there was a delay of 118 days in filing the first appeal before the State Commission. The delay was condoned by the State Commission, which the National Commission did not agree. Therefore, the present Revision Petition was allowed and the orders of the fora below were set aside.

**vii) Citation:**

III (2014) CPJ 68.

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**Deficiency in Service - Life Insurance**

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**2. Abdul Latheef & Ors. Vs. The Life Insurance Corporation of India & Ors.**

**i) Case in Brief:**

On 28.03.2006, the deceased Zeenath, wife of Complainant No.1 obtained a Bima Gold Policy from LIC of India for Rs.2,00,000/-. She paid the first and second premium. During the subsistence of the policy, she died on 12.11.2007 due to Carcinoma Larynx. The Petitioners/Complainant No.1 to 4 are the nominees under the said policy. Complainant No.1 lodged the claim with the Respondent which was repudiated stating the deceased had withheld material information regarding her health at the time of filling up the proposal form. Alleging deficiency in service Complainant filed the complaint before the District Forum which dismissed the complaint. The Appeal filed by the Complainant before the State Commission was also dismissed vide impugned order against which the present Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 07.02.2012 in First Appeal No.3775/2010 of Karnataka State Consumer Disputes Redressal Commission, Bangalore.

**iii) Parties:**

Abdul Latheef & Ors.

- Petitioners

Vs.

The Life Insurance Corporation of India & Ors.

- Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.2370 of 2012 & Date of Judgement: 04.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission perused the documents and the hospital records pertaining to the deceased which showed that she had taken treatment from 13.03.2006 to 16.03.2006 for Bipolar Mood Disorder and thereafter took a policy on 28.03.2006. The question was whether non-disclosure of Bipolar Mood Disorder was a material fact and whether it had any relevance to Carcinoma Larynx

which was the cause of her death. After going through medical literature on the subject of Bipolar Mood Disorder, the Commission held that it was commonly seen in women during abnormal menstrual cycles or during pregnancy. As such it was a condition of mind and not a disease. The Commission further held that the answer, “No” given by the deceased under Item 11 (a) of the proposal form “during the last five years did you consult a Medical Practitioner for any ailment requiring treatment for more than a week” was not a wrong answer since she was admitted for only three days and not more than a week. Moreover bipolar mood disorder was a trivial one and it was not a material fact and there was no fraudulent suppression. The Commission further held that there was no nexus between bipolar mood disorder and the Carcinoma of larynx.

- b) The Commission observed that on one hand LIC raised the voice of “Utmost good faith” but in contrast it was not settling genuine claims for some reason or the other and that it amounted to exploitation of policy holders. Consequently the Revision Petition was allowed and the orders of the fora below were set aside. OP was directed to pay a sum of Rs.2,00,000/- with interest at 9% p.a, from the date of death of deceased within 90 days.

**vii) Citation:**

III (2014) CPJ 357; 2014(3) CPR 1.

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**3. K.D. Mandappa & Anr. Vs. Metlife India Insurance Co. Ltd. & Anr.**

**i) Case in Brief:**

Shri K.D.Mandappa, son of the Petitioners/Complainants, obtained a Unit Linked Insurance Policy from Respondent Insurance Company on an annual premium of Rs.12,000/-. The sum assured was Rs.2,40,000/-. During the currency of the policy, K.D.Mandappa died of kidney failure on 31.03.2009. Petitioners being parents of the insured/deceased submitted the insurance claim which was repudiated by the Respondent on the ground that the deceased had obtained the policy by concealing the fact that he was suffering from “Diabetes Mellitus”. Aggrieved by the repudiation of the claim, Petitioners filed a complaint before the District Forum which, allowing the Complaint, directed the

### **Deficiency in Service - Life Insurance**

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OP to pay a sum of Rs.2,40,000/- together with 100% of the fund value in the Unit account to the Complainant. The Insurance company preferred an appeal to the State Commission which allowed the appeal vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 31.10.2011 in First Appeal No.2217/2010 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore.

**iii) Parties:**

K.D. Mandappa & Anr. - Petitioners

Vs.

Metlife India Insurance Co. Ltd. & Anr. - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.2830 of 2012 & Date of Judgement: 21.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission noted that the State Commission while deciding the appeal had relied upon the discharge summary issued by Nephrology department of Vikram Hospital Private Ltd., where the deceased had admittedly taken treatment. In the aforesaid summary it was recorded that the patient was a known case of "Diabetes Mellitus" since 8 years on treatment. It was held that the history must have been given by the patient himself or the person who accompanied him to the hospital. But in the application for life insurance policy submitted by the insured, he had replied in the negative to a query whether he was suffering from diabetes. The Commission observed that diabetes is a serious disease which can adversely impact the functioning of vital human organs. Since the insurance contract was obtained by the deceased by concealing material information which could have impaired the decision of the insurance company to accept or reject the proposal, it was held that the insurance company cannot be faulted for repudiating the claim. Relying on the judgements of the Hon'ble Supreme Court in *P.C.Chacko & Anr. Vs. Chairman, LIC of India* (2008) 1 SCC 321 and *Satwant*



*Kaur Sandhu Vs. New India Assurance Company* (2009) 8 SCC 316, the Commission dismissed the complaint.

**vii) Citation:**

2014(3) CPR 385.

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**4. Bajaj Allianz General Insurance Co. Ltd Vs. Shri. Jayanthibhai Nathanbhai Monpara and others**

**i) Case in Brief:**

The deceased Smt.Manishaben Jayantilal Monpara was having farm land in her own name and was a member of the Co-operative Society (Respondent No.5). She was the beneficiary of a group personal accident insurance policy for two different sums of Rs.1,00,000/- and Rs.50,000/- provided by the Petitioner, Insurance Company/OP.1 and the New India Assurance Co.Ltd, Respondent No.3/OP.2 respectively. It is alleged that the deceased Manishaben fell into a well while working on 24.02.2003, sustained head injury and later succumbed to the injuries. The incident was reported to the Police Station and post-mortem was carried out. Respondent Nos.1&2, being legal heirs of the deceased, submitted claims to the two insurance companies both of which repudiated the claims. The Respondents 1 & 2 filed consumer complaint before the District Forum which dismissed the complaint. The State Commission accepted the appeals filed by the Respondent Nos.1&2 and directed the OPs to pay the insured amount along with 9% interest p.a from the date of complaint till realization along with Rs.5,000/- for mental agony and Rs.1,500/- for cost. OP.2/Respondent No.3 paid the amount as per the orders of the State Commission and did not file any appeal or Revision Petition. Aggrieved by the said order, the present Revision Petition had been filed by the Petitioner. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 10.04.2012 in Appeal No.773/2009 of the Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.

**iii) Parties:**

Bajaj Allianz General Insurance Co. Ltd	- Petitioner
Vs.	
Shri. Jayanthibhai Nathanbhai Monpara & Ors.	- Respondents

**Deficiency in Service - Life Insurance**

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**iv) Case No and Date of Judgement:**

Revision Petition No:2493 of 2012 & Date of Judgement: 24.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission observed that though the deceased was suffering from schizophrenia, there was no evidence to prove that she committed suicide. Even the presumption that she might have jumped into the well would be wrong keeping in view the fact the deceased used to carry out agricultural activity on her own, was a regular member of the co-operative society and used to avail of finance from the society for agricultural operations. The Commission held that the Petitioner company failed to prove, by independent evidence, that the deceased insured had actually committed suicide. The Commission therefore found no ground to interfere with the orders of the State Commission and dismissed the Revision Petition.

**vii) Citation:**

IV (2014) CPJ 42; 2014(3) CPR 348.

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**5. PNB MetLife India Insurance Co. Ltd Vs. Ramila Manubhai Indrekar**

**i) Case in Brief:**

Complainant's husband obtained a life insurance policy from the Petitioner company for a sum of Rs.7,50,000/- on 06.07.2005 paying Rs.3,813/- as premium. The premium was payable at the interval of six months. The next premium which was due on 06.01.2006 was paid on 22.04.2006 after the grace period was over, along with interest and reinstatement charges. The next installment was also similarly paid along with interest and reinstatement charges after the grace period was over. The insured expired on 05.04.2007. Complainant lodged a claim with the Petitioner which was repudiated on the ground that the policy had lapsed due to non-payment of premium. The Petitioner also refunded a sum of Rs.3,785/- to the nominee of the insured on 31.01.2008 i.e more than 9 months after the death of the insured. Complainant approached the District Forum which dismissed the

complaint. The State Commission allowed the appeal filed by the Complainant vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 21.11.2013 in F.Appeal No.944 of 2011 of Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.

**iii) Parties:**

PNB MetLife India Insurance Co. Ltd - Petitioner

Vs.

Ramila Manubhai Indrekar - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No:2020 of 2014 with I.A.No.5102 of 2014 (For early hearing) & Date of Judgement: 01.08.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21 (b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission noted that the installments of premium which were due on 06.01.2006 and 06.07.2006 were accepted by the insurance company along with interest and reinstatement charges. Even the premium due on 06.01.2007 was accepted on 22.02.2007 along with interest and reinstatement charges. The Commission held that having accepted the premium, it was not open to the insurance company to refund the amount of the last paid premium after the death of the insured and deny the claim made by the nominee. It was held that once the premium was accepted, the policy stood revived and the contract between the parties became alive. Consequently, it was held that the Petitioner company was under a contractual obligation to make payment in terms of the policy on the death of the insured. The Revision Petition was accordingly dismissed as devoid of merit.

**vii) Citation:**

Not reported in CPJ and CPR.

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**Deficiency in Service - Life Insurance**

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**6. The C.E.O & Director, Sahara India Life Insurance Company Ltd and another Vs. Rayani Ramanjaneyulu**

**i) Case in Brief:**

The claim made by the Complainant was repudiated by the Petitioner on the ground owing to non-disclosure of material facts relating to her earlier policy with various insurers including Sahara India Insurance Co. Ltd and also her annual income. The State Commission, vide impugned order came to the conclusion that the repudiation of the claim was not valid, against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 31.10.2013 in First Appeal No.257 of 2013 of the State Consumer Disputes Redressal Commission, A.P. Hyderabad.

**iii) Parties:**

The C.E.O & Director, Sahara India  
Life Insurance Company Ltd and another - Petitioners  
  
Vs  
  
Rayani Ramanjaneyulu - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.1117 of 2014 with IA/1005/2014 (Stay), IA/1006/2014 (Condonation of delay) IA/4290/2014 (Extension of Stay) & Date of Judgement: 01.08.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o),19 and 21(b) of the Consumer Protection Act, 1986 & Section 45 of the Insurance Act.

**vi) Issues raised and decided:**

The main issue was 'what is a material fact as per proviso appended to Section 45 of Insurance Act. The Hon'ble Apex Court in *Satwant Kaur Sandhu v. New India Assurance Co. Ltd* IV (2009) CPJ 8 (SC) had held in Para 17 that "the term material fact is not defined in the Act and therefore it has been understood and explained by the Courts in general term to mean any fact which would influence the judgement of the prudent insurer in fixing the premium or determining whether he would like to accept the risk. Any fact which goes to the root of the



## **Deficiency in Service - Life Insurance**

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### **vi) Issues raised and decided:**

The Commission noted from the discharge summary of Mr. Joseph issued by the Department of Cardiology that he was admitted in the hospital on 24.06.2004 and was discharged on 01.07.2004 and diagnosed with a cardiac disease. However, this fact was suppressed by him while giving personal details in the proposal form at the time of taking the insurance policy. In the light of judgement of the Hon'ble Apex Court in *P.C. Chacko and another v. Chairman, LIC of India* (2008) 1 SCC 321, the Commission held that the Petitioner had not committed any deficiency in repudiating the claim. Accordingly, the Revision Petition was allowed and the orders of the fora below were set aside.

### **vii) Citation:**

Not reported in CPJ and CPR.

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## **8. Life Insurance Corporation of India Vs. Smt. Santosh Devi**

### **i) Case in Brief:**

Late Sh. Mool Chand Kumawat, husband of the Complainant/ Respondent took an LIC Policy for a sum of Rs.1 lakh on 27.11.2003. In the night intervening 13/14.01.2004, he suffered a heart attack and died. Being his nominee, the Complainant/respondent lodged a claim with the petitioner corporation. The claim however was repudiated on the ground that though the deceased was an alcoholic and had also taken treatment in a de-addiction Centre of a hospital, he had concealed these facts while submitting the proposal for obtaining the LIC Policy. Being aggrieved from repudiation of her claim, the Complainant/respondent approached the District Forum which held that repudiation of the claim was not justified since the deceased had died due to heart attack and not from alcoholism. The petitioner preferred an appeal before the State Commission which was dismissed vide impugned order against which the present Revision Petition has been filed. Revision Petition allowed.

### **ii) Order appealed against:**

From the order dated 09.04.2008 in Appeal No.1885 of 2005 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

**iii) Parties:**

Life Insurance Corporation of India - Petitioner

Vs.

Smt. Santosh Devi - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.3042 of 2008 & Date of Judgement : 03.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the records found that the deceased made three misrepresentations to the petitioner corporation. Firstly, he falsely denied having consulted a medical practitioner in five years prior to submitting the proposal, secondly he falsely claimed that he had never consumed liquor despite the fact that he was so much addicted to liquor that he had to remain in the hospital to get rid of his addiction and thirdly, he falsely represented that he had not taken leave for the purpose of his treatment.
- b) In view of the above, the Commission observed that had the true state of affairs been disclosed to the insurer, it was quite probable that either the proposal would have been rejected or a higher premium would have been charged.
- c) It was further observed that since the misrepresentation/ suppression of fact related personally to the insured, it could not be said that it was a bona fide suppression without any mala fide intention. The concealment was of a fact which was exclusively in the knowledge of the insured and could not have been detected by the petitioner corporation by way of a reasonable and practicable inquiry.
- d) In the above said circumstances, the Commission held that the District Forum and the State Commission fell into error in allowing the complaint despite misrepresentation and concealment of material fact by the insured. Reliance was placed on the decisions of the Hon'ble Supreme court in *P.J. Chacko vs.*

## **Deficiency in Service - Life Insurance**

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*Chairman, L.I.C. of India, AIR 2008 SC 425, Life Insurance Corporation of India & Ors. vs. Asha Goel (Smt) & Anr. (2001) SCC 160 & Satwant Kaur Sandhu vs. New India Assurance Company Ltd. (2009) 10 SCR 560. The Revision Petition was allowed and the impugned orders passed by the District Forum and the State Commission were set aside.*

### **vii) Citation:**

IV (2014) CPJ 139.

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## **9. Birla Sun Life Insurance Co. Ltd Vs. Smt. Jayasheelamma**

### **i) Case in Brief:**

Complainant/Respondent's husband submitted a proposal to the Petitioner on 21.07.2008 to obtain an insurance cover to the extent of Rs.8,00,000/- and paid premium amounting Rs.12,187/-. The proposal was accepted and policy was issued on 19.08.2008. However, Sri. Odulingegowda, the insured died of heart attack on 30.08.2008. Complainant's claim was repudiated by the Petitioner on the ground that there was suppression of material fact relating to pre-existing illness. Complainant approached District Forum which allowed the complaint and directed the Petitioner to pay the insured amount of Rs.8 lakhs with interest at 7% p.a along with cost of Rs.2,000/-. Petitioner's appeal was dismissed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition partly allowed modifying the sum assured as Rs.4,43,018/-.

### **ii) Order appealed against:**

From the order dated 28.03.2011 in Appeal No.1029 of 2010 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore.

### **iii) Parties:**

Birla Sun Life Insurance Co. Ltd - Petitioner

Vs.

Smt. Jayasheelamma - Respondent

### **iv) Case No and Date of Judgement:**

Revision Petition No: 2410 of 2011 & Date of Judgement: 10.09.2014.



**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Petitioner's contention that the deceased had concealed the material fact about his being a patient of diabetes for about 10 years before submitting the proposal was not accepted by the National Commission as no evidence was produced to substantiate the claim. However, the Petitioner's contention that the sum assured was Rs.4,43,018/- and not Rs.8,00,000/- was accepted by the National Commission since the policy document clearly showed that the sum assured was Rs.4,43,018/-. Commission also noted that the Complainant failed to produce any policy showing the sum assured to be Rs.8,00,000/-. Consequently, the order passed by the for a below was modified directing that as against the sum of Rs.8,00,000/- awarded by the fora below, the Petitioner would pay to the Complainant a sum of Rs.4,43,018/- with 7% interest p.a.

**vii) Citation:**

Not reported in CPJ and CPR.

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**10. Darshna Devi and another Vs. Life Insurance Corporation of India & Ors.**

**i) Case in Brief:**

Late Shri Bhagwan Dass, husband of Complainant No.1 and father of Complainant No.2 took two insurance policies from the Respondents, one for a sum of Rs.5,00,000/- and the other for Rs.3,00,000/-. Bhagwan Dass expired on 07.02.2007. The claim made by the Complainants for the insurance amount was repudiated by the Respondent on the ground that the deceased had not disclosed information relating to his pre-existing ailment as required at the time of submitting the proposal for assurance. Complainants approached District Forum which allowed the complaint and directed Respondents to pay a sum of Rs.8,00,000/- to the Complainants along with interest at 9% p.a and further directed them to pay Rs.5,000/- as cost. The appeal filed by the Respondents was allowed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**Deficiency in Service - Life Insurance**

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**ii) Order appealed against:**

From the order dated 20.12.2013 in Appeal No.63 of 2010 of Punjab State Consumer Disputes Redressal Commission, Chandigarh.

**iii) Parties:**

Darshna Devi and another - Petitioners

Vs.

Life Insurance Corporation of India & Ors. - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.2287 of 2014 with IA.No.6200/2014 (Place on record Additional Documents) & Date of Judgement: 16.09.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission noted from the hospital records that at the time of getting admitted in the hospital on 17.01.2007, the deceased had informed them that he had hypertension from 8-9 years. He had also informed that he had CVA about two years ago i.e around January, 2005. This information had been suppressed by the deceased when he submitted the proposal form on 30.03.2005. It was held that a material fact with respect to the state of the health was concealed by the deceased and that had this information been disclosed, LIC would not have accepted his proposal or might have asked for further investigation and/or a higher premium. It was also held that some other person had appeared before the doctor who prepared the report dated 30.03.2005 after examining that person and signed as Bhagwan Dass. It was therefore held that the insured had played a fraud on the Respondent and therefore, the Petitioner's claim had been rightly repudiated. The Revision Petition was accordingly dismissed.

**vii) Citation:**

Not reported in CPJ and CPR.

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**(aa) LPG SUPPLY**

**1. Indian Oil Corporation Ltd Vs. Late Om Prakash Seth (since died) represented through his legal heirs and others**

**i) Case in Brief:**

Late Sri Om Prakash Seth, Father of Complainant No.2, Baldev Seth had an LPG connection from the Appellant/OP.1 viz. IOC which was being used by Complainant No.2. The cylinders containing LPG were supplied by OP.No.2, Citizen Gas Enterprises. An explosion took place at 5.15 A.M on 06.12.1995 in the house of Complainant No.2 causing extensive damage to the window panes of the house as well as adjoining flats and destroying electronic gadgets as well as furniture and crockery items. The matter was reported to the Police which after inspection seized the cylinder as well as the regulator and sent it to CFSL for opinion. CFSL opined that the damage occurred due to explosion of LPG/Air Mixture. In another report, CFSL stated that there was leakage from the valve/nozzle of the cylinder. The Complainants filed complaint before the State Commission against the IOC and the Distributor. The State Commission vide impugned order directed OP No.1 to pay Rs.2.5 Lakhs as damages for the loss caused to the household goods, mental agony, harassment etc and directed OP.No.2 to pay Rs.25,000/- for its negligence. The present appeals had been filed by OP.No.1 and OP.No.2 challenging the said order. Appeal filed by OP.No.2 was allowed and the order of the State Commission to the extent it directed OP.No.2 to pay Rs.25,000/- for negligence was set aside. Appeal filed by OP.No.1 was partially allowed and the compensation amount was reduced from Rs.2,50,000/- to Rs.1,00,000 along with interest at 10% p.a from the date of order of the State Commission.

**ii) Order appealed against:**

From the order dated 30.08.2007 in CC No.333/96 of Delhi State Consumer Disputes Redressal Commission, New Delhi.

**iii) Parties:**

First Appeal No.664 of 2007

Indian Oil Corporation Ltd

- Appellant

Vs.

Late Om Prakash Seth  
(since died) represented through  
his legal heirs and others

- Respondents

**Deficiency in Service - LPG Supply**

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First Appeal No.759 of 2007

Citizen Gas Enterprises

- Appellant

Vs.

Late Om Prakash Seth  
(since died) represented through  
his legal heirs and others

- Respondents

**iv) Case No and Date of Judgement:**

- i. First Appeal No:664 of 2007
- ii. First Appeal No:759 of 2007 &  
Date of Judgement: 17.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (d), (g), (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- i. The first question considered was whether Complainant No.2, Sri Baldev Seth who was using his father's LPG connection can be said to be a consumer of the Appellants in the two appeals. It was held that not only a person who hires or avails of any service for a consideration but also a beneficiary of such service is also included in the definition of consumer as per Section 2(1)(d)(ii) of the Act at the relevant time.
- ii. The next question was whether there was any deficiency in providing services to the Complainant by IOC or the Distributor or both of them. It was held that as per the report dated 03.01.1996, the LPG cylinder which IOC had supplied to the Complainant was defective and therefore, there was deficiency in service provided by IOC. It was also held that there was no deficiency on the part of the distributor since the cylinder was supplied in the same condition in which it was received from IOC by the distributor.
- iii. On the question of compensation, since no architect or an engineer was examined by the Complainant to show the amounts needed for repairing the damages caused to the house, it was held that the compensation awarded by the State Commission was on the higher side and that in the facts and circumstances

of the case, a lump sum compensation of Rs.1,00,000/- with interest at the rate of 10% p.a from the date of State Commission's order was considered adequate.

**vii) Citation:**

2014(4) CPR 27.

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**(ab) MAINTENANCE OF EQUIPMENT**

**1. M/s. Aag India Pvt. Ltd. Vs. Bharat Sanchar Nigam Ltd**

**i) Case in Brief:**

Complainant/Respondent accepted the quotations from the OP/ Petitioner for servicing the firefighting equipment for a period of three months from 1.10.2001 to 31.01.2001. On 22.11.2001, the employees of the OP while doing maintenance works mistakenly activated two fire fighting globes containing halom gas and gas leaked which caused loss of Rs.3,20,250/-. Alleging deficiency on the part of OP, Complainant filed complaint before the District Forum which allowed the complaint and directed OP to pay Rs.2,66,650/- as cost of halom gas and the labour charge with 6% p.a interest. Appeal filed by the OP was dismissed by the State Commission against which, this Revision Petition has been filed by the Petitioner. Revision Petition dismissed.

**ii) Order appealed against:**

Against the Order dated 27.01.2011 in Appeal No.350/2009 of the State Commission Kerala.

**iii) Parties:**

M/s. Aag India Pvt. Ltd - Petitioner/OP

Vs.

Bharat Sanchar Nigam Ltd - Respondent/Complainant

**iv) Case No and Date of Judgement:**

Revision Petition No.2191 of 201 & Date of Judgement: 16.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**Deficiency in Service - Maintenance of Equipment**

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**vi) Issues raised and decided:**

- a) The Commission did not accept the contention of the OP that there was no Annual Maintenance Contract between the parties.
- b) The National Commission pointed out that Petitioner had admitted in its reply before District Forum that OP personnel reached on the spot on call from the Complainant regarding leakage of gas. Had there been no AMC Contract, OP personnel would not have attended the call and in such circumstances, it can very well be inferred that AMC contract between the parties was in force and during validity period of AMC contract, gas leakage had occurred which was due to negligence of OP personnel.
- c) In view of the above, the present Revision Petition was dismissed and the order of the State Commission was confirmed.

**vii) Citation:**

III (2014) CPJ 359; 2014(3) CPR 415.

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**(ac) MANUFACTURING DEFECT**

**1. Manohar Lal Vs. Raj Motors and others**

**i) Case in Brief:**

On 08.08.1995, the Complainant/Manohar Lal purchased a tempo vehicle from Raj Motors/OP-1 with the guarantee certificate for replacement of vehicle and a provision for free service till 3 months or 6,000 kms. As per Complainant, the said vehicle had gone out of order within 7 days of purchase. OP-1 was informed, but no step was taken for its repair or replacing the vehicle. Complainant had to pay interest on loan and suffered loss of Rs.6,000/- income per month. The Complainant approached the District Forum which ordered the OPs to repay Rs.1,02,973/- along with the interest @ 6%, in lieu of vehicle due to manufacturing defect in tempo and Rs.5,000/- towards compensation and Rs.2,000/- towards legal expenses. OP.2 filed the first appeal in the State Commission which set aside the order of District Forum. Against the impugned order of State Commission, the petitioner/ Complainant has filed this present Revision Petition. Revision Petition allowed.

**ii) Order appealed against:**

Against order dated 25.11.2011 in First Appeal No.725 of 2009 of the State Consumer Disputes Redressal Commission, Rajasthan, Jaipur.

**iii) Parties:**

Manohar Lal - Petitioner

Vs.

Raj Motors and others - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.757 of 2012 & Date of Judgement: 01.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission after perusal of the records found that during the proceedings before the District Forum, the Complainant presented several bills of items purchased for the repair of his vehicle, dated 20.08.95, 22.08.1995, 25.08.1995, 18.09.1995, 02.11.1995, 04.11.1995, 16.04.1995 and 19.06.1995. This allegation of Complainant was also supported by the affidavit of the mechanic. Also, OP-2 himself had admitted that on 07.04.1996, one Satyapal was sent and he repaired gear box and differential, i.e. after the warranty period, which clearly signified that the vehicle had inherent manufacturing defect.
- b) In view of the above, the Commission allowed the present Revision Petition and set aside the order passed by the State Commission. Considering the depreciation and the peculiarity of this case which was dragged for more than two decades, the Commission directed that if the vehicle is in possession of Complainant, he should hand over the vehicle in question to the OP-1. OP-1 and 2 were also directed to pay jointly and severally compensation of Rs.1,50,000/-, along with Rs.25,000/- towards mental agony and Rs.20,000/- as cost of litigation within 90 days, otherwise it will carry interest @ 9% per annum till it's realization.

**vii) Citation:**

III (2014) CPJ 342; 2014(3) CPR 285.

## **Deficiency in Service - Manufacturing Defect**

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### **2. General Motors India Pvt. Ltd Vs. Mitali Aggarwal**

#### **i) Case in Brief:**

It is the case of the Complainant/Respondent No.1 that she purchased Opel Astra Club Car from OP.No.1/Respondent No.2 on the assurance that the car was free from all mechanical and manufacturing defects but the car was not running properly and despite numerous complaints to OPs, the defects had not been rectified. Alleging deficiency in service and unfair trade practice, Complainant filed complaint before the State Commission. The State Commission vide impugned order allowed the complaint and directed OP.2 to refund the cost of the vehicle and pay compensation of Rs.2,00,000/- to the Complainant. Aggrieved by the said order, the present appeal has been filed. Appeal partly allowed and the order of the State Commission modified reducing the compensation to Rs.1,00,000/-.

#### **ii) Order appealed against:**

From the order dated 03.07.2008 in C.C.No.C-88/2002 of the State Consumer Disputes Redressal Commission, Delhi.

#### **iii) Parties:**

General Motors India Pvt. Ltd	- Appellant /OP.2
Vs.	
Mitali Aggarwal	- Respondent/Complainant
British Motor Car Co. Ltd	- Respondent/OP.1

#### **iv) Case No and Date of Judgement:**

First Appeal No:339 of 2008 & Date of Judgement: 21.08.2014.

#### **v) Acts and Sections referred:**

Sections 2(1)(f), (g), (j), (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

#### **vi) Issues raised and decided:**

The National Commission after perusing the different job cards from 12.04.2011 observed that there was no manufacturing defect in the car and after routine checkup, the problems were sorted out immediately whenever complaints were made. The Commission also held that job cards pertaining to wheel balancing and horn check cannot be termed as manufacturing defects and those repairs were routine repairs. Since the defects were removed from time to time by the Appellant without



charging any money within the warranty period, it was held appropriate to grant only lump sum compensation for inconvenience caused to the Complainant. Relying on the decision of the Hon'ble Supreme Court in *Maruti Udyog Ltd v. Susheel Kumar Gabgotra and another*, AIR (2006) SC 1586 wherein it was held that if there is no foundation for holding that there were no manufacturing defects in the vehicle but only minor repairs were required, replacement of vehicle was not justified, it was held that the order of the State Commission in the present case for refund of the amount was liable to be set aside as the vehicle was in possession of the Complainant since last 13 years and the vehicle was still running. Consequently, appeal filed by the Appellant was allowed, the order of the State Commission was set aside and modified and the Appellant was directed to pay Rs.1,00,000/- to Respondent No.1 as Compensation on account of inconvenience and mental agony.

**vii) Citation:**

IV (2014) CPJ 68; 2014(3) CPR 810.

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**3. Rakesh Pathak Vs. M/s. Hindustan Aircon Pvt. Ltd**

**i) Case in Brief:**

Complainant/Petitioner purchased Split Window Air Conditioner of 1.5 ton capacity having 5 years compressor warranty from OP/Respondent. Within warranty period, compressor chucked and Complainant requested OP to replace the compressor. As compressor was not replaced, alleging deficiency on the part of OP, Complainant filed complaint before District Forum which directed OP to replace new compressor and collect old one and further awarded Rs.5,000/- as compensation for harassment and litigation charges. Appeal filed by the Complainant was dismissed by State Commission vide impugned order against which, this Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 08.07.2014 in Appeal No.461/2014 of the State Consumer Disputes Redressal Commission, Delhi.

**iii) Parties:**

Rakesh Pathak	-	Petitioner/Complainant
	Vs.	
M/s. Hindustan Aircon Pvt. Ltd.	-	Respondent/Opp. Party

## **Deficiency in Service - Manufacturing Defect**

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### **iv) Case No and Date of Judgement:**

Revision Petition No.3202 of 2014 & Date of Judgement: 29.08.2014.

### **v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

### **vi) Issues raised and decided:**

- a) Complainant contended before the National Commission that he never asked for replacement of compressor. But perusal of complaint revealed that Complainant requested OP to replace the compressor. In paragraph 8 of the complaint also Complainant alleged that he made several telephone calls to OP to replace the compressor, but that was not done. Complainant had not got compressor replaced before filing complaint, but claimed cost of the compressor along with service charges in the complaint.
- b) In the light of the above, the National Commission held that the District Forum has not committed any error in allowing replacement of compressor instead of cost and service charges for replacement because warranty was for replacement of the compressor and Complainant by repeated requests requested OP to replace the compressor. In such circumstances, order passed by District Forum is in accordance with law. It was held that the State Commission has also not committed any error in dismissing appeal *in limine*.
- c) Consequently, the Revision Petition filed by the Petitioner was dismissed and the orders passed by the foras below were confirmed.

### **vii) Citation:**

IV (2014) CPJ 467.

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## **4. Jan Sewa Ashram Vs. TIL Ltd and another**

### **i) Case in Brief:**

Complainant purchased a 'Backhoe Loader-cum-Excavator' machine to be used for a project on waste management and making compost out of garbage from OP.1 for a sum of Rs.14 lakhs. The newly purchased machine was unauthorisedly operated by a worker who accidentally

slipped the machine into a deep ditch. The worker died in the accident and the machine was damaged beyond repairs. OP.1 agreed to take back the damaged machine at salvage value and adjusted that value against the price of a new machine. Complainant purchased a new machine from OP.1 on the same terms and conditions. It is his case that the second machine delivered to him was so defective that the engineers of the OPs were never able to commission it and it remained non-functional for 117 days out of the first 180 days after its delivery. It was alleged that OP.1 obtained the signature of the Complainant without commissioning the machine on 04/05.07.1999. Despite carrying out repeated and extensive repairs on the machine, the OPs were unable to make it functional and usable. Alleging manufacturing defect, the Complainant has filed this complaint seeking replacement of the old and defective machine, compensations/damages for the loss suffered and for harassment. Complaint partly allowed and OP directed to pay Rs.2,50,000/- to the Complainant for causing harassment and mental agony.

**ii) Order appealed against:**

Original Complaint

**iii) Parties:**

Jan Sewa Ashram

- Complainant

Vs.

TIL Ltd and another

- Opp. Parties

**iv) Case No and Date of Judgement:**

Original Petition No:300 of 2000 & Date of Judgement: 01.09.2014.

**v) Acts and Sections referred:**

Sections 2(1)(d), (g), (o) and 21(a)(i) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission noted that the OP had agreed for a warranty of 12 months or 2000 hrs from the date of commissioning of machine and that the machine became defective during the subsistence of warranty. Relying on the decisions of the Commission in *M/s. Pearlite I –Liners Ltd Vs. Thermo Jarrell Ash Corporation*, IV (2006) CPJ 375 NC, *UA Md. Ali Raja Vs. Godrej Photone Ltd and others* , *M/s. Olympic Zippers Pvt Vs. K.C.Cherien and another*,

### **Deficiency in Service - Manufacturing Defect**

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I (2002) CPJ 11 (NC), *M/s. Tinkle Bells Enterprises Vs. State of Rajasthan* I (2003) CPJ 71 (NC), *Satelee Power Electronics (P) Ltd Vs. National Research*, III (2002) CPJ 124 (NC), *State Government of Maharashtra Vs. Hindustan Computer Ltd*, I (2000) CPJ 13 (NC), *Jai Industries Vs. N.Babhraiah Acharya & others*, R.P.No.1758/2001, decided on 22.11.2001, the Commission held that the Complainant was a consumer within the meaning of the Act.

- b) As regards deficiency in service and negligence, the Commission held that it was a case of contributory negligence. The Complainant should have been vigilant and should have seen that he was purchasing a machine and tyres manufactured in 1997. He should have raised objection at the time of purchase. The Commission found no evidence that he was forced to take the machine. The Commission further noted that the Complainant got the machine repaired from private persons which was against the provisions in the agreement.
- c) The Commission found deficiency on the part of OP.1 as well. When they found that the Complainant was not following their directions and was using low grade diesel from local sources which would affect engine performance, they should have sent a notice/letter in black and white.
- d) The Commission noted that the machine was sold subsequently and the Complainant insisted merely for compensation and was not claiming any relief against OP.2.
- e) Consequently, since there was contributory negligence, the complaint was partly allowed and OP.1 was directed to pay Rs.2,50,000/- to the Complainant within 90 days for causing harassment, mental agony, anger etc.

#### **vii) Citation:**

IV (2014) CPJ 318.

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### **5. Rakesh Kumar and another Vs. M/s. Parkshit Tractors and others**

#### **i) Case in Brief:**

Complainants/Petitioners purchased tractor from OP.1/Respondent No.1 on 03.03.2008. It is the Complainant's case that OP delivered second hand tractor manufactured in July, 2007, that the lift system of the tractor was not functioning and there were other manufacturing defects.

Alleging deficiency, a complaint was filed before the District Forum which allowed the complaint and directed OP to replace tractor within one month or refund entire price with 9% interest. Appeal by the OP was partly allowed by the State Commission directing OP to remove all defects in the tractor to the satisfaction of the Complainant and awarding compensation of Rs.35,000/-. Aggrieved by the said order, the Revision Petition has been filed by the Complainant. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 11.08.2011 in Appeal No.1831 of 2009 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

**iii) Parties:**

Rakesh Kumar and another - Petitioners/Complainants

Vs.

M/s. Parkshit Tractors and others - Respondents/OPs

**iv) Case No and Date of Judgement:**

Revision Petition No:3839 of 2011 & Date of Judgement: 03.09.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission noted that the price of a new tractor was Rs.4,30,000/- whereas the tractor in question was sold for Rs.4,00,000/-. It was therefore held that OP cannot be said to have cheated Complainant and delivered second hand tractor. As regards allegations of manufacturing defects, the Commission upheld the finding of the State Commission that the District Forum without any expert evidence had wrongly directed replacement of the tractor. The Commission also observed that that since the OP had not filed any appeal against the order of the State Commission, OP cannot raise the plea in the National Commission that the tractor was used for commercial purpose. Accordingly, the order of the State Commission was upheld and the Revision Petition was dismissed.

**vii) Citation:**

IV (2014) CPJ 546.

**Deficiency in Service - Manufacturing Defect**

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**6. The Commercial Officer, M/s. Piaggio Greaves Vehicle Pvt Ltd & Anr. Vs. Ramakanta Samal & Ors.**

**i) Case in Brief:**

Complainant/Respondent No.1 purchased one three wheeler Diesel Auto from OP.No.1/Respondent No.3 for Rs.98,400/- on 19.03.1999. OP Nos.2&3/Petitioners were manufacturers and OP No.4/Respondent No.2 sanctioned loan for purchase of the three wheeler to the Complainant. The Complainant's grievance is that OP.1 charged Rs.9,000/- for supplying accessories, registration, insurance etc without providing those services and that the vehicle was giving trouble during the period of warranty and OP.1 charged cost of spare parts even during the period of warranty. It was also submitted that the vehicle was examined by REC, Rourkela and found to be not road-worthy. Alleging deficiency on the part of OP, Complainant filed complaint before the District Forum which dismissed the complaint. The appeal filed by the Complainant was allowed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 03.12.2007 in CD Appeal No.172 of 2002 of Orissa State Consumer Disputes Redressal Commission, Cuttack.

**iii) Parties:**

The Commercial Officer,  
M/s. Piaggio Greaves Vehicle Pvt Ltd and another - Petitioners

Vs.

Ramakanta Samal and others - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.946 of 2008 & Date of Judgement: 11.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

Perusal of the record revealed that Complainant had violated the conditions of the warranty. He had not availed 4<sup>th</sup> and 6<sup>th</sup> service whereas as per conditions of warranty, if any free services had not been availed, warranty will be null and void. Perusal of job card also

revealed that third service had been availed at 4,500 kms whereas it should have been availed between 3500 to 4000 kms. Moreover, Complainant got the vehicle repaired outside a number of times which was also against the terms and conditions of warranty. The Commission further noted that the Complainant did not accept the offer of the OP to get the vehicle tested by appropriate agency as approved under the Act for any manufacturing defect but managed to get the test report from REC, Rourkela when no direction had been given by District Forum to get it examined from REC, Rourkela. Consequently, it was held that the order of the State Commission was not sustainable. Revision Petition was therefore allowed.

**vii) Citation:**

IV (2014) CPJ 252.

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**(ad) MARINE INSURANCE**

**1. National Commission Insurance Ltd. Vs. M/S. JDR Exporters & Importers (P) Ltd.**

**i) Case in Brief:**

Complainant exported goods including gherkins and tomato ketchup from Delhi to Dushanbe in the Republic of Tajikistan and got the consignment insured with the Appellant company. When the cargo was received by the overseas buyers in Tajikistan, it was found to be badly damaged and unfit for the human consumption. Complainant's claim was rejected by the insurance company on the ground that the goods had reached Bandar Abbas, which was the final port of discharge on 21.01.1999 whereas they had reached Dushanbe on 08.06.1999 by surface transport and policy issued to the Complainant had terminated within 60 days of the goods after discharge at Bandar Abbas. Complainant filed complaint before the State Commission which allowing the complaint directed the appellant to pay Rs.7,82,000/- to the Complainant, Rs.1,00,000/- towards compensation for mental agony and Rs.10,000/- as cost of litigation. Aggrieved by the said order the present Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 04.11.2008 in Complaint No.95/2000 of the State Consumer Disputes Redressal Commission, Delhi.

**Deficiency in Service - Marine Insurance**

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**iii) Parties:**

National Commission Insurance Ltd. - Appellant(s)

Vs.

M/S. JDR Exporters & Importers (P) Ltd. - Respondent(s)

**iv) Case No and Date of Judgement:**

First Appeal No.163 of 2009 & Date of Judgement: 15.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The question before the Commission was when the insurance cover would terminate. The Commission after careful analysis of clause 8.1 of the insurance policy, held that once the goods were discharged by the vessel at final port, the period of 60 days stipulated in 8.1.3 of the policy began to commence. Had the vessel travelled from Bandar Abbas to Dushanbe, the final port of destination would have been Dushanbe and not Bandar Abbas. But since the goods discharged from the vessel at Bandar Abbas, that would be the final port of discharge contemplated in clause 8.3 of the policy. The Commission noted that there was no material to indicate that the goods were damaged before they were discharged from the vessel at Bandar Abbas on 14.01.1999 or that they got damaged on or before 22.03.1999 (on which date the liability of the insurance company came to an end). The Commission further noted that damage to the goods was reported to the first time on 08.06.1999 when the container was opened in Dushanbe. In the circumstances the commission held that the insurance company cannot be saddled with the liability to make good the loss sustained by the Complainant on account of the damage to the goods during transit. Accordingly the Commission set aside the orders that the State Commission and allowed the First Appeal.

**vii) Citation:**

Not reported in CPJ and CPR.

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**(ae) MEDICAL REIMBURSEMENT**

**1. The Chairman/CEO, Yeshasvini Co-op. Farmers Health Care Scheme Department of Co-operation Vs. Smt. Leelamma and another**

**i) Case in Brief:**

The Complainant/Respondent No.1, a member of the Petitioner co-operative, was suffering from a coronary artery disease, for which she took treatment at the Hospital of Respondent No.2 and incurred an expenditure of Rs.1,76,000/-. She was paid a sum of Rs.50,000/- from Parekh Health Management and the remaining amount of Rs.1,26,000/- was paid by her from her own pocket. Claiming to a member of Yeshasvini Farmer Health Security Scheme, she sought reimbursement of the above referred sum of Rs.1,26,000/- from the Petitioner trust. Since, the reimbursement was not forthcoming, alleging deficiency in service, she filed a complaint before the District Forum which dismissed the complaint on the ground that no authorization had been obtained by the Complainant before taking treatment in the hospital. Being aggrieved from the dismissal of her complaint, the Complainant approached the State Commission which confirmed the orders of the District Forum vide impugned order against which the present Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

Against the order dated 23.07.2008 in Appeal No.306/2008 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore.

**iii) Parties:**

The Chairman/CEO, Yeshasvini Co-op. Farmers  
Health Care Scheme Department of Co-operation - Petitioner

Vs.

Smt. Leelamma and another - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.4789 of 2008; Date of Judgement: 10.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

## **Deficiency in Service - Medical Reimbursement**

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### **vi) Issues raised and decided:**

- a) The National Commission after perusal of the records of the case pointed out that the Complainant was a member of the said society as well as the Yeshasvini Farmer Health Security Scheme. Before taking treatment, she had informed the society/bank that she was seeking to take treatment at Wockhardt Hospital, Bannerghatta Road, Bangalore. Had the society informed her, at that time, that the Wockhardt Hospital at Bannerghatta Road was not one of the empanelled hospitals, in all probability, she would have taken treatment at Cunningham Road Hospital or some other empanelled hospital. In these circumstances, it would not be fair to deny reimbursement to the Complainant solely on the ground that it was the hospital at Cunningham Road, but not the hospital at Bannerghatta Road, which was empanelled with the petitioner society. Admittedly, the Petitioner society would have reimbursed the expenditure incurred by the Complainant, had she taken treatment at Cunningham Road hospital under Wockhardt Hospital Pvt. Ltd.
- b) In view of the above, the Commission directed the Petitioner to reimburse the Respondent in respect of the treatment taken by her at Wockhardt Hospital, Bannerghatta Road, Bangalore, but held that the reimbursement would be restricted to the rates prescribed by the Petitioner society for the treatment in its empanelled hospital. The Revision Petition was disposed of accordingly.

### **vii) Citation:**

Not reported in CPJ and CPR.

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## **2. Shri O M Mahesree, IAS (Retd.) Vs. Union of India and others**

### **i) Case in Brief:**

Petitioner, a ret'd. IAS officer, suffered a mild stroke on the midnight of 17.06.2004 requiring him to undergo treatment in a Hospital where he was advised to undergo a by-pass surgery of the heart. The fact was intimated to Respondent No.4 who was the Joint Director of Health Services in the CGHS. The by-pass surgery was done by a reputed surgeon at a local nursing home, not recognized by CGHS. Petitioner

sent a medical reimbursement bill for Rs.1,81,178.79/- to Respondent No.4 who, though certified it to be correct, reduced the amount to Rs.83,000/-. The District Forum before whom complaint was filed by the Petitioner allowed the complaint directing the OPs to pay a total amount of Rs.1,50,000/- to the Complainant towards harassment, mental agony etc and Rs.5,000/- towards cost. The appeal filed by the Respondents before the State Commission was allowed vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 29.11.2013 in F. Appeal No.62 of 2009 of the Assam State Consumer Disputes Redressal Commission, Guwahati.

**iii) Parties:**

Shri O M Mahesree, IAS (Retd.) - Petitioner

Vs.

Union of India and others - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.4904 of 2013 & Date of Judgement: 16.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The main grounds on which the Revision Petition had been filed were (i) discrimination in the treatment given to the Petitioner (ii) in a similar case of by-pass surgery in respect of another IAS Officer, a sum of Rs.1,54,000/- had been allowed. It was held by the National Commission that the State Commission had rightly come to the conclusion that there was no discrimination in respect of the Petitioner since the Hospital in which he underwent surgery, not being a hospital empanelled by CGHS scheme, the rate of reimbursement had to be in terms of clause I of the office memorandum dated 07.04.1999. The Petitioners' claim that he had to be reimbursed in accordance with Clauses 7, 7A and 7B of the said OM was rightly rejected by the State Commission. On the second issue of comparison with Shri.Hiralal Gogoi, another IAS officer, it was noted that the surgery was done in an empanelled hospital in Delhi and therefore the two cases were not

### **Deficiency in Service - Medical Reimbursement**

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comparable. Consequently, the order of the State Commission was upheld and the Revision Petition was dismissed.

#### **vii) Citation:**

IV (2014) CPJ 283; 2014(4) CPR 33.

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### **3. Union of India and another Vs. Sri.B.M.Singh**

#### **i) Case in Brief:**

Complainant/Respondent who retired from railways in 1995 was entitled for medical reimbursement for himself and his wife under the Railway Employees Liberalised Health Scheme. On 30.10.2003, he fell unconscious during morning walk and was attended to by passers-by. He was shifted to the emergency of Escort Super Special Hospital and medical stent was implanted. He was discharged on 07.11.2003 and incurred an expenditure of Rs.2,46,576/-. He submitted bill for reimbursement but received cheque of only of Rs.1,28,500/-. Complainant filed complaint before the District Forum where OP was proceeded ex-parte. The District Forum allowed the complaint and directed OP to pay Rs.1,18,076/- along with Rs.10,000/- as compensation and Rs.1,000/- as litigation expenses. Both the parties filed appeal before the State Commission which dismissed both the appeals. Aggrieved by the same, Petitioners/OPs have filed the present Revision Petition. Revision Petition dismissed.

#### **ii) Order appealed against:**

From the order dated 12.07.2012 in Appeal No.250 of 2007 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh.

#### **iii) Parties:**

Union of India and another

- Petitioners/OPs

Vs.

Sri.B.M.Singh

- Respondent/Complainant

#### **iv) Case No and Date of Judgement:**

Revision Petition No: 3962 of 2012 & Date of Judgement: 17.09.2014.

#### **v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission noted that the OP/Petitioner failed to make an appearance both before the District Forum and before the State Commission. Perusal of letter by which Rs.1,28,500/- was sanctioned to the Complainant did not elaborate any reasons for repudiation of claim for rest of the amount apart from stating that the amount has been sanctioned being minimum necessary treatment in the non-recognized hospital. It had not been stated whether expenditure incurred by the Complainant in treatment was not pertaining to minimum necessary treatment. The Commission did not find any reason for restricting the claim only to Rs.1,28,500/- instead of Rs.2,46,576/-. Since there was no illegality or irregularity or jurisdictional error in the impugned order, the Revision Petition was dismissed.

**vii) Citation:**

IV (2014) CPJ 347; 2014(4) CPR 16.

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**(af) MEDICAL NEGLIGENCE**

**1. Akhilesh Jain Vs. Nobel Hearing & Anr.**

**i) Case in Brief:**

On 05.05.2009, Complainant/Petitioner (Akhilesh Jain) took his son to ENT Specialist, Dr. Jagdish Jain/OP.2 who referred him to Nobel Hearing & Speech Therapy Clinic/OP.1. The Brainstem Evoked Response Audiometry (BERA) test was conducted, and the report showed that the left ear was normal, whereas the right ear had minor hearing defect. OP.2 assured the Complainant that, the child would start hearing and talking very soon and there was nothing to worry about. However, as the child did not show any improvement, he consulted Dr. Satya Prakash Dubey at Bhopal who advised a CT Scan and another BERA Test. The BERA report showed that the child had profound sensory neural hearing loss in his left ear. Hence, the Complainant/Petitioner filed a complaint before the District Forum alleging that OP-1 and OP-2 were negligent in diagnosis, issued wrong report by which his child was deprived of specific treatment. The District Forum dismissed the complaint

**Deficiency in Service - Medical Negligence**

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summarily on the basis of the report of the medical expert committee. The State Commission also confirmed the order of District Forum. Aggrieved by the order of State Commission, the Complainant has filed this present Revision Petition. Revision Petition dismissed.

**ii) Order appealed against:**

Against the Order dated 10.05.2013 in Appeal No.1599/2011 of the State Commission Madhya Pradesh.

**iii) Parties:**

Akhilesh Jain - Petitioner

Vs.

Nobel Hearing & Anr. - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.2908 of 2013 & Date of Judgement: 21.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the medical board report found that Complainant had not conducted Bone Conduction ABR and had also not done follow up after 6 month as suggested by Dr. Jagdish Jain, Mr. Salaj Bhatnagar who conducted the test was an Audiologist technician and not the Doctor. As such the Commission did not find any negligence caused by the OPs and there was no error in any of the reports. Complainant did not follow up the advice of OP-2. He had slept for 2 years, without any proper follow-up and check up of his child,
- b) In view of the above, the Commission held that the OPs were not liable and dismissed the present Revision Petition and confirmed the orders of the fora below.

**vii) Citation:**

III (2014) CPJ 61; 2014(2) CPR 737.

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**2. Badam Agaiah & Ors. Vs. Dr.L. Vidya Sagar Reddy**

**i) Case in Brief:**

Complainant No.1/Respondent No.1 in R.P.No.27/2013 is the husband of the deceased patient, Badam Jyothi. Complainant No.2 to 4/ Respondent No.2 to 4 are the sons of the said Badam Jyothi. It is their case that Smt. Jyothi was suffering from fever and she was brought to the hospital of OP for treatment on 26.12.2007. It is alleged that on the advice of the Petitioner/OP she was admitted into the hospital and remained there for 6 days from 26.12.2007 to 31.12.2007 for treatment and that due to wrong conclusion and giving wrong medicines the condition of the patient deteriorated. On 31.12.2007 when the Complainants allegedly put pressure on OP, she was shifted to Rohini Hospital, Warangal where she was diagnosed as suffering from Cerebral Malaria. She remained there till 09.01.2008 and on the advice of the doctors there, she was to be shifted to another hospital in Hyderabad but unfortunately she died on the way to the hospital. Alleging medical negligence against OP, Complainants filed complaint in the District Forum. The Forum allowed the complaint and directed OP to pay a sum of Rs.5 lakhs along with interest at 7.5% p.a. However the State Commission, on appeal filed by OP modified the order of the District Forum and directed OP to pay Rs.1 lakh to the Complainants along with interest at 7.5% p.a. Both the parties filed Revision Petitions against the State Commission's order. Revision Petition No.2784 of 2013 filed by OP was allowed and the Revision Petition No.15 of 2013 filed by the Complainants was dismissed.

**ii) Order appealed against:**

Revision Petition No.15/2013 & Revision Petition No.2784/2013:

From the order dated 08.11.2012 in First Appeal No.422/2011 of Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad.

**iii) Parties:**

Revision Petition No.15/2013

Badam Agaiah & Ors.

- Petitioners

Vs.

Dr. L. Vidya Sagar Reddy

- Respondent

**Deficiency in Service - Medical Negligence**

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Revision Petition No.2784/2013

Dr. L. Vidya Sagar Reddy - Petitioner

Vs.

Badam Agaiah & Ors. - Respondents

**iv) Case No and Date of Judgement:**

- i) Revision Petition No.15/2013 with IA.No.17 of 2013 (For Stay)
- ii) Revision Petition No.2784 of 2013 with IA.No.4775 of 2013 (For Stay) and IA.No.4776 of 2013 (Condonation of Delay) &  
Date of Judgement: 23.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission held that the charge of the negligence against the doctor had not been substantiated by any evidence. Applying the principles laid down in Halsbury's Laws of England to establish liability viz. "(i) that there is a usual and normal practice (ii) that the defendant has not adopted it and (iii) that the course in fact adopted is one no professional man of ordinary skill would have taken had he been acting with ordinary case", the Commission held that there was no evidence to suggest that the hospital was found negligent in attending the patient properly or administering treatment at proper time.
- b) The Commission also noted that the Executive Committee of the Andhra Pradesh Medical Council, based on the recommendation on the Ethical and Malpractice Committee of the said Council, which had considered the complaint in detail, had concluded that there was no negligence on the part of the doctor.
- c) The Commission accordingly held that the charge of medical negligence was not proved and dismissed the complaint. R.P.No.15 of 2013 filed by the Complainants was dismissed while R.P.No.2784 of 2013 filed by the OP was allowed.

**vii) Citation:**

III (2014) CPJ 141.

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**3. Smt. Afsana Bano alias Baby Vs. Dr.Manju Verma & Anr.**

**i) Case in Brief:**

Complainant who was expecting her baby on 10.11.1997 was admitted in a Medical College Hospital on that date for immediate delivery by caesarian operation (LSCS). On 11.11.1997, the OP-1 advised for ultrasound, blood test and urine test. The report was sent to the house of OP-1 who did not disclose anything to the Complainant. It is alleged that OP-1 went on leave without any information to the Complainant or making any alternative arrangement for the patient. On 17.11.1997, the Complainant became serious and was bleeding but nobody attended on her from 11.00 a.m till 05.30 p.m. Thereafter, at 06.00 p.m. with the help of OP-2 LSCS was performed. The child after delivery developed serious complications like damage in the lungs and stomach. The child was treated in SRN Children's Hospital from 19.11.1997 till 25.11.1997. Even thereafter the child seemed abnormal. On 01.04.2004 a specialist Dr.R.K.Singh informed about the impossibility of cure and issued a certificate of permanent disability. Complainant met OP-1 and discussed her child's problem but OP-1 turned a deaf ear. Aggrieved by the events, the Complainant filed complaint on 31.08.2005 alleging that OP-1 and 2 had spoiled the life of her child due to their negligence and prayed for compensation of a sum of Rs.1,32,12,921/-. Complaint dismissed.

**ii) Order appealed against:**

Original Complaint

**iii) Parties:**

Smt. Afsana Bano alias Baby - Complainant

Vs.

Dr. Manju Verma & Anr. - Opposite Parties

**iv) Case No and Date of Judgement:**

Original Petition No.68 of 2005 & Date of Judgement: 01.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 21(a)(i) and 24A of the Consumer Protection Act, 1986.

## **Deficiency in Service - Medical Negligence**

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### **vi) Issues raised and decided:**

The National Commission after perusing the relevant records and literature dismissed the complaint both on merits and on the ground of abnormal delay for the following reasons:

- a) OP-1 and OP-2 were rendering their services as Govt. doctors, so it was a "Contract of Service" and not a "Contract for Service", which is not under purview of C. P. Act.
- b) The cerebral palsy of the child in this case was not due to any negligence of the OP-1 or OP-2. The text book on Essentials of Obstetrics clearly mentioned that, during the course of normal labour, a caesarian section is contemplated if maternal or foetal distress occurs (decreased heart-rate) or if labour progress stops.
- c) A doctor could not be said to negligent when he is acting in accordance with standard practice merely because there is a body of opinion who would take a contrary view as per the dictum of Bolam's case.
- d) In this case, both the doctors Dr. Manju Verma and Dr. U.K.Ghosh are faculty members in Department of OBG of Govt. Medical College. They are qualified and possess requisite skill and experience of more than a decade to operate LSCS. They had taken adequate care of the patient. The OP-1 made proper alternate arrangement with Dr. U.K.Ghosh (OP-2) and thereafter proceeded on Casual Leave w.e.f. 17th Nov.1997 till 21st Nov. 1997. Hence, there was no deviation or negligence committed by the OPs.
- e) The Compliant is also time-barred under Section 24-A of the Limitation Act and there was no application for condonation of delay and the compensation of Rs.1,32,12,921/- claimed by the Complainant, unrealistic one.
- f) The doctors OP-1 & 2 performed their duty as per standard of medical practice and there was no negligence in delivery of child by the LSCS method. The treatment was done in Govt. Hospital, free of cost; hence, this case is not under purview of the C.P. Act.

### **vii) Citation:**

III (2014) CPJ 266; 2014(3) CPR 252.

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**4. Master Abhishek Ahluwalia and others Vs. Dr.Sanjay Saluja**

**i) Case in Brief:**

On 11.7.2003, Complainant/Appellant No.1 while playing in his school sustained a fracture in his left leg and the fractured leg was plastered by Respondent No.1, in Respondent No.2 hospital. The case of appellants was that the plaster put on the leg of Appellant No.1 was very tight which caused acute and severe pain. Respondent No.1 prescribed certain pain killers and injections. In spite of acute and severe pain being suffered by Appellant No.1, Respondent No.1 did not take any remedial/corrective measures and instead, discharged the patient from the hospital at 9.30 p.m. As the pain did not subside, on 12.7.2003 in the night after repeated calls, Respondent No.1 visited the residence of the Appellants and gave a slit on the upper part of the plaster which was inadequate. Even at that stage, the patient had severe pain and was unable to move left foot fingers, which were clear indication of the fact that the blood vessels had been obstructed and muscles of the left leg of the patient, were in the process of dying and impending gangrene. Such condition which was called as “Compartment Syndrome” (CS) in medical terms had thus already been set in. Even at that stage, Respondent No.1 did not take the aforesaid ominous symptoms seriously and left the patient still crying in pain. Due to the ineffective treatment by Respondent No.1, he was shifted to Respondent No.2 Hospital where he was treated for some time. It is alleged that the attending staff and Doctors of INSCOL Hospital exhibited utterly casual and negligent approach for the treatment and care of the patient. Finally, the doctors of Respondent No.4 rendered exemplary professional expertise and with their untiring efforts for a period of about one month, the left leg of Appellant No.1 had to be amputated to save his life. Alleging medical negligence on the part of the OPs/Respondents 1 to 3, he filed complaint before the State Commission which provided compensation of Rs.15,23,192/- which was less than Rs.20 lacs and therefore the complaint was ordered to be returned to the Appellants for being filed before the District Forum. Appellants filed Revision Petition (No.3427 of 2003) against the order of the State Commission, before National Commission which set aside the order of the State Commission and remanded the case for being decided on merits. The State Commission after going through the record and after hearing the learned counsel for the parties, vide its impugned order dismissed the complaint. Being

### **Deficiency in Service - Medical Negligence**

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aggrieved, the appellants have filed the present appeal. Appeal partly allowed.

**ii) Order appealed against:**

Against the order dated 28.2.2005 in Complaint Case No.39 of 2003 of the Consumer Disputes Redressal Commission, U.T. Chandigarh.

**iii) Parties:**

Master Abhishek Ahluwalia and others - Appellants

Vs.

Dr. Sanjay Saluja - Respondents

**iv) Case No and Date of Judgement:**

First Appeal No.110 of 2005 & Date of Judgement: 01.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21a(ii) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

a) The Commission identified the two issues to be decided as follows:

- (i) whether the plaster applied was so tight that it pressed the nerves and muscles and also blocked the smooth flow of the blood resulting in complications in the left leg beside causing considerable pain, which ultimately resulted in the amputation of the leg of the patient;
- (ii) whether such act on the part of the Respondent No.1 would come within the ambit of "medical negligence".

The National Commission after perusal of the all the medical records found that the plaster applied was very tight and timely action had not been taken by Respondent No.1 despite being informed several times about the patient's discomfort. Ultimately it resulted in setting in of "Compartment Syndrome" and gangrene leading to the amputation of leg. Had amputation of leg not been done by the doctors of Respondent No.4-Hospital then the life of Appellant No.1 would have been in danger. Under these circumstances, the National Commission held that though the Respondent No.1 was a qualified doctor, he had not used his best professional judgement and due care in the treatment of Appellant

No.1 from the beginning and that Respondent No.1 alone had to be blamed for such an unfortunate incident. It was also held that medical negligence on the part of Respondent No.1 was writ large in this case relying on the doctrine of *res ipsa loquitur*. (*Ashish Kumar Mazumdar Vs. Aishi Ram Batra Charitable Hospital Trust and others*, II (2014) CPJ 5 (SC); *Shyam Sunder and Others vs. The State of Rajasthan*, 1974(1)SCC 690; *Smt. Savita Garg Vs. Director National Heart Institute*, AIR 2004 SC 5088; *Rusell Vs. L.&S. W.Ry.*, (1908) 24 TLR 548, 551; *Saroj Chandhoke Vs. Ganga Ram Hospital & Anr.* III (2007) CPJ 189 (NC); *Vidya Devi (Since deceased) through LR's & Ors. Vs. Dr. R.Mahendroo*, II (2008) CPJ 232 (NC); *Dr. Vinod Kumar Gupta Vs. Ruplal Yadav and another* (R.P. No.4823 of 2012, decided on 15.1.2013).

- b) The National Commission granted a total compensation of Rs.70,000,00/- (Rupees Seventy lac only) to Appellant No.1 and added that failure to pay will attract interest @ 9% p.a., till realization. Accordingly, the impugned order passed by the State Commission was set aside. The present appeal was partly allowed against Respondent No.1. Since, no negligence on the part of Respondents Nos.2 to 4 had been established the appeal against them was dismissed relying on the decisions of the Hon'ble Apex Court in *Indian Medical Association vs. V.P. Santha* (1995) 6 SCC 651; *Post Graduate Institute of Medical Education and Research, Chandigarh, Vs. Jaspal Singh & Ors.* (2009) 7 SCC 330; *Nizam Institute of Medical Sciences Vs. Prasanth S. Dhananka & Ors.*, (2009) 6 SCC 1; *B.Krishna Rao Vs. Nikhil Super Speciality Hospital*, III (2010) CPJ 1(SC); *Balram Prasad Vs. Kunal Saha and others* [IV (2013) CPJ1 (SC)]; *Govind Yadav Vs. New India Insurance Ltd.; Ibrahim Vs. Raju & Ors; Malay Kumar Ganguly Vs. Dr. Sukumar Mukherjee & Ors.* 2009(9) SCC 221; and also the decisions of the National Commission in *Masih Hospital and others Vs. Kuldeep and others* (R.P. No.685 of 2013, decided on 1.4.2013); *Prem Prakash Rajagaria Vs. Nagarmal Modi Sewa Sadan and others* (Consumer Case No.170 of 1999, decided on 6.2.2013)

**vii) Citation:**

III (2014) CPJ 290; 2014(3) CPR 180.

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**Deficiency in Service - Medical Negligence**

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**5. I. Ratnamala W/o. Late I.J. Divakar & Ors. Vs. Image Hospitals & Ors.**

**i) Case in Brief:**

I.J. Divakar, husband of Complainant-1 was admitted in the intensive care unit of the Respondent No.1/Hospital on 22.04.2002 for treatment of a heart disease. Respondent No.2 (Dr.A.S.V. Narayana Rao, a Cardiologist) initially advised Coronary Angiogram (CAG) and on seeing a major block of 95% in one of the arteries recommended Angioplasty (PTCA) with Stent. The said procedure which was fixed on 25.04.2002 could not be completed because of calcification in the artery (LAD) and therefore Coronary Artery Graft Bypass (CABG) was performed on the same day. On 27.04.2002 the Appellants were informed that the patient was being electively ventilated. He developed jaundice and other complications including renal shut down and died on 09.05.2002. Alleging medical negligence on the part of the Respondents including the Anesthetist and the Cardiothoracic surgeon (Respondents 3 and 4), the Appellants filed complaint before the State Commission which dismissed the complaint vide impugned order against which the present appeal has been filed. Appeal dismissed.

**ii) Order appealed against:**

From the order dated 08.07.2008 in Complaint No.38/2004 of the Andhra Pradesh State Consumer Disputes Redressal Commission.

**iii) Parties:**

I. Ratnamala W/o. Late I.J. Divakar & Ors. - Appellants

Vs.

Image Hospitals & Ors. - Respondents

**iv) Case No and Date of Judgement:**

First Appeal No.460 of 2008 & Date of Judgement: 03.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The questions for consideration before the National Commission were i) whether there was negligence on the part of Respondent No.2 in subjecting the deceased to Angioplasty (PTCA) instead of

recommending Bypass surgery (CABG) when it was detected that he had approximately 95% blockage in LAD and ii) whether there was inordinate delay in performing CABG because of lack of cardiac surgical backup which ultimately proved to be fatal. The Commission observed that what constitutes medical negligence based on the touchstone of Bolam's test is well settled through a catena of decisions of the Hon'ble Supreme Court including in (i) *Jacob Mathew v. State of Punjab and another*, (2005) 6 SCC 1, AIR (2005) SC 3180; (ii) *Indian Medical Association v. V.P.Shantha and others* (1995) 6 SCC 651; (iii) *Kusum Sharma and others v. Batra Hospital and Medical Research Centre and others*, (2010) 3 SCC 480.

- b) The Commission observed that no material has been brought on record on behalf of the Appellants to show that with the nature of the blocks that the deceased had, PTCA is never advised. It was also noted that the decision to go in for PTCA was not taken in hurry but after due deliberations with Appellant No.1, her brother and a brother of the deceased, one of them being a doctor himself.
- c) The Commission also noted CABG was performed after conducting a number of tests. There is nothing on record to show that complications developed due to PTCA or CABG.
- d) The Commission held that there was no inordinate delay in performing CABG and there was no negligence on the part of Respondents 1 and 2 (The Commission noted that the Appellants had withdrawn their complaint against Respondents 3 and 4 before the State Commission).
- e) Consequently the appeal was dismissed as devoid of merit.

**vii) Citation:**

III (2014) CPJ 344; 2014(3) CPR 227.

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**6. Smt. Neeti Saluja Vs. Dr.(Mrs.) K.Batra & Ors.**

**i) Case in Brief:**

Complainant who got admitted in Batra Nursing Home for her first delivery alleged that OPs performed Caesarian operation (LSCS) when it was not necessary and that the said operation was performed by a compounder/technician under the guidance of OP-1. It was further

### **Deficiency in Service - Medical Negligence**

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alleged that due to carelessness and negligence when performing LSCS, the Complainant suffered a large scar on her stomach and she developed "Obstructed Umbilical Hernia". She had to undergo an emergency operation which was performed by Dr.R.K.Sippy. Complainant sent a legal notice to the OPs and sought details of medical record and the list of patients who have had normal and Caesarian deliveries in the hospital. Since there was no response from the OPs, she filed this Original complaint. Complaint dismissed.

**ii) Order appealed against:**

Original Complaint.

**iii) Parties:**

Smt. Neeti Saluja

- Complainant

Vs.

Dr. (Mrs.) K.Batra & Ors.

- Opposite Parties

**iv) Case No and Date of Judgement:**

Original Petition No.309 of 2002 & Date of Judgement: 04.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(a)(i) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission on perusal of medical records and referring to several surgical books, text and literature observed that the patient was diagnosed with hypo-thyroidism with early pregnancy and was put on proper treatment. She also had high BP, IUGR, PET. The Commission observed that there was no reported case of "Obstructed Umbilical Hernia" being caused due to cesarean section. In the case on hand, it was held that OP-1 exercised reasonable care and skills, during patient follow-up, during pregnancy and also during delivery by LSCS. The "Obstructed Umbilical Hernia" was not an Incisional Hernia due to any defective suturing of LSCS incision. The Commission further held that the allegation of the Complainant that the compounder/assistant performed a major surgery like LSCS was vague, without evidence and totally unacceptable. The Commission relied on the decisions of the Hon'ble Supreme Court in *Jacob Mathew v. State of Punjab and another*, (2005) 6 SCC 1, AIR (2005) SC 3180 and *Indian Medical Association v. V.P.*



*Shantha and others* (1995) 6 SCC 651 and held that OPs had conducted LSCS in good faith with the intention of saving the baby, there was no deviation from the medical practice followed and it was not a case of medical negligence. The complaint was accordingly dismissed.

**vii) Citation:**

III (2014) CPJ 376; 2014(3) CPR 44.

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**7. Dr. R.K. Pandey Vs. Sri Chandra Shekhar Pandey and others**

**i) Case in Brief:**

As the facts of the two Revision Petitions are similar, the facts from RP/3242 of 2013 were taken into consideration. The Complainant's wife, Smt. Shanti Pandey had undergone a Ultra-Sonography test (USG) by Dr. Salil Chandra/OP.1 and was diagnosed as a case of gall stones of 6x6 mm and 6x9 mm size in her gall bladder. Thereafter, the Complainant took his wife to the surgeon Dr. R.K.Pandey/OP-2 who advised surgery for removal of her gall bladder at the cost of Rs.10,000/- and the patient agreed for the same. During operation at Saraf Hospital, Dr. Pandey, did not find any stone in the gall bladder, but noticed that the gall bladder was malignant (Cancer) and proceeded to conduct surgery for removal of gall bladder without calling any cancer specialist. Then the patient was kept in Saraf Hospital for nine more days under observation without any treatment of cancer, and she expired on 25.11.2000. Alleging deficiency in service, the Complainant filed a complaint before District Forum which dismissed the complaint. Aggrieved by the order, the Complainant filed the appeal 1998/2004 before the State Commission which held Dr. R.K. Pandey (OP-2) and Saraf Hospital (OP-3) guilty of medical negligence and deficiency in service and ordered the OP.2&3 to pay jointly and severally compensation of Rs.2,55,000/- and Rs.10,000/- as litigation cost. Aggrieved by the impugned order dated 12.05.2010 of State Commission, OPs.2&3 filed the writ petition in the Hon'ble High Court of Allahabad which dismissed the same on the ground of alternative remedy and granted liberty to the Petitioner to file the Appeal/Revision Petition. Accordingly, the OPs.2&3 filed the present Revision Petition. Revision Petition allowed.

**Deficiency in Service - Medical Negligence**

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**ii) Order appealed against:**

Revision Petitions No.3242 & 3364 of 2013

Against order dated 12.05.2010 in First Appeal No. 1998/2004 of the State Consumer Disputes Redressal Commission, Uttar Pradesh, Lucknow.

**iii) Parties:**

Revision Petition No.3242 of 2013

Dr. R.K. Pandey - Petitioner

Vs.

Sri Chandra Shekhar Pandey and others - Respondents

Revision Petition No.3364 of 2013

Saraf Hospital - Petitioner

Vs.

Chandra Shekhar Pandey and others - Respondents

**iv) Case No and Date of Judgement:**

Revision Petitions No.3242 & 3364 of 2013 &

Date of Judgement: 10.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission, on perusal of the records, found that OP-2/Dr.R.K. Pandey, acted with proper care and clinical acumen. He had not deviated from the standard of medical practice. The Commission held OP.1/Dr. Salil Chandra, liable as he failed to diagnose gall bladder malignancy and the metastasis by USG study. If USG diagnosis had been correct, the operation for gall stone might have been deferred by OP-2. Even otherwise, the OP-2 was doing surgery after opening the abdomen by taking only biopsy; and waited for the histopathology report. Therefore, the Commission came to the conclusion that the cause of death of patient was not due to any delay in referring the patient to cancer hospital but because of wrong diagnosis by OP.1.

- b) In view of the above, the National Commission allowed the present Revision Petition and set aside the order of the State Commission and held OP-1/Dr. Salil Chandra, liable for his wrong diagnosis and directed him to pay Rs.50,000/- as compensation to the Complainant, within 3 months, otherwise it would carry interest @ 9% pa, till its realization relying on the decision of the Hon'ble Apex Court in *Dr.Laxman Balkrishna Joshi Vs. Dr.Triambak Babu Godbole and Another* (1969) 1 SCR 206. The Commission exonerated OP.2 & 3 as it found no negligence or fault on their part.

**vii) Citation:**

2014(3) CPR 478.

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**8. Dr. Manpreet Kaur Vs. Laxmi Devi *alias* Gudiya**

**i) Case in Brief:**

Complainant/Respondent, during her pregnancy, slipped and suffered miscarriage on 28.07.2006. She was initially treated by one Dr.Sudhir Kumar for three days and then by Dr. N.K.Agarwal at City Hospital, Dr. Madhu Shah at Ramakrishna Mission Sevashrama and finally by the Petitioner/OP (14.08.2006 to 19.08.2006). The Complainant's allegation is that OP kept her for first three days only on medication which resulted in pus formation in the abdomen. Complainant was operated upon on 16.08.2006 but according to her post-operative care was so poor that she had to be taken to Combined Medical Institute (CIM) Dehradun. She underwent two further surgeries before she was discharged on 28.09.2006. She had to incur a cost of Rs.70,000/-. Alleging medical negligence against OP she filed complaint before the District Forum. Allowing the complaint the District Forum directed OP to pay a sum of Rs.1,52,000/- against medical expenses, fees, physical and mental agony and cost of litigation. Appeal filed by the OP was partly allowed by the State Commission by reducing the amount of medical expenses and compensation from Rs.1,52,000/- to Rs.62,000/-. Aggrieved by the said order the present Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 19.09.2013 in Appeal No.207/2008 of the Uttaranchal State Consumer Disputes Redressal Commission.

**Deficiency in Service - Medical Negligence**

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**iii) Parties:**

Dr. Manpreet Kaur - Petitioner

Vs.

Laxmi Devi *alias* Gudiya - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.4547 of 2013 & Date of Judgement: 15.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission noted that the Complainant approached the OP only after 17 days of the incident of miscarriage and during the period she had remained under the treatment of Dr.Sudhir Kumar, a midwife Smt.Munni Devi and Dr.Madhu Shah. The Commission on perusal of records observed that Dr.Sudhir Kumar appeared to be a quack and not qualified to treat patients such as the Complainant. The Commission was not convinced about the medical qualification of Dr.Madhu Shah who had kept her under her treatment for 14 days. It was noted that no medical records were made available for that period. By the time Dr.Madhu Shah advised the Complainant to consult a surgeon, complications in lower abdomen had already set in.
- b) The Commission did not find any element of negligence in the treatment rendered by OP. It was held that her approach was reasonable as per standard of medical practice. The Commission held that she succeeded Bolam's test. Relying on various judgements of the Hon'ble Supreme Court relating to medical negligence, the Commission held that the fora below had erred in not appreciating the treatment given by OP to the Complainant.
- c) The Commission therefore set aside the orders of the fora below and allowed the Revision Petition.

**vii) Citation:**

III (2014) CPJ 371; 2014(3) CPR 430.

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**9. Manjeet Chawla and Others Vs. Escorts Heart Institute and Research Centre**

**i) Case in Brief:**

Mr. Pritpal Singh Chawla (husband of Complainant-1) approached ESCORTS Heart Institute and Research Centre, OP on 14.02.2001 with complaint of palpitation and angina on exertion (AOE) after undergoing Tread Mill test the previous day. He was also a diabetic. After examination Dr.Kleir, the Cardiologist, advised him to undergo coronary angiography test (CART). The patient underwent the test on the evening of 15.02.2001. While he was in the recovery room he suffered an attack of Cardiogenic Pulmonary Edema for which he was administered Lasix and some other medicines. He was shifted to ICU by 7.30 p.m. On 16<sup>th</sup> February OP observed bluish marks on his legs and conducted embolectomy. Patient's kidneys got damaged and he had to be taken for dialysis the next day. Subsequently the patient expired due to renal failure and hypoglycemia on 24.02.2001. This complaint had been filed in July 2001 by Mrs. Manjeet Chawla and her two sons alleging medical negligence in treatment and deficiency in services by the doctors at OP Institute causing death of Mr. Pritpal Singh Chawla, who was 52 years old at that time, seeking a total compensation of Rs.9.66 crores. Complaint partly allowed. OP hospital was directed to pay compensation Rs.25 Lakhs with interest at 9% from the time of death of the patient and a further sum of Rs.2 Lakhs as cost of litigation.

**ii) Order appealed against:**

Original Complaint.

**iii) Parties:**

Manjeet Chawla and Others - Complainants

Vs.

Escorts Heart Institute and Research Centre - Opposite Party

**iv) Case No and Date of Judgement:**

Consumer Complaint No.228 of 2001 & Date of Judgement: 17.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o) and 21(a) (i) of the Consumer Protection Act, 1986.

## **Deficiency in Service - Medical Negligence**

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### **vi) Issues raised and decided:**

- a) The Commission on the basis of evidence, medical literature and on the opinion of Dr.Greshan K. Davis from UK held that OP had miserably failed to discharge its duty. The patient was wrongly advised to undergo immediate angiography (ART). It was not an emergency and OP had sufficient time to have planned CART. It was further held that angiography was conducted without baseline ECHO and other investigations. The doctors at OP ought to have studied the condition of the deceased, whether fit to undergo CART and could have anticipated the probability of occurrence of known complications. OP should have conducted allergy test for contrast medium. The Acute Cardiac failure could have been avoided by terminating the angiography procedure which further led to Multi Organ Failure.
- b) The Commission held that OP failed to manage the Post Angiography complications as per standards of medical practice. The Hospital, though a Corporate Hospital, lacked infrastructure of Cardiac Alert System or Rapid Response Team.
- c) It was further held that the ICU staff was careless and negligently monitored the patient who suffered prolonged severe hypoglycemia and unfortunate death on the same day.
- d) The Commission also to held OP was guilty of over writing and making correction in the medical records.
- e) Relying on several decisions of the Hon'ble Supreme Court on medical negligence, the Commission allowed the complaint and directed the OP Hospital to pay compensation of Rs.25 Lakhs with interest at 9% p.a from the time of death of the patient and Rs.2 Lakhs as cost of litigation within 90 days to the Complainant.

### **vii) Citation:**

IV (2014) CPJ 81; 2014(3) CPR 452.

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## **10. Smt. Namita Chatterjee Vs. Dr.Mousami Banerjee and others**

### **i) Case in Brief:**

Petitioner/Complainant who was suffering from several health problems including Obstructive Pulmonary Disease (COPD) underwent cataract surgery on the left eye on 14.06.2007 in the H.K. Nursing Home of

OP-2. The surgery was performed OP-1 and the patient was discharged the next day. Since she continued to suffer from irritation, watering etc., she visited OP-1 again who prescribed some high dose of antibiotics. Since there was no improvement she was referred to a higher Institute where she was diagnosed as suffering from Endophthalmitis. She underwent another operation and continued treatment till 19.11.2007. Since there was no improvement, her left eye was eviscerated. Alleging deficiency, based on the report of a three Member enquiry committee, the Complainant approached the District Forum which allowed the complaint and awarded a compensation of Rs.5,00,000/- out of which Rs.4,50,000/- was to be paid by OP-1 and Rs.50,000/- by OP-2. The OPs' appeal was dismissed by the State Commission with regard to Nursing Home/OP-2 but it set aside the order against the doctor OP-1 vide impugned Order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 31.05.2013 in First Appeal No.328 of 2012 of the State Consumer Disputes Redressal Commission, West Bengal, Kolkata

**iii) Parties:**

Smt. Namita Chatterjee - Petitioner

Vs.

Dr. Mousami Banerjee and others - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No:3083 of 2013 & Date of Judgement: 22.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission noted that the West Bengal Medical Council after an enquiry had come to the conclusion that Dr. Mousami Banerjee (Respondent-1) had done the management of the case correctly and appropriately and the occurrence of the post-operative infection was in no way related to the surgical skill and competence of the doctor concerned. The Commission agreed with the said finding and relying on the decisions of the Hon'ble Supreme Court in *Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Babu*

### **Deficiency in Service - Medical Negligence**

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*Godbole* AIR 1969 SC 128 = (1969) 1 SCR 206) and *Achutrao Haribahau Khodwa and Ors. Vs. State of Maharashtra and Ors.* Manu/SC/0600/1996, did not find any negligence on the part of OP-1 either in treatment (cataract surgery) or post-operative care.

- b) The Commission noted that the three member enquiry committee at CMOH, Burdwan had highlighted the shabby condition of the nursing home in question and also absence of adequate infrastructural facilities annexed to it. It was also noted that the operation theater was not sterilized properly. The Commission further noted that OP-2 had not produced fumigation register, details of other surgeries performed in the said operation theater etc., The Commission therefore agreed with the finding of the State Commission with regard to OP-2 Nursing Home.
- c) The Commission therefore upheld the order of the State Commission and dismissed the Revision Petition.

#### **vii) Citation:**

IV (2014) CPJ 77; 2014 (3) CPR 445.

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### **11. Dr. G. Swaminathan and others Vs. G. Rajendran**

#### **i) Case in Brief:**

The Complainant had suffered compound fracture in his right leg in a road accident on 27.11.1999. He was treated at OP.3/Madurai City Hospital by Dr.Swaminathan/OP.1 and Dr.A.M.R.Padmanabhan/OP.2. The leg was put in plaster cast. Later on 02.12.1999 when X-ray showed non-union of the bone, the plaster was removed and steel plates were put with nuts and bolts. On 16.12.1999, Complainant underwent procedure for skin grafting on the open area of wound and was discharged on 15.01.2000. It is the Complainant's case that he took further treatment from another doctor and only after that he was able to walk on his own legs. Alleging negligence and deficiency in service, he filed complaint against the OPs before the District Forum which observed that before the surgery OP should have cleaned the wound properly to avoid any possibility of any infection and complication. On appeal filed by the Petitioners, the State Commission held that the OPs could not be faulted for choosing the plate and screw method but having chosen it, they failed to do it properly. Both the fora below held that the line of treatment chosen by the Revision Petitioners/OP was not



properly explained to the Complainant or his relatives. Aggrieved by the order of the State Commission, the present Revision Petition had been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 25.06.2008 in F.Appeal Nos.557 & 570 of 2003 of State Consumer Disputes Redressal Commission, Chennai.

**iii) Parties:**

Dr.G.Swaminathan and others - Petitioners

Vs.

G.Rajendran - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No:4084 of 2008 & Date of Judgement: 24.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission observed that the OPs had obtained consent in writing from the Complainant on three occasions: i) when the fractured leg was put in plaster cast, ii) when the cast was removed and metal plate was fixed and iii) when skin crafting was done on the fracture wound. On all the three occasions, it was a generally worded, identical consent. The Commission wondered how such consent was relevant to specific procedures. The National Commission therefore came to the conclusion that the procedures were not properly explained to the Complainant at the time of obtaining consent. The National Commission therefore found no ground for exercise of jurisdiction under Section 21(b) of the Act and dismissed the Revision Petition.

**vii) Citation:**

IV (2014) CPJ 29; 2014(3) CPR 345.

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**12. Md. Mahatab Alam Khan Vs. Dr.Gopinath Roy and another**

**i) Case in Brief:**

It is the case of the Complainant that he sustained knee injury in an accident on 13.06.2000. After first aid, he was taken to OP Hospital (Bhattacharyya Orthopedics and Related Research Centre (P) Ltd) (BORRC) where a surgery took place on 17.06.2000. At the time of

### **Deficiency in Service - Medical Negligence**

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discharge on 19.06.2000, his right knee was paining. The Complainant followed the advice of the doctor strictly and did regular exercises. The Complainant informed the OP doctor of pain and problem in his right knee. But the OP turned a deaf ear to it. Thereafter, for second time, the OP-2 operated the Complainant on 16.02.2001 at BORCC and discharged him on 19.02.2001, but there was no cure. Thereafter, the Complainant consulted a few renowned doctors, who informed him of the need of an immediate surgery, to correct his Varus deformity and the shortening of right leg. The Complainant alleged that due to negligence and deficiency on the part of OPs, he suffered deformity, with mental and physical loss. Hence, he filed the Complaint before the District Forum which dismissed the complaint. Subsequently, the appeal filed by the Complainant was also dismissed. On dismissal of the appeal, the present Revision Petition has been filed. Revision Petition dismissed.

#### **ii) Order appealed against:**

Against order dated 19.01.2012 in First Appeal No.3861/2010 of the State Consumer Disputes Redressal Commission, West Bengal, Kolkata.

#### **iii) Parties:**

Md. Mahatab Alam khan - Petitioner

Vs.

Dr. Gopinath Roy and another - Respondents

#### **iv) Case No and Date of Judgement:**

Revision Petition No.3215 of 2012 & Date of Judgement: 04.08.2014.

#### **v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

#### **vi) Issues raised and decided:**

- a) The National Commission on perusal of the medical records, case papers, various prescriptions, slips, on the file and continuation sheets maintained by BORCC during the period from 17.06.2000 – 01.05.2001 did not find any element of negligence committed by OP-2, during the treatment of the said fracture of the Complainant for the following reasons:

- i. OP.2 is a qualified orthopedic surgeon (M. S. Ortho) having experience of 15 years.
  - ii. OP-2 performed the surgery properly, the post-operative advise was correct. The injections 'Kanamycin', administered, were not in excess, and also no side effects were seen in this case.
  - iii. During the proceedings, the Commission found varus deformity is a known complication of such operation. There was wasting of quadriceps muscles due to lack of exercise and also due to unpreventable contractures which causes shortening of leg.
  - iv. After discharge from OP, the Complainant visited several orthopedic surgeons during one year but none of them have opined or commented about the negligence in the operation performed by OP.2.
- b) Therefore, the Commission held that the OP-2, doctor could not be penalized even if it results in a failure. Hence, the present Revision Petition was dismissed and the orders of the fora below were confirmed.

**vii) Citation:**

III (2014) CPJ 558.

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**13. Chief Secretary, Govt. of NCT of Delhi & Anr. Vs. Smt. Babita**

**i) Case in Brief:**

The Complainant underwent Tubectomy (Sterilization operation) on 10.04.2002. Thereafter, she conceived and delivered a female baby on 18.12.2004. Alleging deficiency in service on the part of OP, she filed a complaint before the District Forum which directed the OP to pay Rs.30,000/- towards negligence in tubectomy operation and Rs.60,000/- for bringing up the child, Rs.3,000/- towards the mental agony and Rs.1,000/- as costs. On appeal by the OP, the State Commission directed the OP-1 to pay a total compensation of Rs.1,00,000/- to the Complainant. Aggrieved by the order of the State Commission, the Petitioner/OP filed this Revision Petition. Revision Petition allowed.

**Deficiency in Service - Medical Negligence**

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**ii) Order appealed against:**

From the order dated 11.07.2013 in First Appeal No. 192/2009 of State Consumer Disputes Redressal Commission, New Delhi, Delhi.

**iii) Parties:**

Chief Secretary, Govt. of NCT of Delhi & Anr. - Petitioners

Vs.

Smt. Babita - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.1016 of 2014 & Date of Judgement: 07.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (d), (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) It was contended by the OPs that the Complainant is not a 'consumer' since she underwent surgery in a government hospital which was rendering free services. But the Complainant countered that all services were not free of charge. Relying on the decision of the Hon'ble Apex Court in *Indian Medical Association v. V.P. Shantha* (AIR 1995 SC (4) 1), the Commission held that the government hospitals cannot be absolved from their liability absolutely, in cases of medical negligence and hence the Complainant is a consumer.
- b) The National Commission on perusal of the case found that in the present case OP is a qualified gynecologist and the consent of the Respondent was taken before doing the surgery. There was no negligence in conducting the laparoscopic sterilization. The doctor who performed the surgery had not committed breach of any duty cast on her, as a surgeon. The surgery was performed by a technique known and recognized by medical science. It is for the woman who had conceived the child to decide whether to go for medical termination of pregnancy or not. Once, the woman missed the menstrual cycle, it was expected of the couple to visit the doctor and seek medical advice. In the present case, Complainant had failed in that and therefore, failure due to natural causes, would not provide any ground for claim.

c) In view of the above, the Commission found no negligence on the part of OP and the State, therefore, the orders of the fora below were set aside and the present Revision Petition was dismissed.

**vii) Citation:**

IV (2014) CPJ 147.

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**14. Consumer Protection Council, Trichy and another Vs. Trichy Specialty Hospital and another**

**i) Case in Brief:**

Smt. Solai (since deceased), wife of Complainant – 2, who was working as Asst. Administrative Officer in LIC was admitted to OP.1 hospital with complaints of wheezing on 08.02.2000. She was discharged the next day. She bought the drugs prescribed by OP.2, Dr.Shanmugavel, from the pharmacy inside the hospital and consumed them as advised. On 10.02.2000, she experienced convulsions and was advised to continue the drugs. Her condition became worse on 12.02.2000 and she had to be readmitted in OP.1 hospital at 10 p.m OP.2 examined her at 00.45 a.m but unfortunately, she expired at 1.15 a.m. Alleging negligence and deficiency in service against OP.2 and also OP.1 which issued wrong medicine from its pharmacy, the present original complaint had been filed. Original petition dismissed.

**ii) Order appealed against:**

Original Complaint

**iii) Parties:**

Consumer Protection Council,  
Trichy and another

- Complainants

Vs.

Trichy Specialty Hospital and another

- Opp.Parties

**iv) Case No and Date of Judgement:**

Consumer Complaint No:61 of 2002 & Date of Judgement: 11.08.2014.

**v) Acts and Sections referred:**

Sections 2(1), (g), (o) and 21(a)(i) of the Consumer Protection Act, 1986.

## **Deficiency in Service - Medical Negligence**

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### **vi) Issues raised and decided:**

The Commission going by medical literature on the subject rejected the contention of the Complainant that his wife who was not a diabetic, suffered severe hypoglycemia and succumbed to death because of consumption of Glynase for three days and that the pharmacy had issued the medicine wrongly. It was observed at the patient who was educated and a responsible officer should not have purchased and consumed medicines blindly and that her death was not due to hypoglycemic coma. The Commission did not also find any delay in issuing medical records of the patient to the Complainant as alleged by him. Relying on the judgements of the Hon'ble Supreme court in *Martin F.D' souza v. Mohd. Ishfaq*, 2009 CTJ 352 (SC) (CP), *Malay Kumar Ganguly v. Sukumar Mukherjee (Dr.) & Ors*, III (2009) CPJ 17 (SC), and that of the National Commission in First Appeal No.1038 of 2000, *Pratap Singh v. Sahib Nursing Home & Surgical Centre and others*, the Commission held that if there is no cure, it is not negligence and that the burden of proof in an action for damages for negligence rests primarily on the Complainant, whether there is any act of commission or omission. The Commission further observed that *Bolam's test* and the principle of *res ipsa loquitur* are not applicable in the present case. Accordingly, it was held that it was not a case of medical negligence or deficiency in service and the complaint was dismissed.

### **vii) Citation:**

IV (2014) CPJ 113.

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## **15. Sri G. Rajendra and others Vs. The City Hospital and others**

### **i) Case in Brief:**

The Complainant G.Rajendra together with his three minor children filed consumer complaint against City Hospital, Shimoga and three of its doctors (OPs.1-4), Kasturba hospital, Manipal (OP.5) and New India Assurance Co. Ltd (OP.No.6). The matter pertained to hospitalization of his wife at OP.1 on 02.07.2000 where she delivered her third child, a normal healthy baby. She underwent tubectomy operation on 04.07.2000 after which she allegedly lost her consciousness. She was shifted to OP.5 hospital on 05.07.2000 in a vegetative state and was discharged on 02.02.2001 in a 'hopeless' state. She died at home at 08.06.2002.

**Compendium of National Commission Judgements – 2014 – Vol.II**

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The complaint was filed prior to her death. Allowing the complaint, the State Commission directed OPs (excluding OP.5) to pay compensation of Rs.2,00,000/- with 6% interest from the date of complaint. Aggrieved by the order, both the parties had filed appeals, the Complainants seeking enhancement of the awarded amount to 18.99 lakhs and interest to 12%. First Appeal No.63 of 2006 filed by OPs.1-4 was dismissed. First Appeal No.54 of 2006 was partially allowed enhancing the amount of compensation to Rs.3,58,672/- with 6% interest from the date of complaint.

**ii) Order appealed against:**

First Appeal No.54 & 63 of 2006

From the order dated 23.01.2006 in Complaint No.123/2001 of the State Consumer Disputes Redressal Commission, Karnataka.

**iii) Parties:**

First Appeal No.54 of 2006

Sri G. Rajendra and others - Appellants

Vs.

The City Hospital and others - Respondents

First Appeal No.63 of 2006

The City Hospital and others - Appellants

Vs.

Sri G.Rajendra and others - Respondents

**iv) Case No and Date of Judgement:**

- i. First Appeal No.54 of 2006
- ii. First Appeal No.63 of 2006 &  
Date of Judgement: 12.08.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission noted, as per medical reports and the evidence of OPs.1-4 themselves that the patient was healthy and normal just before the surgery on 04.07.2000 and that after the operation,

### **Deficiency in Service - Medical Negligence**

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she never regained her consciousness. OPs 1-4 could not explain how her condition deteriorated and that the complications that developed were not due to their negligence. Though the evidence showed that the patient suffered cardiac arrest, OPs 1-4 chose to describe it as bradycardia which is not the same as cardiac arrest. The Commission also found that the evidence of expert committee of AIIMS did not support the conclusions of OPs 1-4. OPs were also not able to explain why oxygenation of the patient failed. The Commission also noted that the OPs could not have taken consent for the performance of tubectomy on 02.07.2000 when the decision to perform tubectomy under general anesthesia was taken on 03.07.2000 and therefore, there was no informed consent given by the patient or her relative. The Commission therefore came to the conclusion that OPs 1-4 were guilty of medical negligence and dismissed their appeal.

- b) As regards the appeal filed by the Complainants, the Commission agreed that an expenditure of Rs.3,85,672/- had been incurred in the treatment of the patient till her death on 08.06.2002 and increased the award amount accordingly with 6% from the date of complaint.

#### **vii) Citation:**

IV (2014) CPJ 598; 2014(3) CPR 528.

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### **16. Dr. K.K. Kakkar and another Vs. Smt. Neetu Singh and others**

#### **i) Case in Brief:**

In the complaint filed on behalf of Smt. Neetu Singh by her father, it was contended that she was admitted in the Nursing home of Appellants/OPs.1&2 on 25.05.1993 for her delivery. She underwent a cesarean operation for which OP.3/Respondent No.2 administered anesthesia. The patient suffered brain damage during surgery and became paralysed. The Complainant's parents got her admitted into another nursing home where they were informed that the patient's brain had suffered irreversible damage. The patient was then referred to Sanjay Gandhi Post Graduate Institute, Lucknow on 21.06.1993. She was discharged from the said institute on 17.08.1993 in a comatose condition. A complaint was then filed on behalf of the patient before the



State Commission seeking a compensation of Rs.9 lakhs. When the case was pending before the State Commission, the Complainant's husband committed suicide and her father who filed the complaint also passed away. The State Commission after protracted hearing allowed the complaint and directed the Appellants to pay the Complainant Rs.9,00,000/- (Rs.3,00,000 each to be paid by OPs.1, 2 & 3). Aggrieved by the order of the State Commission, two separate appeal petitions had been filed by the OPs. Meanwhile, the Complainant who was in a vegetative state also died on 01.12.2004. First Appeal No.163 of 2004 filed by OP.3 was allowed while First Appeal No.156 of 2004 filed by OPs.1 & 2 was partly allowed directing them to pay Rs.5,00,000/- to the mother of the Complainant within a period of two months.

**ii) Order appealed against:**

First Appeal Nos.156 & 163 of 2004

From the order dated 12.03.2004 in Complaint No.351/1993 of the Uttar Pradesh State Consumer Disputes Redressal Commission.

**iii) Parties:**

First Appeal No.156 of 2004

Dr. K.K. Kakkar and another - Appellants

Vs.

Smt. Neetu Singh and others - Respondents

First Appeal No.163 of 2004

Dr. Vijay Singhal - Appellant

Vs.

Smt.Neetu Singh and others - Respondents

**iv) Case No and Date of Judgement:**

i. First Appeal No:156 of 2004

ii. First Appeal No:163 of 2004 &

Date of Judgement: 12.08.2014.

**v) Acts and Sections referred:**

Sections 2(1), (g), (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

## **Deficiency in Service - Medical Negligence**

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### **vi) Issues raised and decided:**

- a) Based on the medical evidence placed before the Commission and keeping in view the guidelines given by the Hon'ble Supreme Court in a number of judgements including in *Kusum Sharma and others v. Batra Hospital and Medical Research Centre and others*, (2010) 3 SCC 480; *Jacob Mathew v. State of Punjab and another*, (2005) 6 SCC 1, AIR (2005) SC 3180; *Achutrao Haribhau Khodwa and others V. State of Maharashtra and others* [(1996) 2 SCC 634], the Commission held that the only medical negligence and deficiency which could be established/proved against OPs 1 & 2 pertained to their failure to record the case history of the patient at the time of her admission and thereafter to get conducted the required laboratory tests which were essential in a high risk first pregnancy case. However, the Commission did not find OP.3 guilty of either medical negligence or deficiency in service in the treatment and care rendered to the patient during the surgery including the administration anesthesia.
- b) Consequently, the order of the State Commission was modified and the compensation awarded by it was reduced from Rs.9,00,000/- to Rs.5,00,000/- to be paid jointly and severally by OPs 1 & 2 to the mother of the late patient.

### **vii) Citation:**

IV (2014) CPJ 642; 2014(3) CPR 513.

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## **17. Dr. Ashok B. Patel Vs. Mansuri Kasambhai Fakir Mohammed & Anr.**

### **i) Case in Brief:**

The case of the Complainant was that his pregnant wife was under the observation of OP.1 and gave birth to a male baby and was discharged thereafter. Subsequently, the patient started bleeding and OP-1 advised for immediate operation for removal of uterus (hysterectomy). Without making any arrangements for blood, OP-1 removed the uterus, but bleeding continued. Then, OP-1 informed the Complainant to arrange 4-5 units of blood and asked the Complainant to shift the patient to Ahmedabad Civil Hospital. Unfortunately, the patient died on the way to the said hospital. The post-mortem report revealed that the patient

was anaemic because of profuse bleeding. Alleging deficiency of service and lack of proper care, Complainant filed a complaint before the District Forum which directed the OP to pay Rs.2,42,000/- with 6% interest and Rs.1,000/- as cost. Against the order of the District Forum, OP preferred an appeal before the State Commission. On dismissal of the appeal, OP filed the present Revision Petition. Revision Petition dismissed.

**ii) Order appealed against:**

Against order dated 15.05.2008 in First Appeal No.1311/2006 of the State Consumer Disputes Redressal Commission, Gujarat.

**iii) Parties:**

Dr. Ashok B. Patel - Petitioner

Vs.

Mansuri Kasambhai Fakir Mohammed & Anr. - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.3360 of 2008 & Date of Judgement: 19.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission relied on the medical text books and the decision of the Hon'ble Supreme Court in *Poonam Verma v. Ashwin Patel*, (1996) 4 SCC 332 wherein the Supreme Court observed that "negligence has many manifestations - it may be active negligence, collateral negligence, comparative negligence, concurrent negligence, continued negligence, criminal negligence, gross negligence, hazardous negligence, active and passive negligence, willful or reckless negligence or negligence per se...." The National Commission on perusal of the case held that it was a case of continued negligence because the patient was under observation/treatment of OP-1 prior to delivery and she was A-Rh Negative, which is a rare blood group. As such, OP failed to anticipate or to caution the patient or her relatives about the need of blood in an unexpected emergency. Further, after delivery, the patient developed hemorrhages (bleeding-PPH)

**Deficiency in Service - Medical Negligence**

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for which OP-1 had neither properly investigated nor treated to stop bleeding. Therefore, the Commission held that those entire events were due to negligence of OP-1. Consequently, the present Revision Petition was dismissed and the order of the State Commission was confirmed.

**vii) Citation:**

IV (2014) CPJ 454.

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**18. Subash Prasad Vs. Dr.(Mrs.) Vidya @ Vidya Rani Singh**

**i) Case in Brief:**

The case of the Complainant was that he took his wife to OP for tubectomy operation which was performed and Rs.1,250/- was paid as fees. Thereafter, Complainant's wife developed severe pain for six months which led to loss of weight and appetite. So she consulted another doctor who confirmed the pregnancy. Subsequently, she delivered a female baby which was the fourth baby for her. Alleging deficiency in service against OP in conducting the Family Planning operation, he filed complaint before the District Forum which directed the OP to refund the fees of Rs.1,250/- and also directed to pay Rs.25,000/- as compensation and Rs.1,000/- as cost. Aggrieved by the order of the District Forum, the OP preferred First Appeal before the State Commission which confirmed the compensation relief only. Against the order of the State Commission, the present Revision Petition has been filed seeking enhancement of compensation. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 03.08.2009 in Appeal No.574 & 581 of 2007 of the Bihar State Consumer Disputes Redressal Commission, Patna.

**iii) Parties:**

Subash Prasad - Petitioner

Vs.

Dr. (Mrs.) Vidya @ Vidya Rani Singh - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.3445 of 2009 & Date of Judgement: 19.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) In the present case, the Commission did not find any negligence in performing sterilization operation by OP who is a qualified gynecologist and had MD (OBG) degree. Relying on the standard medical text books on Obstetrics. & Gynecology which clearly state that no method of sterilization is entirely safe even when the women have undergone hysterectomy and the decision of the Hon'ble Supreme Court in *State of Punjab v. Shiv Ram and Others* (2005) 7 SCC, wherein the Supreme Court clearly laid-down that the failure of tubectomy was not negligence and the party could not claim the compensation, the Commission held that failure due to natural causes would not be a ground for claim. It also observed that there were reported cases that even after total or sub-total hysterectomy, there were chances of pregnancy (ectopic pregnancy).
- b) In view of the above, the Commission dismissed the present the Revision Petition and held that observation of the District Forum based on drugs prescription was wrong.

**vii) Citation:**

IV (2014) CPJ 165; 2014(3) CPR 845.

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**19. Mrs. Chitragini Ramchandra Mujmule Vs. Dr. Manoj Jain and others**

**i) Case in Brief:**

Complainant underwent tubectomy on 25.11.2005 at Sri Sai Hospital owned by Dr. Abhay Lunawat and Dr. Sapan Lunawat, OPs.2&3/ Respondents No.2&3. The operation was performed by OP.1/Respondent No.1, a visiting surgeon from Solapur. It is of the Complainant's case that she became pregnant again after six months and she visited OP.3 on 02.05.2006 who performed abortion. On the same day, OP.1 performed another tubectomy by open method and she was under the observation of OPs.1 & 2 for two days. She developed complications and

### **Deficiency in Service - Medical Negligence**

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was shifted to Jain Hospital of OP.1 in Solapur wherein OP.1 performed another corrective surgery. Since her condition deteriorated, she was shifted to another hospital on 05.05.2006 where she underwent treatment till her condition improved. She claimed that she incurred heavy expenditure and filed a complaint before the District Forum alleging medical negligence by the OPs. District Forum allowed the complaint and directed OPs 1-3 to pay Rs.1,10,000/- to the Complainant, Rs.20,156/- towards medicines, Rs.25,000/- for physical pain, Rs.5,000/- for mental agony and Rs.1,000/- for cost of litigation. OPs filed appeals before the State Commission which allowed both the appeals vide impugned order and dismissed the complaint. Challenging the order of the State Commission, the present Revision Petition has been filed. Revision Petition allowed.

#### **ii) Order appealed against:**

From the order dated 05.11.2008 in F.Appeal No.863 & 965/2007 of the State Consumer Disputes Redressal Commission, Maharashtra, Mumbai.

#### **iii) Parties:**

Mrs. Chitrangini Ramchandra Mujmule - Petitioner

Vs.

Dr. Manoj Jain and others - Respondents

#### **iv) Case No and Date of Judgement:**

Revision Petition No:391 of 2009 & Date of Judgement:20.08.2014.

#### **v) Acts and Sections referred:**

Sections 2(1), (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

#### **vi) Issues raised and decided:**

- a) The Commission observed that the case on hand entails dual issues of negligence, i) failure of first tubectomy operation and ii) intestinal injury which occurred after either abortion or by open tubectomy surgery. It was held that failure of tubectomy was not negligence as was decided by Hon'ble Supreme Court in *State of Haryana v. Santra* (2000) 5 SCC 182. However, it was held that OP.2 or 3, had applied instrumentation which might have caused uterine perforation and subsequent intestinal injury. It was held that OP.2 & 3 who were ayurvedic practitioners had indulged in

allopathic practice and performed 'digital evacuation' which amounted to medical negligence.

- b) It was also held that OP.1 should have thoroughly assessed the patient without relying upon OP.2 & 3, and that he failed to diagnose any perforation of uterus which might have occurred due to intervention of OP.2 & 3. It was further held that it was an act of omission by OP.1.
- c) The Commission observed that medical negligence is an act of commission or omission. In the case of *Poonam Verma v. Ashwin Patel and others*, (1996) 4 SCC 332, the Apex Court had held that negligence, as a tort, is the breach of duty caused by omission to do something which a reasonable man would do or commission, of doing something which a prudent and reasonable man would not do. In the present case, it was held that OP.1 is liable for the act of omission and while OPs.2 & 3 are liable for acts of commission. The extent and nature of damage to the intestines of the patient showed that the principle of *res ipsa loquitur* was applicable in this case.
- d) Consequently, Revision Petition was allowed and the order of the State Commission was set aside. OPs 2 & 3 were directed to pay 80% of the total award decided by the District Forum and OP.1 was directed to pay 20%, within a period of 90 days.

**vii) Citation:**

I (2015) CPJ 51.

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**20. Sau. Kirti Verma and another Vs. Dr. Manoj Rambhau Gawande and another**

**i) Case in Brief:**

Petitioner/Complainant No.1 delivered a male child around 11.20 P.M on 09.08.2005. She noticed fever in the new born child which was treated by the Pediatrician/OP.1. It was alleged by her that the infant was treated with heavy doses of higher antibiotics. The Child was hospitalized but unfortunately died on 12.08.2005. Alleging deficiency in service, Complainants approached the District Forum which allowed the complaint and directed OP.1 to pay compensation of Rs.1,00,000/- and cost of Rs.2,000/- to the Complainant. OP.1 preferred

### **Deficiency in Service - Medical Negligence**

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an appeal against the order and Complainants also preferred an appeal for enhancement of compensation. The State Commission allowed the appeal filed by the OP and dismissed the complaint. Aggrieved by the order of the State Commission, the Complainants have filed the present Revision Petition. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 10.05.2013 in F.Appeal No.A/10/86 of the Maharashtra State Consumer Disputes Redressal Commission, Circuit Bench, Nagpur.

**iii) Parties:**

Sau. Kirti Verma and another - Petitioners

Vs.

Dr. Manoj Rambhau Gawande and another - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No:2985 of 2013 with I.A/7437/2013 &  
Date of Judgement: 22.08.2014.

**v) Acts and Sections referred:**

Sections 2(1), (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission after perusing the medical records on the file and prescriptions came to the conclusion that treatment with higher antibiotics was essential since the baby had severe infection and that OP.1 treated the infant as per the standard of practice. There was no deviation or negligence. The Commission also noted that the expert opinion given by the Committee headed by a Civil Surgeon had clarified that the treatment was proper and the injections were in proper dosage. It was further noted that OP.1 was a qualified pediatrician and had treated the patient with reasonable care and caution. Applying the guidelines given by the Hon'ble Supreme Court in *Jacob Mathews v. State of Punjab*, (2005) 6 SCC 1, the Commission did not find any merit in the Revision Petition and accordingly dismissed it.

**vii) Citation:**

IV (2014) CPJ 406.



**21. Sh. Manik Maliba Tarade Vs. Sushrut Medical Care & Research Societies Hardikar Hospital and others**

**i) Case in Brief:**

Complainant met with a motor cycle accident on 09.04.2004 and sustained fractures. He was admitted in OP.3 hospital and after CT scan and necessary treatment, Dr. Daule suggested major surgery. He was shifted to OP.1 hospital where a steel rod was inserted in both the hands. The fracture remained un-united and the hands remained bent. Thereafter, Dr. Patil from Ahmednagar operated his right hand by removing the rod but his right hand remained bent and he became permanently disabled. Alleging medical negligence and deficiency in service, he filed consumer complaint before the District Forum which dismissed the complaint. His appeal with the State Commission was also dismissed vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 14.02.2014 in F.Appeal No.82 of 2007 of the Maharashtra State Consumer Disputes Redressal Commission, Circuit Bench, Aurangabad.

**iii) Parties:**

Sh. Manik Maliba Tarade

- Petitioner

Vs.

Sushrut Medical Care &

Research Societies Hardikar Hospital and others

- Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No:3010 of 2014 & Date of Judgement: 22.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission after perusing the medical records came to the conclusion that OP.1 treated the Complainant with all care. It was also noted that the Complainant himself did not follow the instructions of OPs.2 & 3 and got removed the steel rod from his right hand by Dr. Patil of Ahmednagar instead of visiting OP.1 for follow up treatment. It was held that it was negligence on the part of the Complainant himself

## **Deficiency in Service - Medical Negligence**

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for sustaining disability. The Commission relied on the judgement of Justice McNair in *Bolam v. Friern Hospital Management Committee*, (1957) 1 WLR 582 and the decision in the case of *Kusum Sharma V. Batra Hospital and Medical Research*, I (2010) CPJ 29 (NC) while arriving at its conclusion. Revision Petition was dismissed as devoid of merit.

### **vii) Citation:**

IV (2014) CPJ 428.

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## **22. Dr. Indira and others Vs. Muchapothula Nirmala**

### **i) Case in Brief:**

Complainant/Respondent got admitted in OP No.3/Petitioner No.3 hospital on 26.8.2008. OP No.1 & 2/Petitioner No.1 & 2 conducted caesarean operation and Complainant gave birth to a male child on the same day. However, soon after the operation, she developed severe pain in her abdomen and alleged that OPs had not taken proper care in conducting the operation. Complainant paid Rs.14,200/- towards hospital charges and medical charges. It was further alleged that due to severe pain in her abdomen due to post operational complications, she was again admitted in the same hospital on 11.9.2008. OP No.1 & 2 referred Complainant to Apurv Scan Centre on 12.09.2008, who opined that fluid had collected in the abdomen. It is alleged that OP No.1 & 2 expressed their inability for treatment and on their advice, Complainant was taken to Sairam Multi Speciality Hospital, Hyderabad on 14.9.2008, where she remained up to 28.09.2008 and incurred expenditure of Rs.2,00,000/-. Alleging deficiency on the part of OPs, Complainant filed complaint before District forum which dismissed the complaint. The appeal filed by the Complainant was allowed by State Commission vide impugned order against which, this Revision Petition has been filed. Revision Petition allowed.

### **ii) Order appealed against:**

From the order dated 19.01.2012 in Appeal No.930/09 of the A.P. State Consumer Disputes Redressal Commission, Hyderabad.

### **iii) Parties:**

Dr. Indira and others - Petitioners/Opp. Parties

Vs.

Muchapothula Nirmala - Respondent/Complainant

**iv) Case No and Date of Judgement:**

Revision Petition No.1732 of 2012 with I.A.655/2014 (Recalling of order) & Date of Judgement : 22.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the records found that Complainant remained hospitalized from 26.8.2008 to 5.9.2008 and at the time of discharge, no complaint of pain was proved by the Complainant. In such circumstances also, petitioner could not be held responsible for any deficiency in service. The Commission found no evidence in support of the contention that OPs 1 & 2 expressed their inability to treat the patient and inferred that Complainant herself decided to go to other hospital and at her request, she was discharged from petitioner's hospital on 14.9.2008.
- b) As far treatment by conservative management is concerned, the Commission found that no treatment by conservative management was taken by Complainant in OP's hospital. Had she taken treatment and not got cured, she could have filed complaint for alleged negligence in treatment, but without taking treatment and getting discharged from the hospital at her own sweet will, no liability could be fastened on petitioners on account of negligence in the treatment.
- c) In view of the above, Revision Petition filed by the petitioner was allowed and impugned order passed by the State Commission was set aside.

**vii) Citation:**

IV (2014) CPJ 104; 2014(3) CPR 791.

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**23. R.P. Unniyal Vs. S.V. Nursing Home & Ors**

**i) Case in Brief:**

The Complainant took his wife, since deceased, to OP.1 hospital on 26.01.2002 where they consulted Dr.Veena Gupta, OP.2 and Dr.S.V.Gupta, O.P.3. After confirming the pregnancy of 8 weeks by due

## **Deficiency in Service - Medical Negligence**

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tests, termination of said pregnancy was performed on Complainant's wife by Dilatation and Curettage (D & C) method on the same day. The patient was kept in the hospital for one more day. Meanwhile, the patient suffered from severe pain and bleeding. On 27.01.2002, OP-2 performed D & C again to ensure that termination had been done successfully. Despite the second D&C, patient's condition further deteriorated and showed signs of excessive bleeding and discharge. It is alleged that OP-1 & 2 forcibly discharged her on the same day on the pretext that there were no complications and symptoms will go away after few days of rest. However, on 29.01.2002, the condition of the patient became serious, she was unable to eat and had pain in abdomen. Bleeding had increased and was unbearable. Hence, the Complainant took her immediately to the OP-1 Nursing Home. OP-3 got an ultrasound test (USG) done at Gupta Diagnostic Centre, Faridabad. According to the Complainant, he was not given the USG report but was informed by OP-2 & 3 about a minor complication and advised to get treatment at Escort Hospital, Faridabad. OP-2 & 3 did not disclose the extent and nature of complication. The Complainant took the patient to Apollo Hospital, OP-4 where the patient was attended by team of doctors, OP-5 to 8, who performed a lengthy operation, but the patient did not recover and died on 13.2.2002. The Complainant filed this Complaint against OP 1-8 alleging deficiency and negligence in medical services to his wife who was around 34 years of age and a school teacher earning Rs.2,600/- and also earning Rs.4,800/- per month by way of private tuitions. Complaint allowed.

### **ii) Order appealed against:**

Original Complaint

### **iii) Parties:**

R.P. Unniyal

- Complainant

Vs.

S.V. Nursing Home & Ors

- Opp. Party

### **iv) Case No and Date of Judgement:**

Consumer Case No.422 of 2002 & Date of Judgement: 25.08.2014.

### **v) Acts and Sections referred:**

Sections 2(1) (g) & (o) and 21(a)(i) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the records found that OP-2 and 3 on pretext of one and another tried desperately to shift their onus of negligence on the unqualified *dai* or on the Apollo Hospital and the doctors there (OP 4 to 8). There was no evidence on record to prove that the *dai* performed the MTP prior to 26.01.2002 i.e. before admission at S. V. Nursing Home. It was held that OP-2 and 3 failed to explain why the patient was kept in the hospital from 26.01.2002, till 28.01.2002 evening.
- b) Furthermore, the National Commission was of the view that the hospital (OP-1) though an authorized centre for MTP did not have records to substantiate whether OP-2 and 3 were qualified to do the MTP (Medical Termination of Pregnancy), as the OP-2 is an Orthopedic Surgeon (MS) while OP-3 is Pathologist (MD, Pathology). It was also not clear who performed the MTP whether OP-2 or OP-3?
- c) The Commission held that the Principle of **“Eggshell Skull Doctrine”** is applicable in this case, wherein liability exists for damages stemming from aggravation of prior injuries or conditions. The “eggshell skull rule” is a legal doctrine used in both tort law and criminal law that holds an individual liable for all consequences resulting from their activities leading to an injury even if the victim suffers unusual damages due to a pre-existing vulnerability or medical condition. Doctrine that makes a defendant liable for the plaintiff’s unforeseeable and uncommon reactions to the defendant’s negligent or intentional tort. Therefore, on the basis of evidence, medical documents, the chronology of the events and considering the circumstantial evidence, the National Commission arrived at a decision, that OP-2 and 3 were responsible for the medical negligence and they didn’t find any negligence on the part of OP-5 to 8. The Commission relied on the decision of the Hon’ble SC in *Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Babu Godbole and Anr.* (1969)1 SCR 206 wherein the Supreme Court observed that “a person who holds himself out ready to give medical advice and treatment impliedly holds forth that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient, owes certain duties, namely, a duty of care in deciding

### **Deficiency in Service - Medical Negligence**

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whether to undertake the case, a duty of care in deciding what treatment to give, and a duty of care in the administration of that treatment. A breach of any of these duties will support an action for negligence by the patient”.

- d) Consequently, the National Commission allowed the complaint and ordered the OP 2 and 3 to pay compensation of Rs.10,00,000/- with interest @ 6% pa from the date of filing of complaint within 90 days, failing which it will attract interest @ 9% pa till its realization.

#### **vii) Citation:**

IV (2014) CPJ 435.

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### **24. Narayanankutty Menon Vs. M/s. Lal Memorial Hospital and another**

#### **i) Case in Brief:**

The Complainant underwent a cataract surgery at OP.1/Respondent No.1 Hospital. The surgery was performed by Dr.C.K. Ravi, OP.2/ Respondent No.2 who inserted Intra Ocular Lens (IOL) in the right eye. During the follow up, the microscope fell down and the index finger of OP.2 was thrust in the right eye of the Complainant. The sutures were damaged and the lens was expelled out. The Patient had excruciating pain. OP.2 conducted another surgery for correction and discharged him from the hospital. It is the Complainant's case that he had to take further treatment from some of the reputed eye hospitals in the area. Alleging negligence and claiming 45% disability, he filed a complaint before the District Forum which partly allowed the complaint and ordered OPs to pay a sum of Rs.45,000/- towards special damages and Rs.1,25,000/- towards general damages and mental agony. The appeal filed by the OPs was partly allowed by the State Commission which reduced the sum payable to the Petitioner to Rs.25,000/-. Aggrieved by the said order, the present Revision Petition has been filed. Revision Petition dismissed.

#### **ii) Order appealed against:**

From the order dated 03.09.2008 in F.Appeal No.578 of 2000 of the State Consumer Disputes Redressal Commission, Kerala.

**iii) Parties:**

Narayanankutty Menon - Petitioner

Vs.

M/s. Lal Memorial Hospital and another - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No:145 of 2009 & Date of Judgement: 01.09.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission noted that both the senior eye surgeon of Aravind Eye hospital, Madurai and the Consultant of Little Flower Hospital, Angamaly did not support the claim of the Petitioner. After examining the case sheet of OP.1 hospital on 24.10.1996, the Commission held that OP took proper decision and treated the patient and did not neglect the patient. Holding that an accident or an error of judgement should not be treated as medical negligence, the Commission relied on the decisions of the Hon'ble Supreme Court in *Jacob Mathew v. State of Punjab and another*, (2005) 6 SCC 1, AIR (2005) SC 3180 & *State of Punjab v. Shiv Ram*, AIR (2005) SC 3280, in which the Hon'ble Supreme Court had differentiated the issue of medical negligence. Accordingly, the Revision Petition was dismissed and the order of the State Commission was upheld.

**vii) Citation:**

Not reported in CPJ and CPR.

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**25. Ram Chandra Rai Vs. Dr. Md.Zaheer**

**i) Case in Brief:**

Complainant took his son to OP for pain in the stomach on 24.04.2000. OP operated on the patient on the same day. According to the Complainant, post-operative pain did not subside despite the medicines. On 10.05.2000, Complainant again took his son to OP who prescribed a few medicines. Since the patient did not get any relief, Complainant took his son to Dr.Asutosh Saran on 11.05.2000 who performed another operation upon the patient and discharged him on 02.06.2000 after

### **Deficiency in Service - Medical Negligence**

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total cure. Alleging negligence and deficiency in service on the part of OP, Complainant filed complaint before District Forum which allowed the complaint and directed OP to pay a compensation of Rs.50,000/- and Rs.500/- towards cost of litigation. OP's appeal before the State Commission was allowed vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 11.01.2008 in Appeal No.327 of 2001 of the State Consumer Disputes Redressal Commission, Patna.

**iii) Parties:**

Ram Chandra Rai

- Petitioner

Vs.

Dr. Md. Zaheer

- Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No: 2526 of 2008 & Date of Judgement: 02.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission noted that Dr.Asutosh was not summoned before the District Forum. The operation performed by Dr.Asutosh Saran was not due to result of either wrong diagnosis or negligence in the previous operation performed by OP. The prescriptions of Dr.Asutosh did not mention about any negligence. After going through the medical texts on the subject, the Commission held that OP had properly diagnosed the case and had performed the operation like a reasonable competent doctor. It was also held that he was a qualified surgeon and his services were as per standard of practice.
- b) Relying on the judgement of the Hon'ble Supreme Court in *A H Khodwa v. State of Maharashtra* (1996) 2 SCC 634, the Commission held that skills differ from doctor to doctor and negligence cannot be attributed to a doctor as long as he is performing his duties to the best of his abilities with due care and caution. The Revision Petition was accordingly dismissed.

**vii) Citation:**

IV (2014) CPJ 549.



**26. Kadar Khan Vs. Dr.G.L. Gupta**

**i) Case in Brief:**

The Complainant took his 2½ months old son, Amjad, to OP/Respondent on 28.07.2004 for treatment. OP declared that Amjad was suffering from pneumonia and gave injection and medicines for four days upto 31.07.2004. On 31.07.2004, Complainant took his second son, Faizan to OP for cold and cough for which OP gave injections and prescribed the medicine – Phenergan. According to the Complainant, OP stated that there was no need to take the child to the children's specialist. Complainant claims to have given the medicines as per OP's advice but unfortunately both the children became unconscious and died on 31.07.2004. Alleging medical negligence, Complainant filed complaint before the District Forum which allowed the complaint and ordered OP to pay the compensation of Rs.1,00,000/- along with Rs.10,000/- towards mental agony and Rs.500/- as cost. Appeal filed by the OP was allowed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 30.07.2007 in Appeal No.900 of 2005 of the M.P State Consumer Disputes Redressal Commission, Bhopal.

**iii) Parties:**

Kadar Khan - Petitioner

Vs.

Dr.G.L. Gupta - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.3615 of 2007 & Date of Judgement: 02.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) It was the contention of the Complainant that OP prescribed an overdose i.e six tea spoonful of the medicine phnergan which resulted in the death of his son. The Commission on seeing the prescription noted that OP had advised only half tsf every six

### **Deficiency in Service - Medical Negligence**

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hours and therefore no over dosage was prescribed. It was further noted that OP had advised to take the children to the specialists at Dhar.

- b) The Commission noted that OP was a qualified doctor who had been practicing for more than 50 years. He had made the diagnosis of pneumonia on the basis of the history, medical examination with routine X-ray and blood test reports. The Commission held that OP used his clinical acumen and reasonableness in diagnosis and treatment of both the children.
- c) Relying on the judgement of the Hon'ble Supreme Court in Jacob Mathew's case, the Commission held that OP was not negligent. The Revision Petition was accordingly dismissed and the order of the State Commission was confirmed.

#### **vii) Citation:**

IV (2014) CPJ 150.

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### **27. Parivar Seva Sanstha and another Vs. Anil Kumar Shukla and another**

#### **i) Case in Brief:**

There are two Revision Petitions and the facts are taken from R.P.No.1100 of 2008. The Complainant, Anil Kumar Shukla consulted Dr.Anita Agarwal (OP.2) at her clinic on 18.10.2004 for medical termination of 16-18 weeks pregnancy (MTP) of his wife Smt. Dolly. Laminera Tent was inserted by OP.2 on 18.10.2004 and MTP was done on 19.10.2004 between 11.40 and 11.50 a.m. Since bleeding continued, OP.2 referred patient at 12.40 A.M to Dubey Orthopedic and Maternity Centre where Dr.Meena Dubey (OP.3) after Ultra Sound Study (USG) took out the retained products of conception by D & C. Since the patient's condition deteriorated, she was shifted to J.R.Medical College at 6.40 P.M where she died at 7.05 P.M. Alleging negligence and deficiency, Complainant filed complaint before District Forum which allowed the complaint and ordered the OPs to pay total compensation of Rs.3,20,000/- and Rs.1,000/- as cost. 80% of the amount was to be paid by OPs 1 & 2 and 20% by OP.3. First Appeals were filed before the State Commission by the OPs which were dismissed vide impugned orders against which R.P. No.1100 of 2008 has been filed by OPs 1 &

2 and R.P.1447 of 2008 has been filed by OP.3. Both the Revision Petitions dismissed.

**ii) Order appealed against:**

Revision Petition No.1100 of 2008

From the order dated 18.01.2008 in F.Appeal No.316 of 2007 of Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

Revision Petition No.1447 of 2008

From the order dated 18.01.2008 in F.Appeal No.2658 of 2006 of Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

**iii) Parties:**

Revision Petition No.1100 of 2008

Parivar Seva Sanstha and another - Petitioners

Vs.

Anil Kumar Shukla and another - Respondents

Revision Petition No.1447 of 2008

Dr. Smt. Meena Dubey - Petitioner

Vs.

Anil Kumar Shukla and others - Respondents

**iv) Case No and Date of Judgement:**

a) Revision Petition No.1100 of 2008

b) Revision Petition No.1447 of 2008 &

Date of Judgement: 02.09.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

a) The Commission on perusal of medical records found that the patient was a high risk multiparous woman, with history of previous LSCS and abortion. The OP.2, prior to insertion of Laminera Tent, had not carried out USG study or basic investigations which was an act of omission by OP.2. After removal of Laminera Tent, she ventured for evacuation by D&C method which was not advisable. She performed incomplete

### **Deficiency in Service - Medical Negligence**

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evacuation as proved by clinical finding of OP.3 and USG study done at OP.3.

- b) The Commission also found some element of negligence on the part of OP.3 who did not advise laboratory investigations to diagnose the cause of bleeding at the time the patient was admitted.
- c) Defining negligence as i) not doing something which a reasonable person would do; ii) doing something which a reasonable person would not do and based on the touchstone of the Bolam's test and the well settled principles relating to medical negligence in a catena of decisions of the Hon'ble Supreme Court including in *Jacob Mathew v. State of Punjab and another*, (2005) 6 SCC 1, *Indian Medical Association v. V.P.Shantha and others* (1995) 6 SCC 651 and *Kusum Sharma and others v. Batra Hospital and Medical Research Centre and others*, (2010) 3 SCC 480, the Commission dismissed the Revision Petitions and confirmed the orders of the fora below.

#### **vii) Citation:**

IV (2014) CPJ 184.

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### **28. Smt. Sarita Vs. Union of India and others**

#### **i) Case in Brief:**

It is the case of the Complainant that her son, Aditya Vikram fell sick on 26.03.1998. She took him to the Hospital of OP.5, Dr. Manisha Bishwas for treatment. OP.5, advised for a C.T. scan of head which was taken on the same day. On 28.03.1998, the patient's condition deteriorated and despite repeated pleas by the Complainant, OP.5 refused to refer the patient to a better medical institute and continued her treatment with 'Albendazole.' Since Master Aditya became critically ill, OP.5 finally referred the case to Command Hospital on 05.04.1998 along with one attendant. However, unfortunately the boy died on 06.04.1998 when he was being taken to Lucknow. Alleging gross negligence and deficiency on the part of OP.5 and OP.4, Dr. Arun Dutta and Air Force Hospital, Gorakhpur, UP (OP.3), this original petition has been filed. Petition dismissed.

#### **ii) Order appealed against:**

Original Complaint

**iii) Parties:**

Smt. Sarita - Complainant  
Vs.  
Union of India and others - Contesting OPs  
Sgt. Ashwani Kumar - Proforma OP

**iv) Case No and Date of Judgement:**

Original Complaint No:36 of 2000 & Date of Judgement: 04.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

It was the Complainant's case that OP.5 was negligent in not referring the patient in time to the neurosurgeon due to which, neurological signs had developed in the patient and that she unnecessarily treated the patient with Albendazole, for long duration which was contraindicated. After perusing the medical literature on management of child epilepsy, childhood tuberculosis and relevant books on Pediatrics, the Commission came to the conclusion that there was no medical negligence, it was held that OP.5, a qualified pediatrician, had treated the patient as per standard of practice and reasonableness and there was no administration of excess dose of Albendazole. She had carried out relevant investigations at proper time and there was no deviation from normal practice. Since there was no medical negligence on the part of any of the OPs, the complaint was dismissed.

**vii) Citation:**

IV (2014) CPJ 308.

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**29. J. D. Bagree Hospital and another Vs. Smt. Vandana Goyal**

**i) Case in Brief:**

Complainant was admitted in OP hospital on 18.01.2006 for treatment of stomach pain, regular stoppage in urine excretion and constipation. It was the case of the Complainant that during surgery done on 20.01.2006 at the OP Hospital, OP-2 Doctor had negligently applied 'cut' at the right pipe of urination, which resulted into her worsening

### **Deficiency in Service - Medical Negligence**

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condition. She was discharged on 26.01.2006 but had to be re-admitted into the OP Hospital on 28.01.2006. Still the doctors at the OP hospital were not able to make proper diagnosis of her condition. She had suffered a lot due to the said medical negligence performed by the OPs. She was later admitted in Bhailal Amin General Hospital, Vadodara. Therefore, she filed a complaint seeking a compensation of Rs.29,10,123/- from the OPs including the cost of treatment. The State Commission partly allowed the complaint and ordered that a sum of Rs.5 Lakh should be paid to the Complainant along with Rs.5,000/- as cost of litigation. Aggrieved by the said order, First Appeal No.58 of 2009 has been filed by the OP seeking dismissal of consumer complaint, whereas F.A.No.106 of 2009 has been filed by the Complainant seeking enhancement of compensation. Both the appeals were dismissed.

#### **ii) Order appealed against:**

From the order dated 12.01.2009 in CC No.11/2007 of Rajasthan State Consumer Disputes Redressal Commission.

#### **iii) Parties:**

##### FIRST APPEAL NO.58 OF 2009

J. D. Bagree Hospital and another - Appellants

Vs.

Smt. Vandana Goyal - Respondent

##### FIRST APPEAL NO.106 OF 2009

Smt. Vandana Goyal - Appellant

Vs.

J. D. Bagree Hospital and another - Respondents

#### **iv) Case No and Date of Judgement:**

i. First Appeal No.58 of 2009 with I.A.No.4433 of 2014 (For Amendment)

ii. First Appeal No.106 of 2009;

Date of Judgement : 05.09.2014.

#### **v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) Two main issues were involved in the present case – the first one related to obtaining consent from the Patient before surgery was conducted for removal of uterus etc by the OP. The second issue related to the right ureteric injury suffered by the Patient, at the time of surgery allegedly performed by the OP, Dr.M.M.Bagree whereas the version of the OPs was that the said injury took place during the procedures carried out at the second hospital, Bhailal Amin General Hospital, Vadodara.
- b) Regarding the first issue, the National Commission on perusal of the records found that there was a printed agreement letter in Hindi language which was signed by the patient and her husband. The patient had signed after reading the contents of the said agreement. One line had also been added in hand saying that the uterus could be removed if the necessity arose and the patient was agreeable to that. Further, affidavits were filed by OP/Doctor and the duty nurse stating that the consent was taken from the patient before conducting surgery. There was no evidence on record to hold that the hand-written line relating to the removal of uterus had been added later on. In the light of the above, the National Commission held that in the absence of such an evidence, no adverse inference could be drawn against the OPs.
- c) Regarding the second issue, the National Commission on perusal of the facts and circumstances of the case found that the right ureteric tear took place at the OP hospital during the procedure performed upon her at that hospital. Further, when the patient was readmitted to the OP hospital on 28.01.2006, the OPs were not able to make proper diagnosis about her condition. During hearing, the OP doctor could not explain the reasons as to why the Intravenous Pyelography (IVP) was not performed upon her, when she was admitted to their hospital second time. Had they done the IVP, the problem could have been detected in the OP hospital itself and proper treatment could have been administered to her. OPs were therefore held negligent in causing injury to the patient during the course of surgery and for their failure to diagnose the problem when she was admitted with them second time. Reliance was placed on the principles laid down in *Jacob Mathew v. State of Punjab* (2005) 6 SCC.

**Deficiency in Service - Medical Negligence**

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d) The National Commission declined to increase the amount of compensation as the State Commission had already awarded a reasonable amount of compensation to the patient. Consequently, both the appeals were dismissed and the order of the State Commission was confirmed.

**vii) Citation:**

IV (2014) CPJ 246; 2014(4) CPR 262.

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**30. Shiv Dial Singh Vs. Shree Sanatam Dharam Mahavir Dal Hospital & Ors.**

**i) Case in Brief:**

Complainant visited OP.1 Hospital for treatment of a minor injury in his left eye which he sustained while he was working in the workshop in April, 1997. He was advised operation which was fixed for 18.10.1997 to be conducted by OP.2/Respondent No.2. Since OP.2 was out of station on that day, it was performed by OP.3/Respondent No.3. It was the Complainant's case that OP.3 gave an injection on the left side of the head due to which his ear got damaged and he was unable to hear. Even after treatment by OP.2, there was no improvement in his condition. The other specialists whom he consulted opined that it was too late to cure his left eye. Alleging negligence on the part of OPs, he filed complaint before the District Forum which dismissed the complaint. The State Commission on appeal demanded the matter back to the District Forum which allowed the complaint and ordered the OPs to pay Rs.1,00,000/- along with Rs.2,000/-. Cross appeals were filed by the two parties. The appeal for enhancement of compensation filed by the Complainant was dismissed and appeal filed by the OP was allowed. Aggrieved by the impugned order of the State Commission, the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 30.05.2012 in Appeal No.439 of 2007 of the State Consumer Disputes Redressal Commission, Punjab, Chandigarh.

**iii) Parties:**

Shiv Dial Singh

- Petitioner

Vs.

Shree Sanatam Dharam Mahavir Dal Hospital & Ors. - Respondents



**iv) Case No and Date of Judgement:**

Revision Petition No:2743 of 2012 & Date of Judgement: 11.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission noted that the Patient had injury in the month of April, 1997, but he approached the doctor after four months i.e in July, 1997. It was held that the delay could have resulted in the foreign body lodging elsewhere and causing development of traumatic cataract. It was negligence on the part of the Complainant himself for which the OPs could not be made liable. The Commission further held that the evidence of PGI, the higher centre and other two doctors did not support the contention that there was negligence by the OPs. The order of the State Commission was therefore confirmed and the Revision Petition dismissed.

**vii) Citation:**

IV (2014) CPJ 358.

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**31. Rakesh Vs. Deep Hospital and others**

**i) Case in Brief:**

Complainant who was suffering from inflamed appendix was operated upon by Respondent No.2 on 14.01.1999 at Respondent No.1 hospital. Since the stomach ache persisted, Complainant visited Batra Hospital and Medical Research Centre on 03.02.1999 where he underwent another surgery and treatment till 28.02.1999. Alleging negligence on the part of the Respondents No.1 & 2, he filed consumer complaint in the District Forum. Respondent No.3, the insurance company, was also impleaded. District Forum allowed the complaint and directed Respondents No.1&2 to pay compensation of Rs.1,50,000/- with 10% interest from the date of the order besides Rs.1,000/- towards litigation expenses. Respondents preferred an appeal before the State Commission which vide impugned order set aside the order of the District Forum and dismissed the complaint. Aggrieved by the said order, the present Revision Petition has been filed. Revision Petition dismissed.

**Deficiency in Service - Medical Negligence**

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**ii) Order appealed against:**

From the order dated 10.09.2009 in F.A.No.295 of 2003 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

**iii) Parties:**

Rakesh - Petitioner

Vs.

Deep Hospital and others - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No: 279 of 2010 & Date of Judgement: 11.09.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

Relying on the statement of Dr.Vijay Hangloo, General Surgeon, Batra Hospital who conducted the second surgery and based on the recorded notes and treatment record, it was held that the Respondent was not guilty of medical negligence. While coming to the conclusion, the judgements of the Hon'ble Supreme Court in *Martin F D'Souza v. Mohd. Ishfaq I* (2009) CPJ 32 (SC), *Jacob Mathew v. State of Punjab* (2005) 6 SCC 1 as also *State of Punjab v. Shiv Ram and others* (2005) 7 SCC 1 were also relied upon and the order of the State Commission was upheld. Revision Petition was accordingly dismissed.

**vii) Citation:**

IV (2014) CPJ 265; 2014(4) CPR 71.

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**32. Shri Mansing Ramu Khade Vs. Dr.Ramesh Rajaram Bhoite**

**i) Case in Brief:**

Complainant/Petitioner met with an accident on 19.10.2002. It is his case that after the accident the traffic police gave a blow on right side of his ear on account of which there was bleeding from his ear. He was admitted in the Hospital of OP/Respondent. He claimed that though he had no problem at his neck, he was operated and OP charged Rs.63,986.96 for treatment. Alleging deficiency, he filed complaint before the District Forum which dismissed the complaint. Appeal filed

by him before the State Commission was also dismissed against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 20.01.2009 in Appeal No.1688/2006 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai.

**iii) Parties:**

Shri Mansing Ramu Khade - Petitioner/Complainant

Vs.

Dr.Ramesh Rajaram Bhoite - Respondent/OP

**iv) Case No and Date of Judgement:**

Revision Petition No.4059 of 2009 & Date of Judgement: 15.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission held after perusal of records that the Local Health Centre looking at the critical condition of the Complainant referred him to the District hospital. But in view of the distance the Complainant was admitted in OP hospital. The Commission held that the Complainant was treated properly.
- b) The Commission also noted that consent for the operation had been given by the brother-in-law of the Complainant since the latter was unconscious at the time of admission. It was held that the concerned hospital was not required to know whether the Complainant's wife and son were available or not. Merely because consent had not been obtained from wife or son of the Complainant, no negligence on the part of OP can be imputed in operating after taking consent of the brother-in-law. The Revision Petition was accordingly dismissed at the admission stage.

**vii) Citation:**

IV (2014) CPJ 385; 2014(4) CPR 43.

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**(ag) PENSION SCHEME**

**1. Regional Provident Fund Commissioner Vs. Shri Mohammad Khasim**

**i) Case in Brief:**

Respondents/Complainants who were members of the Employees Family Pension Scheme 1971 opted for the Employees Pension Scheme, 1995 after it was introduced. On their exercising the said option, the contributions which they had made under the Employees Family Pension Scheme 1971 were transferred to the 1995 Scheme. The Complainants thereafter continued to make contributions to the Employees Pension Fund under the 1995 Scheme, till the date they superannuated. The Complainants, on their retirement from service were not given weightage of two years in terms of Sub-Para (2) of the Employees Pension Scheme, 1995 for the purpose of calculating the pensionable service. Being aggrieved from the failure of the Petitioner/OP to give the aforesaid weightage and consequently fixing lesser pension, the Complainants filed complaints before the District Forum which directed the Petitioner to refix their pension as per Para 12(3) read with Para 10 (2) of the Employees Pension Scheme 1995 by giving weightage of two years to each of the Complainants and pay the pension accordingly from the date as applicable to each case. It was further directed that the arrears will carry interest at the rate of 6% p.a. from the date of the order till the payment was made. The petitioner was also directed to pay Rs.1,000/- each as cost of proceedings to each of the Complainants. Aggrieved from the order of the District Forum, the Petitioner approached the State Commission by way of separate appeals. The appeals having been dismissed, the Petitioner has filed these Revision Petitions. Revision Petitions dismissed.

**ii) Order appealed against:**

Revision Petition No.2864 of 2014

From the order dated 17.12.2013 in FA No.1430 of 2013 of Karnataka State Consumer Disputes Redressal Commission at Bangalore.

Revision Petition No.2865 of 2014

From the order dated 17.12.2013 in FA No.1431 of 2013 of Karnataka State Consumer Disputes Redressal Commission at Bangalore.

**Compendium of National Commission Judgements – 2014 – Vol.II**

---

Revision Petition No.2866 of 2014

From the order dated 17.12.2013 in FA No.1432 of 2013 of Karnataka State Consumer Disputes Redressal Commission at Bangalore.

Revision Petition No.2867 of 2014

From the order dated 17.12.2013 in FA No.1433 of 2013 of Karnataka State Consumer Disputes Redressal Commission at Bangalore.

Revision Petition No.2868 of 2014

From the order dated 17.12.2013 in FA No.1434 of 2013 of Karnataka State Consumer Disputes Redressal Commission at Bangalore.

Revision Petition No.2869 of 2014

From the order dated 17.12.2013 in FA No.1435 of 2013 of Karnataka State Consumer Disputes Redressal Commission at Bangalore.

**iii) Parties:**

Revision Petition No.2864 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

Shri Mohammad Khasim - Respondent

Revision Petition No.2865 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

Shri D. Daniel - Respondent

Revision Petition No.2866 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

Shri M. Muralidhar Rao - Respondent

Revision Petition No.2867 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

Smt. R. Subhadra - Respondent

**Deficiency in Service - Pension Scheme**

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Revision Petition No.2868 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

Shri Bheemalingappa - Respondent

Revision Petition No.2869 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

Shri R. Subbaiah - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.2864 of 2014 with I.A.No.4724 of 2014 & I.A.No.4725 of 2015 (For Stay and Condonation of Delay);

Revision Petition No.2865 of 2014 with I.A.No.4726 of 2014 & I.A.No.4727 of 2015 (For Stay and Condonation of Delay);

Revision Petition No.2866 of 2014 with I.A.No.4728 of 2014 & I.A.No.4729 of 2015 (For Stay and Condonation of Delay);

Revision Petition No.2867 of 2014 with I.A.No.4730 of 2014 & I.A.No.4731 of 2015 (For Stay and Condonation of Delay);

Revision Petition No.2868 of 2014 with I.A.No.4732 of 2014 & I.A.No.4733 of 2015 (For Stay and Condonation of Delay);

Revision Petition No.2869 of 2014 with I.A.No.4734 of 2014 & I.A.No.4735 of 2015 (For Stay and Condonation of Delay) &

Date of Judgement: 28.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986 & Para 10 of the Employees Pension Scheme, 1995.

**vi) Issues raised and decided:**

- a) The issue was whether the contributions made by them under the 1971 Scheme can be said to be contributions received or receivable on their behalf in the Employees' Pension Fund or not.
- b) The National Commission pointed out that Sub Para (2) of Para 10 of the 1995 Scheme applies to every member who had rendered 20 years or more of pensionable service. Sub Para (1) of Para 10

leaves no doubt that the pensionable service is to be determined with reference to the contributions received or receivable on behalf of the concerned employee in the 'Employees Pension Fund'. Therefore, the answer to the question as to whether the services rendered by the Complainants, before they were enrolled as the members of the 1995 Scheme would be counted for the purpose of determining their pensionable service or not would depend upon whether they had made contributions to Employees Pension Fund, for 20 years or more, before their superannuation or not. Therefore, considering the provisions of the scheme, the Commission held that it was evident that the contributions which the Complainants had made under the 1971 Scheme will have to be taken into consideration for the purpose of determining their pensionable service in terms of Para 10 of the scheme. As a necessary corollary they would also be entitled to the weightage of two years, in terms of Sub Para (2) of Para 10, provided they had either put in 20 years of service or they had turned 58 years of age at the relevant time.

- c) In view of the above, the present Revision Petition was dismissed and the orders of the fora below directing the Petitioner to give weightage of two years to the Complainants, while determining their pensionable service in terms of the Para 10 of the 1995 Scheme were confirmed.

**vii) Citation:**

Not reported in CPJ and CPR.

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**2. Sh. Ramanayak Tiwari Vs. Regional Provident Fund Commissioner (North) and another**

**i) Case in Brief:**

Complainant/Petitioner was an employee of Videsh Sanchar Nigam Ltd (VSNL). It is his case that he was entitled to Pension on 15.07.2007 on attaining the age of 58 years but was released pension by OP/ Respondent from 09.09.2009. Alleging deficiency on the part of OP, he filed complaint before the District Forum which allowed the Complaint and directed OP to pay Rs.25,000/- as compensation and Rs.5,000/- as cost of litigation to the Complainant. Appeal filed by the OP was partly

**Deficiency in Service - Pension Scheme**

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allowed by the State Commission setting aside the compensation amount of Rs.25,000/- vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 07.08.2013 in F.Appeal No.12/2010 of the State Consumer Disputes Redressal Commission, New Delhi.

**iii) Parties:**

Sh. Ramanayak Tiwari - Petitioner/Complainant

Vs.

Regional Provident Fund  
Commissioner (North) and another - Respondent/OPs

**iv) Case No and Date of Judgement:**

Revision Petition No:3184 of 2013 & Date of Judgement: 20.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986 & Section 17(A) of Employees Pension Scheme, 1995.

**vi) Issues raised and decided:**

The Commission noted that Section 17(A) of the Employees Pension Scheme, 1995 provides for grant of 12 % p.a interest in case of delay of more than 30 days in release of pension. It was held that when interest was allowed as per provisions of the Act, compensation was not required to be granted and that the State Commission was right in setting aside compensation of Rs.25,000/- awarded by the District Forum. The Commission also noted that interest was to be paid only for the delayed period of 5 months and 14 days but interest has been allowed for more than this period and given to the Petitioner and in such circumstances is not entitled to any compensation. Accordingly, the Revision Petition was dismissed.

**vii) Citation:**

IV (2014) CPJ 170; 2014(3) CPR 823.

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**3. Regional Provident Fund Commissioner Vs. H.C. Shiva Rudrappa**

**i) Case in Brief:**

Respondents in the Revision Petitions who were the retired employees of Bharat Earth Movers Ltd. (BEML) were enrolled as members of Employees Provident Fund Scheme, 1952. In the year 1971, the Government of India formulated Employees' Pension Scheme (EPS), 1971. The respondents joined the Family Pension scheme and contributed to the employees' pension fund as contemplated under para-9 of the above scheme since 1987. The Government of India again formulated Employees' Pension Scheme (EPS), 1995 on 16.11.1995 under Section 5-A of the above-said Act and the contribution made by the respondents/Complainants towards the earlier pension scheme was transferred to the EPS, 1995 since the date of its inception. It is the case of the Complainants that they retired on superannuation on attaining the age of 58 years after completing more than 20 years of the eligible service as determined under Section 9 (b) of the EPS, 1995. Therefore, in view of para 10 (2) of the EPS, 1995, they were entitled to added weightage of two years over and above the pensionable service rendered for computation of the pension. The petitioner, however, while computing and fixing the pension of the respective Complainants did not give benefit of two years in terms of the Scheme of 1995. Claiming this to be deficiency in service, complaints were filed before the District Forum which partly allowed the complaint and directed the OP to refix the pension of all the Complainants as per para 12(4) R/w para 10(2) of the EPS, 1995 by adding additional weightage of two years and to pay the pension accordingly from the respective dates of their retirement. The difference amount due to the Complainants was ordered to be paid along with costs of Rs.1,000/- to each of the Complainants within a period of two months from the date of order. Being aggrieved of the order of the District Forum, the petitioner preferred an appeal which was dismissed by the State Commission vide the impugned order against which these Revision Petitions have been filed. Revision Petitions dismissed.

**ii) Order appealed against:**

Revision Petition No.662 Of 2014

From the order dated 08.07.2013 in Appeal No.836/2013 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore.

**Deficiency in Service - Pension Scheme**

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Revision Petition No.663 Of 2014

From the order dated 08.07.2013 in Appeal No.842/2013 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore.

Revision Petition No.664 Of 2014

From the order dated 08.07.2013 in Appeal No.884/2013 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore.

Revision Petition No.665 Of 2014

From the order dated 08.07.2013 in Appeal No.852/2013 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore.

Revision Petition No.666 Of 2014

From the order dated 08.07.2013 in Appeal No.863/2013 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore.

Revision Petition No.667 Of 2014

From the order dated 08.07.2013 in Appeal No.864/2013 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore.

Revision Petition No.668 Of 2014

From the order dated 08.07.2013 in Appeal No.865/2013 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore

Revision Petition No.669 Of 2014

From the order dated 08.07.2013 in Appeal No.878/2013 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore.

**iii) Parties:**

Revision Petition No.662 Of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

H.C. Shiva Rudrappa - Respondent

Revision Petition No.663 Of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

V. Nagarajulu Naidu - Respondent

**Compendium of National Commission Judgements – 2014 – Vol.II**

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Revision Petition No.664 Of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

M. Gopalu - Respondent

Revision Petition No.665 Of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

Janardhana - Respondent

Revision Petition No.666 Of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

M.S. Shama Rao - Respondent

Revision Petition No.667 Of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

M.V. Sathyanarayana Rao - Respondent

Revision Petition No.668 Of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

C.S. Bopaiah - Respondent

Revision Petition No.669 Of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

S.V. Gandhi - Respondent

**iv) Case No and Date of Judgement:**

- a) Revision Petition No.662 Of 2014 with Interim Application No.288 of 2014 (For exemption from filing certified copy);
- b) Revision Petition No.663 Of 2014 with Interim Application No.290 of 2014 (For exemption from filing certified copy);

### **Deficiency in Service - Pension Scheme**

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- c) Revision Petition No.664 Of 2014 with Interim Application No.292 of 2014 (For exemption from filing certified copy);
- d) Revision Petition No.665 Of 2014 with Interim Application No.294 of 2014 (For exemption from filing certified copy);
- e) Revision Petition No.666 Of 2014 with Interim Application No.296 of 2014(For exemption from filing certified copy);
- f) Revision Petition No.667 Of 2014 with Interim application no.298 of 2014 (For exemption from filing certified copy);
- g) Revision Petition No.668 Of 2014 with Interim Application no.300 of 2014 (For exemption from filing certified copy);
- h) Revision Petition No.669 Of 2014 with Interim application no.302 of 2014 (For exemption from filing certified copy) &

Date of Judgement: 28.08.2014.

#### **v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986 & Part – 3, Para-12 of the Employees' Pension Scheme, 1995.

#### **vi) Issues raised and decided:**

- a) In this case the issue involved was whether the petitioners are entitled to added advantage of two years over and above the pensionable service rendered by them for the purpose of computing the pension. In order to answer to this question, it was to be checked whether or not the past service rendered by the Complainants before coming into force of Employees' Pension Scheme, 1995 can be termed as pensionable service?
- b) The National Commission on perusal of records found out that on perusal of the Part-3 (iv) of 1995 Scheme, the assets of Family Pension Scheme, 1971 stood vested and transferred to the Employees' Pension Fund, 1995. Undisputedly, the Complainants had contributed to the Employees' Pension Fund created under 1971 Scheme. Since the aforesaid amount got transferred to the Employees' Pension Fund created under 1995 Scheme, the contributions of the Complainants/employees for the period prior to November, 1995 were obviously received in the Pension Fund 1995. Therefore, the period of service rendered by the respective Complainants while they were members of the 1971 Scheme fell

within the definition of “pensionable service. If the aforesaid period was taken into account, the pensionable service rendered by the respective Complainants was more than 20 years and as such they were entitled to added advantage of two years in terms of para-10 (2) of the Scheme.

- c) In view of the above, the Revision Petition was dismissed and the orders of the fora below were confirmed.

**vii) Citation:**

IV (2014) CPJ 470; 2014(3) CPR 717.

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**(ah) POSTAL SERVICES**

**1. Superintendent of Post Offices Jhunjhunu Division & Ors. Vs. Mangla Ram Jat**

**i) Case in Brief:**

Complainant/Respondent in R.P.No.1461 of 2014 armed with the Power of Attorney executed by his son in his favour approached the Sub Post Master, Jhunjhunu Post Office for transfer of Kisan Vikas Patras purchased in the name of his son, who was studying in Bangalore, for transfer in the name of his son's wife. The request was turned down on the ground that transfer cannot be carried out on the basis of a certified copy of the Power of Attorney. Complainant's representation to Appellant No.1 was also rejected. On 21.09.2012 Complainant attempted to deposit the transfer fee and produced the original KVPs along with Power of Attorney for transfer but without any success. Alleging deficiency in service he filed four complaints before the District Forum which were allowed. Being unsuccessful before the State Commission, the Petitioners have filed the four Revision Petitions. Revision Petitions dismissed with cost at Rs.10,000/- in each of the Petitions.

**ii) Order appealed against:**

Revision Petition Nos.1461-1464/2014

From the order dated 02.12.2013 in Appeal Nos.1104-1107/2013 of the State Consumer Disputes Redressal Commission, Rajasthan.

**Deficiency in Service - Postal Services**

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**iii) Parties:**

Revision Petition Nos.1461-1464/2014

Superintendent of Post Offices

Jhunjhunu Division & Ors.

- Petitioners

Vs.

Mangla Ram Jat

- Respondent

**iv) Case No and Date of Judgement:**

1. Revision Petition Nos.1461 of 2014 with IA No.1840-1842/14 (For Stay, condonation of delay and Exemption from filing certified copy);
2. Revision Petition Nos.1462 of 2014 with IA No.1843-1845/14 (For Stay, condonation of delay and Exemption from filing certified copy);
3. Revision Petition Nos.1463 of 2014 with IA No.1846-1848/14 (For Stay, condonation of delay and Exemption from filing certified copy);
4. Revision Petition Nos.1464 of 2014 with IA No.1849-1851/14 (For Stay, condonation of delay and Exemption from filing certified copy) &

Date of Judgement: 03.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986. Sub Rule (4) of 23 of Post Office Savings Bank Manual volume II.

**vi) Issues raised and decided:**

The Commission held that the Petitioners have misinterpreted in Sub Rule (4) of 23 of Post Office Savings Bank Manual volume II which provides for encashment of certificates to persons holding Power of Attorney (POA). In the present case the son of the Complainant had executed POA on favour of his father who was residing at Jhunjhunu to get them transferred from Mandava to Jhunjhunu as he was studying in Bangalore. The documents had been sent by Petitioner No.1 to Bangalore Post Office for verification. On 27.08.2012 the signatures were verified and the Superintendent wrote to the Post Master for completion of the process of the transfer. Since there was no legal

impediment thereafter, the local Post Office at Jhunjhunu had no justification for refusing to transfer some of the KVPs and then refusing to make payment against the matured KVPs to Complainant. It was held that there was deficiency in service on the part of the Petitioners as held by the fora below. Consequently all the Revision Petitions were dismissed with costs quantified at Rs.10,000/- in each of the Petitions to be paid to the Complainant within four weeks.

**vii) Citation:**

III (2014) CPJ 282; 2014(3) CPR 233.

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**2. Sr. Superintendent of Post Offices & Ors. Vs. Vikesh Dogra**

**i) Case in Brief:**

Respondent/Complainant booked a parcel containing articles valued at Rs.42,470/- with the Head Post Master, Post Office Nerchowk (Petitioner No.2). The value of the articles was disclosed on the parcel itself. On 14.09.2012 the Complainant was informed that the assignee had refused to accept the parcel and therefore he should take it back. When he went to the Post Office to collect the parcel he found that it had been tampered with. He refused to take delivery and sent a letter accordingly to the post office. In reply he received a letter asking him to take delivery of the open parcel. He refused to do so and filed a complaint before the District Forum. The complaint was allowed and the Petitioners were directed to pay a sum of Rs.42,470/- being the value of the parcel. Petitioners' appeal was dismissed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 09.04.2014 in First Appeal No.402/2013 of Himachal Pradesh State Consumer Disputes Redressal Commission, Shimla.

**iii) Parties:**

Sr. Superintendent of Post Offices & Ors. - Petitioners

Vs.

Vikesh Dogra - Respondent

## **Deficiency in Service - Postal Services**

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### **iv) Case No and Date of Judgement:**

Revision Petition No.2637 of 2014 & Date of Judgement: 11.07.2014.

### **v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986 & Section 6 of the Indian Post Office Act, 1898.

### **vi) Issues raised and decided:**

- a) The main question that arose for consideration was whether the parcel got accidentally damaged in transit or it was deliberately opened and the articles kept in it were taken out. The Commission held that the fact that no article was found inside the parcel when it was offered to the Complainant indicated that someone had opened the parcel and taken out the articles. Since the parcel was in the custody of the post office from the time it was delivered to him by the Complainant till the time it was offered to him, only some employee of the post office could have tampered with the parcel and taken out the articles which were kept in it. The State Commission had noted that the parcel had weighed 7700 grams at the time it was booked. The Petitioners neither produced the parcel before the District Forum nor informed the Forum what the weight of the parcel was at the time it was offered back to the Complainant. The Commission therefore held that it was a clear case of deficiency in service by the Petitioners and that section 6 of the Indian Post Office Act on which reliance was placed by the Petitioners would not be applicable.
- b) The Revision Petition was accordingly dismissed as devoid of merit.

### **vii) Citation:**

Not reported in CPJ and CPR.

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## **3. The Suptt. of Post Offices, Guntur Division & Anr. Vs. Smt. Meena Juneja**

### **i) Case in Brief:**

On 21.01.2012, the Complainant sent sarees worth Rs.22,500/- to Jodhpur through Postal Department. When the parcel was delivered it was found to have less weight and was also stuffed with rags. The



Complainant sent another parcel consisting of 10 sarees and blouses worth Rs.8,310/- and Rs.7,700/- respectively to Jodhpur. But the consignee received only two sarees and 18 blouse pieces. The Complainant claimed to have sustained a loss of Rs.38,510/- an account of tampering with the parcels. Alleging deficiency in service on the part of Postal Department she filed complaint before the District Forum which allowed the complaint and directed the Postal Department to pay Rs.15,405/- to the Complainant along with interest at 9% p.a. The Department's appeal was dismissed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 31.12.2013 in Appeal No.691/2013 of the Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad.

**iii) Parties:**

The Suptt. of Post Offices, Guntur Division & Anr. - Petitioners

Vs.

Smt. Meena Juneja

- Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.2688 of 2014 with IA/4341/2014, IA/4342/2014, IA/4343/2014 (Stay, Condonation of Delay, Exemption from filing of certified copy) &

Date of Judgement: 14.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission noted that the Department had conducted enquiry on the administrative complaint made by the Complainant. The enquiry showed that the second parcel had been tampered with and the parcel had not been transmitted as per the norms and procedures of the Department which clearly indicated deficiency in rendering services. The Commission noted that at the time of delivery, the addressee had no reason to suspect foul play and therefore had no cause to refuse the delivery or accept the parcels subject to verification of its contents. The



**iv) Case No and Date of Judgement:**

Revision Petition No.2687 of 2014 with IA/4338/2014, IA/4339/2014 and IA/4340/2014 (Stay, Condonation of Delay, Exemption from filing the certified copy) & Date of Judgement: 14.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission noted that the Police investigation had revealed that the ATM card sent to the Complainant as well as the PIN sent to him was stolen by the Postman to whom the aforesaid articles were entrusted for the purpose of delivery. The internal enquiry conducted by the Postal Department had also confirmed the involvement of the Postman. Since it was a case of a Postal employee tampering with postal articles and fraudulently committing theft, it was a case of deficiency in providing service by the Postal Department.
- b) On the claim made by the bank that SMS alerts had been sent to the Complainant at the time of withdrawal of the amount, the Commission noted that there was no documentary evidence to that effect. Moreover the Complainant being an agriculturist was not expected to be conversant with reading the messages and acting upon them. It was held that receiving of an alert by Complainant would have no bearing on the liability of the Postal Department.
- c) The Revision Petition as well as the application for Condonation of Delay were both dismissed and the orders of the fora below were confirmed.

**vii) Citation:**

Not reported in CPJ and CPR.

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**5. Post Master, Head Office and others Vs. Sanjay Gupta and another**

**i) Case in Brief:**

The respondent/Complainant opted to join the Monthly Income Scheme (MIS) and deposited Rs.3.00 lacs in the said scheme for six years vide cheque No.322277 dated 02.07.2004 drawn at HDFC Bank Sonapat

### **Deficiency in Service - Postal Services**

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Branch. The cheque was cleared on 06.07.2004 and the sum of Rs.3.00 lacs was debited in the account of the respondent. Despite that the opposite parties failed to issue the documents pertaining to opening of MIS account for Rs.3.00 lacs in favour of the Complainant. Claiming this to be deficiency in service, the respondent filed a consumer complaint in District Forum which dismissed the complaint on the ground that intricate questions of law and facts were involved which could only be decided by the civil court of competent jurisdiction. The respondent/Complainant preferred an appeal before the State Commission which allowed the appeal and directed the OPs to make the payment of interest as per the Monthly Income Scheme w.e.f 7.7.2004 onwards and also to make the payment of deposited amount which was to be paid by the respondents/opposite parties to the Complainant monthly. The Complainant was further awarded compensation of Rs.10,000/- for facing unnecessary litigation for a period of about seven years and litigation expenses of Rs.11,000/-. Aggrieved by the order passed by the State Commission, this Revision Petition has been filed. Revision Petition dismissed.

#### **ii) Order appealed against:**

Against the order dated 26.08.2011 in FA No. 1321/2005 of the State Commission Haryana, Panchkula

#### **iii) Parties:**

Post Master, Head Office and others - Petitioners

Vs.

Sanjay Gupta and another - Respondents

#### **iv) Case No and Date of Judgement:**

Revision Petition No.154 of 2012 & Date of Judgement: 05.09.2014

#### **v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986 & Rule 36 of the Post Office Savings Bank Manual Volume I, Rule 8 (2) of Post Office Saving Account Rules, 1981.

#### **vi) Issues raised and decided:**

- a) The National Commission on perusal of the records found a stark difference in the photocopy of the relevant specimen signatures of Sanjay Gupta and Anusha Gupta. But, there was nothing on the record to suggest that officials of the post office concerned

followed the mandate of section Rule 36 of the Post Office Savings Bank Manual Volume I.

- b) Even if the Respondent had failed to keep the pass book in safe custody as required under rule 8 (2) of Post Office Saving Account Rules, 1981 this will not absolve the petitioner of its duty to follow the procedure for withdrawal of amount from the account of customer.
- c) The plea that 'cheque for opening of account was sent through agent Manohar Lal and, therefore, he should have been made party to the consumer complaint' was devoid of merit because the consumer complaint was filed on the allegation of deficiency in service on the part of post master.
- d) In view of the above, the order of the State Commission holding that 'a Manager and cashier of a bank are expected to have a reasonable degree of intelligence and knowledge ordinarily required of a person in his position to befit to discharge their duties. If that is not done and the amount is disbursed to the third party, without verification of the signature of the depositor or doubting/suspecting as to why no cheque was used as an instrument of transfer, when the whole amount lying in the account was being transferred in one go, the fault lies with the bank. Relying on the decision of the Commission on *Uma Shankar Bhatt Vs. Chairman-cum-Managing Director Punjab & Sind Bank and others* decided on 11.02.2007 in original petition no.98 of 2002, the order of the State Commission was confirmed and the Revision Petition was dismissed.

**vii) Citation:**

IV (2014) CPJ 135; 2014(4) CPR 338.

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**6. The Sr. Superintendent, Post Offices Vs. Amit Kumar Sharma and another**

**i) Case in Brief:**

The Respondent applied for selection to the post of lower division clerk in the year 2009 for which examination was to be held on 24.01.2010. It was his grievance that though the application form reached the office of the Second Respondent, he did not receive the admission card in

## **Deficiency in Service - Postal Services**

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time which prevented him from attending the examination. The admission card was finally received subsequently bearing the postal stamp dated 30.01.2010. Claiming deficiency on the part of OPs, he filed complaint before the District Forum which allowed the complaint and held both the Respondents jointly and severally liable to pay a total amount of Rs.38,000/- comprising Rs.35,000/- on account of mental agony and Rs.3,000/- as cost. On appeal by the OPs, the State Commission set aside the order of the District Forum qua the Respondent No.2/OP.2 i.e Staff Selection Commission. However, the Commission awarded higher litigation cost of Rs.10,000/- while dismissing the complaint of the Petitioner vide impugned order against which the present Revision Petition has been filed. Revision Petition allowed.

### **ii) Order appealed against:**

From the order dated 11.12.2012 in F.Appeal No.28 of 2011 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

### **iii) Parties:**

The Sr. Superintendent, Post Offices - Petitioner

Vs.

Amit Kumar Sharma and another - Respondents

### **iv) Case No and Date of Judgement:**

Revision Petition No:959 of 2013 & Date of Judgement: 10.09.2014.

### **v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986 & Section 6 of Indian Post Office Act.

### **vi) Issues raised and decided:**

The National Commission held that the fora below committed a jurisdictional error in allowing the complaint and awarding compensation against the Petitioner in view of Section 6 of Indian Post Office Act particularly when there was no allegation that the loss, misdelivery or delay occurred on account of fraudulent or willful act of postal employee. The Commission relied on the earlier judgements of the Commission in the matter of *The Presidency Post Master and Anr v. Dr. U.Shanker Rao* II (1993) CPJ 141 (NC) & R.P No.4567 of 2012 in *Sr. Superintendent of Post Offices v. Dharamveer Harijan* decided on 11.09.2013

and allowed the Revision Petition. The order of the State Commission was set aside and the complaint was dismissed.

**vii) Citation:**

IV (2014) CPJ 566; 2014(4) CPR 81.

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**(ai) POST OFFICE SAVINGS**

**1. Union of India through Senior Post Master Vs. Shri. Deepak Puri**

**i) Case in Brief:**

The Respondent, who was also the Karta of an HUF, purchased some National Savings Certificate from the Petitioner on 30.08.1991. On maturity of the certificates on 31.03.1997, the Petitioner refused to make payment of the maturity amount on the ground that he being the Karta of HUF could not have purchased National Savings Certificate in his single name though he could have purchased the same jointly with another member of HUF. Respondent filed a complaint before the District Forum alleging deficiency in service. The Complaint was allowed and the Petitioner was directed to pay (in addition to principal) interest on the amount of Rs.10,000/- to the Respondent as per rate applicable to FDR of three years or above of a Nationalised Bank till 31.03.1997 and at the rate applicable to savings bank accounts thereafter. Petitioner/OP filed an appeal before the State Commission which was dismissed vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 16.04.2013 in Appeal No.947 of 2005 of the UP State Consumer Disputes Redressal Commission, Lucknow.

**iii) Parties:**

Union of India through Senior Post Master - Petitioner

Vs.

Shri. Deepak Puri - Respondent

**Deficiency in Service - Post Office Savings**

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**iv) Case No and Date of Judgement:**

Revision Petition No.2848 of 2014 with the IA/4693/2014, IA/4694/2014 and IA/4695/2014 (Condonation of Delay, Stay, Exemption for filing translation of documents) &

Date of Judgement: 22.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986. Post Office Bank General Rules 16 and 17.

**vi) Issues raised and decided:**

The Commission noted that it was not the case of the Petitioner that the Respondent/Complainant was not at all eligible to open an account in the relevant category. He could have opened the account but the only additional requirement was that he should have added the name of another coparcener of the HUF along with his name. Therefore it would be a case of an irregularity which the Post Office ought to have pointed out to the Complainant at the time of taking deposit and before issuing the certificate to him. The Commission noted that there was no statutory rule/notification, prohibiting a person who is the Karta of a HUF from purchasing National Savings Certificate without joining another coparcener of the HUF as a co-purchaser. It was therefore held that the Post Office, having accepted the deposit in the single name of the depositor, cannot on maturity of deposit refuse payment of interest to the depositor. The Commission therefore found no merit in the Revision Petition and accordingly dismissed it.

**vii) Citation:**

Not reported in CPJ and CPR.

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**2. Sr. Supdt. Of Post Offices and another Vs. Smt. Lavanglata Sharma and another**

**i) Case in Brief:**

The Complainants opened a term deposit account with Sub-Post Office and deposited a sum of Rs.50,000/- in the said account on 11.01.2005 for a period of two years. When the Complainant submitted the pass-book to the post office on 03.02.2010, they were informed that the



maturity amount of Rs.57,488/- had already been withdrawn on 13.03.2008 and the account had been closed. The Complainants thereupon entered into repeated correspondence with several authorities of postal department for redressal of their grievance but the said correspondence did not yield any result. They filed a complaint before the District Forum on 04.01.2013 i.e. about three years after the fraud was detected. District Forum, holding the post office negligent in rendering services to the Complainants, directed it to pay a total sum of Rs.1,00,000/- which comprised Rs.57,488/- towards principal amount; Rs.12,514/- towards interest and Rs.30,000/- towards compensation. Being aggrieved from the order passed by the District Forum, the petitioners preferred an appeal before the State Commission which directed the Petitioners to refund Rs.57,488/- to the Complainants at the rates applicable to savings bank account for the period from 10.01.2007 till the date of actual payment. However, the direction for payment of Rs.30,000/- as compensation was maintained. Being still dissatisfied, the petitioners have this Revision Petition. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 11.04.2014 in FA No.302 of 2013 of Uttarakhand State Consumer Disputes Redressal Commission at Dehradun.

**iii) Parties:**

Sr. Supdt. Of Post Offices and another - Petitioners

Vs.

Smt. Lavanglata Sharma and another - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.2836 of 2014 With I.A.No.4672 OF 2014 (For stay) & Date of Judgement: 24.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission noted that an internal inquiry was conducted by the Post Office which showed that the maturity amount of the Complainants had been fraudulently withdrawn in

### **Deficiency in Service - Procurement Services**

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connivance with an official of the Post Office and that legal and departmental action had been initiated.

- b) The National Commission on perusal of the records found that the Complainants approached the post office on 03.02.2010. For almost three years, the post-office did not bother to refund even the maturity amount of the Complainants, not to talk of interest on that amount or any compensation to the Complainants. The Commission observed that the conduct of the concerned officers of the post office was reprehensible and irresponsible.
- c) Further, the Complainants had kept their money in a fixed deposit and not in a savings bank account. Therefore, had the money been paid to them on maturity, in all probability, they would have invested the same in a fixed deposit, thereby earning interest much higher than the interest applicable to savings bank accounts. The Commission noted that the Petitioners in fact got a favourable order from the State Commission in spite of which they chose to challenge the order.
- d) In view of the above, the Commission dismissed the present Revision Petition with cost assessed at Rs.25,000/- and directed that the said cost be recovered from the salary of the officers/officials who recommended to challenge the order of the State Commission.

#### **vii) Citation:**

Not reported in CPJ and CPR.

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#### **(aj) PROCUREMENT SERVICES**

##### **1. M/s. Rainbow International Vs. M/s. M.M.T.C. Ltd**

#### **i) Case in Brief:**

Complainant/Appellant entered into an arrangement/agreement with the Respondent/MMTC, whereby MMTC was to procure orders for export of scientific equipments by the Appellant to Jordan. A memorandum of understanding dated 06.05.1994 was executed between the parties in this regard as per which the Complainant/Appellant was to pay 3% service charges on the F.O.B. value of the products to MMTC, out of the price of the export product realized by it. Complainant submitted its

tender along with catalogue etc. to MMTC for onward transmission to the Ministry of Education, Jordan, which was the overseas buyer in this case. He also furnished a performance guarantee dated 22.02.1996 for a sum of Rs. 3,05,000/- to MMTC, for a period of 12 months. MMTC in turn submitted a performance guarantee to the overseas buyer i.e. Ministry of Education, Jordan. Since no order was placed with the Complainant/Appellant through MMTC, there was no occasion for it to supply the scientific equipments through the said agency. The bank guarantee which the Appellant/Complainant had furnished to the MMTC was invoked by the said agency. Claiming that it has made huge investment in procuring the scientific equipment, which it was to supply to Jordan and also aggrieved from the invocation of the bank guarantee, the appellant filed a complaint before the State Commission alleging deficiency in providing service on the part of the MMTC. The State Commission directed the OP/MMTC to refund the interest amount of the Bank Guarantee which was wrongly invoked from the date of invocation till the date of filing of the complaint. Against the decision of the State Commission, the present appeal has been filed. Appeal allowed.

**ii) Order appealed against:**

From the order dated 17.09.2008 in C-172/1997 of the State Consumer Disputes Redressal Commission, Delhi.

**iii) Parties:**

M/s. Rainbow International	- Appellant
Vs.	
M/s. M.M.T.C. Ltd	- Respondent

**iv) Case No and Date of Judgement:**

First Appeal No.430 of 2008 & Date of Judgement: 24.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission noted that the Respondent/MMTC had not challenged the finding returned by the State Commission i) that the Appellant/Complainant was a consumer (ii) that it was not entitled to invoke the bank guarantee as it had not procured

### **Deficiency in Service - Provident Fund**

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any order for the Complainant iii) that there was limited deficiency on its part. Therefore, the aforesaid finding has become final.

- b) The National Commission observed that the State Commission, despite recording the finding that there was a limited deficiency on the part of the MMTC in not invoking the bank guarantee but also not procuring the order, did not award any compensation to the Complainant for the deficiency on the part of MMTC in not procuring the order for the Complainant. As far as the deficiency in invocation of the bank guarantee is concerned, once the State Commission had come to the conclusion that there was a deficiency, though a limited one, on the part of the MMTC, it was required to direct payment not only of the interest on the amount of bank guarantee but all of the principal sum as well.
- c) Therefore, the Commission reversed the order of the State Commission to the extent principal amount of the bank guarantee had been denied to the Complainant/Appellant. Accordingly, the Commission allowed the appeal directing the Respondent/MMTC to refund not only the principal amount of Rs.3,05,000/- which it had recovered by invoking the bank guarantee but also the interest on the said amount.

#### **vii) Citation:**

Not reported in CPJ and CPR.

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#### **(ak) PROVIDENT FUND**

#### **1. Regional Provident Fund Commissioner and another Vs. Subhadraben Jayantilal Mehta and another**

##### **i) Case in Brief:**

It was the case of the Complainant/Respondent No.1 that her husband late Shri Jayantilal Somalal Mehta, was a member of the Provident Fund with the OPs/Petitioners for the period from 1998 to July, 2006. At the time of his death, deceased was having amount of Rs.1,02,285/- as existing credit upto October, 2006 in his account. Respondent No.2/Opposite Party No.3 was the employer of the deceased, where deceased was performing his duty as Administrative Officer from

1998 till his death in July 2006. After the death of the deceased, Respondent No.1 filed Form No-5(IF) E.D.L.I,1976 Scheme and submitted the same to the Petitioners, claiming death claim benefits which were rejected by the Petitioners vide order dated 20.11.2007 on the ground that Respondent No.2 did not deposit PF and other allied dues of the deceased from 1998 to 2006. It was also the case of the Complainant that the Petitioners had failed to take any action against the Respondent No.2 for the default from the period from 1998 to 2006. Hence, Respondent No.1 filed a complaint before the District Forum which directed OP.No.1 to pay the due amount of late husband of Complainant pertaining to E.D.L.I. and Provident Fund contribution from the date of the order within seven weeks and also directed OP.No.3 to pay the remaining amount if any due with 9% interest from 16.10.2006. The District Forum also directed the Opponents jointly to pay Rs.2,000/- as cost of the litigation. Petitioners being aggrieved by the order of District Forum filed an appeal before the State Commission which dismissed the same vide its impugned order. The Petitioners had filed this present Revision Petition challenging the State Commission's order. Revision Petition allowed.

**ii) Order appealed against:**

Against order dated 07.10.2008 in First Appeal No.983 of 2008 of the State Consumer Disputes Redressal Commission, Gujrat Ahmedabad.

**iii) Parties:**

Regional Provident Fund Commissioner & Anr. - Petitioners

Vs.

Subhadraben Jayantilal Mehta & Anr. - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.223 of 2009; Date of Judgement: 18.07.2014.

**v) Acts and Sections referred:**

Sections 2(1), (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The issues involved in this case were whether the deceased/ husband of Respondent No.1 was the employee of Respondent No.2 and if so, what was his pay and other emoluments. Further,

### **Deficiency in Service - Provident Fund**

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which post deceased was holding under Respondent No.2 and what was the deceased's share of contribution. Lastly, whether the deceased was employed with Respondent No.2 for the relevant period.

- b) The National Commission on perusal of the records found that the Respondent No.1 had miserably failed to prove the case that her husband was employed with Respondent No.2 for the period from October, 1998 to July, 2006. The detailed report furnished by the Assistant Provident Fund Commissioner also revealed that no liability could be fastened either upon Respondent No.2 or on the Petitioners to remit PF contribution in respect of Complainant's husband/Late Shri Jaynatilal S. Mehta for the period from October, 1998 to July, 2006 and also to make the department liable for payment of assurance benefits.
- c) In view of the above, the present Revision Petition was allowed and the order passed by the State Commission was set aside.

#### **vii) Citation:**

2014(3) CPR 406.

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## **2. Narayandas Mundra Vs. The Post Master, Dewas**

### **i) Case in Brief:**

Petitioner/Complainant's PPF Account in Head Post Office, Dewas ended on 31.03.2006. He claimed that he exercised option on 10.01.2007 to maintain the account and continued subscription for a further period of five years by submitting Form-H and deposited Rs.70,000/- each on 03.08.2006 and 05.09.2007 which were credited to his account along with interest. Subsequently, entries crediting interest relating to the years 2005-06 to 2007-08 were reversed and it was alleged by the Complainant that the Respondent declared his account as irregular on the ground that Form-H (a mandatory requirement for continuation of PPF A/c) had not been filed. Petitioner filed complaint before the District Forum which was dismissed. Petitioner's appeal to the State Commission was also dismissed vide impugned order against which the present Revision Petition has been filed. Revision Petition partly allowed.

**ii) Order appealed against:**

From the order dated 20.10.2011 in Appeal No.733/09 of State Consumer Disputes Redressal Commission, Madhya Pradesh.

**iii) Parties:**

Narayandas Mundra - Petitioner

Vs.

The Post Master, Dewas - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No:56 of 2012 & Date of Judgement: 12.08.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission noted the decision of the District Forum that there was no document evidencing filing of 'Form-H' by the Petitioner.
- b) The Commission held that the clarification (5) on Rule 9 (3A) of the scheme issued by Ministry of Finance (DEA) in letter No.F/8/88-NS-II (dated 11.08.1992) clearly envisaged exercise of option in writing in Form-H for continuing in the scheme. However, acceptance of further subscriptions by the Post Office cannot be construed as deficiency in service since there was a provision for regularization as per the above clarification. With regard to payment of interest on the amount due on maturity, it was noted that clarification (4) provided for payment of interest at the normal rate.
- c) Accordingly, the Commission held that the Petitioner would be entitled to interest at the normal rate applicable to the PPF account on the amount standing to his credit from the date of maturity till its actual release. As regards payment of interest on the amounts deposited after the date of maturity of the account on 31.03.2006, since these amounts also remained on the coffers of the Post Office, it was held that the Petitioner was entitled to interest at the rate admissible on a Savings Bank A/c at the time of each deposit, from the date of deposit till the date of refund of subscription.

**Deficiency in Service - Purchase / Transfer of Shares**

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d) The Commission further held that there was no justification for award of any compensation to the Petitioner.

**vii) Citation:**

IV (2014) CPJ 107.

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**(a1) PURCHASE / TRANSFER OF SHARES**

**1. The Bombay Dyeing and Manufacturing Co. Ltd Vs. Mehmud M.Chopda (LRs) and another**

**i) Case in Brief:**

Complainant/Respondent No.1 purchased 100 shares of OP.1/Petitioner through OP.2/Respondent No.2 (United Securities) @ Rs.380.50 per share and paid the amount. Shares were transferred in the name of the Complainant. Complainant received notice from Civil Court, Madras but he could not appear. On 26.12.2005, Complainant received two separate papers along with copy of Court order and Share transfer form. 100 shares of Complainant were taken back and it was mentioned that duplicate share certificate will be issued in the names of Sharda Joshi & Sanjay Chedda though Complainant did not sell the aforesaid shares. Alleging deficiency on the part of OP, he filed complaint before the District Forum which allowed the complaint and directed OPs to pay the market price of shares to the Complainant along with 9% interest p.a besides awarding compensation of Rs.3,000/-. Appeal filed by Petitioner was dismissed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 21.07.2010 in F.Appeal No.214 of 2007 of the Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.

**iii) Parties:**

The Bombay Dyeing and  
Manufacturing Co. Ltd

- Petitioner/OP

Vs.

Mehmud M.Chopda (LRs) & Anr.

-Respondents/Complainants



**iv) Case No and Date of Judgement:**

Revision Petition No:3843 of 2010 & Date of Judgement: 24.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission, after perusal of the records, noted that the shares transferred in the name of the Complainant were cancelled and transferred in the names of Sanjay Chedda & Sharada Joshi by Petitioner in pursuance of the Civil Court's order. It was therefore held that by no stretch of imagination, it can be treated as deficiency in service.
- b) The National Commission observed that the District Forum had fastened liability on both the OPs and in such circumstances Complainant was free to recover his amount from OP.2 but no liability can be fastened on the Petitioner.
- c) The Revision Petition was therefore allowed and the impugned order of the State Commission was set aside.

**vii) Citation:**

2014(3) CPR 339.

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**(am) RAILWAYS**

**1. Rakesh Kumar Goutam Vs. General Manager, South East Central Railway**

**i) Case in Brief:**

Complainant/Petitioner was traveling from Banda to Bilaspur by train No.8204 on 05.04.2010 in coach No.S-7. It was his case that though he had locked his suitcase which contained gold ornaments, new clothes and Rs.15,000/- in cash, tied it with the chain below the berth and locked it, someone had stolen it. Report was lodged with GRP Bilaspur and legal notice was also served on OP/Respondent. Alleging deficiency in service he filed complaint before the District Forum claiming Rs.1,25,000/- towards stolen items and Rs.10,000/- towards mental harassment. The District Forum allowing the complaint directed OP to

**Deficiency in Service - Railways**

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pay Rs.1,25,000/- in addition to Rs.500/- for mental harassment and Rs.1,000/- towards costs. Appeal filed by the OP was partly allowed by the State Commission which reduced the amount to be paid by OP from Rs.1,25,000/- to Rs.25,000/-. Aggrieved by the order of the State Commission the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 11.04.2013 in Appeal No.513/2012 of the State Consumer Disputes Redressal Commission, Chhattisgarh.

**iii) Parties:**

Rakesh Kumar Goutam - Petitioner

Vs.

General Manager, South East Central Railway - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.2768 of 2013 & Date of Judgement: 16.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission after a perusal of records found that the Complainant had not filed any cash memo or receipt relating to purchase of jewellery or clothes and had only filed an affidavit in support of his claim. It was held that the State Commission had rightly reduced the amount of compensation as no other document in support of his claim was filed by the Complainant before the District Forum. The Commission observed that the District Forum committed error in awarding the amount claimed and the State Commission rightly modified the order of the District Forum. Since there was no infirmity, irregularity or jurisdictional error in the order of the State Commission, the Revision Petition was dismissed.

**vii) Citation:**

II (2014) CPJ 634.

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**2. Union of India through General Manager Northern Central Railway & Anr. Vs. Smt. Anjana Singh Chauhan**

**i) Case in Brief:**

Respondent/Complainant, a Railway employee, was travelling from Bhopal to Nizamuddin on 04.02.2009 by Southern Express Train No.2721 in S-9 coach. At about 2.00 a.m. on 05.02.2009 some miscreants entered the bogie and snatched away her purse containing jewellery and cash worth Rs.1,63,066/-. She screamed for help, pulled the chain but no help came from the officials of OP. She registered a case at GRP Madura under section 279 IPC. FIR was also registered at the Nizamuddin Police Station. She filed a complaint before the District Forum which allowed the same and directed OP to pay a sum of Rs.75,000/- towards the loss occasioned to her, Rs.3,000/- towards mental agony and Rs.2,000/- as cost to be paid within one month failing which interest would be payable at 9% p.a. The first appeal filed by the OP was dismissed by the State Commission modifying the order of the District Forum reducing the amount of Rs.75,000/- to Rs.65,000/- and maintaining the rest of the order. Aggrieved by the said order, present Revision Petition has been filed. Revision Petition was dismissed with punitive cost of Rs.10,000/- payable to the Consumer Legal Aid Account of the Commission.

**ii) Order appealed against:**

From the order dated 21.09.2012 in First Appeal No.2443/2010 of the State Consumer Disputes Redressal Commission, Madhya Pradesh, Bhopal.

**iii) Parties:**

Union of India through General Manager  
Northern Central Railway & Anr. - Petitioners

Vs.

Smt. Anjana Singh Chauhan - Respondent

**iv) Case No and Date of Judgment:**

Revision Petition No.104 of 2013 & Date of Judgment: 22.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986 and Section 13 of the Railway Claim Tribunal Act.

## **Deficiency in Service - Railways**

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### **vi) Issues raised and decided:**

- a) The Commission rejected the contention of the OP regarding the maintainability of the Complaint on the jurisdiction of the Forum. It was argued by the OP that the claim should have been filed under Section 13 of the Railway Claim Tribunal Act. Relying on an earlier decision of the Commission in the case of *Deputy Chief Commercial Manager, Eastern Railways and Anr. Vs. Dr.K.K.Sharma and Ors.* [200 (III) CPJ page 1 (NC)], it was held that “existence of remedy provided by Sections 13 & 15 of the Railway Claims Tribunal Act, 1987 did not take away the jurisdiction of Consumer Courts to decide the question of deficiency in service”. Judgments of the Commission in *Union of India and another Vs. Sanjeev Dilsukhraj Dev and Others*, 1986-2004, Consumer 7609 NS), *Southern Eastern Railway Vs. Kumari Bharti Arora*, 1986-2004, Consumer 8331 (NS), *G.M. South Central Railway Vs. Dr.R.V.Kumar and others*, 1986-2005, Consumer 967 (NS) and *Divisional Railway Manager and others Vs. Dr. Abhi Shanker Officer*, 1986-2006, Consumer 10115 (NS) were also cited in support of this contention.
- b) The Commission relying on the duties prescribed in the official website of the Railways for “TTE for sleeper coaches”, held that the TTE in the present case had failed in the performance of his duties which led to the incident of theft.
- c) Relying on a Judgment of the Commission in *Union of India Vs. Dr. Shobha Agarwal* in III (2013) CPJ 469 (NC), it was held that though the passengers ought to be careful with their belongings while on trains, Railways too is liable to protect them.
- d) The Commission held that in this case there was a deliberate attempt by the Petitioner to harass its own employee. The Commission accordingly upheld the order of the State Commission and dismissed the Revision Petition imposing punitive cost of Rs.10,000/- which OP was directed to deposit in the Consumer Legal Aid Account of the Commission within 90 days, otherwise it will carry 9% p.a till realization.

### **vii) Citation:**

IV (2014) CPJ 198; 2014(3) CPR 449.

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**3. Northern Railway through its General Manager & Others Vs. Delhi Sikh Gurudwara Management Committee**

**i) Case in Brief:**

The Complainant, which is a statutory body constituted under the Delhi Sikh Gurudwara Act 1971 had been organizing pilgrimage to Nanded Saheb. It is his contention that he had organized two pilgrimages and paid security deposit to the Petitioner which was however not returned. A total sum of Rs.1,80,000/- remained with the Petitioner. The Complainant wrote several times to the Petitioner seeking refund of the aforesaid security deposit but to no avail. A complaint was filed before the concerned District Forum which directed the Petitioner to pay a sum of Rs.90,000/- since balance amount had been paid in the meanwhile. The petitioner was also directed to pay Rs.25,000/- as compensation. Being aggrieved from the order of the District Forum, the petitioner filed an appeal before the State Commission which dismissed the appeal in default vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 17.02.2014 in Appeal No.FA-83/11 of Delhi State Consumer Disputes Redressal Commission.

**iii) Parties:**

Northern Railway through  
its General Manager & Others - Petitioners

Vs.

Delhi Sikh Gurudwara Management Committee - Respondent

**iv) Case No and Date of Judgment:**

Revision Petition No.1759 of 2014 with I.A.No.2458/2014 (For Stay) &  
Date of Judgment: 23.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The issue involved in this case was whether the refusal to refund the amount on the ground of non-production of folder or ticket would amount to deficiency in service or not.

## **Deficiency in Service - Railways**

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- b) The National Commission agreed with the view that even if, for the sake of argument, there was a rule which required the person depositing the security to submit the original folder for the purpose of refund, in the case in hand, no such folder was allegedly given to them in respect of either journey, as a result of which they were not in a position to submit the said folder at the time of seeking refund of the security deposit. The aforesaid allegation made in para 15 of the complaint had not been controverted in the reply. There was also no averment in the reply that the Station Master had filled up the requisite details in the folder and had handed over the same to the Complainant after initialing the same and affixing seal on them, before departure of the train.
- c) In view of the above, the National Commission found no fault in the view taken by the District Forum and also opined that there was no need to remand the matter back to the State Commission for hearing the appeal on merits. Consequently, the Revision Petition was dismissed.

### **vii) Citation:**

Not reported in CPJ and CPR.

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## **4. Station Superintendent, Bhadrak Railway Station Vs. H. Bokhari and others**

### **i) Case in Brief:**

Complainants/Respondents who are senior citizens booked their tickets for return journey on 5.3.2012 from New Delhi to Bhadrak by Nandankanan Express with waiting list nos. 165, 166 and 167, but their tickets could not be confirmed till 5.3.2012. It was further submitted that one Fazal Karim senior citizen booked one reservation ticket in the same train from New Delhi to Bhadrak for the same date after 10 days and got confirmed reservation. Complainants were forced to return on 5.3.2012 in standing position and suffered a lot physically and mentally. Alleging deficiency on the part of OP, Complainants filed complaint before District Forum which directed OPs to pay Rs.6,000/- as compensation. Appeal filed by the OP was dismissed by State Commission vide impugned order against which, this Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 24.04.2013 in First Appeal No.892/2012 of the Orissa State Consumer Disputes Redressal Commission, Cuttack.

**iii) Parties:**

Station Superintendent,  
Bhadrak Railway Station

- Petitioners/Opp. Parties

Vs.

H. Bokhari and others

- Respondents/Complainants

**iv) Case No and Date of Judgement:**

Revision Petition No.2840 of 2013 with IA/4887/2013 (For Stay) &  
Date of Judgement: 28.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the records noted that the Petitioners were bound by Circular No.CCM/24/Quota Policy/Pt.-1 dated 26.8.2008 according to which, certain seats were reserved for senior citizens travelling alone in sleeper and in other classes and as Fazal Karim, senior citizen was travelling alone, he was given confirmed ticket, though, booked after 10 days of obtaining tickets by the Complainants which was in accordance with the aforesaid circular. Provisions shown in Trains at a Glance on which District Forum and State Commission have placed reliance are not applicable to the facts and circumstances of the present case. According to that heading if one of the passengers falls in confirmed or RAC status then names of other passengers in the same PNR are to be shown on waiting list, but it does not mean that if more than one senior citizen is travelling on the same PNR, his ticket will be confirmed automatically, if there are less number of seats available in comparison to number of passengers in the same PNR.
- b) In view of the above, the National Commission held that there was no deficiency on the part of the Petitioner and District Forum has committed error in allowing complaint and State

## **Deficiency in Service - Railways**

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Commission further committed error in dismissing appeal. Therefore, the Revision Petition was allowed and the orders passed the fora below were set aside.

### **vii) Citation:**

IV (2014) CPJ 378.

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## **5. G.M. Northern Railway Vs. Manoj Kumar**

### **i) Case in Brief:**

On 14.02.2013, Respondent/Complainant booked a three tier AC ticket for travel from Allahabad to Delhi in Lichchavi Express. The date of travel was 08.03.2013. It was the case of the Complainant that on 08.03.2013 when he reached Allahabad junction at the time of departure of train mentioned in the ticket, he found that service of the said train was cancelled. On inquiry, he was told that aforesaid train was not running for the last few months. Claiming this to be deficiency in service, the Respondent filed a consumer complaint before the District Forum. In the proceedings before the District Forum, OP was proceeded ex-parte. The District Forum found that it was clear case of deficiency on the part of the OP in issuing a ticket from internet without updating information on the internet about its non-availability of the services. Therefore, the District Forum ordered compensation of Rs.25,000/- to the Complainant including the litigation expenses. Being aggrieved of the order of the District Forum, the petitioner preferred an appeal to the State Commission which dismissed the appeal against which this Revision Petition has been filed. Revision Petition dismissed.

### **ii) Order appealed against:**

Against the order dated 15.05.2014 in First Appeal No.357/2014 of the State Commission, Delhi.

### **iii) Parties:**

G.M. Northern Railway	- Petitioner
Vs.	
Manoj Kumar	- Respondent

### **iv) Case No and Date of Judgement:**

Revision Petition No: 3208 of 2014 with IA/5362 of 2014 (for stay) &  
Date of Judgement: 10.09.2014.



**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The issue was whether the failure to intimate the Respondent/Complainant about the cancellation of running of train amounted to deficiency in service or not.
- b) It was pointed out by the National Commission that undisputedly, the ticket was booked by the Complainant on internet on 14.02.2013 for the travel dated 08.03.2013. It was the case of the petitioner in his Revision Petition that running of train in question was cancelled by the railway officials from 01.01.2013 to 17.02.2013 and cancellation was further extended till 15.03.2013. The least expected from the railway was to intimate the Respondent/Complainant about the cancellation of running of train in order to save him of unnecessary trouble to visit the railway station to board the train. This was held to be a gross deficiency in service on the part of the Petitioner/Opposite Party. Therefore, the Revision Petition was dismissed and the orders of the fora below were confirmed.

**vii) Citation:**

IV (2014) CPJ 559; 2014(4) CPR 88.

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**(an) RETAIL SERVICES**

**1. Harish Kumar Vs. Reliance Communications Pvt. Ltd. & Ors.**

**i) Case in Brief:**

Complainant is in the business of selling new mobile connections of various companies. He used to purchase unactivated connections of OPs 1 and 2 from Mr.Mirnal Garg, Proprietor of AB Traders (OP-3) which were further sold to customers and thereafter activated from a demo set given to him for the purpose. Complainant's grievance is that OPs launched schemes for retailers under which free gifts like LCD 22", Air conditioner etc., were given to motivate retailers to achieve targets and that he was not given the gifts even though he achieved the targets under the schemes. The District Forum before whom a complaint was

**Deficiency in Service - Retail Services**

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filed allowed the complaint while the State Commission on appeal set aside the order of the District Forum. Aggrieved by the said order the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 05.02.2014 in First Appeal No.595/2013 and 654/2013 of the State Consumer Disputes Redressal Commission, Punjab, Chandigarh.

**iii) Parties:**

Harish Kumar - Petitioner

Vs.

Reliance Communications Pvt. Ltd. & Ors. - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition Nos.2028-2029 of 2014 &

Date of Judgement: 22.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission after going through the order of the State Commission agreed with the State Commission's view that the Complainant did not fulfill the conditions and had not provided any retailer code or demo number which was necessary to identify the retailer in the system. It was held that the Complainant had failed to prove that he had achieved the target of eligible activation under the scheme. The Commission also noted that since the gifts were to be given free, the Petitioner cannot be called a consumer and he cannot seek the assistance of consumer fora to force OP to give him gifts. Revision Petition was accordingly dismissed as devoid of merit.

**vii) Citation:**

III (2014) CPJ 79.

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**2. Ankish, Laxmi Towers Vs. Dinesh Shankar Tripathy and another**

**i) Case in Brief:**

The Complainant booked a PCL computer with the Petitioner on 21.01.1997 for a sum of Rs.29,995/-. Since the computer was not delivered, he cancelled the order on 28.05.1997 and sought refund of the amount. Aggrieved by the non-refund of the amount, he filed a complaint before the District Forum against the Petitioner as well as the manufacturer through its manager. District Forum directed OPs to pay a sum of Rs.29,995/- along with interest @ 12% p.a w.e.f 26.05.1997 and also pay Rs.5,000/- as cost. The Petitioner's appeal before the State Commission was dismissed vide impugned order against which this Revision Petition has been filed. Revision Petition partly allowed.

**ii) Order appealed against:**

From the order dated 25.01.2006 in Appeal No.1618 of 2002 of the U.P State Consumer Disputes Redressal Commission, Lucknow.

**iii) Parties:**

Ankish, Laxmi Towers - Petitioner

Vs.

Dinesh Shankar Tripathy and another - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No:1215 of 2006 & Date of Judgement: 12.08.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission noted that the principal amount of Rs.29,995/- was deposited by the Petitioner with the District Forum and had been disbursed to the Complainant on 04.07.2006. Considering that the Petitioner must have got only some commission on the booking amount and it would not be fair to saddle it with interest liability or with cost, the Commission modified the order of the fora below to the extent that the liability of the Petitioner would be restricted to payment of Rs.29,995/- only. The Commission further gave liberty to the Complainant to recover the interest as well as the amount of cost from the manufacturer M/s. PCL Computers. It was further directed that the

**Deficiency in Service - Security Services**

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Petitioner will be entitled to avail such remedy as may open to it in law against the manufacturers.

**vii) Citation:**

Not reported in CPJ and CPR.

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**(ao) SECURITY SERVICES**

**1. M/s. Panchsheel Buildtech Pvt. Ltd Vs. Mr. Ajai Kumar Gopalia**

**i) Case in Brief:**

A theft took place in the flat of the Complainant whose case was that he had put locks on both the gates at the main door of the flat. The lock put on the steel door was broken, whereas the wooden door was cut, for the purpose of trespassing in the flat. The thieves thereafter broke open the steel almirah kept inside the flat and removed jewellery as well as the cash which the Complainant had kept in the lockers of the almirah. The Complainant submitted that under an agreement between him and the petitioner, the security for the flat purchased by him was to be provided by the petitioner and maintenance and security charges were being paid to the petitioner on a regular basis. Since neither the thieves could be caught nor the stolen goods could be recovered, the Complainant preferred a complaint before the District Forum seeking compensation for his loss amounting to Rs.4,75,000/- which comprised Rs.4,00,000/- towards the cost of the jewellery and Rs.75,000/- towards cash which was stolen from the house. He also sought compensation amounting to Rs.5,00,000/- for the harassment. The State Commission, on appeal, decided the case in favour of the Complainant vide impugned order against which this Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 02.07.2014 in FA No.1628 of 2013 of Uttar Pradesh State Consumer Disputes Redressal Commission at Lucknow.

**iii) Parties:**

M/s. Panchsheel Buildtech Pvt. Ltd	- Petitioner
Vs.	
Mr. Ajai Kumar Gopalia	- Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.3151 of 2014 with I.A.No.5229 of 2014 (For Stay)  
&

Date of Judgement : 10.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The first question which came up for consideration was whether the security of the flat which the Complainant had purchased from the petitioner was to be maintained by the petitioner or not. The National Commission observed that as per Clause (c) of the allotment letter which contained the terms and conditions agreed between the parties, Clause 11 clearly said that the responsibility of maintaining the building as well as its security was an obligation of the petitioner.
- b) The next question which came up for consideration was whether there was any deficiency in providing security related services or not. The National Commission observed that once the petitioner-company had taken on itself to provide security of the building on payment of maintenance charges by the flat buyers, it was under a contractual obligation to provide security to the extent of a reasonable level which include installation of cameras with CCTVs, to be watched in a control room. Since admittedly, the petitioner-company had not installed any cameras, either outside the main entrance of the flat of the Complainant or at any place from where the main entrance of the flat would be within the reach of the camera, it was clearly a case of deficiency in providing the security related services to the Complainant.
- c) In view of the above, the present Revision Petition was dismissed and the order of the State Commission was confirmed.

**vii) Citation:**

Not reported in CPJ and CPR.

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**(ap) SHIPPING SERVICES**

**1. Singapore Airlines Ltd. Vs. M/s Beauty House (Regd) and another**

**i) Case in Brief:**

The Complainant, received an order for export of garments to one Salco Manufacturing Company Pvt. Ltd., Australia (Salco). One Main Express Australia Pvt. Ltd. (Main Express) was the nominated shipping agent of Salco in Australia. In execution of the said order, the Complainant handed over two consignments of 206 packages valued at US \$29,550/- to Dart Global Logistics Pvt. Ltd (DGL) as local booking agent of Main Express. Two invoices both dated 25.01.1999 showing them as the Consignor and National Australia Bank as the Consignee were issued by the Complainant. DGL issued House Airway Bill (HAWB), dated 30.01.1999, for shipment of the consignments from New Delhi to Melbourne. Complainant was shown as the Consignor; the name of the Consignee was corrected as "To Order of" and Salco as the notified party. The details of Letter of Credit obtained by the Complainant were also noted in the said HAWB. DGL handed over the consignments to Singapore Airlines Limited (SIA) for carriage to Melbourne. However, in the Airway Bill (AWB) dated 30.01.1999, issued by SIA, DGL was shown as the shipper; Main Express as the Consignee and DGL as the issuing carrier's Agent. In accounting information Box, besides HAWB number, Complainant was shown as the shipper and Salco as the Consignee. Freight was prepaid. HAWB and other allied documents were forwarded by the Complainant to National Australia Bank. The Complainant claimed that though, the original documents were still held by the National Australia Bank, the consignments had been delivered to Main Express without production of the original documents. The Complainant lodged protest with DGL, on whose advice, the Complainant issued a legal notice to Salco, asking them to immediately make payment of US \$29,550/- being the invoice value of the goods, failing which, threat of legal action was conveyed. Having failed to receive any response from Salco, on 05.05.1999, the Complainant issued a legal notice to DGL to pay the said amount along with interest @ 2% per month from the time the payments were due, and compensation of Rs.1 lakh for harassment, etc. Denying any liability to pay the said amount, DGL reiterated that the consignments having been booked as per Complainant's instructions, there was no default on their part. Complainant filed the complaint against DGL and SIA before the State Commission which held that

**Compendium of National Commission Judgements – 2014 – Vol.II**

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since SIA did not perform its duty as per AWB, which was “To Order Of”, meaning thereby that the consignments were to be delivered only as per the Consignor’s instructions, DGL and SIA were deficient in rendering service to the Complainant and were, therefore, jointly and severally liable to pay to the Complainant, the value of the consignments, amounting to US \$29,550/-, equivalent to Indian Rupee at the rate as on 31.01.1999 along with a lump sum compensation of Rs.1,00,000/- for the mental agony, harassment and other sufferings by the Complainant. Hence, the present First Appeal has been filed. Appeal allowed.

**ii) Order appealed against:**

First Appeal No.258 of 2008 and First Appeal No.317 of 2009

From the order dated 11.03.2008 in Complaint Case No.C-202/1999 of the Delhi State Consumer Disputes Redressal Commission.

**iii) Parties:**

First Appeal No.258 of 2008

Singapore Airlines Ltd. - Appellant

Vs.

M/s Beauty House (Regd) and another - Respondents

First Appeal No.317 of 2009

M/s.Dart Global Logistics Pvt. Ltd. - Appellant

Vs.

M/s Beauty House (Regd) and another - Respondents

**iv) Case No and Date of Judgement:**

- i. First Appeal No.258 of 2008;
- ii. First Appeal No.317 of 2009 & Date of Judgement: 07.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the records found that the HAWB was amended to change the name of the Consignee

### **Deficiency in Service - Shipping Services**

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from National Australia Bank to "To Order Of" at the request of the Complainant.

- b) The Commission further observed that the Complainant could not be so naive that he did not understand the implications of the said notation. As a matter of fact, with the said notation, the National Bank of Australia was ousted from its position of being the Consignee of the subject goods. On their own showing, the Complainant did not check the AWB, prepared as per Rule 6 of the Second Schedule to the Carriage by Air Act, 1972.
- c) Therefore, the Commission held that the Complainant had failed to prove that there was deficiency in service on the part of DGL or SIA in delivering the consignments to Main Express, the notified shipping agent of Salco in Australia and named as Consignee in the AWB because as per Rule 13(1) of the said Second Schedule on arrival of the cargo at the place of destination, a consignee is entitled to require the carrier to hand over to him the airway bill and to deliver the cargo to him, subject to his paying the charges due and on complying with the conditions of carriage set out in the airway bill. As noted above, in the present case, the freight was prepaid and there were no other instructions to the carrier.
- d) In view of the above, the Appeals were allowed and the impugned order was set aside.

**vii) Citation:**

III (2014) CPJ 270; 2014(3) CPR 21.

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**2. M/s. RG2, WZ-83 Vs. ATC (Clearing & Shipping) Pvt Ltd**

**i) Case in Brief:**

Complainant received orders during April – May, 1999 for the supply of pillow covers from a buyer in the US through their buying agent in India M/s. Plexus for a total value of Rs.19.82 lakhs. The OP was the clearing and shipping agent of the Complainant. It was alleged by the Complainant that the OP despite being in receipt of all goods and documents in time acted in a haphazard manner and failed to provide services diligently and delayed the filing of documents for processing. It was further alleged that OP did not respond to fax messages and



e-mail sent by the Complainant as well as M/s. Plexus. OP's failure to deliver shipping bills copies to the Complainant resulted in loss of quota, MD, Drawback, DEPB entitlement etc. On 03.02.2000, the foreign bank pointed out discrepancies in the documents prepared by OP and refused to pay for any of the bills of the Complainant. In spite of correspondence between the parties, there was no improvement. The Complainant therefore filed the present complaint seeking various reliefs. Complaint partly allowed and OP was directed to pay Rs.10,00,000/- to the Complainant within 45 days. The question of total loss was left to the decision of the Civil Court.

**ii) Order appealed against:**

Original Complaint

**iii) Parties:**

M/s. RG2, WZ-83

- Complainant

Vs.

ATC (Clearing & Shipping) Pvt Ltd

- Opp. Party

**iv) Case No and Date of Judgement:**

Consumer Complaint No:170 of 2000 & Date of Judgement: 12.08.2014.

**v) Acts and Sections referred:**

Sections 2(1), (d), (g), (o) and 21(a)(i) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The first issue that came up for consideration was whether the Complainant is a consumer. Relying on the judgement of a three member bench of the Hon'ble Supreme Court in *Kishore Lal v. Chairman, Employees State Insurance Corporation* (2007) SCC 579 wherein it was held that "the person who obtained goods for resale or for any commercial purpose is excluded but the services hired for consideration, even for any commercial purposes are not excluded", the Commission held that the Complainant is a consumer.
- b) With regard to the question whether there was any deficiency in the services provided by the OP, it was held that though the Complainant was somewhat negligence in not sending the correct documents, the main negligence, inaction and passivity lay with

### **Deficiency in Service - Storage Services**

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the OP who failed to show why there was so much delay in the said export. It was held that OP failed to remove defects or rectify the same within the prescribed time and behaved in a laggardly manner. Keeping in view the law laid down *Citibank N.A v. Geekay Agropack Pvt Ltd and Another* (2008) 15 SCC 102, the Commission held that OP was deficient in discharge of duties and therefore awarded compensation for deficiency only in the sum of Rs.10 lakhs to be paid to the Complainant within 45 days from the date of receipt of order. The Commission also opined that the question of total loss can be decided by the Civil Court.

#### **vii) Citation:**

Not reported in CPJ and CPR.

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#### **(aq) STORAGE SERVICES**

##### **1. Manager, U. P. Co-operative Federation Ltd Vs. Rajpati Yadav**

###### **i) Case in Brief:**

The Complainant in this case, deposited 30 sacks of potatoes weighing 85 kgs each, in the Cold Storage of U.P. Co-operative Federation Limited/OP, on 30.03.1996. The Complainant went to the Cold Storage on 22.10.1996 with his tractor for taking the potatoes. However, he was asked to come again, on 11.11.1996. But the potatoes were not given on that date. The Complainant made a written request to the OP on 15.11.1996 upon which he was called again on 21.11.1996, on which date, the OP told him that only 17 sacks of potatoes could be cleared from the storage. The Complainant also deposited the rent charges of Rs.643/-. According to the Complainant, the 17 sacks of potatoes contained only one-fourth of the original potatoes in each sack and the same were in rotten condition. The Complainant returned those potatoes to the OP. He assessed the loss in the sum of Rs.99,600/- and filed a complaint before the District Forum against the OP. The District Forum directed the Respondents to pay Rs.50,000/- as compensation within one month failing which it will attract 10% interest. The appeal filed by the OP was dismissed by the State Commission. On dismissal of the said appeal, the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From order dated 23.05.2013 in First Appeal No.1677 of 2007 of the U.P. State Consumer Disputes Redressal Commission, Lucknow.

**iii) Parties:**

Manager, U.P. Co-operative Federation Ltd - Petitioner

Vs.

Rajpati Yadav - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.2941 of 2013 with I.A. No.5067 of 2013, I.A. No.1167 of 2014 (Stay & Early hearing) & Date of Judgement : 07.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the affidavit of the Complainant submitted before the District Forum noted that the Complainant had gone a number of times to claim the sacks of potatoes in question before the closing date of 30.11.1996.
- b) In view of the above, the Commission found that there was no illegality or infirmity in the findings of the lower fora fastening the liability on the part of OP and the orders of the fora below were confirmed. Accordingly, the present Revision Petition was dismissed.

**vii) Citation:**

I (2015) CPJ 49.

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**(ar) SUPPLY OF EQUIPMENT**

**1. Dr. Nilesh G.Nimavat Vs. Medipicks and another**

**i) Case in Brief:**

Petitioner, a doctor, purchased a C-Arm Image Intensifier X-Ray Machine from the Respondents for a sum of Rs.6,30,000/-. It was alleged by the Petitioner that during the usage of the machine, he felt dizziness and suffered nausea, headache, redness of eyeballs and

### **Deficiency in Service - Supply of Equipment**

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swelling, which are symptomatic of having absorbed excess quantity of X-Rays. Thereafter, again on the next occasion when Petitioner used the said machine for a longer period in the operation, he again developed the aforesaid problem. The problem, according to him, occurred due to the extra emission of X-Rays. Therefore, Petitioner complained about the same to the Respondents. The employees of the Respondents did visit but could not repair the machine and rectify the said problem. Alleging deficiency in service on the part of the respondents, the Petitioner filed complaint before the District Forum which, after going through the record of the case, dismissed the complaint, vide its order dated 22.01.2010. Being aggrieved, petitioner filed an appeal before the State Commission which upheld the order of the District Forum and dismissed the appeal at the admission stage itself. Hence, this Revision Petition has been filed. Revision Petition dismissed.

#### **ii) Order appealed against:**

Against order dated 23.08.2010 in First Appeal No.422 of 2010 of the State Consumer Disputes Redressal Commission, Gujarat State, Ahmedabad.

#### **iii) Parties:**

Dr. Nilesh G.Nimavat

- Petitioner

Vs.

Medipicks and another

- Respondent

#### **iv) Case No and Date of Judgement:**

Revision Petition No.34 of 2011 & Date of Judgement: 25.08.2014.

#### **v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

#### **vi) Issues raised and decided:**

- a) The National Commission on perusal of the records found that the petitioner had not placed on record any prescription slip with regard to the alleged treatment taken by him from Dr. Hemang Desai on 2.10.2007 as well as on 14.10.2007. As such, the certificate in the absence of any prescription slip would be of no help to the petitioner. Moreover, there was no expert evidence on record to show that X-Ray was emitting excess radiation.

- b) In view of the above, the National Commission held that the Petitioner had failed to prove any defects in the X-Ray machine and had also failed to establish that X-Ray machine was emitting excessive radiation due to which Petitioner had suffered ailments. Accordingly, the Revision Petition was dismissed.

**vii) Citation:**

2014(3) CPR 779.

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**(as) SUPPLY OF SEEDS**

**1. Nuziveedu Seeds Ltd. and Anr. Vs. Shri Babasaheb @ Ibrahim Pathan**

**i) Case in Brief:**

Complainant/Respondent had sown seeds of Banny Bt. Cotton purchased from Mahendra Krushi Seva Kendra, OP-2/Petitioner-2 manufactured by OP No.1/Petitioner No.1. After sowing seeds he found that there was less germination. Since his complaint to OP No-2 did not any elicit any response, he contacted the Taluka Agriculture Officer who, on inspection, found that there was only 43% germination. He prepared a Panchanama and forwarded it to the Agricultural Development Officer, Zilla Parishad who observed that there was 55-60% germination and further observed that the seed was not defective. Alleging deficiency on the part of OPs, Complainant filed complaint before the District Forum which allowed the same and directed OPs to return the cost of seeds of Rs.3,636/- and further allowed Rs.25,000/- towards cost of cultivation, financial loss etc., and Rs.2,000/- towards litigation expenses. Appeal filed by the OPs was dismissed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 25.09.2013 in First Appeal No.A/06/1609 of the Maharashtra State Consumer Disputes Redressal Commission, Circuit Bench at Nagpure.

**iii) Parties:**

Nuziveedu Seeds Ltd. and Anr. - Petitioner/OPs

Vs.

Shri Babasaheb @ Ibrahim Pathan - Respondent/Complainant

**Deficiency in Service - Supply of Seeds**

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**iv) Case No and Date of Judgement:**

Revision Petition No.3789 of 2013 & Date of Judgement: 22.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission agreed with the Petitioner's contention that the Respondent/Complainant had not filed any Revenue Record to show that he possessed the land and sown crop. It was therefore held that the complaint should not have been allowed by the District Forum.
- b) The Commission further held that the State Commission had without any basis dismissed the report of the District Seed Grievances Redressal Committee who had inspected the field and found germination of 55-60% and further came to the conclusion that there was no defect in the seeds. The Commission also held that the lower Fora committed error in not considering the report of the Central Cotton Research Institute which revealed that 100% seeds were positive for the presence of Bt. protein meaning thereby that the seeds were not defective.
- c) The Commission rejected the contention of the Respondent that 75% germination had been assured in the brochure and therefore there was deficiency in service. The Commission observed that germination depends upon a number of factors and merely because there was 15% less germination, it cannot be held that the seeds produced by OP-1 and sold by OP-2 were defective. Consequently the Revision Petition was allowed, the orders of the fora below were set aside and the complaint was dismissed.

**vii) Citation:**

IV (2014) CPJ 119.

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**2. Nuziveedu Seeds Ltd. and another Vs. Shri Prakashrao**

**i) Case in Brief:**

Complainant/Respondent had sown seeds of Banny Bt. Cotton purchased from Lohiya Beej Bhandar, OP-2/Petitioner-2 manufactured by OP No.1/Petitioner No.1. After sowing seeds he found that there was less

germination. Since his complaint to OP No-2 did not any elicit any response, he contacted the Taluka Agriculture Officer who, on inspection, found that there was only 30% germination. He prepared a Panchanama and forwarded it to the Agricultural Development Officer, Zilla Parishad who observed that there was 62% germination and further observed that the seed was not defective. Alleging deficiency on the part of OPs, Complainant filed complaint before the District Forum which allowed the same and directed OPs to return the cost of seeds of Rs.27,270/- and further allowed Rs.65,000/- towards cost of cultivation, Rs.5,000/- towards compensation and Rs.1,000/- towards litigation expenses. Appeal filed by the OPs was dismissed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 25.09.2013 in First Appeal No.A/06/1608 of the Maharashtra State Consumer Disputes Redressal Commission, Circuit Bench at Nagpur.

**iii) Parties:**

Nuziveedu Seeds Ltd. and another - Petitioners/OPs

Vs.

Shri Prakashrao - Respondent/Complainant

**iv) Case No and Date of Judgement:**

Revision Petition No.3788 of 2013 & Date of Judgement: 22.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- d) The Commission agreed with the Petitioner's contention that the Respondent/Complainant had not filed any Revenue Record to show that he possessed the land and sown crop. It was therefore held that the complaint should not have been allowed by the District Forum.
- e) The Commission further held that the State Commission had without any basis dismissed the report of the District Seed Grievances Redressal Committee who had inspected the field and found germination of 69.02% and further came to the conclusion

### **Deficiency in Service - Supply of Seeds**

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that there was no defect in the seeds. The Commission also held that the lower Fora committed error in not considering the report of the Central Cotton Research Institute which revealed that 90% seeds were positive for the presence of Cry 1 Ac meaning thereby that the seeds were not defective.

- f) The Commission rejected the contention of the Respondent that 75% germination had been assured in the brochure and therefore there was deficiency in service. The Commission observed that germination depends upon a number of factors and merely because there was 5% less germination, it cannot be held that the seeds produced by OP-1 and sold by OP-2 were defective. Consequently the Revision Petition was allowed, the orders of the fora below were set aside and the complaint was dismissed.

#### **vii) Citation:**

2014(3) CPR 376.

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### **3. The District Manager, AP State Seeds Development Corporation Vs. M.Madhusudhan Reddy and Anr.**

#### **i) Case in Brief:**

The Complainants (in all the three Revision Petitions) had purchased black gram seeds of T9 variety from Andhra Pradesh State Seeds Development Corporation Limited (for short, the APSSDC). The seeds were sown by the Complainant (in R.P.No.384 of 2011), M. Madhusudhan Reddy in his agricultural land. The grievance of the Complainant was that despite his having taken due care, the crop failed as there was no flowering in the plants which grew in the land in which the seeds were sown which was further confirmed by the report of the Mandal Agriculture Officer. At the time of inspection, the age of the crop was opined to be about 50-60 days, whereas the flowering was expected in about 40-50 days of sowing. They were of the view that the non-flowering in the plant was due to sterility of the seeds. The Complainant, therefore, filed a complaint before the District Forum claiming compensation from APSSDC as well as the proprietor of M/s. Sri Lakshmi Venkateswara Seeds who was amongst various suppliers of seeds to APSSDC. The District Forum directed the opposite parties No.1 and 2 i.e. APSSDC and its Managing Director to pay to the Complainant value of 51.16 black gram per acre at the rate of



Rs.3,500/- per quintal besides Rs.10,000/- as compensation towards mental agony and Rs.5,000/- as cost of litigation. Similar orders were passed in respect of the other two complaints. Interest at the rate of 9% was also awarded to the Complainants. On appeal, State Commission confirmed the orders of the District Forum vide impugned orders against which these Revision Petitions have been filed. Revision Petitions dismissed.

**ii) Order appealed against:**

Revision Petition No.384 of 2011

From the order dated 17.09.2010 in Appeal No.1370/2008 of Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad.

Revision Petition No.385 of 2011

From the order dated 17.09.2010 in Appeal No.1371/2008 of Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad.

Revision Petition No.386 of 2011

From the order dated 17.09.2010 in Appeal No.1591/2008 of Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad.

**iii) Parties:**

Revision Petition No.384 of 2011

The District Manager,  
AP State Seeds Development Corporation - Petitioners

Vs.

M. Madhusudhan Reddy and Anr. - Respondents

Revision Petition No.385 of 2011

The District Manager,  
AP State Seeds Development Corporation - Petitioners

Vs.

M.V. Nagaswamy Reddy and Others - Respondents

Revision Petition No.386 of 2011

The District Manager,  
AP State Seeds Development Corporation - Petitioners

Vs.

M. Nagarjuna Reddy and Others - Respondents

## **Deficiency in Service - Supply of Seeds**

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### **iv) Case No and Date of Judgement:**

Revision Petitions Nos.384-386 of 2011 &

Date of Judgement: 24.07.2014.

### **v) Acts and Sections referred:**

Sections 2(1) (g), (o), 13(1)(c), 19 and 21(b) of the Consumer Protection Act, 1986.

### **vi) Issues raised and decided:**

All the Revision Petitions were dismissed and the orders of the State Commission were confirmed for the following reasons:

- a) Mandal Agriculture Officer gave report that non-flowering was due to sterility of seeds which was corroborated by the statement of the Scientist, District Agriculture Advisory and Transfer of Technology Centre who stated that there was failure of the T-9 variety of black gram due to non-flowering and admixture of seeds even though the plant growth was satisfactory and no pest was found on it. He also opined that non-flowering and non-budding could not be attributed to heavy rains or any agro environmental conditions. In his opinion also, non-flowering of the plants was due to sterile seeds.
- b) The opposite party did not invoke its power under Section 13(1)(c) of the Consumer Protection Act to get the residuary sample of the seeds tested to establish the genuineness of the seeds and to show that the same were free from any defect.
- c) There is no evidence of any failure on the part of the Complainant to manage the crop.
- d) Since the opposite party did not produce any expert evidence to prove either that the seeds sown in the fields of the Complainant were different from the seeds which he had purchased from them or that the crop failure could be due to reasons other than the defects in the seeds, there would be no good reason to reject the positive evidence produced by the Complainant in the form of the deposition of the Scientist from DATT, Kurnool, Mandal Agricultural Officer and the Assistant Executive Officer.

### **vii) Citation:**

Not reported in CPJ and CPR.

**4. The Manager, AP State Seeds Development Corporation and another Vs. N. Rama Swamy and others**

**i) Case in Brief:**

The Complainants (in all the four Revision Petitions) had purchased black gram seeds of T9 variety from Andhra Pradesh State Seeds Development Corporation Limited (for short, the APSSDC). The seeds were sown by the Complainant (in R.P.No.387 of 2011), N. Ramasamy in his agricultural land. But it had not yielded any flowers and pods within 40 days after the sowing which was further confirmed by the report of the Mandal Agriculture Officer. This had happened in spite of the farmer having taken all agronomical and plant protection measures. It was also found that in the neighboring land having cultivation of the same variety there was a possibility of yield of 4 - 5 quintal per acre. Therefore, alleging deficiency in service, he filed complaint before the District Forum which directed the OPs 1, 2 and 3 jointly and severally to pay to the Complainant Rs.4,060/- towards the cost of seed purchased, Rs.22,760/- towards the cost of pesticides and fertilizers purchased, and the cost of expected yield at 5 quintals per acre in proportion to the extent of cultivation of Acs 15-00, at the then, prevailing market rate for that kind along with Rs.10,000/- as compensation and Rs.2,000/- as cost. Similar orders were passed on the complaint of Shri. Nagendrudu (in R.P.No.388 of 2011). Being aggrieved from the orders passed by the District Forum, the APSSDC preferred two separate appeals before the State Commission which dismissed the same. Since the order of the District Forum was also directed against the proprietor of Sri Lakshmi Venkateswara Seeds, he also had filed two separate appeals. The aforesaid two appeals were also dismissed by the State Commission. Being aggrieved from the dismissal of their appeals, the aforesaid Sri Lakshmi Venkateswara Seeds and the APSSDC have filed these Revision Petitions. Revision Petitions filed by Sri Lakshmi Venkateshwara Seeds were allowed and the Revision Petitions filed by the APSSDC were dismissed.

**ii) Order appealed against:**

Revision Petition No.387 of 2011

From the order dated 17.09.2010 in Appeal No.1601/2007 of Andhra Pradesh State Consumer Disputes Redressal Commission.

**Deficiency in Service - Supply of Seeds**

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Revision Petition No.388 of 2011

From the order dated 17.09.2010 in Appeal No.1603/2007 of Andhra Pradesh State Consumer Disputes Redressal Commission.

Revision Petition No.409 of 2011

From the order dated 17.09.2010 in Appeal No.1602/2007 of Andhra Pradesh State Consumer Disputes Redressal Commission.

Revision Petition No.410 of 2011

From the order dated 17.09.2010 in Appeal No.1602/2007 of Andhra Pradesh State Consumer Disputes Redressal Commission.

**iii) Parties:**

Revision Petition No.387 of 2011

The Manager, AP State Seeds Development Corporation and another - Petitioners

Vs.

N. Rama Swamy and others - Respondents

Revision Petition No.388 of 2011

The Manager, AP State Seeds Development Corporation and another - Petitioners

Vs.

Sale Nagendrudu and another - Respondents

Revision Petition No.409 of 2011

The Proprietor,  
M/s. Sri Lakshmi Venkateswara Seeds - Petitioners

Vs.

N. Rama Swamy and others - Respondents

Revision Petition No.410 of 2011

The Proprietor,  
M/s. Sri Lakshmi Venkateswara Seeds - Petitioners

Vs.

Sale Nagendrudu - Respondents

**iv) Case No and Date of Judgement:**

- i. Revision Petition No.387 of 2011
- ii. Revision Petition No.388 of 2011
- iii. Revision Petition No.409 of 2011
- iv. Revision Petition No.410 of 2011 &  
Date of Judgment: 31.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 13(1) (c), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

Revision Petitions filed by Sri Lakshmi Venkateshwara Seeds were allowed and the orders of the District Forum and the State Commission, to the extent, the fora below had directed payment by the petitioner were set aside. The Revision Petitions filed by the APSSDC were dismissed and the APSSDC was directed to make payment in terms of the orders of the District Forum and the State Commission within four weeks from the date of the order for the following reasons:

1. No expert evidence was produced by APSSDC to prove that T9 variety seeds sold by them to the Complainant were not sterile or that the same were free from defects. APSSDC did not invoke the jurisdiction of the District Forum under Section 13(1)(c) of the CP Act which empowers the Forum to obtain a sample of the goods and get the same tested from an appropriate laboratory.
2. The Complainant produced the Mandal Agricultural Officer who carried out inspection on receipt of a representation from the Complainant and found that there was flowering to the extent of 5% in the plants.
3. The Mandal Agricultural Officer also found that the crop standing in the fields of the Complainant did not have the characteristic of T9 variety, which in turn indicates that the seeds sold to the Complainant could be of a variety other than T9 variety though they were sold and purchased as seeds of T9 variety.
4. There was no dry spell considering the weather reports.

## **Deficiency in Service - Supply of Seeds**

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5. There was nothing noticed during course of inspection by the Mandal Agricultural Officer to suggest that the farmers had not adopted the requisite agronomical practices and had not taken the required crop protection measures.

### **vii) Citation:**

Not reported in CPJ and CPR.

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## **5. M/s. Maha Gujarat Seeds Pvt. Ltd and another Vs. Gurlal Singh**

### **i) Case in Brief:**

It was the case of the Complainant that he purchased five packets of seeds from O.P.2 (Surindra Beej Bhandar) dated 27.04.2010. The Complainant claimed that despite spending huge amount and making best efforts, no flowers and fruits came from the said crop which almost went dead. With respect to damage to the crop, he filed complaint to the Chief Agriculture Officer who inspected the field and submitted a report which confirmed that the loss on account of lesser yield was due to defective seeds. Therefore, alleging deficiency in service, he filed complaint before District Forum which directed the OPs to pay a sum of Rs.91,775/- to the Complainant for the loss along with Rs.10,000/- for mental agony and Rs.2,000/- as cost. Against the order of the District Forum, OPs filed appeal before the State Commission which was dismissed. On dismissal of the appeal, the Petitioners/OPs have filed this Revision Petition. Revision Petition dismissed.

### **ii) Order appealed against:**

From the order dated 12.02.2014 in First Appeal No.1157 of 2011 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh.

### **iii) Parties:**

M/s. Maha Gujarat Seeds Pvt. Ltd and another - Petitioners

Vs.

Gurlal Singh - Respondent

### **iv) Case No and Date of Judgement:**

Revision Petition No:2405 of 2014 & Date of Judgement: 14.08.2014.

### **v) Acts and Sections referred:**

Sections 2(1), (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the invoice found that in the column bearing the heading “Valid upto”, the month and year mentioned against items No.1 to 5 were 03/2010, 12/2010, 11/2010, 01/2011 and 11/2011 respectively. Since the invoice itself was of 27.04.2010, the aforesaid dates could not have been the testing dates of the seeds. There could be no question of the seeds sold in April, 2010, having test report of December 2010, November 2010, January 2011 or November 2011. Further, perusal of the Complaint would show that according to the Complainant, he had taken all necessary steps. Therefore, deficiency in the quality of the seeds was apparent from the fact that expired seeds were sold to the Complainant by OP. 2 (Surindra Beej Bhandar).
- b) In view of the above, the present Revision Petition was dismissed and the orders of the foras below were confirmed.

**vii) Citation:**

Not reported in CPJ and CPR.

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**(at) TELEPHONES**

**1. Bharat Sanchar Nigam Ltd., & Anr. Vs. Devisahay Sharma**

**i) Case in Brief:**

Complainant/Respondent had filed a complaint against BSNL/ Petitioners for their failure to provide a landline connection. Aggrieved by the order of the State Commission in favour of the Complainant, the present Revision Petition was filed by the Petitioners. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 07.02.2014 in Miscellaneous Application No.88 of 2013 in Appeal No.940 of 2011 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

**iii) Parties:**

Bharat Sanchar Nigam Ltd. and Anr.	-	Petitioners
	Vs.	
Devisahay Sharma	-	Respondent

## **Deficiency in Service - Telephones**

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### **iv) Case No and Date of Judgement:**

Revision Petition No.2708 of 2014 with IA/4408/2014 and IA/4409/2014 & Date of Judgement: 22.07.2014.

### **v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

### **vi) Issues raised and decided:**

The Petitioners submitted before the Commission that since they do not have overhead wires for upto 2.5 km., instead of providing overhead wires upto the premises of the subscriber, they would provide WLL connection, which according to them, was better than the landline connection in the matter of connectivity and the tariff including the call charges are equal to the tariff including call charges applicable in respect of the landline connection. The Petitioners undertook to do the same within one month with the date of order. Granting permission to the Petitioner to provide WLL connection in terms of the submission made by them, the Revision Petition was dismissed.

### **vii) Citation:**

Not reported in CPJ and CPR.

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## **(au) TRANSPORT OF GOODS**

### **1. M/S. Karam Cargo Logistics Pvt. Ltd. Vs. M/S. Lakra Industries Ltd.**

#### **i) Case in Brief:**

The Complainant entrusted 42 cartons of garments valued at Rs.10,67,128/- to the Petitioner. When the goods arrived at the destination only 14 out of 42 cartons were delivered. Having failed in his attempts to get the remaining goods from the Petitioner, the Complainant filed complaint before the District Forum which allowed the complaint and directed the petitioner to handover the remaining goods or in the alternative refund a sum of Rs.6,82,082/- (price of undelivered goods) to the Complainant along with the interest at 9% p.a. from the date of Complaint. A sum of Rs.10,000/- was also awarded as compensation and cost of litigation. Petitioner's appeal was dismissed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.



**ii) Order appealed against:**

From the order dated 21.04.2014 in Appeal No.487/2013 of the State Consumer Disputes Redressal Commission, Punjab.

**iii) Parties:**

M/S. Karam Cargo Logistics Pvt. Ltd. - Petitioner(s)  
Vs.

M/S. Lakra Industries Ltd. - Respondent(s)

**iv) Case No and Date of Judgement:**

Revision Petition No.2732 of 2014 & Date of Judgement: 18.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission did not accept the arguments of the Petitioner that (i) the theft goods took place on a account of reasons beyond the control of the Petitioner and (ii) the Complainant did not prove the value of goods before the District Forum. The Commission held that the Petitioner had failed to establish that the theft of the goods took place on account of reasons beyond its control and that the invoice produced by the Complainant was sufficient to prove the value of the goods.
- b) The Commission therefore dismissed the Petition as devoid of merit.

**vii) Citation:**

Not reported in CPJ and CPR.

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**(av) TRAVEL AGENCY / SERVICE**

**1. R. Suyambu Ananthan & Ors. Vs. M/s. Cox and Kings**

**i) Case in Brief:**

Six Complainants, including Shri Suyambu Ananthan and his wife Mrs.Chitra, made bookings with M/s. Cox and Kings (OP) to go on a foreign tour to Thailand and Singapore in May 2011. A total sum of Rs.5,61,000/- was paid for the tour. It is the Complainants' case that the OP blocked tickets only for five persons instead of six, leaving out

### **Deficiency in Service - Transport of Goods**

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Mrs.Chitra. Though this was pointed out to OP they promised that a separate ticket would be booked for her and there would be no problem. Though the first part of the tour to Thailand went off smoothly, the Complainants faced innumerable difficulties everywhere in Singapore including hotel accommodation, sightseeing and local travel. On their return Complainants took up the matter with the OP for adequate compensation. OP offered Rs.1,42,303/- towards refund for cancellation of return Air tickets and unutilized services. The Complainants refused to accept the offer and demanded that the offer should be increased by at least 200%. On refusal of OP to accede to their demand, a complaint was filed before the State Commission. Partly allowing the complaint, the State Commission directed the OP to pay Rs.1,42,303/- as already agreed and a further amount of Rs.3,50,000/- for unfair trade practice, negligence in duty, deficiency in service, mental agony and physical suffering. Rs.10,000/- was also awarded as cost. Aggrieved by the said order both the parties have filed Revision Petitions. Revision Petitions accepted and the case remanded back to the State Commission with a direction to give an opportunity to the parties to produce evidence again and pass a detailed order.

#### **ii) Order appealed against:**

First Appeal No.779/2013 and First Appeal No.12/2014

From the order dated 25.09.2013 in Complaint No.92/2011 of Tamil Nadu State Consumer Disputes Redressal Commission, Chennai.

#### **iii) Parties:**

First Appeal No.779/2013

R. Suyambu Ananthan & Ors. - Appellant(s)

Vs.

M/s. Cox and Kings - Respondent(s)

First Appeal No.12/2014

M/s. Cox and Kings - Appellant(s)

Vs.

R. Suyambu Ananthan & Ors. - Respondent(s)

#### **iv) Case No and Date of Judgement:**

First Appeal Nos.779 of 2013 and 12 of 2014 &

Date of Judgement: 26.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), (r), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The question before the Commission was whether arrangements were made for five or six persons at Singapore. The Commission observed that it was the duty of the parties to prove by credible evidence that arrangements for transportation, accommodation and sightseeing were made for a party of six and not five persons at Singapore. The Opposite party cannot escape responsibility just by saying that they are not liable if the local representatives were not able to make proper arrangements.
- b) The Commission further observed that the State Commission had not given any reason for arriving at a figure of Rs.3,50,000/- while passing the order. They had also not taken into account the letter of the Complainants that they would consider the offer if the original offer of Rs.1,42,303/- was increased by 200%.
- c) The Commission therefore felt that an opportunity should be given to both the parties to prove their case by necessary documentary evidence and accordingly remanded the matter back to the State Commission to consider the matter afresh after giving such an opportunity and pass a speaking order. The Revision Petitions were accepted and the order of the State Commission was set aside.

**vii) Citation:**

III (2014) CPJ 135.

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**2. Abhishek Sarkar and another Vs. Cox & Kings Ltd.**

**i) Case in Brief:**

Complainants went on a tour of Malaysia on a holiday voucher endorsed in favour of OP. After completion of the tour, they were to be picked up at the hotel by the representative of the OP for catching their return flight. It is their grievance that their representative did not turn up and they were forced to take a taxi to the airport and missed their flight since they reached late. They incurred expenses of Rs.1,03,943/- for purchasing tickets for their return journey to Kolkata via Delhi. Alleging

**Deficiency in Service - Travel Agency / Service**

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deficiency in service, they filed complaint before the District Forum which allowed the complaint and directed the OP to pay Rs.1,03,943/- and further awarded compensation of Rs.25,000/- and Rs.5,000/- as cost of litigation. OP filed appeal before the State Commission which vide impugned order reduced the amount of Rs.1,03,943/- to Rs.42,050/- against which both the parties have filed the present Revision Petitions. Revision Petition No.3533 of 2013 filed by Petitioner/OP was allowed and R.P.No.3366 of 2013 filed by the Petitioners/Complainants was dismissed.

**ii) Order appealed against:**

Revision Petition No: 3366 & 3533 of 2013

From the order dated 31.07.2013 in S.C.Case No.FA/787/2012 of West Bengal State Consumer Disputes Redressal Commission, Kolkata.

**iii) Parties:**

Revision Petition No:3366 of 2013

Abhishek Sarkar and another - Petitioners/Complainants

Vs.

Cox & Kings Ltd - Respondent/OP

Revision Petition No:3533 of 2013

Cox & Kings Ltd - Petitioner/Opp. Party

Vs.

Abhishek Sarkar and another - Respondents/Complainants

**iv) Case No and Date of Judgement:**

i. Revision Petition No: 3366 of 2013

ii. Revision Petition No: 3533 of 2013 with IA/6303/2013 (For Stay)  
&

Date of Judgement: 26.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

a) It was the contention of the Complainants that they came down from their room No.1911 to the lobby adjoining the reception at 11 A.M. Since one of the Complainants had stomach upset and

fever since morning, he had to go the rest room in room no.1911 twice leaving the other Complainants in charge of the baggage but the driver did not turn up. The Commission after perusing the e-mail communication dated 11.12.2010 sent at 12.14 by local supplier came to the conclusion that the driver reached the hotel at 11 A.M to pick up Mr. Abhishek (Complainant) but as Complainant was not found there, he left the hotel after leaving message. Driver could not have waited as he had to drop other passengers also sitting in taxi to go the airport. Perusal of assignment order given by Tourland also revealed that driver was to pick up one couple at 10.45 A.M and Complainant at 11 A.M and in such circumstances it was inferred that the driver did reach the hotel on time.

- b) The Commission also held that the Complainants should not have waited for a long time for the taxi and should have proceeded to the airport after hiring another taxi to avoid consequences of missing flight.
- c) In such circumstances, the orders of the District Forum and State Commission were set aside. Revision Petition No.3366 of 2013 filed by the Complainants/Petitioner was dismissed and the Revision Petition No.3533 of 2013 filed by Petitioner/OP was allowed.

**vii) Citation:**

IV (2014) CPJ 442; 2014(3) CPR 746.

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**(aw) VEHICLE INSURANCE**

**1. Bachan Singh Vs. Oriental Insurance Co. Ltd.**

**i) Case in Brief:**

Complainant bought a truck on 10.09.2003 for Rs.9,05,111/-. His brother was the owner of two similar trucks, one 2001 model and the other 2003 model. It was the Complainant's case that he and his brother with two trucks bearing numbers PB-05-J-9703 (owned by Complainant) and PB-05-J-9803 (owned by his brother) went to Amritsar along with a driver and cleaner and parked their trucks near Jagdambhey Transport Company at Amritsar – Tarn Taran Road and slept there for the night

### **Deficiency in Service - Vehicle Insurance**

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intervening 3-4/06-2005 and that at about 3.00 a.m. on 04.06.2005, the three of them went to Shri Harmander Sahib to pay obeisance leaving the cleaner, Kala, behind. When they returned they found only one truck PB-05-J-9803 parked at the site. The cleaner who was sleeping could not explain what happened to the other truck. FIR was registered, after some delay regarding jurisdiction of the station, on 20.06.2005. The matter was reported to the OP along with a copy of FIR. The investigator appointed by OP gave his report that the truck was never stolen and was disposed of fraudulently with mala fide intention. The claim was repudiated by the OP upon which a Consumer Complaint was filed before the District Forum. The forum dismissed the complaint. Appeal filed by the Complainant before the State Commission was also dismissed vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 18.02.2013 in Appeal No.1479/2008 of the Punjab State Consumer Disputes Redressal Commission.

**iii) Parties:**

Bachan Singh - Petitioner

Vs.

Oriental Insurance Co. Ltd. - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.2419 of 2013 & Date of Judgement: 20.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission noted that there was delay in lodging the FIR and in giving intimation to the insurance company about the alleged incident. When the incident was stated to have occurred on 04.06.2005, the FIR had been registered on 26.06.2005. The National Commission agreed with the State Commission's view that even if the FIR was not registered, the Complainant should have moved some application to set the law in motion regarding the theft. The Commission further observed that intimation was given to the insurance company on 04.07.2005 i.e. after a lapse of one month of the incident. The Commission held that



### **Deficiency in Service - Vehicle Insurance**

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**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission on perusal of the complaint observed that the complaint had been filed on 28.11.2002 by Bhupinder Singh in his own name although in the heading to the complaint the description of the Complainant had been given as Bhupinder Singh himself as well as Attorney of Kamalpreet Singh. The Commission noted that the vehicle stood in the name of the original owner Kamalpreet Singh and the insurance policy also stood in the name of the original owner. It was therefore held that the Complainant did not have any insurable interest in the matter. Although it was stated that the claim was being made as Power of Attorney holder, even then the complaint itself said that Bhupinder Singh had filed the complaint in his own capacity as well as in the capacity of Attorney holder. The Commission therefore had no reason to agree with the conclusion arrived at by the fora below that the Complainant was liable to get the claim from the insurance company. The Commission further observed that the State Commission had not given any reasons for agreeing with the findings given by the District Forum.
- b) The Commission further observed that the alleged theft place on 10.09.2001 as stated in the complaint whereas FIR was lodged on 01.12.2001 with police and the insurance company was informed on 07.12.2001. Thus intimation to the police was given late by 2 months and 21 days and to the insurance company by 2 months and 27 days. This was clearly violation of the terms and conditions of the policy which required that intimation should be given immediately. The Commission cited the decision in *New India Insurance Co. Vs. Trilochan Jane* in FA.No.321 of 2005, decided on 09.12.2009 in which a delay of two days in lodging the FIR and a delay of 9 days in giving intimation to the Insurance company was found fatal to the claim for payment.
- c) The Commission held that the fora below had gravely erred in coming to the conclusion that the Complainant was entitled to the insurance claim. The orders of the fora below were set aside and the Revision Petition was allowed.

**vii) Citation:** III (2014) CPJ 20; 2014(2) CPR 761.



**3. Kalyan Singh Chauhan Vs. National Insurance Co. Ltd.**

**i) Case in Brief:**

The Petitioner got insured his newly purchased Swaraj Mazda LCV with the Respondent/Insurance Company for own damage and the third party risk for the period from 02.06.2008 to 01.07.2009. The vehicle was insured as commercial vehicle. Unfortunately, the vehicle met with an accident on 15.07.2008. The insurance company was informed and the Petitioner filed insurance claim to Respondent/Insurance Company which repudiated the claim on the ground that Petitioner was plying the vehicle at a public place in violation of the terms and conditions of the insurance policy without a valid registration as also a valid route permit. Claiming this to be deficiency in service, the Petitioner filed complaint before the District Forum which held that the Respondent was not justified in repudiating the entire claim because of the aforesaid breach and allowed the insurance claim of the Petitioner on non-standard basis and directed the Respondent/Insurance Company to pay to the petitioner 75% of the loss suffered amounting to Rs.1,97,133/- with interest @ 9% along with Rs.2,500/- as litigation expenses. Being aggrieved of the aforesaid order, the Respondent preferred an appeal before the State Commission which allowed the appeal and dismissed the complaint vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

Against the Order dated 29.02.2012 in Appeal No.87/2011 of the State Commission Himachal Pradesh.

**iii) Parties:**

Kalyan Singh Chauhan	- Petitioner
Vs.	
National Insurance Co. Ltd.	- Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.1823 of 2012 & Date of Judgement: 20.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986 & Section 39, 66 (1), Section 192 (A) of the Motor Vehicles Act, 1988.

## **Deficiency in Service - Vehicle Insurance**

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### **vi) Issues raised and decided:**

The National Commission dismissed the present Revision Petition holding that that this is a case of fundamental breach of terms and conditions of the insurance contract and sustained the order of the State Commission on the following grounds:

- a) Undisputedly, at the time of accident, subject vehicle was being plied on a public road without a valid route permit.
- b) Respondent/Complainant could not claim indemnity in view of the violation of the expressed imitations as to use provided in the insurance contract. The decision of the Hon'ble Supreme Court in *Vikram Greentech India Ltd. & Anr. Vs. New India Assurance Co. Ltd.* (2009) 5 SCC 599 is relevant.
- c) Admittedly, the vehicle in question was not having a valid registration at the relevant time. Thus, by permitting the vehicle to be driven without registration, the Petitioner has committed violation of Section 39 of the Motor Vehicles Act, which also amounted to fundamental breach of insurance policy.

### **vii) Citation:**

III (2014) CPJ 16; 2014(2) CPR 757.

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## **4. Didar Singh and Anr. Vs. Reliance General Insurance Company Ltd.**

### **i) Case in Brief:**

Complainant No.1/Petitioner No.1 was owner of truck/trolla No.PB 10-AT-4479, who purchased it after taking loan from the Bank. Complainant No.1 sold trolla to one Major Singh, Complainant No.2/Petitioner No.2. The registration of vehicle could not be transferred in his name due to outstanding loan. Vehicle was got insured from OP/respondent for a period of one year from 6.9.2007 to 5.9.2008. Vehicle was stolen in the intervening night of 7/8.7.2008 and FIR was lodged on 8.7.2008, but vehicle was not traced. Claim submitted to the OP was repudiated on the ground that Major Singh had no insurable interest on the date of theft. Alleging deficiency on part of OP, Complainants filed complaint before District Forum which directed OP to pay Rs.4,50,000/- with interest to Major Singh. Appeal filed by OP was

allowed by State Commission vide impugned order against which, this Revision Petition has been filed along with application for condonation of delay. Delay condoned but Revision Petition dismissed.

**ii) Order appealed against:**

Against the Order dated 30.09.2013 in Appeal No.1260/2010 of the State Commission, Punjab.

**iii) Parties:**

Didar Singh and Anr. - Petitioners

Vs.

Reliance General Insurance Company Ltd. - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.1816 of 2014 & Date of Judgement: 20.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 & 21(b) of the Consumer Protection Act, 1986 & Section 157 of the Motor Vehicles Act & GR-17 of India Motor Tariff.

**vi) Issues raised and decided:**

- a) The National Commission after perusal of the records of the case found that that Didar Singh purchased vehicle and transferred it to Major Singh and intimation of transfer was not given by both the Complainants to OP. The Commission further observed that as pointed out by the State Commission the insurance remained in the name of respondent No.1 and respondent No.1 never intimated to the appellant about the transfer of the vehicle to respondent No.2. The handing over of the possession amounts to sale and it was obligatory on the part of respondent No.1 to intimate the appellant insurance company to get the insurance transferred in the name of respondent No.2. Respondent No.1 has violated the terms and conditions contained U/s 157 of the Motor Vehicles Act and GR-17 of India Motor Tariff as per which certificate of insurance has to be transferred in the name of the purchaser.
- b) In view of the above, the Commission held that the repudiation of claim by the insurance company could not be termed as



**vi) Issues raised and decided:**

The Commission relying on an earlier judgement of the Commission in *the Manager, Bharti AXA General Insurance Company Ltd. Vs. B.A.Lokesh Kumar* held that the State Commission had committed error in allowing full claim whereas Complainant should have accepted 75% of the loss on non-standard basis offered by OP since he had committed an offence under the Motor Vehicles Act by driving the vehicle on road without obtaining registration certificate. He had also committed breach of the terms and condition of the policy. The Commission therefore partly allowed the Petition and modified the order of the State Commission by substituting the amount of Rs.7,02,000/- by Rs.5,25,250/-. Rest of the State Commission's order was upheld.

**vii) Citation:**

III (2014) CPJ 184.

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**6. Jagdish Prasad Bakshi Vs. Oriental Insurance Co. Ltd.**

**i) Case in Brief:**

The claim of the Complainant/Petitioner for the theft of the truck was repudiated by the Oriental Insurance Company Limited, on two counts. Firstly, he had received the "no claim bonus" in premium. The State Commission came to the conclusion that this ground does not stand proved. No appeal has been filed by the Insurance Company in that respect. Regarding the second ground, the State Commission justified the repudiation on the ground that the petitioner was negligent in taking care of the truck. He left the key inside the truck. Since the driver stopped the truck at 3-00 A.M. in front of Dhaba itself, which was situated on the Highway, the driver could not find the truck even after searching for the same. On this ground, the appeal filed by the Oriental Insurance Company was allowed by the State Commission. Challenging the order of the State Commission, the present Revision Petition had been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From order dated 22.05.2013 in First Appeal No.1558/2011 of the State Consumer Disputes Redressal Commission, Rajasthan, Circuit Bench No.3, Jaipur.

**Deficiency in Service - Vehicle Insurance**

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**iii) Parties:**

Jagdish Prasad Bakshi

- Petitioner

Vs.

Oriental Insurance Co. Ltd.

- Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.3045 of 2013 & Date of Judgement: 26.05.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission after perusal of the records of the case found that as per the averment of the Petitioner, in case the truck was locked, its key should have been produced either before the police or before the surveyor but that was not done. It was the first and foremost duty of the driver to produce the key before the police. However, the needful was not done. The truck remained on the spot unlocked for half an hour. Surveyor of the Insurance Company had also reported that when the driver left for taking tea, he left the key inside the truck. That clearly revealed negligence and inaction on the part of the driver. Moreover, the Complainant had not come to the Court with clean hands. The Commission also opined that it was quite possible that the driver might be working in cahoots with the thief as indicated by the State Commission.
- b) In view of the above, the present Revision Petition was dismissed and the Commission did not find any illegality, irregularity or jurisdictional error in the impugned order of the State Commission.

**vii) Citation:**

III (2014) CPJ 134.

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**7. M/s. Harpreet Motors (P) Limited Vs. Dr. Prithipal Singh Bhandari & Ors.**

**i) Case in Brief:**

Dr. Prithipal Singh Bhandari, Complainant/Respondent No.1 got his 1997 model diesel car insured with National Insurance Co. Ltd. OPs 2

and 3 M/s. Ford India Limited and Ford Motor Company are manufactures of the car. The said car met with an accident on 12.04.2003 when Complainant's wife was travelling from Amritsar to Delhi, resulting in damage to the vehicle as well as injuries to the passengers. A Police report was lodged and OP No.1 was informed on the same day. The vehicle was shifted to the workshop of Harpreet Motors (OP-4) at New Delhi who carried out repairs and raised bill of Rs.2,43,858/- which was subsequently raised to Rs.2,78,500/-. It is the Complainant's case that the vehicle had to be sent for repairs frequently over the next few months to OP-5. Meanwhile Insurance Company after getting the loss assessed by a Surveyor M/s. K.R. Arora/OP-7 informed the Complainant that they had passed the claim for Rs.1,47,841/-. The Complainant after accepting the amount, allegedly under threat, filed complaint before the District Forum demanding payment of the insured value of Rs.3,60,000/- along with interest and compensation. On dismissal of the complaint by the District Forum, Complainant filed appeal before the State Commission. The State Commission assessed the amount spent on repairs at Rs.1,11,060/- and ordered that Rs.55,530/- each shall be paid by the insurance company and Harpreet Motors (OP-4). The Commission further ordered that the insurance company should pay Rs.50,000/- for adopting unfair trade practice and Rs.5,000/- towards cost. Aggrieved by the said order both the insurance company and OP-4 have filed the present Revision Petitions. Revision Petitions dismissed and State Commission's order upheld with a minor modification.

**ii) Order appealed against:**

Revision Petition Nos.977/2013 and 2346/2013

From the order dated 23.11.2012 in First Appeal No.332/2008 of Punjab State Consumer Disputes Redressal Commission.

**iii) Parties:**

Revision Petition No.977/2013

M/s. Harpreet Motors (P) Limited - Petitioner/OP

Vs.

Dr. Prithipal Singh Bhandari & Ors. - Respondent/Complainant

**Deficiency in Service - Vehicle Insurance**

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Revision Petition No.2346/2013

National Insurance Co. Ltd. - Petitioner/OP

Vs.

Dr. Prithipal Singh Bhandari & Ors. - Respondent/Complainant

**iv) Case No and Date of Judgement:**

Revision Petition Nos.977/2013 and 2346/2013 &

Date of Judgement: 26.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), (r), 15, 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission agreed with the State Commission's finding that the insurance company did not pay the amount for a long time since the Complainant was not prepared to accept the amount of Rs.1,47,841/- as full and final settlement. The said amount was released only after the complaint was filed and the District Forum passed an order to that effect. Construing this as unfair trade practice, it was held that the State Commission had rightly awarded compensation of Rs.50,000/-.
- b) The National Commission arrived at the amount spent on repairs from 24.10.2003 to 31.12.2004 as Rs.73,387/- as against Rs.1,11,060/- arrived at by the State Commission. However the decision of the State Commission to apportion 50% of the above cost to be borne by the insurance company and Harpreet Motors was upheld as reasonable since Harpreet Motors (P) Ltd. was also found to be deficient in rendering service.
- c) The State Commission's order on the amount to be borne by the Petitioners in the two Revision Petitions was modified accordingly and the Revision Petitions were dismissed.

**vii) Citation:**

III (2014) CPJ 130.

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**8. ICICI Lombard General Insurance Co. Ltd. Vs. Sh. Pawan Kumar**

**i) Case in Brief:**

On 29.09.2007, when Complainant was on his way from Kullu to Hoshiarpur, his vehicle met to an accident and suffered damage. Police report was lodged and intimation was given to OP with whom the vehicle was insured. OPs' Surveyor inspected the vehicle on 11.10.2007 and assessed the damage at Rs.3,54,661/-. Since Complainant's claim was repudiated by the OP, he filed complaint before the District Forum. The Forum dismissed the complaint on the ground that the driver of the vehicle was not having valid driving license at the time of the accident. Appeal filed by the Complainant was allowed by the State Commission which directed OP to pay Rs.2,16,650/- along with interest at 9% p.a. against which the present Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 31.08.2011 in First Appeal No.302/2009 of the Himachal Pradesh State Consumer Disputes Redressal Commission, Shimla.

**iii) Parties:**

ICICI Lombard  
General Insurance Co. Ltd. - Petitioners/OPs

Vs.

Sh. Pawan Kumar - Respondent/Complainant

**iv) Case No and Date of Judgement:**

Revision Petition No.4166 of 2011 & Date of Judgement: 29.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The issue that came up for consideration was whether i) the Complainant was driving the vehicle or Sunny, the driver and ii) whether the Complainant breached the terms and conditions of the policy.
- b) The Commission observed that as per complaint Complainant was driving the vehicle whereas as per the written statement, Sunny

### **Deficiency in Service - Vehicle Insurance**

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was driving the vehicle. It was also observed that all the three persons who were in the vehicle at the time of the accident sustained injuries. Since no injury report of Complainant was available, it was inferred that Complainant was not driving vehicle at the time of the accident. The report of the Surveyor confirmed that given the condition of the vehicle, it was impossible for the driver not to have suffered any injury. The Commission also noted the Complainant had not produced driving license of Sunny and the Complainant had purposely introduced himself as driver of the vehicle instead of Sunny which is palpably a false story. The Commission held that the Complainant had not come to the Commission with clean hands.

- c) The Commission also observed that the Complainant had not lodged FIR with Police Station but only Rapat Roznamcha had been placed on record dated 11.10.2007 i.e. after 13 days of accident and intimation to the insurance company was also given 10.10.2007 i.e. after 12 days of the accident. The Commission therefore held that there was violation of the terms and conditions of the policy which required that intimation should not given immediately as held by the Commission in *Oriental Ins. Co. Ltd. & Anr. Vs. Rohtas Singh*.
- d) Consequently Revision Petition was allowed and the impugned order of the State Commission was set aside.

#### **vii) Citation:**

III (2014) CPJ 162.

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### **9. Paramjit Kaur Vs. M/s. Oriental Insurance Co. Ltd.**

#### **i) Case in Brief:**

It is alleged that Complainant's driver was going from Delhi to Patiala on 16.01.2008 in Complainant's Scorpio vehicle and on the way when he had parked the vehicle for taking meals, the vehicle was stolen by some unknown person. FIR was lodged on 16.01.2008 and Respondent/ Insurance Company was informed. The claim was repudiated on the ground that no reasonable care was taken to safeguard the vehicle from loss. The District Forum before whom a complaint was filed directed OP to pay 75% of the insurance amount of Rs.5 Lakhs along with 8%

interest p.a. and further granted cost of Rs.5,000/-. Appeal filed by the OP was allowed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 29.05.2013 in First Appeal No.1835/2009 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh.

**iii) Parties:**

Paramjit Kaur - Petitioner/Complainant

Vs.

M/s. Oriental Insurance Co. Ltd. - Respondent/OP

**iv) Case No and Date of Judgement:**

Revision Petition No.650 of 2014 & Date of Judgement: 29.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g),(o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission found some discrepancies between the complaint and the FIR. It could be inferred from the FIR that the driver Tarsem Singh either handed over the keys of the vehicle to an unknown person who was coming with him or left keys in the vehicle and allowed the unknown person to sit in the car when he went to attend nature's call. In the complaint filed before the District Forum, there was no mention of the said facts mentioned in the FIR. It was therefore held that the State Commission did not commit any error in holding that the driver of the vehicle failed to take reasonable steps of safeguarding the vehicle which amounted to violation of Condition 5 of terms and conditions of the policy.
- b) The Commission also observed that if there was no breach of any condition of the policy, Complainant would have filed appeal claiming 100% value of the vehicle whereas the District Forum had allowed 75% of the claim on non-standard basis holding that there was breach of condition of policy. In the circumstances, the Commission observed, that it can be very well inferred that

**Deficiency in Service - Vehicle Insurance**

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Complainant's driver violated terms and conditions of the policy and District Forum committed error in allowing complaint partly.

c) Consequently Revision Petition was dismissed.

**vii) Citation:**

III (2014) CPJ 164;

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**10. Puneet Phutela Vs. The Oriental Insurance Company Ltd.**

**i) Case in Brief:**

Complainant's truck met with an accident on 14.06.2004 during the subsistence of the insurance policy taken with the Respondent. The Surveyor assessed the loss of the Truck in the sum of Rs.1,39,587/- for repairs. The Insurance Co/OP repudiated the claim of the Complainant, on the ground that the driving license of the driver was found to be invalid. The complaint filed by the Complainant before the District Forum was allowed and the Insurance Co/OP was directed to pay a sum of Rs.1,99,591/- as claimed by the Complainant along with interest @ 9% p.a, from the date of lodging of the claim, till its payment along with Rs.5000 as litigation expenses and damages of Rs.10,000/-. The State Commission, however, accepted the appeal filed by the insurance company and dismissed the complaint. Against the order of the State Commission, the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 31.01.2012 in First Appeal No.1162/2007 of the State Consumer Disputes Redressal Commission, Haryana, Panchkula.

**iii) Parties:**

Puneet Phutela - Petitioner

Vs.

The Oriental Insurance Company Ltd. - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.1979 of 2012 & Date of Judgement: 08.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission on perusal of the records found that the driving license of the driver showed that he was not permitted to drive HTV. His license was issued by the Licensing Authority at Ambala for Motor Car and not for Truck. No proper evidence was placed to the effect that RTO Barielly had made an endorsement for HTV on the said license. The affidavit of Surveyor remained unrebutted on record.

In view of the above, the present Revision Petition was dismissed and the order of the State Commission was confirmed relying on the decision of Hon'ble Apex Court in *New India Assurance Co. Ltd. Vs. Suresh Chandra Aggarwal*, 2009 (3) CPC 12 (SC).

**vii) Citation:**

III (2014) CPJ 379; 2014(3) CPR 39.

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**11. National Insurance Co. Ltd. Vs. Ashwani Kumar**

**i) Case in Brief:**

Complainant/Respondent had insured his Bolero vehicle with the Petitioner/Insurance company. The said vehicle was stolen on 21.07.2011 when it was parked in front of his house. F.I.R was lodged with the Police on the next day. Though a Surveyor was appointed by the Petitioner to investigate the matter, the Complainant's claim was repudiated on the ground that only temporary registration had been issued to the Petitioner in June 2011. Complainant's complaint was allowed by the District Forum. The Petitioner's appeal was dismissed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 06.03.2014 in Appeal No.840/2013 of the State Consumer Disputes Redressal Commission, Haryana.

**iii) Parties:**

National Insurance Co. Ltd.	- Petitioner(s)
Vs.	
Ashwani Kumar	- Respondent

**Deficiency in Service - Vehicle Insurance**

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**iv) Case No and Date of Judgement:**

Revision Petition No.2410 of 2014 & Date of Judgement: 14.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986 & Section 39 and 43 (2) of the Motor Vehicles Act.

**vi) Issues raised and decided:**

- a) The Commission observed Section 43 clause 2 of the Motor Vehicles Act provides for extension of time granted for temporary registration. Section 39 of the M.V. Act restricts the person to drive the vehicle unless the same was registered in accordance with Chapter IV of the M.V. Act. The Commission observed that there was no evidence that the vehicle was being driven at the time of theft. Relying on the earlier judgements of the Commission in *IFFCO Tokio General Insurance Co. Ltd. Vs. Pratima Jha*, RP No.171 of 2012, decided on 27.04.2012 and in *M/s Aroma Paints Ltd. and Mr. Rajiv Sethi Versus The New India Assurance Co. Ltd.* III (2013) CPJ 635 (NC) in Revision Petition No.626 of 2013 decided on 07.08.2013, the Commission held that the question is no more *res integra* and that the contention of the Petitioner was not valid. The Commission further observed that the SLPs filed against the judgements had been dismissed by the Hon'ble Supreme Court.
- b) Consequently the Revision Petition was dismissed as devoid of merits.

**vii) Citation:**

III (2014) CPJ 378; 2014(3) CPR 467.

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**12. Md. Kaimuddin Khaja Vs. Reliance General Insurance Co. Ltd. & Ors.**

**i) Case in Brief:**

Petitioner/Complainant's lorry met with an accident on 05.01.2008. The matter was reported to the Police. Respondent/Insurance company who was also informed deputed a Surveyor to assess the damage. The vehicle was alleged to have been repaired at cost of Rs.2,50,000/-

including the cost of motor parts whereas the Surveyor had estimated the damage at Rs.70,684/-. However, the Complainant's claim was repudiated by the insurance company on the ground that the driver of the vehicle did not possess a valid driving license at the time of the alleged accident. Petitioner's complaint was allowed by the District Forum which directed the insurance company to pay a sum of Rs.2,50,000/- to the Complainant on account of damage to the vehicle, Rs.7,000/- towards compensation for harassment and Rs.5,000/- towards cost of litigation. Interest at 9% p.a. was also awarded. The Respondent's appeal was allowed by the State Commission which dismissed the Complaint vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 16.01.2014 in Appeal No.969/2012 of West Bengal State Consumer Disputes Redressal Commission, Kolkata.

**iii) Parties:**

Md. Kaimuddin Khaja - Petitioner

Vs.

Reliance General Insurance Co. Ltd. & Ors. - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.1790 of 2014 & Date of Judgement: 15.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission on perusal of the documents placed before it observed that the driving license purported to have been issued by the Licensing Authority, Howrah was for a period of 12 years from 12.08.1998 to 11.08.2010. The State Commission had noted that as per Section 14 of the Motor Vehicle Act, 1988, the currency of a driving license to drive a transport vehicle is three years only. The Commission also noted that the concerned Licensing Authority did not have any record of having issued by the said driving license. The Commission therefore came to the conclusion that the driving license that the Petitioner/Complainant submitted to the insurance company was a forged document. The State Commission had relied on the decision of the Hon'ble Supreme Court

### **Deficiency in Service - Vehicle Insurance**

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on Civil Appeal No.6248 of 2009, *National Insurance Company Ltd. Vs. Om Prakash Jain* in which it was held that in case of damage to the vehicle of the insured, he is not entitled to any compensation in case the license of the driver was found to be fake. The Commission therefore found no irregularity in the order of the State Commission and dismissed the Revision Petition.

**vii) Citation:**

Not reported in CPJ and CPR.

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**13. Madhukantaben Mahendrabhai Mehta Vs. Future Generali India Insurance Co. Ltd.**

**i) Case in Brief:**

Petitioner's Bolero vehicle was insured with the Respondent for the period from 29.01.2011 to 28.01.2012. On 12.06.2011, as a result of the driver attempting to pass the vehicle through the under-bridge of a lower height, the vehicle dashed with the angle of the under-bridge and sustained damages. The claim lodged by the Petitioner was repudiated by the insurance company on the ground that the damage occurred because of the driver's negligence. Aggrieved by the repudiation of the claim, the Petitioner preferred a complaint before the District Forum which dismissed the complaint. The appeal preferred by the Petitioner before the State Commission was also dismissed vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 09.10.2013 in Appeal No.1357/2013 of the Gujarat State Consumer Disputes Redressal Commission.

**iii) Parties:**

Madhukantaben Mahendrabhai Mehta - Petitioner

Vs.

Future Generali India Insurance Co. Ltd. - Respondent(s)

**iv) Case No and Date of Judgement:**

Revision Petition No.1636 of 2014 & Date of Judgement: 15.07.2014.



**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission held that this was a clear cut case where the accident occurred solely due to the negligence of the driver. Firstly, the vehicle was not being used for the purpose for which it had been manufactured, the same having been converted into a refrigerated closed body structure which resulted in the height of the vehicle being raised. Further the under-bridge through which the driver sought to pass the vehicle did not permit vehicles beyond a certain height. The driver could have easily seen that the vehicle would not pass below the under-bridge but still he tried to do so and thereby caused the damage. It was held that the fora below were justified in dismissing the complaint filed by the Petitioner. The Revision Petition was accordingly dismissed as devoid of merit.

**vii) Citation:**

Not reported in CPJ and CPR.

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**14. Satish Singh Saini Vs. M/s. Royal Sundaram Alliance Insurance Co. Ltd. & 3 Ors.**

**i) Case in Brief:**

Complainant/Petitioner, while obtaining Insurance for her vehicle for the period 13.03.2009 to 12.03.2010, allegedly declared that the vehicle was earlier insured for the period from 13.03.2008 to 12.03.2009. The vehicle met with an accident on 18.06.2009. The matter was reported to the Police after 5 days and to the insurance Company after 20 days. The Surveyor appointed by the insurer assessed the loss at Rs.2,13,140/-. Estimate of Rs.3,50,000/- was given by the workshop for repairs but in the absence of instructions from the insurance company, the repair work was not started but garage charge at the rate of Rs.200/- per day was charged to the Complainant. Alleging deficiency in service Complainant approached the District Forum which directed the insurance company to indemnify the Complainant to the extent of Rs.2,07,814/- as per the assessment of the Surveyor and the other opposite parties were directed to pay Rs.50,000/- on account of deficiency of service. The workshop was directed to hand over the

### **Deficiency in Service - Vehicle Insurance**

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vehicle to the Complainant and pay Rs.25,000/- which it had received from him. Cost of litigation amounting to Rs.11,000/- was also awarded. The insurance company's appeal before the State Commission was allowed setting aside the order of the District Forum qua insurance company alone. The rest of the order of the District Forum was upheld. Aggrieved by the State Commission's order the present Revision Petition has been filed. Revision Petition dismissed.

#### **ii) Order appealed against:**

From the order dated 15.01.2014 in Appeal No.486/2013 of the State Consumer Disputes Redressal Commission, Chandigarh.

#### **iii) Parties:**

Satish Singh Saini - Petitioner

Vs.

M/s. Royal Sundaram Alliance Insurance Co. Ltd. & 3 Ors. - Respondents

#### **iv) Case No and Date of Judgement:**

Revision Petition No.1742 of 2014 & Date of Judgement: 15.07.2014.

#### **v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

#### **vi) Issues raised and decided:**

- a) The Commission noted that the State Commission on comparison of the copy of the cover note which Complainant had submitted to the insurance company and copy of the genuine cover note produced before the District Forum had held that the date of previous insurance had been tampered with. The purpose behind forging the copy of the cover note submitted to the insurance company was to satisfy the insurance company that the vehicle was under continuous insurance. The correct date of previous insurance was 10.09.2007 to 09.09.2008 whereas copy submitted to the insurance company showed the period from 13.03.2008 to 12.03.2009. The Commission held that the insurance policy having been obtained by making misrepresentation to the insurance company and playing fraud upon it was voidable at the instant of the insurance company and that the conduct of the Complainant who chose to commit forgery of documents disentitled him from getting any relief from the fora below.

b) The Revision Petition was therefore dismissed as devoid of merits.

**vii) Citation:**

Not reported in CPJ and CPR.

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**15. United India Insurance Company Ltd. Vs. Diwan Chand**

**i) Case in Brief:**

The Complainant, Diwan Chand got his vehicle insured with the Petitioner company for the period from 04.03.2011 to 03.03.2012. The aforesaid vehicle met with two accidents, the first accident taking place on 03.10.2011 and the second accident taking place on 25.02.2012. On intimation in this regard being given to the Insurance Company, a surveyor was appointed who assessed the damages at Rs.1,95,113/- for repair of the vehicle after the first accident and at Rs.39,890/- after the second accident. All the bills were deposited with the Insurance Company. However, the claim was later repudiated by the Insurance Company vide its letter dated 21.03.2012, on the ground that on the date of the accident, the vehicle did not have route permit to ply the vehicle on road as per the Motor Vehicle Act. Being aggrieved from the rejection of the claim, the Complainant preferred a complaint before the District Forum which dismissed the complaint, vide its order dated 24.01.2013. Being aggrieved from the order of the District Forum, the Complainant preferred an appeal before the State Commission which directed the Insurance Company to pay 75% of the assessed amount to the Complainant along with Rs.800/- as salvage value of the damaged vehicle, in case the Insurance company wants to keep the salvage of the vehicle. Being aggrieved from the order of the State Commission, the Petitioner has filed the present Revision Petition. Revision Petition dismissed.

**ii) Order appealed against:**

Against the Order dated 28.01.2014 in Appeal No. 220/2013 of the State Commission Punjab.

**iii) Parties:**

United India Insurance Company Ltd.	- Petitioner
Vs.	
Diwan Chand	- Respondent

**Deficiency in Service - Vehicle Insurance**

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**iv) Case No and Date of Judgement:**

Revision Petition No.2341 of 2014 & Date of Judgement: 16.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the records found that the claim lodged by the insured in the present case did not involve a third party risk and the insured himself was the beneficiary of the claim. The accidents in which the vehicle got damaged were not attributed to its being plied without a route permit. Therefore, there was no prejudice caused to the Insurance Company, on account of the Complainant not possessing a route permit.
- b) In view of the above, the present Revision Petition was dismissed and the order of the State Commission was confirmed relying on the decision of the Hon'ble Apex Court in *Amalendu Sahoo Vs. Oriental Insurance Co. Ltd* 2010 CTJ 485 & the decision of the National Commission in *New India Assurance Company Ltd. Vs. Narayan Prasad Appaprasad Pathak* (2006) CPJ 144 (NC). The delay caused in filing this Revision Petition was also condoned.

**vii) Citation:**

Not reported in CPJ and CPR.

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**16. Ramchandra Khatwani Vs. IFFCO TOKIO General Insurance Company and Anr.**

**i) Case in Brief:**

Complainant's vehicle, a Scooty was insured with the Respondent Insurance Company for the period from 28.02.2011 to 21.08.2011. On 14.05.2011, the said vehicle had been stolen. A report was lodged with the Police Station in Raipur on 18.05.2011 and the same was registered there. After carrying out investigations, a final report was submitted by the Police to the Chief Judicial Magistrate on 31.07.2011. Thereafter, the matter was reported to the insurance company and claim for Rs.21,000/- was submitted. Since the claim was repudiated, a complaint

was filed by the District Forum which allowed the complaint and directed the insurance company to pay a sum of Rs.15,750/- along with the interest besides Rs.2,000/- towards compensation and Rs.2,000/- towards cost. The appeal filed by the insurance company was allowed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 20.12.2013 in Appeal No.504 of 2013 of the Chhattisgarh State Consumer Disputes Redressal Commission.

**iii) Parties:**

Ramchandra Khatwani - Petitioner

Vs.

IFFCO TOKIO General Insurance Company & Anr. - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.1841 of 2014 & Date of Judgement: 17.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission noted that the order of the State Commission was based upon several decisions of the National Commission including *New India Assurance Company Ltd., Vs. Trilochan Jane*, IV (2012) CPJ 441 (NC), *Satpal Vs. United India Insurance Company Ltd. and others* IV (2013) CPJ 15 (NC) and *Suman Vs. Oriental Insurance Company Ltd.* I (2013) CPJ 713 (NC). The Commission observed that any delay in reporting to the insurer deprives the insurer a valuable right to investigate as to the commission of the theft and to trace/help in tracing the vehicle. The Commission therefore held that the insurance company was right in repudiating the claim of the Complainant which was made after delay of more than 2½ months. The Revision Petition was accordingly dismissed.

**vii) Citation:**

Not reported in CPJ and CPR.

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**Deficiency in Service - Vehicle Insurance**

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**17. National Insurance Company Vs. Kulwant Singh**

**i) Case in Brief:**

Complainant's Bolero vehicle was stolen in the night intervening 11/12.04.2012. A complaint was lodged in Fatehabad Police Station on the same day and FIR was registered. The Petitioner Insurance Company with whom the vehicle was insured was informed of the theft after 5 days. Complainant's claim for the insurance amount was repudiated by the Petitioner on the ground that the theft was not reported promptly. Complainant approached the District Forum which dismissed the complaint. However, the State Commission, on appeal, directed the insurance company to pay the insured declared value to the Complainant along with interest at 9% p.a. vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 29.04.2014 in Appeal No.72/2014 of the Haryana State Consumer Disputes Redressal Commission.

**iii) Parties:**

National Insurance Company	Vs.	- Petitioner
Kulwant Singh		- Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.2719 of 2014 & Date of Judgement:  
18.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission did not accept the contention of the Petitioner that the circular dated 20.09.2011 issued by the Insurance Regulatory and Development Authority (IRDA) applied only to Life Insurance and Health Insurance Policies and not to General Life Insurance Policies such as Motor Vehicle Insurance Policies.
- b) It was argued before the National Commission that the Respondent did not take information about the theft of the vehicle

on the ground that written information shall be taken only after all the formalities like FIR had been completed. The Petitioner also wanted details of Registration Certificate, Policy number which were available only in the stolen vehicle. The Complainant was able to prove that he had immediately filed duplicate copy of the insurance policy and registration certificate from the respective authorities. Considering the explanation given by the Complainant for the delay in reporting the matter to the insurance company, it was held that the Petitioner should not have repudiated the claim merely on account of delay in bringing the theft his knowledge, particularly when there was no delay in lodging the FIR with the Police. It was observed that the circumstances of theft conveyed to the insurance company were not different from the circumstances report to the Police.

- c) The Commission therefore dismissed the Revision Petition as devoid of merit.

**vii) Citation:**

IV (2014) CPJ 62.

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**18. Bajaj Allianz General Insurance Company Vs. Santhosh Singh**

**i) Case in Brief:**

Complainant/Respondent's Bolero vehicle was stolen on 30.10.2010. The matter was reported to the Police Station, Pipariya on 31.10.2010. Information was also given to the Petitioner/Insurance company with whom the vehicle was insured. The claim of the Complainant having been repudiated by the insurance company, he filed complaint before the District Forum. The Forum directed the Petitioner company to pay a sum of Rs.5 lakhs to the Complainant along with interest at 6% p.a. and Rs.2,000/- as litigation cost. The Petitioner's appeal was partly allowed by the State Commission by modifying order of the District Forum and directing the insurance company to pay 75% of the Insured Declared Value of the vehicle which came to Rs.3,82,500/-. Rest of the order passed by the District Forum remained unaltered. Aggrieved by the State Commission's order, the present Revision Petition has been filed. Revision Petition dismissed.





**19. United India Insurance Co. Ltd., and Others Vs. Deepak Mathur and Anr.**

**i) Case in Brief:**

Complainant/Respondent No.1, purchased a Tata Sumo vehicle and got it registered as a taxi. It was insured with the Petitioner/Insurance Company for Rs.4,40,000/- for the first year and Rs.4,00,000/- for the second year (12.05.2002 to 12.05.2003). The vehicle got stolen on 24.08.2004 and an FIR was lodged with the Police Station. Since the vehicle could not be traced, Respondent-1 submitted a claim to the Petitioner/Insurance Company for the insured sum of Rs.4,00,000/-. But the insurance company offered a sum of Rs.2,78,500/- which was the market value of the vehicle assessed by the Surveyor. Respondent-1 filed a complaint before the District Forum. The Forum held that the Complainant did not have any insurable interest left on the date the vehicle was stolen and therefore dismissed the complaint. Respondent-1 filed an appeal before the State Commission impleading Ishwar Singh/ Respondent-2 as Respondent-4 in the said appeal. The State Commission allowed the appeal and directed the insurance company to pay Rs.4,00,000/- less 10% depreciation to the Complainant along with interest at 12% p.a. from the date of complaint and a further sum of Rs.25,000/- as compensation and cost of litigation. Aggrieved by the said order present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 12.05.2008 in First Appeal No.262 of 2004 of Delhi State Consumer Disputes Redressal Commission, New Delhi.

**iii) Parties:**

United India Insurance Co. Ltd., and Others - Petitioners

Vs.

Deepak Mathur and Anr. - Respondents

**iv) Case No and Date of Judgment:**

Revision Petition No:3001 of 2008 & Date of Judgment: 22.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986 & Section 19 of the Sale of Goods Act 1930.

## **Deficiency in Service - Vehicle Insurance**

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### **vi) Issues raised and decided:**

- a) The Commission noted that there was an agreement for sale of the vehicle dated 28.06.2001 executed between the Complainant Deepak Mathur and Respondent-2 Ishwar Singh according to which the purchaser was to pay a sum of Rs.2,02,000/- by February 2002 and to pay 33 installments of Rs.1,21,121/- commencing July 2001. A reading of clause 5 the said agreement showed that the intention of the parties was not to transfer ownership of the vehicle immediately on execution of the agreement but to transfer ownership by way of a proper transfer deed after the entire payment in terms of the sale agreement had been made by the purchaser to Deepak Mathur. The Commission further observed that Section 19 of the Sale of Goods Act 1930 envisages that the title in a movable property is transferred to the purchaser only at the time the parties to the transaction intend it to be transferred. It was therefore held that the Complainant did have an insurance interest in the vehicle on the date the policy was taken and got renewal by him. He would have lost insurable interest only when the entire payment had been made by Ishwar Singh and the ownership transferred by executing a proper transfer letter/sale letter in his favour.
- b) The Commission further held that the assessment of the market value of the vehicle made by the Surveyor of the insurance company was wholly arbitrary and without any basis. His report did not refer to any sale of a vehicle of the same age.
- c) The Commission did not find any reason to interfere with the order of the State Commission. It was however observed that the order of the State Commission was silent on payment of interest by the Insurance Company. It therefore directed the Insurance Company to pay the amount award by the State Commission along with interest at 9% p.a. for the period commencing from 12.06.2008 till the date of payment.
- d) The Revision Petition was accordingly dismissed.

### **vii) Citation:**

Not reported in CPJ and CPR.

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**20. Satnam Singh Vs. Mahindra & Mahindra Ltd and another**

**i) Case in Brief:**

It is the case of the Petitioner/Complainant that he purchased a Bolero vehicle from the Respondents/Opposite Parties on 6.8.2008 and he found that it had a manufacturing defect. Whenever there was rain, water drops from the rear side of the dashboard and doors would fall on the front mats and within few minutes it would become a pool of water inside the vehicle. The Petitioner gave his vehicle to the Respondent No.2/Opposite Party No.2 for repair of above mentioned problem a number of times but the problem existed till December, 2008 and in lieu of that no alternative vehicle was provided to the Petitioner. Moreover, during the time of repairs the ceiling of cabin, floor mats of driver side had been totally filled with dust and two plugs of dashboard assembly to cover the mounting bolts had been misplaced by the Respondent No.2. Neither the problem was handled by the Respondents nor did they pay any heed to the issue. At last, the Petitioner demanded from the Respondents that they either change the vehicle or refund the price of the vehicle. Aggrieved by the inaction, he filed complaint before the District Forum which directed the OPs to replace the jeep in question with a new defect free jeep of the same specifications within a period of one month from the date of the order, failing which they shall be liable to refund to the Complainant its sale price to the tune of Rs.6,00,000/- and to pay interest thereon @ 9% p.a. from the date of institution of the complaint i.e. 23.9.2009 till the date of payment along with cost of Rs.2,500/-. Aggrieved by the order of the District Forum, Respondent No.1 filed appeal No.585 of 2010 and Respondent No.2 filed appeal No.1140 of 2010 before the State Commission which allowed appeal (No.585 of 2010) and modified the order of the District Forum to the extent that the Respondent no.2 shall replace the dashboard and the doors and shall make sure that no water/water drops enter through the dashboard or the doors and collect on the mats. The Appellant and Respondent No.2 were also directed to pay compensation of Rs.20,000/- each to respondent No.1/Complainant along with Rs.10,000/- as litigation expenses, jointly and severally. Against the order of the State Commission, the present Revision Petition has been filed. Revision Petition dismissed.

**Deficiency in Service - Vehicle Insurance**

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**ii) Order appealed against:**

Against the order dated 30.4.2013 in First Appeal No.1140 & 585/2010 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh.

**iii) Parties:**

Satnam Singh - Petitioner

Vs.

Mahindra & Mahindra Ltd and another - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.2920 of 2013 & Date of Judgement: 30.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission agreed with the State Commission that only the defective parts can be replaced but not the whole vehicle as held by the Hon'ble Supreme Court in *Maruti Udyog Ltd v. Susheel Kumar Gabgotra and Another*, 2006(2) Consumer Law Today - 150 (SC).
- b) The National Commission noted that pursuant to the order of the State Commission, the Petitioner had taken the vehicle for repairs and the repairs were carried out as directed. Though the Petitioner still expressed dissatisfaction alleging other defects, it was held that the Petitioner could not establish that the vehicle had any manufacturing defects or even that the earlier defects persisted. Therefore, the order of the State Commission was confirmed and the present Revision Petition was dismissed.

**vii) Citation:**

IV (2014) CPJ 156; 2014(3) CPR 310.

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**21. New India Assurance Co. Ltd Vs. Jatin Sachdeva**

**i) Case in Brief:**

The Complainant got his vehicle insured with the Petitioner/Insurance Company and the said policy inter alia included insurance against theft of the vehicle. The above said vehicle was stolen in the night of

26.09.2003. The claim was rejected by the Insurance Company on the ground that the vehicle had entered the State of Uttar Pradesh without paying the requisite toll tax thereby violating the provisions of law which required the insured to pay toll tax before entering the said State. Alleging deficiency in service, he filed complaint before the District Forum which dismissed the complaint. Being aggrieved from the dismissal of his complaint, the insured preferred an appeal before the State Commission which directed the petitioner/insurance company, to make payment in terms of the insurance policy, along with interest at the rate of 6% p.a., from the date of filing of the complaint till the date of payment. Being aggrieved from the order of the State Commission, the insurance company has filed this Revision Petition. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 16.04.2014 in Appeal No.228/2008 of Uttar Pradesh State Consumer Disputes Redressal Commission.

**iii) Parties:**

New India Assurance Co. Ltd - Petitioner

Vs.

Jatin Sachdeva - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.3015 of 2014 with I.A.No.4823 of 2014 (For Stay) &

Date of Judgement: 31.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission after perusing all the records wondered how a vehicle which had a permit issued in the State of Haryana could have entered the State of Uttar Pradesh without paying toll tax. The officials of the 'toll plaza' at Haryana and Uttar Pradesh border would not have allowed the vehicle to enter the State of Uttar Pradesh without paying the toll

**Deficiency in Service - Vehicle Insurance**

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tax. Therefore, the present Revision Petition was dismissed with cost assessed at Rs.10,000/ as devoid of merit and the order of the State Commission was confirmed.

**vii) Citation:**

Not reported in CPJ and CPR.

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**22. New India Assurance Company Ltd and another Vs. Shri Girish Gupta**

**i) Case in Brief:**

It was the case of the Respondent/Complainant that he got insured his car upto 17.05.2008. According to the Complainant, the car was stolen by two unknown Sikh persons at gun point from the respondent on 21.06.2007. FIR was registered. The Respondent gave information to Petitioner No.2 and requested to release the aforesaid insurance claim but the claim was rejected by the insurance company on the ground that the Respondent had violated the terms and conditions of the said insurance policy. Alleging deficiency in service, Complainant filed complaint before the District Forum which dismissed the complaint as devoid of merit. Aggrieved by the order of the District Forum, the Respondent filed an appeal before the State Commission which allowed the complaint and directed the insurance company to pay 75% of Rs.2,85,000/- as the insurance amount, Rs.15,000/- as compensation and Rs.5,000/- as cost. Against the order of the State Commission, the present Revision Petition has been filed by the Insurance company. Revision Petition dismissed.

**ii) Order appealed against:**

Against the order dated 31.10.2013 in First Appeal No.1394 of 2011 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh.

**iii) Parties:**

New India Assurance Company Ltd and another - Petitioners

Vs.

Shri Girish Gupta - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.590 of 2014 & Date of Judgement: 31.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the records pointed out that the as per condition No.4 of the insurance policy, the insured should take reasonable steps for protection of the insured vehicle from any loss or damage. It also opined that whether or not there was breach of condition would always depend upon the facts of the case. In the present case, the car was said to have been stolen when the driver parked the vehicle at road side and went to ease himself, forgetting to remove the keys from ignition. If in the hurry to answer the call of nature, the driver forgot to remove keys from the ignition switch, he could not be said to have committed wilful breach violation of the terms of the above condition no.5. Therefore, the Commission held that leaving of the key in the ignition of the car on all occasions could not be termed as so serious breach so as to disentitle the insured from seeking claim under the insurance policy relying on the judgment of the Commission in R.P.No.375 of 2013 *Shri Sukhwinder Singh Vs. Cholamandalam MS* decided on 30<sup>th</sup> August, 2013 and Punjab & Haryana High Court in the matter of *Bajaj Allianz General Insurance Company Ltd. Vs. M/s. Sagar Tour & Travels & Anr.* P.L.R. Vol. CLX IV.
- b) In view of the above, the present Revision Petition was dismissed and the order of the State Commission was confirmed.

**vii) Citation:**

III (2014) CPJ 663; 2014(3) CPR 300.

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**23. Sh.Vishnu Singh Vs. IFFCO TOKIO General Insurance Co and another**

**i) Case in Brief:**

The Complainant had insured his Tavera Car with OP/Respondent for the period 07.06.2009 to 06.05.2010. It is his case that his friend Amrit took the vehicle along with his driver to Ambala and the car met with

### **Deficiency in Service - Vehicle Insurance**

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an accident on the return journey from Ambala to Faridabad on 27.06.2009. All the occupants of the car died in the accident. FIR was registered. Complainant preferred a claim with the OP for damages which was repudiated on the ground that he was using the vehicle for hire and reward. The Complainant approached District Forum which partly allowed the complaint and directed OPs to pay Rs.3,30,726/- to the Complainant within two months and Rs.2,200/- as litigation expenses. OPs filed first appeal before the State Commission which was allowed vide impugned order against which the present Revision Petition has been filed. Revision Petition allowed.

#### **ii) Order appealed against:**

From the order dated 01.08.2012 in F.Appeal No.1522/2011 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

#### **iii) Parties:**

Sh.Vishnu Singh - Petitioner

Vs.

IFFCO TOKIO General Insurance Co. & Anr. - Respondents

#### **iv) Case No and Date of Judgement:**

Revision Petition No:4456 of 2012 & Date of Judgement: 01.08.2014.

#### **v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

#### **vi) Issues raised and decided:**

- a) The Commission noted that FIR revealed that the car was badly damaged and was beyond repair. OP had ignored such total damage and rejected the claim. Relying on the law laid down by the Hon'ble Supreme Court in *Amalendu Sahoo's case*, II (2010) CPJ 9, it was held that even if no report of mechanic to the effect of total damage was brought on record by the Complainant, he was entitled to an amount equal to 75% of the insurance amount. The Commission also relied on judgement of the Hon'ble Supreme Court in *National Insurance Co. Ltd v. Nitin Khandelwal*, IV (2008) CPJ 1 (SC), wherein it was held that the insurance company is liable to indemnify the owner of the vehicle assuming that there was a breach of condition of the insurance policy in which event the claim ought to be settled on a non-standard basis.



- b) In the present case, the Commission did not agree with the report of the surveyor that the car was being used as a taxi on hire and reward. Considering the loss as total, the Commission allowed compensation of IDV Rs.4,40,968/-. The OP was directed to pay the said amount within 90 days along with interest @ 6% p.a from the date of accident, failing which interest was payable @ 9%.
- c) The Commission set aside the order of the State Commission and restored the order of the District Forum while allowing the Revision Petition.

**vii) Citation:**

III (2014) CPJ 546; 2014(3) CPR 555.

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**24. Reliance General Insurance Co. Ltd Vs. Dr.P.S. Pramod and another**

**i) Case in Brief:**

The Complainant/Respondent purchased a Honda City Car and got it insured with the Petitioner/Reliance General Insurance Co. Ltd. for the period from 06.04.2011 to 05.04.2012 for a sum of Rs.8,81,790/-. The vehicle met with a major accident on 30.11.2011, during subsistence of the policy and was taken to Vision Motors Pvt. Ltd., Opposite Party No. 3 in the complaint, for repairs. The said opposite party prepared an estimate of Rs.7,07,917/- and forwarded the same to the Insurance Company. However, no instructions were given by the Insurance Company to Vision Motors Pvt. Ltd. to start repair of the vehicle. As a result, the Complainant approached the District Forum by way of complaint. The District Forum directed the Insurance Company to pay a sum of Rs.8,81,790/- to the Complainant with interest at the rate of 9% per annum from the date of filing of the complaint along with Rs.2,000/- as cost. Being aggrieved from the order of the District Forum, the Insurance Company filed appeal before the State Commission. On dismissal of the above said appeal, the Insurance Company has filed this Revision Petition. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 22.02.2014 in Appeal No.55/2013 of Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram.

## **Deficiency in Service - Vehicle Insurance**

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### **iii) Parties:**

Reliance General Insurance Co. Ltd - Petitioner

Vs.

Dr. P. S. Pramod and another - Respondent

### **iv) Case No and Date of Judgement:**

Revision Petition No. 2698 of 2014 with IA/4375/2014, IA/4376/2014  
(For Stay and Condonation of Delay) &

Date of Judgement : 25.08.2014.

### **v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

### **vi) Issues raised and decided:**

- a) The issue was whether the Insurance Company was required to pay more than the cost of repair viz. Rs.4,11,942.26/- assessed by its surveyor appointed by it.
- b) The National Commission on perusal of the report prepared by the surveyor appointed by the District Forum and that prepared by the surveyor appointed by the Insurance Company held that the District Forum was justified in relying upon the report of the former since no notice had been given to the Complainant by the surveyor appointed by the Insurance Company before undertaking assessment of the damage.
- c) The National Commission further found that the surveyor appointed by the District Forum, in addition to cost of repair which he assessed at Rs.5,61,207.36/- after deducting the salvage value, also added a sum of Rs.1,25,000/-, towards possible damage to the engine and other mechanical parts. The Commission opined that the surveyor appointed by the District Forum should have asked the work shop i.e. Vision Motors Pvt. Ltd. to carry out an assessment of the damage to the engine and other mechanical parts instead of giving an estimate without any basis for it. In the facts and circumstances of the case, the Commission was of the view that a sum of Rs.50,000/- should be paid to the Complainant for repair of the damage to the engine and other mechanical parts of the vehicle.

d) In view of the above, the Commission directed the Petitioner/ Insurance Company to pay the aforesaid amount of Rs.6,11,207.36/- (Rs.5,61,207.36 + 50,000) to the Complainant along with interest @ 9% per annum from the date of filing of the complaint till the date of payment. It was held that the Complainant shall be entitled to take the vehicle from the workshop of respondent no. 3 and get it repaired, utilising the aforesaid amount.

**vii) Citation:**

2014(3) CPR 786.

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**25. Oriental Insurance Co. Ltd and another Vs. Mohinder Pal and another**

**i) Case in Brief:**

Complainant/Respondent's vehicle which was insured with the Petitioner company met with an accident soon after its purchase. The actual bill of repair came to Rs.6,15,774/-. The surveyor appointed by the Insurance Company estimated the loss at Rs.5,24,937/- but the net amount recommended to be paid to the Complainant was Rs.4,09,495/-only. The District Forum allowed the actual cost of repair with compensation of Rs.20,000/- which was endorsed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 01.02.2013 in F.Appeal No.68 of 2013 of the State Consumer Disputes Redressal Commission, Haryana.

**iii) Parties:**

Oriental Insurance Co. Ltd and another - Petitioners

Vs.

Mohinder Pal and another - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No: 1925 of 2013 & Date of Judgement: 26.08.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**Deficiency in Service - Vehicle Insurance**

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**vi) Issues raised and decided:**

It was noted by the Commission that the vehicle was less than 3 months old when it met with an accident. Secondly, it was got repaired from OP.3 from whom it was purchased. It was therefore held that there was no occasion to doubt the correctness of the cost of repair and there was absolutely no justification for deduction towards depreciation as recommended by the Surveyor. Consequently, the Commission upheld the orders of the fora below and dismissed the Revision Petition.

**vii) Citation:**

IV (2014) CPJ 451; 2014(3) CPR 756.

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**26. M/s. Premier Shield Pvt Ltd Vs. Tata-AIG General Insurance Co. Ltd**

**i) Case in Brief:**

Petitioner's vehicle which was insured with the Respondent met with an accident on 18.11.2009. DDR was lodged with the Police Station and intimation was given on the same date to the Respondent. However, Respondent repudiated the claim of the Petitioner on the ground that the driver of the vehicle at the time of the accident was not holding an effective and valid license. Alleging deficiency in service, a complaint was filed before the District Forum which was dismissed. Appeal filed by the Petitioner before the State Commission was also dismissed vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed with cost.

**ii) Order appealed against:**

From the order dated 05.08.2013 in First Appeal No.318 of 2013 of State Consumer Disputes Redressal Commission, UT, Chandigarh.

**iii) Parties:**

M/s. Premier Shield Pvt Ltd - Petitioner

Vs.

Tata-AIG General Insurance Co. Ltd - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No:3496 of 2013 & Date of Judgement: 26.08.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission noted that the Petitioner produced the driving license which was held by the driver employed by them that was valid for the period from 08.02.2010 to 07.02.2013 for driving LMV only along with the claim whereas the accident took place on 18.11.2009. Subsequently, they produced another license held by the driver which was valid for the period from 03.07.2008 to 02.07.2011 for MC, LMV, HGV and HTV. Since the driver was in possession of two driving licenses which was against the provisions contained in Section 6 of the Motor Vehicles Act, 1988, it was held that the Respondent was justified in repudiating the claim. Therefore, the Revision Petition was dismissed with cost of Rs.10,000/- to be deposited by way of Demand Draft in the name of Consumer Legal Aid A/c of the Commission.

**vii) Citation:**

IV (2014) CPJ 325; 2014(3) CPR 750.

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**27. Arjun Lal Jat Vs. M/s. HDFC Irgo General Insurance Co. Ltd and another**

**i) Case in Brief:**

The Complainant/petitioner had got a truck No.RJ 142G 4283 insured with the respondent company. The aforesaid vehicle was stolen from in front of All India Institute of Medical Science in New Delhi, in the night intervening 19/20.01.2010. An FIR in this regard was lodged with the concerned Police Station on 29.01.2010. Since the truck could not be traced, a claim was lodged by the Complainant with the Insurance Company. The claim having not been paid by the Insurance Company, the Complainant filed complaint before the District Forum which directed the Insurance Company to pay a sum of Rs.7 lakhs to the Complainant along with interest on that amount at the rate of 10% per annum, Rs.11,000/- as compensation and Rs.3,000/- as cost of litigation. Being aggrieved from the order of the District Forum, the Insurance Company filed appeal before the State Commission which was allowed. Against the decision of the State Commission, the present Revision Petition has been filed. Revision Petition dismissed.

**Deficiency in Service - Vehicle Insurance**

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**ii) Order appealed against:**

From the order dated 05.05.2014 in Appeal No.806 of 2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur

**iii) Parties:**

Arjun Lal Jat - Petitioner

Vs.

M/s. HDFC Irgo General Insurance Co. Ltd and another - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.3182 of 2014 & Date of Judgement: 28.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) In the present case, perusal of the signed statement given by the driver of the truck namely Sh. Hemraj on 25.02.2010 would show that in the night intervening 19/20.01.2010, he left the truck in start condition near All India Institute of Medical Science and went out to ease himself. When he returned after 10-15 minutes, the vehicle was found missing. He informed the owner of the truck at about 7.50.am.
- b) The National Commission based on the signed statement given by the truck driver opined that it could be hardly disputed that the driver left the truck unattended with the key of the truck in the ignition. Had the driver not left the key in the ignition, it might not have been possible for the thief to commit theft of the vehicle. The driver of the vehicle was clearly negligent in leaving the truck unattended with the key inside the ignition.
- c) In view of the above, the Commission held that once it was shown that the theft took place solely on account of the driver, employed by the insured, the Insurance Company could not be made liable for such negligent act on the part of the driver and cannot be directed to reimburse the insured. For this reason alone, the order passed by the State Commission was eminently justified and there was no question as to whether leaving keys in the

ignition, and leaving the vehicle unattended amounts to breach of the terms and conditions of the policy.

d) Consequently, the Revision Petition was dismissed and the order passed by the State Commission was upheld.

**vii) Citation:**

2014(3) CPR 721.

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**28. United India Insurance Co. Ltd Vs. Mr. Dada Miyan**

**i) Case in Brief:**

Complainant/Respondent purchased a vehicle which was insured by Petitioner/Insurance Company by way of a policy which was valid from 28.09.2006 to 27.09.2007. Complainant got the vehicle transferred in his name by 31.10.2006 but did not apply to the insurance company at any time prior to 28.01.2007 for transfer of the policy in his name. On 28.01.2007, the vehicle met with an accident and the Complainant's claim was repudiated by the insurance company. Alleging deficiency in service, a complaint was filed before the District Forum which directed the Petitioner/Insurance Company to pay a sum of Rs.1,50,000/- being the insured value along with compensation amounting to Rs.8,000/-. Petitioner's appeal was dismissed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 17.10.2008 in F.Appeal No.1070 of 2008 of Karnataka State Consumer Disputes Redressal Commission, Bangalore.

**iii) Parties:**

United India Insurance Co. Ltd	Vs.	- Petitioner
Mr. Dada Miyan		- Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No:129 of 2009 & Date of Judgement: 01.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986 & Section 157 of the Motor Vehicles Act, 1988.

## **Deficiency in Service - Vehicle Insurance**

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### **vi) Issues raised and decided:**

- a) The Commission held that in view of the mandate of Section 157(2) of the Motor Vehicles Act, 1988, the Complainant was required to apply to the insurance company within 14 days of the purchase of vehicle for transfer of the certificate of insurance in his name and he failed to do so. A policy of insurance was nothing but a contract between the insurer and the insured whereby the insurer, in consideration of the premium received from the insured undertakes to indemnify to insure in case of loss of or damage to the vehicle as held in Revision Petition No.3001 of 2008, *United India Insurance Co. Ltd and others Vs. Deepak Mathur and Another* decided by the National Commission on 22.07.2014. In the absence of such a contract, it was held that the insurance company cannot be held liable to indemnify the owner of the vehicle which is lost or gets damaged.
- b) The Commission rejected the contention of the Complainant that under India Motor Tariff Regulations, the benefits under the policy automatically accrues to the new owner on transfer of the vehicle. It was noted the aforesaid regulations were applicable only upto 30.06.2002 and as per the new regulations which came into effect from 01.07.2002, the Complainant was not entitled to indemnification (*Madan Singh Vs. United India Insurance Co. Ltd*, (2009) CPJ 158 (NC) and *Sandeep Gupta Vs. United India Insurance Co. Ltd* and another in Revision Petition No.2355 of 2012 decided on 14.02.2014).
- c) Revision Petition was accordingly allowed and the orders of the fora below were set aside.

### **vii) Citation:**

2014(3) CPR 684.

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## **29. Smt. Sarla Jain Vs. United India Insurance Co. Ltd**

### **i) Case in Brief:**

Complainant's husband and son were travelling in a vehicle on 23.10.2009 which met with an accident due to negligence of the truck driver and five persons died. The vehicle was registered in the name of Dilip Kumar Kothari and was covered by comprehensive insurance



**Compendium of National Commission Judgements – 2014 – Vol.II**

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policy issued by the OP/Respondent from 31.03.2009 to 30.03.2010. However, Complainants' claim was repudiated by OP against which complaints were filed before the District Forum. District Forum dismissed the complaints. Appeal filed by the Complainants was also dismissed by the State Commission against which the present Revision Petitions have been filed. Revision Petitions dismissed since the policy was found *ab initio* void.

**ii) Order appealed against:**

Revision Petition No.3430 of 2013

From the order dated 19.06.2013 in Appeal No.FA/13/126 of Chhatisgarh State Consumer Disputes Redressal Commission, Raipur.

Revision Petition No.3431 of 2013

From the order dated 19.06.2013 in Appeal No.FA/13/127 of Chhatisgarh State Consumer Disputes Redressal Commission, Raipur.

Revision Petition No.3432 of 2013

From the order dated 19.06.2013 in Appeal No.FA/13/128 of Chhatisgarh State Consumer Disputes Redressal Commission, Raipur.

Revision Petition No.3433 of 2013

From the order dated 19.06.2013 in Appeal No.FA/13/129 of Chhatisgarh State Consumer Disputes Redressal Commission, Raipur.

**iii) Parties:**

Revision Petition No.3430 of 2013

Smt. Sarla Jain - Petitioner

Vs.

United India Insurance Co. Ltd - Respondent

Revision Petition No.3431 of 2013

Smt. Nirmala Jain - Petitioner

Vs.

United India Insurance Co. Ltd - Respondent

Revision Petition No.3432 of 2013

Jinesh Jain and another - Petitioners

Vs.

United India Insurance Co. Ltd - Respondent

**Deficiency in Service - Vehicle Insurance**

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Revision Petition No.3433 of 2013

Smt. Rajshree Jain

- Petitioner

Vs.

United India Insurance Co. Ltd

- Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No:3430 with IA/6890/2013 (For Condonation of Delay);

Revision Petition No:3431 with IA/6891/2013 (For Condonation of Delay);

Revision Petition No:3432 with IA/6892/2013 (For Condonation of Delay);

Revision Petition No:3433 with IA/6893/2013 (For Condonation of Delay)

& Date of Judgement: 04.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

In this case, after the accident, it was found on investigation that prior to purchase of vehicle and issuance of insurance policy, Dilip Kumar Kothari had already died on 30.04.2007. After the accident, an affidavit was filed by Deepak Kumar Kothari before the RTO on 28.10.2009 in which it was submitted that the vehicle was mistakenly registered in the name of Dilip Kumar Kothari instead of Deepak Kumar Kothari, Kartha, HUF and the RTO accordingly corrected entries in the Registration Certificate. On receiving this information, OP cancelled the insurance policy. The National Commission held that as the policy had been taken in the name of a dead person, it was *ab initio* void and no liability can be fastened on the Respondents. Consequently, Revision Petitions were dismissed.

**vii) Citation:**

2014(4) CPR 356.

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**30. National Insurance Co. Ltd and another Vs. Alam Ali**

**i) Case in Brief:**

On 13.06.1996, Complainant/Respondent's tanker met with an accident and was damaged. At the time of the accident, it was driven by one Feroz Beg while actually the driver was Inayat Khan. Complainant who had insured the tanker with the OP for Rs.3,50,000/-, claimed

Rs.1,31,899/- towards cost of repair. Claim was repudiated by OP on the ground that at the time of the accident, the person who was at the wheel had only a learner's license. Alleging deficiency in service, a complaint was filed before the District Forum which dismissed the claim as barred by limitation and since driver was having learner's license. Appeal filed by the Complainant was allowed by the State Commission and Rs.44,034/- was awarded as compensation. Aggrieved by the said order, the present Revision Petition has been filed along with application for condonation of delay of 74 days. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 20.11.2007 in Misc. Application No.224 of 2007 in Appeal No.1126/2000 of Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

**iii) Parties:**

National Insurance Co. Ltd and another - Petitioners

Vs.

Alam Ali - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No:2164 of 2008 & Date of Judgement: 08.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) Since the reasons given in the application for condonation of delay were found to be justified, the application was allowed subject to payment of cost of Rs.5000 to the Respondent.
- b) On merits, the Commission held that as driver of the vehicle was having learner's licence at the time of accident and did not have the permit to drive transport vehicle on road, the Petitioner had not committed any deficiency in repudiating the claim. It was noted that in *Alka Ojha Vs. Rajasthan Public Service Commission and another* (2011) 9 SCC 438, Hon'ble Supreme Court had held that driving licence and learner's licence cannot be treated at par and that a person shall not drive motor vehicle in any public place unless he holds effective driving license.

**Deficiency in Service - Vehicle Insurance**

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c) Consequently, Revision Petition was allowed. The order of the State Commission was set aside and the order of the District Forum dismissing the complaint was upheld.

**vii) Citation:**

IV (2014) CPJ 573; 2014(4) CPR 239.

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**31. Naresh Kumar Vs. Oriental Insurance Company Ltd.**

**i) Case in Brief:**

Complainant's car met with an accident on 16.01.2009 and got damaged when the insurance policy with the Respondent company was in currency. Complainant's claim was not settled by the Respondent. Alleging deficiency, he filed complaint before the District Forum which allowed the complaint and directed the Respondent to pay a sum of Rs.1,90,000/- as compensation for loss of vehicle with interest at 9% p.a and a further lumpsum compensation of Rs.10,000/- towards for mental agony, harassment and cost of litigation. The Respondent's appeal to the State Commission was partly allowed and it was directed that the Complainant would be entitled to an amount of Rs.1,30,220/- on repair basis along with interest at the rate of 9% p.a from the date of filing of the complaint. The present Revision Petition has been filed by the Complainant/Petitioner challenging the above order. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 16.08.2012 in F.Appeal No.802/2011 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

**iii) Parties:**

Naresh Kumar - Petitioner

Vs.

Oriental Insurance Company Ltd - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No: 2915 of 2013 with I.A/5006/2013 (For Condonation of Delay) & Date of Judgement: 10.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission noted that two surveyor's reports, one appointed by the insurance company and the other appointed by the Complainant were filed before the District Forum and the District Forum instead of going into the correctness of the said reports opted to take a shortcut by averaging the quantum of damages assessed by the surveyors and awarded a sum of Rs.1,90,000/-. However, the State Commission relied upon the report furnished by the surveyor appointed by the insurance company who assessed the damages at Rs.1,30,220/-. The State Commission also observed that there were no grounds to disagree with the report of the surveyor appointed by the Insurance Company. The National Commission agreed with the above rationale and upheld the order of the State Commission. It was also noted by the National Commission that the Respondent had not challenged the principle of awarding compensation on the basis of quantum of damages. Accordingly, the Revision Petition was dismissed.

**vii) Citation:**

IV (2014) CPJ 203; 2014(4) CPR 85.

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**32. Sri Monjay Das Vs. The Managing Director, The Oriental Insurance Co. Ltd and others**

**i) Case in Brief:**

The petitioner/Complainant purchased one Chevrolet Tavera motor vehicle on 08.09.2005 and got the same insured with the respondent/ insurance company for a sum of Rs.6,10,000/- for the period from 31.12.2006 to 30.12.2007. The case of the Complainant is that while he was on tour in the North East in the aforesaid vehicle, he and his driver were attacked by some unknown persons in a petrol bunk on 06.04.2007 and they also took away the vehicle as well as cash amounting to Rs.10,000/-. An FIR being No.31/07 under Section 392/34 of IPC was registered on 06.04.2007. However, the culprits could not be arrested and a final report was eventually submitted to the concerned judicial magistrate, who accepted the said report. The claim lodged by the petitioner, however, was repudiated by the insurance company on the ground that the vehicle was being used for commercial purpose. The insurance company also doubted the alleged theft of the vehicle. Being aggrieved, he filed complaint before the

### **Deficiency in Service - Vehicle Insurance**

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District Forum which dismissed the complaint. So, the petitioner approached the State Commission by way of an appeal. The said appeal having been dismissed, this Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 13.01.2014 in FA/761/2012 of West Bengal State Consumer Disputes Redressal Commission at Kolkata.

**iii) Parties:**

Sri Monjay Das - Petitioner

Vs.

The Managing Director,  
The Oriental Insurance Co. Ltd and others - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.1788 of 2014 & Date of Judgement: 15.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The issues for consideration in this Revision Petition were (i) whether the vehicle in question was being used for a commercial purpose and (ii) whether the vehicle was actually stolen or not.
- b) The Commission pointed out that no documentary evidence of the vehicle in question having been hired and a sum of Rs.15,000/- having been paid to the Complainant was produced. No receipt of the alleged payment of Rs.15,000/- was produced before the District Forum. Further, no witnesses to support this claim were produced. Therefore, it was held that in these circumstances, the finding of the District Forum and the State Commission with respect to the vehicle in question having been given on hire was perverse, since it was not based on any legally admissible evidence.
- c) Regarding the theft of the vehicle, there was no legally admissible evidence produced by the insurance company to prove that the vehicle in question was not stolen. In fact, the report of the investigating officer was contrary to that claim.

d) Consequently, the Revision Petition was allowed and the respondent-company was directed to make payment to the Complainant in accordance with the insurance policy within eight weeks from the date of the order.

**vii) Citation:**

IV (2014) CPJ 458.

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**33. Kulwant Singh Vs. The Managing Director, United India Insurance Co. Ltd. and another**

**i) Case in Brief:**

Petitioner got his jeep insured with the OPs on 10.01.2011. On 18.04.2011, when the petitioner visited his friend's house at Phagwara, the Jeep was found missing on 19.04.2011. The matter was reported to the Police and to the OPs on 22.04.2011. The insurance claim of the Petitioner was repudiated by the OPs. Petitioner filed a consumer complaint before the District Forum which allowed the complaint and directed the OPs to pay a sum of Rs.5,97,000/- against the insurance claim besides Rs.10,000/- as compensation. The appeal filed by the Respondents was allowed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 04.06.2014 in F. Appeal No.55 of 2013 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh.

**iii) Parties:**

Kulwant Singh - Petitioner

Vs.

The Managing Director,  
United India Insurance Co. Ltd and another - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.3320 of 2014 & Date of Judgement: 15.09.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

## **Deficiency in Service - Vehicle Insurance**

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### **vi) Issues raised and decided:**

The Commission held that the State Commission had rightly dismissed the complaint of the Petitioner on the ground of violation of the condition of the insurance contract which required that information of theft should be given to the Police and to the insurance company immediately. In the present case, it was noted that the theft, which took place on the night of 18/19.04.2011 was reported to the police on 22.04.2011 i.e after more than two days. Relying on the decision of the National Commission in First Appeal 321 of 2005 decided on 09.12.2009 (*New India Assurance Co. Ltd v. Trilochan Jane*) and that of the Hon'ble Supreme Court in *Oriental Insurance Co.Ltd v. Parvesh Chander Chadha* – Civil Appeal No.6739/2010 decided on 17.08.2010, it was held that by delaying the information of theft to the police the Petitioner had acted against the interest of insurer and this violation of condition is fundamental to the loss caused which justifies repudiation of claim by the insurance company. The Revision Petition was accordingly dismissed.

### **vii) Citation:**

IV (2014) CPJ 350; 2014(4) CPR 45.

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## **34. The IFFCO Tokio General Insurance Co. Ltd Vs. M/s. Sheetalben Nileshbhai Surti**

### **i) Case in Brief:**

The husband of the Complainant met with an accident on 31.12.2005 when he was going on a motor cycle and died on the spot. The vehicle was registered in the name of his father and was insured for a period of one year 06.08.2005 to 05.08.2006. Since Complainant's claim was not settled by OP, she filed complaint before District Forum which allowed the complaint. Appeal filed by the OP was dismissed by the State Commission vide impugned order against which this Revision Petition has been filed. Revision Petition allowed.

### **ii) Order appealed against:**

From the order dated 31.01.2012 in Appeal No.1340/2007 of Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.



**iii) Parties:**

The IFFCO

Tokio General Insurance Co. Ltd - Petitioner/OP

Vs.

M/s. Sheetalben Nileshbhai Surti - Respondent/Complainant

**iv) Case No and Date of Judgement:**

Revision Petition No.1420 of 2012 & Date of Judgement: 16.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21 (b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Petitioner's contention that the premium paid by the registered owner Premchandbhai Surti was paid for owner/driver and deceased not being owner of the said vehicle, Complainant was not entitled to receive any compensation under the policy was upheld by the National Commission since Section 3(c)(1) of the policy made it clear the driver must have been the owner and he should have held an effective driving license at the time of the accident.
- b) The National Commission also held that since the Complainant had filed claim before the Motor Accident Claims Tribunal and she may be entitled to claim as per Section 2(3) of the policy, she cannot claim compensation simultaneously before two fora namely Motor Accident Claims Tribunal and the District Forum.
- c) Consequently, the Revision Petition filed by the Petitioner was allowed and the order of the State Commission was set aside.

**vii) Citation:**

IV (2014) CPJ 264; 2014(4) CPR 38.

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**Ex-parte Decree**

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**IV. EX-PARTE DECREE**

**1. M/s. Accanoor Associates Vs. Akanksha Co-operative Housing Society Ltd. & 19 Others**

**i) Case in Brief:**

In Appeal No.151/2010, during the proceedings before the State Commission, notice to both the OPs.1 & 2 were sent on 04.10.2012 and they were duly served as per the postal acknowledgments on record. But they remained absent. After this, public notice was published in daily *avshakti* issue dated 19<sup>th</sup> June 2012 and the Free Press Journal issue dated 19<sup>th</sup> June 2012. But in spite of the above said public notice, none of the OPs appeared. Hence, complaint was proceeded with in their absence. The case was decided ex-parte by the State Commission for default of appearance and the failure of filing of written statement vide impugned order against which the present Revision Petition has been filed. Revision Petition was dismissed.

**ii) Order appealed against:**

Revision Petition No.2049 of 2014

Against the Order dated 29.01.2013 in Appeal No.151/2010 of the State Commission Maharashtra.

Revision Petition No.2050 of 2014

Against the Order dated 30.10.2013 in Appeal No.151/2010 of the State Commission Maharashtra.

**iii) Parties:**

Revision Petition No.2049 & 2050 of 2014

M/s. Accanoor Associates

- Petitioner(s)

Vs.

Akanksha Co-operative Housing Society Ltd.  
& 19 Others

- Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.2049 & 2050 of 2014 with IA/3070/2014, IA/3071/2014 & Date of Judgement: 16.07.2014.

**v) Acts and Sections referred:**

Sections Section 13 (2) (b) (ii), 13(3A), 13 (4), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the records found that as per the record on 10.04.2013, Mr.S.B.Rao, Advocate appeared on behalf of the petitioner OP No.1 before the State Commission. No steps for getting the impugned order set aside were taken by the petitioner till then. Even thereafter, neither any Revision Petition was filed nor any application for setting aside ex-parte order was moved by the petitioner till 11.07.2013 on which date Advocate for the petitioner appeared in the State Commission and sought time to file proper application for accepting the written version of OP No.1 belatedly. The Commission observed that the aforesaid conduct of the Petitioner makes it clear that the Petitioner was not serious about prosecuting the complaint and he was grossly negligent in defending the consumer complaint filed against him.
- b) The National Commission further observed that according to Section 13(2) of the Consumer Protection Act, 1986, OP is required to file his response to the consumer complaint within a period of 30 days from the date of service of notice which period can be extended up to a period not exceeding fifteen days by the fora concerned. But in the instant case, the Petitioner who was a service provider, obviously had been grossly negligent in conduct of his defence and he moved an application seeking condonation of delay after the expiry of the period provided in section 13 (3A) for disposing of the complaint. From this, it was evident that the petitioner had been grossly negligent in the conduct of this case and he had miserably failed in filing his written statement within the time prescribed by section 13 (2) (a) of the Act. In the circumstances, the National Commission observed that the State Commission was right in declining to allow the application for condonation of delay in filing the written Statement.
- c) In view of the above, the present Revision Petitions were dismissed and the order of the State commission was upheld.

**vii) Citation:**

III (2014) CPJ 363; 2014(3) CPR 423.

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**Execution Petition**

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**V. EXECUTION PETITION**

**1. Haryana Urban Development Authority and another Vs. M/s.Stanley Engineering Private Limited**

**i) Case in Brief:**

This appeal, filed under Section 27A of the Consumer Protection Act, 1986, called in question the order passed by Haryana State Commission on 17.06.2013 in Execution Petition No.1/2006. It was observed that it should have been listed as an Execution Appeal and not as First Appeal. When the matter came up before the National Commission on 18.09.2013, counsel for the appellant/HUDA informed that the State Commission had passed final orders in the execution petition on 09.09.2013. For complying with the above said order, one Shri Prem Singh, had appeared before the State Commission, on behalf of JD/HUDA and presented a cheque for Rs.8,97,233/- which was delivered to DH/Complainant Mr. R.M.Khanna who is the Managing Director of the Complainant Company. The State Commission had recorded the satisfaction of Shri Khanna that the full amount has thus been tendered to him and therefore had dismissed the Execution Petition. Execution appeal was dismissed as order had been complied with by the parties.

**ii) Order appealed against:**

Against the order dated 17.06.2013 in EA No.01/2006 in Complaint Case No.24/1995 of the State Commission, Haryana.

**iii) Parties:**

Haryana Urban Development Authority and another - Appellants

Vs.

M/s. Stanley Engineering Private Limited - Respondent

**iv) Case No and Date of Judgement:**

First Appeal No.609 of 2013 & Date of Judgement: 18.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19, 21(a)(ii) and 27A of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission on perusal of the records found that the execution proceedings which commenced before the State Commission through EA No.1/2006 in CC No.24 of 2005 stood closed on 09.09.2013, with compliance of the direction of the executing court by the judgment debtor/HUDA. So, nothing survived. Therefore, the present appeal filed against an interim order of the executing court, prior to 09.09.2013, became infructuous and was dismissed as the order had been complied with by the parties.

**vii) Citation:**

2014(3) CPR 411.

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**VI. IMPLEMENTATION OF CONSUMER FORA'S ORDERS/SCOPE OF SECTION 27**

**1. M/s. Shreenath Corporation and others Vs. Nilkamal V. Patel**

**i) Case in Brief:**

Several complaints were filed before the State Commission, Gujarat against the Appellants in which orders were passed by the State Commission on 30.01.2012 for payment of various amounts by the Appellants to the Complainants. The Appellants did not comply with the order and preferred appeals before the National Commission. The interim order passed by the National Commission on 15.05.2012 granting stay subject to depositing 50% of the amount with the State Commission was also not complied with. The appeals filed by the Appellants before the Supreme Court were also dismissed. The Complainants initiated proceedings under Section 27 for implementation of the order of the State Commission which was resisted by the Appellants on the ground that they had preferred appeals before the National Commission and that the order of the State Commission had not become final in view of Section 24 of the Act and consequently, proceedings under Section 27 of the Act were not maintainable. The said contention was rejected by the State Commission vide impugned order dated 09.05.2014 against which the present execution appeals have been filed. Execution Appeals dismissed as devoid of merit.

**ii) Order appealed against:**

Execution Appeal No.13 of 2014

From the order dated 09.05.2014 in Proposal No.26/2012 of Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.

Execution Appeal No.14 of 2014

From the order dated 09.05.2014 in Proposal No.27/2012 of Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.

Execution Appeal No.15 of 2014

From the order dated 09.05.2014 in Proposal No.28/2012 of Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.

Execution Appeal No.16 of 2014

From the order dated 09.05.2014 in Proposal No.29/2012 of Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.

**Compendium of National Commission Judgements – 2014 – Vol.II**

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Execution Appeal No.17 of 2014

From the order dated 09.05.2014 in Proposal No.30/2012 of Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.

Execution Appeal No.18 of 2014

From the order dated 09.05.2014 in Proposal No.31/2012 of Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.

Execution Appeal No.19 of 2014

From the order dated 09.05.2014 in Proposal No.32/2012 of Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.

Execution Appeal No.20 of 2014

From the order dated 09.05.2014 in Proposal No.33/2012 of Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.

Execution Appeal No.21 of 2014

From the order dated 09.05.2014 in Proposal No.34/2012 of Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.

Execution Appeal No.22 of 2014

From the order dated 09.05.2014 in Proposal No.35/2012 of Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.

Execution Appeal No.23 of 2014

From the order dated 09.05.2014 in Proposal No.36/2012 of Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.

Execution Appeal No.24 of 2014

From the order dated 09.05.2014 in Proposal No.37/2012 of Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.

Execution Appeal No.25 of 2014

From the order dated 09.05.2014 in Proposal No.38/2012 of Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.

Execution Appeal No.26 of 2014

From the order dated 09.05.2014 in Proposal No.39/2012 of Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.

**Implementation of Consumer Fora's Orders / Scope of Section 27**

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**iii) Parties:**

Execution Appeal No.13 of 2014

M/s. Shreenath Corporation and others - Appellants

Vs.

Nilkamal V. Patel - Respondent

Execution Appeal No.14 of 2014

M/s. Shreenath Corporation and others - Appellants

Vs.

Nilkamal V. Patel and another - Respondents

Execution Appeal No.15 of 2014

M/s. Shreenath Corporation and others - Appellants

Vs.

Prafullaben R. Shah and another - Respondents

Execution Appeal No.16 of 2014

M/s. Shreenath Corporation and others - Appellants

Vs.

Chotubhai V. Patel - Respondent

Execution Appeal No.17 of 2014

M/s. Shreenath Corporation and others - Appellants

Vs.

Chotubhai V. Patel and another - Respondents

Execution Appeal No.18, 19 & 20 of 2014

M/s. Shreenath Corporation and others - Appellants

Vs.

Jatinbhai Harendrabhai Badiyani and another - Respondents

Execution Appeal No.21 of 2014

M/s. Shreenath Corporation and others - Appellants

Vs.

Jatinbhai Harendrabhai Badiyani and another - Respondents



**Compendium of National Commission Judgements – 2014 – Vol.II**

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Execution Appeal No.22 of 2014

M/s. Shreenath Corporation and others - Appellants

Vs.

Jatinbhai Harendrabhai Badiyani - Respondent

Execution Appeal No.23 of 2014

M/s. Shreenath Corporation and others - Appellants

Vs.

Jagdish Gordhanbhai Shodhan - Respondent

Execution Appeal No.24 of 2014

M/s. Shreenath Corporation and others - Appellants

Vs.

Prafullaben R.Shah and another - Respondents

Execution Appeal No.25 of 2014

M/s. Shreenath Corporation and others - Appellants

Vs.

Smitaben B.Desai and another - Respondents

Execution Appeal No.26 of 2014

M/s. Shreenath Corporation and others - Appellants

Vs.

Smitaben B.Desai - Respondent

**iv) Case No and Date of Judgement:**

Execution Appeal No.13 to 26 of 2014 with IA/4871 to 4884/2014 (For Stay) & Date of Judgement : 05.08.2014.

**v) Acts and Sections referred:**

Sections 17, 18, 19, 21, 22, 24, 25 and 27(1) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission observed that the use of the expression 'any order' in sub-Section (1) of Section 27 of the Act leaves absolutely no doubt or ambiguity with respect to the legislative intent. Had

### **Implementation of Consumer Fora's Orders / Scope of Section 27**

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the intention of the legislature been to initiate penalty proceedings under Section 27 of the Act, only in the event of a person, failing or omitting to comply with a final order, the legislature would have expressly stated so in the body of the sub-Section particularly when the expression 'final' was used in Section 24 of the Act.

- b) The Commission also rejected the contention of the Appellant that Section 27 would not be maintainable until and unless the steps are taken for execution in terms of Section 25 of the Act. The Commission held that the Act provides two simultaneous remedies to the person in whose favour the order is made by the Consumer Forum and the remedies are independent of each other. It is for the person in whose favour the order is made to decide whether he wants to proceed under Section 25 of the Act or 27 of the Act.
- c) The Commission referred to the decisions of the Allahabad High Court in *Allahabad Development Authority v. District Consumer Protection Forum*, AIR 2006 71 and that of the Hon'ble Supreme Court in *Atmaram Properties v. Federal Motors*, 2005 (1) SCC 507 and held that if a person against whom an order is passed by the District Forum, State Commission or the National Commission, as the case may be, fails or omits to comply with the said order, he can be proceeded under Section 27 of the Act even if he has filed an appeal against the order provided that the said order has not been stayed by a superior forum.
- d) In the present case, it was noted that though the appeals filed by the Appellants against the order of the State Commission dated 30.01.2012 are pending, there is no stay of the order since the Appellant had not complied with the condition subject to which stay of the said order was granted by the National Commission. Consequently, it was held that the proceedings under Section 27 were maintainable against the Appellants and the executive appeals were dismissed.

#### **vii) Citation:**

I (2015) CPJ 109.

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**VII. JURISDICTION OF CONSUMER FORA**

**1. Ramesh Chand Vs. The Secretary, BHEL Employees Provident Fund Trust and others**

**i) Case in Brief:**

Complainant submitted an application for permanent withdrawal of loan for house purpose on 29.09.2004 to OP No.1/Respondent No.1 and prayed for loan of Rs.2,70,000/-. OP No.1 returned the application on the ground that as per Rule 48 of Provident Fund Trust Rules, Provident Fund Loan is granted where clear title deed exists in the name of the seller. Complainant requested again on 12.10.2004 for grant of loan, but loan was not granted on the ground that Complainant had already availed non-refundable withdrawal from his account for purchasing one DDA flat. Alleging deficiency on the part of OP, Complainant filed complaint before District Forum which directed OP to release Provident Fund loan as sought by application dated 29.9.2004, Rs.1,00,000/- as compensation for mental agony and Rs.10,000/- cost. Appeal filed by OP was allowed by State Commission vide impugned order against which, this Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 06.02.2013 in First Appeal No.714/09 of the Delhi State Consumer Disputes Redressal Commission.

**iii) Parties:**

Ramesh Chand - Petitioner/Complainant  
Vs.  
The Secretary, BHEL Employees  
Provident Fund Trust and others - Respondents/Opp. Parties

**iv) Case No and Date of Judgement:**

Revision Petition No.2201 of 2013 & Date of Judgement: 30.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 11, 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The issues involved in this case were whether the Complainant availed first advance of Rs.5541/- for purchase of DDA flat and

### **Jurisdiction of Consumer Fora**

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secondly whether application for second non-refundable withdrawal was maintainable.

- b) Regarding the first issue, the National Commission on perusal of the records found that the Complainant moved application for non-refundable withdrawal from Provident Fund Account for registration of flat in DDA and Rs.5,541/- was sanctioned to the Complainant on 11.06.1985 and Complainant received this draft on 12.06.1985 and has put his signatures on receipt.
- c) Regarding the second issue, the Commission pointed out that Complainant himself had admitted in Column V that he had availed earlier non-refundable advance for registration of flat and in such circumstances; it amounted to estoppel against the Complainant as he availed loan of Rs.5,541/- for booking of DDA flat.
- d) Further, the Commission observed that the District Forum could not sit on the decision of Regional Provident Fund Commissioner/ Income Tax Commissioner and complaint was not maintainable before District Forum and as per Arbitration Clause 68 the decision of Regional Provident Fund Commissioner/Commissioner of Income Tax was final.
- e) In view of the above, the present Revision Petition was dismissed and the orders of the State Commission were confirmed.

#### **vii) Citation:**

III (2014) CPJ 535; 2014(3) CPR 307.

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## **2. Nirmala Devi Vs. Punjab State Electricity Board and another**

### **i) Case in Brief:**

Complainant's connection was disconnected by OP and District Forum had in May, 2001 directed OP to restore electricity connection to the Complainant and pay Rs.5,000/- as damages. It is alleged by the Complainant that the said order was not obeyed and OP issued demand notice for Rs.3,28,480/-. Alleging deficiency in service, she filed complaint again before the District Forum which dismissed the complaint. Appeal filed by the Petitioner was also dismissed vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed and liberty given to the Petitioner to seek remedy before the Appropriate Forum.

**ii) Order appealed against:**

From the order dated 30.04.2008 in F.Appeal No.522 of 2002 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh.

**iii) Parties:**

Nirmala Devi - Petitioner/Complainant

Vs.

Punjab State Electricity Board & Anr. - Respondent/OPs

**iv) Case No and Date of Judgement:**

Revision Petition No:4284 of 2008 & Date of Judgement: 11.08.2014.

**v) Acts and Sections referred:**

Sections 2(1), (g), (o), 12, 13, 14, 17(b), 18, 19 and 21(b) of the Consumer Protection Act, 1986 & Sections 126 - 135 of Indian Electricity Act.

**vi) Issues raised and decided:**

The Commission noted, after perusal of records, that the OP had raised demand on the basis of tampering of meter seals which prima facie amounted to theft. The Hon'ble Apex Court in *U.P. Power Corporation Ltd and others v. Anis Ahmed* (2013) 8 SCC 491, had held that cases falling within Sections 126 to 135 of Indian Electricity Act are not maintainable before Consumer Fora and Consumer should have recourse for redressal of his grievance before the Appropriate authority under the Indian Electricity Act. Relying on the said decision, the Commission dismissed the Revision Petition giving liberty to the Petitioner to seek remedy before the appropriate forum.

**vii) Citation:**

IV (2014) CPJ 549; 2014(3) CPR 534.

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**3. Ramnath Panjiyar Vs. Electrical Executive Engineer and others**

**i) Case in Brief:**

Complainant/Petitioner had taken commercial connection with 6.25 HP load for operating and running a welding machine, a drilling machine and a grinder. OP/Respondent issued electricity bill w.e.f 1991 on the basis of 15 H.P. load. Alleging deficiency, Complainant filed complaint before the District Forum. OP maintained that Complainant was having capacity of 8.95 HP load and there was no plate relating to capacity of

## **Jurisdiction of Consumer Fora**

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welding machine. District Forum allowed the complaint and directed OP to issue bills on the basis of 6.25 H.P. Appeal filed by the OP was allowed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

### **ii) Order appealed against:**

From the order dated 02.04.2008 in F.Appeal No.388 of 2005 of Bihar State Consumer Disputes Redressal Commission, Patna.

### **iii) Parties:**

Ramnath Panjiyar - Petitioner/OP

Vs.

Electrical Executive Engineer & Ors. - Respondent/Complainant

### **iv) Case No and Date of Judgement:**

Revision Petition No:2467 of 2008 & Date of Judgement: 29.08.2014.

### **v) Acts and Sections referred:**

Sections 12, 13, 14, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

### **vi) Issues raised and decided:**

The Commission noted that while the Petitioner submitted that he was using 6.25 HP for running the welding machine, drilling machine etc, the OP submitted that the Petitioner was using 8.95 HP and there was no plate in the welding set and therefore, it was treated as 15 H.P. It was thus a case of using excess load which fell under Explanation (b) (iv) of Section 126 of Indian Electricity Act, 2003 as per the decision of the Hon'ble Supreme Court in *The Executive Engineer and another v. M/s. Sri Seetaram Rice Mill* in Civil Appeal No.8859 of 2011. The Hon'ble Supreme Court had further held in *U.P. Power Corporation Ltd and others Vs. Anis Ahmed III* (2013) CPJ 1 (SC) that if the case of a Complainant falls under Section 126 or under 135-140 of the Electricity Act, Consumer Fora has no jurisdiction to deal with the complaint. Accordingly, the Revision Petition was dismissed and the Petitioner was given liberty to approach the appropriate authorities under the Indian Electricity Act, 2003 for redressal of his grievance.

### **vii) Citation:**

IV (2014) CPJ 143; 2014(3) CPR 691.

**4. Ajmer Vidyut Vitran Nigam Ltd and another Vs. Sh. Madho Singh**

**i) Case in Brief:**

Complainant/Respondent had taken electricity connection from OP/Petitioner. OP in the bill of December, 2005 had raised a demand of Rs.30,759/- plus Rs.219 whereas according to the Complainant, no amount was due. Alleging deficiency on the part of OP, he filed complaint before the District Forum. OP maintained that Complainant had 60 HP connection with maximum 50 KVA demand whereas he had used excess load in the months of November, December, 2002 and January, 2003. District Forum allowed the complaint and quashed the demand. Appeal filed by OP was dismissed by State Commission against which the present Revision Petition has been filed. Revision Petition allowed. Respondent directed to approach appropriate authority under the Indian Electricity Act for redressal of his grievance.

**ii) Order appealed against:**

From the order dated 28.08.2009 in Appeal No.149 of 2007 of the Rajasthan State Consumer Disputes Redressal Commission, Circuit Bench, Jaipur.

**iii) Parties:**

Ajmer Vidyut Vitran Nigam Ltd & Anr. - Petitioners/OPs

Vs.

Sh. Madho Singh - Respondent/Complainant

**iv) Case No and Date of Judgement:**

Revision Petition No:1515 of 2010 & Date of Judgement: 29.08.2014.

**v) Acts and Sections referred:**

Sections 12, 13, 14, 18, 19 and 21(b) of the Consumer Protection Act, 1986 & Section 126 of Indian Electricity Act, 2003.

**vi) Issues raised and decided:**

The Commission noted that the Complainant was using excess load than sanctioned load which fell within the purview of Section 126 of Indian Electricity Act, 2003 as held by the Hon'ble Supreme Court in Civil Appeal No.8859 of 2011, *The Executive Engineer and Anr Vs. M/s. Sri Seetaram Rice Mill*. It was further noted that Hon'ble Supreme Court in Civil Appeal No.5466 of 2012, *U.P. Power Corporation Ltd and others Vs.*

## **Jurisdiction of Consumer Fora**

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*Anis Ahmed* III (2013) CPJ 1 (SC) held that if the case of a Complainant falls under Section 126 or under 135-140 of the Electricity Act, Consumer Fora has no jurisdiction to deal with the complaint. Accordingly, the Revision Petition was allowed and order of the State Commission was set aside directing the Respondent to seek remedy in the appropriate forum.

### **vii) Citation:**

Not reported in CPJ and CPR.

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## **5. Smt. Sarita Bhatnagar Vs. Shri Yogender Sharma**

### **i) Case in Brief:**

Complainant/petitioner filed complaint before District Forum which dismissed complaint with an observation that if there is any dispute with regard to agreement in question, same can be adjudicated before the competent civil court. Complainant filed appeal before State Commission and during course of hearing, Complainant withdrew appeal, so appeal was dismissed, against which this Revision Petition has been filed along with application for condonation of delay of 261 days. Revision Petition dismissed.

### **ii) Order appealed against:**

From the order dated 04.09.2013 in Appeal No.821/2013 of the State Consumer Disputes Redressal Commission, New Delhi.

### **iii) Parties:**

Smt. Sarita Bhatnagar - Petitioner

Vs.

Shri Yogender Sharma - Respondent

### **iv) Case No and Date of Judgement:**

Revision Petition No.3337 of 2014 with I.A./5761/2014 (For Condonation of delay) & Date of Judgement:15.09.2014.

### **v) Acts and Sections referred:**

Sections 12, 13, 14, 18, 19 and 21(b) of the Consumer Protection Act, 1986.



**vi) Issues raised and decided:**

- a) The application for condonation of delay was allowed since the petitioner had given convincing reasons for the delay.
- b) On merits, the National Commission noted that perusal of impugned order nowhere revealed that State Commission directed petitioner to withdraw the appeal but order made it crystal clear that petitioner's counsel himself withdrew the appeal as he felt that such dispute cannot be adjudicated by consumer Fora. State Commission had not discussed any merits in the impugned order but appeal was dismissed as withdrawn. Consequently, Revision Petition filed by the petitioner was dismissed and the order passed by the State Commission was confirmed.

**vii) Citation:**

IV (2014) CPJ 562.

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**Limitation**

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**VIII. LIMITATION**

**1. Arvind Pundlik Dhamne Vs. Raghuvir Wamanrao Joshi**

**i) Case in Brief:**

On 04.07.1985, Complainant/Respondent purchased two plots from OP/petitioner by paying Rs.8,000/- on that day and on 21.01.1986, Complainant paid Rs.1,000/- for each plot. OP failed to give registered sale deed; so, Complainant filed consumer complaint before the District Forum which disposed of the complaint as parties remained absent with liberty to the Complainant to file fresh complaint. Complainant filed fresh complaint for direction to execute sale deed. District Forum allowed complaint and directed OP to execute sale deed of the plots in favour of Complainant and further awarded Rs.100/- per day as penal charges, Rs.25,000/- as compensation and Rs.3,000/- as litigation cost. Appeal filed by the OP was dismissed by the State Commission vide impugned order against which this Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

Against the Order dated 19.08.2013 in Appeal No.1250/2008 of the State Commission Maharashtra.

**iii) Parties:**

Arvind Pundlik Dhamne - Petitioner

Vs.

Raghuvir Wamanrao Joshi - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.3970 of 2013 & Date of Judgement: 20.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19, 21(b) and 24A of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of records found that part consideration for purchase of plots was given on 04.07.1985 and 21.01.1986, but Complainant filed first complaint in 2003 and second complaint in 2005 meaning thereby, complaints were filed almost after 17 years and 19 years. At the time of contract for

purchase of plots, Consumer Protection Act was not in force and in such circumstances; complaint was not maintainable under Consumer Protection Act. Not only this, complaints were filed after 17 years and 19 years without any application for condonation of delay under Section 24A of the Consumer Protection Act. The Commission relied on its earlier judgement in RP No.1728 of 2010 *Vasant Digamber Joshi Vs. Suryakalabai* decided by 26.11.2010 and OP No.12 of 1991 *E.Aboo & Anr. Vs. Tata Engineering & Locomotive Co. Ltd. & Ors.* decided on 12.09.1991 in which it was held that the Act does not have retrospective effect.

- b) In view of the above, the Commission held that both the complaints were time barred and complaint was not maintainable under the Consumer Protection Act, District Forum committed error in allowing complaint and State Commission further committed error in dismissing appeal. Hence, Revision Petition was allowed and order passed by fora below were set aside with liberty to the Complainant to approach the Civil Court for redressal of his grievance.

**vii) Citation:**

III (2014) CPJ 3; 2014(2) CPR 746.

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**2. Kishor Chandrakant Rathod Vs. The Managing Director, ICICI Prudential Life Insurance Co. Ltd & Anr.**

**i) Case in Brief:**

Complainant purchased ICICI Prudential Life Insurance Pension Policy on 18.12.2009 by paying Rs.1,00,000/- as premium without knowing the details of the policy but affixed the signatures on the application form. At the end of year, the Complainant thought that he was being misguided and immediately discontinued his second premium, to be on the safer side of future trap of such policy plan and enquired about any assurance of the return of the policy. He was informed that in case he discontinued, the premium would be forfeited. The Complainant wanted his money back. He approached ICICI Prudential Life Insurance Company, IRDA and Ombudsman but to no avail. Consequently, he filed a complaint before the District Forum which dismissed the complaint. The appeal filed by the Complainant was also dismissed by the State Commission vide impugned order against which the present Revision

### **Limitation**

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Petition has been filed. Revision Petition dismissed as barred by limitation.

**ii) Order appealed against:**

From order dated 28.06.2013 in First Appeal No. 3239/12 of the State Consumer Disputes Redressal Commission, Gujarat, Ahmedabad.

**iii) Parties:**

Kishor Chandrakant Rathod - Petitioner

Vs.

The Managing Director,  
ICICI Prudential Life Insurance Co. Ltd & Anr. - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.3390 of 2013 & Date of Judgement: 21.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19, 21(b) & 24-A of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The main issue involved in this case was that the cause of action arose in the year 2009 itself when the Complainant had made up his mind to withdraw from the scheme but the complaint had been filed in the year 2012 only. No application for condonation of delay had been filed. Everywhere in the complaint he had mentioned that he was informed by a bank official without mentioning the name of the official. It was therefore held that no deficiency can be attributed on the part of the Respondent. They had acted in accordance with the law. On the other hand the Complainant had been guilty of not acting in accordance with the frame work of the policy and was negligent in not filing the suit within the stipulated time. Therefore, the present Revision Petition was dismissed as barred by limitation by relying on the decisions of the Hon'ble Supreme Court in *Kandimalla Raghavaiah & Co Vs. National Insurance Co. Ltd. and another*, 2009 CTJ 951 (Supreme Court) (CP), *State Bank of India Vs. B.S. Agricultural Industries*, 2009 CTJ 481 (SC) (CP)= JT 2009 2009 (4) SC 191, *HUDA Vs. B.K. Sood* (2006) 1 SCC 164 and *V.N.Shrikhande (Dr.) Vs. Anita Sena Fernandes* (2011) 1 SCC 53".

**vii) Citation:**

III (2014) CPJ 154.

**3. Haryana Urban Development Authority & Anr. Vs. The Vasundhara Co-operative Group House Society Ltd.**

**i) Case in Brief:**

Respondent/Complainant Society was allotted a plot in Faridabad. As per the terms of the allotment the society was entitled to a rebate of 20% of the price of the land if it was able to complete construction within three years from the offer of possession. Respondent completed the construction work within three years, but Petitioners rejected their claim for rebate. Hence a Consumer complaint was filed before the District Forum which allowed the Complaint and directed the Petitioners to release the rebate amount with interest and costs. The appeal filed by the Petitioners was dismissed by the State Commission vide impugned order against which the present Revision Petition had been filed along with application for condonation of delay. Both the said application and the Revision Petition were dismissed with punitive cost of Rs.50,000/-.

**ii) Order appealed against:**

From the order dated 03.07.2012 in First Appeal No.892/2011 of the State Consumer Disputes Redressal Commission, Panchkula, Haryana.

**iii) Parties:**

Haryana Urban Development Authority & Anr. - Petitioners  
Vs.

The Vasundhara Co-operative Group House Society Ltd.- Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.732 of 2014 along with IA.No.442 of 2014 (For Condonation of Delay) & Date of Judgement: 23.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19, 21(b) and 24A of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission noted that the Petitioners had not filed a certified copy of the impugned order though a copy of the same was received on the same day i.e. 03.07.2012. But Revision Petition was filed on 20.01.2014, after a delay of 476 days. The Commission held that there was no sense of urgency on the part of the Petitioners in filing the Revision Petition and that ex-facie

## **Limitation**

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gross negligence, deliberate inaction and lack of bonafides are imputable to the Petitioners. It was held that there were no grounds whatsoever for condoning the long delay of 476 days. The Commission relied on the judgements of the Hon'ble Supreme Court in *Ram Lal and Ors. Vs. Rewa Coalfields Ltd.*, AIR 1962 Supreme Court 361; *R.B.Ramlingam v. R.B.Bhavaneshwari* [2009] (2) Scale 108]; *Anshul Agarwal v. New Okhla Industrial Development Authority* (2011) 14 SCC 578, IV (2011) CPJ 63 (SC) and *Post Master General and Others Vs. Living Media India Ltd. & Another* [2012 3 SCC 563].

- b) The Commission further held that the only intention of Petitioner was to deprive the Respondent/Complainant the fruits of the award passed more than three years ago. Citing a number of decisions of the Apex Court viz *Bikaner Urban Improvement Trust Vs. Mohan Lal* 2010 CTJ 121 (Supreme Court) (CP); *Dilbagh Rai Jarry V. Union of India*, 1973 (3) SCC 554; *Madras Port Trust Vs. Hymanshu International by its Proprietor V.Venkatadri (Dead) by L.R.s* (1979) 4 SCC 176; *Bhag Singh & Ors. Vs. Union Territory of Chandigarh through LAC, Chandigarh*, (1985) 3 SCC 737; *Ravinder Kaur Vs. Ashok Kumar*, AIR 2004 SC 904; *Subrata Roy Sahara Vs. Union of India and others (W.P. (Criminal) No.57 of 2014) decided on 06.05.2014*, the Commission dismissed the Revision Petition as barred by the limitation imposing punitive cost of Rs.50,000/-, to be recovered from the salaries of delinquent officials of the Petitioner organization and to be paid to the "Consumer Legal Aid Account" of the Commission.

### **vii) Citation:**

III (2014) CPJ 86; 2014(3) CPR 46.

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## **4. Ram Avtaar Sastry Vs. Max Super Specialty Hospital & Anr.**

### **i) Case in Brief:**

The Appellant's grievance was that his claim, preferred on 10.04.2007 for reimbursement of a sum of Rs.82,771.87 expended by him on his treatment for cerebro vascular attack in OP-1 hospital had been illegally repudiated on 13.09.2007 by Royal Sundaram Alliance Insurance Company/OP-2 under Medical Claim Health Policy for which he had paid Rs.6,989/- as premium. The reason given was that he had not

revealed that he was suffering from hypertension and diabetes for the last 10-15 years. Alleging deficiency in service on the part of both OPs, the Applicant filed complaint on 17.02.2011 before the State Commission seeking compensation amounting to Rs.42,02,771.87 including expenses incurred, compensation and cause. The complaint was filed along with an application for condonation of delay of more than three years. The said application as well as the complaint and the application for restoration were all dismissed by the State Commission vide impugned orders against which the present appeal had been filed along with application for condonation of delay for 62 days in filing the appeal. Complaint dismissed as barred by limitation.

**ii) Order appealed against:**

From the orders dated 23.08.2011 and 01.03.2012 in Complaint No.228/2010 of the State Consumer Disputes Redressal Commission, New Delhi.

**iii) Parties:**

Ram Avtaar Sastry

- Appellant

Vs.

Max Super Specialty Hospital & Anr.

- Respondent

**iv) Case No and Date of Judgement:**

First Appeal No.402 of 2012 & Date of Judgement: 23.05.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19, 21(a)(ii) and 24A of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission observed that as per sub section 2 of Section 24A of the Consumer Protection Act, the Commission had to be satisfied that there was sufficient cause for not filing the complaint within two years. The proviso to sub section 2 mandates that for condoning such delay, reasons must be recorded. The Commission after going through the explanation given by the Complainant for condonation of delay held that there was no "sufficient cause" which would have warranted the State Commission to condone the inexplicable delay of more than two years in filing the complaint. The State Commission's order was therefore upheld and the appeal was dismissed as devoid of merit.

**vii) Citation:**

III (2014) CPJ 198.

## **Limitation**

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### **5. Delhi Development Authority Vs. Naresh Kumar Alag**

#### **i) Case in Brief:**

Complainant/Respondent registered himself with OP/Petitioner for a plot under LIG category by depositing Rs.2,000/- in March 1981. Though he did not get any intimation about the allotment, he received a letter dated 27.06.1985 from OP that his allotment had been cancelled for non-payment of demanded amount. Complainant's request for restoration of allotment did not yield any result. He issued a legal notice dated 08.05.1996 in response to which OP asked Complainant to submit copy of FDR and other documents within 15 days. It is the Complainant's case that though he submitted the documents, his request for restoration was rejected. Alleging deficiency he filed complaint before the District Forum which allowed the complaint and directed OP to restore registration and withdraw the cancellation letter. Appeal filed by the Petitioner was dismissed by the State Commission vide impugned order against which the present Revision Petition had been filed. Revision Petition allowed.

#### **ii) Order appealed against:**

From the order dated 17.07.2007 in First Appeal No.1246/2003 of Delhi State Consumer Disputes Redressal Commission.

#### **iii) Parties:**

Delhi Development Authority

- Petitioner

Vs.

Naresh Kumar Alag

- Respondent

#### **iv) Case No and Date of Judgement:**

Revision Petition No.4190 of 2007 & Date of Judgement: 28.05.2014.

#### **v) Acts and Sections referred:**

Sections 19, 20(1A)(iii), 21(b) and 24A of the Consumer Protection Act, 1986.

#### **vi) Issues raised and decided:**

- a) The Commission after perusal of records noted that allotment of plot was cancelled in the year 1985 and request for restoration was also turned down in the year 1986 and in such circumstances complaint filed in the year 1998 i.e. almost after 12 years is clearly barred by Limitation. The Commission disagreed with the District Forum's interpretation that since the OP had asked the Complainant on 06.06.1996 to submit documents within 15 days



which the Complainant did and since the final letter conveying rejection was issued on 10.12.1996, the two year period should be counted from 10.12.1996.

- b) The Commission also noted that the District Forum's order was contradictory since on one hand it directed OP to restore Complainant's registration after withdrawing the cancellation and on the other hand directed OP to include the name of the Complainant in the next draw of lots of LIG category of plots as and when held and make payment for the plot as applicable at the time of draw. It was held that if cancellation had been withdrawn and allotment had been restored, Complainant was entitled to get plot on the original price for which plot was allotted and if that plot was allotted to some other person, Complainant was entitled to get plot at the original price even in the next draw and he could not have been asked to make payment as applicable at the time of next draw. It was held that such a contradictory order cannot be upheld.
- c) The Commission accordingly allowed the Revision Petition and set aside the impugned order of the State Commission.
- d) In this case since the two members of the Division Bench (Hon'ble Mr. Justice K.S.Chaudhari and Hon'ble Dr.B.C.Gupta) gave separate judgements differing from each other, by virtue of provisions of Section 20(1A)(iii) of Consumer Protection Act, the case was referred to a third member (Hon'ble Mr. Justice V.B.Gupta) who delivered his judgement agreeing with the views of Hon'ble Mr. Justice K.S.Chaudhari.

**vii) Citation:**

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**6. Kanpur Development Authority Vs. Lt. Col. Surendra Kumar Jhingran**

**i) Case in Brief:**

Complainant/Respondent filed complaint before District Forum which allowed the complaint and directed OP/Petitioner not to recover installments until the houses are made available and to calculate interest and adjust that amount in the cost of the amount. Aggrieved by the said order, Complainant filed appeal before the State Commission

### **Limitation**

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which was subsequently withdrawn on 12.09.2007 in the presence of Counsel for OP. Later on Petitioner filed appeal against order of the District Forum with application for condonation of delay of 11 years 4 months and 28 days which was dismissed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition as well as the application for condonation of delay were dismissed.

**ii) Order appealed against:**

From the order dated 24.04.2014 in Appeal No.1641/2013 of the Uttar Pradesh, State Consumer Disputes Redressal Commission.

**iii) Parties:**

Kanpur Development Authority - Petitioner

Vs.

Lt. Col. Surendra Kumar Jhingran - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.2432 of 2014 & Date of Judgement: 15.07.2014.

**v) Acts and Sections referred:**

Sections 19, 21(b) and 24A of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission noted that the State Commission after considering the explanation given by the Petitioner in all aspects and after referring to several judgements of the Hon'ble Apex Court had dismissed the Revision Petition along with the application for condonation of delay of more than 11 years. The Commission observed that the appeal filed by the Complainant in the State Commission was withdrawn by him in the presence of OP's Counsel and therefore OP was well aware that Complainant had challenged the order of the District Forum. It was observed that the Petitioner neither filed any appeal nor any cross-objection before the State Commission before filing Appeal No.1641 of 2013. The National Commission held that there was no ground for condonation of delay and the State Commission did not commit any error dismissing the application for condonation of delay and dismissing the appeal as barred by limitation. Revision Petition was accordingly dismissed.

**vii) Citation:**

2014(3) CPR 435.

**7. Dooab Exim Pvt. Ltd Vs. Export Credit Guarantee Corporation of India**

**i) Case in Brief:**

An Insurance policy was obtained by the Complainant in respect of an export consignment of readymade garments in January 2002. The default committed by the foreign buyer was reported to the OP on 12.06.2004. The claim form was submitted by the Complainant on 03.09.2004. The OP rejected the claim of the Complainant on 28.09.2004. From this, it was evident that cause of action for filing of the complaint lastly arose on 28.09.2004. But the complaint was filed in 2012, after the expiry of almost eight years from the date on which the cause of action arose. The Complainant, therefore, moved IA No.1/2012 seeking condonation of delay. Complaint along with an application for condonation of delay were dismissed as barred by limitation.

**ii) Order appealed against:**

Original Complaint

**iii) Parties:**

Dooab Exim Pvt. Ltd - Complainant

Vs.

Export Credit Guarantee Corporation of India - Opp. Party

**iv) Case No and Date of Judgement:**

Consumer Complaint No.272 of 2012 with I.A.No.01 of 2012 (For condonation of delay) & Date of Judgement : 18.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 21(a)(i) & 24A of the Consumer Protection Act, 1986 & Section 5 of the Limitation Act.

**vi) Issues raised and decided:**

- a) The National Commission dismissed the complaint along with an application for condonation of delay for the following reasons:
  - i. The explanation (i.e. proceedings of other criminal cases against the Complainant) given by Complainant for not filing the complaint immediately after the dismissal the writ petition i.e. on 01.04.2010 was not tenable.

### **Limitation**

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- ii. There was no explanation as to why in absence of the Managing Director, the other persons having control of the management did not take initiative to file the consumer complaint within the period of limitation.
  - iii. The contention of the Complainant that he was under a huge financial crunch because of which he could not file complaint was also not tenable as no court fee is required for filing complaint before the consumer fora.
- b) In view of the above, the present complaint along with an application for condonation of delay was dismissed as barred by limitation and there was no sufficient case for condoning the delay. Reliance was placed on the decisions of Hon'ble Supreme Court in *Ram Lal and Ors. Vs. Rewa Coalfields Ltd.*, AIR 1962 Supreme Court 361 & *R.B. Ramlingam Vs. R.B. Bhavaneshwari*, 2009 (2) Scale 108 Apex Court.

#### **vii) Citation:**

IV (2014)CPJ 39; 2014(3) CPR 397.

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### **8. Pappu Managaratanam Vs. M/s. Sai Sha Finance and Chits and another**

#### **i) Case in Brief:**

Complainant/Petitioner in R.P.No.29 of 2012 filed a consumer complaint before the District Forum alleging that on 01.04.2001, she had deposited a sum of Rs.3,45,000/- with the OPs/Respondents for a period of 12 months which was to be repaid with interest @ 24% p.a on 31.03.2002 and that the Respondents did not make any payment though the maturity period was over. The District Forum dismissed the complaint as barred by limitation as well as on merits. The appeal filed by the Respondents was partly allowed by the State Commission which directed the OPs to pay a sum of Rs.1,75,000/- to the Complainant with interest @ 9% p.a along with cost of Rs.5,000/-. Aggrieved by the order of the State Commission, both the parties have filed the present Revision Petition before the National Commission. Revision Petition No.29 of 2012 filed by the Complainant seeking enhancement was dismissed while Revision Petition No.821 of 2012 filed by OPs was allowed.

**ii) Order appealed against:**

Revision Petition No: 29 of 2012

From the order dated 08.11.2011 in F.A.No.349 of 2011 of the A.P State Consumer Disputes Redressal Commission, Hyderabad.

Revision Petition No: 821 of 2012

From the order dated 08.11.2011 in F.A.No.349 of 2011 of the A.P State Consumer Disputes Redressal Commission, Hyderabad.

**iii) Parties:**

Revision Petition No:29 of 2012

Pappu Managaratanam - Petitioner

Vs.

M/s. Sai Sha Finance and Chits and another - Respondents

Revision Petition No:821 of 2012

M/s. Sai Sha Finance and Chits and another - Petitioners

Vs.

Pappu Managaratanam - Respondent

**iv) Case No and Date of Judgement:**

i. Revision Petition No: 29 of 2012

ii. Revision Petition No: 821 of 2012 &

Date of Judgement: 19.08.2014.

**v) Acts and Sections referred:**

Sections 19, 21(b) and 24A of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The main question that arose whether the complaint filed before the District Forum was within time or the same was barred by limitation. The Commission rejected the contention of the Complainant that the cause of action arose from the date of service of legal notice dated 20.05.2004. The Commission observed that it is well settled that by serving the legal notice or by making representation, the period of limitation cannot be extended by the Petitioner. Reliance was placed on the judgment and observations of the Hon'ble Supreme Court in *Kandimalla*

### **Limitation**

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*Raghavaiah & Co Vs. National Insurance Co. Ltd and another*, 2009 CTJ 951 (SC) (CP). The Commission further noted that no application for condonation of delay was filed on behalf of the Complainant before the District Forum. It was therefore held that the complaint being barred by limitation was not maintainable by the District Forum and that the State Commission erred in setting aside the order of the District Forum.

- b) Consequently, R.P.No.29 of 2012 filed by the Complainant was dismissed and R.P.No.821 of 2012 filed by OPs was allowed.

#### **vii) Citation:**

I (2015) CPJ 105; 2014 (3) CPR 842.

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### **9. M/s. Matrumal Dhannalal Oil Mill Vs. State Bank of India and others**

#### **i) Case in Brief:**

The Complainant is a partnership firm having a current A/c with SBI Branch at Hathras, UP (OP.3). He was planning to establish a depot at Patna (Bihar) and accepted the offer of one Mr. Vijay Prasad of M/s. Pawan Trading Co, Patna to be his consignment agent. He accepted four drafts of Rs.85,500/- in June, 2000 each payable at SBI Main Branch, Hathras (OP.2) and after clearance dispatched 752 tins. Mr. Vijay Prasad sent four more drafts in the sum of Rs.92,000/- each a week later and requested for another consignment. The said drafts were credited by the OPs in the A/c of the Complainant. However, the truck driver of the second consignment could not locate the said Mr. Vijay Prasad and returned to Hathras as directed by Complainant who sensed some foul play. He sent a letter on 28.06.2000 to OP.3 and requested that his account may be debited for Rs.7,10,000/-, the total amount of all the eight drafts till their genuineness were confirmed. Accordingly, his account was debited. The Complainant reported the matter to the Police. It transpired that all the eight drafts belonged to the series of drafts stolen from the State Bank of India at Rajgir, Bihar. FIR was registered on the Complainant's letters. The Chief Manager of OP.2 filed a complaint under Section 156(3) Cr.P.C against the Complainant and others before the CJM, Hathras which resulted in registration of FIR. The aforesaid complaint was also published in the

Hindi edition of Dainik Lalsa dated 01.08.2000. The investigating officer closed the crime case filed by OP.2 which report was accepted by CJM, Hathras after period of more than 14 years on 23.11.2013. Complainant filed this consumer complaint claiming a total sum of Rs.1,13,10,350/- from the OPs alleging negligence, harassment etc. Complaint dismissed as hopelessly barred by time.

**ii) Order appealed against:**

Original Complaint

**iii) Parties:**

M/s. Matrumal Dhannalal Oil Mill - Complainant

Vs.

State Bank of India and others - Opp. Parties

**iv) Case No and Date of Judgement:**

Consumer Complaint No:286 of 2014 & Date of Judgement: 22.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 21(a)(i) and Section 24-A of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission did not accept the Complainant's argument that time will start from the order passed by CJM on 23.11.2013. It was held that no criminal case was filed and it was within the knowledge of the Complainant that the closure statement had been prepared by the investigating officer as far back as on 22.08.2000. No action was taken by the Complainant between 22.08.2000 and 23.11.2013. It was held that there was an inordinate delay of 14 years in filing the case. Relying on the decision of the Hon'ble Supreme Court in *Dolphin Offshore Enterprises Ltd v. United India Insurance Co. Ltd*, SLP No.9307 of 2013 decided on 08.03.2013, it was held that the complaint was hopelessly barred by time and was accordingly dismissed.

**vii) Citation:**

IV (2014) CPJ 430.

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## **Limitation**

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### **10. S.R. Ramesh Babu Vs. Federal Bank Ltd and another**

#### **i) Case in Brief:**

The petitioner filed a complaint before the District Forum against the Federal Bank Ltd. and its Branch Manager. The said complaint was dismissed by the District Forum vide its order dated 24.09.2000. The petitioner preferred an appeal before the State Commission. The said appeal was not presented in person but was sent by post on 17.11.2000. The appeal reached the State Commission on 24.11.2000. On scrutiny, certain defects were found in the appeal and therefore it was returned for rectification on 29.11.2000. However, the petitioner did not bother to inquire about the fate of his appeal for about 2 years and 8 months. It was only on 20.07.2013 that he sent a letter to the State Commission, inquiring about the status of the appeal, which he had sent by post. The State Commission informed him on 14.08.2013 that the appeal had been returned on 29.11.2010, for rectification. The papers were thereafter collected by the petitioner from the State Commission on 30.08.2013 and re-presented on 03.10.2013. The only reason given by the petitioner/Complainant for the delay in re-presentation of the appeal was his being engaged in the marriage function of his niece. The State Commission, vide its order dated 12.06.2014, held that the delay in representation of the appeal was not justified and accordingly dismissed the petition seeking condonation of delay in re-filing the appeal. Being aggrieved, the Complainant has filed this Revision Petition. Revision Petition dismissed.

#### **ii) Order appealed against:**

From the order 12.06.2014 in C.M.P. No.39/2014 of the Tamil Nadu State Consumer Disputes Redressal Commission, Madurai Bench.

#### **iii) Parties:**

S.R. Ramesh Babu - Petitioner

Vs.

Federal Bank Ltd and another - Respondents

#### **iv) Case No and Date of Judgement:**

Revision Petition No.3149 of 2014 & Date of Judgement: 22.08.2014.

#### **v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19, 21(b) and 30(A) of the Consumer Protection Act, 1986 & Regulation 9 of the Consumer Protection Regulations, 2005.



**vi) Issues raised and decided:**

In the present case, the only reason given by the petitioner for the abnormal delay of about 2 years and 8 months for removing the defects was that he remained busy in connection with the wedding of his niece. The National Commission did not accept the above said reason and opined that how a person could remain busy in connection with the wedding of his niece for as much as 2 years and 8 months at a stretch. Therefore, the delay in refiling the appeal was not accepted and the Revision Petition was dismissed and the orders of the fora below were confirmed relying on the Regulation 9 of the Consumer Protection Regulations, 2005 which apply to all complaints, appeals, petitions etc. irrespective of whether they are filed by a consumer or by an opposite party. If it is accepted that a person can remove the defects pointed out by the Registry at any time of his choice, without there being any outer time limit for removal of such defects, that may lead to a situation where an unscrupulous litigant may drag a consumer to a consumer fora by way of an appeal/revision etc., years and years after an order in favour of the consumer is passed. Similarly, an unscrupulous Complainant, having no merit in his case, may also drag the opposite party to yet another round of litigation, at any time of his choice by first filing a defective appeal/revision and then not removing the defects identified by the Registry, for years together. It was to curb such possible misuse that this Commission has made regulation prescribing an outer limit for the removal of the objections. In view of Sub regulations(s) of Regulations the time taken beyond the prescribed time limit, in removing the objections cannot be excluded for the purpose of limitation.

**vii) Citation:**

2014(3) CPR 799.

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**11. G.P. Tiwari Vs. ICICI Bank Ltd and others**

**i) Case in Brief:**

Petitioner/Complainant preferred a complaint before the District Forum alleging that his car was seized by the officers of the Respondent Bank, who had financed the purchase of the car, for default of payment of only one installment. The complaint was dismissed in default since neither the Complainant nor the Counsel appeared before the District

### **Limitation**

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Forum for six consecutive dates of hearing. The Appeal filed by him before the State Commission was also dismissed on the grounds of limitation vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 01.05.2014 in F.Appeal No.469 of 2014 of M.P State Consumer Disputes Redressal Commission, Bhopal.

**iii) Parties:**

G.P. Tiwari - Petitioner

Vs.

ICICI Bank Ltd and others - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No:3289 of 2014 & Date of Judgement: 02.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19, 21(b) and 24A of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission did not accept the argument of the Complainant blaming the counsel for the delay. It was observed that the person who files a complaint alleging deficiency on the part of the service provider ought to be vigilant in pursuing his remedies instead of leaving everything to the counsel engaged by him. The Complainant ought to have remained in regular touch and ought to have enquired about the regular date of hearing fixed by the District Forum.
- b) As regards the delay in filing the appeal before the State Commission, the National Commission was not impressed with the Complainant's attempt to blame the advocate for informing him late about the dismissal of the complaint. The Commission was not inclined to accept the contention that an unnamed advocate inspected the record of the District Forum and informed the Complainant about dismissal of complaint in default. The Commission noted that even after receiving certified copy of the order on 10.02.2014, the appeal was not immediately filed.

- c) The National Commission found no ground to interfere with the order of the State Commission and dismissed the Revision Petition.

**vii) Citation:**

IV (2014) CPJ 561.

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**12. Sunita W/o. Late Suresh Kumar Vs. Managing Director, Reliance General Insurance Co. Ltd and others**

**i) Case in Brief:**

Complainant's husband died in a road accident on 01.06.2008 and claimed Rs.1,00,000/- as compensation from OPs under Rajiv Gandhi Parivar Bima Yojna. As claim was not paid, alleging deficiency in service on the part of OPs, complaint was filed before the District Forum which after hearing the parties dismissed the complaint. Appeal filed by the Complainant was dismissed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 05.02.2013 in Appeal No.67/2013 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

**iii) Parties:**

Sunita W/o. Late Suresh Kumar - Petitioner/Complainant

Vs.

Managing Director,  
Reliance General Insurance Co. Ltd & Ors. - Respondents/OPs

**iv) Case No and Date of Judgement:**

Revision Petition No:1133 of 2013 & Date of Judgement: 02.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19, 21(b) and 24A of the Consumer Protection Act, 1986.

## **Limitation**

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### **vi) Issues raised and decided:**

- a) The Commission noted that the Petitioner's husband died on 01.06.2008 in the road accident and that OP.No.3 (District Social Welfare Officer) remitted claim papers on 14.08.2009 i.e after more than 14 months of death and complaint was filed on 04.10.2011, after more than two years. It was also noted that as per Condition No.1 of the Policy, the Complainant was under an obligation to give intimation of her husband's death to OP.No.3 immediately and further was under an obligation to submit claim with full particulars within a period of one month. In the instant case, it was noted that the claim papers were sent after 14 months which was a clear violation of the terms and conditions of the policy. In such circumstances, it was held that the Complainant was not entitled to any claim.
- b) Secondly, the Complainant filed complaint on 04.10.2011 i.e after more than two years of the cause of action and as per Section 24(A) of the CP Act, such claims are not admissible as per law laid down by the Hon'ble Supreme Court in *V.N.Shrikhande (Dr.) Vs. Anita Sena Fernandes*, 2011 CTJ1 (SC) CP.
- c) Accordingly, the National Commission dismissed the Revision Petition and upheld the orders of the fora below.

### **vii) Citation:**

IV (2014) CPJ 555.

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## **13. Atam Prakash Vs. Reliance General Insurance Co. Ltd**

### **i) Case in Brief:**

Complainant/Petitioner's wife died on 14.12.2008 on account of fire in her grocery shop. Complainant informed about the death of his wife to OPs.1, 2 and 3/Respondents 2, 3 and 4 and demanded compensation under Rajiv Gandhi Bima Yojna Scheme. OPs 2 to 4 remitted claim papers of the Complainant to OP.No.4/Respondent No.1 on 11.03.2010. As claim was not paid, Complainant referred complaint to the District Forum which allowed the complaint and directed OP.No.4 to pay Rs.1,00,000/- with 9% interest and further awarded Rs.1,000/- as cost. Appeal filed by OP.4 was allowed by the State Commission on the ground of limitation vide impugned order against which the Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 31.01.2012 in Appeal No.806 of 2011 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

**iii) Parties:**

Atam Prakash - Petitioner/Complainant

Vs.

Reliance General Insurance Co. Ltd - Respondents/OPs

**iv) Case No and Date of Judgement:**

Revision Petition No: 1715 of 2012 & Date of Judgement: 02.09.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19, 21(b) and 24A of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- d) The National Commission noted that as per condition No.1 of the policy, the Complainant was under an obligation to give intimation of the death of his wife to OP.No.4 immediately and further was under an obligation to submit claim with full particulars within a period of one month. In the instant case, it was noted that the claim papers were sent after 14 months which was a clear violation of the terms and conditions of the policy. In such circumstances, it was held that the Complainant was not entitled to any claim.
- e) The Commission further noted that the Complainant filed complaint on 03.01.2011 i.e after two years of cause of action and in terms of Section 24-A of the CP Act, such a complaint cannot be entertained as observed by the Hon'ble Supreme Court in *V.N.Shrikhande (Dr.) Vs. Anita Sena Fernandes*, 2011 CTJ1 (SC) CP.
- f) Consequently, the Revision Petition was dismissed and the order of the State Commission was upheld.

**vii) Citation:**

IV (2014) CPJ 215.

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## **Limitation**

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### **14. Rajinder Singh Vs. Reliance General Insurance Co. Ltd and others**

#### **i) Case in Brief:**

Complainant/Petitioner's daughter died on 03.09.2008 on account of burn injuries. Complainant demanded compensation from OPs under Rajiv Gandhi Parivar Bima Yojna Scheme. Since the claim was not paid, despite completing all formalities, complaint was filed before District Forum which allowed the complaint and directed OP.No.4 (District Social Welfare Officer) to pay Rs.1,00,000/- with 9% interest and further allowed Rs.1,000/- as cost. OP.No.4 filed appeal before the State Commission which allowed the appeal vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

#### **ii) Order appealed against:**

From the order dated 31.01.2012 in Appeal No.688/2011 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

#### **iii) Parties:**

Rajinder Singh - Petitioner/Complainant

Vs.

Reliance General Insurance Co.Ltd & Ors. - Respondents/OPs.

#### **iv) Case No and Date of Judgement:**

Revision Petition No:1710 of 2012 & Date of Judgement: 02.09.2014.

#### **v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19, 21(b) and 24A of the Consumer Protection Act, 1986.

#### **vi) Issues raised and decided:**

- g) The National Commission noted that as per condition No.1 of the policy, the Complainant was under an obligation to give intimation of the death of his daughter to OP.No.4 immediately and further was under an obligation to submit claim with full particulars within a period of one month. In the instant case, it was noted that the claim papers were sent after 14 months which was a clear violation of the terms and conditions of the policy.

h) Secondly, it was noted that the Complainant filed complaint on 03.01.2011 i.e after 2 years of the cause of action and therefore, it was held that the State Commission had rightly dismissed the complaint as barred by limitation on the basis of law laid down by Hon'ble Apex Court in *V.N.Shrikhande (Dr.) Vs. Anita Sena Fernandes*, 2011 CTJ1 (SC) CP.

i) Consequently, Revision Petition was dismissed.

**vii) Citation:**

Not reported in CPJ and CPR.

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**15. The Assistant General Manager, Reserve Bank of India Vs. Karumu Subba Reddy**

**i) Case in Brief:**

Respondent/Complainant's father, had purchased on 15.07.1943, two Government of India Loan Bonds 1953-1955 for Rs.1,000/-. Each bond carried 3% interest during the period of the currency of the bond i.e. from 1943-1953 with half yearly interest payable at any of the Treasury Office as per the opinion of the Depositor. It was stated that his father received interest on the said two bonds for half yearly periods only upto 14.01.1945. Complainant's father expired in 1960. It is the Complainant's case that he made several requests to the Petitioner for renewal of the bonds but to no avail. Finally on 20.03.2002, he issued a legal notice to the Petitioner. Complainant filed complaint before the District Forum against the petitioner alleging deficiency in service in not renewing the bonds or in not allowing payment of principal and interest. The District Forum decreed in favour of the Complainant. Aggrieved by the order of the District Forum, Petitioner filed an appeal before the State Commission which vide its impugned order, modified the order of the District Forum and directed the petitioner; "To communicate the Complainant the agreed value with interest of 9% per annum upto 15.07.1953 and on receiving such communication the Complainant shall obtain a Succession Certificate and submit the same to the opposite party/appellant herein; and on submission of the Succession Certificate the opposite party/appellant shall pay the amount within a period of six weeks". Aggrieved by the said order, petitioner has filed this Revision Petition. Revision Petition allowed.

## **Limitation**

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### **ii) Order appealed against:**

Against order dated 13.11.2006 in First Appeal No.708 of 2004 of A.P. State Consumer Disputes Redressal Commission, Hyderabad.

### **iii) Parties:**

The Assistant General Manager,  
Reserve Bank of India

- Petitioner

Vs.

Karumu Subba Reddy

- Respondent

### **iv) Case No and Date of Judgement:**

Revision Petition No.564 of 2007 & Date of Judgement: 05.09.2014.

### **v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19, 21(b) and 24-A of the Consumer Protection Act, 1986.

### **vi) Issues raised and decided:**

- a) The main question which arose for consideration was whether the complaint filed by the respondent before the District Forum, was within the period of limitation or the same was barred by limitation.
- b) It was held that the complaint filed by the respondent before the District Forum, was hopelessly barred by limitation. Admittedly, no application for condonation of delay was filed on behalf of the respondent before the District Forum. Both the fora below did not consider the preliminary objection raised by the petitioner regarding limitation. Since, complaint filed before the District Forum was hopelessly barred by limitation, it was held that both the fora below had committed grave error and illegality in allowing the same.
- c) Relying on the decisions of the Hon'ble Apex Court in *Kandimalla Raghvaiah & Co v. National Insurance Co. Ltd and another*, (2009) CTJ 951 (SC) (CP) & in *State Bank of India v. B.S.Agricultural Industries*, 2009 CTJ 481 (SC) (CP) = JT 2009 (4) SC 191, the Commission allowed the Revision Petition, set aside the orders of the both the fora below and dismissed the complaint as barred by limitation.

### **vii) Citation:**

2014(4) CPR 255.



**16. Tara Singh Jhand Vs. Punjab Urban Development Authority**

**i) Case in Brief:**

Petitioner who had applied for allotment of a plot by paying earnest money was allotted a plot by the Respondent vide letter dated 06.10.2010. He deposited Rs.1,48,000/- on 05.02.2001 so as to complete payment of 25% of the sale consideration. However, the petitioner failed to make payment of the balance amount of Rs.5,55,000 in six installments in terms of the schedule laid down in the allotment letter. The Respondent sent several notices referring to the installments which had not been paid by the Petitioner. Since there was no response, the Respondent vide letter dated 21.10.2003 ordered resumption of flat allotted to the Petitioner and forfeiture of full price of land. The Petitioner appealed against the order which was rejected in December, 2004. Later on in 2008, he paid the balance amount through two drafts one of Rs.3,66,000/- and the other of Rs.1,45,000/- to the respondent 'as remaining cost price of the plot. Even after, the possession of the plot was not handed over to the Petitioner. Being aggrieved from the resumption of the plot, the petitioner preferred a representation/appeal which came to be dismissed by the appellate authority on 15.12.2004. The petitioner then filed a complaint seeking revocation of the resumption order as well as payment of compensation, interest and cost of litigation, etc. The complaint was dismissed as withdrawn on 19.03.2009 in view of the submission of the Complainant that he wanted to file a civil suit. However, instead of filing a civil suit, the Complainant filed a fresh complaint before the District Forum which was dismissed in limine on 22.04.2009. The petitioner filed an appeal before the State Commission against the order of the District Forum dated 22.04.2009. The order passed by the District Forum was set aside by the State Commission on 08.06.2009 and the matter was remanded back to the said forum with a direction to decide the complaint on merits. The District Forum, vide its order dated 30.10.2009, revoked the cancellation of the plot and directed the petitioner to pay full and final payment of the plot as per the allotment letter issued by the respondent within one month. The respondent was directed to handover vacant possession of the plot in question within two months of the receipt of the full and final payment. Being aggrieved from the order of the District Forum dated 30.10.2009, the Respondent preferred an appeal before the State Commission which allowed the appeal and set aside the order passed by the District Forum. Being aggrieved from the order of the State

### **Limitation**

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Commission, the Petitioner has filed this Revision Petition. Revision Petition dismissed as barred by limitation.

**ii) Order appealed against:**

From the order dated 31.03.2011 in FA No.15 of 2010 of the Punjab State Consumer Disputes Redressal Commission at Chandigarh.

**iii) Parties:**

Tara Singh Jhand - Petitioner

Vs.

Punjab Urban Development Authority - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No: 2470 of 2011 & Date of Judgement: 10.09.2014.

**v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19, 21(b) and 24-A of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) It was pointed out by the National Commission that cause of action to file a complaint arose on 15.12.2004 when the appeal filed against the presumption order was rejected. However, since the complaint was filed before the District Forum in 2008, it was clearly barred by limitation and the deposit of two drafts on 31.12.2008 did not give any fresh cause of action to the petitioner and both the complaints filed by him were clearly barred by limitation and were rejected on this ground alone. Therefore, it was not considered necessary to answer the question as to whether the order resuming the plot was illegal for want of the requisite notice in terms of Sub-Section (3) of Section 45 of the said Act or not.
- b) The Commission further observed that having withdrawn the first complaint with liberty to file a civil suit to challenge the order whereby plot in question was resumed by the Respondent it was not open to the petitioner to file another complaint instead of filing a civil suit; no remedy other than a civil suit could have been availed by the petitioner.

- c) Consequently, the Revision Petition was dismissed with liberty to the Respondent to take such a defence and plea as are open to it in law.

**vii) Citation:**

Not reported in CPJ and CPR.

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**17. M/s. Global Ispat Ltd. through Director Vs. Oriental Insurance Company**

**i) Case in Brief:**

Complainant/Appellant, manufacturer of steel ingots got his factory insured from Opposite Party/Respondent under Standard Fire and Special Perils Policy for a period of one year from 13.04.2009 to 12.04.2010. Later on, policy was modified to the extent that policy would extend to include loss or damage by fire only of or to the property insured caused by its own fermentation, natural heating or spontaneous combustion. On 04.07.2009 at 5.30 P.M. there was a dreadful explosion in Complainant's factory causing extensive damage to the factory premises, machinery and stock. Complainant reported the matter to police and opposite party on the same day. Opposite party got preliminary survey by local surveyor on the same date. Final report was submitted by surveyor on or about 05.09.2009 assessing gross loss of Rs.13,87,500/- and net loss payable at Rs.7,09,556/-. Opposite party forwarded discharge voucher for Rs.7,08,967/- in full and final settlement of the claim but Complainant returned discharge voucher as this amount was offered against claim of Rs.99,48,635/-. Alleging deficiency on the part of opposite party, Complainant filed complaint before State Commission which dismissed the complaint as barred by limitation against which this appeal has been filed. Appeal was dismissed.

**ii) Order appealed against:**

From the order dated 04.12.2012 in Complaint Case No.01/11 of the Goa State Consumer Disputes Redressal Commission, Panaji.

**iii) Parties:**

M/s. Global Ispat Ltd. through Director	- Appellant
	Vs.
Oriental Insurance Company	- Respondent

## **Limitation**

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### **iv) Case No and Date of Judgement:**

First Appeal No:13 of 2013 & Date of Judgement: 10.09.2014.

### **v) Acts and Sections referred:**

Sections 2(1)(g), (o), 19 and 21(a) (ii) of the Consumer Protection Act, 1986, Clause 6 (ii) General Conditions of the Policy & Section 28 of the Indian Contract Act, 1872.

### **vi) Issues raised and decided:**

- a) It was pointed out by the National Commission that in terms of clause 6(ii) of the general conditions of the policy, the claim should be preferred within 12 calendar months from the date of the disclaimer or else the claim for all purposes was deemed to have been abandoned or the right extinguished and the liability ceased. It was held that clause 6(ii) was not hit by Section 28 of the Indian Contract Act, 1872. The Complainant's claim was deemed to have been abandoned on completion of 12 months from 08.10.09 and it could not have been revived or extended by sending a legal notice. It was noted that the complaint before the State Commission was filed on 21.01.2011.
- b) It was held that as Complainant had not filed complaint within period of 12 months from the date of repudiation of part of the claim, Complaint filed by the Complainant before State Commission was barred by limitation and Complainant was not entitled to get the benefit of limitation provided under Section 24 (A) of Consumer Protection Act and orders of the State Commission was confirmed.
- c) The present appeal was therefore dismissed, as not having being filed within the period stipulated by clause 6(ii) of the policy and reliance was placed on the decision of the Hon'ble Supreme Court in the case of *Himachal Pradesh State Forest Co. Ltd.*, (2009) 2 SCC 252.

### **vii) Citation:**

IV (2014) CPJ 270; 2014(4) CPR 91.

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**18. Ms. Sudha Shrotria Vs. Fortis Healthcare Limited Through Its Managing Director**

**i) Case in Brief:**

In a case of medical negligence, the Complainant filed a complaint on 05.02.2008 alleging unfair trade practices against OP before the MRTP Commission which was then transferred to the Competition Appellate Tribunal. On 02.12.2013 i.e when the case was 5 years 10 months and 27 days old, the Complainant withdrew the application and moved the National Commission. The National Commission was ready to condone the above said delay. But the Complainant in this case filed the Revision Petition on 16.07.2014 whereas the permission to withdraw had been given by the Competition Appellate Tribunal on 02.12.2013. The Complaint was conspicuously silent about the delay 135 days in filing this Revision Petition. Therefore, the Revision Petition was dismissed as barred by limitation.

**ii) Order appealed against:**

Original Complaint

**iii) Parties:**

Ms. Sudha Shrotria

- Complainant

Vs.

Fortis Healthcare Limited  
Through Its Managing Director

- Opposite Party

**iv) Case No and Date of Judgement:**

Consumer Complaint No.234 of 2014 with IA/4789/2014, IA/4790/2014 (Condonation of delay, Exemption to file typed copies of documents) &

Date of Judgement: 12.09.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 21(a)(i) and 24A of the Consumer Protection Act, 1986 & Section 5, 14 of the Limitation Act.

**vi) Issues raised and decided:**

It was held that the expression “sufficient cause” could not be erased from Section 5 of the Limitation Act by adopting excessive liberal approach, which would defeat the very purpose of Section 5 of Limitation Act. There must be some cause, which could be termed as ‘sufficient

### **Limitation**

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one' for the purpose of delay condonation. Therefore, it was incumbent on the Complainant to explain each day of default beyond the terminus line of the prescribed period of limitation with sufficient cause. The Complainant had not given any reason. So, the complaint was held to be hopelessly barred by limitation, as a result of which, the present revision was dismissed. Reliance was placed on the following cases for arriving at this decision:

- i. *Anshul Aggarwal v. New Okhla Industrial Development Authority*, IV (2011) CPJ 63 (SC).
- ii. *State Bank of India Vs. B.S. Agricultural Industries*, 2009 CTJ 481 (SC) (CP) = JT 2009 (4) SC 191.
- iii. *Dolphin Offshore Enterprises (I) Ltd. Vs. United India Insurance Co. Ltd.* Special leave to Appeal (Civil) No.9307 of 2013 (SC) decided on 08.03.2013.
- iv. *HUDA vs. B.K. Sood* (2006) I SCC 164.
- v. *S.B.I. vs. B.S.Agricultural Industries (I)* (2009) 5 SCC 121.
- vi. *Kandimalla Raghavaiah vs. National Insurance Company* (2009) 7 SCC 768.
- vii. *V.N. Shrikhande (Dr.) vs. Anita Sena Fernandes* (2011) 1 SCC 53.
- viii. *Balwant Singh (dead) Vs. Jagdish Singh & Ors.* (Civil Appeal No.1166 of 2006) decided on 08.07.2010.

**vii) Citation:**

2014(4) CPR 52.

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### **19. Vertex Securities Ltd and another Vs. T. Chacko and others**

**i) Case in Brief:**

Complainant claimed to have deposited Rs.75,000/- with Vazuthacaud branch of the Petitioner/OP, Vertex Securities Ltd, on 14.10.2000 for trading in shares. It was the Complainant's grievance that the petitioners kept the amount idle without depositing it in the share trading account. Alleging deficiency on the part of the OP, he approached the District Forum seeking refund and compensation. District Forum dismissed the complaint on the ground of limitation and also on the

ground that the Complainant was not a consumer under Section 2(1)(d) of the Act. However, the State Commission on appeal, remanded the matter back to the District Forum for fresh consideration vide impugned order against which the present Revision Petition has been filed. The Revision Petition was allowed, the order of the State Commission was set aside and the complaint was dismissed as barred by limitation.

**ii) Order appealed against:**

From the order dated 31.05.2014 in F.A.No.291 of 2013 of Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram.

**iii) Parties:**

Vertex Securities Ltd and another - Petitioners

Vs.

T. Chacko and others - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.3123 of 2014 with IA.No.5180 of 2014 (For Stay) &  
Date of Judgement: 16.09.2014.

**v) Acts and Sections referred:**

Sections 19, 21(b) and 24A of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission observed that taking a reasonable time of one year for the opposite party to comply with the requirements regarding trading in shares, the cause of action had arisen in 2001 and the complaint should have been filed by the year 2003. The National Commission noted that as per the averments made in the complaint itself, no written communication was sent by the Complainant to the Petitioner at any time between 14.10.2000 and 27.09.2006. It was further noted that the Complainant did not take any steps between 06.10.2006 when a registered letter was sent to the OP and 08.07.2010 when a communication was sent to SEBI seeking its intervention in the matter. Since the complaint was filed in the year 2011, it was hopelessly barred by limitation. The order of the State Commission was therefore held to be not sustainable. Accordingly, the complaint was dismissed.

**vii) Citation:**

Nor reported in CPJ and CPR.

## Limitation

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### **20. Dharambir Vs. Dr. Akhil Saxena and others**

#### **i) Case in Brief:**

The Complainant took his wife who was suffering from stomach pain to Rai hospital at Sonipat on 24.10.2000. She was referred to Respondent No.1 who referred her to Sundar Lal Jain Hospital at Delhi. Initially, she was taken to a hospital in Jaipur but subsequently to Sundar Lal Jain hospital where she died. Alleging negligence in her treatment, a complaint was filed in the District Forum on 24.11.2004, i.e after more than four years of the death of the Complainant's wife. District Forum initially allowed the complaint and directed Respondent No.2 to pay compensation along with cost of litigation. However, on appeal, the State Commission set aside the order and remanded the matter back to the District Forum for deciding the application which the Complainant had filed under Section 24A(2) of the Act. The District Forum on re-examination dismissed the application. The appeal filed by the Complainant/Petitioner before the State Commission was also dismissed. Aggrieved by the order of the dismissal, the present Revision Petition has been filed.

#### **ii) Order appealed against:**

From the order dated 11.02.2014 in F. Appeal No.744 of 2013 of Haryana State Consumer Disputes Redressal Commission, Panchkula.

#### **iii) Parties:**

Dharambir - Petitioner

Vs.

Dr. Akhil Saxena and others - Respondents

#### **iv) Case No and Date of Judgement:**

Revision Petition No.2692 of 2014 with IA.No.4360 of 2014 (For Condonation of Delay) & Date of Judgement: 16.09.2014.

#### **v) Acts and Sections referred:**

Sections 19, 21(b) and 24A of the Consumer Protection Act, 1986.

#### **vi) Issues raised and decided:**

- a) The issue was whether the Complainant took efforts to file the complaint in time. It was claimed that the Complainant approached an advocate, Shri Krishan Kumar Malik in June, 2002



for filing the complaint. As per the affidavit filed by Shri Krishan Kumar Malik before the District Forum, he asked his clerk to handover the case to another advocate on being appointed as President of the District Consumer Forum, Narnaul. The National Commission noted that the application did not disclose what efforts were made by the Complainant to ascertain whereabouts of Shri Krishan Kumar Malik till around Diwali, 2004 with regard to filing of complaint in time. The National Commission observed that the Complainant could have easily contacted Shri.Malik over phone. It was also observed that the application did not disclose how the Complainant came to know the whereabouts of Shri Krishan Kumar Malik around Diwali of 2004.

- b) The National Commission came to the conclusion that the delay in filing the application under Section 24A(2) was not satisfactorily explained by the Complainant. Accordingly, the order of the fora below was upheld and the Revision Petition was dismissed.

**vii) Citation:**

Not reported in CPJ and CPR.

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**Maintainability of a Second Complaint**

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**IX. MAINTAINABILITY OF A SECOND COMPLAINT**

**1. Shri Prabhakar Vishnu Surte Vs. Suhas Co-op. Housing Society Ltd and others**

**i) Case in Brief:**

The Petitioner had filed a consumer complaint against six persons including Suhas Co-op. Housing Society and its office bearers. The Complaint was rejected by the District Forum. The appeal filed by the Petitioner was dismissed by the State Forum vide impugned order on 06.03.2014. When the case was taken up earlier by the State Commission on 26.06.2013, the Complainant had specifically stated that he was not pressing his prayer against OPs 2 – 6 in the complaint and would be agitating his grievance *qua* the said party before an appropriate forum. However, even after making the aforesaid statement, the Petitioner made another complaint against the society vide impugned order. In the impugned order, the State Commission held that he was not entitled to file the complaint against the said society and its office bearers a second time. Aggrieved by the said order, the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 06.03.2014 in First Appeal No.FA/14/79 of Maharashtra State Consumer Disputes Redressal Commission.

**iii) Parties:**

Shri Prabhakar Vishnu Surte - Petitioner

Vs.

Suhas Co-op. Housing Society Ltd and others - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No:2131 of 2014 & Date of Judgement: 23.07.2014.

**v) Acts and Sections referred:**

Sections 11,12,13,15,17,18,19 and 21(b) and 22 of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission, after a perusal of the proceedings of the State Commission dated 26.06.2013, noted that the Petitioner himself

had expressed a desire not to press his prayer against OPs 2-6 before the Consumer Forum. The Commission observed that even if such a request had been made by the Petitioner on the suggestion of the State Commission, he was under no compulsion to accept suggestion of the State Commission. The Commission further observed that the Complainant's counsel was also present before the State Commission on 26.06.2013 when that request was made. The Petitioner did not choose to challenge the order. The Commission therefore held that having accepted the order of the State Commission, it was not open to the Petitioner to file a fresh complaint before the OPs 2 – 6. The Commission therefore held that Revision Petition was devoid of merit and accordingly dismissed the same.

**vii) Citation:**

Not reported in CPJ and CPR.

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**Parallel Proceedings**

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**X. PARALLEL PROCEEDINGS**

**1. Shri. S.S. Bhatia, S/o. Lt. Sh. Sardar Jot Singh Vs. HDFC Bank Ltd. (Collections)**

**i) Case in Brief:**

Shri. S.S. Bhatia, the Complainant purchased an Indica Car with commercial number from ICICI Bank in July 2003. The said vehicle was refinanced by HDFC Bank in December 2005. HDFC Bank, the Respondent, had offered to enhance the existing the loan amount to Rs.1,95,000/- and after adjusting the existing balance amount of Rs.1,33,192.48 the difference would be credited to the Complainant's account with Punjab National Bank. However, the amount credited was only Rs.46,800/-. On Complainant taking up the matter with the official who approached him originally, a credit of Rs.7,005/- was given and the remaining amount of Rs.6,000/- was not paid. It is alleged that Respondent sent threatening calls for seizure of the vehicle for non-payment of EMI. The vehicle was surrendered to the Respondent on 16.09.2006 and it was sold by them for a sum of Rs.41,000/-. Aggrieved by the Respondent's action, Petitioner filed complaint before the District Forum which disposed of the case on the ground that it had to be decided by the appropriate Civil Court. The State Commission also dismissed the Appeal on the ground that a decree had been passed by a Civil Court on a suit filed by the Respondent. The present Revision Petition has been filed challenging the order of the State Commission. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 30.09.2013 in First Appeal No.FA-766/2009 of the State Consumer Disputes Redressal Commission, Delhi.

**iii) Parties:**

Shri. S.S. Bhatia, S/o. Lt. Sh. Sardar Jot Singh - Petitioner

Vs.

HDFC Bank Ltd. (Collections) - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.633 of 2014 & Date of Judgement: 04.07.2014.

**v) Acts and Sections referred:**

Sections 12, 13, 14, 17(b), 18, 19, 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission after perusing the judgement of the Civil Court held that all the issues involved in the case had been discussed and decided finally in the judgement and that the National Commission cannot pass a different judgement. The Commission noted that the Petitioner could not produce any evidence in support of his claim that the judgement of the Civil Court had been obtained after applying influence. The Commission further noted that the Petitioner has already filed an appeal and the Civil Court is seized of the matter. Holding that multiplicity of decisions on the same issue are prohibited under the law, the Commission dismissed the Petition as devoid of merit.

**vii) Citation:**

III (2014) CPJ 390.

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**XI. PECUNIARY JURISDICTION**

**1. M/s. Omaxe Ltd. Vs. Iqbal Begum & Anr.**

**i) Case in Brief:**

Complainant/Respondent No.1 was allotted commercial space by OP No.1/Appellant for a sum of Rs.72,96,222.23 for carrying out business of footwear and sports. It was alleged that OP No.1 agreed to pay Rs.70,000/- per month as rent till the time some leading brand took the allotted space on rent. It was the Complainant's case that due to non-satisfactory construction made by OP No.1, no brand name turned up. Mall remained incomplete and despite legal notice OP No.1 failed to fulfill their assurances. Alleging deficiency on the part of OPs, Complainant filed complaint before the State Commission which allowed complaint against OP No.1 and directed to pay Rs.69,31,411/- with 9% interest from 05.05.2008 till the date of actual payment and further awarded Rs.25,000/- as costs. Aggrieved by the said order the present Appeal has been filed. Appeal was allowed and the order of the State Commission was set aside.

**ii) Order appealed against:**

From the order dated 30.09.2013 in Complaint No.55/2012 of the State Consumer Disputes Redressal Commission, Delhi.

**iii) Parties:**

M/s. Omaxe Ltd. - Appellants

Vs.

Iqbal Begum & Anr. - Respondents

**iv) Case No and Date of Judgement:**

First Appeal No.887 of 2013 & Date of Judgement: 16.05.2014.

**v) Acts and Sections referred:**

Sections 17(1)(a)(i), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission noted that the Complainant had asked for a total relief of Rs.4,74,00,000/- comprising (a) Rs.77,23,843.67 being price of the commercial space with interest at 15% p.a. (b) Rs.15,000/- per day from

05.05.2008 to the date of payment as compensation for harassment, inconvenience, frustration and mental agony (c) Rs.1,00,000/- towards costs of legal notice and other expenses. The National Commission observed that as per Section 17(1) of the CP Act, the State Commission has no pecuniary jurisdiction to entertain complaints where the claim exceeded Rs.1 crore. The Commission further observed that pecuniary jurisdiction was to be decided in accordance with the prayer made in the complaint and the fact that the State Commission did not grant relief of Rs.15,000/- per day was immaterial. Consequently the appeal was allowed and the order of the State Commission was set aside. Complainant was given to liberty to file new complaint on the same cause of action before appropriate forum.

**vii) Citation:**

II (2014) CPJ 635.

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**2. Dr. Harekrishna Biswas Vs. The State Bank of India and others**

**i) Case in Brief:**

Complainant, Dr. Harekrishna Biswas and his wife opened a Joint Fixed Deposit Account with State Bank of India and deposited a sum of Rs.80,000/- for a period of 1000 days on interest @ 10.50% p.a. The due amount and date of encashment was Rs.1,06,317/- & 04.08.2011. The Complainant filed Form 15G to the effect that the term deposit periods would continue until the Complainant wanted to encash the same as per the conditions laid down in the said term deposit certificate. On 06.11.2013, the Complainant went to purchase three Demand Drafts from the said Bank Branch in the name of the Registrar, National Consumer Disputes Redressal Commission, payable at New Delhi, for a sum of Rs.5,000/- each. It was alleged that to the surprise of the Complainant, OP No.4 denied him permission for encashment of the said amount, due to which the Complainant did not have money to meet the expenses for filing the consumer complaints, medical expenses of his family members, marriage of his daughter, etc. The Complainant approached the police station and lodged an FIR on 06.11.2013 itself. However, the police did not take any action. Hence he issued notice under Section 80 of the CPC to the then Hon'ble Finance Minister with copies to SBI, Durgapur Branch (OP4), SBI, Regional Office (OP3) and

### **Pecuniary Jurisdiction**

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Union of India, Department of Financial Services (OP2). Under these circumstances, he filed the present complaint claiming more than fifteen crores as compensation. Complaint was dismissed giving liberty to the Complainant to approach the appropriate fora.

**ii) Order appealed against:**

Original Complaint

**iii) Parties:**

Dr. Harekrishna Biswas - Complainant

Vs.

The State Bank of India and others - Opposite Parties

**iv) Case No and Date of Judgement:**

Consumer Complaint No.97 of 2014 & Date of Judgement: 09.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o) and 21(a)(i) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- 1) The Commission after perusal of all the records of the case, dismissed the complaint for the following reasons:
  - a) The case of the Complainant was for only Rs.80,000/- but he claimed more than Rs.15 crores which is beyond the pecuniary jurisdiction of the National Commission.
  - b) The case of the Complainant required detailed examination of witnesses and cross-examination which is not permissible under the CP Act. The case also contained an element of criminality. Further, the allegations made by the Complainant could not be proved by mere affidavits or interrogatories.
  - c) Neither he amended the case nor would he approach the lower fora in spite of advice from the Court.
  - d) He could not prove that he was an Income Tax Payee and no evidence recording his status was placed on the record.
- 2) In view of the above and relying on the decisions of the Hon'ble Supreme Court in *Pesi Dady Shroff Vs. Boehringer Ingetheim Denmark & Anr.* Civil Appeal No.9453 of 2013 and *Synco Industries*



*Vs. State Bank of Bikaner & Jaipur and Others*, (2002) 2 SCC 1, the complaint was dismissed giving liberty to the Complainant to approach the Civil and Criminal Court giving liberty to the Complainant to get redressal of his grievances.

**vii) Citation:**

III (2014) CPJ 274; 2014(3) CPR 29.

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**3. Sushil Gupta Vs. International Department (Master Vintage International)**

**i) Case in Brief:**

Complainant, Shri Sushil Gupta, got admission for “Master Vintage International Masters Degree Course” which was promoted by Campus France India, one of the regional centres of OP in December, 2008. The Complainant was asked to deposit 200 euros which he did. Thereafter, he was invited to join the course in France. The said course was divided into four semesters. The Complainant passed the first three semesters with good marks but failed twice in his last semester “Professional Project”. In the last semester, the Complainant was required to do internship of six months with a company and to write an academic thesis. To help the petitioner, service of a tutor was assigned by Groupe ESA. It was alleged by the Complainant that he failed twice in the last semester because of deficiency of service provided by the tutor in preparing thesis of required quality. It is alleged that the Complainant even wrote to the course coordinator that he was unhappy with the service and the assistance provided by the tutor. After that on payment of further fee of 3016 euros to Groupe ESA, a new tutor was provided. But again, he was declared failed stating that his thesis was not of the required quality. According to the Complainant, he had failed only because of deficiency of service provided by the tutor assigned to him. Therefore, he had filed this consumer complaint claiming a huge amount of Rs.3,07,06,552/- as compensation. Complaint was dismissed on the ground of pecuniary jurisdiction.

**ii) Order appealed against:**

Original Complaint

## **Pecuniary Jurisdiction**

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### **iii) Parties:**

Sushil Gupta - Complainant

Vs.

International Department  
(Master Vintage International) - Opp. Party

### **iv) Case No and Date of Judgement:**

Consumer Complaint No.236 of 2013 & Date of Judgement: 18.07.2014.

### **v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 11, 17, 21 and 21(a)(i) of the Consumer Protection Act, 1986.

### **vi) Issues raised and decided:**

The National Commission, on perusal of the records, found that in the present case, the amount allegedly spent by the Complainant was only rupees eighteen lakh plus but he had added a disproportionate amount of Rs.2,88,55,000/- approximately as compensation to bring this case within the jurisdiction of the National Commission. The Commission held that the above act of the Complainant obviously was mala fide with a view to defeat the scheme of the Act. Therefore, the complaint was dismissed on the ground of pecuniary jurisdiction with liberty to the Complainant to file fresh complaint on the same cause of action before the appropriate forum. Reliance was placed on the decision in *Praveen Kumar Singhia Vs. State Bank of India* 2003 INDLAW NCDRC 144. The Commission further observed that on reading of the complaint, it was evident that Complainant had failed in the course and he was trying to shift the blame alleging deficiency in service on the part of the tutor.

### **vii) Citation:**

IV (2014) CPJ 111; 2014(3) CPR 403.

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## **4. Dr. Uttamkumar Samanta Vs. Bharti Airtel Limited and others**

### **i) Case in Brief:**

It is the case of the Complainant that he bought a prepaid mobile phone SIM card from an authorized dealer at Bhubaneswar, Orissa after submitting all necessary documents, proper identities and residential proof to OP.1/Bharti Airtel Ltd. Thereafter, the Complainant received numerous messages from OP.1 for providing them identity proof

and address verification, again and again. The Complainant submitted all those documents of identity and address proof to the store as well as to the local representative of OP.1. In June, 2011, the Complainant shifted to Kolkata permanently. He contacted the local centre of OP1 in Kolkata, several times and requested them verbally to change his port of service of the said telephone to Kolkata but that was not done. Meanwhile, the Complainant lost his mobile on 4<sup>th</sup> January, 2012. So, he applied to OP.1 to get the new SIM card with his saved data in the SIM from OP.1 by submitting all the necessary documents. He got a new sim on 13.02.2012. It was found by the Complainant that OP.1 incorporated some unknown person's name into his account or sold the SIM of the said telephone number to Complainant in a sealed packet, which, either had actually been used by some unknown person or registered in foreign name but sold to Complainant keeping him in dark. Therefore, the Complainant wrote complaint letters to the Union of India, through the Secretary, M/o. Communications & Information Technology, Department of Telecommunications (DoTEI)/OP.2, Chairman, Telecom Regulatory Authority of India (TRAI)/OP.3, and Registrar of Companies, M/o. Corporate Affairs, Government of India/OP4. But the Complainant could get not proper reply from all the above said OPs. Aggrieved by the act of OPs, he filed this complaint claiming as compensation of Rs.7 Crores. Complaint was dismissed giving liberty to the Complainant to approach the appropriate forum due to pecuniary limit.

**ii) Order appealed against:**

Original Complaint

**iii) Parties:**

Dr. Uttamkumar Samanta - Complainant

Vs.

Bharti Airtel Limited and others - Opp.Parties

**iv) Case No and Date of Judgement:**

Consumer Complaint No.235 of 2014 & Date of Judgement: 01.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

## **Pecuniary Jurisdiction**

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### **vi) Issues raised and decided:**

- a) On perusal of the complaint, the Commission found that the complaint ran to 36 pages, several details and dates had been given and that a number of witnesses would be required to give evidence. The case could not be decided on the basis of affidavits only. All the complicated and intricate questions of law put forward by the Complainant could not be decided in a summary fashion. The examination of witnesses and their cross-examination is not permissible under the C.P. Act, 1986. All the questions raised above required a lot of evidence and needed proper investigation. The allegations must stand proved in accordance with law.
- b) Therefore, the Commission relying on the decisions of the Hon'ble Supreme Court in *Pesi Dady Shroff Vs. Boehringer Ingelheim Denmark & Anr.*, Civil Appeal No.9453 of 2013 (wherein the prayer was for Rs.73.35 crores), *Synco Industries Vs. State Bank of Bikaner & Jaipur and Others*, (2002) 2 SCC 1 (wherein the prayer was for Rs.15 crores), *Kumari Sangita Tukaramji Rokde vs. Union of India and Ors*, Consumer Complaint No 76 of 2014 on 16.05.2014, (wherein the prayer was for 5 crores), dismissed the present complaint and gave liberty to the Complainant to approach Civil Court or Apex Court in the matter of Hindi Language or Criminal Court to get redressal of his grievance as per law.

### **vii) Citation:**

2014(3) CPR 664.

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## **5. Ramesh Kumar Vs. Dr. Akhil Saxena and others**

### **i) Case in Brief:**

The Complainant filed this complaint against OPs/Dr. Akhil Saxena & 10 Ors, comprising seven doctors, two hospitals and two blood banks, alleging medical negligence during the treatment of his wife, Smt. Anita Khatri which resulted in her untimely death. Hence, Complainant filed this complaint and prayed for a total compensation of Rs.6,30,60,000/- under various heads. Complaint dismissed.

### **ii) Order appealed against:**

Original Complaint

**iii) Parties:**

Ramesh Kumar - Complainant

Vs.

Dr. Akhil Saxena and others - OPs

**iv) Case No and Date of Judgement:**

Consumer Complaint No.351 of 2012 & Date of Judgement: 04.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o) & 21(a) (i) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on seeing the prayer itself found that Serial No.1 to 4 and 16 were somewhat relevant. The remaining quantum of compensation appeared to be just hypothetical and illusionary. The Commission opined that there was no justification in such prayer with an observation that the 'Consumer Courts are not a Lottery Centre or game of Russian roulette'. At most, the Complainant incurred expenditure of around Rs.2-3 lakhs, but is seeking hefty compensation of Rs.6,30,60,000/- in spite of giving an opportunity to amend the prayer.
- b) In view of the above, the Commission relying on the decisions of the Hon'ble Supreme Court in *Pesi Dady Shroff Vs. Boehringer Ingetheim Denmark & Anr.*, Civil Appeal No.9453 of 2013 (wherein the prayer was for Rs.73.35 crores), *Synco Industries Vs. State Bank of Bikaner & Jaipur and Others*, (2002) 2 SCC 1 (wherein the prayer was for Rs.15 crores), *Kumari Sangita Tukaramji Rokde vs. Union of India and Ors*, Consumer Complaint No 76 of 2014 on 16.05.2014, (wherein the prayer was for 5 crores), dismissed the present Revision Petition and gave liberty to the Complainant to approach Civil Court or proper Forum, where the pecuniary jurisdiction lies along with the benefit of limitation as laid down in *Laxmi Engineering Works vs. P.S.G. Industrial Institute* (1995) 3 SCC 583.

**vii) Citation:**

III (2014) CPJ 628.

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**6. Varghese Silvester Vs. Dr. Archana Dhawan**

**i) Case in Brief:**

The case of the Complainant was that he approached OP for fertility treatment (IVF), as a biological father with the donor egg from a Caucasian donor at a cost of Rs.1,20,00,000/- and was offered surrogate services at the cost of Rs.3,50,000/- on installments. The Complainant alleged that the OP did not explain to him about the details and the estimate cost of total treatment. The OP did not produce clinical details, case sheet, medical records and consent forms despite several visits. The clinic neither issued any required documents before the Embryo Transfer nor provided the supporting documents to prove that the services of OP were genuine. The Complainant also alleged that, he was being followed and watched (spied) ever since he became a patron of the clinic. The OP made him to wait at her clinic for long hours unnecessarily. Above all, the main allegation by the Complainant against OP was that because of the lethargic attitude of the OP in handling the case, the first two cycles, out of three, failed. Hence, the Complainant suffered a lot of emotional stress and mental agony and prayed for compensation of Rs.5,96,00,000/- for the Recipient of the embryos (calculated as per guidelines given in the case of Dr. Kunal Saha Vs. AMRI Hospital, Kolkata) and Rs.1,00,00,001/- for himself before the National Commission. Complaint dismissed.

**ii) Order appealed against:**

Original Complaint

**iii) Parties:**

Varghese Silvester

- Petitioner

Vs.

Dr. Archana Dhawan

- Opp. Party

**iv) Case No and Date of Judgement:**

Consumer Complaint No.419 of 2013 & Date of Judgement: 14.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 12, 13, 14, 18 and 21(a)(i) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The main issue involved in this case was that the admissibility of the Complaint because of the pecuniary limit involved in this case.
- b) The National Commission pointed out that as the present case required a lot of oral evidence and scrutiny of alleged forged documents, it dismissed the complaint giving liberty to the Complainant to approach the Civil Court or proper Forum where the pecuniary jurisdiction lies along with the benefit of limitation as laid down in *Laxmi Engineering Works v. P.S.G. Industrial Institute* (1995) 3 SCC 583. Reliance was placed on the decisions of the National Commission and of the Hon'ble Supreme Court in *Kumari Sangita Tukaramji Rokde v. Union of India and Ors* Civil Appeal No.9453 of 2013 (wherein the Complainant prayed for compensation of Rs.500/- crores), *Pesi Dady Shroff V. Boehringer Ingtheim Denmark & Anr.*, filed against the National Commission's order passed in Consumer Complaint No.164, dated 10.07.2013 (wherein the Complainant prayed for Rs.73.35 crores) & *Synco Industries V. State Bank of Bikaner & Jaipur and Others*, (2002) 2 SCC 1 (wherein the prayer was for fifteen crores).

**vii) Citation:**

IV (2014) CPJ 162.

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**XII. PROCEDURE ADOPTED/FOLLOWED BY THE FORA**

**1. United India Insurance Co. Ltd. Vs. Oriental Rubber Works & Anr.**

**i) Case in Brief:**

The Complainant filed a Consumer complaint before the State Commission against the Appellant since the insurance claim was not settled. The State Commission vide its order dated 28.11.2008, while allowing the complaint directed the Appellant to pay the amount of loss assessed by the Surveyor to the Complainant against the policy, Rs.20,000/- as compensation and Rs.2,000/- as cost within a period of two months. It was also ordered that Complainant could be entitled to payment of interest at 10% p.a. in case of default for the entire period till realization. The Appellant filed first appeal before the National Commission. On 27.01.2009, the National Commission passed an interim order directing the Appellant to deposit 50% of the amount awarded by the State Commission within four weeks, subject to which the order of the State Commission was stayed. Appellant accordingly deposited Rs.16,95,977/- with the State Commission. Thereafter the appeal was disposed of by the National Commission upholding the order of the State Commission. The Appellant was directed to pay the Respondent a sum of Rs.33,91,954/- as loss assessed by the Surveyor along with Rs.20,000/- as compensation and Rs.2,000/- as cost. Since the Appellant did not comply with the said order of the National Commission dated 07.05.2013, the Complainant filed the execution application before the State Commission which vide impugned order directed payment of the said amounts along with 10% interest from 07.07.2013 till the date of payment against which the present appeal execution has been filed. Appeal allowed modifying the order of the State Commission.

**ii) Order appealed against:**

From the order dated 28.03.2014 in Complaint No.9/2013 of the State Consumer Disputes Redressal Commission, West Bengal.

**iii) Parties:**

United India Insurance Co. Ltd. - Appellants

Vs.

Oriental Rubber Works & Anr. - Respondents

**iv) Case No and Date of Judgement:**

Appeal Execution No.6 of 2014 & Date of Judgement: 20.05.2014.



**v) Acts and Sections referred:**

Sections 19, 21(b) and 25 of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The main contention of the Appellant was that a sum of Rs.16,95,977/- had already been deposited with the State Commission on 16.02.2009 and that the Appellant was liable to pay only the balance amount of Rs.18,03,937/-. The Commission noted that the Appellant had indeed deposited a sum of Rs.16,95,977/- with the State Commission in terms of the order dated 27.01.2009 passed by the National Commission. Accordingly the Appellant/Insurance Company was directed to comply with the order dated 18.11.2008 passed by the State Commission and that Appellant however would get adjustment for the sum of Rs.16,95,977/- already deposited with the State Commission. The impugned order was modified to that extent.

**vii) Citation:**

Not reported in CPJ and CPR.

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**2. Ajay Rana Vs. Ms. Shagun**

**i) Case in Brief:**

Complainant/Respondent filed complaint before the District Forum which allowed the same and directed OP to refund Rs.6,700/- and further awarded Rs.50,000/- as compensation and Rs.2,500/- as costs. OP did not comply in the directions and Complainant filed Petition under Section 27 of the CP Act for not complying the order. The District Forum vide order dated 23.12.2009 sentenced OP to undergo imprisonment for one year and pay fine of Rs.10,000/-. OP filed appeal with application for condonation of delay which was dismissed by the State Commission vide impugned order on grounds of limitation against which the present Revision Petition has been filed. Revision Petition allowed. Petitioner directed to pay Rs.5,000/- to the Respondent and the matter remanded back to the State Commission for a fresh hearing.

**ii) Order appealed against:**

From the order dated 03.06.2013 in Appeal No.215/2013 of the State Consumer Disputes Redressal Commission, U.T. Chandigarh.

**Procedure Adopted / Followed by the Fora**

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**iii) Parties:**

Ajay Rana

- Petitioner/OP

Vs.

Ms. Shagun

- Respondent/Complainant

**iv) Case No and Date of Judgement:**

Revision Petition No.2781 of 2013 & Date of Judgement: 21.05.2014.

**v) Acts and Sections referred:**

Sections 13, 14, 15, 17(b), 18 and 27 of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission observed that on 09.11.2012 the parties had arrived at compromise by which an amount of Rs.75,000/- was paid to the Complainant as full and final settlement and that the said compromise had not been disputed by the Respondent/Complainant. Since the Respondent was to withdraw the execution proceedings as per the settlement between the parties but failed to do so, the Revision Petition was filed by the Petitioner with application for condonation of delay of 1245 days. In the circumstances the Commission observed that the State Commission should have allowed the application for condonation of delay. Consequently Revision Petition filed by the Petitioner was allowed subject to payment of Rs.5,000/- to the Respondent. The order of the State Commission was set aside and the State Commission was directed to decide the appeal on merits after giving an opportunity of being heard to both the parties.

**vii) Citation:**

III (2014) CPJ 152.

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**3. Rajasthan Housing Board & Anr. Vs. Gyan Singh**

**i) Case in Brief:**

Complainants/Respondents, Gyan Singh and Karuna Bohra booked flats in the scheme launched by the Petitioner in Jaipur. It is their grievance that though they paid the amounts demanded by the Petitioner Board, there was a delay in handing over possession and further demands were made. The construction work had not been completed when the

flats were handed over. On complaints filed before the District Forum, while allowing them the Forum awarded payment of interest at 15% p.a. by the Board to Gyan Singh and at 9% p.a. to Karuna Bohra. The appeals made by the State Commission resulted in upholding the order of the District Forum. The matter was remanded to the State Commission by the National Commission on 07.08.2013 for taking a fresh look and passing a speaking order. The State Commission then passed the impugned order dated 16.09.2003. Aggrieved by the second order of the State Commission, the Petitioners have once again filed the Revision Petitions. Revision Petitions accepted and impugned orders were set aside and the matter remanded once again to the State Commission to consider all aspects and pass a well reasoned order.

**ii) Order appealed against:**

Revision Petition No.3658/2013

From the order dated 16.09.2013 in First Appeal No.32/2013 of Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

Revision Petition No.3659/2013

From the order dated 16.09.2013 in First Appeal No.33/2013 of Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

**iii) Parties:**

Revision Petition No.3658/2013

Rajasthan Housing Board & Anr. - Petitioners

Vs.

Gyan Singh - Respondent

Revision Petition No.3659/2013

Rajasthan Housing Board & Anr. - Petitioners

Vs.

Karuna Bohra - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.3658/2013 and Revision Petition No.3659/2013 & Date of Judgement: 26.05.2014.

**v) Acts and Sections referred:**

Sections 13, 14, 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission observed that the matter was originally remanded to the State Commission as it had overlooked the serious discrepancies in the orders passed by the District Forum though the cases of Gyan Singh and Karuna Bohra were both similar. Despite the direction of the National Commission the State Commission had once again passed a cryptic and non-speaking order. The Commission observed that it was absurd that in one case interest was allowed @ 15% while in the other case the interest was allowed @ 9% p.a. on the total cost of flats. The awarding of different rates of interest on the parking charges also needed to be explained. Relying on the decision of the Hon'ble Apex Court in *HVPNL Vs. MAHAVIR* (2001) 10 SCC 659, the National Commission set aside the orders of the State Commission and once again remanded the matter back to the State Commission for passing a well reasoned order.

**vii) Citation:**

Not reported in CPJ and CPR.

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**4. The Deputy Executive Engineer Urban Sub-Division-2 Vs. Aditya Developers**

**i) Case in Brief:**

Complainant/Respondent filed complaint before the District Forum with a prayer to quash demand of Rs.2,94,086/- and further claimed compensation. OP/Petitioner contested complaint and submitted that the act of Complainant amounted to theft under Section 135 of Indian Electricity Act and resisted complaint on other grounds as well. The complaint was allowed. Appeal filed by the Petitioner was dismissed in default by the State Commission vide impugned order against which the present Revision Petition had been filed along with the Application for Condonation of Delay. Revision Petition allowed and the matter remanded back to the State Commission to decide the appeal on merits after giving an opportunity of being heard to both the parties subject to payment of cost by the Petitioners to the Legal Aid Fund of the State Commission.

**ii) Order appealed against:**

From the order dated 22.01.2013 in First Appeal No.482/2011 of the Maharashtra State Consumer Disputes Redressal Commission, Circuit Bench at Aurangabad.

**iii) Parties:**

The Deputy Executive Engineer  
Urban Sub-Division-2

- Petitioners/Opposite Parties

Vs.

Aditya Developers

- Respondent/Complainant

**iv) Case No and Date of Judgement:**

Revision Petition No.2420 of 2013 with IA/4017/2013 and IA/4018/2013  
(Stay, Condonation of Delay) &

Date of Judgement: 28.05.2014.

**v) Acts and Sections referred:**

Sections 12, 13, 14, 15, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission observed from perusal of impugned order that Petitioners did not appear before the State Commission on 4 days and the cost imposed was not deposited and in such circumstances appeal was dismissed in default. Though they did not give any reason for absence on earlier 4 days they had given explanation about non-appearance on 22.01.2013 which was convincing. The Commission further observed that as the matter pertained to theft of Electricity, it was not entertainable by the District Forum. The impugned order was set aside subject to depositing Rs.5,000/- as cost with Legal Aid Fund of the State Commission and appeal was restored to the original number. The Revision Petition filed by the Petitioners was allowed and the matter was remanded back to the State Commission to decide the appeal on merits after giving an opportunity of being heard to both parties subject to the Petitioners depositing cost imposed earlier by the State Commission.

**vii) Citation:**

Not reported in CPJ and CPR.

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**5. National Seeds Corporation Ltd. Vs. Sh. Uttam Bagal**

**i) Case in Brief:**

Complainants/Respondents filed complaint before District Forum alleging supply of defective seeds by OP. The complaint was allowed and OP/Petitioner was directed to pay Rs.2,20,680/- along with 9% p.a. interest with effect from 12.03.2001, Rs.7,500/- towards mental distress and Rs.2,500/- towards cost. Appeal filed by the Petitioner was dismissed by the State Commission vide impugned order against which the present Revision Petition had been filed. Revision Petition allowed and the case remanded back to the State Commission to decide the matter afresh after giving an opportunity of being heard to both the parties.

**ii) Order appealed against:**

From the order dated 22.02.2012 in First Appeal No.A/03/1947 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai.

**iii) Parties:**

National Seeds Corporation Ltd. - Petitioner/OP

Vs.

Sh. Uttam Bagal - Respondents/Complainants

**iv) Case No and Date of Judgement:**

Revision Petition No.130 of 2013 & Date of Judgement: 28.05.2014.

**v) Acts and Sections referred:**

Sections 12, 13, 14, 15, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission observed after perusal of the impugned order that the State Commission neither discussed the facts of the case nor contentions of the Appellant raised in memo of appeal. The Commission relying on the judgement of the Hon'ble Apex Court in *HVPNL v. Mahavir* (2001) 10 SCC 659 held that the Appellate Court while deciding appeals is required to deal with all the facts and arguments raised by the Appellant and the State Commission had not done so. It was therefore decided to remit the matter back to the State Commission for fresh disposal after dealing with all the contentions and arguments raised by the Petitioner. The Revision Petition was allowed accordingly.

**vii) Citation:** Not reported in CPJ and CPR.

**6. National Seeds Corporation Ltd. Vs. Sh. Dadaso Vishvanath Bagal & Anr.**

**i) Case in Brief:**

Complainants/Respondents filed complaint before the District Forum alleging that the seeds supplied by the OP were defective. The District Forum allowed the complaint and directed OP/Petitioner to pay Rs.56,000/- along with 9% p.a. interest, Rs.4,000/- towards mental distress and Rs.1,500/- towards cost. Appeal filed by the Petitioner was dismissed by the State Commission vide impugned order against which the present Revision Petition had been filed. Revision Petition allowed and the case remanded back to the State Commission to decide the matter afresh after giving the opportunity of being heard to both the parties.

**ii) Order appealed against:**

From the order dated 22.02.2012 in First Appeal No.A/03/1949 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai.

**iii) Parties:**

National Seeds Corporation Ltd. - Petitioner/OP

Vs.

Sh. Dadaso Vishvanath Bagal & Anr. - Respondents/Complainants

**iv) Case No and Date of Judgement:**

Revision Petition No.132 of 2013 & Date of Judgement: 28.05.2014.

**v) Acts and Sections referred:**

Sections 12, 13, 14, 15, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission observed after perusal of the impugned order that the State Commission neither discussed facts of the case nor contentions of the Appellant raised in memo of appeal. The Commission relying on the judgement of the Hon'ble Apex Court in *HVPNL v. Mahavir* (2001) 10 SCC 659 held that the Appellate Court while deciding appeals is required to deal with all the facts and arguments raised by the Appellant and the State Commission had not done so. It was therefore decided to remit the matter back to the State Commission for fresh disposal after dealing with all the contentions and arguments raised by the Petitioner. The Revision Petition was allowed accordingly.

**vii) Citation:** Not reported in CPJ and CPR.

**Procedure Adopted / Followed by the Fora**

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**7. Shyambahadursingh Gangasingh Rajput Vs. Mahendra and Mahendra Financial Services Ltd.**

**i) Case in Brief:**

Since the Petitioner did not turn up even in the second round and had not filed proper translated copies of the documents, the Revision Petition was dismissed in default.

**ii) Order appealed against:**

From the order dated 31.03.2011 in Appeal No.826/2010 of the State Consumer Disputes Redressal Commission, Gujarat.

**iii) Parties:**

Shyambahadursingh Gangasingh Rajput - Petitioner  
Vs.

Mahendra and Mahendra Financial Services Ltd. - Respondent(s)

**iv) Case No and Date of Judgement:**

Revision Petition No.2013 of 2011 & Date of Judgement: 14.07.2014.

**v) Acts and Sections referred:**

Sections 13(2)(c), 19, 21(b) and 22, of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

Nil.

**vii) Citation:**

III (2014) CPJ 387; 2014(3) CPR 439.

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**8. B.M. Jayeshankar Vs. B. Sharathkumar**

**i) Case in Brief:**

The present Revision Petition had been filed challenging the order of the State Commission which decided the case in favour of the Respondent. The Revision Petition was dismissed in a brief order in which details of the case have not been given. However, the Commission agreed with the Petitioner's Counsel that the use of words "by hook or crook" by the State Commission was inappropriate and ordered that the said words be deleted from Para 6 of the impugned order.



**ii) Order appealed against:**

From the order dated 03.04.2014 in Appeal No.195/2004 of the State Consumer Disputes Redressal Commission, Karnataka.

**iii) Parties:**

B.M. Jayeshankar - Petitioner

Vs.

B. Sharathkumar - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.2365 of 2014 & & Date of Judgement: 16.07.2014.

**v) Acts and Sections referred:**

Sections 12, 13, 14, 18, 19, 21(b), 24A of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

Nil.

**vii) Citation:**

Not reported in CPJ and CPR.

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**9. Shri Prasant Kumar Mishra Vs. Pratap Kumar Biswal**

**i) Case in Brief:**

The Petitioner filed a complaint against the Respondent alleging deficiency in service in not handing over possession of a flat which he had purchased from the opposite party. The Complaint was dismissed by the District Forum. The Petitioner preferred an appeal before the State Commission which directed the OP to pay the principal amount of Rs.2,05,640/- which the Complainant had deposited along with interest as per the Bank rate till the date of payment. Cost amounting to Rs.2,000/- was also awarded to the Complainant. Since the OP failed to comply with the order of the State Commission, the Complainant filed an Execution Petition before the District Forum. The District Forum, on getting the calculation of interest done by the Chief General Manager, SBI, Cuttack Branch, held that a sum of Rs.6,94,449/- was payable by the OP to the Complainant. The OP/Respondent preferred the Revision Petition before the State Commission which, vide impugned order directed the OP to pay a sum of Rs.4,50,000/- to the Complainant. Aggrieved by the said order the present Revision Petition has been

**Procedure Adopted / Followed by the Fora**

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filed. Revision Petition disposed of with the direction to the District Forum to calculate the amount of simple interest and notify the same to the parties and directed the OP to make payment in accordance with the calculation made by the District Forum.

**ii) Order appealed against:**

From the order dated 12.07.2006 in R.P.No.13 of 2006 of Orissa State Consumer Disputes Redressal Commission, Cuttack.

**iii) Parties:**

Shri Prasant Kumar Mishra - Petitioner

Vs.

Pratap Kumar Biswal - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.1141 of 2007 & Date of Judgement: 22.07.2014.

**v) Acts and Sections referred:**

Sections 2(1), (g), (o), 12, 13, 14, 17(b), 18, 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission held that the State Commission could not have altered or modified its earlier order dated 14.05.2004 while hearing the Revision Petition against the order of the District Forum in an execution case. The order dated 14.05.2004 had not been challenged by either party before the National Commission and therefore had become final. In terms of the said final order the Petitioner was entitled to interest on the amount of Rs.2,05,640/- from the date on which the amount was deposited with the OP till the date of payment at the prevailing Bank rate though he was entitled to simple interest and not to compound interest. It was further observed that the order dated 14.05.2004 did not envisage payment of compound interest to the Petitioner. The Commission therefore directed the District Forum to calculate the amount of simple interest at the rates indicated in the letter of State Bank of India, Cuttack Branch dated 12.09.2007 and directed the OP to make payment as per the said calculation.

**vii) Citation:**

Not reported in CPJ and CPR.

**10. Urban Improvement Trust through its Secretary, Rajasthan Vs. Varun Gupta**

**i) Case in Brief:**

Complainant/Respondent was allotted residential plot in the residential scheme floated by OP/Petitioner. OP assured to provide facilities of road, post office, shopping mall, water and electricity, telephone etc. OP asked Complainant to deposit the remaining amount, failing which, security amount will be forfeited; though facilities were not provided by the OP. Alleging deficiency on the part of OP, Complainant filed complaint before the District Forum which directed the OP to return deposited amount along with 9% p.a interest. Appeal filed by the OP was dismissed by the State Commission vide impugned order against which these Revision Petitions have been filed along with application for condonation of delay of 9 days. Revision Petitions were allowed and the matter remanded back to the State Commission for fresh hearing on merits.

**ii) Order appealed against:**

Revision Petition No.3981 of 2012

From the order dated 02.07.2012 in F.Appeal No.389/2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

Revision Petition No.3982 of 2012

From the order dated 02.07.2012 in F.Appeal No.397/2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

Revision Petition No.4013 of 2012

From the order dated 02.07.2012 in F.Appeal No.391/2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

Revision Petition No.4014 of 2012

From the order dated 02.07.2012 in F.Appeal No.392/2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

Revision Petition No.4015 of 2012

From the order dated 02.07.2012 in F.Appeal No.393/2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

**Procedure Adopted / Followed by the Fora**

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Revision Petition No.4016 of 2012

From the order dated 02.07.2012 in F.Appeal No.395/2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

Revision Petition No.4017 of 2012

From the order dated 02.07.2012 in F.Appeal No.396/2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

Revision Petition No.4064 of 2012

From the order dated 02.07.2012 in F.Appeal No.385/2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

Revision Petition No.4065 of 2012

From the order dated 02.07.2012 in F.Appeal No.388/2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

Revision Petition No.4067 of 2012

From the order dated 02.07.2012 in F.Appeal No.399/2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur

Revision Petition No.4066 of 2012

From the order dated 02.07.2012 in F.Appeal No.392/2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

Revision Petition No.4164 of 2012

From the order dated 02.07.2012 in F.Appeal No.386/2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

Revision Petition No.4165 of 2012

From the order dated 02.07.2012 in F.Appeal No.387/2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

Revision Petition No.4166 of 2012

From the order dated 02.07.2012 in F.Appeal No.394/2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

Revision Petition No.4728 of 2012

From the order dated 02.07.2012 in F.Appeal No.398/2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur

Revision Petition No.621 of 2013

From the order dated 02.07.2012 in F.Appeal No.406/2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

**iii) Parties:**

Revision Petition No.3981 of 2012

Urban Improvement Trust  
through its Secretary, Rajasthan - Petitioner/OP

Vs.

Varun Gupta - Respondent/Complainant

Revision Petition No.3982 of 2012

Urban Improvement Trust  
through its Secretary, Rajasthan - Petitioner/OP

Vs.

Smt. Sonal Gupta - Respondent/Complainant

Revision Petition No.4013 of 2012

Urban Improvement Trust  
through its Secretary, Rajasthan - Petitioner/OP

Vs.

Smt. Ravinder Gupta - Respondent/Complainant

Revision Petition No.4014 of 2012

Urban Improvement Trust  
through its Secretary, Rajasthan - Petitioner/OP

Vs.

Rajesh Gupta - Respondent/Complainant

Revision Petition No.4015 of 2012

Urban Improvement Trust  
through its Secretary, Rajasthan - Petitioner/OP

Vs.

Smt. Aruna Gupta - Respondent/Complainant

**Procedure Adopted / Followed by the Fora**

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Revision Petition No.4016 of 2012

Urban Improvement Trust  
through its Secretary, Rajasthan - Petitioner/OP

Vs.

Sh. Subhash Gupta - Respondent/Complainant

Revision Petition No.4017 of 2012

Urban Improvement Trust  
through its Secretary, Rajasthan - Petitioner/OP

Vs.

Sh. Radhey Shayam Gupta - Respondent/Complainant

Revision Petition No.4064 of 2012

Urban Improvement Trust  
through its Secretary, Rajasthan - Petitioner/OP

Vs.

Murari Lal Gupta - Respondent/Complainant

Revision Petition No.4065 of 2012

Urban Improvement Trust  
through its Secretary, Rajasthan - Petitioner/OP

Vs.

Smt. Neha Gupta - Respondent/Complainant

Revision Petition No.4067 of 2012

Urban Improvement Trust  
through its Secretary, Rajasthan - Petitioner/OP

Vs.

Rohan Gupta - Respondent/Complainant

Revision Petition No.4066 of 2012

Urban Improvement Trust  
through its Secretary, Rajasthan - Petitioner/OP

Vs.

Dinesh Gupta - Respondent/Complainant

**Compendium of National Commission Judgements – 2014 – Vol.II**

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Revision Petition No.4164 of 2012

Urban Improvement Trust  
through its Secretary, Rajasthan - Petitioner/OP

Vs.

Smt.Anju Gupta - Respondent/Complainant

Revision Petition No.4165 of 2012

Urban Improvement Trust  
through its Secretary, Rajasthan - Petitioner/OP

Vs.

Smt. Sobha Gupta - Respondent/Complainant

Revision Petition No.4166 of 2012

Urban Improvement Trust  
through its Secretary, Rajasthan - Petitioner/OP

Vs.

Suba Singh - Respondent/Complainant

Revision Petition No.4728 of 2012

Urban Improvement Trust  
through its Secretary, Rajasthan - Petitioner/OP

Vs.

Mahesh Jakhotiya - Respondent/Complainant

Revision Petition No.621 of 2013

Urban Improvement Trust  
through its Secretary, Rajasthan - Petitioner/OP

Vs.

Sh. Naveen Kumar - Respondent/Complainant

**iv) Case No and Date of Judgement:**

Revision Petition No.3981 of 2012;

Revision Petition No.3982 of 2012;

Revision Petition No.4013 of 2012;

Revision Petition No.4014 of 2012;

**Procedure Adopted / Followed by the Fora**

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Revision Petition No.4015 of 2012;  
Revision Petition No.4016 of 2012;  
Revision Petition No.4017 of 2012;  
Revision Petition No.4064 of 2012;  
Revision Petition No.4065 of 2012;  
Revision Petition No.4067 of 2012;  
Revision Petition No.4066 of 2012;  
Revision Petition No.4164 of 2012;  
Revision Petition No.4165 of 2012;  
Revision Petition No.4166 of 2012;  
Revision Petition No.4728 of 2012;  
Revision Petition No.621 of 2013 with I.A.No/1123/2013 &

Date of Judgement: 23.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 12, 13, 14,15,17, 18, 19, 21(b) of the Consumer Protection Act, 1986

**vi) Issues raised and decided:**

The Commission observed after perusal of the impugned order that the State Commission neither discussed facts of the case nor contentions of the Appellant raised in memo of appeal. The Commission relying on the judgement of the Hon'ble Apex Court in *HVPNL v. Mahavir* (2001) 10 SCC 659 held that the Appellate Court while deciding appeals is required to deal with all the facts and arguments raised by the Appellant and the State Commission had not done so. It was therefore decided to remit the matter back to the State Commission for fresh disposal after dealing with all the contentions and arguments raised by the Petitioner. The Revision Petitions were allowed accordingly and the delay of 9 days was condoned.

**vii) Citation:**

2014(3) CPR 355.

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**11. UOI and others Vs. Rajendra Kumar and another**

**i) Case in Brief:**

It is the case of the Complainant that in response to an advertisement by the Senior Chief Forest Conservator, he submitted an application form on 13.11.2010 to OP/Petitioner and deposited Rs.34,000/- as speed post charges for delivery to OP.No.3/Respondent No.2 which was to reach office of OP.No.3 before 16.11.2010. But the envelope was returned back to the Complainant on 26.11.2010 without any reason for non-delivery. Complainant could not therefore appear in the examination for the post of Forest Conservator. Alleging deficiency on the part of OP, Complainant approached the District Forum which allowed the complaint and directed the OPs.1&2 to pay Rs.5,000/- as compensation, Rs.2,000/- for mental agony and Rs.2,000/- towards litigation expenses. Appeal filed by the OPs was dismissed vide impugned order against which the present Revision Petitions have been filed along with an application for condonation of delay. Delay condoned and Revision Petition allowed and the case remanded back to the State Commission for deciding it by speaking order after giving an opportunity of being heard to the parties.

**ii) Order appealed against:**

From the order dated 04.06.2012 in F.Appeal No.286 of 2012 of Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

**iii) Parties:**

UOI and others - Petitioners/OPs

Vs.

Rajendra Kumar and another - Respondents/Complainants

**iv) Case No and Date of Judgement:**

Revision Petition No:178 of 2013 & Date of Judgement: 24.07.2014.

**v) Acts and Sections referred:**

Sections 12, 13, 14, 15, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission observed after perusal of the impugned order that the State Commission neither discussed facts of the case nor contentions of the Appellant raised in memo of appeal. The Commission relying on

**Procedure Adopted / Followed by the Fora**

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the judgement of the Hon'ble Apex Court in *HVPNL v. Mahavir* (2001) 10 SCC 659 held that the Appellate Court while deciding appeals is required to deal with all the facts and arguments raised by the Appellant and the State Commission had not done so. It was therefore decided to remit the matter back to the State Commission for fresh disposal after dealing with all the contentions and arguments raised by the Petitioner. The Revision Petition was allowed accordingly.

**vii) Citation:**

IV (2014) CPJ 118; 2014(3) CPR 337.

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**12. United India Insurance Co. Ltd Vs. Smt. Lalita Devi**

**i) Case in Brief:**

Complainant's husband, Ramji Lal purchased a vehicle on 22.11.2006 and the vehicle was registered on the same day in his name. On 24.11.2006, he submitted application with OP/Petitioner for transfer of insurance policy in his name. OP had covered risk of personal accident of Rs.2,00,000/- by charging premium of Rs.100/-. But the insurance was not transferred in Ramji Lal's name. On 16.06.2007, Ramji Lal died in a road accident in which the vehicle was damaged. Alleging deficiency on the part of OP, Complainant filed two separate complaints before the District Forum pertaining to loss of vehicle and personal accident coverage. District Forum allowed the complaints and directed the OPs to transfer the policy in the name of Complainant within one month and settle the claim besides awarding costs of Rs.5,000/- towards mental agony and Rs.1,500/- for litigation. Appeals filed by the OPs were dismissed by the State Commission vide impugned order against which the present Revision Petitions have been filed. Revision Petitions allowed and the matter remanded back to the State Commission for deciding the case afresh and issuing a speaking order after giving opportunity of being heard to both the parties.

**ii) Order appealed against:**

Revision Petition Nos.3542 & 3543 of 2013

From the order dated 24.05.2013 in F.Appeal No.275 of 2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

**iii) Parties:**

Revision Petition Nos.3542 & 3543 of 2013

United India Insurance Co. Ltd - Petitioner/OP

Vs.

Smt. Lalita Devi - Respondent/Complainant

**iv) Case No and Date of Judgement:**

Revision Petition Nos.3542 & 3543 of 2013 &

Date of Judgement: 24.07.2014.

**v) Acts and Sections referred:**

Sections 12, 13, 14,18, 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission observed after perusal of the impugned order that the State Commission neither discussed facts of the case nor contentions of the Appellant raised in memo of appeal. The Commission relying on the judgement of the Hon'ble Apex Court in *HVPNL v. Mahavir* (2001) 10 SCC 659 held that the Appellate Court while deciding appeals is required to deal with all the facts and arguments raised by the Appellant and the State Commission had not done so. It was therefore decided to remit the matter back to the State Commission for fresh disposal after dealing with all the contentions and arguments raised by the Petitioner. The Revision Petition was allowed accordingly.

**vii) Citation:**

III (2014) CPJ 455; 2014(3) CPR 335.

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**13. Deposit Insurance & Credit Guarantee Corpn. Vs. Fakeerappa Basavantappa Kudari**

**i) Case in Brief:**

On a complaint filed before the District Forum by Complainant/ Respondent No.1, the forum allowing the complaint directed OP/ Petitioner and Respondent Nos.2 & 3 (The Asst. Registrar of Co-operative Societies and Liquidator, Maratha Cooperative Bank Ltd & the General

**Procedure Adopted / Followed by the Fora**

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Manager, Maratha Co-operative Bank Ltd) to pay Rs.4,10,256/- with 8% p.a interest and further Rs.1,000/- towards compensation and Rs.500/- for mental agony. Petitioner filed Revision Petition before the State Commission but the State Commission treating it as First Appeal dismissed the same as barred by 61 days and for want of depositing statutory amount against which the present Revision Petition has been filed. Revision Petition allowed.

**ii) Order appealed against:**

From the order dated 19.11.2010 in F.Appeal No.3906 of 2010 of Karnataka State Consumer Disputes Redressal Commission, Bangalore.

**iii) Parties:**

Deposit Insurance &  
Credit Guarantee Corpn.

- Petitioner/OP

Vs.

Fakeerappa Basavantappa Kudari

- Respondents/Complainants

**iv) Case No and Date of Judgement:**

Revision Petition No:17 of 2011 & Date of Judgement: 31.07.2014.

**v) Acts and Sections referred:**

Sections 12, 13, 14, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The Commission observed that the Petitioner never requested the State Commission to treat the Revision Petition as appeal. If it was treated as a Revision Petition, it was well within the limitation. Even if it is treated as an appeal, the Commission noted that as per the statement of the Counsel for Petitioner, Petitioner received intimation about the impugned order on 22.07.2009 and filed the Revision Petition on 14.09.2010 meaning thereby there was a delay of 23 days in filing appeal. It was observed that the State Commission should have asked the Petitioner to move an application for condonation of delay and only after that aspect of delay should have been considered. The impugned order was therefore held liable to be set aside.

- b) Consequently, the Revision Petition was allowed and the matter was remanded back to the State Commission to decide the maintainability of the Revision Petition after giving an opportunity of being heard to both the parties.

**vii) Citation:**

2014(3) CPR 299.

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**14. Sudha Rani Gupta Vs. Central Govt. Employees Welfare Housing Organization**

**i) Case in Brief:**

Petitioner/Complainant had applied for a flat under a physically handicapped category on the ground floor in the housing scheme of the Respondent. An allotment was made to her vide letter dated 01.01.2008. The Respondent went on asking for additional payment and did not hand over the flat. Aggrieved by the acts of omission and commission on the part of the Respondent, she approached the District Forum. The Respondent did not file the written statement in time but was later allowed to file the same subject to payment of Rs.1,000/- as cost. However, neither the cost was paid nor the written statement filed on 04.02.2014, the date fixed for hearing. The District Forum closed the opportunity to the Respondent to file the written statement. Aggrieved by the said order, Respondent filed First Appeal before State Commission which allowed the same vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 12.05.2014 in F.Appeal No.248 of 2014 of the State Consumer Disputes Redressal Commission, Delhi.

**iii) Parties:**

Sudha Rani Gupta - Petitioner

Vs.

Central Govt. Employees  
Welfare Housing Organization - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No:3000 of 2014 & Date of Judgement: 01.08.2014.

**Procedure Adopted / Followed by the Fora**

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**v) Acts and Sections referred:**

Sections 12, 13, 14, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission observed that the endeavour of every consumer forum should be to decide a matter on merit instead of deciding the same *ex parte*. When a party approaches a forum with the plausible explanation for the default committed by him, the forum should normally condone such fault so that the matter can be heard and decided on merits after considering the case of both the parties. In the present case, it was held that for the default of the Respondent in not filing the written statement prior to 04.02.2014, the Respondent had already been penalized with cost of Rs.1,000/-. As far as the default on 04.02.2014 was concerned, the Commission was convinced of the explanation given by the Counsel for the Respondent and did not find any justification for imposing any kind of cost. The Commission therefore did not interfere with the order of the State Commission but directed the Respondent to file its reply before the District Forum within one week from the date of the order.

**vii) Citation:**

Not reported in CPJ and CPR.

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**15. Pradeep Kulsrestha Vs. Ashok Kumar R.Singh and others**

**i) Case in Brief:**

The Complainant agreed to purchase a flat for a consideration of Rs.12,90,000/- from the Respondents/OPs.1 to 4 and paid an amount of Rs.5,40,000/- as part consideration. Thereafter, the Complainant approached the UCO Bank, for obtaining loan which he could not get. Consequently, the Builder terminated the agreement and also filed suit before the Hon'ble High Court of Mumbai for declaration that the agreement between the Complainant and the Respondents stood terminated. The suit is still pending. On this ground, the District Forum dismissed the complaint. However, it directed the OPs to pay back the amount with interest @ 18% p.a. from 19.10.2007. Aggrieved by that order, the petitioner filed an appeal before the State Commission

which confirmed the order of the District Forum and added that the since the issue of termination of the agreement is very much sub-judice, before the High Court, in the suit filed by the Respondent, it will be inappropriate to go to the said issue in a summary proceeding like a present consumer dispute. Against the decision of the State Commission, the present Revision Petition has been filed. The National Commission set aside the order of the State Commission and remanded the case for decision on merits of the case.

**ii) Order appealed against:**

From order dated 13.08.2012 in First Appeal No.A/11/122 of the State Consumer Disputes Redressal Commission, Maharashtra, Mumbai.

**iii) Parties:**

Pradeep Kulsrestha - Petitioner

Vs.

Ashok Kumar R.Singh and others - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.3452 of 2012 with IA/1/2012 (For Stay); IA/2/2012 (For exemption to file C/C; IA/469/2013 (For placing additional documents) &

Date of Judgement: 01.08.2014.

**v) Acts and Sections referred:**

Sections 12, 13, 14, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the case found that the judgement of the State Commission was based on 'ifs and buts'. It had not passed a speaking order. The pendency of the case before the Hon'ble High Court had got no bearing on this case. The complaint case was filed first of all and it should be decided on merits. The State Commission had not applied its mind and had not passed a definite order.
- b) The Commission further observed that this is an exercise of shirking and fudging, rather than confronting the issue. Consequently, the Commission set aside the order passed by the

**Procedure Adopted / Followed by the Fora**

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State Commission and remanded the case for fresh hearing for deciding the case on the merits of the case and the parties are directed to appear before the State Commission on 15.09.2014.

**vii) Citation:**

2014(3) CPR 607.

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**16. M/s. A2Z Logistics India Pvt Ltd Vs. M/s. DACSS Granites Pvt Ltd**

**i) Case in Brief:**

In a complaint filed by the Respondent/Complainant before the District Forum, the Forum passed an ex-parte order against the OP/Petitioner allowing the complaint and directing the OP to pay Rs.11,54,764/- with 9% interest and further awarded cost of Rs.3,000/-. Appeal was filed by the OP before the State Commission. Vide impugned order, State Commission granted stay subject to OP depositing 50% of the awarded amount, against which the present revision has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 06.08.2013 in Appeal No.941 of 2013 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore.

**iii) Parties:**

M/s. A2Z Logistics India Pvt Ltd - Petitioner/OP

Vs.

M/s. DACSS Granites Pvt Ltd - Respondent/Complainant

**iv) Case No and Date of Judgement:**

Revision Petition No:3894 of 2013 & Date of Judgement: 05.08.2014.

**v) Acts and Sections referred:**

Sections 12, 13, 14, 17(b), 18, 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission found no illegality, irregularity or jurisdictional error in the order of the State Commission granting stay



subject to OP depositing 50% of the awarded amount with the Commission within two weeks. The Commission observed that while issuing notice to the Respondent, the National Commission also stayed operation of the District Forum's order subject to depositing 50% of the awarded amount with the State Commission, meaning thereby the Commission also extended time for depositing the amount by order dated 17.02.2014. Since the Petitioner had not deposited the amount, it was held that he was not interested in availing benefit of the stay order. The Revision Petition was therefore dismissed as devoid of merit.

**vii) Citation:**

III (2014) CPJ 609; 2014(3) CPR 631.

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**17. Union of India, Dept of Posts and others Vs. Rahul and others**

**i) Case in Brief:**

Complainant/Respondent, a minor opened a Provident Fund Account (PPF) dated 14.09.2001 with an amount of Rs.60,000/- and another PPF A/c dated 20.09.2001 with an amount of Rs.40,000/- for a period upto 20.09.2010. He was issued a pass book. By letter dated 18.09.2010, OP informed the Complainant that the second A/c was in contravention of PPF rules and vide Cheque dated 27.01.2011, returned the amount of Rs.40,000/- with interest. Alleging deficiency in service, Complainant filed complaint before the District Forum which allowed the complaint and directed OPs 1 & 2/Petitioners to pay interest on Rs.40,000/- on second account upto maturity date. Appeal filed by the OP was dismissed by the State Commission vide impugned order against which the present Revision Petition has been filed. State Commission's order was set aside and the matter remanded back to the State Commission to decide the matter afresh and pass a speaking order.

**ii) Order appealed against:**

From the order dated 07.09.2012 in F.Appeal No.567 of 2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

**iii) Parties:**

Union of India, Dept of Posts & Ors. - Petitioners/OPs

Vs.

Rahul & Ors. - Respondents/Complainants

**Procedure Adopted / Followed by the Fora**

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**iv) Case No and Date of Judgement:**

Revision Petition No:179 of 2013 & Date of Judgement: 11.08.2014.

**v) Acts and Sections referred:**

Sections 12, 13, 14, 17(b), 18, 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission observed after perusal of the impugned order that the State Commission neither discussed facts of the case nor contentions of the Appellant raised in memo of appeal. The Commission relying on the judgement of the Hon'ble Apex Court in *HVPNL v. Mahavir* (2001) 10 SCC 659 held that the Appellate Court while deciding appeals is required to deal with all the facts and arguments raised by the Appellant and the State Commission had not done so. It was therefore decided to remit the matter back to the State Commission for fresh disposal after dealing with all the contentions and arguments raised by the Petitioner. The Revision Petition was allowed accordingly.

**vii) Citation:**

2014(3) CPR 536.

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**18. M/s. Sarju Cold Storage Vs. M/s. Ambika Traders**

**i) Case in Brief:**

Complainants had put their bags of Kirana items in cold storage of OP for safety and preservation. It is their case that when they approached OP to take back delivery of goods, OP informed them that the goods were destroyed in fire. Alleging deficiency, Complainants filed separate complaints before the District Forum which were allowed and OP was directed to make payment along with interest. Appeals filed by the OP and some of the Complainants for enhancement were dismissed by the State Commission vide impugned orders against which the present Revision Petitions had been filed along with applications for condonation of delay. Impugned orders set aside and the matters remanded back to the State Commission for deciding them afresh after giving opportunity of being heard to the parties.

**ii) Order appealed against:**

Revision Petition No.2354 of 2013

From the order dated 27.02.2013 in Appeal No.620 of 2012 of Rajasthan State Consumer Disputes Redressal Commission, Jaipur, Bench No.1.

Revision Petition No.2349 of 2013

From the order dated 27.02.2013 in Appeal No.273 of 2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

Revision Petition No.2350 of 2013

From the order dated 27.02.2013 in Appeal No.274 of 2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

Revision Petition No.2351 of 2013

From the order dated 27.02.2013 in Appeal No.275 of 2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

Revision Petition No.2352 of 2013

From the order dated 27.02.2013 in Appeal No.595 of 2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

Revision Petition No.2353 of 2013

From the order dated 27.02.2013 in Appeal No.613 of 2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

Revision Petition No.3550 of 2013

From the order dated 03.07.2013 in Appeal No.234 of 2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

Revision Petition No.3551 of 2013

From the order dated 27.02.2013 in Appeal No.626 of 2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

Revision Petition No.3552 of 2013

From the order dated 27.02.2013 in Appeal No.627 of 2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

**Procedure Adopted / Followed by the Fora**

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**iii) Parties:**

Revision Petition No.2354 of 2013

M/s. Sarju Cold Storage - Petitioner/OP

Vs.

M/s. Ambika Traders - Respondent/Complainant

Revision Petition No.2349 of 2013

M/s. Sarju Cold Storage - Petitioner/OP

Vs.

Anil Kumar,  
Amit Kumar Kirana Stockist - Respondent/Complainant

Revision Petition No.2350 of 2013

M/s. Sarju Cold Storage - Petitioner/OP

Vs.

Shri Ganesh Oil & Flour Mills,  
Karauli and another - Respondents/Complainants

Revision Petition No.2351 of 2013

M/s. Sarju Cold Storage - Petitioner/OP

Vs.

M/s. Kaila Devi Enterprises - Respondent/Complainant

Revision Petition No.2352 of 2013

M/s. Sarju Cold Storage - Petitioner/OP

Vs.

M/s. Mohan & Brothers - Respondent/Complainant

Revision Petition No.2353 of 2013

M/s. Sarju Cold Storage - Petitioner/OP

Vs.

M/s. Bajrang Lal Shyam Sunder - Respondent/Complainant

Revision Petition No.3550 of 2013

M/s. Shri Ganesh Oil & Flour Mills - Petitioner/Complainant

Vs.

M/s. Sarju Cold Storage and another - Respondents/OPs

**Compendium of National Commission Judgements – 2014 – Vol.II**

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Revision Petition No.3551 of 2013

M/s. Bajrang Lal Shyam Sunder - Petitioner/Complainant

Vs.

M/s. Sarju Cold Storage and another - Respondents/OPs

Revision Petition No.3552 of 2013

M/s. Mohan & Brothers - Petitioner/Complainant

Vs.

M/s. Sarju Cold Storage and another - Respondents/OPs

**iv) Case No and Date of Judgement:**

- i. Revision Petition No.2354 of 2013 with IA/1814/2014 (Substituted service);
- ii. Revision Petition No.2349 of 2013 with IA/3901/2013, IA/4123/2013 (Stay, Condonation of Delay);
- iii. Revision Petition No.2350 of 2013 with IA/3902/2013, IA/4124/2013 (Stay, Condonation of Delay);
- iv. Revision Petition No.2351 of 2013 with IA/3903/2013, IA/4125/2013 (Stay, Condonation of Delay);
- v. Revision Petition No.2352 of 2013 With IA/3904/2013, IA/4126/2013 (Stay, Condonation of Delay);
- vi. Revision Petition No.2353 of 2013 with IA/3905/2013, IA/4127/2013 (Stay, Condonation of Delay);
- vii. Revision Petition No.3550 of 2013;
- viii. Revision Petition No.3551 of 2013 with IA/6329/2013 (Condonation Of Delay);
- ix. Revision Petition No.3552 of 2013 with IA/6319/2013 (Condonation Of Delay) &

Date of Judgement: 12.08.2014.

**v) Acts and Sections referred:**

Sections 12, 13, 14, 17(b), 18, 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission observed on perusal of impugned orders that the State Commission had neither discussed the facts of the case nor contentions

**Procedure Adopted / Followed by the Fora**

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of the Appellants raised in memo of appeal. The Commission relying on the judgement of the Hon'ble Apex Court in *HVPNL v. Mahavir* (2001) 10 SCC 659 held that the Appellate Court while deciding appeals is required to deal with all the facts and arguments raised by the Appellant and the State Commission had not done so. It was therefore decided to remit the matter back to the State Commission for fresh disposal after dealing with all the contentions and arguments raised by the Petitioner. The Revision Petitions were disposed of accordingly.

**vii) Citation:**

Not reported in CPJ and CPR.

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**19. M/s. N.M.P. Developers and another Vs. Mr. Nitin Tukaram Gavankar and another**

**i) Case in Brief:**

Complainants/Respondents filed complaint before State Commission for direction to OP to execute agreement for sale of the area along with compensation. OP appeared before the State Commission on 25.04.2013 and the matter was adjourned for filing written statement subject to cost of Rs.2,000/-. On 09.05.2013, neither cost was paid nor written statement was filed and in such circumstances, the State Commission, by impugned order, proceeded without written statement and adjourned the case to 30.07.2013 for evidence of the Complainant. Aggrieved by the said order, the present Revision Petition has been filed. Revision Petition allowed and Petitioner permitted to file written statement before the State Commission subject to payment of cost of Rs.5,000/-.

**ii) Order appealed against:**

From the order dated 09.05.2013 in Complaint Case No.C.C/12/268 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai.

**iii) Parties:**

M/s. N.M.P. Developers & Anr. - Petitioners/OPs

Vs.

Mr. Nitin Tukaram Gavankar & Anr. - Respondents/Complainants

**iv) Case No and Date of Judgement:**

Revision Petition No:3528 of 2013 with I.A.6292 of 2013 & I.A.6293 of 2013 (For Stay and Condonation of Delay) &

Date of Judgement: 13.08.2014.

**v) Acts and Sections referred:**

Sections 12, 13, 14, 17(b), 18, 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission accepted the argument of the Petitioner and the evidence produced by him to show that written statement was ready but due to mistake of clerk it could not be filed before the State Commission. Accordingly, the Commission allowing the Revision Petition directed the Petitioner to file the written statement before the State Commission subject to payment of cost.

**vii) Citation:**

2014(3) CPR 494; IV (2014) CPJ 550.

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**20. Jet Lite (India) Ltd and another Vs. Dr. Surendra Nath Rana Patgiri**

**i) Case in Brief:**

Respondent/Complainant filed a complaint before the District Forum against the then Sahara India Airlines, alleging that he purchased three tickets for himself, his wife and his son for a total sum of Rs.4,103/- for the flight of Sahara India Airlines for travelling from Dibrugarh to Guwahati to attend the cremation of his father, who died on 2.07.98. The Complainant and his family reported at Dibrugarh airport on time and boarding cards were issued by the Airlines and seat Nos.15D, 15E and 15F were allocated to them. The said flight was to go from Dibrugarh to Guwahati and then to Delhi. However, when the flight was about to leave Dibrugarh, the Airlines authorities announced that they would not carry the passengers bound for Guwahati due to some operational reasons. However, they permitted the Delhi-bound passengers to fly to Delhi via Guwahati. The Complainants requested the airlines authorities to allow his family to fly to Guwahati as a

**Procedure Adopted / Followed by the Fora**

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special case, because he had to perform certain rituals for cremation of his father but the Airlines did not accept his request. The Complainant and his family were forced to hire a taxi from Dibrugah for his village but he could not reach in time as the dead body of his father had already been cremated. On the other hand, the said flight of Sahara Airlines duly landed at Guwahati Airport and took passengers from Guwahati to Delhi. The Complainant filed the consumer complaint in question claiming a total compensation of Rs.4,84,953/- including the taxi fare and air fare for three tickets before the District Forum which ordered the OPs to pay a sum of Rs.1 lakh as compensation for mental agony and harassment plus refund of Rs.4,103/- as air fare along with interest @10% p.a. An appeal was filed against this order before the State Commission which dismissed the appeal for default of appearance of the Respondent in spite of notice, against which the present Revision Petition has been filed. Revision Petition allowed and the case remanded to State Commission for fresh hearing.

**ii) Order appealed against:**

From the order dated 27.09.10 in C.A. No.87/2002 of Assam State Consumer Disputes Redressal Commission.

**iii) Parties:**

Jet Lite (India) Ltd and another - Petitioner

Vs.

Dr. Surendra Nath Rana Patgiri - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.3973 of 2013 & Date of Judgement: 25.08.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g) & (o), 19, 21(b) and Section 28(A) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission on perusal of the records found that the appeal was filed before the State Commission in the year 2002 itself, but the said appeal remained pending for a long time. The State Commission had stated in their order dated 31.05.2010 that the matter was taken up after a long gap of almost 8 years at the insistence of the Respondent and it was decided to issue fresh notices to the Petitioner/Appellant. It was observed in that



order that Sahara India Airlines had subsequently merged with Jet Airways and hence newspaper publication be issued giving the name of the company which had taken over Sahara India Airlines. It was also ordered that the notice be issued in two daily English newspapers and one vernacular paper but it was published in only one paper in the name of Sahara India Airlines because of which the Petitioner, M/s. Jet Lite (India) Ltd. did not get proper notice for hearing on 27.09.2010. It was therefore held that the State Commission should have ensured that notice in proper name was published in all the newspapers as per order dated 31.05.2010.

- b) In view of the above, this Revision Petition was allowed and the order passed by the State Commission was set aside and the case was remanded back to the State Commission for a fresh hearing on merits.

**vii) Citation:**

2014(3) CPR 772.

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**21. Kanpur Development Authority Vs. Smt. Ramsiya Gupta**

**i) Case in Brief:**

District Forum had allowed the complaint filed by the Complainant/ Respondent and directed OP/Petitioner to remove deficiencies in the house and handover possession of the house and pay interest at 12% p.a on Rs.27,889/- from 18.01.1993 till the time of handing over and further allowed compensation of Rs.10,000/- and cost of Rs.500. Petitioner filed appeal before the State Commission which was dismissed vide impugned order as none appeared before the State Commission on behalf of either party. The Petitioner/OP has filed this Revision Petition along with an application for condonation of delay of 73 days. Revision Petition allowed and the matter remanded back to the State Commission for passing a speaking order.

**ii) Order appealed against:**

From the order dated 22.04.2013 in Appeal No.2481 of 2002 of the UP State Consumer Disputes Redressal Commission, Luknow.

**Procedure Adopted / Followed by the Fora**

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**iii) Parties:**

Kanpur Development Authority - Petitioner/OP

Vs.

Smt. Ramsiya Gupta - Respondent/Complainant

**iv) Case No and Date of Judgement:**

Revision Petition No:3887 of 2013 with I.A/6927/2013 (For Stay) &  
Date of Judgement: 29.08.2014.

**v) Acts and Sections referred:**

Sections 12, 13, 14, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) It was submitted before the National Commission that the Petitioner's advocate had misplaced the file while shifting his office. The Commission also noted that the order of the State Commission was ex-parte. It was therefore deemed proper to condone the delay of 73 days subject to payment of cost of Rs.5,000/- to the Respondent.
- b) As far as merit is concerned, it was noted that the State Commission had dismissed the appeal without considering the grounds raised in the memo of appeal. It was therefore considered proper to remand the matter back to the State Commission for disposal by a speaking order after dealing with all the contentions and arguments raised by the Petitioner.
- c) Consequently, the State Commission's order was set aside and the matter was remanded back to the State Commission.

**vii) Citation:**

IV (2014) CPJ 465; 2014(3) CPR 699.

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**22. M/s. Naraindas Tejpal Vs. The Branch Manager, United India Insurance Co. Ltd and others**

**i) Case in Brief:**

Adinath Oil Industries, Udaipur who had taken marine open declaration policy from OP, consigned 145 quintals of loose mustard oil worth Rs.4,00,000/- in a vehicle to Complainant/Appellant. On 22.11.1997, the vehicle met with an accident due to which there was loss of some

quantity of oil due to pilferage. Matter was reported to Police and to the Respondent. The Surveyor appointed by the Respondent assessed loss of 74 quintals and 30 kgs valued at Rs.1,96,895.06/-. OP asked Complainant to settle for Rs.1,32,624/-. Alleging deficiency in service, Complaint was filed before the State Commission by one Umakanta Gupta, a partner in the firm of Complainant. The State Commission dismissed the complaint on the ground of maintainability vide impugned order against which the first appeal has been filed. Appeal allowed and the matter remanded back to the State Commission after allowing the Complainant to amend memo of complaint.

**ii) Order appealed against:**

From the order dated 30.10.2007 in C.D.Case.No.28 of 2000 of the Orissa State Consumer Disputes Redressal Commission, Cuttack.

**iii) Parties:**

M/s. Naraindas Tejpal - Appellant/Complainant

Vs.

The Branch Manager,  
United India Insurance Co. Ltd & Ors. - Respondents/OPs

**iv) Case No and Date of Judgement:**

First Appeal No:749 of 2007 & Date of Judgement: 03.09.2014.

**v) Acts and Sections referred:**

Sections 12, 13, 14, 18, 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission observed that the State Commission had dismissed the complaint only on the ground of maintainability and held that as partnership deed did not authorize one of the partners namely Umakant Gupta, the complaint was not maintainable. The National Commission amended memo of complaint and the amended complaint was filed by the firm through partner Umakant Gupta. Since the State Commission had not dealt with any other aspect like grant of compensation etc, the appeal was allowed and the matter was remanded back to the State Commission for deciding it afresh after giving an opportunity of being heard to the parties.

**vii) Citation:**

Not reported in CPJ and CPR.

**Procedure Adopted / Followed by the Fora**

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**23. M/s. Novous Abasan Pvt. Ltd. Vs. Dakshineswar Saptarshi Welfare Society and another**

**i) Case in Brief:**

Respondent No.2/Kamarhati Municipality entered into an agreement with the Petitioner for raising a multi-storey building in Kolkata. After getting the building plan sanctioned, Saptarishi Building Apartment was developed by the Petitioner. The case of the Complainant, who bought one of the apartments, is that the Petitioner Company had violated the sanctioned plan and raised additional construction reducing common areas and services for the members of the society. It was further alleged that the Petitioner sold parking space to outsiders leaving inadequate parking area for the plot owners. A number of other allegations were also made in their complaint before the State Commission. Before filing the complaint, the Complainant society had filed a civil suit for permanent injunction making several allegations against the Petitioner Company which were more or less on the same lines with the allegations made in the complaint. The Petitioner Company filed an application before the State Commission seeking dismissal of the complaint on the ground of pendency of civil suit. The State Commission dismissed the application vide impugned order against which the present Revision Petition has been filed. Revision Petition disposed of by staying the proceedings before the State Commission.

**ii) Order appealed against:**

From the order dated 21.05.2014 in C.C.No.193 of 2013 of the West Bengal State Consumer Disputes Redressal Commission, Kolkata.

**iii) Parties:**

M/s. Novous Abasan Pvt. Ltd. - Petitioner

Vs.

Dakshineswar Saptarshi Welfare Society & Anr. - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No:2858 of 2014 with IA /4715/2014(For Stay) &  
Date of Judgement: 04.09.2014.

**v) Acts and Sections referred:**

Sections 12, 13, 14, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission observed that it would be necessary for the Civil Court to go into the questions of fact before a final view is taken by the Civil Court/State Commission on the prayers made in the Civil suit/Complaint. It was held that if the civil suit as well as the complaint before the State Commission are allowed to proceed simultaneously there is a likelihood of conflicting finding of facts being rendered by the aforesaid two forums. Considering that the finding of the civil court rendered in the civil suit between the parties would be binding on the State Commission, the Commission held that the complaint pending before the State Commission should remain stayed during the pendency of the civil suit. Accordingly, Revision Petition was disposed of by directing that the proceedings in the complaint before the State Commission shall remain stayed during the pendency of the civil suit.

**vii) Citation:**

2014(4) CPR 357.

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**24. Radhey Shyam Vs. Assistant Engineer, Jaipur Vidyut Vitran Nigam Ltd and others**

**i) Case in Brief:**

Complainant/Petitioner filed complaint before the District Forum and claimed loss of Rs.2,25,000/- for a period of nine years on account of non-release of electricity connection resulting in loss of crop. District Forum dismissed the complaint. Appeal filed by the Petitioner was dismissed by the State Commission also vide impugned order against which the present Revision Petition has been filed. Revision Petition allowed and the case remanded back to the State Commission for deciding it by a speaking order after giving an opportunity of being heard to both the parties.

**ii) Order appealed against:**

From the order dated 01.10.2010 in Appeal No.529/2010 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

**iii) Parties:**

Radhey Shyam

- Petitioner/Complainant

Vs.

Assistant Engineer,

Jaipur Vidyut Vitran Nigam Ltd & Ors. - Respondents/OPs

**Procedure Adopted / Followed by the Fora**

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**iv) Case No and Date of Judgement:**

Revision Petition No:131 of 2011 & Date of Judgement: 04.09.2014.

**v) Acts and Sections referred:**

Sections 12, 13, 14, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission noted that the order of the State Commission neither contained any fact nor grounds taken in memo of appeal nor any finding on those objections. The Commission relying on the judgement of the Hon'ble Apex Court in *HVPNL v. Mahavir* (2001) 10 SCC 659 held that the Appellate Court while deciding appeals is required to deal with all the facts and arguments raised by the Appellant and the State Commission had not done so. It was therefore decided to remit the matter back to the State Commission for fresh disposal after dealing with all the contentions and arguments raised by the Petitioner. The Revision Petition was allowed accordingly.

**vii) Citation:**

2014(4) CPR 354.

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**25. Prabhu Dayal Sharma Vs. Director (CRS), State Insurance and Provident Fund Department and others**

**i) Case in Brief:**

Complainant/Petitioner filed complaint before District Forum seeking a direction to OP/Respondent to i) give provident fund amount along with interest ii) State Insurance amount along with interest iii) allow Rs.400/- which was deducted by State Insurance and iv) award Rs.25,000/- towards mental agony and cost of complaint. OP contended that the delay in payment of provident fund amount occurred as indemnity bond was not submitted and further that insurance amount along with interest had already been paid. District Forum dismissed the complaint. Appeal filed by the Petitioner was also dismissed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition allowed and the case remanded back to the State Commission for passing a speaking order.

**ii) Order appealed against:**

From the order dated 29.11.2007 in Appeal No.1341 of 2005 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

**iii) Parties:**

Prabhu Dayal Sharma - Petitioner/Complainant

Vs.

Director (CRS), State Insurance and Provident Fund Department and others - Respondents/OPs

**iv) Case No and Date of Judgement:**

Revision Petition No:1902 of 2008 & Date of Judgement: 04.09.2014.

**v) Acts and Sections referred:**

Sections 12, 13, 14, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission relying on the judgement of the Hon'ble Apex Court in *HVPNL v. Mahavir* (2001) 10 SCC 659 held that the Appellate Court while deciding appeals is required to deal with all the facts and arguments raised by the Appellant and the State Commission had not done so. It was therefore decided to remit the matter back to the State Commission for fresh disposal after dealing with all the contentions and arguments raised by the Petitioner. The Revision Petition was allowed accordingly.

**vii) Citation:**

IV (2014) CPJ 201; 2014(4) CPR 352.

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**26. Allahabad Bank and another Vs. Sri Shrawan Kumar Poddar and another**

**i) Case in Brief:**

Complainant/Respondent No.1 deposited Rs.17,820/- along with an application for allotment of land with OP No.1/Petitioner who were authorized agents for collecting applications on behalf of OP.2/ Respondent No.2. It is alleged that later on Complainant deposited the required amount with OP.2. As allotment of land was delayed, he

**Procedure Adopted / Followed by the Fora**

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requested for refund of amount from OP.2. As amount was not returned, he filed complaint before the District Forum in which OP.2 was proceeded ex-parte. District Forum allowed complaint and directed OPs to refund Rs.84,951/- along with interest. OP.No.1 filed appeal before State Commission along with application for condonation of delay which was dismissed by impugned order against which the present Revision Petition has been filed. Revision Petition allowed and the matter remanded to State Commission for deciding the appeal on merits.

**ii) Order appealed against:**

From the order dated 11.02.2013 in Appeal No.612 of 2012 of the State Consumer Disputes Redressal Commission, Delhi.

**iii) Parties:**

Allahabad Bank & Anr.

- Petitioners/OPs

Vs.

Sri Shrawan Kumar Poddar & Anr.

- Respondents/Complainants

**iv) Case No and Date of Judgement:**

Revision Petition No: 2263 of 2013 with IA/3762/2013 (For Stay) &

Date of Judgement: 08.09.2014

**v) Acts and Sections referred:**

Sections 12, 13, 14, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

- a) The National Commission noted that perusal of records revealed that the appellant did not appear before the District Forum after filing written statement and order was passed in his absence. As soon as he came to know about order, after receiving notice dated 20.06.2012 from Deputy Commissioner directing Bank to pay decreed amount, an appeal was filed immediately on 07.07.2012. The Commission held that the State Commission in the circumstances ought to have allowed the application for condonation of delay subject to cost.
- b) Secondly, perusal of complaint showed that Complainant deposited Rs.17,820/- with application with the Petitioner and rest of the amount with OP.2. Therefore, prima facie, order directing the Petitioner to pay full amount was not correct.



- c) Consequently, Revision Petition was allowed and order of the State Commission was set aside. Application for condonation of delay was allowed subject to payment of Rs.5,000/- to Respondent No.1/Complainant. The State Commission was directed to decide appeal on merits after giving an opportunity of being heard to both the parties.

**vii) Citation:**

2014(4) CPR 242.

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**27. M/s. Indiagen Ltd Vs. Sri.B.S. Arun Kumar and another**

**i) Case in Brief:**

Complainants/Respondents booked Frozen Semen Doses with OP No.1/ Petitioner on 22.11.2006 and paid Rs.2,00,000/-. They received one cargo on 06.12.2006 which was sent by OP.No.1 through OP.No.2/ Respondent No.2, but on opening it was found that liquid nitrogen was not present and frozen semen doses were spoiled. Complainant returned back consignment to OP.1 through OP.2 and requested replacement of stock. Since OP.1 did not respond, complaint was filed before the District Forum which allowed the complaint and directed OP.1 to refund Rs.2,00,000/- with 9% interest and dismissed complaint against OP.2. Appeal filed by OP.1 was dismissed by State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition allowed and the matter remanded back to the District Forum to deal with the objections regarding the maintainability of the complaint.

**ii) Order appealed against:**

From the order dated 30.06.2008 in Appeal No.2372 of 2007 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore.

**iii) Parties:**

M/s. Indiagen Ltd

- Petitioner/OP

Vs.

Sri.B.S. Arun Kumar and another

- Respondents/Complainants

**iv) Case No and Date of Judgement:**

Revision Petition No:4050 of 2008 & Date of Judgement: 09.09.2014.

**Procedure Adopted / Followed by the Fora**

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**v) Acts and Sections referred:**

Sections 2(1) (d), (g), (o), 12, 13, 14, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The issue that came up for consideration was whether Complainant is a 'Super Distributor' of OP and obtained goods for the purposes of resale as contended by the Petitioner and whether the Complainant fell within the purview of consumer. The National Commission observed that neither the District Forum nor the State Commission dealt with this objection which pertained to the maintainability of the complaint. The Revision Petition was therefore allowed, the orders of the fora below were set aside and the matter remanded back to the District Forum to deal with the objections of OP and decide the complaint afresh after giving an opportunity of being heard to both the parties.

**vii) Citation:**

2014(4) CPR 204.

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**28. M/s. Yellow Stone Builders Pvt. Ltd and others Vs. Lalit Kumar Dhiman**

**i) Case in Brief:**

Complainant/Respondent filed Complaint against OP/Appellant No.1 & 2 before State Commission which directed OP to refund Rs.21,60,120/- and further awarded Rs.10,000/- as litigation cost. Since the order of the State Commission was not complied, Complainant filed Execution Application before State Commission which vide impugned ex-parte order dated 13.05.2014 sentenced OPs to undergo imprisonment for a period of two years and directed to pay a fine of Rs.10,000/- against which, this appeal has been filed. Appeal allowed.

**ii) Order appealed against:**

From the order dated 13.05.2014 in EA No.14/2014 in CC No. 63/2013 of the State Consumer Disputes Redressal Commission, UT Chandigarh.

**iii) Parties:**

M/s. Yellow Stone Builders Pvt. Ltd  
& Ors.

- Appellants/OPs

Vs.

Lalit Kumar Dhiman

- Complainant/Respondent

**iv) Case No and Date of Judgement:**

Appeal Execution No:12 of 2014 & Date of Judgement: 10.09.2014.

**v) Acts and Sections referred:**

Sections 12, 13, 14, 18, 19 and 21(a) (ii), 25(3) and 27 of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

It was pointed out by the National Commission that perusal of the records revealed that during pendency of appeal, Complainant filed affidavit dated 15.07.2014 in which it was submitted that matter had been compromised and Rs.28,00,000/- vide Bank Draft dated 14.07.2014 had been paid by OP to Complainant towards full and final settlement and nothing remained due to be satisfied in Execution Application. Complainant/Respondent also filed an affidavit to the same effect. Therefore, appeal filed by the appellant was allowed and impugned order passed by the State Commission was set aside.

**vii) Citation:**

2014(4) CPR 90.

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**29. United India Insurance Co. Ltd. Vs. Atul Metal Industries**

**i) Case in Brief:**

The grievance of the Petitioner was that the State Commission, in the impugned order, had not dealt with any of the submissions of the insurance company on merits. On perusal of the impugned order, the National Commission noted that the State Commission did not even indicate as to what were the contentions of the Appellant/Petitioner before the State Commission. It was also noted that the State Commission did not refer to the grounds on which the order of the District Forum was assailed by the insurance company. The National Commission directed the State Commission to decide the appeal afresh after dealing with the submissions made on behalf of the insurance company and pass order within three months. Revision Petition was disposed of accordingly.

**ii) Order appealed against:**

From the order dated 31.03.2014 in F.A.No.281 of 2011 of the Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.

**Procedure Adopted / Followed by the Fora**

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**iii) Parties:**

United India Insurance Co. Ltd. - Petitioner  
Vs.  
Atul Metal Industries - Respondent

**iv) Case No and Date of Judgement:**

Revision Petition No.2706 of 2014 with I.A No.4400 of 2014 (For Stay)  
&

Date of Judgement: 16.09.2014.

**v) Acts and Sections referred:**

Sections 12, 13, 14, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The National Commission accepted the contention of the counsel for the Petitioner that the State Commission was required to independently examine the material on record and render its own finding on the issues involved in the complaint. Since the State Commission did not take into account either the contentions of the Appellant/Petitioner nor referred to any of the grounds in the appeal, the State Commission's order was liable to be set aside. Accordingly, Revision Petition was disposed of with a direction to the State commission to deal with the appeal afresh and pass appropriate orders within a period of three months.

**vii) Citation:**

Not reported in CPJ and CPR.

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**30. M.M.Developers and Promoters Pvt. Ltd. Vs. Vinod Kumar and others**

**i) Case in Brief:**

Complainant purchased office unit from OP vide agreement dated 07.02.2005. Complainant found that there was continuous leakage at various places in public toilets of second and third floor resulting in seepage on all the walls and roof of Complainant's office and damage to furniture. Alleging deficiency in service, Complainant approached District Forum which allowed the complaint and directed OPs to repair

the toilets, walls, floor and roof of Complainant's office and further to pay Rs.25,000/- as compensation and litigation cost. Both the parties filed appeals before the State Commission which enhanced the compensation to Rs.1,00,000/-. OP filed Revision Petition before the National Commission which set aside the order of State Commission and remanded the matter back to the State Commission for fresh decision in accordance with law. The State Commission vide impugned order upheld its previous order against which the present Revision Petition has been filed. Revision Petition allowed and the matter remanded back again to the State Commission to decide the matter afresh.

**ii) Order appealed against:**

From the order dated 27.01.2011 in F. Appeal No.237/08 & FA.790/08 of State Consumer Disputes Redressal Commission, New Delhi.

**iii) Parties:**

M.M.Developers and Promoters Pvt. Ltd. - Petitioner

Vs.

Vinod Kumar and others - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No:1993 of 2011 & Date of Judgement: 17.09.2014

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 12, 13, 14, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

Perusal of the impugned order revealed that the State Commission had not considered any ground taken by the Petitioner in memo of appeal and had observed in the order that no evidence had been given and no estimates had been furnished by the Complainant; even then the compensation was enhanced from Rs.25,000/- to Rs.1,00,000/-. Consequently, the order of the State Commission was set aside and the matter was again remanded back to the State Commission to decide the matter afresh in accordance with law.

**vii) Citation:**

2014(4) CPR 23.

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**XIII. POWER OF REVIEW**

**1. Suncity Residents Welfare Association (SRWA) Vs. M/s. Suncity Maintenance Pvt. Ltd and others**

**i) Case in Brief:**

On a complaint filed by Petitioner/Complainant against the Respondents/OPs with a prayer to direct the OPs to provide services in terms of minutes of the meeting dated 26.06.2008 and other reliefs and compensation, the District Forum vide an interim order dated 03.01.2013, while issuing notice of the application, ordered that OP shall be bound by the terms and conditions of the minutes of the meeting held on 26.06.2008. OP submitted objections before the District Forum on 03.04.2013 and also filed Revision Petitions before the State Commission. The State Commission vide the impugned order dated 04.04.2013 stayed operation of the District Forum's order dated 03.01.2013 and subsequently by the other impugned order dated 07.05.2013 rectified typing mistake in the order dated 04.04.2013 and inserted the word 'and' against which the present Revision Petition has been filed. Revision Petition partly allowed.

**ii) Order appealed against:**

From the order dated 04.04.2013 and 07.05.2013 in Appeal No.RP-3/21 of the State Consumer Disputes Redressal Commission, New Delhi.

**iii) Parties:**

Suncity Residents Welfare Association (SRWA)  
- Petitioner/Complainant

Vs.

M/s. Suncity Maintenance Pvt. Ltd and others  
- Respondents/OPs

**iv) Case No and Date of Judgement:**

Revision Petition No: 2138 of 2013 & Date of Judgement: 27.08.2014.

**v) Acts and Sections referred:**

Sections 12, 13, 14, 17(b), 18, 19 and 21(b) of the Consumer Protection Act, 1986 & Regulation 17 of the Consumer Protection Regulation, 2005.

**vi) Issues raised and decided:**

- a) The Petitioner's contention was that as per Regulation 17 of the Consumer Protection Regulation, 2005, the ex-parte interim order stood vacated after 45 days if in the meanwhile objections to the interim order are not heard and disposed of. It was observed by the Commission that if the ex-parte interim order dated 03.01.2013 passed by the District Forum stood vacated after 45 days, then merely because the State Commission had passed the impugned order dated 04.04.2013 staying operation of the order dated 03.01.2013, the Petitioner should not have filed the Revision Petition challenging the order because in either case the order dated 03.01.2013, did not remain in force. The Commission found no illegality, irregularity or jurisdictional error in the impugned order dated 04.04.2013 staying the operation of District Forum's order 03.01.2013 and to that extent the Revision Petition was liable to be dismissed.
- b) However, as regards the order dated 07.05.2013, the Commission observed that the State Commission's order inserting the word 'and' amounted to review of order dated 04.04.2013 as the word 'and' changed the scope of the order dated 04.04.2013. Since the State Commission had no power to review its order, it was held that the order dated 07.05.2013 was liable to be set aside.
- c) Consequently, Revision Petition was partly allowed setting aside the State Commission's order dated 07.05.2013. The Revision Petition to the extent it challenged the order dated 04.04.2013 was set aside.

**vii) Citation:**

2014(3) CPR 739.

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**XIV. UNFAIR TRADE PRACTICE**

**1. M/s. Procter and Gamble Home Products Ltd. Vs. Ms. Taranjit kaur and others**

**i) Case in Brief:**

Complainant/Ms. Taranjit Kaur used a Pantene Shampoo Pro-V purchased from Sh. Dharam Pal, Bansal Karyana Store/OP-3. Her hair got damaged after use and head washing. The Complainant's father took this matter to OP-3 and the distributor M/s. Raj Agency/OP-1. Thereafter, the OP-1 discussed the matter with officials of M/s. Procter and Gamble Home Products Ltd. and offered to get the hair treated at OP-4/M/s. Vandana Luthra Care Clinic (VLCC). It was further alleged that even after treatment by OP-4, the Complainant's hair could not recover nor get at its original position. Hence her hair had to be removed. Complainant filed a complaint against the OPs alleging unfair trade practice and deficiency before the District Forum which held the OP-1/Petitioner and the OP3/Respondent No.3 jointly and severally liable to pay the Complainant a sum of Rs.25,000/- in lieu of consolidated amount of compensation. Aggrieved by the order of District Forum, the OP-1/Petitioner filed a First Appeal before the State Commission which was dismissed with cost of Rs.2,000/-. Against the order of State Commission, the OP-1 has preferred this Revision Petition. Revision Petition dismissed.

**ii) Order appealed against:**

Against order dated 16.09.2013 in First Appeal No.1841of 2009 of the State Consumer Disputes Redressal Commission, Punjab.

**iii) Parties:**

M/s. Procter and Gamble Home Products Ltd. - Petitioner

Vs.

Ms. Taranjit Kaur and others - Respondents

**iv) Case No and Date of Judgement:**

Revision Petition No.4728 of 2013 & Date of Judgement : 01.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), ( r ), 13 (1) (c ), 19 and 21(b) of the Consumer Protection Act, 1986.



**vi) Issues raised and decided:**

- a) The National Commission after perusal of the records pointed out that OP had failed to prove why there was such extensive damage to the hair of Complainant. OPs could have proved that their product was of good quality by subjecting the material in one of the pouches to laboratory test as envisaged in Section 13(1)(c) of CP Act. The Commission also observed that the goodwill gesture of the OP who was kind enough to bear the cost of one time treatment at VLCC would not absolve the Petitioner from its deficiency in service. Moreover, this factor also showed that the OP had clandestinely admitted its liability and therefore, the question of showing goodwill gesture had cropped up in order to save its own skin.
- b) In view of the above, the Commission held that it was a clear case of deficiency in service and unfair trade practice and also observed it is unjust and unfair to drag the consumer up to National Commission for more than 5 years, for a meager amount of compensation of Rs.25,000/- awarded by District Forum. Reliance was placed on the decision of the Hon'ble Supreme Court in *Gurgaon Gramin Bank vs. Smt. Khazani & ANR*. [Civil Appeal No. 6261 of 2012 @ Special Leave Petition (C) No. 8875/2010]. Accordingly, the present Revision Petition was dismissed and the orders of fora below were confirmed.

**vii) Citation:**

III (2014) CPJ 338; 2014(3) CPR 287.

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**2. Satish Maniklalji Baheti Vs. Ku. Monika D/o. Shantilal Takkar**

**i) Case in Brief:**

Complainant/Respondent had purchased a display monitor on 10.02.1995 for her STD/PCO shop at a cost of Rs.21,000/- from the Petitioner/OP. The said PCO had been allotted to her under educated unemployed scheme. It is alleged that after one month, OP took the monitor from the Complainant's PCO with a promise to return it with the same number. Even after a lapse of one year, OP did not return the monitor despite repeated requests. Complainant had to spend Rs.4,000/- for repairing the old monitor which also went out of order.

## **Unfair Trade Practice**

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She sent a legal notice which was returned back. She filed a complaint before the District Forum which allowed the same and ordered the OP to refund Rs.21,000/- with interest at 12% p.a. from 03.06.1996 plus Rs.5,000/- towards mental agony and Rs.2,000/- as cost. Appeal filed by the OP was dismissed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

### **ii) Order appealed against:**

From the order dated 04.04.2013 in First Appeal No.1545/2001 of the Maharashtra State Consumer Disputes Redressal Commission, Circuit Bench.

### **iii) Parties:**

Satish Maniklalji Baheti - Petitioner

Vs.

Ku. Monika D/o. Shantilal Takkar - Respondent

### **iv) Case No and Date of Judgement:**

Revision Petition No.4440 of 2013 & Date of Judgement: 04.07.2014.

### **v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

### **vi) Issues raised and decided:**

The Commission observed that the case pertained to the year 1995 and though two decades have passed the case was being unnecessarily dragged on to harass the Complainant. It was held that OP was shirking away from its responsibility by not accepting legal notices and avoiding to change the monitor or refund the amount and that it amounted to unfair trade practice. The Commission further held that the Complainant deserved compensation because she was an educated unemployed lady who suffered due to unfair practices of OP. The Commission observed that both the fora below had passed well reasoned orders which did not need any interference. Consequently Revision Petition was dismissed.

### **vii) Citation:**

III (2014) CPJ 388; 2014(3) CPR 3.

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**3. Fortis Health Management (North) Ltd. Vs. Smt. Meenu Jain & Anr.**

**i) Case in Brief:**

Complainant-1 was admitted in Petitioner's hospital on 25.05.2009 for treatment of a serious disease. On 25.06.2009 she was put on ventilator and was administered a life saving drug injection "IVIGLOBEX" five doses daily for five days. The cost of each injection, provided by the hospital pharmacy, was Rs.18,990/-. After successful treatment the Complainant was discharged on 13.06.2009. A total sum of Rs.6,82,965/- as hospitalization charges was paid by the Complainants. Complainant-2 alleged that, though the drug was available at 30-40% discount in the other medical shops, he was not permitted by the OPs to purchase the injection from outside. He added that the cost per injection was only Rs.9,000/-. He wrote a letter to OP and sought information about the Batch Number, Expiry date and the Bill of the supplier of those injections to the hospital. But OP refused to furnish the details. He claimed compensation of Rs.1,56,167/- from the OP being the excess amount charged from him which was turned down by the OP. He filed complaint before the District Forum which allowed the complaint and awarded a sum of Rs.1,00,000/- each to the Complainant-1 and to the State Consumer Welfare Fund and Rs.5,000/- as cost of litigation. Appeal filed by the OP was dismissed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 14.05.2013 in First Appeal No.747 of 2012 of the State Consumer Disputes Redressal Commission, Rajasthan, Jaipur.

**iii) Parties:**

Fortis Health Management (North) Ltd., - Petitioner

Vs.

Smt. Meenu Jain & Anr. - Respondents

**iv) Case No and Date of Judgment:**

Revision Petition No.2448 of 2013 & Date of Judgment: 22.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), (r), 19 and 21(b) of the Consumer Protection Act, 1986.

## **Unfair Trade Practice**

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### **vi) Issues raised and decided:**

- a) The Commission observed that the hospital authorities imposed, unjustified and unreasonable conditions on the Complainant to purchase the injections from the hospital pharmacy. Since the drug was very expensive, OP should have allowed at least a discount of 10-20%. It was held the action of the hospital authorities in exercising undue influence and compelling the Complainants to pay excess price amounted to Unfair Trade Practice.
- b) The Commission also observed that the Complainant's approach was opportunistic. Taking into account the services which OP had rendered when the patient was in critical condition and the right of OP to earn profits from its pharmacy, it was held that it would be just and proper to allow refund of 50% of the calculated excess amount.
- c) Accordingly the commission directed the Petitioner/OP to refund/ pay Rs.78,000/- to the Complainants within 90 days from the date of receipt of the order. Otherwise it would carry interest 9% p.a. till its realization.

### **vii) Citation:**

IV (2014) CPJ 94; 2014(3) CPR 426.

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## **4. Anthony muthu Vs. M/s. Whirlpool of India Ltd and others**

### **i) Case in Brief:**

Complainant/Petitioner purchased whirlpool refrigerator for a sum of Rs.15,500/- on 17.07.2009 from Next Retail India Ltd, OP.3/Respondent No.3, manufactured by OPs No.1& 2/Respondents Nos.1 & 2. It is his case that on the date of delivery itself, he suspected that an old fridge had been delivered and complained to OPs 2&3. OP.2 immediately visited his premises, the service engineers also visited but the date of manufacture could not be traced. Respondents did not replace the fridge. Alleging that not mentioning the date of manufacture amounted to unfair trade practice, Complainant approached District Forum which dismissed the complaint. Appeal filed by the Complainant was dismissed by the State Commission vide impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

**ii) Order appealed against:**

From the order dated 29.04.2013 in F.Appeal No.1051 of 2011 of Tamil Nadu State Consumer Disputes Redressal Commission, Chennai.

**iii) Parties:**

Anthonymuthu - Petitioner/Complainant

Vs.

M/s. Whirlpool of India Ltd and others - Respondent/OPs

**iv) Case No and Date of Judgement:**

Revision Petition No:2402 of 2013 & Date of Judgement: 25.07.2014.

**v) Acts and Sections referred:**

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

**vi) Issues raised and decided:**

The Commission noted that it was not in dispute that the carton in which the refrigerator was delivered contained May, 2009 as month & year of manufacture. Merely because, the refrigerator itself did not contain the month and year of manufacture, it cannot be inferred that the delivered refrigerator was old and manufactured in the year 2006. The Commission observed that the Petitioner could not place any document in support of his claim that the refrigerator was manufactured in the year 2006. Nor could the Petitioner cite or place any rule making it obligatory on the part of the Respondent to inscribe the month and year of manufacture on the refrigerator. The Commission did not find any illegality or irregularity or jurisdictional error in the order of the State Commission and accordingly dismissed the Revision Petition.

**vii) Citation:**

IV (2014) CPJ 281; 2014(3) CPR 329.

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**5. Novartis India Ltd Vs. J. Anto and another**

**i) Case in Brief:**

The Complainant J. Anto's son Tomes Anto, aged about 17 years, underwent surgery for brain tumour and remained sick for a considerable period. Thereafter, he started growing taller and taller due to excess production of growth hormone. They consulted Dr. Nihal

## **Unfair Trade Practice**

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Thomas/Respondent No.2, Professor of Endocrinology at Vellore who prescribed a medicine octreotide costing Rs.58,000/- which was to be given on a monthly basis. The treatment was started on 30.04.2008. A few months later, on a suggestion given by another doctor, Novartis India Ltd, the Petitioner, supplied the medicine at a maximum discount upto 50 %. Ultimately, the medicine was stopped. The Complainant had to purchase eight injections amounting to Rs.3,60,008/-. It is the Complainant's case that if the discount had been given for the earlier purchase, he would have saved Rs.1,17,872/-. He asked for refund of the amount. Both the Consumer Fora below gave a concurrent finding allowing his claim. Aggrieved by the order of the State Commission, the present Revision Petition has been filed. Petition allowed.

### **ii) Order appealed against:**

From the order dated 29.06.2013 in F.Appeal No.213 of 2012 of the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram.

### **iii) Parties:**

Novartis India Ltd	-	Petitioner/OP
Vs.		
J. Anto and another	-	Respondents

### **iv) Case No and Date of Judgement:**

Revision Petition No:3092 of 2013 with I.A.No.5409 of 2013 (For Stay)  
&

Date of Judgement: 04.08.2014.

### **v) Acts and Sections referred:**

Sections 2(1)(r), 19 and 21(b) of the Consumer Protection Act, 1986.

### **vi) Issues raised and decided:**

The case of the Petitioner was that at the request of Dr. Mathew John, OP.1, the patient was enrolled with a new scheme launched to benefit the patients of acromegaly and thereafter, the Petitioner supplied the medicine to the Patient on discount. The question before the Commission was whether the Petitioner/OP can sell the medicine below the MRP and whether it is unfair trade practice. The Commission held that since the injections were given at a concessional rate which was below the MRP, by no stretch of imagination it can be said to be

an unfair trade practice. The law is clear that nobody can charge an amount more than the MRP but it can be sold at a lower rate than the MRP. Consequently, Revision Petition was allowed and the orders of the fora below were set aside. However, the Petitioner did not insist on the Complainant refunding the decretal amount which had already been paid since the Patient had expired.

**vii) Citation:**

III (2014) CPJ 661; 2014(3) CPR 646.

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**6. M/s. True Zone Buildwell Pvt Ltd Vs. Bhoop Singh**

**i) Case in Brief:**

Respondent/Complainant had booked a plot of 200 sq. yards and deposited a sum of Rs.2,00,000/- with the Petitioner/OP in June, 2006. The Petitioner did not disclose the exact number of plot but issued several letters to the Respondent asking him to deposit a sum of Rs.18,66,715/-. It is the Respondent's case that he never refused to make payment of the balance amount but the Petitioner was indulging in unfair trade practice by demanding a sum of Rs.18,66,715/- in June, 2008 with interest without allotting the plot number. The Petitioner returned the registration money and cancelled the allotment. Respondent filed a consumer complaint alleging unfair trade practice and terming the cancellation illegal. The District Forum allowed the complaint and directed the Petitioner to allot a plot measuring 200 sq. yards on payment of the amount which was paid by other applicants along with interest. Petitioner's appeal filed with an application for condonation of delay was dismissed by the State Commission both on merits and on the point of limitation. Challenging the said order, the present Revision Petition has been filed. Revision Petition dismissed and punitive damages of Rs.2,00,000/- imposed on the Petitioner.

**ii) Order appealed against:**

From the order dated 01.03.2013 in F.Appeal No.133 of 2013 of State Consumer Disputes Redressal Commission, Haryana, Panchkula.

**iii) Parties:**

M/s. True Zone Buildwell Pvt Ltd	- Petitioner
Vs.	
Bhoop Singh	- Respondent

## **Unfair Trade Practice**

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### **iv) Case No and Date of Judgement:**

Revision Petition No: 2176 of 2013 with I.A.No.3616 of 2013 (For Stay)  
&

Date of Judgement: 13.08.2014.

### **v) Acts and Sections referred:**

Sections 2(1) (g), (o),(r), 19 and 21(b)of the Consumer Protection Act, 1986.

### **vi) Issues raised and decided:**

- a) The Commission noted that there was a delay of 201 days in filing of the appeal before the State Commission and that the Petitioner in his application for condonation of delay had nowhere stated before the State Commission when it received the free copy of the order of the District Forum. It was therefore held that the State Commission had rightly refused to condone the long delay of 201 days.
- b) On merits, it was held that the act of the Petitioner in accepting a sum of Rs.2 lakhs from the Respondent in 2006 without disclosing the area, location and the number of plot etc amounted to 'Deceptive Practice' which fell within the meaning of unfair trade practice as defined in the Act. It was further held that the conduct of the Petitioner per se amounted to an act of misrepresentation and alluring the innocent public to part with their hard earned money without giving them any detail.
- c) It was observed that unscrupulous builders like Petitioner who after taking the booking amount of the plot do not perform its part of obligation should not be spared. Relying on the decisions of the Hon'ble Supreme Court in *Ravinder Kaur Vs. Ashok Kumar*, AIR 2004 SC 904 & *Ramrameshwari Devi and others Vs. Nirmala Devi and others*, (Civil Appeal Nos.4912-4913 of 2011 decided on July, 4, 2011), it was held that the Revision Petition is nothing but gross abuse of process of law. It was accordingly dismissed with punitive damages of Rs.2,00,000/- to be paid to Consumer Legal Aid A/c of the Commission within four weeks.

### **vii) Citation:**

IV (2014) CPJ 584; 2014(3) CPR 486.

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