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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.I) gives a summary of 427 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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[CASES OF 2014 - Vol.I]**

Patron

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I. ARBITRATION

1. Mr. Amitabh Doss Vs. Ideal Real Estates Pvt. Ltd. & Ors.

i) Case in Brief:

Complainant and his wife purchased a villa from OP No.1. An agreement was entered into by the parties on 28.01.2010. The construction and delivery of the villa was followed by a registered deed of conveyance on 30.06.2010. It is the Complainant's case that there were many deficiencies in the design and construction and that OP No.1 had delivered an incomplete, unsafe and an inhabitable villa without WBSEDCL Electric connection. Since the defects were not rectified he filed consumer complaint before the State Commission seeking payment of Rs.27,81,896/- for execution of rework/retrofitting by the Complainant together with compensation. The State Commission passed an interim order which was challenged by the Respondents/OPs in the High Court. In the order dated 31.08.2012, the High Court allowed the revision application observing that both the parties were unanimous on the point of reference of the dispute to arbitral proceedings. Subsequently the State Commission, in the impugned order, took a similar view against which the present appeal had been filed. Appeal dismissed.

ii) Order appealed against:

From the order dated 22.03.2013 in S.C. Case No.CC/87/2010 of the West Bengal State Consumer Disputes Redressal Commission.

iii) Parties:

Mr. Amitabh Doss - Appellant

Vs.

Ideal Real Estates Pvt. Ltd. & Ors. - Respondents

iv) Case No and Date of Judgement:

First Appeal No.334 of 2013 with IA/2857/2013 &

Date of Judgement: 10.01.2014.

v) Acts and Sections referred:

Sections 3, 19 and 21(a)(ii) of the Consumer Protection Act, 1986; Sections 5 & 8 of the Arbitration and Conciliation Act, 1996.

vi) Issues raised and decided:

The Commission noted that the Complainant himself had first resorted to the Alternative Dispute Resolution Mechanism under Clause 16.1 of the agreement. Moreover the Complainant had clearly consented to arbitration before the High Court. The Commission observed that having given his consent to arbitration before the High Court in 2012, the Complainant went back to opposing reference to arbitration before the State Commission in 2013. The appeal itself was filed against the decision of the State Commission to refer the matter to arbitration. The Commission therefore found no merit in the appeal and accordingly dismissed the same.

vii) Citation:

I (2014) CPJ 375.

II. CONDONATION OF DELAY

1. Ajmer Vidyut Vitran Nigam Ltd. & Anr. Vs. Shri Kana

i) Case in Brief:

Respondent/Complainant had an electricity connection for agricultural purpose from the Petitioners. He had been making payments of all bills regularly. This being the case, he was surprised to receive a bill for the month of November for a sum of Rs.28,657/- in which Rs.26,657/- had been shown as arrears. His request for quashing the bill was not acceded to. The District Forum allowed the complaint filed by the Respondent and quashed the bill of November 2009 sent by the Petitioners. 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 an application for condonation of delay of 90 days. The application for condonation of delay as well as the Revision Petition were both dismissed.

ii) Order appealed against:

From the order dated 06.09.2011 in Appeal No.1301/2010 of the Rajasthan State Consumer Disputes Redressal Commission.

iii) Parties:

Ajmer Vidyut Vitran Nigam Ltd. & Anr. - Petitioners

Vs.

Shri Kana - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1151 of 2012 with IA/01/2012 (Condonation of Delay) & Date of Judgement: 02.01.2014.

v) Acts and Sections referred:

Sections 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Commission observed that in the application for condonation of delay, the Petitioners had simply mentioned about their office procedure for the purpose of filing the Revision. Nowhere was it mentioned in the application as to what was the sufficient cause for not filing the Revision in time. The Petitioners had nowhere mentioned as to for

which period the file remained pending and before which official at different levels. Nor had the Petitioners mentioned what time was taken at each level for getting the approval. The Commission held that the application for condonation of delay was vague and the same had been filed without any justification. It was also held that valuable right had accrued in favour of the Respondent due to the carelessness and negligence on the part of the Petitioners and the right cannot be brushed aside lightly. Relying on the decisions of the Hon'ble Apex Court in *Post Master General and Others Vs. Living Media India Ltd. & Another* [(2012) 3 SCC 563] 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 ground to condone the long delay of 90 days. The Revision Petition was accordingly dismissed being barred by limitation.

vii) Citation:

IV (2014) CPJ 648; 2014(1) CPR 214.

2. Sanjeev Gupta Vs. Oriental Insurance Co. & Ors.

i) Case in Brief:

Appellant's bus, which was insured for a sum of Rs.6.75 lakhs with OPs/Respondents, was stolen in the night between 31.12.1999 and 01.01.2000. FIR was recorded on 02.01.2000 with Ashok Vihar Police Station. OP was informed on 01.01.2000. Since the claim was not settled consumer complaint was filed before the State Commission. Allowing the complaint the State Commission directed OP to pay a sum of Rs.6.75 lakhs less 15% towards indemnification of actual loss by way of total loss and to pay Rs.50,000/- as compensation for mental harassment and Rs.10,000/- as cost of litigation. The Complainant filed an Execution Application before the State Commission for enforcement of the order. The State Commission disposed of the said application on 30.01.2009 after recording that the cheque of the decretal amount had been deposited by OP. The present appeal had been filed with the prayer that the impugned order should be set aside to the extent whereby the State Commission had directed deduction of 15% from the insured amount of Rs.6.75 lakhs. It was further requested that 18% p.a. interest should be allowed from the date of filing complaint till realization of the amount. Along with the appeal, an application for

Condonation of Delay

condonation of delay was also filed. The application for condonation of delay and consequently the appeal were both dismissed.

ii) Order appealed against:

From the order dated 27.03.2008 in Complaint No.C-297/2001 of Delhi State Consumer Disputes Redressal Commission.

iii) Parties:

Sanjeev Gupta - Appellant

Vs.

Oriental Insurance Co. & Ors. - Respondents

iv) Case No and Date of Judgement:

First Appeal No.67 of 2009 & Date of Judgement: 07.01.2014.

v) Acts and Sections referred:

Sections 15, 17, 18, 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Commission observed that the appeal had been filed after a delay of 291 days and no proper explanation had been furnished. The Appellant had tried to put the blame on his advocate saying that he was wrongly advised by the advocate that the Execution Application should be filed first and then the appeal in question. The Commission agreed with the Counsel for the Respondents that the filing of the Execution Application had nothing to do with the filing of appeal against the order dated 27.03.2008 of the State Commission. The Commission observed that the Appellant had not been able to give any cogent and convincing reason for not filing the appeal in time. Relying on the decision of the Hon'ble Supreme Court in *R.B.Ramlingam v. R.B.Bhavaneshwari* [2009] (2) Scale 108] 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 justification to condone the delay in filing the appeal. Consequently the application for condonation of delay was rejected. The appeal, being barred by limitation, was also dismissed.

vii) Citation:

2014(1) CPR 203.

3. The United India Insurance Co. Ltd. & Anr. Vs. Indosin Ltd.

i) Case in Brief:

Complainant/Respondent had taken a marine insurance policy for his cargo from Romania to Mumbai Port from OP/Appellant. It was alleged that consignment of 50 MT of calcium carbide was not received by the Complainant. A claim was filed before OP which was not processed. Alleging deficiency in service Complainant filed complaint before the State Commission. The complaint was partly allowed and the OP was directed to pay Rs.2,50,000/- as compensation and Rs.50,000/- as cost. Aggrieved by the said order the present appeal had been filed along with application for condonation of delay and application for exemption from filing certified copy of the impugned order. Application for condonation of delay was rejected and consequently the appeal was dismissed.

ii) Order appealed against:

From the order dated 03.10.2007 in Complaint No.203/1998 of the Delhi State Consumer Disputes Redressal Commission.

iii) Parties:

The United India Insurance Co. Ltd.
& Anr.

- Appellants/OPs

Vs.

Indosin Ltd.

- Respondent/Complainant

iv) Case No and Date of Judgement:

First Appeal No.370 of 2008 & Date of Judgement: 07.01.2014.

v) Acts and Sections referred:

Sections 15, 17, 18, 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Commission observed that the appellant had not mentioned the number of days, delay to be condoned but according to the office report there was a delay of 301 days in filing the appeal. The Commission further observed that the perusal of photocopy of the impugned order filed by the appellant clearly revealed that certified copy was received by appellant on 19.11.2007 whereas appellant had mentioned in the application that certified copy of

Condonation of Delay

the order was not received till 23.03.2008 which was a false statement. Even if it is presumed that the appellant received certified copy of the order on 23.03.2008, appeal had been filed on 29.08.2008 and no explanation had been given for delay of 5 months in filing appeal.

- b) The Commission held that the inordinate delay of 301 days in filing appeal could not be condoned in the light of judgments of the Hon'ble Supreme Court in *R.B.Ramlingam v. 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 v. Gujarat Industrial Development Corporation & Anr.*, (2010) 5 SCC 459, *Post Master General and Others Vs. Living Media India Ltd. & Another* [(2012) 3 SCC 563] and *Anshul Agarwal v. New Okhla Industrial Development Authority* (2011) 14 SCC 578, IV (2011) CPJ 63 (SC). The application for condonation of delay was accordingly dismissed. Consequently the appeal, being barred by limitation, was also dismissed.

vii) Citation:

2014(1) CPR 184.

4. Kulamani Sahoo Vs. ICICI Bank

i) Case in Brief:

Complainant/Petitioner filed complaint before the District Forum with a prayer to direct Respondent/OP to hand over his seized motor cycle in good running condition or pay price of the vehicle. The District Forum decided the matter on 18.02.2007 in Lok Adalat. Review Application was dismissed by the District Forum against which appeal was filed before the State Commission which was also dismissed. Petitioner filed Writ Petition before the High Court of Odisha and the Hon'ble High Court vide order dated 23.08.2011 directed the State Commission to dispose of the case on merits. The State Commission vide impugned order dismissed the Review Petition vide impugned order. Another Writ Petition was filed in the High Court challenging the said order which was withdrawn on 02.08.2012 with liberty to approach the National Commission. In pursuance of the direction the present Revision Petition had been filed with application for condonation of delay. The

application of condonation of delay was rejected and consequently the Revision Petition was dismissed.

ii) Order appealed against:

From the order dated 20.09.2011 in M.A.No.79/2010 in First Appeal No.331/2007 of the Odisha State Consumer Disputes Redressal Commission, Cuttack.

iii) Parties:

Kulamani Sahoo - Petitioner/Complainant

Vs.

ICICI Bank - Respondent/OP

iv) Case No and Date of Judgement:

Revision Petition No.3247 of 2013 with IA/8188/2013 (Delay) &

Date of Judgement: 09.01.2014.

v) Acts and Sections referred:

Sections 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Commission observed that the High Court dismissed the Writ Petition as withdrawn on 02.08.2012 and the Revision Petition had been filed on 10.09.2013 almost 13 months later and that no reasonable explanation had been given for condonation of delay. Even though the Petitioner claimed that he came to know the order of the High Court in May 2013, even then 4 months were taken in filing the Revision Petition. The Commission held that as no reasonable explanation for condonation of inordinate delay of 313 days was given, the delay cannot be condoned in the light of the judgments of the Hon'ble Apex Court and the National Commission in *Oriental Aroma Chemical Industries Ltd v. Gujarat Industrial Development Corporation & Anr.*, (2010) 5 SCC 459, *Office of the Chief Post Master General & Ors. Vs. Living Media India Ltd. & Anr.* (2012) 3 SCC 563 and *Anshul Agarwal v. New Okhla Industrial Development Authority* (2011) 14 SCC 578, IV (2011) CPJ 63 (SC).
- b) The application for condonation of delay was dismissed and consequently the Revision Petition was also dismissed.

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- c) Even on merits the Commission held that the State Commission's order did not suffer from any infirmity as State Commission has no power to review its order.

vii) Citation:

2014(1) CPR 180.

5. Vishal Sood Vs. Regional Manager, M/s. Tata Motors Finance Ltd. & Anr.

i) Case in Brief:

Complainant/Petitioner purchased a vehicle in February 2005 for Rs.4,95,600/- after raising loan payable in 47 monthly installments of Rs.10,325/- each and submitted 40 post dated cheques. He received notice from OP/Respondent demanding payment of Rs.44,414/- immediately or return the vehicle. It is alleged that on the next day, the vehicle was repossessed by OP and later on it was sold for a sum of Rs.1,65,000/- and the amount was appropriated towards the loan liability of the Petitioner. Alleging deficiency in service, Complainant approached the District Forum which held that the repossession of the vehicle was illegal, allowed complaint partly and directed OP to pay Rs.20,000/- as damages. Complainant filed appeal before the State Commission for enhancement of compensation. The State Commission dismissed the appeal vide impugned order against which the present Revision Petition had been filed along with application for condonation of delay. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 08.05.2012 in First Appeal No.172/2010 of the Himachal Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

Vishal Sood - Petitioner/Complainant

Vs.

Regional Manager,
M/s. Tata Motors Finance Ltd. & Anr. - Respondents/OPs

iv) Case No and Date of Judgement:

Revision Petition No.815 of 2013 with IA/1449/2013 (For Exemption from filing C/c) and IA/1480/2013 (For Stay) &

Date of Judgement: 10.01.2014.

v) Acts and Sections referred:

Sections 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) In the application for condonation of delay, the Petitioner had stated that the Revision Petition had been filed within the period of limitation and only on enquiry, he filed affidavit in which he admitted receipt of copy of order on 23.05.2012 and submitted that copy was handed over to his counsel on the same day who assured to file Revision Petition but did not do so and returned the brief to him. The Commission observed that the Petitioner had tried to mislead the Commission and suppressed the fact of receipt of free copy by hand in application for condonation of delay. It was further observed that the Petitioner had not come with clean hands in filing application for condonation of delay. He had also not given any cogent reason for inordinate delay of 192 days and concocted a false story that copy was given to the counsel for filing Revision Petition. The Commission held that in the light of the Judgments of the Hon'ble Apex Court in *Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation & Anr.*, (2010) 5 SCC 459, *Post Master General and Others Vs. Living Media India Ltd. & Another* [(2012) 3 SCC 563] and *Anshul Agarwal v. New Okhla Industrial Development Authority* (2011) 14 SCC 578, IV (2011) CPJ 63 (SC), the delay of 192 days cannot be condoned and rejected the application for condonation of delay.
- b) Consequently the Revision Petition was also dismissed as barred by limitation.

vii) Citation:

2014(1) CPR 170.

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6. Dr. Ravinder Kumar Vs. Managing Director, Dish TV India & Anr.

i) Case in Brief:

Petitioner/Complainant had purchased a Dish T.V. DTH from Respondent No.1/OP No.1 for a sum of Rs.2,490/- and found that it was not working properly from the date of installation. He had given the Dish Box to Respondent No.2/OP No.2 for repairs and told him that when the box was installed with TV, it gave problem to DTH. But when he approached Respondent No.2 to take it back he found that it was in a broken condition. Alleging deficiency in service he filed a complaint before the District Forum which dismissed the complaint. He filed an appeal before the State Commission which dismissed the same vide impugned order when none was present on behalf of the Appellant/Complainant. Aggrieved by the said order the present Revision Petition had been filed along with an application for condonation of delay. The application for condonation of delay was rejected and consequently Revision Petition was also dismissed.

ii) Order appealed against:

From the order dated 03.09.2012 in First Appeal No.822/2012 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

Dr. Ravinder Kumar - Petitioner

Vs.

Managing Director, Dish TV India & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3486 of 2013 with IA/6200/2013 (For condonation of delay) & Date of Judgement: 15.01.2014.

v) Acts and Sections referred:

Sections 15, 17, 18, 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 290 days in filing the Revision Petition. The Petitioner's main contention was that he did not receive the copy of the impugned order dated 03.09.2012 and got a certified copy only after several letters and a personal visit to the Commission's office on 24.09.2013. The

Commission observed that it was the bounden duty of the Petitioner to have followed the appeal before the State Commission with due care and diligence. It was also observed that despite notice of hearing issued to the Petitioner by the State Commission, the Petitioner did not appear. Secondly, the Petitioner had made false averments in the petition that he did not receive the free copy of the impugned order passed by the State Commission. It was noted that the Petitioner himself had placed on record certified copy of the impugned order dated 03.09.2012 issued to him on an application with an endorsement "certified copy of the order supplied free of cost to the parties/ counsel on 12.09.2012". The Commission observed that the Petitioner had been supplied with the free copy of the impugned order as early as on 12.09.2012 but the Revision Petition was filed only on 27.09.2013 after a long delay of 290 days.

- b) The Commission held that no sufficient ground had been shown by the Petitioner for condoning the long delay. 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), the Commission held that the delay was unjustified and rejected the application for condonation of delay. Consequently the Revision Petition was also dismissed.

vii) Citation:

2014(1) CPR 406.

7. Manjinder Singh Vs. Gurkeerat Hospital & Anr.

i) Case in Brief:

Petitioner filed a consumer complaint against the Respondents on the ground of medical negligence claiming a sum of Rs.4.90 lakhs as compensation along with interest at 24% p.a. The District Forum partly allowed the complaint and directed Respondent Nos.1 and 2 to pay a sum of Rs.60,000/- as compensation whereas complaint against Respondents 3 and 4 was dismissed with cost. Petitioner filed Appeal No.1000 of 1999 whereas Respondents 1 and 2 filed Appeal No.964 of 1999. The State Commission, vide impugned order dated 25.11.2009, dismissed First Appeal No.964 of 1999 filed by the Respondents and

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allowed the appeal filed by the Petitioner and enhanced the compensation from Rs.60,000/- to Rs.2,00,000/- and awarded Rs.10,000/- as cost of litigation. Not satisfied with the order of the State Commission, the Petitioner filed the present Revision Petition along with application for condonation of delay. Both the application for condonation of delay and consequently the Revision Petitions were dismissed.

ii) Order appealed against:

From the order dated 25.11.2009 in Appeal No.1000/1999 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh.

iii) Parties:

Manjinder Singh - Petitioner

Vs.

Gurkeerat Hospital & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3626 of 2011 with IA/1/2011 (For condonation of delay) & Date of Judgement: 23.01.2014.

v) Acts and Sections referred:

Sections 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

a) The question before the Commission was whether the free copy of the impugned order dated 25.11.2009 was supplied to the Petitioner or not. The Commission summoned the original record of the State Commission and noted from the report of the Registrar that the free copies of the order were dispatched to the parties by Registered Post on 31.12.2009 which was also clear from the dispatch register placed on record. The Commission observed that there was nothing on record to show that the above noted registered letters were received back undelivered. The Commission therefore held that free copy of the impugned order had been received by the Petitioner latest by 30.01.2010 and that there was a delay of more than 20 months in filing the Revision Petition. The Commission observed that it was the bounden duty of the Petitioner to have inquired from the State Commission or its counsel as to why the order had not been conveyed to him for a period of more than 20 months.

b) Relying 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] and *Anshul Agarwal v. New Okhla Industrial Development Authority* (2011) 14 SCC 578, IV (2011) CPJ 63 (SC), the Commission held that the Petitioner was negligent, callous and careless. The Commission therefore found no ground to condone the long delay of 20 months in filing the Revision Petition and dismissed the same.

vii) Citation:

Not reported in CPJ and CPR.

8. Ludhiana Improvement Trust Vs. Harbhajan Singh & Ors.

i) Case in Brief:

Respondents 1 to 4/Complainants filed consumer complaint against Petitioner as well as Respondent No.5/OP No.1 (State of Punjab) seeking direction to the Petitioner and Respondent No.5 to allot and hand over plot measuring 411 sq. yards in lieu of the acquired area measuring 454 sq. yards. The District Forum dismissed the complaint. However, the State Commission, on appeal, allowed the same, vide impugned order and directed the Petitioner to pass an order of allotment of a suitable plot of 400 sq. yards under Kartar Singh Sarabha Nagar Scheme and in case the plot was not available, to allot a plot in another scheme. Aggrieved by the order of the State Commission the present Revision Petition had been filed with an application for condonation of delay. Application for condonation of delay was rejected as not maintainable. Consequently the Revision Petition was also dismissed.

ii) Order appealed against:

From the order dated 30.08.2007 in Appeal No.630/2005 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh.

iii) Parties:

Ludhiana Improvement Trust - Petitioner

Vs.

Harbhajan Singh & Ors. - Respondents

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iv) Case No and Date of Judgement:

Revision Petition No.2052 of 2009 with IA/.../2009 (For condonation of delay) & Date of Judgement: 27.01.2014.

v) Acts and Sections referred:

Sections 15, 17, 18, 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 515 days in filing the Revision Petition. The Commission observed that sufficient cause for condoning delay in each case is a question of fact.
- b) The main ground on which condonation had been sought was that the impugned order was never communicated to the Petitioner and it came to know of the order only when summon was received from the District Forum on 27.02.2009 in the Execution Petition. The Commission observed that the Petitioner had not placed on record the copy of summon purported to have been received from the District Forum which was a material piece of evidence. On the other hand the Respondent had placed on record a copy of the receipt register maintained by the Petitioner Trust according to which the order of the State Commission was received by the Petitioner on 15.10.2007. It was therefore held that the defence taken by the Petitioner stood totally demolished.
- c) 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 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], the Commission observed that there was no sufficient cause made out for condoning the delay of 515 days.
- d) Accordingly the application for condonation of delay was dismissed as not maintainable with cost of Rs.10,000/- to be paid to the Consumer Legal Aid Account of the Commission.

vii) Citation:

II (2014) CPJ 285.

9. Narella Saritha Vs. Andhra Bank & Ors.

i) Case in Brief:

There was a delay of 96 days in filing the present Revision Petition. The case of the Petitioner was that she did not receive the copy of the impugned order at all, that her counsel had applied for it on 15.07.2011, got it on 16.07.2011 and filed the Revision Petition on 18.10.2011. The application for condonation of delay was rejected and consequently the Revision Petition was also dismissed.

ii) Order appealed against:

From the order dated 28.02.2011 in Appeal No.664/2008 of the Andhra Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

Narella Saritha - Petitioner

Vs.

Andhra Bank & Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3447 of 2011 with IA/02/2011 (For condonation of delay) & Date of Judgement: 29.01.2014.

v) Acts and Sections referred:

Sections 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Commission noted that as per the certified copy of the impugned order placed by the Petitioner, there was an endorsement that the free copy was issued to the Petitioner on 15.04.2011. Petitioner had not controverted the fact that either she or her counsel had received the free copy of the order on 15.04.2011. Since the Revision Petition had been filed only on 18.10.2011, the Commission held that there was no explanation for the long delay of 96 days. The Commission observed that it is well settled that sufficient cause condoning the delay in each case is a question of fact. Relying on the decision of the Hon'ble Apex Court in *Anshul Aggarwal vs. New Okhla Industrial Development Authority*, IV (2011) CPJ 63 (SC), the Commission rejected the application for

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condonation of delay. Consequently the Revision Petition was also dismissed.

vii) Citation:

Not reported in CPJ and CPR.

10. Indore Management Institute Vs. Prashant Kumar & Anr.

i) Case in Brief:

Complainant/Respondent was admitted in OP No.2/Petitioner Institute. He deposited fees but since the Institute did not get recognition and since the study was not proper, he asked for refund of fees which was not given. Alleging deficiency on the part of OPs, he filed complaint before the District Forum. After hearing the parties the Forum dismissed the complaint. Appeal filed by the Complainant was allowed by the State Commission vide impugned order directing OP No.2 to refund Rs.1,25,000/- along with 6% P.a. interest and further awarded cost of Rs.1,000/- against which the present Revision Petition had been filed along with an application for condonation of delay of 452 days. Application for condonation of delay and consequently the Revision Petition were both dismissed.

ii) Order appealed against:

From the order dated 05.11.2011 in First Appeal No.1860/2010 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

iii) Parties:

Indore Management Institute - Petitioner

Vs.

Prashant Kumar & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1824 of 2013 with IA/2932/2013, IA/2933/2013 and IA/158/2014 (Stay, Condonation of Delay) & Date of Judgement: 11.02.2014.

v) Acts and Sections referred:

Sections 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Commission, after perusal of record, noted that the State Commission delivered judgment on 03.10.2011 after hearing both the Counsels i.e. for the Petitioner as well as Respondent No.1 and therefore it cannot be presumed that the Petitioner remained under the impression up to 06.04.2013 that the appeal was still pending before the State Commission. The Commission observed that the Petitioner should have contacted his Counsel appearing before the State Commission or the Counsel appearing before the State Commission should have apprised fate of appeal to the Petitioner. It was held that inordinate delay of 452 days cannot be condoned simply on the ground that Petitioner was under the impression that appeal was still pending.
- b) Relying on the decisions of the Hon'ble Apex Court in *Ram Lal and Ors. v. Rewa Coalfields Ltd.*, AIR 1962 Supreme Court 361, *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) and *Post Master General and Others v. Living Media India Ltd. & Another* [(2012) 3 SCC 563], the Commission held that there was no justification for condonation of delay. The application for condonation of delay was accordingly rejected.
- c) Consequently the Revision Petition, being barred by limitation, was also dismissed.

vii) Citation:

2014(1) CPR 502.

11. Indore Management Institute Vs. Anunaya Kulshreshtha & Anr.

i) Case in Brief:

Complainant/Respondent was admitted in OP No.2/Petitioner Institute. He deposited fees but as neither study was proper nor institute got recognition, he prayed for refund of fees. When the amount was not refunded he filed complaint before the District Forum which dismissed the same. The appeal filed by the Complainant was allowed by the State

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Commission vide impugned order directing OP No.2 to refund Rs.1,25,000/- along with 6% p.a. interest and cost of Rs.1,000/-. Aggrieved by the said order the present Revision Petition had been filed along with application for condonation of delay of 485 days. The application for condonation of delay was rejected and consequently the Revision Petition was dismissed.

ii) Order appealed against:

From the order dated 03.10.2011 in Appeal No.1844/2010 of the Madhya Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

Indore Management Institute - Petitioner

Vs.

Anunaya Kulshreshtha & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1823 of 2013 with IA/157/2014, IA/2930/2013, IA/2931/2013 & Date of Judgement: 11.02.2014.

v) Acts and Sections referred:

Sections 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The main contention of the Petitioner was that the delay was unintentional as he was not aware about the final order. The Commission after perusal of records observed that the State Commission delivered judgment on 03.10.2011 after hearing both the parties and in such circumstances it cannot be presumed that Petitioner remained under the impression till 06.04.2013 that the appeal was pending before the State Commission. Relying 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]; *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) and *Post Master General and Others Vs. Living Media India Ltd. & Another* [(2012) 3 SCC 563], the Commission held that there was no

case for condonation of delay of 485 days and rejected the application for condonation of delay. Consequently the Revision Petition being barred by limitation was also dismissed.

vii) Citation:

I (2014) CPJ 578; 2014(1) CPR 499.

12. M/s. Regain Laboratories Vs. New India Assurance Co. Ltd.

i) Case in Brief:

Complainant took two policies with OP, one for Rs.60,00,000/- covering stock of all kinds of medicines, raw material, packing material etc., and the other for Rs.20,00,000/-. On 13.04.2010, when the polices were in subsistence, a fire accident took place at the insured premises of the Complainant due to which he claimed to have suffered a loss of Rs.70,00,000/-. The matter was reported to the police. Necessary intimation was given to the insurance company. The Surveyor appointed by the OP assessed the loss. The OP paid only Rs.3,30,200/- and Rs.3,13,300/- to the Complainant vide two cheques dated 17.04.2011. Complainant's requests to pay the balance amount did not yield any result. He approached the Permanent Lok Adalat but his complaint was dismissed as withdrawn by the Adalat. He filed complaint before the State Commission along with an application for condonation of delay of 448 days. The said complaint having been dismissed as barred by limitation, the present appeal had been filed. Appeal dismissed.

ii) Order appealed against:

From the order dated 23.08.2013 in Complaint No.65/2013 of the Haryana State Consumer Disputes Redressal Commission.

iii) Parties:

M/s. Regain Laboratories - Appellant(s)

Vs.

New India Assurance Co. Ltd. - Respondent(s)

iv) Case No and Date of Judgement:

First Appeal No.679 of 2013 & Date of Judgement: 12.02.2014.

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v) Acts and Sections referred:

Sections 15, 17, 18, 19 and 21(a)(ii), of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

It was the appellant's contention that an account of wrong legal advice, he approached Permanent Lok Adalat and later on after receiving proper legal advice, the said complaint was withdrawn and a fresh complaint was filed before the State Commission. The State Commission observed that the Permanent Lok Adalat had passed order on 07.03.2013 giving permission to file a fresh case. But the complaint before the State Commission was filed only on 19.08.2013. There was no satisfactory explanation for condonation of delay of 165 days from 07.03.2013 to 19.08.2013. The State Commission had observed that a valuable right had accrued to the OP on account of non-filing of the complaint within the prescribed period of limitation and that by condoning the delay which is not sufficiently explained, the OP cannot be put to a disadvantageous position. It was held that the reasons stated in the application for condonation of delay were general in nature and based on flimsy grounds and were not sufficient to allow the application for condonation of delay and accordingly rejected the application. The National Commission did not find any illegality or irregularity in the impugned order and upheld the same. The appeal was dismissed.

vii) Citation:

2014(1) CPR 534.

13. Sri Krishna Murthy Vs. Secretary, ITI Employee Housing Corporation Society Ltd. & Anr.

i) Case in Brief:

Petitioner filed a consumer complaint before the District Forum alleging deficiency in service in respect of the allotment of a plot by the Respondent/OP. The aforesaid complaint was allowed in part vide order dated 26.07.2008. Petitioner applied for execution of the above order. During the pendency of the execution petition, the Petitioner came to know that there were unallotted plots available in the Mallathahalli project which fact was concealed from the District Forum. Complainant

filed Review Petition before the District Forum which was dismissed. He filed an appeal against the order of the District Forum with the delay of 1667 days after the expiry of the period of 30 days provided under the statute for filing an appeal. The State Commission declined to condone the delay and dismissed the application of condonation of delay as also the appeal. Aggrieved by the said order the present Revision Petition had been filed along with application for condonation of delay. Both the application for condonation of delay and the Revision Petition were dismissed.

ii) Order appealed against:

From the order dated 16.04.2013 in Appeal No.372/2013 of the Karnataka State Consumer Disputes Redressal Commission.

iii) Parties:

Sri Krishna Murthy

- Petitioner

Vs.

Secretary, ITI Employee Housing
Corporation Society Ltd. & Anr.

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1029 of 2014 with IA/812/2014 &
Date of Judgement: 13.02.2014.

v) Acts and Sections referred:

Sections 13, 15, 17, 18, 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 294 days in filing the Revision Petition. It was held that the explanation that the Petitioner could not file the Revision Petition because of financial constraints was not a justifiable reason for condoning the delay particularly when the Petitioner was also negligent in filing the appeal against the order of the District Forum. Relying 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] and *Anshul Agarwal v. New Okhla Industrial Development Authority* (2011) 14 SCC 578, IV (2011) CPJ 63 (SC) and that of the Commission

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in *Haryana Urban Development Authority v. Sukhbir Singh Malik* 2013 (1) CPR 417 (NC), *Sapna Jain v. Jaipal Singh* 2013 (1) CPR 322 (NC) and in the case of *Principal, National Pre-University College, Basavangudi, Bangalore and Anr. v. N. Raghunath Rao* 2011 (4) CPR 181 (NC), the Commission held that the Petitioner had been grossly negligent in the conduct of the proceedings and there was no merit in the application for condonation of delay.

- b) The Commission, on the basis of evidence on record, rejected the contention of the Petitioner that the Respondent had made misrepresentation before the State Commission that no plot in Mallathahalli project was available for allotment to the Petitioner.
- c) Consequently the application for condonation of delay was rejected and the Revision Petition was dismissed.

vii) Citation:sss

Not reported in CPJ and CPR.

14. The Superintendent Head Post Office & Ors. Vs. Smt. Sunita Gautham & Ors.

i) Case in Brief:

Respondent No.1/Complainant had opened a RD account on 10.01.2010 with Petitioner No.2/OP No.2 for the payment of Rs.500/- per month. She paid 88 installments i.e. deposited Rs.44,000/-. On 22.05.2007 she submitted necessary documents with OP No.2 for getting refund of the aforesaid amount. On enquiry, OP No.2 informed her that the original documents sent to OP No.1 had not been received and that the amount will be paid once the cheque is prepared by head office. Later when Respondent No.1 approached Petitioner No.1 for getting payment she was informed that the cheque dated 26.05.2007 for a sum of Rs.64,509/- had been sent to the Petitioner No.2. Since Petitioner No.2 did not pay the amount to the Respondent No.1 a consumer complaint was filed before the District Forum which dismissed the complaint. Respondent No.1 filed an appeal before the State Commission which allowed the appeal and directed OP Nos.1, 2 and 4 to pay a sum of Rs.64,509/- with interest at 9% p.a. from 26.05.2007. Rs.20,000/- towards compensation was also allowed. Aggrieved by the said order the present Revision

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Petition had been filed along with an application for condonation of delay of 54 days. Application for condonation of delay as also the Revision Petition were dismissed.

ii) Order appealed against:

From the order dated 03.09.2013 in Complaint Case No.413/2012 of the Rajasthan State Consumer Disputes Redressal Commission.

iii) Parties:

The Superintendent Head Post Office & Ors. - Petitioners

Vs.

Smt. Sunita Gautham & Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.915 of 2014 with IA/616/2004 (Condonation of Delay) & Date of Judgement: 13.02.2014.

v) Acts and Sections referred:

Sections 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Commission observed that it is a well settled principle that “sufficient cause” for condoning delay in each case is a question of fact. The Commission held that the Petitioner had failed to give day to day justification with dates as also “sufficient cause” for condoning the delay of 54 days. 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) and *Post Master General and Others Vs. Living Media India Ltd. & Another* [(2012) 3 SCC 563], the Commission held that the application for condonation of delay was not maintainable and rejected the same. Consequently the Revision Petition being hopelessly barred by limitation was also dismissed with cost of Rs.5,000/- to be deposited in the Consumer Legal Aid Account of the Commission within four weeks.

vii) Citation:

2014(2) CPR 23.

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15. Chandan Banik Vs. Sumona Bagchi (Bhattacharya) & Ors.

i) Case in Brief:

Mrs. Nirmala Banik, sole owner of the premises in question entered into some arrangement with OP No.1/Respondent No.3 (M/s. Rathnakar Properties Pvt. Ltd.) for developing her property. The Complainants/ Respondents No.1 and 2 booked three flats in the building complex erected in the name of Orchid Towers and made payment for the same. It is their case that OPs failed to execute and register the conveyance deed in their favour. They filed complaint before the State Commission seeking direction to execute the deeds and pay compensation and costs. The State Commission vide impugned order allowed the complaint and directed OPs to execute and register the conveyance deed in favour of the Complainants and further directed them to pay a compensation of Rs.1,50,000/- to all the Complainants saying that the cost of registration had been increased in the meantime. Rs.30,000/- was allowed as cost of litigation. Aggrieved by the said order the present appeal had been filed. Appeal dismissed on ground of limitation.

ii) Order appealed against:

From the order dated 22.07.2011 in Complaint No.72/2008 of the West Bengal State Consumer Disputes Redressal Commission.

iii) Parties:

Chandan Banik

- Appellant

Vs.

Sumona Bagchi (Bhattacharya) & Ors.

- Respondents

iv) Case No and Date of Judgement:

First Appeal No.60 of 2014 with IA/490/2014, IA/491/2014 & Date of Judgement: 19.02.2014.

v) Acts and Sections referred:

Sections 15, 17, 18, 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Commission noted that the present appeal had been filed after delay of 732 days. The Commission observed that even if the version of the appellants that they were unaware of the order dated 22.07.2011 and they received an envelope containing the

copy of the order on 22.12.2011 is believed, still there is no explanation as to why no appeal was filed within the time limit prescribed in the CP Act. Even though the appellant had gone to the High Court which passed an order on 21.08.2013 (received by the appellants on 18.09.2013) giving them liberty to challenge the impugned order before the National Commission, still the appellants took more than four months to file the appeal. No satisfactory explanation was given by them for the delay. The Commission also noted that the State Commission had ensured proper service on the predecessor-in-interest of the appellant.

- b) Relying on the judgments 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) and *Post Master General and Others Vs. Living Media India Ltd. & Another* [(2012) 3 SCC 563], the Commission held that there was no valid ground for condonation of delay and accordingly dismissed the appeal on grounds of limitation.

vii) Citation:

2014(1) CPR 705.

16. NCR Vehicles Pvt. Ltd. Vs. Rias Ahmed & Anr.

i) Case in Brief:

The Complainant, Shri Rias Ahmed had filed complaint against NCR Vehicles/OP No.1 and M/s. Ford India (P) Ltd/OP No.2 before the District Forum alleging deficiency in service. Allowing the complaint the Forum had directed the Respondents to return the car No.HR29U-7866 to the Complainant by replacing the engine with a new one or carrying out necessary repairs to the satisfaction of the Complainant. Both the Petitioners/OPs filed separate appeals before the State Commission. In the appeal filed by M/s. Ford India (P) Ltd. there was a delay of 257 days before the State Commission and in the appeal filed by the dealer/OP No.1 there was a delay of 196 days. Both the appeals were dismissed vide impugned order against which the present Revision Petitions had been filed by the two parties. Revision Petitions dismissed.

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ii) Order appealed against:

From the order dated 05.09.2012 in Appeal No.1022/2012 of the Haryana State Consumer Disputes Redressal Commission.

iii) Parties:

Revision Petition No.4738 of 2012

NCR Vehicles Pvt. Ltd. - Petitioner(s)

Vs.

Rias Ahmed & Anr. - Respondents

Revision Petition No.47 of 2013

M/s. Ford India (P) Ltd. - Petitioner(s)

Vs.

Rias Ahmed & Anr. - Respondents

iv) Case No and Date of Judgement:

i) Revision Petition No.4738 of 2012

ii) Revision Petition No.47 of 2013 &

Date of Judgement: 20.02.2014.

v) Acts and Sections referred:

Sections 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The plea taken by M/s. Ford India (P) Ltd. was that the District Forum had passed an ex-parte order and they were unaware of the decision on the complaint. It was also averred that notice of complaint was sent by the District Forum at some other address. Mrs. NCR Vehicles Pvt. Ltd. also claimed that they were not aware of the ex-parte decision and that they came to know about it during the pendency of the execution petition before the District Forum. The National Commission summoned the file from the District Forum and observed that both the Petitioners were duly served with the notice. The Commission rejected the contention of M/s. Ford India (P) Ltd. that the notice was served in the office of Ford Business Service Pvt. Ltd. which was not the manufacturer of the vehicle. The Commission held that one can have the same address for a number of offices and it was for the recipient to put the papers before the concerned authority. Relying on the decisions of the Hon'ble Apex Court in *R.B.Ramlingam v. R.B.Bhavaneshwari [2009] (2) Scale*

108]; *Bikram Dass Vs. Financial Commissioner and others* AIR 1977 SC 1221; *Anshul Agarwal v. New Okhla Industrial Development Authority* (2011) 14 SCC 578, IV (2011) CPJ 63 (SC); *Ram Lal and Ors. Vs. Rewa Coalfields Ltd.*, AIR 1962 Supreme Court 361; *Post Master General and Others Vs. Living Media India Ltd. & Another* [(2012) 3 SCC 563] etc., the Commission rejected the applications for condonation of delay and consequently both the Revision Petitions were also dismissed the parties were directed to comply with the order of the District Forum within one month of the receipt of the order.

vii) Citation:

Not reported in CPJ and CPR.

17. Dr. Shib Kumar Mukherjee Vs. H.D.F.C. Bank

i) Case in Brief:

Complainant/Appellant had two fixed deposit accounts with OP/ Respondent for Rs.5,00,000/- and Rs.3,00,000/- respectively and was also having a savings account with a balance of Rs.1,00,000/-. Complainant was a regular investor in shares and in December 2001 his account was frozen. A criminal case was registered against him and he alleged that when he was in police custody he was compelled to write a letter to the bank with a request to pay Rs.5,00,000/- in favour of Mr. Rama Sircar. Alleging deficiency in service he filed complaint before the State Commission. The State Commission after hearing the parties observed that the case did not fall under the purview of CP Act and advised him to approach the appropriate forum for relief. Challenging the said order the present appeal had been filed along with application for condonation of delay of 129 days. Application for condonation of delay was dismissed and consequently the appeal was also dismissed.

ii) Order appealed against:

From the order dated 24.04.2013 in Complaint No.38/2011 of the West Bengal State Consumer Disputes Redressal Commission.

iii) Parties:

Dr. Shib Kumar Mukherjee

- Appellant

Vs.

H.D.F.C. Bank

- Respondent

Condonation of Delay

iv) Case No and Date of Judgement:

First Appeal No.63 of 2014 & Date of Judgement: 20.02.2014.

v) Acts and Sections referred:

Sections 15, 17, 18, 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Commission noted that as per office report there was a delay of 227 days in filing appeal. The appellant had blamed his advocate for the delay. But the Commission observed that the appellant had not mentioned in the application when his advocate refused to file the appeal and when he contacted another advocate for filing appeal. The Commission found no satisfactory explanation for condoning the inordinate delay of 227 days. Relying on the decisions of the Hon'ble Supreme 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 Vs. Living Media India Ltd. & Another* [(2012) 3 SCC 563]; *Ram Lal and Ors. Vs. Rewa Coalfields Ltd.*, AIR 1962 Supreme Court 361 etc., the Commission rejected the application for condoning the delay. Consequently the appeal was also dismissed giving him liberty to seek redressal of his grievance from appropriate authority.

vii) Citation:

I (2014) CPJ 609; 2014(1) CPR 693.

18. Shaikh Zakiruddin Vs. Vijay

i) Case in Brief:

This Revision Petition had been filed by the Petitioner against the impugned ex-parte judgment of the State Commission along with an application for condonation of delay of 181 days. The Petitioner had stated that the matter was dismissed in default and no intimation was given by his advocate that he could not contact his advocate due to illness and the delay was caused due to unavoidable circumstances. He had produced a medical certificate in support of his illness. The Commission found that the reasons given for delay were not satisfactory

and rejected the application for condonation of delay. Consequently the Revision Petition was also dismissed.

ii) Order appealed against:

From the order dated 06.05.2013 in Appeal No.31/2011 of the Maharashtra State Consumer Disputes Redressal Commission.

iii) Parties:

Shaikh Zakiruddin - Petitioner

Vs.

Vijay - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1097 of 2014 & Date of Judgement: 27.02.2014.

v) Acts and Sections referred:

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

vi) Issues raised and decided:

- a) The Commission observed that the medical certificate given by a pathologist advising a period of 9 months rest for Cervical Spondylitis appeared to be false and decided to refer the matter to the Medical Council of India for appropriate action against the pathologist for professional misconduct.
- b) The Commission recalled the well settled principle that negligence of a litigant agent is negligence of a litigant himself (*Qui facit per alium facit per se*) and is not sufficient cause for condoning delay.
- c) It was noted that in *Banshi Vs. Lakshmi Narain* 1993(1) R.L.R. 68, it was held that reason for delay was sought to be explained on the ground that the Counsel did not inform the appellant in time but it was not accepted since it was primarily the duty of the party himself to have gone to the lawyer's office and enquired about the case. Similar view was taken in *Jaswant Singh Vs. Assistant Registrar, Co-operative Societies* 2003(3) Punj. L.R. 83 and *Bhandari Dass Vs. Sushila*, 1997(2) Raj LW 845.
- d) The Commission also relied on the decisions of the Apex Court in *R.B.Ramlingam v. R.B.Bhavaneshwari* [2009] (2) Scale 108]; *Anshul Agarwal v. New Okhla Industrial Development Authority* (2011)

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14 SCC 578, IV (2011) CPJ 63 (SC); *Ram Lal and Ors. Vs. Rewa Coalfields Ltd.*, AIR 1962 Supreme Court 361 and *Bikram Dass Vs. Financial Commissioner and others* AIR 1977 SC 1221 while deciding to reject the application for condonation of delay.

e) Consequently the Revision Petition was also dismissed.

vii) Citation:

II (2014) CPJ 62.

19. Lalit Vs. Sunil Jadhav & Anr.

i) Case in Brief:

There was a delay of 170 days in filing the Revision Petition. The reason for the delay was that the Counsel for the Petitioner allegedly did not inform the Petitioner about the passing of impugned order on 03.05.2013. Secondly, the car of the Counsel who was subsequently engaged was stolen on 04.09.2013 and that time was required to collect the documents from the fora below. The application for condonation of delay was not found acceptable and it was rejected. Consequently the Revision Petition was also dismissed.

ii) Order appealed against:

From the order dated 03.05.2013 in Appeal No.2072/2008 of the Madhya Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

Lalit - Petitioner

Vs.

Sunil Jadhav & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.767 of 2014 with IA/505/2014 &

Date of Judgement: 03.03.2014.

v) Acts and Sections referred:

Sections 12, 13, 14, 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Commission relying on the following judgements held that the delay cannot be condoned: *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.
- b) The Commission observed that in *Bansi Vs. Lakshmi Narain* 1993(1) R.L.R. 68, it was held that reason for delay was sought to be explained on the ground that the Counsel did not inform the appellants in time, was not accepted since it was primarily the duty of the party himself to have gone to the lawyer's office and enquired about the case. The Commission further observed that it is well settled that *Qui facit per alium facit per se* negligence of a litigant agent is negligence of the litigant himself and is not sufficient cause for condoning delay (*M/s. Chawala & Co. Vs. Felicity Rodrigues*, 1971 ACJ 92). The Commission held that the case was clearly barred by time.
- c) The Commission observed that it was a dispute between two independent persons which can be decided only by the Civil Court. Held that the case was liable to be dismissed on merit also and accordingly dismissed the same both on merit and on grounds of limitation.

vii) Citation:

II (2014) CPJ 391.

20. Golden Trust Financial Services Vs. Sanjay Kumar Behra & Others

i) Case in Brief:

Complainant submitted the insurance claim to the OPs which was not settled. Alleging deficiency in service, he filed complaint before the District Forum which was allowed. OPs had been set ex-parte. Against the decision of the District Forum, appeals were filed before the State Commission with a delay of 5 months and 16 days in RP.No.21 of 2013 and a delay of 5 months and 19 days in RP.No.4482 of 2012 which were dismissed by the State Commission vide impugned orders against which the present Revision Petitions had been filed. Revision Petitions allowed.

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ii) Order appealed against:

Revision Petition No.21 of 2013

Against the Order dated 27.09.2012 in Appeal No.396/2012 of the State Commission Orissa.

Revision Petition No.4482 of 2012

Against the Order dated 27.08.2012 in Appeal No.403/2012 of the State Commission Orissa.

iii) Parties:

Revision Petition No.21 of 2013

Golden Trust Financial Services - Petitioner

Vs.

Sanjay Kumar Behra & Others - Respondents

Revision Petition No.4482 of 2012

National Insurance Co. Ltd. - Petitioner

Vs.

Sanjay Kumar Behra & Others - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.21 of 2013 and Revision Petition No.4482 of 2012 & Date of Judgement: 04.03.2014.

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 State Commission dismissed the application for condonation of delay and the appeal on the premise that delay in filing of appeal was 5 months and 16 days in RP.No.21 of 2013 and 5 months and 19 days in RP.No.4482 of 2012. On perusal of the copy of application for condonation of delay annexed along with the appeal, it was evident that the Petitioners in the applications categorically alleged that free copy of the impugned order of the District Forum was received by him on 05.06.2012. Therefore, the appeal could have been filed by 05.07.2012. Thus, there was a delay of only 15 days which had been sufficiently explained by

the Petitioners. Therefore, the National Commission allowed the revision petitions and the impugned orders were set aside stating that the impugned orders were based upon wrong assumption of facts and were not sustainable and the matter was remanded back to the State Commission with the direction to hear the appeals on merits.

vii) Citation:

2014(1) CPR 584.

21. General Manager, Sawai Madhopur Co-Operative Upbhokta Wholesale Bhandar Ltd. Vs. Ravindra Singh Jadoun

i) Case in Brief:

Complainant filed complaint before District forum with an allegation that Complainant/Respondent deposited Rs.88,000/- with OP/petitioner for taking delivery of wheat for disbursement to BPL, but wheat was not delivered. OP was proceeded ex-parte. District forum directed OP to refund Rs.88,000/- along with 9% p.a. interest and further awarded Rs.2,000/- as compensation and Rs.1,000/- as cost of litigation. Later on, OP filed application on 9.2.2012 for recall of the order dated 01.04.2011 allowing complaint, but that application was dismissed by order dated 31.12.2012. Petitioner filed appeal before State Commission challenging both the orders along with application for condonation of 658 days delay. State Commission dismissed appeal as barred by limitation as well as on merits against which, this revision petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

Against the Order dated 01.04.2013 in Appeal No.177/2013 of the State Commission Rajasthan.

iii) Parties:

General Manager, Sawai Madhopur Co-Operative
Upbhokta Wholesale Bhandar Ltd.

- Petitioner

Vs.

Ravindra Singh Jadoun

- Respondent

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iv) Case No and Date of Judgement:

Revision Petition No.2462 of 2013 with IA/4105/2013, IA/5274/2013 & Date of Judgement: 04.03.2014.

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 District Forum proceeded ex-parte against OP and passed an ex-parte order on 01.04.2011. OP moved application dated 09.02.2012 for recalling order dated 01.04.2011 and submitted that as complainant filed one petition before Permanent Lok Adalat and another complaint before District Forum and OP on account of excessive work treated both the matters as one and the same and could not get information about ex-parte proceedings. The Commission held that the District Forum rightly dismissed application for recalling the order as District forum had no jurisdiction to recall its ex-parte order.
- b) Regarding the condonation of delay, the National Commission held that Petitioner came to know about ex-parte order first time on 11.01.2012 when notice u/s. 27 of C.P. Act was received by him. On the other hand, in review application, he submitted that on account of excessive work and on the understanding that both the matters that were pending before District forum and Permanent Lok Adalat were one and the same, he did not appear before District forum. Thus, it became clear that he had taken contradictory stand before the District Forum and the State Commission and in such circumstances, State Commission rightly dismissed application for condonation of delay of 658 days.
- c) In view of the above, the Revision Petition was dismissed and the orders of the fora below were upheld.

vii) Citation:

2014(1) CPR 581.

22. Baljeet Singh Brar Vs. M/S. Birla Sun Life Insurance Co. Ltd. & Anr.

i) Case in Brief:

The present Revision Petition had been filed along with an application for condonation of delay. The delay of 99 days was attributed to the misplacement of file in the office of the Counsel by the clerk of the Counsel. The application for condonation of delay was rejected and consequently the Revision Petition was dismissed.

ii) Order appealed against:

From the order dated 04.01.2013 in Appeal No.1647/2011 of the Punjab State Consumer Disputes Redressal Commission.

iii) Parties:

Baljeet Singh Brar - Petitioner

Vs.

M/S. Birla Sun Life Insurance Co. Ltd. & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2863 of 2013 with IA/4928/2013 &

Date of Judgement: 07.03.2014.

v) Acts and Sections referred:

Sections 12, 13, 14, 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986; Section 5 of the Limitation Act and Section 151 of CPC.

vi) Issues raised and decided:

- a) The Commission noted that even before the State Commission none was present on behalf of the Appellant on 25.07.2012, 10.10.2012 when the case was listed for hearing and again on 04.01.2013 when the case was dismissed in default. It was further noted that the Petitioner after receipt of the copy of the impugned order on 25.01.2013, filed the Revision Petition only on 02.08.2013. Even if the file had been lost as alleged, it was held that the Counsel should have got prepared another file. The Commission held that the advocate was clearly negligent and observed that negligence of a litigant's agent is negligence of the litigant himself and is not sufficient cause for condoning delay (*M/s. Chawala & Co. Vs. Felicity Rodrigues*, 1971 ACJ 92).

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b) The Commission also noted that there was no evidence on record that the litigant/petitioner had taken any action against his own advocate. Relying on the decisions of the Hon'ble Apex Court in *Anshul Agarwal Vs. 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 and *Banshi Vs. Lakshmi Narain* 1993 (1) R.L.R. 68, the Commission held that the delay cannot be condoned.

c) Consequently the Revision Petition was dismissed as time barred.

vii) Citation:

Not reported in CPJ and CPR.

23. Central Bank of India Vs. Smt. Gauda Devi

i) Case in Brief:

On 31.10.2006, the Respondent/Complainant deposited a cheque for Rs.70,060/- in her savings bank account in the Petitioner bank. The payment of the said cheque was not disbursed to the Respondent for quite some time. It is alleged that the Respondent who was to perform her daughter's marriage had to undergo physical and mental agony besides facing social insult. Alleging negligence on the part of OP, she filed complaint before the District Forum. Allowing the complaint the Forum directed OP to pay Rs.70,060/- to the Complainant along with simple interest at 6% p.a. besides Rs.1,000/- towards cost. Aggrieved by the order the OP filed an appeal before the State Commission along with an application for condonation of delay. The application for condonation of delay and hence the appeal were both dismissed vide impugned order against which the present Revision Petition had been filed. Revision Petition dismissed with cost.

ii) Order appealed against:

From the order dated 04.03.2008 in Appeal No.610/2008 of the Uttar Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

Central Bank of India

- Petitioner

Vs.

Smt. Gauda Devi

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2017 of 2008 & Date of Judgement: 10.03.2014.

v) Acts and Sections referred:

Sections 2(1) (d), (g), (o), 15, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The National Commission noted that there was a delay of four months in filing the appeal which was explained by the Counsel for the Petitioner as due to delay inherent in the working of Government Organization. It was held that there was no proper explanation offered by the department for the delay except mentioning of various dates and that the department had miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. The Commission relying on the Judgments of the Hon'ble Supreme Court in *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], held that the delay cannot be condoned.
- b) It was observed that the claim on account of impersonal machinery and inherent bureaucratic methodology of making several notes cannot be accepted in view of modern technologies being used and available. It was held that the law of limitation binds everybody including the Government.
- c) The Commission held that the State Commission had given a detailed and well reasoned order which did not call for any interference. The Revision Petition was accordingly dismissed with cost of Rs.10,000/- of which Rs.5,000/- was to be paid to the Respondent and balance to be deposited by way of demand draft in the name of the Consumer Legal Aid Account of the Commission.

vii) Citation: 2014(2) CPR 27.

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24. K. Alfred Vs. Mahindra & Mahindra Financial Services Ltd.

i) Case in Brief:

Complainant/Petitioner filed complaint before the District Forum. OP/ Respondent did not file written statement and was proceeded ex-parte and District Forum allowed complaint and directed OP to pay Rs.10,000/- towards compensation for mental agony and Rs.5,000/- as cost of litigation. Both the parties preferred appeals before State Commission and Respondent also filed application for condonation of delay of 200 days. The State Commission vide impugned order condoned delay subject to payment of Rs.500/- as cost against which this Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

Against the Order dated 02.11.2012 in Appeal No.2142/2011 of the State Commission Tamil Nadu.

iii) Parties:

K. Alfred - Petitioner

Vs.

Mahindra & Mahindra Financial Services Ltd. - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.236 of 2013 with IA/432/2013 &

Date of Judgement: 11.03.2014.

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 impugned order dated 02.11.2012 condoning delay was not a speaking order. Record further revealed that after preferring revision, petitioner insisted before State Commission to decide appeal and in such circumstances, State Commission decided appeal of both the parties by order dated 24.09.2013. As appeals have been decided finally by the State Commission, revision petition challenging order of condonation of delay became infructuous and revision petition was held liable to be dismissed. The Commission also gave liberty to the Petitioner to challenge

the order dated 24.09.2013 by filing a fresh revision petition in which he could also challenge the order dated 02.11.2012 regarding condonation of delay.

- b) Consequently, Revision Petition filed by the Petitioner was dismissed as having become infructuous with no order as to costs.

vii) Citation:

2014(2) CPR 238.

25. Kanpur Development Authority Vs. Smt. Indra Singh

i) Case in Brief:

Respondent/Complainant purchased one freehold plot in Kanpur from one Abdul Shakoor. He made efforts to deposit the development fee with the Petitioner but no action was taken in that regard. In 1991, Petitioner published a notification for regularization of property by collecting development fee etc. On the basis of said notification, Respondent deposited a sum of Rs.10,117/- in the account of the Petitioner. In spite of numerous requests, the Petitioner did not give any approval. Alleging deficiency in service, Respondent filed a consumer complaint which was allowed by the District Forum directing the Petitioner to regularize the plot in dispute at the rate prevalent in the year 1990-1991 after collecting the balance from the Respondent within 30 days. Rs.10,000/- as compensation for mental agony and Rs.2,000/- towards cost were also awarded. Petitioner filed an appeal after a period of two and a half years before the State Commission which dismissed the same both on grounds of limitation as well as on merits. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition dismissed with cost of Rs.50,000/-.

ii) Order appealed against:

From the order dated 19.12.2011 in Appeal No.2440/2011 of the Uttar Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

Kanpur Development Authority	-	Petitioner
	Vs.	
Smt. Indra Singh	-	Respondent

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iv) Case No and Date of Judgement:

Revision Petition No.3337 of 2013 with IA/5926(for Stay), IA/5927(for C/ Delay), IA/5928(Exemption from translation of documents) and IA/ 5929(for additional documents) & Date of Judgement: 14.03.2014.

v) Acts and Sections referred:

Sections 15, 17, 18, 19 and 21 (b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Revision Petitioner, in the application for condonation of delay, had blamed Shri Kanchan Gupta and Mr. Azaz Ansari, officials of the authority for the delay in filing the Revision Petition. The Commission noted that though the Petitioner had sought clarification from Shri Ansari on 21.06.2012, the Revision Petition had been filed only on 20.09.2013. No plausible explanation had been given for the long delay. The Petitioner did not file any affidavit of the two officials nor of the counsel who was dealing with the matter. 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), *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, the Commission held that the observations made by the Hon'ble Apex Court in the authoritative pronouncements are fully attracted to the facts and circumstances of the case.
- b) The Commission from the averments made by the Petitioner in his written statement noted that it had accepted a sum of Rs.10,117/- from the Complainant on 27.03.1991. It observed that there was nothing on record to show that the amount had been returned. The Petitioner had been enjoying the aforesaid amount for more than 23 years without any lawful authority. It was held that the present petition was nothing but gross abuse of the process of law and had been filed to deprive the Respondent the fruits of the award passed in his favour as early as in the year 2009.

- c) Relying on the decision of the Hon'ble Supreme Court in *Ramrameshwari Devi and Ors. v. Nirmala Devi and Ors.*, in Civil Appeal No.4912-4913 of 2011 decided on July 4, 2011, the Commission decided to dismiss the Revision Petition with punitive cost of Rs.50,000/- to be deposited in the name of Consumer Legal Aid Account of the Commission. The Commission further directed that the said amount shall be recovered from the salaries of the delinquent staff.

vii) Citation:

II (2014) CPJ 583.

26. ICICI Lombard General Insurance Co. Ltd. & Ors. Vs. Jitendra

i) Case in Brief:

Respondent/Complainant got a comprehensive insurance policy for his LP truck in which for damages against Respondent himself, responsibility equivalent to the cost of truck was also accepted and the Respondent had paid the premium to the Petitioners. On 24.11.2007 when the policy was in currency Respondent's driver was going from Sayla to Merta after midnight having loaded sacks filled with cotton. At about 4.00 a.m. the sacks filled with cotton caught fire. He tried to get it overturned but as the vehicle came off the road, it got stuck in sand and did not overturn. The fire brigade that was informed could not control the fire. Report on the incident was lodged by the driver in police station, Gotan. Respondent filed claim before Petitioner/ Insurance Company but the same was repudiated on 27.05.2008 saying that the fire occurred due to grave negligence on the part of the Respondent. A consumer complaint was filed praying for damages to sacks along with interest and damages. The complaint was allowed and the Respondents were asked to pay, jointly and severally, a sum of Rs.2,52,200/- along with interest at 9% p.a. from the date of filing of complaint along with cost of Rs.2,000/-. Respondent/Complainant filed appeal before the State Commission for enhancement. Allowing the appeal the State Commission passed the impugned order directing the insurance company to pay the sum assured for the truck within one month and interest at 9% p.a., compensation of Rs.25,000/- for mental agony and Rs.5,000/- as cost. Aggrieved by the said order the present Revision Petition had been filed along with an application for

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condonation of delay of 85 days. Both the application for condonation of delay and consequently the Revision Petition were dismissed.

ii) Order appealed against:

From the order dated 09.08.2011 in Appeal No.193/2010 of the Rajasthan State Consumer Disputes Redressal Commission, Circuit Bench at Jodhpur.

iii) Parties:

ICICI Lombard General Insurance Co. Ltd. & Ors. -Petitioners

Vs.

Jitendra

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.685 of 2012 with IA/2/2012 (for condonation of delay) & Date of Judgement: 19.03.2014.

v) Acts and Sections referred:

Sections 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The National Commission found that no specific dates or reasons were given in the application to explain the day to day delay of 85 days. It was mentioned that Respondent/Complainant had approached the Petitioner/Insurance Company along with his relatives for settlement of his claim. But no evidence had been given to support the said statement. The Commission also observed that the Counsel for the Petitioners had stated that a cheque for Rs.9,50,000/- had been forwarded to the Counsel for the Respondent on 31.01.2012 but the latter had stated categorically that the said cheque had never been received by the Respondent. The Commission observed that sufficient cause for condoning the delay in each case is a question of fact. The judgments of the Hon'ble Supreme Court in *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] were referred to in this context and it was held that no sufficient cause for condoning the delay of 85 days had been made out in this case. Consequently the application for condonation of delay was rejected and the Revision Petition was dismissed with cost of

Rs.10,000/- of which Rs.5,000/- was to be paid to the Respondent and the remaining amount was to be deposited in the Consumer Legal Aid Account of the Commission.

vii) Citation:

Not reported in CPJ and CPR.

27. HUDA Vs. Adhunik Educational Cultural Society

i) Case in Brief:

Complainants purchased a nursery school from the Petitioner through open auction. It is alleged that though payment was made as per schedule in installments, Petitioner/OP handed over physical, unencumbered possession of the site only after a long delay. When the Complainants were about to start the construction work, they found high tension electricity line passing through their plot. Alleging deficiency in service they filed complaint before the District Forum which allowing the same directed OPs either to remove the high tension wire forthwith or in the alternative provide another site of the same size and similar price. In addition an amount of Rs.4,75,345/- received from the Complainant in the shape of interest on installments was ordered to be refunded. The Forum further directed to pay a sum of Rs.2,00,000/- as compensation and Rs.2,000/- as costs. The Appeal filed by OP was partly allowed by the State Commission reducing the compensation from Rs.2,00,000/- to Rs.50,000/-. Aggrieved by the said order the present Revision Petition had been filed along with an application for condonation of delay of 79 days. Both the application for condonation of delay and consequently the Revision Petition were dismissed.

ii) Order appealed against:

From the order dated 05.04.2005 in Appeal No.2819/2004 of the Haryana State Consumer Disputes Redressal Commission.

iii) Parties:

HUDA	-	Petitioner
	Vs.	
Adhunik Educational Cultural Society	-	Respondent

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iv) Case No and Date of Judgement:

Revision Petition No.1272 of 2006 & Date of Judgement: 19.03.2014.

v) Acts and Sections referred:

Sections 12, 13, 14, 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Commission did not find any justification for condonation of delay as the Petitioners themselves had admitted about lengthy, lethargic and cumbersome procedures prevalent in their office. The Hon'ble Apex Court in a catena of Judgments had settled the law clearly that unless cogent and convincing explanation is furnished by a party for condonation of delay, the same should not be condoned. The National Commission accordingly held that the Revision Petition deserved to be dismissed on that ground alone.
- b) Even on merits the National Commission observed that the Petitioners themselves changed the zoning plan in order to take care of the problem caused by high tension wire over the plot.
- c) The Commission noted that the Petitioner had not come forward to plead their case despite effecting service of notice twice upon them.
- d) The Commission held that there was no illegality, irregularity or jurisdictional error in the order of the State Commission and accordingly dismissed the Revision Petition.

vii) Citation:

II (2014) CPJ 76; 2014(2) CPR 54.

28. Harshita Vs. Dr. Aruna Kulkarni & Anr.

i) Case in Brief:

Complainant/Petitioner filed a consumer complaint before the District Forum for award of compensation of Rs.4,80,000/- from Respondents/ OPs on the allegation of medical negligence. The complaint was partly allowed and Rs.50,000/- as compensation and Rs.2,000/- as costs were awarded. Aggrieved by the inadequacy of the award, Petitioner filed

First Appeal No.96 of 2008 seeking enhancement of compensation while OPs filed First Appeal No.111 of 2008 challenging the legality and propriety of the order. The State Commission dismissed the appeal filed by the Petitioner, allowed the appeal filed by the OPs and dismissed the complaint. Aggrieved by the order of the State Commission, the present Revision Petition had been filed by the Petitioner along with an application for condonation of delay of 7 months. Both the application for condonation of delay and consequently the Revision Petitions were dismissed.

ii) Order appealed against:

From the order dated 24.06.2009 in Appeal Nos.96 and 111/2008 of the Uttaranchal State Consumer Disputes Redressal Commission.

iii) Parties:

Harshita

- Petitioner

Vs.

Dr. Aruna Kulkarni & Anr.

- Respondents

iv) Case No and Date of Judgement:

Revision Petition Nos.1763-1764 of 2010 & Date of Judgement: 28.03.2014.

v) Acts and Sections referred:

Sections 12, 13, 14, 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Commission observed that nowhere in the application for condonation of delay had it been mentioned as to when the impugned order dated 24.06.2009 was received. No names and dates were given anywhere in the application. It was held that the application was very general and vague and that both the Petitioner and the Counsel had failed to explain the day-to-day delay of 7 months. The Commission also reiterated the well settled principle that sufficient cause with regard to condonation of delay in each case is a question of fact. Relying 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); *Balwant Singh v. Jagdish Singh and others*, Civil Appeal No.1166 of 2006 decided on 08-07-2010 and *Ram Lal and Ors. Vs. Rewa Coalfields*

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Ltd., AIR 1962 Supreme Court 361, the Commission rejected the application for condonation of delay as devoid of merit. Consequently the Revision Petition was also dismissed being time barred by limitation.

vii) Citation:

II (2014) CPJ 239; 2014(2) CPR 162.

29. Ajmer Vidyut Vitran Nigam Ltd. & Anr. Vs. Bhagga

i) Case in Brief:

There are six Revision Petitions, the facts of which are identical and common question of law is involved and therefore they have been disposed of by a common order. Facts of Revision Petition No.329 of 2012 have been taken as the lead case. The Complainant therein filed a consumer complaint before the District Forum praying for quashing of the electricity bills issued by the Petitioners. The Forum allowed the complaint and quashed the impugned notice. The appeals filed by the Petitioners 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 ranging from 77 days to 203 days. Applications for condonation of delay were rejected and Revision Petitions were also dismissed with cost of Rs.20,000/- in each case.

ii) Order appealed against:

Revision Petition No.329 of 2012

From the order dated 07.04.2011 in Appeal No.1281/2010 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

Revision Petition No.330 of 2012

From the order dated 07.04.2011 in Appeal No.1282/2010 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

Revision Petition No.331 of 2012

From the order dated 07.04.2011 in Appeal No.1284/2010 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

Revision Petition No.332 of 2012

From the order dated 07.04.2011 in Appeal No.1285/2010 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

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Revision Petition No.333 of 2012

From the order dated 07.04.2011 in Appeal No.1287/2010 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

Revision Petition No.683 of 2012

From the order dated 07.04.2011 in Appeal No.1280/2010 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

iii) Parties:

Revision Petition No.329 of 2012

Ajmer Vidyut Vitran Nigam Ltd. & Anr. - Petitioners
Vs.

Bhagga - Respondent

Revision Petition No.330 of 2012

Vidyut Vitran Nigam Ltd. & Anr. - Petitioners
Vs.

Madan Lal - Respondent

Revision Petition No.331 of 2012

Assistant Engineer,
Ajmer Vidyut Vitran Nigam Ltd. & Anr. - Petitioners
Vs.

Narayan Lal - Respondent

Revision Petition No.332 of 2012

Ajmer Vidyut Vitran Nigam Ltd. & Anr. - Petitioners
Vs.

Madan Lal & Anr. - Respondents

Revision Petition No.333 of 2012

Ajmer Vidyut Vitran Nigam Ltd. & Anr. - Petitioners
Vs.

Shankar Lal - Respondent

Revision Petition No.683 of 2012

Ajmer Vidyut Vitran Nigam Ltd. & Anr. - Petitioners
Vs.

Rajmal - Respondent

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iv) Case No and Date of Judgement:

Revision Petition Nos.329, 330, 331, 332, 333 and 683 of 2012 (with IA/683/2013) & Date of Judgement: 31.03.2014.

v) Acts and Sections referred:

Sections 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The main contention of the Petitioners was that the impugned orders were received in the last week of May 2011. The Commission noted that the Petitioners had nowhere mentioned as to on which date the file was sent to the Company Secretary and on which date he sent the same for legal opinion to the Law Department and when the file was received from the Legal Department. It was nowhere mentioned in the applications as to what documents were required by the Counsel. Even otherwise as per averments made in the application the documents were provided to the Counsel in August 2011 whereas the Revision Petitions were filed on 24.01.2012. It was held that the Petitioners had no explanation for the delay at different levels in their office nor did they mention the name of the officials who were dealing with the matter at different stages. Relying on the decisions of the Hon'ble Supreme 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] etc., the Commission held that the applications for condonation of delay were not maintainable and consequently the Revision Petitions were dismissed with cost of Rs.20,000/- in each case to be deposited in the Consumer Legal Aid Account of the Commission. The Commission further directed that the cost be recovered from the salaries of the delinquent officers.

vii) Citation:

II (2014) CPJ 244; 2014(2) CPR 45.

30. Union of India & Ors. Vs. Anjani Kumar Agarwal

i) Case in Brief:

It is the case of the Complainant that he had deposited a total amount of Rs.16,46,361/- since the year 1991 till the year 2008-2009 including

interest on the deposited amount. The Complainant alleged that the Petitioners had recovered a sum of Rs.2,99,744/- illegally being excess interest paid against excess amount deposited over and above the prescribed limit of deposit that can be made in the said account and the said fact came to his knowledge only in 2008. He had stated that he had opened the said account for a period of 15 years and thereafter extended the same by 5 years but no objection was raised by the Petitioners in this regard. Alleging deficiency in service he filed a complaint before the District Forum which allowed the complaint and ordered that the sum recovered from the Complainant be deposited in his account within two months. The appeal filed by the Petitioner was dismissed by the State Commission vide impugned order against which the present Revision Petition had been filed along with an application for condonation of delay of 152 days. The application for condonation of delay was rejected and consequently the Revision Petition was also dismissed with cost.

ii) Order appealed against:

From the order dated 07.04.2011 in Appeal No.752/2011 of the Rajasthan State Consumer Disputes Redressal Commission

iii) Parties:

Union of India & Ors. - Petitioners

Vs.

Anjani Kumar Agarwal - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3947 of 2011 & Date of Judgement: 01.04.2014.

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 reasons for delay given in the application were extremely vague and general. No date of the impugned order had been mentioned and when it was received. It did not give the number of days taken for translation and typing nor did it give the time taken for obtaining legal opinion nor the names of higher authorities from whom necessary sanctions and legal opinion had to be taken. It was observed that sufficient cause for condoning delay in each case is a question of fact. Placing reliance on the decisions of the Apex Court

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in the cases of *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], the Commission observed that the department had miserably failed to give any acceptable and cogent reasons sufficient to condone the delay. The application for condonation of delay was rejected and consequently the Revision Petition was also dismissed with cost of Rs.10,000/- of which Rs.5,000/- was ordered to be paid to the Respondent and the balance to be deposited in the Consumer Legal Aid Account of the Commission.

vii) Citation:

2014(2) CPR 312.

31. Chief Post Master General & Ors. Vs. Pratap Chandra Parida

i) Case in Brief:

Respondent/Complainant had filed a consumer complaint against the Petitioners before the District Forum on the ground that deficiency in service had been committed by the petitioners, while asking for payment of differential premium amount at the time of payment of maturity value under Postal Life Insurance Policy which was taken by the respondent. District Forum found Petitioners guilty of deficiency in service, negligence and unfair trade practice. Aggrieved by the order of the District Forum, Petitioners filed first appeal before the State Commission. Since there was a delay of 92 days in filing of the appeal, the State Commission declined to condone the delay and 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 30.12.2013 in Appeal No.375/2013 of the State Commission Orissa.

iii) Parties:

Chief Post Master General & Ors. - Petitioners

Vs.

Pratap Chandra Parida - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1373 of 2014 & Date of Judgement: 02.04.2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 13, 14, 15, 17, 18, 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 copy of the order passed by the District Forum was received by the Central Government Counsel on 29.4.2013. Thereafter the matter was examined in detail by the Competent Authority and after seeing the record and information from different sections, the appeal was filed before the State Commission only on 23..8.2013. Thus, it became clear that Petitioners had taken about four months for filing the appeal before the State Commission. Thus, the only ground for the delay as per affidavit was with regard to the office procedure. If Petitioner's department had taken about four months to file an appeal, then it had to blame itself for the carelessness and negligence on the part of its officials.
- b) The Commission held that the discretion exercised by the State Commission in declining condonation of delay of 92 days, did not suffer from any legal infirmity. The Commission relied on the decisions of the Hon'ble Supreme Court in *Ram Lal and Ors. Vs. Rewa Coalfields Ltd*, AIR SC 361; *R.B. Ramlingam Vs. R.B. Bhavaneshwari*, 2009 (2) Scale 108; *Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation* reported in (2010) 5 SCC 459; *Collector, Land Acquisition, Anantnag v. Mst. Katiji* (1987)2 SCC 107; *N. Balakrishnan v. M. Krishnamurthy* (1998) 7 SCC 123; *Vedabai v. Shantaram Baburao Patil* (2001) 9 SCC 106; *Anshul Aggarwal Vs. New Okhla Industrial Development Authority*, IV (2011) CPJ 63 (SC) and *Post Master General and others vs. Living Media India Ltd. and another* (2012) 3 Supreme Court Cases 563. Therefore, the present revision petition was dismissed with cost of Rs.10,000/- to be paid to the Consumer Legal Aid Account of the Commission by the Petitioners.

vii) Citation:

II (2014) CPJ 433; 2014(2) CPR 37.

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32. Dr. Devi Prasad Pandey Vs. Rang Bihari Sinha & Anr.

i) Case in Brief:

Respondent No.1/Complainant had invested a sum of Rs.60,000/- each in two FDRs having purchased them from Petitioner as well as Respondent No.2/OPs (Prudential Capital Market Ltd.). Maturity dates of the FDRs were 12.03.1998 and 28.04.1998 respectively. On maturity when Respondent No.1 claimed the amount, OPs refused to pay. Alleging deficiency a consumer complaint was filed before the District Forum. Both the Petitioner and Respondent No.1 did not appear despite service and were proceeded ex-parte. The District Forum allowed the complaint. Petitioner's appeal was dismissed by the State Commission in default for non-prosecution vide impugned order against which the present Revision Petition had been filed along with the application for condonation of delay of 1 year 2 months and 22 days. The application for condonation of delay was rejected and the Revision Petition was dismissed with cost.

ii) Order appealed against:

From the order dated 13.08.2012 in First Appeal No.3140/2003 of the Uttar Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

Dr. Devi Prasad Pandey - Petitioner

Vs.

Rang Bihari Sinha & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.4692 of 2013 with IA/8115/2013 &

Date of Judgement: 03.04.2014.

v) Acts and Sections referred:

Sections 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The National Commission observed that the Petitioner in his application for condonation of delay had shifted the entire burden upon the earlier counsel. There was nothing on record to show that the Petitioner had taken any action against the advocate due to whose fault the appeal was dismissed in default. No legal notice was sent against the said

advocate. The Commission observed that the Petitioner himself was negligent and inactive. The Commission held that the story put forwarded by the Petitioner was a concocted one because as per certified copy of the impugned order placed on record by the Petitioner himself, the free copy of the impugned order was applied to him on 22.08.2012. Thus there was a long delay of more than 1 year and 2 months. 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); *Ram Lal and Ors. Vs. Rewa Coalfields Ltd.*, AIR 1962 Supreme Court 361 and *R.B.Ramlingam v. R.B.Bhavaneshwari* [2009] (2) Scale 108], it was held that the Petitioner had not acted with reasonable diligence in the prosecution of his appeal/petition. It was also noted that negligence of a litigant's agent is negligence of litigant himself (*Qui facit per alium facit per se*) and is not sufficient cause for condoning delay. The Commission observed that right through the case, before the District Forum as well as the State and National Commissions, the Petitioner had conducted himself in a very casual, careless and negligent manner. The application for condonation of delay was rejected and consequently the Revision Petition being barred by limitation was dismissed with cost of Rs.5,000/- to be paid to the Consumer Legal Aid Account of the Commission.

vii) Citation:

2014(2) CPR 191.

33. Kranti Kumar Dhiman Vs. Karm Chand Thapar & Brothers Ltd.

i) Case in Brief:

It is the Complainant/Petitioner's case that when he was a minor he had purchased 75 preference and 51 original shares of Hindustan Electrical Corporation Ltd. under the guardianship of his father for a sum of Rs.5,000/-. The Petitioner came to know that the said corporation was merged in Crompton Greaves Ltd. and the shares with lying with the Respondent. Petitioner wrote letters to Hindustan General Electrical Corporation regarding issuance of sales certificate and furnished all the necessary documents to the corporation as requested by them. But the corporation did not send the same nor paid any dividend or profit of the said shares. Complainant filed complaint before the District Forum which allowed the compliant and directed

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Respondent No.3 to send share certificate along with dividend and profit to the Complainant and Rs.2,000/- as compensation. Not satisfied with the order Petitioner filed appeal before the State Commission against Respondent No.3 who also filed Appeal Nos.1887 and 1888 of 2004 challenging the District Forum's order. The State Commission accepted the appeals of the Respondent No.3 and dismissed the appeal of the Complainant vide impugned order against which the present Revision Petition had been filed along with an application for condonation of delay of 172 days. Application for condonation of delay was rejected as also the Revision Petition.

ii) Order appealed against:

From the order dated 26.10.2010 in Appeal No.434, 1887, 1888/2004 of the Haryana State Consumer Disputes Redressal Commission.

iii) Parties:

Kranti Kumar Dhiman

- Petitioner

Vs.

Karm Chand Thapar & Brothers Ltd.

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2635-2637 of 2011 &

Date of Judgement: 09.04.2014.

v) Acts and Sections referred:

Sections 12, 13, 14, 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Commission observed that it is well settled that sufficient cause for condoning delay in each case is a question of fact. The Commission was of the view that the Petitioner had failed to give any proper justification for the delay of 172 days. Relying 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] and *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. Consequently the

Revision Petition was also dismissed with cost of Rs.5,000/- to be deposited in the Consumer Legal Aid Account of the Commission within four weeks.

vii) Citation:

2014(2) CPR 585.

34. National Insurance Co. Ltd. Vs. Minati Das & 4 Ors.

i) Case in Brief:

Respondents 1 to 4, legal heirs of the Complainant Shri Santi Ranjan Das, obtained domestic gas connection in March 2000, from Respondent No.5/OP No.1 i.e. M/s. Santi Gas Service. On 06.01.2003 a cylinder was taken from OP No.1 through spot delivery. On 26.01.2003 at 6.30 a.m. a fire accident took place in the house premises of the Respondent due to bursting of gas cylinder in which all domestic articles, valuables, furniture etc., were gutted. Fire Service and Police Authorities were informed. It is claimed that OP No.1 was also informed verbally a few times but he did not take any action. Subsequently in response to letters OP informed Respondent No.1 that the LPG Gas had been insured with National Insurance Co. Ltd. and that OP is not responsible for any damage. After repeated requests by the Respondent, Petitioner deputed a Surveyor on behalf of OP No.1 and OP No.2/Insurance Company. Petitioner did not give any compensation. Alleging deficiency, a complaint was filed in the District Forum claiming a compensation of Rs.7,00,000/-. The Forum allowed the complaint and ordered that the Complainants were entitled to a compensation of Rs.2,00,000/- from the Insurance Company. The Appeal filed by the Petitioner was dismissed and the Commission allowed a higher compensation of Rs.5,25,000/- for the loss of property and Rs.1,00,000/- for harassment and mental agony suffered by the Complainant. A sum of Rs.10,000/- was also imposed as cost to be deposited in the Legal Aid Account of the Commission. Aggrieved by the said order the present Revision Petition had been filed with an application seeking condonation of delay of 45 days. Application for condonation of delay was dismissed as was the Revision Petition.

ii) Order appealed against:

From the order dated 08.11.2011 in Appeal No.17/2011 of the State Consumer Disputes Redressal Commission, Tripura.

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iii) Parties:

National Insurance Co. Ltd.

- Petitioner

Vs.

Minati Das & 4 Ors.

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1263 of 2012 & Date of Judgement: 09.04.2014.

v) Acts and Sections referred:

Sections 12, 13, 14, 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Commission held that the Petitioner company had dealt with the matter in the most careless and casual manner and forwarded the case file with the all the documentation required there was no reason or justification to explain the delay of 45 days in filing the Revision Petition. The Commission observed that it is well settled that sufficient cause with regard to condonation of delay in each case is a question of fact.
- b) 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); *Balwant Singh v. Jagdish Singh and others*, Civil Appeal No.1166 of 2006 decided on 08-07-2010; *Ram Lal and Ors. Vs. Rewa Coalfields Ltd.*, AIR 1962 Supreme Court 361; *Post Master General and Others Vs. Living Media India Ltd. & Another* [(2012) 3 SCC 563], the Commission rejected the application for condonation of delay and dismissed the Revision Petition with cost of Rs.5,000/- to be paid in the name of Consumer Legal Aid Account of the Commission within four weeks.

vii) Citation:

II (2014) CPJ 417; 2014(2) CPR 244.

35. The Commissioner, City Corporation, Belgaum Vs. Namadev Krishna Hiremani

i) Case in Brief:

Complainant/Respondent applied for a site developed by OP/Petitioner and deposited Rs.1,10,244/- by the end of 1999. In spite of several requests, possession of site was not given to the Complainant. Alleging

deficiency in service he filed complaint before the District Forum which allowed the complaint and directed OP to deliver possession of plot and execute sale deed and further awarded Rs.2,000/- as compensation and Rs.1,000/- as costs. Appeal filed by the Petitioner 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. The Application for condonation of delay was dismissed and consequently the Revision Petition was also dismissed as barred by limitation.

ii) Order appealed against:

From the order dated 22.05.2008 in Appeal No.1357/2007 of the Karnataka State Consumer Disputes Redressal Commission.

iii) Parties:

The Commissioner, City Corporation, Belgaum - Petitioner

Vs.

Namadev Krishna Hiremani - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4184 of 2012 & Date of Judgement: 21.04.2014.

v) Acts and Sections referred:

Sections 12, 14, 15, 17, 18, 19, 21(b) and 24A of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Commission noted that there was a delay of 1535 days in filing Revision Petition. As Writ filed by the Petitioner was dismissed by the High Court of Karnataka vide order dated 30.05.2011, it was observed that delay upto 30.05.2011 could be condoned. But there was no satisfactory explanation for the delay of nearly 17 months from 31.05.2011 to 02.11.2012. The Commission noted that no document had been placed on record that Complainant was offered alternate site and he refused to take that site in August 2012. Since there was an inordinate delay of 17 months, the Commission held that it could not be condoned in the light of the Judgements of the Hon'ble Apex Court in *Ram Lal and Ors. Vs. Rewa Coalfields Ltd.*, AIR 1962 Supreme Court 361; *R.B.Ramlingam v. R.B.Bhavaneshwari* [2009] (2)

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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) and *Post Master General and Others Vs. Living Media India Ltd. & Another* [(2012) 3 SCC 563].

- b) Since the application for condonation of delay was dismissed, the Revision Petition was also dismissed as barred by limitation.

vii) Citation:

2014(2) CPR 542.

36. New India Assurance Co. Ltd. Vs. M/s. Nakoda Trading Co. & Anr.

i) Case in Brief:

Complainants/Respondents filed complaint before District Forum and the District Forum vide order dated 26.03.2010 allowed complaint and directed OP to pay a sum of Rs.2,68,521/- along with 9% p.a. interest and further awarded Rs.5,000/- as cost. OP filed appeal along with application for condonation of 59 days delay and State Commission vide impugned order dismissed application for condonation of delay against which, this revision petition has been filed. Revision Petition allowed, delay condoned and the matter was remanded to State Commission for deciding the appeal on merits.

ii) Order appealed against:

Against the Order dated 22.01.2013 in Appeal No.653/2010 of the State Commission Maharashtra.

iii) Parties:

New India Assurance Co. Ltd. - Petitioner

Vs.

M/s. Nakoda Trading Co. & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2013 of 2013 & Date of Judgement: 29.04.2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The National Commission held that the State Commission in its proceedings has rightly observed that delay could have been avoided as offices were backed with full automation assisted with computerization. No doubt, delay could have been avoided by the Petitioner in filing appeal, but as there was some delay in issuing copy of the order and some delay occurred due to the fact that the Advocate left for holidays and, as there was delay of only 59 days in filing appeal, it was held that it would be appropriate to allow the application for condonation of delay in the light of judgment of the Hon'ble Apex Court in (2005) 3 SCC 752 *State of Nagaland Vs. Lipok AO and Ors.*
- b) Consequently, the present revision petition was allowed subject to cost of Rs.10,000/- and the delay of 59 days was condoned and State Commission was directed to decide the appeal on merits after giving an opportunity of being heard to both the parties.

vii) Citation:

2014(2) CPR 444.

37. Jagwanti Nandal Vs. H.U.D.A

i) Case in Brief:

While allowing the complaint filed by the Complainant, the District Forum had directed OP/Respondent to refund Rs.6,47,000/- to the Complainant along with 9% p.a. interest. Appeal filed by the OP was allowed by the State Commission vide impugned order against which the present Revision Petition had been filed along with application for condonation of delay of 980 days. The application for condonation of delay and consequently the Revision Petition were both dismissed.

ii) Order appealed against:

From the order dated 25.04.2011 in Appeal No.585/2009 of the Haryana State Consumer Disputes Redressal Commission.

iii) Parties:

Jagwanti Nandal	-	Petitioner
	Vs.	
H.U.D.A	-	Respondent

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iv) Case No and Date of Judgement:

Revision Petition No.1656 of 2014 & Date of Judgement: 30.04.2014.

v) Acts and Sections referred:

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

vi) Issues raised and decided:

- a) The Commission noted that no reason was mentioned in the application for condonation of delay except the reason that the family members were in shock and could not arrange documents and engage advocate for filing revision. Since there was no explanation for condoning the delay of 959 days (as per office report), the said application was dismissed relying on the judgements of the Hon'ble Apex Court and National Commission in *Oriental Aroma Chemical Industries Ltd v. Gujarat Industrial Development Corporation & Anr.*, (2010) 5 SCC 459; *Post Master General and Others Vs. Living Media India Ltd. & Another* [(2012) 3 SCC 563] and *Anshul Agarwal v. New Okhla Industrial Development Authority* (2011) 14 SCC 578, IV (2011) CPJ 63 (SC).
- b) Since the application of condonation of delay was dismissed, the Revision Petition was also dismissed.

vii) Citation:

Not reported in CPJ and CPR.

38. Sunil Kumar & Anr. Vs. Administrator, New Anaj Mandi Township, Punjab

i) Case in Brief:

Petitioners purchased houses in open auction held on 04.10.2006. Since there was a dispute regarding shifting of wires, a Consumer complaint was filed before the District Forum which allowed the complaint and awarded compensation and costs. On appeal filed by the Petitioners the State Commission vide impugned order disposed of the appeal on the statement made by the Counsel for the Respondent "that wires in dispute will be got shifted within 6 months and the grievance of the petitioner will be redressed". The compensation and costs awarded by the District Forum were waived off. Alleging that the said assurance

had only been partly fulfilled, the present Revision Petitions had been filed along with an application for condonation of delay. Revision Petitions dismissed as barred by time.

ii) Order appealed against:

Revision Petition No.3614 of 2013

From the order dated 08.11.2012 in Appeal No.817/2008 of the Punjab State Consumer Disputes Redressal Commission.

Revision Petition No.3615 of 2013

From the order dated 08.11.2012 in Appeal No.1315/2008 of the Punjab State Consumer Disputes Redressal Commission.

iii) Parties:

Sunil Kumar & Anr. - Petitioners

Vs.

Administrator, New Anaj Mandi Township, Punjab - Respondent

iv) Case No and Date of Judgement:

Revision Petition Nos.3614 & 3615 of 2013 &
Date of Judgement: 01.05.2014.

v) Acts and Sections referred:

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

vi) Issues raised and decided:

- a) The Commission noted that the Revision Petitions should have been filed within 90 days from the order of the State Commission dated 08.11.2012. There was a delay of 196 days. Even if the version of the Petitioners was accepted that there was a delay of only 65 days, the day to day delay was not explained. 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); *Ram Lal and Ors. Vs. Rewa Coalfields Ltd.*, AIR 1962 Supreme Court 361 and *Bikram Dass Vs. Financial Commissioner and others* AIR 1977 SC 1221, the Commission held that the Revision Petitions were barred by time and were liable to be dismissed.

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- b) Even on merits the Commission held that the Consumer Fora have no jurisdiction to try the cases of open auction and the Petitioners can agitate this question before the appropriate forum as per law.
- c) The Revision Petitions were accordingly dismissed.

vii) Citation:

III (2014) CPJ 241; 2014(2) CPR 401.

39. M/s. Cox & Kings limited Vs. Vijay Baburaoji Chandawar

i) Case in Brief:

Complainant/Respondent filed complaint before District Forum for recovery of Rs.1,03,000/- and compensation of Rs.50,000/- on account of deficiency in service. District Forum after hearing both the parties, allowed complaint and directed OP to refund Rs.1,03,000/- with interest and awarded cost of Rs.3,000/-. The appeal filed by the petitioner was dismissed by the State Commission as there was a delay of 135 days against which, this revision petition has been filed along with application for condonation of delay. Revision Petition was allowed, delay condoned and matter was remanded to the State Commission to decide appeal on merits.

ii) Order appealed against:

Against the Order dated 01.03.2013 in Appeal No.337/2010 of the State Commission Maharashtra.

iii) Parties:

M/s. Cox & Kings limited - Petitioner

Vs.

Vijay Baburaoji Chandawar - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3024 of 2013 & Date of judgement: 05.05.2014.

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 observed that though the explanation for condonation of delay was not satisfactory, a legal point was involved in the appeal as was observed the State Commission and moreover when payment was accepted by the Complainant without protest, complaint filed after 21 months may not to be maintainable. It was held that in such circumstances the State Commission ought to have allowed application for condonation of delay subject to cost and should have decided appeal on merit instead of dismissing appeal as barred by limitation.
- b) Revision petition filed by the petitioner was allowed and impugned order passed by the State Commission was set aside and application for condonation of delay filed by the petitioner before the State Commission was allowed subject to payment of Rs.10,000/- as cost to the respondent and matter was remanded back to the State Commission to decide appeal on merits after giving an opportunity of being heard to both the parties.

vii) Citation:

2014(2) CPR 390.

40. The Andhra Pradesh Eastern Power Distribution Company Ltd. Vs. Smt. Puvvala Savitri and others

i) Case in Brief:

Complainants/Respondents filed complaint for grant of compensation of Rs.5,00,000/- on account of death of husband of complainant No.1 due to electrocution before District Forum. The Forum directed OP to pay Rs.1,75,800/- with interest and cost of Rs.2,000/- and Rs.15,000/- as consortium against which, appeal along with an application for condonation of delay of 150 days was filed by the petitioner. The said 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 11.07.2012 in Appeal No.2892 of 2012 of A.P. State Consumer Disputes Redressal Commission, Hyderabad.

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iii) Parties:

The Andhra Pradesh Eastern Power
Distribution Company Ltd. - Petitioner/OP

Vs.

Smt. Puvvala Savitri and others - Respondents/Complainants

iv) Case No and Date of Judgement:

Revision Petition No.3593 of 2012 & Date of Judgement: 05.05.2014.

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 there was an inordinate delay of 150 days in filing appeal and again delay in resubmitting appeal for which there was no reasonable explanation at all. Therefore, the Commission held that State Commission had not committed any error in dismissing the application for condonation of delay in the light of following judgments of Honble Apex Court: *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* reported in (2010) 5 SCC 459; *Post Master General & Ors. Vs. Living Media India Ltd. and Anr*; 2012 (2) CPC 3 (SC) *Anshul Aggarwal Vs. New Okhla Industrial Development Authority*.
- b) In view of the above, the present revision petition was dismissed and the order of the State Commission was upheld.

vii) Citation:

II (2014) CPJ 564; 2014(2) CPR 384.

41. M/S. Auva Gas Agency Vs. Consumer Union, Vairengte South Branch

i) Case in Brief:

Respondent/Complainant filed complaints before the District Forum against M/s. Auva Gas Agency/OP alleging various deficiencies in

providing LPG supply. The District Forum allowed the complaint and gave the relief in favour of the Complainant. Aggrieved by the order of the District Forum, the Petitioner/Appellant filed an appeal along with an application for condonation of delay of 15 days before the State Commission which dismissed the appeal as well as the application for condonation of delay as there was no valid reason. Being aggrieved, the present revision petition has been filed by the Petitioner. Revision Petition dismissed.

ii) Order appealed against:

Against the Order dated 03.10.2013 in Appeal No.1/2013 of the State Commission Mizoram.

iii) Parties:

M/S. Auva Gas Agency - Petitioner

Vs.

Consumer Union, Vairengte South Branch - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4697 of 2013 & Date of Judgement: 05.05.2014.

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 revision petition was filed challenging the dismissal of application for condonation of delay of 15 days by the State Commission.
- b) The Commission noted that the petitioner failed to give any supporting evidence regarding the date on which they received the order of the District Forum dated 17.12.2012. The reasons given in the application were found vague. No date wise justification had been given. As per the grounds of delay, the delay was stated to be 5 days whereas the State Commission had noted the delay of 15 days.
- c) The National Commission after perusal of the necessary records held that since the two Fora below had given a detailed and well-reasoned order, it did not call for any interference. Nor did they

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suffer from any infirmity or erroneous exercise of jurisdiction or material irregularity. Accordingly, the present revision petition was dismissed relying on the decisions of the *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) and *Ram Lal and Ors. Vs. Rewa Coalfields Ltd.*, AIR 1962 Supreme Court 361.

- d) Cost of Rs.5,000/- was imposed on the Petitioner to be paid to the Consumer Legal Aid Account to the Commission within four weeks from the date of the order.

vii) Citation:

II (2014) CPJ 616; 2014(2) CPR 377.

42. HDFC Bank Ltd. Vs. Bal Krishan Sood & Ors.

i) Case in Brief:

The complaint was filed against 5 opposite parties, where HDFC/ Petitioner was arrayed as OP No.4 and Allahabad Bank, OP No.5 was proceeded against ex-parte on 30.01.2013. It is stated that the fact of pendency of the case came to the knowledge of the Petitioner in May 2013 and the Branch Manger of OP No.4 appeared before the District Forum on 15.05.2013. He was permitted to join the proceedings. Allahabad Bank/OP No.5 was permitted to join the proceedings on 10.07.2013. The ex-parte order was set aside by the District Forum on 22.07.2013 and OP No.5 was permitted to file reply/evidence. However OP No.5 did not file reply on three consecutive hearings. An application was made before the District Forum for recalling the order dated 22.07.2013. However the District Forum dismissed the application vide order dated 30.12.2013. The State Commission vide order dated 03.03.2014 dismissed the Revision Petition as there was delay of 305 days in filing the Revision Petition against the order dated 30.01.2013. Aggrieved by the said order, the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 03.03.2014 in Appeal No.4/2014 of the State Consumer Disputes Redressal Commission, Chandigarh.

iii) Parties:

HDFC Bank Ltd. - Petitioner

Vs.

Bal Krishan Sood & Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1773 of 2014 & Date of Judgement: 08.05.2014.

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 application made by the Petitioner was vague and evasive and that the Petitioner was terribly amiss in discharging his duties. Day-to-day delay was never explained. Relying on the decision of the Hon'ble Supreme Court/National Commission in a number of cases viz *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); *Ram Lal and Ors. Vs. Rewa Coalfields Ltd.*, AIR 1962 Supreme Court 361; *Bikram Dass Vs. Financial Commissioner and others* AIR 1977 SC 1221; *Balwant Singh v. Jagdish Singh and others*, Civil Appeal No.1166 of 2006 decided on 08.10.2010, the Commission held that the orders dated 03.03.2014 and 30.01.2013 had attained finality and they cannot be set aside. The Revision Petition was accordingly dismissed.

vii) Citation:

2014(3) CPR 97.

III. CONSUMER – DEFINITION & SCOPE

1. M/s. Avery India Ltd. Vs. M/s. Kaybee Sulphates Ltd.

i) Case in Brief:

Respondent entered into a contract with the Petitioner to purchase a weighbridge. Petitioner agreed to sell, deliver and erect the weighbridge at the site selected by the Respondent within the stipulated time. Respondent paid the price of weighbridge amounting to Rs.2,23,395/- on 27.08.1996. The Respondent completed the construction of weighbridge platform as per the foundation drawing supplied by the Petitioner. The weighbridge supplied was defective as the transfer lever was broken. It is alleged that the Petitioner neither replaced the same nor the weighbridge was erected as per contract with the result the Respondent suffered huge loss. He had to place order with another manufacturer to supply him a weighbridge. Alleging deficiency in service he filed consumer complaint. The District Forum allowed the complaint and directed OPs to take the weighbridge back at their cost and pay the cost to the Complainant. Petitioner's appeal 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 30.10.2007 in First Appeal No.876/1997 of the Orissa State Consumer Disputes Redressal Commission.

iii) Parties:

M/s. Avery India Ltd. - Petitioner

Vs.

M/s. Kaybee Sulphates Ltd. - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2905 of 2008 & Date of Judgement: 03.01.2014.

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 main contention of the Petitioner was that the Respondent is not a "consumer" within the meaning of Section 2(1)(d) of the Act. The Commission observed that the Respondent ran a Sulphate Industry and

had purchased the weighbridge from the Petitioner for the purpose of above industry only. It was a commercial transaction between the Petitioner and the Respondent and the same was not a consumer dispute. The Commission recalled the judgment of the Hon'ble Supreme Court in *Laxmi Engineering Works Vs. PSG Industrial Institute*, II (1995) CPJ 1 (SC)=1995 3 SCC 583 in which the scope and definition of the consumer had been discussed at great length. It had been mentioned therein that what is a "commercial purpose" is a question of fact to be decided in the facts of each case. The Commission held that in view of the dictum of law laid down by the Hon'ble Apex Court, the Respondent/Complainant in this case, by no stretch of imagination would come within the meaning of "consumer" as defined under the Act. The Commission observed that the fora below had committed grave error in allowing the complaint of the Respondent. The Revision Petition was allowed and the complaint before the District Forum was dismissed.

vii) Citation:

I (2014) CPJ 621; 2014(1) CPR 210.

2. Kotak Securities Ltd. Vs. Shri Bhartkumar Ranchhoddas Rana & Ors.

i) Case in Brief:

There are six Revision Petitions involving common question of law and facts and have been disposed of by a common order. RP.No.719 of 2012 has been taken as the lead case. Respondent No.1, a grocery shop owner, was jointly holding a D-mat account with his wife/Respondent No.2. In view of the reputation of Petitioner/Kotak Securities limited and OP/Modi Financial Service, Respondent No.1 started business with them. As per directions of Sh.Ashotosh Pankajbhai Desai (Respondent No.3) he gave his entire share portfolio for portfolio management with a condition that existing shares portfolio will be kept intact and whatever money is earned by Sh.Ashotosh P Desai in day trading will be passed on to Respondent No.1. It is alleged that Mr.Desai opened a separate account and retained all the shares in his account including those purchased thereby keeping all the dividends and other benefits accrued on shares given by the companies with him. Mr. Desai did not take any action for opening account with Kotak Securities Ltd. Alleging deficiency in service consumer complaints were filed seeking a direction to OPs

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to restore the shares existing in the name of Respondents 1 and 2 or to pay them the entire amount along with interest. The District Forum partly allowed the complaints. OPs filed appeals before the State Commission which were dismissed vide impugned orders. Aggrieved by the same the present Revision Petitions had been filed. Revision Petitions allowed.

ii) Order appealed against:

Revision Petition No.719 of 2012

From the order dated 15.12.2001 in First Appeal No.1072/2007 of the Gujarat State Consumer Disputes Redressal Commission.

Revision Petition No.720 of 2012

From the order dated 15.12.2001 in First Appeal No.1071/2007 of the Gujarat State Consumer Disputes Redressal Commission.

Revision Petition No.918 of 2012

From the order dated 15.12.2001 in First Appeal No.1039/2007 of the Gujarat State Consumer Disputes Redressal Commission.

Revision Petition No.1264 of 2012

From the order dated 15.12.2001 in First Appeal No.1039/2007 of the Gujarat State Consumer Disputes Redressal Commission.

Revision Petition No.1487 of 2012

From the order dated 15.12.2001 in First Appeal No.1034/2007 of the Gujarat State Consumer Disputes Redressal Commission.

Revision Petition No.1488 of 2012

From the order dated 15.12.2001 in First Appeal No.1035/2007 of the Gujarat State Consumer Disputes Redressal Commission.

iii) Parties:

Revision Petition No.719 of 2012

Kotak Securities Ltd. - Petitioner (Original OP1)

Vs.

Shri Bharatkumar Ranchhoddas Rana & Ors. - Respondents/OPs

Revision Petition No.720 of 2012

Kotak Securities Ltd. - Petitioner (Original OP1)

Vs.

Shri Bharatkumar Motilal Rana & Ors. - Respondents/OPs

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Revision Petition No.918 of 2012

Shri Chetan Dinesh Modi - Petitioner

Vs.

Shri Bharkumar Motilal Rana & Ors. - Respondents

Revision Petition No.1264 of 2012

Shri Chetan Dinesh Modi - Petitioner

Vs.

Shri Bharkumar Ranchhoddas Rana & Ors. - Respondents

Revision Petition No.1487 of 2012

Shri Authosh Pankajbhai Desai - Petitioner

Vs.

Shri Bharkumar Ranchhoddas Rana & Ors. - Respondents

Revision Petition No.1488 of 2012

Shri Authosh Pankajbhai Desai - Petitioner

Vs.

Shri Bharkumar Ranchhoddas Rana & Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition Nos.719, 720, 918, 1264, 1487 and 1488 of 2012 &
Date of Judgement: 08.01.2014.

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 question that arose for consideration was whether the Respondents 1 and 2/Complainants are “consumers” as per Section 2(1)(d) of the Consumer Protection Act. The Commission noted that Respondents 1 and 2 had nowhere pleaded in their complaints that they were doing the share business for self-employment. Nor had it been pleaded that the services provided by the Petitioners/OPs were being availed of exclusively for the purpose of earning of their livelihood. The Commission observed that the law is well settled that disputes between parties relating

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to commercial purposes are excluded under the Act. In *Vijay Kumar Vs. IndusInd Bank*, II (2012) CPJ 181 (NC), the Commission had held that “regular trading in the purchase and sale of shares is a commercial transaction and the only motive is to earn profit”.

- b) In the present case since Respondents 1 and 2 had been trading regularly in shares which is a commercial activity with the motive of earning profits, the Commission held that they are not “consumers” as per the provisions of the Act.
- c) The Commission held that the fora below had committed grave error in allowing the complaints and set aside their orders. The Revision Petitions were allowed. The complaints before the District Forum stood dismissed.

vii) Citation:

I (2014) CPJ 324; 2014(1) CPR 181.

3. Lord Wear Pvt. Ltd. Vs. Rance Computers Pvt. Ltd.

i) Case in Brief:

On 30.11.2007, Complainant/Petitioner, a garment manufacturer purchased fusion retail software for Rs.91,000/- from OP/Respondent for accounting system. He had also borne the expenses in the sum of Rs.10,000/- for arrangements for stay of engineer of OP. It was alleged that during the course of installation itself, software was not found functional and there was no integration with the Tally Software. OP allegedly promised to rectify defects but failed to do so. Alleging deficiency in service, complaint was filed before the District Forum. The Forum allowed the complaint and directed OP to refund Rs.1,01,000/- with interest and further awarded Rs.3,000/- as cost of litigation. Appeal filed by OP was allowed 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 20.11.2012 in Appeal No.A/09/186 of the Maharashtra State Consumer Disputes Redressal Commission, Circuit Bench at Nagpur.

iii) Parties:

Lord Wear Pvt. Ltd. - Petitioner/Complainant
Vs.

Rance Computers Pvt. Ltd. - Respondent/OP

iv) Case No and Date of Judgement:

Revision Petition No.2553 of 2013 & Date of Judgement: 21.01.2014.

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 Commission after perusal of the record observed that the Complainant is Lord Wear Pvt. Ltd. meaning thereby that software had been purchased by a private limited company and not by any individual. The Commission dismissed the argument of the Petitioner that the owner of the company, as Managing Director, was carrying on business for earning his livelihood. The Commission observed that this argument is devoid of merit because nowhere in the complaint had it been pleaded that the Managing Director was running the business in the name of Complainant company for earning his livelihood. As software was purchased by a limited company for commercial purpose, the Commission held that Complainant did not fall within the purview of consumer in the light of judgment of Hon'ble Apex Court in *Birla Technologies Ltd. Vs. Neutral Glass and Allied Industries Ltd.* 2011 (1) SCC 525.
- b) The Commission held that the order passed by the State Commission did not call for any interference and dismissed the Revision Petition.

vii) Citation:

I (2014) CPJ 332; 2014(1) CPR 388.

4. Sunil Gupta Vs. Today Homes & Infrastructure (P) Ltd.

i) Case in Brief:

The Complainant booked two villas one measuring 826.81 sq. yards and the other measuring 1029.75 sq. yards both with superstructure consisting of ground, first and part second floor. It was the

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Complainant's case that he was staying in his father's house and he had no house in his name. The Complainant filed the present complaints due to some dispute with the OP. The complaint was dismissed on the ground that Complainant is not a consumer within the definition of the Act.

ii) Order appealed against:

Original Complaint.

iii) Parties:

Consumer Complaint Nos.5 & 6 of 2014

Sunil Gupta

- Complainant

Vs.

Today Homes & Infrastructure (P) Ltd.

- Opposite Party

iv) Case No and Date of Judgement:

Consumer Complaint No.5 & 6 of 2014 & Date of Judgement: 03.02.2014.

v) Acts and Sections referred:

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

vi) Issues raised and decided:

The Counsel for the Complainant contended that Section 2(1)(d) did not make any distinction between one or more number of houses. He also contended that even as per the Section 11 of the Act, there was no difficulty in buying two houses. He further claimed that the Complainant purchased one house for his son and another for his daughter. The Commission observed that no details of the family members were given, whether they are minor or major, married or unmarried, why there is need of second and third house etc., It was noted that the Commission in the case of *Jagmohan Chabra and another Vs. DLF Universal Ltd*, IV (2007) CPJ 199, in a similar case, held that the complaint was not maintainable and directed the Complainant to approach the Civil Court. The said order had been upheld by the Hon'ble Supreme Court in Civil Appeal No.6030-6031 of 2008. The Commission further observed that they cannot arrogate to themselves the powers with which they are not armed. Consequently both the complaints were dismissed.

vii) Citation:

II (2014) CPJ 1.

5. M/s. Steel City Securities Ltd. Vs. Shri. G.P. Ramesh & Anr.

i) Case in Brief:

Respondents/Complainants, who are husband and wife, were transacting shares with the Petitioner. On 24.01.2008, Respondent-1 lost his bag containing blank signed depository participant slip books of himself and of Respondent-2. He immediately informed the Petitioner and requested him not to allow any transactions on the said depository participant slips. He also lodged a complaint with the police on the same day. Later on he came to know that the petitioner sold shares worth Rs.11,768.37 dated 29.01.2008 and Rs.1,78,661.69 respectively belonging to Respondent-2. He sought reimbursement of the amount from the Petitioner but there was no response. He therefore filed consumer complaint before the District Forum which was dismissed. However, the State Commission on appeal set aside the order of the District Forum and allowed the complaint directing the Petitioners to reimburse Rs.1,78,661.69 and Rs.11,768.37 to the second Complainant. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 25.05.2011 in Appeal No.603/2009 of the Andhra Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

M/s. Steel City Securities Ltd. - Petitioner

Vs.

Shri. G.P. Ramesh & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3060 of 2011 & Date of Judgement: 03.02.2014.

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 question before the Commission was whether the Respondents are consumers under Section 2(1)(d) of the Act. It was noted that Respondents had nowhere pleaded that they were doing the share trading business for self employment nor it had been pleaded that the services provided by the Petitioner are being availed exclusively for the

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purpose of earning their livelihood by means of self employment. The Commission further noted that in *Vijay Kumar Vs. IndusInd Bank*, II (2012) CPJ 181 (NC), it had been held that the Petitioner therein who was regularly trading in shares was indulging in commercial activity for which he had availed overdraft facility from the Respondent. It was also stated that regular trading in the purchase and sale of shares is a commercial transaction and the only motive was to earn profit. On the same analogy, the Petitioner in the present case was held to be indulging in a commercial activity and therefore would not fall under the definition of consumer as per the Act. Consequently the Revision Petition was allowed, the impugned order of the State Commission was set aside and the order of the District Forum was restored.

vii) Citation:

I (2014) CPJ 576; 2014(1) CPR 494.

6. Vipin Garg Vs. Union of India & Ors.

i) Case in Brief:

Complainant is the son of OP-3, Sh. Brij Bhushan Garg. There was a property dispute between OP-2, Sh. Raj Bhushan Garg and OP-3. It is alleged that OP-2 filed suit for partition of the property which rightly belonged to OP-3. The Complainant, being member of HUF, claimed that he is entitled to have his share. He came to know in January, 2013 about a wrong mutation and conveyance deed executed by OP-1 viz Land & Development Office, Ministry of Urban Development, Government of India in favour of OPs 2 and 3 in November, 2007. He filed the present complaint before the Commission seeking a direction to OP-1 to rectify the conveyance deed dated 20.11.2007 and/or correct the defect by executing another supplementary conveyance deed in favour of HUF firm or Legal Heirs/Members jointly. The complaint was dismissed with cost on the ground that the Complainant is not a consumer.

ii) Order appealed against:

Original Complaint.

iii) Parties:

Vipin Garg

- Complainant

Vs.

Union of India & Ors.

- Opposite Parties

iv) Case No and Date of Judgement:

Consumer Complaint No.206 of 2013 & Date of Judgement: 04.02.2014.

v) Acts and Sections referred:

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

vi) Issues raised and decided:

- a) The Commission observed that the Complainant nowhere had stated that he is a consumer as per the law laid down in Section 2(1)(d) of the Consumer Protection Act, 1986. He had also not mentioned who was the service provider. The Commission further observed that this is a case of the nature of a civil dispute and that the Commission cannot arrogate to itself the powers with which it is not armed. It was further noted that the case involved complicated questions of law and facts requiring recording of oral and documentary evidence which the Commission cannot do.
- b) The Commission while dismissing the complaint further observed that the complaint was mala fide, vexatious and frivolous and decided to impost cost in the sum of Rs.10,000/- under Section 26 of the CP Act to be deposited with Consumer Welfare Fund.

vii) Citation:

I (2014) CPJ 465.

7. India Info Line Commodities Ltd. & Anr. Vs. Jagu Srinivasa Rao

i) Case in Brief:

The Complainant, Jagu Srinivasa Rao, opened an account with OP No.1 on 12.08.2008 for buying and selling of gold online like share business. OP No.1 allotted client ID after verification was made by OP No.2, the office of the Petitioner at Thane, Maharashtra. Complainant credited the amounts by way of demand drafts drawn on HDFC bank, in his account with OP No.1, the total amount being Rs.8,50,000/-. The Complainant opened the account exclusively for the purpose of gold related commodity online and OP No.1 obtained consent from the Complainant for trade of gold commodities. It is alleged that, subsequently, without written consent and advice from the Complainant, OP No.1 traded other commodities like spices due to which Complainant

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incurred huge loss in his business. OP No.1 encashed two demand drafts and misappropriated the same. A complaint was filed before the District Forum, which allowing the same, directed OPs 1 and 2 to refund the misappropriated amount of Rs.2,00,000/- with interest at 9% p.a. from the date of deposit till realization along with Rs.5,000/- towards compensation and Rs.1,000/- towards legal expenses. The appeal filed by the OPs having been dismissed by the State Commission, the present Revision Petition had been filed. Revision Petition allowed on the ground that Complainant is not a consumer.

ii) Order appealed against:

From the order dated 19.03.2012 in Appeal No.1117/2010 of the Andhra Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

India Info Line Commodities Ltd. & Anr. - Petitioners

Vs.

Jagu Srinivasa Rao - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2441 of 2012 & Date of Judgement: 12.02.2014.

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 Commission observed that the Complainant is a young businessman who invested the amount with the help of his relatives. His was a case of investment and he entered into a commercial transaction. There was not even an iota of evidence to reveal that the Complainant entered into the said transaction to earn his livelihood. The Commission referred to the explanation of the term "commercial purpose" by the Hon'ble Supreme Court in *Laxmi Engineering Works vs. P.S.G. Industrial Institute*, II (1995) CPJ 1 (SC). In *Morgan Stanley Mutual Fund vs. Kartick Das*, (1994) 4 SCC 225, the question was whether a prospective investor in the shares of a company was a consumer as defined in Section 2 (f). It was held that he was not a consumer. On the same analogy the Commission held that the Petitioner in the present case was not a consumer. Since the consumer fora are not armed with the power to decide commercial transactions the Revision Petition was accepted, the

orders of the fora below were set aside and the complaint was dismissed with liberty to the Complainant to seek redressal before the appropriate forum.

vii) Citation:

I (2014) CPJ 483.

8. Duggirala Prasad Babu Vs. M/s. Skoda Auto India Pvt. Ltd. and others

i) Case in Brief:

Complainant/Petitioner purchased Skoda Octavia Ambience car from the OP No.3. It was the case of the Complainant that after delivery of the vehicle, the petitioner noticed that the steering wheel of the car was dragging towards the left side. He also noticed that reverse gear of the car was not functioning. The petitioner, therefore, visited the dealer, the OP No.3 on the very next day and asked him to rectify the defects. The vehicle was returned to the petitioner on 28.02.2010 stating that the defects were rectified. The complainant noticed that the defects were still there and he again returned the vehicle to the OP No.3 for rectification of those defects but in vain. The complainant issued legal notice to the OPs. Alleging the deficiency on the parties of the OPs, the Complainant filed a complaint before the District Forum which dismissed the complaint stating that neither there was any manufacturing defect nor any deficiency in service on the part of the opposite party. Being aggrieved by the order of the District Forum, the Petitioner preferred an appeal which 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:

Against the Order dated 24.09.2012 in Appeal No.496/2011 of the State Commission Andhra Pradesh.

iii) Parties:

Duggirala Prasad Babu

- Petitioner

Vs.

M/s. Skoda Auto India Pvt. Ltd. and others

- Respondents

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iv) Case No and Date of Judgement:

Revision Petition No.428 of 2013 with IA/978/2013 &

Date of Judgement: 04.03.2014.

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 two issues involved in this complaint were: (i) whether or not the above noted defect regarding drag towards the left was set right by the opposite party service station; (ii) whether the Complainant is a consumer or not.
- b) As far as the first issue is concerned, the Commission relied on three expert reports. The Complainant relied upon the reports of A.Chandrasekhra Rao and R.V.S.Sharma whereas the opposite parties relied upon the technical report of the manufacturer, namely, Ramakrishna Surabhi. According to the reports relied upon by the Complainant, a drag towards the left was found on the steering of the car whereas according to the technical report of Ramakrishna Surabhi, there was no defect in the functioning of the car. State Commission declined to accept the inspection reports relied upon by the Complainant and returned a concurrent finding of dismissal of complaint which was endorsed by the National Commission also. The Commission also noted that the gear box had been replaced by OP.
- c) As far as the second issue is concerned, the National Commission relied on para 5 of Complainant's affidavit wherein he had confirmed that he did take benefit of the depreciation of the value of the car for the purpose of his income tax liability for the assessment years 2010-2011, 2011-2012 and 2012-2013. From this, it was made clear that Petitioner purchased the car for commercial purpose and that is why he took benefit of depreciation in value for the purpose of Income Tax. Since the car was purchased in relation to business of the petitioner i.e. commercial purpose, the Commission held that he could not come within the purview of Section 2(1)(d) of the Act.

d) In view of the above, the Commission dismissed the Revision Petition as not maintainable.

vii) Citation:

II (2014) CPJ 82.

9. Jasobanta Narayan Ram Vs. The Branch Manager L & T Finance Limited

i) Case in Brief:

It was the case of the Appellant/Complainant that he had availed a loan for purchasing two trucks in a single agreement from the Respondent/OP/L&T Finance Limited by a loan-cum-hypothecation agreement. He engaged first truck for transportation of iron ore and there was no mention about the second truck in the complaint. He used to pay the installments of loan in time from the income of the first truck. However, due to heavy rains during rainy season, the mining work stopped, due to which the vehicle remained idle and he could not pay some of the installments. The said vehicle was seized by certain persons from the OP on 17.02.2010. According to the Complainant, he was never served with any notice before the seizure of the vehicle. The Complainant then filed consumer complaint before the State Commission which dismissed the complaint stating that repossession of the vehicle by the OP was not illegal as a sum of about Rs.1 lakh was pending against him by 20.01.2010. Against the order of the State Commission, the present appeal had been filed. Appeal dismissed.

ii) Order appealed against:

Against the Order dated 26.11.2013 in Complaint No.45/2010 of the State Commission Orissa.

iii) Parties:

Jasobanta Narayan Ram - Appellant

Vs.

The Branch Manager L & T Finance Limited - Respondent

iv) Case No and Date of Judgement:

First Appeal No.888 of 2013 & Date of Judgement: 04.03.2014.

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v) Acts and Sections referred:

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

vi) Issues raised and decided:

- a) The National Commission after perusal of the records dismissed the appeal and upheld the order of the State Commission for the following reasons:
 - i. The Complainant had not given any clarification about the use of operation of the other truck. As such, the Commission held that he could not come under the definition of Section 2(1)(d) of the Act in view of the decision of *Laxmi Engineering Works versus PSG Industrial Institute* [as reported in 1995 AIR SC 1428] wherein it was held that a person who purchases an autoriksaw, a car or a lathe machine or other machine to be plied or operated exclusively by any person could not be a consumer.
 - ii. It has been clearly admitted by the Complainant that he was a defaulter on the date of repossession of the vehicle by the OP. He had also admitted that it had been provided in the loan-cum-hypothecation agreement that OP would have the right of repossess the vehicle in the case of defaulter. The deficiency in service on the part of the OP had not been proved anywhere.
- b) The National Commission endorsed the views of the State Commission that if the vehicle had not been sold, a pre-sale notice should be issued to the Complainant and the vehicle should be sold in his presence, unless he refused to receive the notice or to attend the auction sale. Further, if the vehicle had been sold, the sale-price should be intimated to the Complainant and the sale proceeds should be adjusted to the pending dues and if it exceeded the said dues, the balance amount should be returned to the Complainant.
- c) The National Commission did not find any infirmity, material illegality, irregularity or jurisdictional error in the impugned order passed by the State Commission.

vii) Citation:

II (2014) CPJ 87.

10. Smt. Ved Kumari & Ashish Kaul Vs. M/s. Omaxe Build Home Pvt. Ltd and Anr.

i) Case in Brief:

Both the Complainants applied for a flat with M/s. Omaxe Build Home Pvt. Ltd./OP.1. Possession of the said flat was not given to the Complainants, in time. Aggrieved by the act of OPs, the present Complaint was filed before the National Commission. Complaint dismissed.

ii) Order appealed against:

Original Complaint

iii) Parties:

Smt. Ved Kumari & Ashish Kaul - Complainants

Vs.

M/s. Omaxe Build Home Pvt. Ltd and Anr. - Opp. Parties

iv) Case No and Date of Judgement:

Consumer Case No.143 of 2013 with IA/36/2014, IA/426/2014, IA/3149/2013 & Date of Judgement: 05.03.2014.

v) Acts and Sections referred:

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

vi) Issues raised and decided:

- a) The main issue in this case was whether the Complainants were consumers or not.
- b) Answering the question negatively, the Commission dismissed the complaint on the ground that the Complainants are investors and therefore, would not come within the definition of a consumer as per Section 2(1)(d) of the Consumer Protection Act, 1986. Reliance was placed on the decisions of the Commission in *Chilkuri Adarsh Vs. ESS ESS VEE Constructions*, III (2012) CPJ 315, *Jagmohan Chabra and another Vs. DLF Universal Ltd.*, IV (2007) CPJ 199; *RS. Savi Gupta Vs. Omaxe Azorim Developers Pvt. Ltd.* in Consumer Complaint No.208 of 2012, decided on 01.10.2012 and *M/s. Moran Plantation Pvt. Ltd. & Ors. Vs. M/s. Ambience Private Ltd.*, decided on 02.09.2013.

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- c) However, the Commission gave a direction that the Complainants should get the possession of flat in question so that his so-called large family would not suffer due to the paucity of accommodation and passed the order as per the compromise reached between the parties.

vii) Citation:

II (2014) CPJ 146.

11. Kunj Bihari Lal Vs. Urban Improvement Co. Pvt. Ltd.

i) Case in Brief:

Urban Improvement Co. Pvt. Ltd./OP made an advertisement offering residential plots in public auction on free hold basis. In the advertisement made, OP made several promises to the Complainant about the flats proposed to be built. As the OP failed in his promises, complaint was filed before the District Forum which was dismissed by the District Forum. Appeal was filed before the State Commission. The State Commission dismissed the appeal by placing reliance on Hon'ble Supreme Court authority reported in the case of *UT Chandigarh Administration vs. Amarjeet Singh and another* II (2009) CPJ 4 (SCC) wherein it was held that the allottee/purchaser in auction was not a consumer within the meaning of Section 2(1) (d) of the Consumer Protection Act 1986 and the complaint was dismissed. Aggrieved by that order the present Revision Petition has been filed. Revision Petition was disposed of remanding the matter back to the State Commission.

ii) Order appealed against:

Against the Order dated 31.10.2012 in Appeal No.581/2009 of the State Commission Delhi.

iii) Parties:

Kunj Bihari Lal - Petitioner

Vs.

Urban Improvement Co. Pvt. Ltd. - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.306 of 2013 with IA/542/2013 &
Date of Judgement: 05.03.2014.

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 raised in this case was that whether the Complainant was a consumer or not.
- b) The National Commission on perusal of the records held that the Complainant/Petitioner was a 'Consumer'. He was not a mere auction purchaser. Certain other conditions were also proved that made him a Consumer under the Consumer Protection Act. The Commission further held that the finding given by the State Commission was not legally tenable and therefore, the same order was reversed. Other questions are yet to be decided by the State Commission. So, the case was remanded back to the State Commission to hear the case on other issues as per Law and the parties were directed to appear before the State Commission. The revision petition was disposed of accordingly.

vii) Citation:

II (2014) CPJ 37.

12. Saurabh Gupta & 3 Ors. Vs. Hasti Petro Chemical & Shipping Ltd.

i) Case in Brief:

The Complainant, M/s. Hasti Petro Chemicals & Shipping Ltd., deals in the business of transportation of domestic and exim cargo, warehousing, fuel stations, container repair yard, truck-trailer workshop etc. Complainant placed orders with OPs for purchasing two Forklift Trucks on 25.06.2010 and made advance payment of Rs.50,000/-. The machines were not delivered before 30.07.2010 as promised but were delivered on 18.08.2010 after the Complainant paid the balance amount. It was alleged that the machines were not suitable for stuffing and de-stuffing of the paper rolls in and out of the normal ISO containers of standard dimensions. Complainant sent several complaints to OPs regarding defects in the machines supplied. It was stated that the OPs informed the Complainant that they were prepared to replace the defective engine but no action was taken. Complainant filed complaint before the State Commission which directed the OPs to replace the defective

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Forklift Truck with a new one within a period of two months or in the alternative to make payment of Rs.13,02,918/- along with interest at 9% p.a. besides compensation of Rs.5,00,000/- for mental agony and financial loss and Rs.25,000/- as litigation cost. Aggrieved by the said order the present appeal was filed. Appeal allowed.

ii) Order appealed against:

From the order dated 07.11.2013 in Complaint No.2/2011 of the Rajasthan State Consumer Disputes Redressal Commission.

iii) Parties:

Saurabh Gupta & 3 Ors.

- Appellants

Vs.

Hasti Petro Chemical & Shipping Ltd.

- Respondents

iv) Case No and Date of Judgement:

First Appeal No.856 of 2013 with IA/7790/2013 &
Date of Judgement: 13.03.2014.

v) Acts and Sections referred:

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

vi) Issues raised and decided:

The Commission noted that the transaction of purchase of machines between the parties was done in the year 2010 i.e. after the amendment to the CP Act, 1986 was inserted by Act 62 of 2002 (with effect from 15.03.2003) by which it was made clear that commercial purpose does not include use by a person of goods bought and used by him and services availed by him exclusively for the purpose earning his livelihood by self employment. The Commission held that the perusal of the contents of the complaint brought out clearly that the said machines were obtained for commercial purposes and there was no mention anywhere that the transaction was done for the purpose of earning livelihood by means of self employment. It was therefore held that the Complainant is not covered under definition of consumer as the purchase of machines in questioned was for commercial purpose only. The appeal was therefore allowed and the order passed by the State Commission was set aside.

vii) Citation:

II (2014) CPJ 137; 2014(2) CPR 133.

13. Smt. Madhu Saigal & Anr. Vs. M/s. Omaxe Buildhome Pvt. Ltd. & Anr.

i) Case in Brief:

Smt. Madhu Saigal, aged 73 and her husband Shri Ashok Saigal, aged 76, the Complainants herein are senior citizens who invested their life savings to the tune of Rs.2 crores in the purchase of two apartments, one for themselves and one for their son. Unfortunately their son passed away and their grand-daughter Aditi Saigal and her husband had been made co-allottees. The Complainants' grievance is that they have suffered at the hands of the Builder/OP-1 at every stage and that possession of flats had not been given to them. Alleging deficiency in service they filed a consumer complaint with the prayer to execute and register the apartments in their favour and to pay adequate compensation. Complaint dismissed as not maintainable.

ii) Order appealed against:

Original Complaint.

iii) Parties:

Smt. Madhu Saigal & Anr. - Complainants

Vs.

M/s. Omaxe Buildhome Pvt. Ltd. & Anr. - Opposite Parties

iv) Case No and Date of Judgement:

Consumer Complaint No.270 of 2013 with IA/459/2014, IA/1562/2014, IA/5359/2013 & Date of Judgement: 20.03.2014.

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 issue before the Commission was whether the Complainants were entitled to invest in more than one apartment. It was held that the Complainants are investors and they are not consumers. The Commission relied on the decisions in *Chilkuri Adarsh Vs. Ess Ess Vee Constructions*, III (2012) CPJ 315 (in which construction of two showrooms was deemed a commercial venture); *Jagmohan Chabra & Anr. Vs. DLF Universal Ltd.* IV (2007) CPJ 199 (in which booking more than one residential unit was considered

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commercial purpose); *Mrs. Savi Gupta Vs. Omaxe Azorim Developers Pvt. Ltd.* in Consumer Complaint No.208 of 2012 decided on 01.12.2012 and *M/s. Moran Plantation Pvt. Ltd. & Ors. Vs. M/s. Ambience Pvt. Ltd.* in Consumer Case Nos.307 to 309 of 2012 decided on 02.09.2013.

- b) Consequently the complaint was dismissed as not maintainable. Complainants were, however, given liberty to approach the appropriate forum to seek redressal of their grievances.

vii) Citation:

2014(3) CPR 265.

14. HDFC Bank Ltd. Vs. Sh. Subhodh Ghanshyam Prabhu

i) Case in Brief:

Complainant/Respondent had purchased shares of many well known companies and had opened a share Mortgage Account with the Petitioner. He had also taken loan against the said shares from the Petitioner. It is stated that he had given oral and written instructions to the Petitioner for selling shares so that there is no deficit in the account of the Complainant. It is the Complainant's case that the Petitioner sold the shares without proper intimation and without waiting for 7 days as per terms of the contract. He filed consumer complaint before the District Forum alleging that the shares owned by him of Glaxo Smithkline Pharmaceutical Limited amounting to Rs.47,260/- had been sold by the Petitioner thereby causing financial loss to him. The District Forum allowed the complaint and directed the Petitioner Bank pay the sum of Rs.46,260/- to the Complainant with interest @ 9% p.a. and Rs.500/- towards cost. Petitioner's appeal to the State Commission was dismissed vide impugned order against which the present Revision Petition had been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 22.04.2008 in Appeal No.155/2007 of the Maharashtra State Consumer Disputes Redressal Commission.

iii) Parties:

HDFC Bank Ltd.,

- Petitioner

Vs.

Sh. Subhodh Ghanshyam Prabhu

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3126 of 2008 & Date of Judgement: 01.04.2014.

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 question that arose for consideration was whether Respondent came within the ambit of Consumer as defined in the Act. The Commission noted that the Respondent had availed overdraft facility from the Petitioner for Rs.20 lakhs by mortgage of shares with the bank as per loan agreement-cum-guarantee. The Respondent in his written submission filed before the Commission had not specifically denied that the loan was not used for his business of selling hardware and steel or for trading in shares. Even in the complaint filed before the District Forum, Respondent had failed to mention the purpose of availing of the loan of Rs.20 lakhs. Nowhere in the complaint had he pleaded that the loan was taken for any purpose other than commercial. Under such circumstances it was held that the Respondent would not be a consumer as per Section 2(1)(d)(ii) of the Act.
- b) The Commission observed that both the fora below did not deal with the point at all whether Respondent is a consumer or not. Therefore the Revision Petition was allowed, the orders of the fora below were set aside and the complaint stood dismissed.

vii) Citation:

II (2014) CPJ 336; 2014(2) CPR 308.

15. Sudhansu Bhusan Dutta Vs. Joint Managing Director and others, Mansukh Securities & Finance Ltd.

i) Case in Brief:

It was the case of the Complainant/Petitioner that he purchased some shares of Reliance Industries and other companies. At the request of Mr.Biswarup Basu and Mrs. Bhaswati Basu, OPs 2 and 3, the complainant invested his shares with the Joint Managing Director,

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Mansukh Securities and Finance Ltd., OP1, and in the process, handed over all his shares to OP1, with a direction to deposit the amounts in DMAT account of the complainant for the purpose of share trading. OP2, instead of transferring the shares to the account of the complainant, transferred the same to his wife and his own account. Aggrieved by the acts of OP, he filed complaint before the District Forum which allowed the complaint but the State Commission reversed the same vide impugned order against which the present revision petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

Against the Order dated 30.04.2013 in Appeal No.534/2012 of the State Commission West Bengal.

iii) Parties:

Sudhangsu Bhusan Dutta - Petitioner

Vs.

Joint Managing Director and others,
Mansukh Securities & Finance Ltd. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3367 of 2013 & Date of Judgement: 16.04.2014.

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:

The National Commission held that the DMAT account was opened by the Petitioners purely for commercial transactions. Therefore, they were rightly not treated as consumer so as to entitle them to claim compensation by filing complaint under the CP Act, 1986. While coming to the decision, the Commission relied on an earlier decision of the Commission vide order dated 01.08.2012 in R.P.No.1179/2012 titled A. Asaithambi Vs. The Company Secretary & Ors. which had been upheld by the Hon'ble Supreme Court. Similarly in another case, *Ganapathi Parmeshwar Kashi & Anr. Vs. Bank of India & Anr.* in First Appeal No.362 of 2011 decided on 21.08.2012, pertaining to DMAT account, the National

Commission had held that the Petitioner cannot be treated as a consumer within the meaning of Section 2(d) of the CP, Act, 1986 and dismissed the complaint which was also subsequently upheld by the Hon'ble Supreme Court. Therefore, the revision petition was dismissed and the orders of the fora below were confirmed.

vii) Citation:

2014(2) CPR 572.

16. Dr. L.P. Kulshresht Vs. Agra Development Authority

i) Case in Brief:

Complainant/Petitioner had booked an HIG house in the Church Road Housing Scheme of the Respondent/OP, by depositing a sum of Rs.8,000/- on 31.8.1979, but respondent did not commence the said scheme in time. So OP allotted a house in Indrapuram scheme and as advised petitioner deposited a sum of Rs.49,300/- on 04.10.1989. Thereafter, he had deposited a sum of Rs.1,49,000/- including interest for delayed payment on 30.11.1990 after obtaining loan from Bank. As per terms of the Respondent, the house was to be allotted within one year, but it had not done so, whereas it was levying interest @ 21% per annum for delayed payments. At the time of registration, price of the house was fixed at Rs.2,74,000/-, but vide letter dated 20.2.1993 of the Respondent, the Petitioner was informed that price had become Rs.3,19,623/-. Petitioner informed the Respondent, vide his letter dated 21.4.1993 that he did not require the house and wanted his money to be refunded along with interest @ 21%. The Respondent refunded a sum of Rs.2,16,200/- after deducting Rs.8,000/- towards 30% of the registration money of Rs.25,000/- on 23.12.1993. Petitioner suffered a loss of Rs.8,000/- on his principal amount. Being aggrieved by the acts of OP, Petitioner filed the complaint before the District Forum which directed the OP to pay to the complainant simple interest @ 15% per annum on the deposited amounts of Rs.8,000/-, Rs.17,000/-, Rs.49,300/- and Rs.1,49,400/- from the respective dates of deposit, that is 31.8.1977, 12.5.1989, 4.10.1989 and 30.11.1990 upto 23.12.1993, within 30 days of this judgment and pay interest on the said interest @ 18% per annum with effect from 1.1.1994 along with compensation of Rs.10,000/-. Aggrieved by the order of the District Forum, Respondent

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filed an appeal before the State Commission which was allowed vide impugned order against which the present revision petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

Against the Order dated 15.07.2011 in Appeal No.1780/1995 of the State Commission Uttar Pradesh.

iii) Parties:

Dr. L.P. Kulshresht - Petitioner

Vs.

Agra Development Authority - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3445 of 2011 & Date of Judgement: 17.04.2014.

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 for consideration was whether Petitioner is a consumer as per provisions of the Act as he received refund of the amount deposited by him from the OP.
- b) The National Commission on perusal of the records pointed out that there was nothing on record to show that petitioner was compelled by the Respondent at any stage to withdraw the amount deposited by him. Interestingly, Petitioner after having received the sum of Rs.2,16,200/- as early as on 23.12.1993, i.e. more than 21 years ago, had been enjoying the aforesaid amount since then.
- c) Once petitioner has received the amount unconditionally and had also got the cheque encashed, Petitioner ceased to be a consumer as per the Act. The privity of contract or relationship of consumer and service provider between the parties if any, came to an end the moment petitioner accepted the refund unconditionally and also got the cheque encashed. Decision of the Hon'ble Supreme Court in *Bhagwati Prasad Pawan Kumar Vs. Union of India* (2006) 5 Supreme Court Cases 311 was cited in this context.

d) Therefore, the present revision petition was dismissed with cost of Rs.5,000/- to be paid by the Complainant/Petitioner to the Consumer Legal Aid Account and the orders of the fora below were upheld.

vii) Citation:

II (2014) CPJ 531; 2014(2) CPR 553.

17. Sanjay Nag Vs. Hari Om Masala Industries & 3 Ors.

i) Case in Brief:

Petitioner/Complainant, an unemployed youth, deposited Rs.5,00,00/- with Hari Om Masala Industries, the OP for the purpose of being a stockiest of spices products. It is alleged that due to substandard quality of products OP factory could not be run. Complainant made several requests to OP to return the advance balance of Rs.43,226/- and the security amount of Rs.5,00,000/- but to no avail. He filed a complaint before the District Forum which allowing the complaint partly directed OP to pay back the security amount of Rs.5,00,000/- along with interest thereon @ 9% p.a. within 90 days. A sum of Rs.2,000/- was awarded towards cost of litigation. OP's appeal was allowed by the State Commission and the complaint was dismissed. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 22.10.2013 in Appeal No.879/2010 of the Uttar Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

Sanjay Nag - Petitioner

Vs.

Hari Om Masala Industries & 3 Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.769 of 2014 & Date of Judgement: 01.05.2014.

v) Acts and Sections referred:

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

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vi) Issues raised and decided:

- a) The Commission accepted the contention of the OPs that the Complainant started the work of the stockiest under stockiest agreement, that it was for commercial purpose to earn for profit and not for earning his livelihood and that the Complainant was not a consumer of the OP. It was also noted that a case, Crime No.182/08 pertaining to this very matter was pending before Chief Metropolitan Magistrate Court, Kanpur Nagar. It was held that the Complainant himself was a service provider and the transaction of goods done by him was for commercial purpose.
- b) The Commission placed reliance on the following case laws to decide this Revision Petition i) *Monto Motors Ltd. Vs. Sri Sai Motors & Anr.* IV (2013) CPJ 372 (NC); ii) *Prashant Nag Vs. Oriental Siramax & Industries Ltd.* IV (2011) CPJ (NC); iii) *Diamond Cement Jhansi Vs. Manoj Kumar & Ors.* III (2002) CPJ 319.
- c) The Commission held that the Complainant had not approached the Commission with clean hands and the issue pertained to a commercial transaction and hence not maintainable under the CP Act, 1986. The Revision Petition was accordingly dismissed and the Petitioner was directed to approach a Civil Court as per law.

vii) Citation:

II (2014) CPJ 554; 2014(2) CPR 395.

18. Regional Institute of Cooperative Management, Chandigarh Vs. Naveen Kumar Chaudhary

i) Case in Brief:

Complainant took admission in the 2 years full time Post Graduate Diploma in Management (Agriculture business) for the 2010-2012 batch in the Petitioner Institute and deposited a sum of Rs.4,53,500/- as per payment schedule. He along with other Complainants completed the course and were issued certificates which showed that the course was recognized by the All India Council for Technical Education, Ministry of HRD, Government of India. It was not recognized by the Association of Indian Universities as equivalent to MBA degree as had been claimed

by the Petitioner Institute. Alleging deficiency in service they filed complaints seeking refund of the amount of Rs.4,53,500/- with interest besides compensation and punitive damages. The District Forum allowed the complaints and granted compensation in the sum of Rs.1,00,000/- with interest @ 12% p.a. Complainant filed first appeal before the State Commission which allowed the appeal partly placing reliance on *Buddhist Mission Dental Hospital Vs. Khurana & Ors*, I (2009) CPJ 25 (SC). Aggrieved by the said order the present Revision Petition had been filed. Revision Petition allowed giving liberty to the Complainants to seek redressal before the proper forum or civil court as per law.

ii) Order appealed against:

From the order dated 18.12.2013 in Appeal No.467/2013 of the State Consumer Disputes Redressal Commission, Chandigarh.

iii) Parties:

Regional Institute of Cooperative Management,
Chandigarh

- Petitioner

Vs.

Naveen Kumar Chaudhary

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.638 of 2014 & Date of Judgement: 02.05.2014.

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 Commission noted that in *Bihar School Examination Board Vs. Suresh Prasad Sinha*, (2009) 8 SCC 483. It was held that Statutory Board does not provide any service in the sense the term is used in the Act and that examinee is not a consumer. It was held that the Board is not a service provider. The Commission further noted that in a recent judgement in Civil Appeal No.697 of 2014 titled *Indian Institute of Bank and Finance (IIBF) Vs. Mukul Srivastava* dated 17.01.2014 the Hon'ble Apex Court had referred to the judgements in *Bihar School Examination Board supra*, *Maharshi Dayanand University Vs. Surjeet Kaur*, 2010 (11) SCC 159 and *Jagmitter Sain Bhagat Vs. Director, Health Services Haryana & Ors*, 2013 (10) SCC 136 and held that the student is not a consumer.

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- b) The Commission noted that in *Maharshi Dayanand University* supra, the Apex Court had held that education is not a commodity, that educational institutions are not providing any kind of service and therefore in the matter of admission, fees etc., there cannot be a question of deficiency of service. Such matters cannot be entertained by the Consumer Forum under the Consumer Protection Act, 1986.
- c) The Commission accordingly allowed the Revision Petition and set aside the orders of the fora below giving liberty to the Complainants to seek redressal of their grievance before the proper forum or civil court, as per law.

vii) Citation:

III (2014) CPJ 120.

19. Shahid Vs. K.P. Dharmian

i) Case in Brief:

Respondent/Complainant, who is a registered exporter of handicraft items, contended that on receipt of an order from a foreign buyer for supply of 50,000 notebooks, he contacted Opposite Party/Mr. Shahid of M/s. Asia Art Printers. After approving a sample shown by the Opposite Party and on his agreeing to manufacture the said notebooks by a stipulated date, he placed an order in writing for the same and also paid him an advance amount of Rs.4,40,000/-. Petitioner/Opposite Party, however, failed to supply the notebooks by the stipulated date for delivery and requested for a further period of two weeks, which was agreed to. However, despite this assurance, the required notebooks were not supplied, leading to cancellation of the order by the foreign buyer and consequently resulting in loss to the Respondent/Complainant. Complainant /Respondent therefore, filed a complaint before the District Forum which directed the Petitioner/Opposite Party to pay the Respondent/Complainant a sum of Rs.4,40,000/- along with interest @ 12% per annum and also Rs.1,000/- as litigation expenses. Against the order of District Forum, appeal was filed before the State Commission which dismissed the appeal and set aside the order of the District Forum regarding payment of interest @ 12% per annum on the amount of Rs.4,40,000/- and in lieu directed the Petitioner/Opposite

Party to pay the Respondent/Complainant compensation of Rs.20,000/- apart from Rs.1,000/- as litigation costs awarded by the District Forum. Being aggrieved, the present revision petition has been filed by the Petitioner. Revision Petition dismissed.

ii) Order appealed against:

Against the Order dated 08.02.2008 in Appeal No.1971/2003 of the State Commission Delhi.

iii) Parties:

Shahid - Petitioner

Vs.

K.P. Dharmian - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2137 of 2008 & Date of Judgement: 06.05.2014.

v) Acts and Sections referred:

Sections 2(1)(d), (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986 & Regulation 14 of the Consumer Protection Regulations 2005.

vi) Issues raised and decided:

- a) The main issue involved in this case was that since the goods had been purchased for resale by Respondent/Complainant (since admittedly they were to be again sold to a foreign buyer), he was not a 'consumer' in terms of Section 2(1)(d) of the Consumer Protection Act, 1986.
- b) Fully agreeing with the views of the State Commission on the above said issue, the National Commission held that this is not a case to non suit the Respondent/Complainant on the ground that the transaction was of a commercial nature. Further. no doubt Respondent/Complainant was a registered merchant exporter under the Export Promotion Council for Handicrafts but, as has been observed by the State Commission, he was a single individual involved in earning his livelihood by placing and procuring orders for the purpose of export and is, therefore, very much a 'consumer' as upheld by the Hon'ble Supreme Court in *Laxmi Engineering Works Vs. P.S.G. Industrial Institute* [(1995) 3 SCC 583].

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- c) The Commission further explained that the notebooks were not purchased “off the shelf” by the Respondent/Complainant from the Petitioner/Opposite Party but had been manufactured/fabricated by the Petitioner/Opposite Party on the basis of particular specifications indicated by the Respondent/Complainant. It was, thus, not a “sale” and consequently not a “resale” as defined under the exclusionary clause of Section 2(1)(d) of the Act but was in the nature of services which the Respondent/Complainant availed of from the Petitioner/Opposite Party.
- d) In view of the above, the present revision petition was dismissed and the order of the State Commission was upheld.

vii) Citation:

Not reported in CPJ and CPR.

20. M/s. Shailaja Finance Ltd. Vs. M/s. GTM Builders & Promoters Pvt. Ltd. & Anr.

i) Case in Brief:

The Complainant Company/M/s. Shailaja Finance Ltd. purchased nine apartments in TM Forests & Hills from the OPs for residential purposes of its Directors and Staff members, and for the Directors of M/s. Radico Khaitan Limited of which Complainant Company is the promoter. The OPs did not handover the flats to the Complainant. Aggrieved by the act of OPs, the present complaint had been filed. Complaint dismissed.

ii) Order appealed against:

Original Complaint

iii) Parties:

M/s. Shailaja Finance Ltd. - Complainant

Vs.

M/s. GTM Builders & Promoters Pvt. Ltd. & Anr. - Opp. Parties

iv) Case No and Date of Judgement:

Consumer Case No.117 of 2014 & Date of Judgement: 07.05.2014.

v) Acts and Sections referred:

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

vi) Issues raised and decided:

The National Commission after perusal of the records of the case pointed out that the Complainant case could not be brought within the meaning of Section 2(1)(d) of the Consumer Protection Act. It was held that the officers who would occupy the flats would transact commercial activity. Relying on the decisions of the National Commission in *Satish Kumar Gajanand Gupta Vs. M/s. Srushti Sangam Enterprises (India) Ltd & Anr.*, Consumer Complaint No.296 of 2011, decided on 03.07.2012, *M/s.Purusharath Associates Pvt. Ltd. Vs. M/s. Uppal Housing Ltd. & Anr.*, Consumer Complaint No.112 of 2012, decided on 05.07.2012 and *Jag Mohan Chhabra & Anr. Vs. DLF Universal Ltd.* IV (2007) CPJ 199 (NC) the National Commission observed that where a person purchases goods with a view to using such goods for carrying on any activity on a large scale for the purpose of earning profit, he will not be a consumer within the meaning of Section 2(1)(d)(i) of the Act'. Consequently, the complaint was dismissed by stating that the Complainant could seek remedy before any other appropriate forum or civil court as per law.

vii) Citation:

II (2014) CPR 724; 2014(3) CPR 117.

21. Dakshin Haryana Bijli Vitran Nigam Ltd. & Ors. Vs. Bhagavan Dass

i) Case in Brief:

Three complaints had been filed by the Respondents before the District Forum. Their case was that Shri Ram Ditta Mal had obtained two electrical power connections bearing No.YM/2 and NMP 3/204 for running an Atta Chakki and Kiryana Shop and after he left the business many years ago, the business continued to be run by the Complainant/ Respondent and his two sons, Ved Prakash and Satpal. Due to old age Respondent also stopped taking part in the business activities and his son Ved Prakash and Prem Kumar, son of Satpal were looking after the two businesses. There was a separate connection for the residential portion in the name of the Respondent. On the intervening night 3rd and 4th July, 1998, the electricity wires coming from the main pole to the meters of Atta Chakki and Kiryana Shop caught fire due to sparking. Though the matter was reported to the Petitioners immediately at 2.15

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a.m. they did not take immediate action. There was disconnection of electricity only at 8.45 a.m. and by that time the fire had caused heavy damages not only to the construction of the building but also to the Kiryana Shop and Atta Chakki. The value of loss was estimated by the Respondents at Rs.1,50,000/- and claiming another Rs.50,000/- for mental shock, pain, agony etc., the Respondent demanded Rs.2,00,000/- as compensation along with interest. The District Forum allowed the complaint and directed the Petitioner to pay Rs.75,000/- to the Complainant, Ved Prakash. Aggrieved by the order, the Petitioner filed three appeals before the State Commission which were dismissed vide impugned orders against which the present Revision Petitions had been filed. Revision Petitions allowed.

ii) Orders appealed against:

From the orders dated 28.07.2006 in Appeal No.1045/2000, Appeal No.1047/2000 and Appeal No.1046/2000 of the State Consumer Disputes Redressal Commission, Haryana.

iii) Parties:

Revision Petition No.2842 of 2006

Dakshin Haryana Bijli Vitran Nigam Ltd. & Ors. - Petitioners
Vs.

Bhagavan Dass - Respondent

Revision Petition No.2877 of 2006

Dakshin Haryana Bijli Vitran Nigam Ltd. & Ors. - Petitioners
Vs.

Ved Prakash - Respondent

Revision Petition No.2878 of 2006

Dakshin Haryana Bijli Vitran Nigam Ltd. & Ors. - Petitioners
Vs.

Prem Kumar - Respondent

iv) Case No and Date of Judgement:

- i) Revision Petition No.2842 of 2006
- ii) Revision Petition No.2877 of 2006
- iii) Revision Petition No.2878 of 2006 &
Date of Judgement: 09.05.2014.

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:

The Commission after going through the record noted that electric connections Nos.YM/2 and NMP 3/204 had been obtained in the name of Ram Ditta Mal. Though Ram Ditta Mal died in the year 1996, that fact was never brought to the notice of the Petitioner nor was any application made for the transfer of the said connection to any other person. It was also noted that there were electric connections for residential portion/first floor in the name of Bhagavan Dass, Respondent No.1 where he was living with his family members. The Commission agreed with the contention of the Petitioner that there were no privity of contract/agreement between the Petitioner and the Respondents for the two connections and with regard to the connection to the residential portion there was no damage to the same. The Respondents could not show records that the connections were transferred in their name. The Commission also held that the Respondents failed to prove that they were consumers under Section 2(1)(d) of the Consumer Protection Act. Consequently the Revision Petitions were allowed and the complaints filed by the Respondents before the District Forum were set aside.

vii) Citation:

III (2014) CPJ 223; 2014(2) CPR 270.

IV. DEFICIENCY IN SERVICE

(a) ACCIDENT COMPENSATION / INSURANCE

1. The United India Insurance Co. Ltd. Vs. Gowramma & Ors.

i) Case in Brief:

The father of the Complainants, Shri B.K. Thimmegowda had taken LPG gas connection for his domestic use from OP No.1, M/s. Shiva Gas Service. The last cylinder was obtained on 27.11.1999. On 07.12.1999, the gas cylinder exploded causing severe injuries to Shri Thimmegowda and his wife and causing heavy damage to the building and to movable properties. Both the parents of Complainants died on 10.12.1999 because of the injuries sustained by them. As per the Complainants the loss caused to the building was Rs.5,15,540/- and loss to immovable property was estimated to be Rs.2,00,000/-. Complainants filed complaint seeking compensation for the death of their parents and the financial loss. The District Forum dismissed the complaints stating that the explosion took place after the cylinder was used continuously for 10 days and there was no possibility of sudden development of defect in the gas cylinder or the regulator. However, the appeal preferred by the Complainants was allowed by the State Commission vide impugned order. OPs 1 and 2 were held liable to pay Rs.2,00,000/- as compensation to the Complainants. It was directed that the amount be paid by the insurance company since there was insurance coverage. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition was allowed and the impugned order was modified directing OPs 1 and 2 to pay the amount.

ii) Order appealed against:

From the order dated 08.06.2007 in First Appeal No.1595/2005 of Karnataka State Consumer Disputes Redressal Commission.

iii) Parties:

The United India Insurance Co. Ltd. - Petitioner

Vs.

Gowramma & Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3253 of 2007 & Date of Judgement: 07.01.2014.

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 so far as payment of compensation to the Complainants is concerned, the issue needed to be settled between the Insurance company, the Gas agency and Indian Oil Corporation. The Commission noted that as per Clause 7 of the policy, the insurance company had agreed to indemnify the loss suffered by third party only when the accident was caused at the premises of OP No.1 i.e. gas agency or the registered address of the customer only while the cylinder was being installed by the insured and/or his employee or when the accident takes place when the gas cylinder is being carried by OP No.1 or his employee for installation to the house of the consumer. In the instant case the facts showed that explosion did not occur when the cylinder was being installed. The Commission therefore held that the order of the State Commission needed to be modified to fix the liability on OPs 1 and 2 jointly and severally.
- b) The Revision Petition was therefore allowed and the impugned order was modified to say that OPs 1 and 2 i.e. M/s. Shiva Gas Service and Indian Oil Corporation shall be liable jointly and severally to pay compensation to the Complainants. Since the payment had already been made to the Complainants, it was held that the insurance company was at liberty to recover the amount from OPs 1 and 2.

vii) Citation:

2014(1) CPR 191.

2. Smt. Munesh Devi Vs. The U.P. Power Corporation Ltd. & Ors.

i) Case in Brief:

Complainant's husband died in an accident caused due to the transformer installed and maintained by the OPs while he was returning home from duty. The transformer suddenly burst and the hot oil of the transformer fell upon her husband, Sh. Jagbir Singh on 05.02.2000 at about 6.00 p.m. He received 85% burn injuries and succumbed to the injuries on 08.02.2000. The deceased was only 38 years old and was

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an employee of Mahanagar Telephone Nigam Ltd., (MTNL) at Delhi. The Complainant claimed Rs.25,00,000/- as compensation. Since her claim was not decided she filed the present complaint. Complaint allowed.

ii) Order appealed against:

Original Complaint.

iii) Parties:

Smt. Munesh Devi - Complainant

Vs.

The U.P. Power Corporation Ltd. & Ors. - Opposite Parties

iv) Case No and Date of Judgement:

Original Petition No.253 of 2002 with IA/543/2013 &

Date of Judgement: 03.02.2014.

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) The complaint was resisted by OP mainly on the ground that the Complainant had approached the Civil Court, the High Court and Supreme Court in respect of exemption of Court fees but her request was not allowed. Therefore, it was claimed that the complaint is barred by principles of *res judicata*. This argument was rejected by the Commission stating that the Supreme Court had remitted the matter back to the National Commission for disposal of the case on merits condoning the delay of 156 days.
- b) The OPs had also contended that the Complainant had an alternative remedy under the Fatal Accident Claims Act. This argument was also rejected on the ground that Section 3 of the Act lay down that the provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.
- c) It was also contended that the accident took place on 05.02.2000 but intimation to the department was not given till 28.07.2000 and the delay was not explained. It was further contended that the Complainant never filed the claim before the OPs. This argument was also rejected on the ground that FIR, Postmortem

report and admission of OP itself clearly showed that the accident took place. It was also known to the MTNL Department and the Complainant got service of Class IV employment on compassionate ground.

- d) The Commission observed that OP was well aware of the fact that the transformer was not working properly. The employees of OP dealt with the matter in a lackadaisical manner till the whole drama ended in the tragic death of Sh.Jagbir Singh. The Commission further noted that there was gross negligence on the part of OP.
- e) Under the circumstances the complaint was allowed and OP was directed to pay a sum of Rs.25,00,000/- to the Complainant along with interest at 9% p.a. from 08.02.2000, the date of her husband death. The Complainant was also awarded compensation in the sum of Rs.10,00,000/- for mental harassment, agony, sadness, anger etc. A further sum of Rs.2,00,000/- was awarded towards litigation charges.

vii) Citation:

Not reported in CPJ and CPR.

3. LIC of India & Anr. Vs. Sri Hari

i) Case in Brief:

The Respondent, Sri Hari, a tailor by profession obtained two Endowment Assurance policies (accident benefit) for Rs.25,000/- and Rs.50,000/- respectively on 25.11.1999 and 10.03.2002. He had been paying monthly premium regularly. On 26.08.2008, when the policy was in currency, Sri Hari was hit by a motor cycle and sustained grievous injuries. He had suffered fracture of left thigh bone, underwent surgery and a steel rod was inserted in his thigh bone. He incurred an expenditure of Rs.75,000/-. It was his case that the doctor had advised him to avoid heavy work and that he would not be able to work on foot pedal tailoring machine because of insertion of steel rod. Claiming that he had suffered permanent disability he filed insurance claim under accident benefit clause of the two polices. The claims were repudiated and a consumer complaint was filed. The District Forum allowed the complaint and directed the OP to pay to the Complainant the accident benefit of the

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two endowment policies within 30 days. The Petitioner's appeal having been dismissed by the State Commission the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 30.08.2011 in Appeal No.1224/2010 of the Karnataka State Consumer Disputes Redressal Commission.

iii) Parties:

LIC of India & Anr.

- Petitioners

Vs.

Sri Hari

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4093 of 2011 & Date of Judgement: 14.02.2014.

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 question that fell for consideration was whether or not the Complainant satisfied the pre-requisite condition for grant of accident benefit to him. It was the Complainant's case that because of the surgery and implant of the rod, he had been advised not to work on foot pedal tailoring machine. Both the fora below had returned concurrent finding agreeing with the Petitioner's contention. The Commission found no reason to interfere with the aforesaid finding of fact given by the fora below. The Commission after considering the disability certificate issued by a qualified orthopedic surgeon held that because of the injury suffered in the accident, the Petitioner had suffered 49% permanent disability as a result of which his functionality was impaired rendering him unable to work on the foot pedal tailoring machine. The Commission held that since the Complainant was a tailor by profession, the incapability caused by the accident had affected his earning capacity. The Commission held that the Complainant fulfilled the condition to avail of the accident clause. The Commission found no jurisdictional error or material irregularity in the orders of the fora below and consequently dismissed the Revision Petition.

vii) Citation:

II (2014) CPJ 276; 2014(1) CPR 689.

4. United India Insurance Co. Ltd. Vs. P.M. Nagesh Nayak & Anr.

i) Case in Brief:

Mrs. Jayanthi Bai, wife of the Complainant/Respondent No.1 obtained a UNI home care policy from the Petitioner valid from 29.08.2006. The policy covered the risk of accidental death. Jayanthi Bai died on 25.02.2007 due to “accidental fall” from the staircase. The Complainant’s claim for insurance was repudiated by the Petitioner on the ground that the death of Jayanthi Bai was not accidental. The District Forum before whom consumer complaint was filed held that the death of Jayanthi Bai occurred because of head injury suffered due to accidental fall and allowed the complaint. Petitioner’s appeal 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 20.03.2009 in Appeal No.2457/2008 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore.

iii) Parties:

United India Insurance Co. Ltd.	- Petitioner
Vs.	
P.M. Nagesh Nayak & Anr.	- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2540 of 2009 & Date of Judgement: 14.02.2014.

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 before the Commission was whether the insured Jayanthi Bai died because of accidental injury or she died a natural death because of heart problem as claimed by the Petitioner.
- b) Jayanthi Bai had also two life insurance policies with LIC. Petitioner placed on record copies of the claim statement, certificate of identity, burial or cremation and requisition letter for claim forms for consideration of death claims submitted to LIC. In all the documents the Respondent No.1 had disclosed the

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immediate cause of death as heart pain. The Commission therefore held that the version of the Respondent that the insured died because of accidental head injury cannot be accepted.

- c) Respondent No.1 produced a certificate from one Dr. M.B. Ravi, as per which he examined Jayanthi Bai on 25.02.2007 at 12.55 pm for severe head injuries and advised that she be admitted to Subaiah Hospital Shimoga for further treatment. The Commission observed that this version in the certificate is in conflict with the averment of the Respondent No.1 in his affidavit filed before the District Forum according to which Dr. Ravi who attended to the insured at the spot declared her dead. The Commission also noted that Respondent No.1 had failed to produce any record from Subaiah Hospital to show that she was brought with the history of head injury due to fall and was declared brought dead. The Commission observed that it is a well settled principle of appreciation of evidence that the person may lie but circumstances do not.
- d) The Commission observed that the fora below had failed to take note of the important factual aspects of the matter and set aside the impugned orders of the fora below. The Revision Petition was allowed and the complaint was dismissed.

vii) Citation:

II (2014) CPJ 388; 2014(1) CPR 686.

**5. Additional Secretary, Chhattisgarh State Power Holding Co. Ltd.
Vs. Bajaj Allianz General Insurance Co. Ltd.**

i) Case in Brief:

Petitioner/Complainant had obtained a Group Personal Accident Insurance Policy for the benefit of its employees from the Respondent/OP Insurance Company, under which a sum of Rs.4,00,000/- was payable in case of accidental death of any employee of the Petitioner/Complainant. One of the employees, Maniram Sahoo, while doing construction work on an electric pole at 36' height, fell down from the said pole and died. Petitioner/Complainant Company paid a sum of Rs.4,00,000/- to the legal representatives of the deceased and claimed

it from the insurance company. The claim was repudiated by the Respondent stating that the employee died due to cardiac arrest. Alleging deficiency in service a consumer complaint was filed by the Petitioner which was allowed by the District Forum. A sum of Rs.4,00,000/- was directed to be paid to the heirs of the deceased along with interest at 6% p.a. from the date of complaint, Rs.5,000/- as compensation for mental harassment and Rs.1,000/- as cost. The appeal filed by the OP was allowed by the State Commission against which the present Revision Petition had been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 23.03.2011 in Appeal No.649/2010 of the Chhattisgarh State Consumer Disputes Redressal Commission.

iii) Parties:

Additional Secretary,

Chhattisgarh State Power Holding Co. Ltd. - Petitioners

Vs.

Bajaj Allianz General Insurance Co. Ltd. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2139 of 2011 & Date of Judgement: 19.03.2014.

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 basic issue to be decided was whether death occurred due to accident and whether the insurance company was liable to pay the claim in accordance with the terms and conditions of the policy.
- b) The Commission observed that as per the post-mortem report the cause of death was cardiorespiratory failure and that the cause of cardiac arrest could be the existence of pre-cardiac disease or even in the absence of such a disease, the cardiac arrest could take place due to shock upon falling from a pole 36' in height. In the event of death by any means, the cardiac arrest or cardiac failure had to take place and only after that a person is usually declared dead. The Commission held that the argument of the

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Respondent that the employee suffered heart attack while working on the pole, died then and there and then fell down was not substantiated by any medical evidence. It was held that the version that because of his fall from the pole he got a shock due to which he suffered a heart attack and died seemed a more plausible explanation. It was further held that the factum of falling from the pole and death did not exclude the incident from the nomenclature of "accident" based on the test of any prudent thinking and common sense.

- c) In the result the National Commission held that the Respondent was liable to pay compensation to the legal heirs of the deceased employee. The Revision Petition was therefore allowed, the order of the State Commission was set aside and the order passed by the District Forum was upheld.

vii) Citation:

II (2014) CPJ 112; 2014(2) CPR 111.

6. United India Insurance Co. Ltd. Vs. P. Sreenivasulu & Anr.

i) Case in Brief:

Complainant/Respondent No.1 took one Group Personal Accident Policy from Petitioner with premium of Rs.1,700/- on 22.09.2003 at N.T.R. Health University, Vijayawada. The policy period was 4 years equivalent to MBBS course. In case of accidental death of earning parent, the Petitioner insurance company had to pay Rs.3,00,000/- to the Respondent No.1 apart from the tuition and boarding fees paid to the college by the insurance company. It is the case of the Complainant that his mother, who was doing cloth business, died due to heart attack suddenly on 27.11.2004. The claim made by the Respondent was repudiated by the insurance company on the ground that heart attack was a natural cause of death and not an accidental death. The District Forum before whom a complaint was filed directed OP No.1 to deposit Rs.3,00,000/- in the name of the Complainant in a Nationalized Bank and to pay monthly interest only to the Complainant by the 10th of every succeeding month and to pay the principal amount of Rs.3,00,000/- after completion of the course. OP No.1 was further ordered to pay only tuition fees directly to the college for the remaining 2 years course.

The complaint against OP No.2 was dismissed. Petitioner's appeal 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 17.01.2007 in Appeal No.304/2006 of the Andhra Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

United India Insurance Co. Ltd.

- Petitioner

Vs.

P. Sreenivasulu & Anr.

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1742 of 2007 & Date of Judgement: 05.05.2014.

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 Group Personal Accident Policy for medical students was designed to give financial help in case of death of the earning parent who was supporting the education of the student and to enable him/her to continue the education. In the instant case, it was admitted that the mother of the student died of heart attack while talking to one Dr.M.Sheshadri Reddy. It was also a fact that the father of the Complainant was an earning parent and is still alive. The Commission further observed that the heart attack did not occur due to any accidental mishap. It was nowhere on record that the mother of the Complainant was paying for the education of the Complainant through her business. The Commission observed that if all deaths, due to medical reasons are to be taken as deaths due to accident, there would no need for a separate accidental policy as one policy i.e. Life Insurance Policy with cover all eventualities. For the above reasons the Revision Petition was allowed and the orders of the State Commission and the District Forum were set aside.

vii) Citation:

II (2014) CPJ 671; 2014(2) CPR 391.

7. Depot Manager, Rajasthan State Transport Corporation & Ors. Vs. Manoj Meena

i) Case in Brief:

Complainant/Respondent's mother was travelling in Bus No.RJ 10P 2811 of OP/Petitioner on 20.11.2005 from Churu to Guddha. The said bus met with an accident and the Complainant's mother died on the spot. Complainant is the only heir of her mother. It was alleged that OP/Petitioner charged Rs.2/- towards insurance premium along with ticket from the mother of the Complainant and as per agreement Complainant was entitled to receive Rs.1,00,000/- from OP and in spite of notice the amount was not paid. It was further submitted that claim before MACT was pending and order granting interim relief had been complied with but that amount was not to be adjusted. Alleging deficiency on the part of OP a complaint was filed before the District Forum. The District Forum allowed complaint and directed OP to pay Rs.25,000/- in addition to Rs.25,000/- awarded by MACT. Both the parties filed appeals before the State Commission which dismissed the appeal of the Petitioner and allowed the appeal of the Respondent and directed Petitioner to pay Rs.50,000/- to the Respondent. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 16.04.2010 in Appeal No.2145/2008 of the Rajasthan State Consumer Disputes Redressal Commission.

iii) Parties:

Depot Manager,

Rajasthan State Transport Corporation & Ors. - Petitioners

Vs.

Manoj Meena - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2551 of 2010 & Date of Judgement: 09.05.2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 12, 13, 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986; Section 146(3) and 175 of the Motor Vehicles Act.

vi) Issues raised and decided:

- a) The National Commission held that the complaint was not maintainable before the District Forum and the Forum committed error in granting compensation and the State Commission committed further error in enhancing the compensation. It was observed that the Hon'ble Supreme Court in *Chairman, Thiruvalluvar Transport Corporation Vs. Consumer Protection Council* (1995) 2 SCC 479 had held that the Claim Tribunal constituted for the area under Motor Vehicle Act had jurisdiction to entertain any claim for compensation arising out of a fatal accident and Consumer Protection Law is a general law and general law must yield to special law. It was further held therein that National Commission was wrong in exercising the jurisdiction and awarding compensation pertaining to fatal accident arising out of use of motor vehicle.
- b) The National Commission noted that the Counsel for the Respondent could not place any document in support of the contention that Rs.2/- was charged by the Petitioner towards insurance of Complainant's mother.
- c) The National Commission further observed that as per the Traveler Accident Compensation Scheme, 2000, any amount under the scheme was payable only towards award passed by MACT. It was held that whatever the amount charged by the Petitioner included in the passenger fare was not towards insurance of the passenger but was towards contribution to fund established by Petitioner for meeting liability arising out of awards passed by MACT. In such circumstances it was held that Respondent was not entitled to any amount in addition to compensation awarded by MACT.
- d) Consequently the orders of the fora below were set aside and the Revision Petition was allowed.

vii) Citation:

II (2014) CPJ 753; 2014(2) CPR 262.

8. Manager, Rajasthan State Transport Corporation & Anr. Vs. Kuldeep Singh

i) Case in Brief:

Complainant/Respondent's father was travelling in bus No.RJ 14 9302 of OP/Petitioner on 30.07.2008 from Nasirabad to Beawar. The said bus

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met with an accident and Complainant's father sustained injuries. He died 31.07.2008. It was alleged that as per agreement Complainant was entitled to receive Rs.50,000/- from OP but in spite of notice, payment was not made. It was further submitted that claim before MACT was pending and order granting interim relief had been complied with but that amount was not to be adjusted. Alleging deficiency in service Complainant approached the District Forum which allowed the complaint and directed OP to pay Rs.50,000/- in addition to Rs.10,500/- for mental agony. Petitioner's appeal was dismissed by the State Commission against which the present Revision Petition had been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 11.04.2012 in Appeal No.96/2012 of the Rajasthan State Consumer Disputes Redressal Commission.

iii) Parties:

Manager, Rajasthan State Transport Corporation & Anr. - Petitioners

Vs.

Kuldeep Singh

- Respondent

v) Case No and Date of Judgement:

Revision Petition No.2843 of 2012 & Date of Judgement: 09.05.2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 12, 13, 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986; Section 146(3) and 175 of the Motor Vehicles Act.

vi) Issues raised and decided:

- e) The National Commission held that the complaint was not maintainable before the District Forum and the Forum committed error in granting compensation and the State Commission committed further error in dismissing the appeal. It was observed that the Hon'ble Supreme Court in *Chairman, Thiruvalluvar Transport Corporation Vs. Consumer Protection Council* (1995) 2 SCC 479 had held that the Claim Tribunal constituted for the area under Motor Vehicle Act had jurisdiction to entertain any claim for compensation arising out of a fatal accident and Consumer Protection Law is a general law and general law must yield to special law. It was further held therein that National Commission

was wrong in exercising the jurisdiction and awarding compensation pertaining to fatal accident arising out of use of motor vehicle.

- f) The National Commission further observed that as per the Traveler Accident Compensation Scheme, 2000, any amount under the scheme was payable only towards award passed by MACT. It was held that whatever the amount charged by the Petitioner included in the passenger fare was not towards insurance of the passenger but was towards contribution to fund established by Petitioner for meeting liability arising out of awards passed by MACT. In such circumstances it was held that Respondent was not entitled to any amount in addition to compensation awarded by MACT.
- g) Consequently the orders of the fora below were set aside and the Revision Petition was allowed.

vii) Citation:

II (2014) CPJ 662; 2014(2) CPR 260.

9. Dabur India Ltd. Vs. Harpreet Singh Oberoi & 3 Ors.

i) Case in Brief:

Complainant/Respondent No.1 was working as Sales Representative with Mirasu Mkt. Ltd. Mumbai (Now Dabur India Ltd, the Petitioner). He purchased a personal accident policy from the insurance company through his employer. Complainant met with an accident on 07.06.2004 and was in hospital till 13.06.2004. The matter was reported to the Police and FIR was registered. According to the Complainant, even after discharge he continued to take treatment and suffered 50% disability. He filed insurance claim with the necessary documents like bills, prescription slips, payment receipts etc., demanding a sum of Rs.1,85,000/-. Since the claim was not settled, he filed complaint before the District Forum which allowed the complaint and directed the insurance company to pay the claim amount of Rs.1,85,000/- and the employer to pay interest at 9% p.a. on the amount of claim and to pay Rs.5,000/- as compensation for non-supply of documents in time and Rs.3,000/- as cost of litigation. No appeal was filed by the employer but on appeal filed by the insurance company, the State Commission ordered

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that all the three Respondents including the insurance company and employer would be jointly and severally liable to pay the entire amount of Rs.1,85,000/-. However the order of the District Forum regarding interest on the claim amount and compensation and litigation cost was maintained. The present Revision Petition has been filed by the employer challenging the said order. Revision Petition allowed.

ii) Order appealed against:

From the order dated 04.07.2012 in Appeal No.1250/2007 of the State Consumer Disputes Redressal Commission, Punjab.

iii) Parties:

Dabur India Ltd. - Petitioner

Vs.

Harpreet Singh Oberoi & 3 Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3656 of 2012 & Date of Judgement: 12.05.2014.

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 the insurance company did not settle the claim on the ground that two documents namely certificate of absence of duty and salary certificate had not been made available to them. The District Forum had reached the conclusion that sufficient documents had been filed for deciding the claim and that the insurance company had been deficient in service. It was also held that for failure of the Petitioner in not supplying the documents they were liable to pay interest on the claim amount and compensation besides litigation costs. Since the said order was not challenged by the Petitioner that part of the order had been become final.
- b) The National Commission did not find any justification for the conclusion arrived at by the State Commission. The salary certificate and certificate of absence of duty were required to calculate the temporary total disablement. There was therefore no justification for putting liability on the Petitioner for the

payment of amount claimed jointly and severally with the insurance company. The Commission therefore set aside the order of the State Commission and confirmed the order of the District Forum.

vii) Citation:

II (2014) CPJ 655; 2014(2) CPR 810.

(b) AIRLINES

1. Anil Goyal Vs. M/s. Indus Airways Pvt. Ltd. & Anr.

i) Case in Brief:

Complainant, Shri Anil Goyal had to attend a business engagement at Gurgaon and he had purchased Air ticket to travel from Chandigarh to Delhi by flight operated by OPs scheduled to leave Chandigarh at 5.30 p.m. on 29.12.2006. Complainant in Complaint No.202 of 2007 Shri Arvinder Pal had to attend a family function at New Delhi on the same day at 8.00 p.m. and booked Air tickets from Chandigarh to Delhi by the same flight. When the Complainants reached the airport around 4.30 p.m. they were informed that the flight had been cancelled. They had to hire taxies to reach Delhi and incurred heavy expenditure apart from suffering mental agony. Alleging deficiency in service they filed separate complaints before the District Forum. The Forum accepted the complaints with cost of Rs.1,100/- and awarded compensation of Rs.10,000/- to each passenger for mental agony besides Rs.4,000/- as refund of taxi charges. Two separate appeals were filed by the Respondent before the State Commission which set aside the orders of the District Forum and dismissed the complaints. Aggrieved by the said order the present Revision Petitions had been filed. Revision Petitions dismissed.

ii) Order appealed against:

Revision Petition No.2712 of 2008

From the order dated 01.04.2008 in Appeal No.20/2008 of the State Consumer Disputes Redressal Commission, Chandigarh.

Revision Petition No.2713 of 2008

From the order dated 19.12.2007 in Appeal No.874/2007 of the State Consumer Disputes Redressal Commission, Chandigarh.

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iii) Parties:

Revision Petition No.2712 of 2008

Anil Goyal - Petitioner

Vs.

M/s. Indus Airways Pvt. Ltd. & Anr. - Respondents

Revision Petition No.2713 of 2008

Mr. Arvinder Pal & Ors. - Petitioners

Vs.

M/s. Indus Airways Pvt. Ltd. & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition Nos.2712 and 2713 of 2008 &
Date of Judgement: 19.03.2014.

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 flight No.09-103 from Mumbai did not land at Chandigarh and therefore flight No.09-202 from Delhi to Chandigarh did not originate. This was due to the fact that a single aircraft was to fly on the sector Delhi – Chandigarh – Mumbai – Chandigarh – Delhi and due to weather condition and the fog which normally occur in northern India in the month of December, the flight schedule was disturbed. Since the flight from Mumbai could not land and due to unavailability of watch hours at Chandigarh it was cancelled and diverted directly to Delhi. The Commission also noted that the scheduled flight was 5.30 p.m. and at 4.30 p.m. Complainants were informed about the cancellation of flight and offered refund.
- b) The Commission did not find any evidence in support of the claim made by the Complainants that the flight was cancelled since only five passengers were scheduled to board the flight at Chandigarh.
- c) The Commission also noted that Complainants did not file any documents to support their argument that the weather conditions were not foggy.

- d) The Commission observed that airlines have to take decisions regarding flight schedules in the interest of passenger safety. These decisions have to be taken as per the weather conditions and the facilities available in the Airport for light landing. It was noted that at Chandigarh the available watch hours were from dawn to dusk.
- e) The Commission found no jurisdictional or legal error in the well reasoned order of the State Commission and accordingly dismissed the Revision Petitions.

vii) Citation:

II (2014) CPJ 78; 2014(2) CPR 50.

(c) ALLOTMENT OF HOUSE / HOUSE SITES

1. Moradabad Development Authority Vs. Gurudeesh Kumar Doda

i) Case in Brief:

Complainant was allotted reserved land under “handicapped category”. OP/Authority enhanced the price of the 200 sq. mtr. plot from Rs.85,000/- to Rs.1,05,000/-. A consumer complaint was filed before the District Forum. When the case was pending an agreement was reached between the parties “that MDA will allot the land on old condition and old rates before March 1992”. The complaint was therefore dismissed after recording the same. The Complainant was allotted plot No.D-104, by lottery draw and was asked to deposit Rs.50,000/- up to 30.07.1992. Complainant deposited Rs.25,000/- on 21.07.1992 and requested for more time to pay the balance. The Complainant was informed vide letter dated 07.12.1993 that the said land came under land ceiling and was offered another land bearing No.D-98. Complainant accepted the same but was not given possession. On 07.12.1994 Complainant was offered the said land at Rs.1,05,000/- and asked to deposit the balance Rs.69,500/-. They also demanded Rs.10,500/- as lease rent for 8 years @ 10%. The Petitioner gave physical possession only after the Complainant was forced to deposit Rs.1,05,000/-. Alleging deficiency in service a consumer complaint was filed. Allowing the same the District Forum directed the authority to repay the escalated money taken by the authority against the compromise and the money

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deposited against lease rent and also to pay Rs.100/- towards litigation expenses. The appeal filed by the authority before the State Commission was dismissed. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 02.09.2005 in First Appeal No.1683/1996 of the U.P. State Consumer Disputes Redressal Commission, Lucknow.

iii) Parties:

Moradabad Development Authority - Petitioner

Vs.

Gurudeesh Kumar Doda - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3758 of 2006 & Date of Judgement: 08.01.2014.

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 second Complainant should have been treated as an Execution Petition as was indicated by the State Commission. It was further observed that the second complaint was barred by principles of *res judicata* but there is no difficulty in treating the same as an Execution Petition.
- b) The Commission observed that the Petitioner had enhanced the value in contravention of the order passed by the District Forum and that they should have followed the directions of the Forum as it had attained finality, qua, both the parties. The Commission further observed that the Petitioner's actions are neither open nor above board. It was held that the Revision Petition was frivolous and had consumed the valuable time of the Commission for 8 years. The Revision Petition was therefore dismissed by imposing costs in the sum of Rs.10,000/- to be paid by the Petitioner to the Complainant within 90 days.

vii) Citation:

I (2014) CPJ 400.

2. Delhi Development Authority Vs. Efficient Offset Printers

i) Case in Brief:

Complainant/Respondent was the successful bidder in the auction of a plot of land by the DDA on 18.09.1996. Despite payment of full amount of Rs.7,55,050/-, possession of the plot was not given to the Complainant. On the contrary, a letter of cancellation was issued on 21.08.1997 and DDA forfeited the earnest money and refunded only 75% of the amount. A consumer complaint was filed before the State Commission with the prayer that either possession of the plot should be handed over to the Complainant or the entire amount paid by him should be refunded with interest, compensation and costs. The State Commission allowed the complaint and ordered full refund together with 9% interest on the forfeited amount and Rs.10,000/- as cost of litigation. Aggrieved by the said order the present appeal had been filed. Appeal dismissed.

ii) Order appealed against:

From the order dated 07.09.2007 in Complaint Case No.C-135/1998 of the Delhi State Consumer Disputes Redressal Commission.

iii) Parties:

Delhi Development Authority	Vs.	- Appellant
Efficient Offset Printers		- Respondent

iv) Case No and Date of Judgement:

First Appeal No.12 of 2008 & Date of Judgement: 10.01.2014.

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 rejected the contention of the appellant that the State Commission had no jurisdiction in the matter as the Complainant, being a purchaser in auction, is not a consumer. The Commission held that the decision of the Apex Court in *U.T. Chandigarh Administration Vs. Amarjit Singh & Ors.*, (2009) 4 SCC 660, cited by the appellant, was in the specific context of the demand for provision of basic amenities in relation to auction of existing sites but was not applicable to consumer complaint

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against forfeiture of earnest money after acceptance of the full bid amount from the auction purchaser and failure to deliver possession to him.

- b) The Commission noted that as per the demand letter dated 24.09.1996, the Complainant was given time till 24.10.1996 only to pay the amount. But the DDA accepted payments well beyond 24.10.1996. The payment of the total sum of Rs.7.55 lakhs was spread over the period from the date of auction on 18.09.1996 to 07.11.1997 when the last payment of Rs.66,300/- was made. The Commission observed that these payments and dates are not denied by DDA. The Commission further noted that the position under the extant Rules notwithstanding, extension of time was not only sought by the Complainant, but was also recommended by the DDA on 05.01.1998 and that the recommendation for extension of time was made by DDA to the Government well after receiving the entire amount from the Complainant. The Commission also noted that while under the Rules the Appellant had authority to deduct the earnest money, it had no authority to accept any payment from the Complainant beyond 180 days without approval of the Government. The Commission held that the State Commission was right in observing that if DDA had authority to condone the delay of 180 days only, it should not have accepted the payment thereafter. Since the appellant/DDA had accepted the full bid amount of the auctioned site and thereafter failed to deliver possession, it was held that the question of forfeiture of the earnest money did not arise.
- c) In view of the above the appeal was dismissed as devoid of merit and the order of the State Commission was confirmed.

vii) Citation:

I (2014) CPJ 295.

3. Blood Donors Cooperative House Building First Society Ltd. Vs. Sh. Ashwani Kumar Munjal & Ors.

i) Case in Brief:

Complainant was a member of the Petitioner society and his name was at serial no.17 in the list prepared on 30.06.1988 for allotment of house. He deposited sums of Rs.9,500/- and Rs.32,000/- as per demand

made by OP No.1 and received allotment letter on 20.04.2000. Subsequently he deposited a sum of Rs.60,502/- being his share of price of land. However, in 2003 he came to know that his name was removed from the list of members. His petition to the Registrar of Cooperative Societies was allowed with direction that a 'B' category flat should be allotted to the Complainant on his depositing the remaining cost of the flat in question. OP No.1 Society demanded a sum of Rs.21,34,000/- which was deposited by the Complainant. He also filed a consumer complaint questioning his removal from the first list and demand of an additional sum of Rs.4,10,727/- towards interest. The complaint was allowed and OP No.1 was directed to refund the sum of Rs.4,10,727/- with interest at 9% besides Rs.50,000/- for mental agony and Rs.10,000/- towards cost of litigation. Appeal preferred by the OP 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 11.12.2012 in First Appeal No.244/2012 of the State Consumer Disputes Redressal Commission, U.T. Chandigarh.

iii) Parties:

Blood Donors Cooperative
House Building First Society Ltd. - Petitioner

Vs.

Sh. Ashwani Kumar Munjal & Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2251 of 2013 & Date of Judgement: 15.01.2014.

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 question that fell for consideration was whether charging of interest by OP No.1 society for the period of deprivation of the Complainant (when he was deprived of the allotment letter and possession of the flat) was in order. The Commission, after going through the letters dated 25.07.2008 and 19.09.2008 of Complainant to the President of the OP society held

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that both the letters indicated protest and the interest deposited by the Complainant was not voluntarily done. The Commission also noted that the name of the Complainant was removed from the list of members in the year 2003 and thereafter he had to run from pillar to post in order to get allotment of the flat from OP No.1 and finally he got the order from the RCS in his favour. The Registrar in his order had specifically mentioned the entitlement of OP No.1 to the cost of land and the cost of construction of flat only and not to charge any interest.

- b) The Commission held that OP No.1 had acted arbitrarily and not complied with the order of RCS by charging Rs.4,10,727/- as interest for the period from January 2002 to July 2008 which amounted to deficiency in service. The Revision Petition was accordingly dismissed as devoid of merit.

vii) Citation:

I (2014) CPJ 367; 2014(1) CPR 419.

4. Rajasthan Housing Board Vs. Vimal Chand Jain

i) Case in Brief:

Complainant got registration of the house in the year 1989 in the "disabled" category with the Petitioner/OP and paid Rs.2,000/- on 21.08.1989 and Rs.3,500/- on 03.03.1993. Complainant, when asked, gave his option for hire purchase system in the Sanganer Scheme. Since OP failed to allot the house, Complainant filed complaint before the District Forum. The Forum, vide order dated 03.06.2006, allowed the complaint and directed the OP to include the name of the Complainant in the lottery to be drawn in Sanganer Scheme and if his name is found in the draw, to adjust the amount already paid with 9% interest in the total amount to be deposited. OP's appeal was dismissed by the State Commission. Since the order was not implemented, Complainant filed contempt petition before the Executing Court for non-compliance of the order. The Contempt Petition was dismissed since the Petitioner Board produced papers for allotment of plot. Complainant filed First Appeal before the State Commission. The appeal was admitted vide impugned order directing OP to allot independent LIG House at the then rate having an area of 60 sq. mtr. and value of Rs.1,97,746/-.

Aggrieved by the said order the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 10.06.2013 in Appeal No.173/2010 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

iii) Parties:

Rajasthan Housing Board - Petitioner

Vs.

Vimal Chand Jain - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3820 of 2013 & Date of Judgement: 20.01.2014.

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 State Commission had dismissed the original cross appeals filed by the both parties vide its order dated 06.08.2008 and that the Executing Court cannot go behind the decree. The Commission further observed that the order passed by the District Forum dated 03.06.2006 had become final and consequently the order passed by the State Commission could not be faulted. It was held that it was in tune with the previous orders passed by the District Forum and the State Commission. The Revision Petition was accordingly dismissed.
- b) The Commission directed OP to comply with the order of the State Commission within 120 days and hand over the plot to the Complainant and to issue fresh notice to the Complainant to pay the residual amount. The Commission further directed that in case of non implementation of the order within 120 days, the Petitioner/OP will liable to pay Rs.5,000/- to the Complainant as penalty till the plot is handed over to him.

vii) Citation:

2014(1) CPR 391.

5. Santosh Kumar Bajpai Vs. Registration U.P. Housing and Development Council & Anr.

i) Case in Brief:

Petitioner filed an application for allotment of a house with the Respondents in the year 1979 and deposited the requisite fee of Rs.50/-. At that time the price of the house was indicated as Rs.7,500/-. After a gap of 17 years after registration, Respondents offered him a house for which he deposited a sum of Rs.2,000/- to the UCO Bank, Kanpur on 26.08.1996. Later, the Respondents asked for payment of enhanced price of Rs.84,704/-. The Petitioner, however, insisted on payment of original price of Rs.7,500/- as determined in the year 1979. Since his request was not accepted, he filed a consumer complaint before the District Forum. The complaint was partly allowed directing the Respondents to refund the amount of Rs.2050/- along with interest at 12% p.a. within two months in case the Petitioner was not willing to accept the house at the enhanced rate. Petitioner's appeal 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 05.01.2010 in F.A.No.1169/2002 of the U.P. State Consumer Disputes Redressal Commission, Lucknow.

iii) Parties:

Santosh Kumar Bajpai - Petitioner

Vs.

Registration U.P.
Housing and Development Council & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.515 of 2013 & Date of Judgement: 23.01.2014.

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 dismissed the Revision Petition both on grounds of delay and on merits.

- b) As regards the application for condoning the delay of 1043 days in filing the Revision Petition, the Commission held that the explanation given by the Petitioner was vague and general without any documents to support. He had not indicated as to when his wife died and on which dates he visited the State Commission before and after the death of his wife to enquire about the status of his appeal. The Commission held that the reasons given by the Petitioner cannot be regarded as “sufficient cause” for condoning the inordinate delay of 1043 days.
- c) On merits the Commission found that the State Commission had passed a well reasoned order pointing out that it’s a long settled view that the Development Authority has a right to escalate the price of a plot or house provided there is justification for it. The State Commission had noted that the price of Rs.7,500/- fixed in 1979 was not determined for all times to come. With the passage of time, cost of building material, land and properties escalated many fold and it was held that the OP’s offer for allotment made to the Complainant vide its letter dated 26.08.2006 was justifiable and sustainable. The National Commission agreed with the views of the State Commission terming it fair and just.
- d) The Commission found no reason to interfere with the impugned order while exercising revisional jurisdiction under Section 21(b) of the Act. The Revision Petition was accordingly dismissed.

vii) Citation:

I (2014) CPJ 299; 2014(1) CPR 355.

6. M/S. J.M.D Limited, through its General Manager (Marketing) Vs. Meenu Aggarwal

i) Case in Brief:

Complainant/Respondent was allotted a flat for Rs.28,59,375/-. Complainant paid Rs.3,00,000/- on 07.10.2004, Rs.7,67,723/- on 24.03.2006 and Rs.2,00,000/- on 22.05.2006 and also claimed to have paid Rs.5,70,000/- in cash to Mr. Anil Sharma and Mr.Rajesh Soni on 24.03.2006 as premium for adjustment. It is the Complainant’s case that due to her mother’s hospitalization and death on 11.05.2007, she was not able to pay the installments in time. She received a letter on 09.10.2007 informing her of cancellation of flat. Though she was

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prepared to pay all dues with interest at 18% p.a. as per condition No.8 of the agreement, OP was not prepared to accept the same. She filed complaint first before the District Forum and later before the State Commission. Allowing the complaint, the State Commission, vide impugned order directed OP to allot flat along with 18% p.a. interest on due installments against which the present appeal had been filed. Appeal was allowed and the impugned order of the State Commission was set aside.

ii) Order appealed against:

From the order dated 06.12.2012 in Complaint No.19/2012 of the Haryana State Consumer Disputes Redressal Commission.

iii) Parties:

M/S. J.M.D Limited
Through its General Manager (Marketing) - Appellants

Vs.

Meenu Aggarwal - Respondent

iv) Case No and Date of Judgement:

First Appeal No.135 of 2013 & Date of Judgement: 07.02.2014.

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 though in the complaint filed before the District Forum, the Complainant had conceded receipt of reminders sent by OP during March and April 2007 but in the present complaint she intentionally denied receipt of reminders sent by OP. OP had placed on record reminders sent on several dates. The Commission observed that clause 7 of the agreement provided for cancellation of the flat on account of non-payment of the due installments. Though clause 8 of the agreement enabled OP to accept payment of due installments along with 18% interest p.a. but this clause did not give any right to the Complainant to make payment of due installments with interest as of right and Complainant did not get the right to compel OP to accept payment and not to cancel allotment.

- b) The Commission further observed that the Complainant did not adduce any evidence in support of her claim that she had paid Rs.5,70,000/- in cash to Mr. Anil Sharma and Mr.Rajesh Soni. It was held that the State Commission had committed error in holding that Rs.5,70,000/- had been paid by the Complainant to OP.
- c) The Commission held that there was no deficiency in service on the part of OP in cancelling the allotment as per clause 7 of the buyer agreement as the Complainant had failed to make payment of due installments. It was further held that the State Commission had committed error in allowing complaint. Consequently the impugned order was set aside and the complaint stood dismissed.

vii) Citation:

I (2014) CPJ 558.

7. M/s. Lakshmi Vatika Limited & 2 Ors. Vs. Ravi Rai Khurana

i) Case in Brief:

Petitioner No.1, Lakshmi Vatika Limited had collected money from the public towards booking residential plots. However due to some lapses on the part of the persons in control of the company, civil as well as criminal cases came to be filed against the company and the directors. Shri Sanjeev Anand, Petitioner No.2 was a director in M/s. Mastiff Buildcon Pvt. Ltd. who had entered into a collaboration agreement with Mrs. Lakshmi Vatika Limited to develop the project of the company at Dehradun. Complainants, five in number filed cases before the District Forum. On 08.02.2011 ex-parte final order was passed by the District Forum. The complaints were allowed and Complainants were awarded the principal amount, compensation and interest at 9% p.a. On 09.05.2011, the Respondents filed execution application against Petitioner No.1 before the consumer fora. On 16.07.2013 non-bailable warrants were issued against the Petitioners 2 and 3 by consumer fora as the Judgment Debtors had not filed list of directors. An undertaking was given on behalf of Petitioner Nos.2 and 3 to pay 50% of the principal amount by 16th December, 2013 and the remaining by first week of 2014. An appeal was preferred against the said order before the State Commission which stayed the District Forum's order including the undertaking provided the appellant paid half of the decretal amount

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within 15 days and the remaining half within three months from the date of order. The Petitioners challenged this order also through the present Revision Petitions (five in number) before the National Commission. Revision Petitions dismissed with costs.

ii) Order appealed against:

From the order dated 03.01.2014 in Appeal No.1325/2013 of the Delhi State Consumer Disputes Redressal Commission.

iii) Parties:

M/s. Lakshmi Vatika Limited & 2 Ors. - Petitioners

Vs.

Ravi Rai Khurana - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1046 of 2014 & Date of Judgement: 18.02.2014.

v) Acts and Sections referred:

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

vi) Issues raised and decided:

The National Commission observed that the Judgment of the District Forum dated 08.02.2011 had attained finality and no appeal was preferred against the order. It was noted that Complainants had given amounts to the Petitioners on 29.12.2006. Eight years had elapsed and the Petitioners had taken the undertaking given by them lightly. The Commission rejected the argument that the undertaking was signed under the threat of arrest. It was noted that NBWs were issued against them as far back as on 16.07.2013. The State Commission gave them time for 15 days to deposit 50% of the principal amount vide order dated 03.01.2004. The Complainants were so powerful that they managed to see that the NBWs were not executed till date. The Commission observed the fora below had already taken a lenient view against the Petitioners. Finding no illegality or impropriety in the order passed by the State Commission, the Commission dismissed the Revision Petitions with costs of Rs.10,000/- each upon the Petitioners under Section 26 of the Act. The amounts were to be paid the Complainants within 90 days failing which it would carry 12% interest p.a. till realization.

vii) Citation:

II (2014) CPJ 509.

8. M/s. Ravi Development Builders and Developers & 3 Ors. Vs. Jayantibhai V Ranka & Anr.

i) Case in Brief:

Respondents 1 and 2 were jointly allotted a bungalow in the project launched by the Petitioner. They had paid an amount of Rs.3,32,000/- being part consideration. It is their grievance that Petitioners had not executed regular agreement for sale and never informed them that local authorities had raised certain technical objections. In the meanwhile Respondent No.2 without the knowledge of Respondent No.1 had accepted an amount of Rs.1,00,000/- from the Petitioner in the year 2002. Respondent No.1 served legal notice on 17.09.2012. In reply Petitioners stated for the first time that the allotment of Respondent No.1 had been cancelled and terminated 1996. It is the Respondent's contention that after the alleged termination, Petitioners had received a sum of Rs.75,000/- from Respondent No.1. A consumer complaint was filed by the Respondent No.1 before the State Commission which was resisted by the Petitioners as hopelessly barred by limitation. The State Commission held that claiming possession was a continuous cause of action and that there was no delay on the part of the Complainant. Challenging the said order the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 09.12.2013 in Appeal No.53/2013 of the Maharashtra State Consumer Disputes Redressal Commission.

iii) Parties:

M/s. Ravi Development Builders
and Developers & 3 Ors.

- Petitioners

Vs.

Jayantibhai V Ranka & Anr.

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1058 of 2014 & Date of Judgement: 18.02.2014.

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 Petitioners had received a sum of Rs.3,32,000/- from the Respondents. There was no explanation as to

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why the bungalow in question had not been allotted to Respondent No.1 and why regular agreement for sale had not been executed though the allotment letter was dated 20.01.1995. It was also noted that the Petitioners after alleged termination of allotment had accepted Rs.1,00,000/- from Respondents 1 and 2 jointly on 01.08.1996 and a further sum of Rs.25,000/- jointly on 18.11.1996. The Commission wondered how the allotment in such a case could have been cancelled in March 1996. This showed the mala fide act on the part of the Petitioners. It was further noted that the Petitioners had neither refunded the amount paid by the Respondent No.1 nor handed over the possession of the bungalow. It was therefore held that there was no legal infirmity in the order of the State Commission that there was continuous cause of action till allotment of site or refusal. The same view had been held in *Lata Construction & Others Vs. Dr. Rameshchandra Ramniklal Shah & Another*, III (1999) CPJ 46 (State Commission). The Commission accordingly confirmed the order of the State Commission and dismissed the Revision Petition.

vii) Citation:

I (2014) CPJ 535; 2014(1) CPR 733.

9. Delhi Development Authority Vs. D.C. Sharma

i) Case in Brief:

Respondent/Complainant had applied for allotment of flat and deposited earnest money of Rs.15,000/-. He was successful in the draw of lots held on 21.03.1997 and was allotted flat bearing No.440 Type-A in Sector B-4. The cost of flat was shown as Rs.5,16,300/-. Respondent deposited Rs.15,000/- as confirmation money on 10.02.2000. Being a Government servant he wanted to avail loan facility and sought permission from the Petitioner for grant of necessary mortgage. No permission was forthcoming. Respondent came to know from Petitioner's letter dated 13.12.2006 in response to his application under RTI Act that the flat allotted to him had already been allotted in favour of Smt. Santosh Minhas through draw of lots held on 28.03.1995. Respondent served a legal notice upon the Petitioner but to no avail. He filed a consumer complaint before the District Forum which was dismissed. But the State Commission on appeal, passed the impugned order directing the Respondent to return back the entire Rs.30,000/- received

from the Complainant and provide another flat of the same description, on the same condition, in the same locality or nearby and in case no flat is available to pay the appellant Rs.30,00,000/- because of sky rocketing prices. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition dismissed with punitive costs.

ii) Order appealed against:

From the order dated 15.01.2013 in Appeal No.705/2010 of the Delhi State Consumer Disputes Redressal Commission.

iii) Parties:

Delhi Development Authority - Petitioner

Vs.

D.C. Sharma - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.895 of 2013 with IA/1620/2013, IA/4046/2013, IA/5407/2013 & Date of Judgement: 18.02.2014.

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 in his written statement had stated that the Respondent's case was examined for allotment of flat but he was not found entitled for allotment as he had deposited only the confirmation amount and failed to deposit the cost of the flat and that the allotment stood cancelled on account of non-payment of the demanded amount. The Commission wondered how the Respondent could be expected to deposit the cost for a non-existent flat when it is the Petitioner's own case that it had been allotted to Smt. Santosh Minhas in 1995 itself and she had paid the entire cost. No explanation was forthcoming for the goof up in allotting the same flat to the Respondent in 1997. There was nothing on record to show that when such a glaring mistake came to his knowledge, Petitioner ever took any step to apprise the Respondent about such mistake.
- b) The Commission observed that the Petitioner had filed a written statement in a mechanical manner without going through the contents properly. The defence of the Petitioner was based on the

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falsehood and was taken just to save and protect its delinquent officials.

- c) Relying on the judgments of the Hon'ble Apex in *Dalip Singh Vs. State of U.P.* (2010) 2 SCC 114; *Bikaner Urban Improvement Trust Vs. Mohal Lal* 2010 CTJ 121 and *Ramrameshwari Devi and Ors. Vs. Nirmala Devi and Ors.* Civil Appeal No.4912-4913 of 2011 decided on July 4, 2011, the Commission not only dismissed the Revision Petition but also imposed punitive damages amounting to Rs.5,00,000/- upon the Petitioner for indulging in unfair trade practice and causing undue harassment to the Respondent. Rs.2,50,000/- was to be paid to the Respondent and remaining Rs.2,50,000/- was to be deposited in the Consumer Legal Aid Account to the Commission within 8 weeks. It was further ordered that the damages should be recovered from the salaries of the delinquent officials who had been pursuing the meritless litigation with the sole aim of wasting the public exchequer.

vii) Citation:

I (2014) CPJ 473; 2014(1) CPR 723.

10. Krishan Vs. The Estate Officer, HUDA

i) Case in Brief:

Petitioner purchased a plot, vide re-allotment letter dated 19.04.2005, from one Harinder Singh who had bought it from Anil Kumar Daver who was the original allottee in 1990. The Petitioner had alleged that though he had deposited the entire amount, the Respondent failed to deliver physical possession of plot in question and provide basic amenities in the area. Alleging deficiency in service he filed consumer complaint. Allowing the complaint the District Forum directed the Respondent to allot an alternative plot in the same sector on similar price and not charge any interest. It further directed the Respondent to pay Rs.1,00,000/- to the Petitioner on account of escalation in the construction cost, Rs.20,000/- on account of mental agony and Rs.2,000/- as litigation expenses. Respondent's appeal was allowed by the State Commission vide impugned order against which the present Revision Petition had been filed along with an application for condonation of delay. The Revision Petition, being barred by limitation as well as on merit, was dismissed with costs.

ii) Order appealed against:

From the order dated 05.04.2011 in Appeal No.FA-2403/2005 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

Krishan - Petitioner

Vs.

The Estate Officer, HUDA - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2221 of 2012 with IA/02/2012 (For condonation of delay) & Date of Judgement: 05.03.2014.

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 pleaded that he was not in the knowledge of the fact that any appeal was filed by the Respondent before the State Commission nor the order passed by the State Commission was received by the Petitioner as it was not sent at proper and new address. The Commission however noted from the record that free copy of the impugned order had been supplied to the Petitioner as early as on 03.05.2011 and there was an endorsement to that effect on the certified copy of the impugned order. It was therefore held that the Revision Petition was hopelessly barred by limitation. Relying 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; *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 gross negligence, deliberate inaction and lack of bona fides are imputable to the Petitioner and that there were no grounds for condonation of delay.
- b) Even on merits the Commission observed that the State Commission had rightly held that "a re-allottee cannot be treated as 'Consumer' and therefore cannot take the plea that the area was not developed".

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- c) The Commission held that there was no illegality or infirmity in the order of the State Commission and dismissed the Revision Petition, being barred by limitation as well as on merits, with costs of Rs.5,000/- to be deposited in the name of the Consumer Legal Aid Account of the Commission.

vii) Citation:

2014(1) CPR 561.

11. Punjab Urban Planning & Development Authority Vs. Kanwal Preet Singh

i) Case in Brief:

Respondent/Complainant filed a consumer complaint against the Petitioner before the District Forum, Patiala asserting that he had purchased plot No.418 in Urban Estate, Phase-1, Patiala from Shri. M.P. Singh and Smt. Gurdip Kaur who had purchased the said plot in open auction conducted by PUDA. The said plot was transferred in the name of Respondent after following proper procedure. After re-allotment letter the Respondent deposited installments as per payment schedule but the possession was not handed over to the Respondent. The original allottees filed a civil suit but no injunction was granted in their favour. Claiming that the refusal on the part of the Petitioner to hand over the possession to the Respondent amounted to gross deficiency in service, consumer complaint was filed. The District Forum partly allowed the complaint and directed OP to hand over possession of the plot subject to the civil suit pending between the original allottees and the Complainant. Respondent filed an appeal before the State Commission which allowed the same and also directed payment of Rs.1,00,000/- as escalation of construction cost due to late delivery of possession. The Petitioner who did not challenge the order of the District Forum, filed the present Revision Petition challenging the order of the State Commission. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 30.11.2012 in First Appeal No.459/2008 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh.

iii) Parties:

Punjab Urban Planning & Development Authority - Petitioner

Vs.

Kanwal Preet Singh - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.888 of 2013 with IA/1608/2013 (For Stay) & Date of Judgement: 12.03.2014.

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 entire case of the Petitioner/Authority was based on the premise that since the civil suit was pending between the parties, possession could not be delivered to the Respondent. During the course of arguments, the counsel for the Petitioner submitted before the Commission that possession of plot in question had been handed over to the Respondent on 04.06.2008 in compliance to the order dated 12.02.2008 passed by the District Forum. The Commission observed that it was strange that the Petitioner handed over the plot in question on 04.06.2008 after delaying the same for about three years when the civil suit was pending. This act of the Petitioner showed that he was at fault. In the circumstances the Commission held that the State Commission had rightly passed the impugned order and that there was no case for interference in exercise of the power given under Section 21(b) of the Act. The Revision Petition was accordingly dismissed.

vii) Citation:

2014(2) CPR 223.

12. Haryana Urban Development Authority Vs. M/s. Sun Rise Engineering Corporation

i) Case in Brief:

Respondent/Complainant was allotted plot No.28 and 29 in Sector-5, Industrial Estate, Faridabad, in July, 1983 at Rs.109/- per sq. yard. In pursuance of the allotment, Petitioner offered possession twice but these offers were only on paper and physical possession was not given

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due to encroachment by Jhuggi dwellers over the allotted plots. Respondent filed a consumer complaint before the District Forum which passed two orders, one by the President on 04.11.1997 directing the Petitioner to allot alternate industrial plot in Sector-59 at the original rate and the other by two Members of the Forum on 25.11.1997 directing the Petitioner to allot alternate plot in Sector-59 of the same size at the original price of Rs.109/- per sq. yard and to pay compensation of Rs.2.25 lakhs and further to pay compound interest at 10% p.a. on the amount of the Complainant lying deposited with the Petitioner. On appeal filed by the Petitioner, the State Commission set aside the order passed by the Members on 25.11.1997 and upheld the order passed by the President on 04.11.1997. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 21.12.1998 in Appeal No.FA-757/1997 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

Haryana Urban Development Authority - Petitioner

Vs.

M/s. Sun Rise Engineering Corporation - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1108 of 1999 with IA/1242/2014 (for status quo) &

Date of Judgement: 13.03.2014.

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 took note of the affidavit filed by the Respondent on 06.12.2013 stating that he had already been allotted Industrial Plot No.13, Sector-59, Industrial area on leasehold basis vide allotment letter dated 28.04.2000 and that since the Petitioner had complied with the direction given by the fora below, the Revision Petition had become infructuous. The Petitioner had stated that the allotment had been made subject to the outcome of the Revision Petition. The Commission observed that when it was in the knowledge of the Petitioner that the plots in question were occupied by unauthorized jhuggi dwellers then

why at the first instance the same were allotted to the Respondent. The Commission observed that the Petitioner had adopted unfair trade practice in the present case and had no explanation to offer. Since more than 13 years had passed, the Petitioner cannot take shelter on the plea that possession of the plot handed over in the year 2000 was subject to the outcome of the present petition. It was held that the present Revision Petition had become infructuous the moment Petitioner had handed over possession of the plot to the Respondent in the year 2000. The Commission did not find any illegality or infirmity in the orders passed by the State Commission and accordingly dismissed the Revision Petition as devoid of merit.

vii) Citation:

Not reported in CPJ and CPR.

13. Jaibir Singh Vs. HUDA & 2 Ors.

i) Case in Brief:

Complainant/Petitioner purchased plot in the year 1994 from OP/ Respondent. Complainant sought possession but OP disclosed that the plot was omitted from Zonal Plan. Alleging deficiency on the part of OP, Complainant filed complaint which was allowed. OP filed appeal which was dismissed by the State Commission vide order dated 03.08.1998. OP offered alternate plot but demanded market price at the rate Rs.3,850/- per sq. yard. Complainant asked for an allotment at the price of which original plot was allotted. Complainant also filed execution petition before the District Forum. Since no order was passed, he filed another complaint before the District Forum. Allowing this complaint, the District Forum directed OP the charge price of alternate plot equal to the price at which original plot was given. It was further observed that any excess payment made by the Complainant should be refunded with interest at 9% p.a. Appeal filed by the Petitioner was allowed 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 16.05.2012 in Appeal No.1284/2009 of the Haryana State Consumer Disputes Redressal Commission.

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iii) Parties:

Jaibir Singh

- Petitioner

Vs.

HUDA & 2 Ors.

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3449 of 2012 & Date of Judgement: 19.03.2014.

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 District Forum had directed OP to deliver possession of alternate plot within two months and further allowed interest for the period of delay in handing over possession. The said order was confirmed by the State Commission. OP, instead of implementing the order offered alternate plot vide letter dated 19.02.2004 at a higher price. It was held that OP's letter was in violation of the order of the State Commission which had attained finality.
- b) The Commission observed that the State Commission had taken an erroneous view that remedy for seeking alternate plot at the rate at which original plot was allotted was not claimed or if claimed and not granted would amount to denial of relief.
- c) The Commission further held that the Respondent intentionally harassed the Complainant by demanding price of plot at market rate.
- d) Consequently the Revision Petition was allowed, the order of the State Commission was set aside and the order of the District Forum was affirmed.

vii) Citation:

II (2014) CPJ 154; 2014(2) CPR 114.

14. Meerut Development Authority Vs. Om Prakash Gupta & Anr.

i) Case in Brief:

Complainants had applied for allotment of a plot admeasuring 600 sq. mts. under the Industrial Estate Scheme and deposited a sum of Rs.5,000/- on 31.08.1997 with the Vice Chairman of the Petitioner

Authority. Complainants did not hear from the OP till 24.11.2005. In response to their notice, OP replied that the said scheme was abandoned and the Complainant was asked to surrender the original receipt in the sum of Rs.5,000/-. Complainants filed complaint in the District Forum which was partly allowed. OP was directed to either allot a plot in any of the schemes at previous rates to the Complainants or to pay interest on the amount deposited by the Complainant at 12% p.a. along with Rs.5,000/- as compensation and Rs.3,000/- as costs. Complainants did not file any appeal against the order. However first appeal was filed by OP. The State Commission passed an order in favour of the Complainant directing OP to allot a plot in one of the schemes within a period of two months at the then prevailing old rates, *inter alia* adjusting the amount deposited by Complainants earlier. Aggrieved by the said order OP had filed the present Revision Petition. Revision Petition partly allowed and the order of the District Forum was restored. A compensation of Rs.1,00,000/- was awarded to the Complainants.

ii) Order appealed against:

From the order dated 19.04.2012 in Appeal No.361/2011 of the Uttar Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

Meerut Development Authority - Petitioner

Vs.

Om Prakash Gupta & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2530 of 2012 & Date of Judgement: 11.04.2014.

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 OP did not make any effort to return the money or even send a notice to the Complainants to get the refund and that the OP had acted in an arbitrary manner. The Commission however did not agree with the Complainant that he was entitled to the allotment of the plot since he did not acquire a legal right for allotment of a plot until and unless he was successful in the draw of lots.

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- b) Consequently the Commission restored the order of the District Forum and directed OP to refund the amount deposited by the Complainant and further directed to pay Rs.5,000/- as compensation and Rs.3,000/- as costs as directed by the District Forum, failing which to pay penalty in the sum of Rs.1,000/- per day till realization.
- c) Since almost 27 years had lapsed since the money was deposited with the OP, the Commission awarded compensation in the sum of Rs.1,00,000/- in addition, to the Complainants for the harassment, anger, anguish and frustration caused to them by OP within 90 days of receipt of the order, failing which it would carry interest at 9% p.a. till realization.

vii) Citation:

II (2014) CPJ 652; 2014(2) CPR 582.

(d) ALLOTMENT OF SHOP / BOOTH

1. Chandigarh Housing Board Vs. Mrs. Anju Bhanot

i) Case in Brief:

The Complainant/Respondent (Mrs. Anju Bhanot) who is the General Power of Attorney (GPA) holder of the allottee Gagan Singh purchased commercial booth from OP by paying Rs.5,37,500/- (25% of the total premium of Rs.21,50,000/-) As per the version given in the complaint, the complainant continued to make payment of the balance amount to the appellant/opposite party along with interest. The complainant has alleged that vide their letters dated 31.07.2003 and 04.08.2003, they sought details of the pending payments from the appellant/opposite party, but the appellant/opposite party never replied to said letters. According to the complainant, full and final payment had been made to the opposite party. On 19.02.2008, they wrote to the opposite party to issue a no due certificate regarding the said property, but they were shocked to receive a demand of Rs.5,63,482/- from the opposite party against the said booth. The complainant, alleging harassment and high-handedness on the part of the opposite party, filed the complaint before the State Commission which held that since the Complainant had deposited certain sums in advance of the due date, it was obligatory

on the part of the opposite party to return the excess amount paid, or to pay interest on the said amount and also directed that the opposite party should pay interest at bank FDR rates to the complainant on the excess amount and also to pay Rs.25,000/- as compensation for mental agony and Rs.5,000/- as costs. It is against this order that the present first appeal has been filed. First Appeal allowed.

ii) Order appealed against:

Against the Order dated 22.01.2009 in Complaint No.7/2008 of the State Commission Chandigarh.

iii) Parties:

Chandigarh Housing Board - Appellant

Vs.

Mrs. Anju Bhanot - Respondent

iv) Case No and Date of Judgement:

First Appeal No.131 of 2009 & Date of Judgement: 23.04.2014.

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 allowed the revision petition and set aside the order of the State Commission by assigning the following reasons:

- a) The position regarding the payment of balance amount along with interest, had been very clearly mentioned and the due dates as well as the last dates of payment of installments, had also been clearly specified. The complainant, who was the G.P.A. holder of the original allottee Gagan Singh, is supposed to be in the knowledge of the contents of the allotment letter.
- b) State Commission have taken an erroneous view of the whole situation in allowing the Complainant and the payment of FDR interest on the excess amount paid by them to the opposite party.
- c) The allottee of the booth was Gagan Singh and possession of the same was also delivered to him. The complaint in question could have been filed by Gagan Singh only, whereas the complaint was filed by the complainant as G.P.A holder, which was not permissible in law.

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d) There had not been any deficiency in service or unfair trade practice on the part of the opposite party, rather the complainant had failed to make payment, as per the schedule given in the allotment letter.

vii) Citation:

II (2014) CPJ 522; 2014(2) CPR 513.

(e) AUTOMOBILES

1. Maruti Udyog Limited and Anr. Vs. Shri J. Teja

i) Case in Brief:

Complainant/Respondent purchased Car HR 26D 7409 from one Rajesh Sagar who had purchased the vehicle in auction on “as is where is” basis from OP No.2/Appellant No.1. In March 1999, due to some technical fault the vehicle was given for repairs to Maruti Sales and Service, OP No.1/Appellant No.2. Rs.18,000/- was paid but it was alleged that the fault was not rectified. The vehicle was again given for repairs to OP No.1 who delivered it after 53 days and charging Rs.46,818/- without rectifying the defect. Complainant spent another Rs.28,000/- towards denting/painting. Alleging deficiency in service he filed complaint before the State Commission. The State Commission vide impugned order allowed the complaint and directed the OPs to refund Rs.92,218/- along with litigation cost of Rs.2,500/-. Aggrieved by the said order the present appeal had been filed. Appeal allowed.

ii) Order appealed against:

From the order dated 13.04.2007 in Complaint No.155/2001 of the Delhi State Consumer Disputes Redressal Commission.

iii) Parties:

Maruti Udyog Limited and Anr. - Appellants

Vs.

Shri J. Teja - Respondent

iv) Case No and Date of Judgement:

First Appeal No.344 of 2007 & Date of Judgement: 11.02.2014.

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) Appellant No.1/OP No.2 contended before the Commission that there was no privity of contract between the Complainant and OP No.2 and that the State Commission had erred in allowing complaint and directing to refund expenses even on denting/painting and cost of spare parts. The Commission noted that the vehicle which was of 1997 model was purchased on "as is where is" basis by Rajesh Sagar from OP No.2, in an auction and the Complainant had purchased it from the said Rajesh Sagar. There was no privity of contract between the Complainant and OP No.2. It was further noted that the Complainant had not impleaded Rajesh Sagar as a party in the complaint. There was no evidence that OP No.2 was paid any amount by the Complainant towards repair of the vehicle. It was therefore held that the State Commission had committed error in allowing complaint against OP No.2/Appellant No.1.
- b) As far as denting/painting charges are concerned, the Commission observed that the Complainant had not placed bills on record to substantiate that he paid Rs.28,000/- towards denting/painting to OP No.1. Even if there was any bill Complainant could not show any deficiency in service regarding denting/painting and consequently it was held that he was not entitled to refund of Rs.28,000/- which had been allowed by the State Commission.
- c) It was further observed that after the first repair in March 1999, the vehicle was in running condition till March 2000 when it picked up technical faults. In the meantime the vehicle had run more than 3000 kms. It was therefore held there was no deficiency in service in repair of old vehicle for Rs.18,000/- in March 1999.
- d) As far as repairs in March 2000 is concerned it was noted that Rs.48,133.62 had been charged for spare parts and only Rs.1,300/- for labour work. Respondent had not disputed replacement of parts and in such circumstances it was held that no deficiency of service can be attributed on the part of OP No.1.

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e) In view of the above the Commission held that the State Commission had erred in allowing the complaint without any evidence on record. The impugned order was therefore set aside and the appeal was allowed.

vii) Citation:

I (2014) CPJ 581; 2014(1) CPR 497.

2. M/s. Nugas Technologies India Private Ltd. Vs. The Principal Geeta Bal Bharti Varisht Madhyamic Vidyalaya

i) Case in Brief:

Complainants/Respondents in both the cases deposited a sum of Rs.25,000/- with Petitioners/OP for converting buses into CNG out of which it was claimed that Rs.5,000/- was security amount and Rs.20,000/- was advance money. The Complainants came to know from the newspaper that CNG fitted buses were not working properly. They therefore decided to purchase new buses fitted with CNG kit from the company itself and asked OPs to refund the amount. Since the amount was not refunded they filed consumer complaints before the District Forum which were dismissed. The Appeals filed by the Complainants were allowed by the State Commission vide impugned order against which the present Revision Petitions had been filed. Revision Petitions allowed.

ii) Order appealed against:

Revision Petition No.3099 and Revision Petition No.3100 of 2008

From the order dated 07.04.2008 in Appeal No.1142/2006 of the State Consumer Disputes Redressal Commission, Delhi.

iii) Parties:

Revision Petition No.3099 of 2008

M/s. Nugas Technologies India Private Ltd. - Petitioner

Vs.

The Principal Geeta Bal Bharti Varisht

Madhyamic Vidyalaya - Respondent

Revision Petition No.3100 of 2008

M/s. Nugas Technologies India Private Ltd. - Petitioner

Vs.

M/s. Hindu Shiksha Samiti Nyas - Respondent

iv) Case No and Date of Judgement:

Revision Petition Nos.3099 of 2008 and 3100 of 2008 &

Date of Judgement: 17.04.2014.

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 after seeing the receipt issued by the Petitioner observed that it cannot be believed that Rs.5,000/- was deposited as security amount and Rs.20,000/- as advance money but it can be inferred that the entire Rs.25,000/- was deposited as booking amount for CNG conversion of the bus. It was also observed that as per note in the receipt, this amount was non refundable. Therefore if the Complainants decided not to get their buses converted into CNG kit, they were apparently not entitled to get refund.
- b) The Commission relying on their earlier judgements in *Homoeopathic Medical College and Hospital, Chandigarh Vs. Miss. Gunita Virk*, I (1996) CPJ 37 (NC) and *T.V. Sundaram Iyengar & Sons Ltd. Vs. Dr. Muthuswamy Duraiswamy & Anr.* II (2013) CPJ 176 (NC) held that consumer fora have no jurisdiction to go beyond the terms of the contract between the parties and cannot hold the contract, *ab initio* void, being unconscionable. As amount was not refundable, it was held that Petitioner had not committed any deficiency in not refunding the amount.
- c) The Commission further noted that Complainants had deposited the amount with OPs on 29.03.2001 whereas complaints were filed in December 2004 i.e. after three years and nine months. Since the complaints were time barred under Section 24A of the Act, it was held that the District Forum rightly dismissed the complaint and the State Commission committed error in allowing appeal and complaint.

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d) Consequently the Revision Petitions were allowed, the State Commission's order was set aside and the District Forum's order was confirmed.

vii) Citation:

2014(2) CPR 550.

(f) BANKING SERVICES

1. Central Bank of India Vs. Mr. K. Ramdas Shetty

i) Case in Brief:

It is the case of the Complainant/Respondent that he deposited Rs.50,000/- in FDR in 2003 with OP/Petitioner. He availed loan facility on the FDR. When the FDR came up for renewal, Complainant asked to OP to return the amount with interest but OP arbitrarily renewed FDR and Complainant's request to return FDR after deducting the loan amount of Rs.9,000/- was not acceded. It was also alleged that OP, Complainant's former employer, was harassing him in connection with an old case pertaining to forged cheques. He filed consumer complaint before the District Forum which was allowed. OP was directed to refund Rs.50,000/- along with 8.25% p.a. interest after deducting loan amount of Rs.9,000/-. Rs.750/- was allowed as litigation expenses. Appeal filed by the OP having been dismissed by the State Commission, the present Revision Petition had been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 12.06.2008 in Appeal No.2326/07 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore.

iii) Parties:

Central Bank of India - Petitioner/OP

Vs.

Mr. K. Ramdas Shetty - Respondent/Complainant

iv) Case No and Date of Judgement:

Revision Petition No.3379 of 2008 & Date of Judgement: 07.01.2014.

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:

OP's contention before the Commission was that Rs.50,000/- from the retirement benefits of Complainant were kept in FDR as a security towards the embezzlement case filed by Dr.P.K. Usman in the Civil Court. It was further claimed that an amount of Rs.42,880/- was kept as security with the consent of Complainant in connection with another case. The Commission after going through the correspondence between the Complainant and OP held that Complainant himself had consented for putting Rs.50,000/- in FDR till the outcome of the Civil suit filed by Dr.P.K. Usman and the FDR was renewed year to year till disposal of Civil suit and that Complainant could not have got his retirement benefits till inquiry or till conclusion of Civil suit. The Commission therefore held that the complaint was liable to be dismissed and the District Forum committed error in allowing the complaint and the State Commission committed further error in dismissing the appeal. The Revision Petition was therefore allowed and the orders of the fora below were set aside. The complaint stood dismissed.

vii) Citation:

I (2014) CPJ 333; 2014(1) CPR 200.

2. Jasvir Kohli Vs. Punjab National Bank

i) Case in Brief:

Appellant filed a consumer complaint against the OP Bank alleging deficiency in service which resulted in loss of Rs.12,40,000/- to the Appellant. The State Commission allowed the appeal and directed OP to pay to the Complainant the said sum with 5% interest with effect from the date the amount was withdrawn from his account i.e. 14.05.2007 till date. No compensation was allowed since it was held that award of interest would adequately meet the ends of justice. The Commission also allowed cost of litigation of Rs.10,000/-. The Appellant aggrieved of the amount of compensation preferred the present appeal seeking compensation and enhancement of interest. Appeal dismissed.

ii) Order appealed against:

From the order dated 29.04.2010 in C.C.No.08/256 of the Delhi State Consumer Disputes Redressal Commission.

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iii) Parties:

Jasvir Kohli

- Appellant

Vs.

Punjab National Bank

- Respondent

iv) Case No and Date of Judgement:

First Appeal No.214 of 2010 & Date of Judgement: 13.01.2014.

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:

It was argued before the National Commission that the Appellant had not come to the Commission with clean hands because he had already received a sum of Rs.15,92,784/- in full and final settlement of claim. The Commission perused the order dated 04.12.2012 passed by the State Commission in Execution Proceedings 2010/31 in which it was observed that the decree holder (Complainant) had endorsed on the receipt that he had received the amount in full and final satisfaction of the claim. The Execution case was therefore disposed of being settled. The Commission observed that once the Appellant had received the said amount in full and final settlement, he cannot be permitted to re-agitate the matter and seek enhancement of rate of interest or compensation. The Commission did not find any merit in the appeal and accordingly dismissed the same.

vii) Citation:

I (2014) CPJ 312; 2014(1) CPR 227.

3. B. Ramakrishnan Vs. The Manager, HDFC Bank

i) Case in Brief:

Complainant was a Savings Bank Account holder of HDFC Bank at Silvasa, Gujarat. When he shifted to Salem, he gave a letter to OP in the second week of February 2004 to transfer his SB Accounts as well as LAS (current account) to Salem. OP transferred two SB Accounts within a week. Regarding LAS account OP insisted on signing a new contract and due to inadequacy of stamp paper OP did not carry out the

same. Complainant later came to know that shares of some companies had been sold from his account. Aggrieved by the failure of OP to transfer his LAS account and selling some shares without his consent, Complainant filed complaint before the District Forum. The Forum partly allowed the complaint and awarded a compensation of Rs.20,000/- directing the Opposite party to transfer the Complainant's LAS account after observing official formalities. The Complainant filed an appeal before the State Commission which was dismissed vide impugned order against which the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 12.10.2011 in First Appeal No.531/2007 of the Tamil Nadu State Consumer Disputes Redressal Commission, Chennai.

iii) Parties:

B. Ramakrishnan

- Petitioner

Vs.

The Manager, HDFC Bank

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4126 of 2011 & Date of Judgement: 22.01.2014.

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 Counsel for OP gave details of the several opportunities given to the Complainant to regularize his account failing which the OP Bank would sell his shares and the shortfall in the Complainant's account would be made good. The Complainant failed to respond to all the letters and telegrams sent to by OP. The Commission held that OP had given enough opportunities to the Complainant to execute and sign the new agreement but the Complainant failed to do so. It was therefore held that there was no deficiency in service on the part of OP and there was no case for interfering with the State Commission's order.
- b) The Commission further noted that this is a case of share transaction and in the light of the judgment of the Commission in *Vijay Kumar Vs. IndusInd Bank*, II (2012) CPJ 181 (NC), it was

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held that the Commission had no jurisdiction under the CP Act. The Revision Petition was dismissed on this ground also.

vii) Citation:

II (2014) CPJ 283.

4. Punjab National Bank & Anr. Vs. M.Shahnaz & Ors.

i) Case in Brief:

Sh. Rais Ahmad (since deceased) represented by his wife Ms.M.Shahnaz Parveen, Complainant No.1 and their two sons along with two real brothers of the deceased, late Sanjeed Ahmad and Hafiz Ahmad, Complainants in second complaint formed one firm in the name and style of Three Brothers. They obtained cash credit limit of Rs.2,25,000/- from Punjab National Bank, branch Chandpur/OP No.1 on 13.06.2000 after execution of the loan documents. Sh.Rais Ahmad pledged three policies obtained from LIC and his brother pledged ten policies. On 17.08.2006, OP No.1 sent notice alleging negligence towards repayment of loan giving 30 days to pay the amount. Unfortunately on 04.09.2006 Sh.Rais Ahmad passed away. When Sanjeed Ahmad and Hafiz Ahmad approached the bank on 12.09.2006 for depositing the amount they were informed that after issuance of notice, they had surrendered all the policies, obtained payments and the balance amount was deposited in their bank account. Alleging deficiency in service the Complainants filed separate complaints before the District Forum which allowed both the complaints and directed OP to pay Rs.5,00,000/- along with 12% interest and Rs.1,00,000/- towards litigation expenses in each case. Appeals filed by the OPs were dismissed by the State Commission vide impugned orders against which the present Revision Petitions had been filed. Revision Petitions partly allowed with some modification of the orders passed by the fora below.

ii) Order appealed against:

Revision Petition No.3483 of 2013

From the order dated 23.07.2013 in First Appeal No.1627/2010 of the UP State Consumer Disputes Redressal Commission, Lucknow.

Revision Petition No.3484 of 2013

From the order dated 23.07.2013 in First Appeal No.1628/2010 of the UP State Consumer Disputes Redressal Commission, Lucknow.

iii) Parties:

Revision Petition No.3483 of 2013

Punjab National Bank & Anr. - Petitioners

Vs.

M.Shahnaz & Ors. - Respondents

Revision Petition No.3484 of 2013

Punjab National Bank & Anr. - Petitioners

Vs.

Hafiz Ahmad & Ors. - Respondents

iv) Case No and Date of Judgement:

- i) Revision Petition Nos.3483 of 2013 with IA/6193/2013, IA/6194/2013, IA/6195/2013, IA/6196/2013 and IA/6412/2013 (Stay, Exemption from filing English translation and certified copy, Impleadment, Placing additional documents)
- ii) Revision Petition Nos.3484 of 2013 with IA/6197/2013, IA/6198/2013, IA/6199/2013 (Stay, Exemption from filing English translation and certified copy and Impleadment) &

Date of Judgement: 04.02.2014.

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 after sending a notice on 17.08.2006 giving 30 days to the Complainants to pay the outstanding balance, the Bank had committed an egregious mistake in not waiting for full month and surrendering the policies. This clearly showed the negligence, inaction and passivity on the part of the Petitioner bank. The Commission agreed that if the policies had not been surrendered prior to the time period mentioned in the notice, the Complainants would have received the whole amount of Rs.5,50,000/-. The Commission therefore partly allowed the Revision Petitions modifying the orders of the fora below as follows:

- i) Complainants in RP No.3483 of 2013 (complaint case No.10/07) would get total compensation in the sum of Rs.5,00,000/- only with interest at 9% p.a. instead of 12% p.a. for harassment and

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mental agony. Amount payable towards cost would be Rs.1,00,000/-. Other benefits in the said case were deleted.

- ii) In RP No.3484 of 2013 (CC.No.11/07), the Complainants would get compensation Rs.1,00,000/- with interest at 9% p.a. from the date of filing of the complaint till the date of actual payment.

vii) Citation:

I (2014) CPJ 462.

5. State Bank of Patiala Vs. Kusum Kalra

i) Case in Brief:

Complainant/Respondent deposited a sum of Rs.70,000/- with the Petitioner branch in the year 2000 and renewed it in October 2002 for another two years. When the deposit had matured she presented the FDR to the bank on 18.11.2004 for encashment but the Petitioner refused to credit the amount in her savings bank account with the same bank on the ground that she had stood as a guarantor in the loan account of one Tejinder Kaur and the said loan had become a non-performing asset (NPA). OP offered to pay only Rs.15,657/- which was rejected by the Complainant. She filed a consumer complaint before the District Forum which was dismissed. The appeal filed by the Complainant before the State Commission was allowed and the Petitioner was directed to credit the amount of FDR in the savings bank account of the Complainant along with interest at 9% p.a. from the date of maturity till payment. Litigation cost of Rs.10,000/- was also allowed. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition was allowed.

ii) Order appealed against:

From the order dated 18.03.2008 in Appeal No.617/2007 of the State Consumer Disputes Redressal Commission, Chandigarh.

iii) Parties:

State Bank of Patiala

- Petitioner

Vs.

Kusum Kalra

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2670 of 2008 with IA/6740/2013 &

Date of Judgement: 10.02.2014.

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 Tejinder Kaur did take loan from the Petitioner bank for which the Complainant, Kusum Kalra, had stood guarantor. The copy of the promissory note on record made it clear that Kusum Kalra and Kiran had made an endorsement on the note in favour of the bank itself. Whether the guarantee deed or agreement on the prescribed proforma was executed or not, the record of the case and the endorsement of the promissory note clearly showed that the Complainant was the guarantor of the loanee Tejinder Kaur. It was also clear that Tejinder Kaur had defaulted in the payment of the said loan. She requested for OTS with the bank but her request was declined. The Commission noted that in *Industrial Investment Bank of India Ltd. vs. Biswanath Jhunjhunwala* VI (2009) SLT 625, the Hon'ble Apex Court had made it clear that the liability of a guarantor and principal debtor are co-extensive and the bank was justified in appropriating the amount from the account of the guarantor to satisfy the outstanding loan. The National Commission had also held in *Gurgaon Gramin Bank & Anr. vs. Om Prakash*, reported in IV (2010) CPJ 385 (NC) that the Petitioner bank was justified in appropriating the amount from Respondent saving bank towards outstanding loan amount. The Commission therefore did not observe any illegality, irregularity or jurisdictional error in the orders passed by the District Forum. It was observed that the order passed by the State Commission did not reflect a correct appreciation of facts. Consequently the Revision Petition was allowed, the order of the State Commission set aside and the order of the District Forum was upheld.

vii) Citation:

I (2014) CPJ 551; 2014(1) CPR 505.

6. Punjab National Bank Vs. Ramesh Chander

i) Case in Brief:

Respondent/Complainant was sanctioned a loan of Rs.6,28,000/- on 13.03.2009 for setting up the business of Masala Chakki out of which a sum of Rs.1,83,000/- was given to him. It is the Complainant's case that he took loan from his neighbours and relations and started the

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business since the bank delayed in issuing the total amount of loan. He had made several visits to the bank but to no avail. He alleged that non-release of the sanctioned loan caused a great loss/damage to him. The legal notice sent by him did not elicit any response. Alleging deficiency in service he filed a complaint before the District Forum which allowed the same and directed the Petitioner to release the amount of Rs.4,45,008/- as loan to the Respondent and awarded compensation of Rs.2,000/- for mental agony, harassment and litigation expenses. The appeal filed by the Petitioner having been dismissed by the State Commission the present Revision Petition had been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 02.07.2012 in Appeal No.325/2011 of the Haryana State Consumer Disputes Redressal Commission.

iii) Parties:

Punjab National Bank

- Petitioner

Vs.

Ramesh Chander

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3854 of 2012 & Date of Judgement: 12.02.2014.

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 fora below had failed to understand the difference between a term loan and cash credit facility. In the present case cash credit hypothecation was used by which the sanctioned amount is deposited into a new account from which the borrower can withdraw as per requirement within the permissible amount fixed by the lender for a specific time period. The bank does not fund the total requirement of working capital. The Commission noted that the Complainant was a defaulter right from the inception of his dealing with the Petitioner, when his cheque in the sum of Rs.30,000/- got dishonoured, coupled with persistent defaults in discharging his liability towards interest, despite repeated demands. The corporation had also noted in its letter dated 24.02.1994 that on inspection by the Regional Manager during the last four months there was no progress in the implementation of the project. The Commission

further observed that the Respondent had failed to show that he had given the bank a single stock statement to support his claim for cash credit towards working capital. The Commission held, on the basis of material on record, that there was no shortcoming or inadequacy in the service on the part of the corporation in performing its duty or discharging its obligations under the loan agreement. The corporation was constrained not to release balance installments and recall the loan on account of stated defaults on the part of the Complainant himself. In view of the above findings, the Revision Petition was allowed and the orders of the fora below were set aside.

vii) Citation:

II (2014) CPJ 343; 2014(1) CPR 528.

7. Karnataka Vikas Grameena Bank Vs. Sri Mallapa Ningappa Parappanavar & Anr.

i) Case in Brief:

Complainant took a short term crop loan of Rs.20,000/- from the Petitioner bank on 14.07.2005. Due to heavy rains the corn crop was damaged. On receiving notice from Petitioner bank for repayment, Complainant paid interest amount of Rs.4640/- only and requested the Petitioner to extend the time for repayment. It is alleged that the bank officials accepted the payment of interest and obtained signatures of the Complainant on various blank forms to show discharge of debt of Rs.20,000/- on 15.10.2007 and sanction of a new loan of Rs.20,000/- on the same day. The Complainant had alleged that the bank has resorted to this exercise to deprive him of the benefit of "Agricultural Debt Waiver and Relief Scheme" announced by the State Government in the year 2008. Alleging deficiency in service he filed consumer complaint. The District Forum allowed the complaint and directed the Petitioner to recommend to the Central Government that the Complainant is a defaulter. The Petitioner's appeal 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 25.02.2009 in Appeal No.2544/2008 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore.

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iii) Parties:

Karnataka Vikas Grameena Bank - Petitioner

Vs.

Sri Mallapa Ningappa Parappanavar & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2719 of 2009 & Date of Judgement: 14.02.2014.

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 before the fora below was whether the Complainant was a genuine defaulter and was eligible for the benefit under the loan waiver scheme. The State Commission had observed that there was no need for the Petitioner bank to sanction loan of Rs.20,000/- on the very date the Complainant discharged the loan. If really the bank was interested in recovery of the money, it could have renewed the loan by collecting interest instead of granting fresh loan. The State Commission had held that the Petitioner's action appeared to be aimed at denying the benefit which the Complainant was entitled to as per the Government notification and upheld the order of the District Forum.
- b) The National Commission, however, observed that the fora below had failed to appreciate that the debt waiver scheme was notified vide circular dated 06.06.2008. When the scheme came into being in 2008, by no stretch of imagination it can be said that on 15.10.2007 the Petitioner bank indulged in fabrication of record to deny a benefit to the Complainant. The Commission found no explanation why a bank Manager would indulge in such exercise when there was no evidence of any enmity against the Complainant.
- c) The Commission further observed that from the deposit slips produced by the Petitioner bank and the ledger entries pertaining to the loan account of the Respondent, they were of the considered view that the Complainant was not covered under eligible criteria for waiver of loan.

d) Consequently the Revision Petition was allowed and the orders of the fora below were set aside.

vii) Citation:

II (2014) CPJ 328; 2014(1) CPR 682.

8. Andhra Bank Vs. Gampala Bharti & 5 Ors.

i) Case in Brief:

Late Gampala Veeranjanyulu, husband of Complainant No.1 and father of Complainant No.2 and 3 and son of Complainant No.4 was having a savings bank account with the Appellant Bank linked with Life Insurance Policy issued by Respondent No.5. As per the condition of the policy in case of natural death of account holder an amount of Rs.1,00,000/- was payable and in case of accidental death double the benefit was payable. He died on 31.10.2005 in a road accident. A case in Crime No.147/2005 was registered by Naidupet Police Station followed by inquest and post-mortem examination. Though intimation of death was given to the Insurance Company the claim was not settled. Alleging deficiency in service a complaint was filed before the District Forum which allowed the complaint and directed OPs to pay Rs.2,00,000/- covered under the policy. 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 04.04.2012 in Appeal No.433/2010 of the Andhra Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

Andhra Bank - Petitioner

Vs.

Gampala Bharti & 5 Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2729 of 2012 & Date of Judgement: 03.03.2014.

v) Acts and Sections referred:

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

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vi) Issues raised and decided:

- a) The Commission noted that LIC had not preferred any appeal against the order of the District Forum and that the order had attained finality against LIC. Only the bank challenged the order and the question was whether the Petitioner Bank was deficient in providing service to the Complainant.
- b) The Commission noted that as per rules of the scheme, legal heirs were required to give intimation of death to the bank branch within 90 days and submit duly filled claim form along with documents within 180 days through respective bank branch. The Commission observed that the Complainants had not placed receipt of the documents by the bank authorities. Even in the notice issued by the Complainants' Counsel to the bank there was no reference to the intimations or documents. The Commission observed that the Petitioner was only a facilitator in forwarding claim and was not liable to make payment of claim. Consequently the Commission held that there was no deficiency on the part of the bank and that the lower fora had committed error in allowing the complaint.
- c) As LIC had not preferred any appeal the Commission held that the Complainants were free to recover amount from LIC and LIC in turn was free to initiate proceedings against the bank for any deficiency, if at all, in the appropriate forum.
- d) Consequently the Revision Petition was allowed and the impugned order was set aside.

vii) Citation:

III (2014) CPJ 465.

9. Syndicate Bank Vs. Kamal Kishor Sharma & Anr.

i) Case in Brief:

Complainant No.2/Respondent No.2 (Smt. Usha Sharma) had savings bank account with OP Bank which was converted into joint account with Complainant No.1/Respondent No.1 and was operated jointly by both the Complainants. It is claimed that the account bearing ID No.2471 and New No.30412013450 was also being operated by Smt.

Saroja Goenka as authority holder of the Complainant. It was alleged that Complainant No.1 had another bank account with OP which was later on converted into joint account with Complainant No.2. In January and February 2009, Complainant No.1 issued 11 cheques out of which one was cancelled by Complainant himself, 8 were cleared by OP but 2 cheques bearing Nos.345677 and 345678 worth Rs.2,500/- and Rs.3,000/- respectively were dishonoured by OP for the reasons that signatures were incomplete. Alleging deficiency on the part of OP, complaint was filed before the District Forum which was dismissed. Appeal filed by the Complainants was allowed by the State Commission vide impugned order and OP was directed to pay a sum of Rs.1,00,000/- towards compensation to the Complainants along with interest besides Rs.5,000/- as cost. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 20.06.2012 in Appeal No.1348/2010 of the Andhra Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

Syndicate Bank - Petitioner

Vs.

Kamal Kishor Sharma & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3833 of 2012 & Date of Judgement: 03.03.2014.

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 noted that the old SB account 2471 (New No.30412013450) was in the name of Complainant No.2 and Complainant No.1 was shown as nominee and Smt. Saroja Goenka was the authorized signatory of this account. No documentary evidence was placed by the Complainants to the effect that the said account was ever made joint account with Complainant No.1. The Commission observed that Complainant No.1 had no authority to issue cheques from that account. No doubt bank cleared 8 cheques pertaining to

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account of Complainant No.2 issued by Complainant No.1 which were local station cheques. It was observed that OP was not estopped from dishonouring out station cheques issued by Complainant No.1 who had no authority to issue the cheques. Merely because some cheques were cleared to facilitate the Complainants, no deficiency can be attributed on the part of OP for dishonouring out station cheques which were not issued by the authorized person namely Complainant No.2.

- b) Consequently the Revision Petition was allowed, the order of the State Commission was set aside and the order of the District Forum was affirmed.

vii) Citation:

II (2014) CPJ 550; 2014(1)CPR 598.

10. Asst. General Manager, State Bank of Hyderabad & Anr. Vs. Parikshitraj Kulkarni & Anr.

i) Case in Brief:

The consumer dispute arose from a loan of Rs.8,00,000/- sanctioned by the OP/State Bank of Hyderabad to the Complainants. During the currency of the loan, the Agricultural Debt Waiver and Debt Relief Scheme of 2008 (hereinafter referred to as the Scheme) came into effect from 01.04.2008. On 08.07.2008, a memorandum was submitted to the OP/Bank for 25% relief (i.e. Rs.1,97,299/-) on the outstanding loan amount under the Scheme. It was rejected on 09.09.2008 on the ground that the scheme was not applicable to this loan. Therefore, terming the refusal of the opposite parties to give this benefit as deficiency in service, Complainant filed complaint before the District Forum which held that the case involved determination of complex questions of fact and law which could not be satisfactorily determined by the Forum, in the time frame provided under the Consumer Protection Act, 1986. Therefore, the Complainants should seek redressal of their grievance in a Civil Court, if so advised. On appeal, the State Commission held that subsequent repayment made on 03.04.2008 amounting to Rs.5,47,685/- would be eligible for 25% benefit under the Scheme. Accordingly, the complainants would be entitled to refund of Rs.1,97,299/-. Against the decision of the State Commission, both the

parties have filed the revision petitions. The complainants have sought additional relief on the ground that the balance outstanding in the loan was Rs.7,89,197.10 and not Rs.5,47,865/-, as determined by the State Commission through R.P.No.4037 of 2010. On the other hand, the OPs have sought setting aside of the impugned order on the ground that the loan granted to the complainants was against mortgage of immovable, non-agricultural property and was not an agricultural loan through R.P.No.3944 of 2010. R.P.No.4037 of 2010 was allowed and R.P.No.3944 of 2010 was dismissed.

ii) Order appealed against:

Against the Order dated 26.08.2010 in Appeal No.3448/2009 of the State Commission Karnataka.

iii) Parties:

Asst. General Manager,
State Bank of Hyderabad & Anr. - Petitioner

Vs.

Parikshitraj Kulkarni & Anr. - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3944 of 2010 & Date of Judgement: 04.03.2014.

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 in the scheme of 2008, the method of determination of 'eligible amount' is detailed in Clause 4. Sub Clause 1(a) thereof deals with 'short-term production loans' and Sub clause 1(b) with 'investment loans'. Applying the Sub Clause 1(b), the eligible amount, in the present case, would be the amount, overdue as of 31.12.2007 and outstanding till 29.02.2008. As per the complainant, the amount remaining outstanding as at the end of February 2008, Rs.7,97,780.10 was the eligible amount. The State Commission has excluded the amount repaid on 31.3.2008, treating the relevant date as 01.04.2008 i.e. the date of commencement of the Scheme. While under the Scheme, the

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'eligible amount' is to be as on 29.02.2008. The Commission therefore held that the claim of the complainant to 25% of Rs.7,97,780.10 as acceptable.

- b) In view of the above, the revision petition filed by the Complainants No.RP/4307/2010 was allowed and the revision petition No.RP/3944/2010 filed by the OP/State Bank of Hyderabad was dismissed.

vii) Citation:

Not reported in CPJ and CPR.

11. Branch Manager, State Bank of Travancore Vs. Shaila Jain

i) Case in Brief:

Respondent/Complainant and her husband had jointly availed a housing loan from the Petitioner/OP/Bank for the amount of Rs.4,83,300/-. The second OP had asked the Respondent and her husband to take a SBI Life Insurance Policy so as to indemnify the repayment of loan amount in the event of the death of the Respondent or her husband. Accordingly, Rs.33,300/- was retained towards insurance premium and Rs.4,50,000/- only was disbursed out of the sanctioned loan amount of Rs.4,83,300/- (Rupees four lakh eighty three thousand three hundred only). On enquiry, it was learnt that it was a usual practice to give insurance coverage to all housing loans. The Respondent and her husband had paid the EMI Rs.5,010/- promptly till April 2008. The husband of the Respondent met with an accident and died on 30.06.2008. Hence, there occurred a break in repayment of three months and the amount was paid in September 2008. Though, as per the insurance policy conditions, the Respondent need not pay the future EMI of the loan, the second OP coerced the Respondent for the remittance of EMI and accordingly the Respondent paid Rs.79,000/- till March 2010. The Respondent approached the second OP for getting the insurance policy benefits. But OP rejected the request stating that they had omitted to transfer the insurance premium amount to the insurance company. Thereafter, the matter was brought to the notice of the Petitioner Bank. But no reply was given to the Respondent. Being aggrieved, she filed complaint before the District Forum which directed the OP to repay the Complainant Rs.79,000/- received as EMI after the

death of the Complainant's husband with 12% interest p.a. Aggrieved by the order of the District Forum, the Petitioner filed an appeal before the State Commission which dismissed the appeal vide impugned order against which the present revision petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

Against the Order dated 25.02.2013 in Appeal No.558/2012 of the State Commission Kerala.

iii) Parties:

Branch Manager, State Bank of Travancore - Petitioner

Vs.

Shaila Jain - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3057 of 2013 with IA/5311/2013 &

Date of Judgement: 04.05.2014.

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 Clause 15 of the loan agreement states that there would not be any detailed insurance proposal form required from the housing loan borrowers. The cover would be available based on a consent letter from the borrower addressed to the branch where he/she avails the housing loan expressing his/her consent to join the group insurance scheme and acceptable proof of age. The Commission asked how the bank without obtaining a consent letter from the borrower, on its own sanctioned Rs.33,300/- as additional loan towards the premium of the insurance policy. Held that it was incumbent on the Petitioner Bank to inform the Respondent of any other required document or any procedure to be followed for obtaining insurance cover which as per the scheme should have been effective from the date of giving the loan, as it was to cover against risk of death due to any reason during the tenure of the loan.

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- b) The Commission further held that the defence of the Counsel for the Petitioner was vitiated by Clause 9 which clearly states that the branch has to remit the premium amount directly to SBI Life as loan disbursement. Therefore, the violation of this Clause on the part of the Bank clearly showed deficiency in service.
- c) In view of the above, the Commission dismissed the present revision petition with cost of Rs. 20,000/- (Rs.10,000/- to the Respondent and Rs.10,000/- to the Consumer Legal Aid Account of the Commission) and upheld the orders of fora below.

vii) Citation:

2014(1) CPR 571.

12. Appala Venkatanaga Durga Srinivas Vs. Manager, Payment Assistance Unit & Anr.

i) Case in Brief:

The Complainant, got a SBI Credit Card, from the OP in which he noticed that his name was wrongly mentioned as ND Sappala instead of Appala Venkata Naga Durga Srinivas. As per advice of the OP Bank authorities, on 07.01.2007, he returned the credit card with a request to block it to avoid misuse. The OPs informed him that the said credit card was blocked on 14.02.2007. It is alleged that the agent of the OP approached the Complainant and demanded to pay Rs.390/- as settlement amount and the Complainant paid the same on 18.07.2007 vide Receipt No.6985091. On 17.06.2010 he received a demand notice for amount with statement. Being aggrieved, he filed complaint before the District Forum which dismissed the complaint; subsequently the first appeal filed by the complainant was also dismissed. Aggrieved by the order of State Commission, the Complainant preferred this revision petition. Revision Petition dismissed.

ii) Order appealed against:

Against the Order dated 01.07.2013 in Appeal No.622/2012 of the State Commission Andhra Pradesh.

iii) Parties:

Appala Venkatanaga Durga Srinivas	- Petitioner
Vs.	
Manager, Payment Assistance Unit & Anr.	- Complainant

iv) Case No and Date of Judgement:

Revision Petition No.3296 of 2013 & Date of Judgement: 01.04.2014.

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 with cost of Rs.2,500/- for the following reasons:

- a) There was no dispute that at that the name of the Complainant is Appala Naga Venkata Durga Srinivas and in the abbreviation it designs as NDS Appala but the OP issued card as ND Sappala; all the words are same except the alignment of letter by the side of letter without any space. In such a case, the Complainant could not be allowed to take undue benefit of such inadvertent small mistake.
- b) Further, normally, the transaction takes place with card number of the Complainant and the description of the name does not come in the way of operating the card. At this stage the Complainant filed an additional document, the Temporary Receipt No.6985091 for Rs.390/- collected by the agent of OP. That receipt did not specify the purpose of collection of Rs.390/-. Even, the Complainant had not produced any cogent evidence or a copy of letter by which he made a request to the OPs for cancellation of the card. He has not produced postal A.D. The agent was not examined before the District Forum.
- c) As per Clause 6 (a) of the terms and conditions, the credit card can be cancelled by making a written request to the concerned authority. But there was no written request from the Complainant and he did not cut card diagonally, to avoid any transactions. The card was in his possession till the date he filed the present complaint, so the card might be used for transactions.
- d) It also came to light that the Complainant did all these things for the sake of avoiding the overdue payment of Rs. Rs.28,799.04.

vii) Citation:

II (2014) CPJ 425; 2014(2) CPR 347.

13. ICICI Bank Ltd. Vs. Sh. Rajendra Kumar Agarwal

i) Case in Brief:

Respondent/Complainant was the karta of HUF and ran his business under the name and style of M/s. Akhechand Hulaschand. He maintained a current account with the Petitioner bank and was provided high value clearance facility under which a customer depositing a cheque was permitted to withdraw the proceeds the next morning. It was the Complainant's case that some of the cheques presented by him were dishonoured despite having credit balance and one self-cheque for Rs.30,000/- was also dishonoured on 07.07.2009 and 08.07.2009. His request for generating a statement of account for the period from 1st July, 2009 to 8th July 2009 was refused. Alleging deficiency in service he filed a consumer complaint before the District Forum which dismissed the same. However his appeal was allowed by the State Commission vide impugned order directing the Respondent bank to pay compensation of Rs.40,000/- to the Complainant for causing stress and mental agony and Rs.10,000/- as costs. The bank was further directed to reverse the debits made twice for an amount of Rs.386/- on account of charges for return of the cheque Nos.167136 and 167139. Aggrieved by the said order, the present Revision Petition had been filed by the Bank. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 02.12.2011 in First Appeal No.253/2011 of the West Bengal State Consumer Disputes Redressal Commission.

iii) Parties:

ICICI Bank Ltd. - Petitioner

Vs.

Sh. Rajendra Kumar Agarwal - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.532 of 2012 & Date of Judgement: 02.04.2014.

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 detailed order of the State Commission observed that the statement of account clearly showed that the second cheque No.161139 for Rs.1,15,627/- was returned on

8th July, 2009 for the reasons of insufficient funds. An amount of Rs.8,93,546/- having been credited as per the version of the Respondent Bank on 7th July, 2009, the dishonouring of the cheque No.161139 was absolutely gross deficiency in service by the Petitioner's bank. The Commission therefore held that the order passed by the State Commission was based on sound reasoning and no jurisdictional or legal error had been shown to call for interference in exercise of powers conferred under Section 21(b) of the Act. The Revision Petition was dismissed as devoid of merit with cost of Rs.5,000/- to be deposited in the name of Consumer Legal Aid Account of the Commission.

vii) Citation:

2014(2) CPR 185.

14. Yasmin Ismail Kiranawala and others Vs. Pune District Central Co.op. Bank ltd. & Anr.

i) Case in Brief:

Complainant had rented a safe locker from OP/DCC Bank, Pune on 28.5.2005. On 9.8.2008 when the complainant opened the locker it was found that all the gold ornaments kept therein were missing. The matter was immediately taken up with the bank officials. FIR was also lodged with the local police on 23.9.2008. Allegedly, some ornaments were not mentioned in the report to the police due to the complainants being in shock and partly due to inability to trace their bills. On a legal notice, from the complainants, the bank did not accept its liability and hence a consumer complaint was filed before the State Commission which dismissed the complaint holding that the Complainants had failed to establish any deficiency in service on the part of the bank vide impugned order. The present First Appeal has been filed against the State Commission's order. Appeal dismissed.

ii) Order appealed against:

Against the Order dated 31.01.2013 in Complaint No.131/2010 of the State Commission Maharashtra.

iii) Parties:

Yasmin Ismail Kiranawala and others - Appellants

Vs.

Pune District Central Co.op. Bank ltd. & Anr. - Respondents

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iv) Case No and Date of Judgement:

First Appeal No.640 of 2013 & Date of Judgement: 16.04.2014.

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, from the complaint, that the locker was taken on hire on 28.05.2005 and operated on several occasions, the last being on 09.08.2008. Allegedly, loss of ornaments was reported to Pune Police "immediately". However it also stated that FIR was lodged on 23.09.2008 i.e. a month and a half after the loss of ornaments was allegedly noticed. There was no explanation for the time gap between the two.
- b) The Commission observed that a perusal of the impugned order showed that when the locker was opened on 09.08.2008 by Complainant No.1, there was no evidence of any attempt to break it open by anybody. Nor was the locker found in an open condition. It was further observed that strangely complaint itself was filed by Complainant No.2 on behalf of all the three and not by Complainant No.1. Even the affidavit in support of the Complainant was filed by Complainant No.3 before the State Commission and not by Complainant No.1 who alone had visited the bank and operated the locker on 09.08.2008.
- c) The Commission further observed that neither the memorandum of appeal nor the appellant's counsel explained how acts and events of 2001, pertaining to transactions of the respondent bank with another customer, became a matter of deficiency in service to the appellants/complainants who came into the picture nearly four years later in 2005.
- d) In view of the above, the Commission held that there was no deficiency of service on the part of the respondent/bank and consequently the present revision petition was dismissed.

vii) Citation:

II (2014) CPJ 552; 2014(2) CPR 574.

15. Bashisth Narayan Singh Vs. Ram Sewak Prasad, Manager Madhya Bihar Gramin Bank

i) Case in Brief:

The Petitioner/Complainant was having a saving fund account No.2851 in the Bank of the Respondent/OP since 2001. The Petitioner had delivered a cheque No.010317 for Rs.56,192/- drawn on State Bank of India which he had received from FCI Daudnagar, Aurangabad (Bihar) by selling fifty nine quintal fifteen kilograms of paddy in the Savings Fund Account No.2851 on 07.04.2009. Petitioner had already deposited Rs.25,622/- at the time of the delivery of the cheque No.010317 of which the Petitioner withdrew Rs.16,000/- upto 25.05.2009 from the Saving Fund Account No.2851 but when the Petitioner demanded in cash Rs.64,000/- by cheque No.015924 from the Respondent on 26.05.2009 to farm his land of twelve acres, the Respondent returned the same by writing on the cheque that the amount was not available in the account as on 26.05.2009. Aggrieved by the act of OP, Complainant filed complaint before the State Commission which held that it was a case of negligence and deficiency on the part of the service rendered by Bank and awarded compensation of Rs.10,000/- in favour of the complainant. Dissatisfied with the order of the State Commission and seeking enhancement the present First Appeal had been filed. Appeal dismissed.

ii) Order appealed against:

Against the Order dated 27.08.2013 in Complaint No.12/2009 of the State Commission Bihar.

iii) Parties:

Bashisth Narayan Singh

- Appellant

Vs.

Ram Sewak Prasad, Manager
Madhya Bihar Gramin Bank

- Respondent

iv) Case No and Date of Judgement:

First Appeal No.692 of 2013 & Date of Judgement: 29.04.2014.

v) Acts and Sections referred:

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

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vi) Issues raised and decided:

- a) The National Commission held that it was a case of negligence and deficiency on the part of the service rendered by the Bank for which there could be no plausible excuse. The problem arose because of the delay in sending the cheque for collection by the Respondent Bank allegedly due to paucity of staff. The Commission endorsed the views of the State Commission that had the Complainant remained vigilant and taken appropriate steps in time, he could have encashed his money even on the next date, i.e. 27.05.2009. The State Commission in their order had concluded that his was not a solitary cheque; it also contained other cheques, which were submitted and collected by the said Bank even earlier on 14.03.2009 which meant that cheques which were collected on 14.03.2009 were also sent after 40 days for such collection.
- b) In view of the above, the Commission dismissed the present First Appeal and upheld the order of the State Commission.

vii) Citation:

II (2014) CPJ 674; 2014(2) CPR 446.

16. Karnataka Bank Ltd. Vs. Smt. Sheela Rani Deceased through L.R.Ajay Aggarwal & Ors.

i) Case in Brief:

A cheque dated 08.06.1998 in the sum of Rs.8,99,571/- drawn on Corporation Bank by M/s. Jawala India (Pvt.) Ltd. in favour of the Complainant was allegedly deposited by the Complainant with Karnataka Bank on 11.06.1998. The amount was not credited to the account of the Complainant. The cheque had been encashed by someone, introduced through one Anil Kumar (Respondent No.3 in First Appeal No.200 of 2008), through a newly opened account with the Corporation Bank. The Appellant/Karnataka Bank denied having received the cheque. Complainant as well as the drawer of the cheque M/s. Jawala India (Pvt.) Ltd. lodged FIR with the Police Station. Since legal notices to the Bank did not elicit any response, Complainant filed complaint in the State Commission seeking direction to the Respondents to pay the cheque amount along with interest at 24% and compensation and

damages amounting to Rs.5,70,000/-. The State Commission held OP No.2 (Karnataka Bank) guilty for deficiency in service and directed it to make payment of the cheque amounting to Rs.8,99,571/-. As regards OP No.1 (Corporation Bank) it was held negligent in clearing a self-cheque issued for such a big amount and for that limited deficiency, the State Commission directed OP No.1 to pay compensation Rs.25,000/-. While Corporation Bank chose not to challenge the order, both the Karnataka Bank and the Complainant (claiming interest), had filed the present First Appeals before the National Commission. Appeal filed by the Karnataka Bank (FA No.200/2008) was allowed while appeal filed by the Complainant (FA No.206/2008) was dismissed.

ii) Order appealed against:

First Appeal No.200 of 2008

From the order dated 29.02.2008 in Complaint No.C-79/1999 of the State Consumer Disputes Redressal Commission, Delhi.

First Appeal No.206 of 2008

From the order dated 20.02.2008 in Complaint No.3/SC/2003 of the Uttar Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

First Appeal No.200 of 2008

Karnataka Bank Ltd. - Appellant

Vs.

Smt. Sheela Rani Deceased through
L.R.Ajay Aggarwal & Ors. - Respondents

First Appeal No.206 of 2008

Smt. Sheela Rani Deceased through
L.R.Ajay Aggarwal & Ors. - Appellants

Vs.

Corporation Bank Centre & Ors. - Respondents

iv) Case No and Date of Judgement:

- i) First Appeal No.200 of 2008
- ii) First Appeal No.206 of 2008 &
Date of Judgement: 30.04.2014.

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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 National Commission observed that the onus lay with the Complainant to prove that the cheque was deposited with Karnataka Bank and from the evidence on record it was held that she had failed to discharge this onus. It was noted even in the Complaint there was no allegation of violation of any rules and regulations by Karnataka Bank. It was further noted that in all her letters and notices, the allegation of the Complainant was that the Corporation Bank had failed to follow the norms in permitting withdrawal of huge amounts. It was pointed out that the suit filed by the drawer for recovery of cheque amount was only against Corporation Bank and the said Anil Kumar while the Karnataka Bank was not arrayed as a party in the suit. Consequently it was held that deficiency in service on the part of Karnataka Bank was not proved. The First Appeal filed by the Bank (FA No.200 of 2008) was allowed and it was ordered that the amount of Rs.8,99,571/- deposited by the Bank with the Commission and the statutory amount of Rs.35,000/- be refunded to them along with accrued interest. The First Appeal No.206 of 2008 filed by Complainant was dismissed.

vii) Citation:

II (2014) CPJ 556; 2014(2) CPR 44.

17. Canara Bank Vs. Mrs. S. Vasudharini

i) Case in Brief:

Complainant obtained Kamadhenu Deposit Scheme from the Canara Bank/OP on 10.10.2006 by depositing of Rs.1,00,000/-, for which she made a payment of Rs.50,000/- by way of cash and for the balance amount of Rs.50,000/- by cheque. OP in turn issued the Kamadhenu Deposit Scheme FDR in favour of the complainant in the sum of Rs.1,00,000/-. On maturity, she got back Rs.1,00,000/- together with interest in the sum of Rs.7187/-. In the month of September 2009, the OP/Bank claimed that the complainant had not deposited

Rs.50,000/- in cash and it unilaterally debited the sum of Rs.61,383/- from her account without any written communication. She approached the Bank and it replied that the amount paid in cash on 10.10.2006 was not credited in her account book and it is to be presumed that no cash in the sum of Rs.50,000/- was paid by her. Being aggrieved, Complainant filed complaint before the District Forum which dismissed the complaint. On appeal, the State Commission directed the Opposite Party to return a sum of Rs.61,383/- with interest @ 9% p.a. along with compensation in the sum of Rs.1,00,000/- for causing mental agony. 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 27.08.2013 in Appeal No.536/2012 of the State Commission, Tamil Nadu.

iii) Parties:

Canara Bank

- Petitioner

Vs.

Mrs. S. Vasudharini

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3884 of 2013 & Date of Judgement: 01.05.2014.

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:

After perusal of the necessary records, the National Commission dismissed the present revision petition and the order of the State Commission was sustained for the following reasons:

- a) First of all, it was not clear how the bank gave the Kamadhenu FDR without receiving the sum of Rs.50,000/-. The story propounded by it did not just stack up.
- b) Secondly, no action was taken against the wrong doers. As a matter of fact junior officers are liable to pay a sum of Rs.25,000/- each for the negligence, inaction and passivity on their party.

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- c) Thirdly, there is no evidence that such matter was reported to the highest authority of the Canara Bank. The Bank is terribly remiss in discharge of its duty. The attitude of authorities adds a shocking dimension to the situation.
- d) Fourthly, there was another deficiency on the part of the petitioner i.e. they remained silent for a period of three years. No action was taken by them. They did not know that the amount was not paid for the last three years. Perhaps there was no audit examination.
- e) Fifthly, the amount of Rs.61,383/- was suo moto debited from the account of the petitioner arbitrarily and capriciously. The Bank had no courtesy to inform the complainant that this mistake was committed by them and they were going to rectify the same. No show cause notice was given before the amount was debited.

vii) Citation:

II (2014) CPJ 649; 2014(2) CPR 404.

18. Central Bank of India & Anr. Vs. Kamini Rastogi & Anr.

i) Case in Brief:

Complainant No.1 was having a firm under the name and style of M/s. Furniture and Paint House. She had an account with the Regional Manager of the Petitioner Bank (OP No.2 in the complaint). The Deputy Collector, Sales Tax (Collection) Department, Respondent No.2 (OP No.3 in the complaint) sent a letter to the Bank asking them to deposit a sum of Rs.17,792/- towards the tax imposed on the firm of the Complainant in the year 1977-1978. Since the Bank did not comply with that order, OP No.3 had sealed the bank account of the Complainant. On 20.10.1995 the Complainant came to know that her account was still running sealed whereas she had already paid the amount in dispute to the Sales Tax Department. Her efforts to get the account opened did not yield any result. On 19.10.1997 she asked the Bank to close her account and to pay the total amount due to her with interest @ 18% p.a. for the period 24.09.1981 to till date. The Bank responded vide letter dated 04.04.1998 that they had received the letter dated 09.09.1997 of the Deputy Collector Sales Tax (Collection) with the

permission to regulate the account of the Complainant. Alleging deficiency in service Complainant approached the District Forum which allowing the complaint directed the Bank to pay the amount with 10% compound interest from the date of suspension till the date of starting. The appeal filed by the Bank 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 29.08.2013 in Appeal No.1650/1999 of the Uttar Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

Central Bank of India & Anr. - Petitioners

Vs.

Kamini Rastogi & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1576 of 2014 & Date of Judgement: 07.05.2014.

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 Complainant had repeatedly informed the OP to release her amount as she had paid the amount to the Sales Tax Department. The Sales Tax Department also wrote to the Bank. But the bank sat over the matter and acted arbitrarily and capriciously. Even after the complaint was filed, the bank did not pay the amount immediately. The Commission noted that had the bank paid the amount to the Deputy Collector Sales Tax (Collection) Department, the matter would not have taken such a serious turn. The Commission upheld the orders of the fora below and directed that the entire amount pending in the bank should be paid to the Complainant as per the order passed by the District Forum. The Revision Petition was disposed of accordingly.

vii) Citation:

Not reported in CPJ and CPR.

(g) CARRIER SERVICES / CONSIGNMENT OF GOODS

1. M/s. Shankar Golden Transport Company Vs. M/s. Ambika Sales & Anr.

i) Case in Brief:

Complainant/Respondent No.1 booked goods with OP No.1/Petitioner on 28.9.2005 through built No.404730 and on 01.10.2005 through built No.405962. Both these builties were of self and goods of both these builties were to be delivered only after getting payment of Rs.91,294/- from opposite party No.2/respondent No.2. Opposite party No.1 delivered goods to opposite party No.2 without endorsement by the complainant and without receiving payment of Rs.91,294/-. Alleging deficiency on the part of the opposite parties, complainant filed complaint before the District Forum which dismissed complaint. Appeal filed by the complainant was allowed by the State Commission vide impugned order, against which the present revision petition had been filed. Revision Petition allowed.

ii) Order appealed against:

Against the Order dated 03.06.2010 in Appeal No.1160/2009 of the State Commission Rajasthan.

iii) Parties:

M/s. Shankar Golden Transport Company - Petitioner

Vs.

M/s. Ambika Sales & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3052 of 2010 with IA/2511/2013 &

Date of Judgement: 12.03.2014.

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 any payment of value of goods was to be received by opposite party No.1 while delivering goods to opposite party No.2.

- b) The National Commission on perusal of the records found that builties did not mention value of the goods and only freight to be charged. There was no question of receiving payment as builties did not contain price of the goods. Moreover self builties goods are to be delivered to the person, who presents original builties without making any payment. Petitioner rightly delivered goods to opposite party No.2 on presentation of original builties and the District Forum rightly dismissed the complaint.
- c) Complainant impleaded opposite party No.2 in the complaint who received goods of self builties, but later on, deleted opposite party No.2 from the array of parties. It showed the collusion between the Complainant and OP No.2 who had received goods of self builties sent by Complainant. Counsel for the Respondent could not place original builties on record and in the absence of original builties, Petitioner was not liable to make payment of value of the goods of the builties and the State Commission committed error in allowing complaint and this order was held liable to be set aside.
- d) In view of the above, the present revision petition was allowed and the impugned order of the State Commission was set aside.

vii) Citation:

II (2014) CPJ 548; 2014(2) CPR 221.

(h) CIVIC SERVICES

1. Commissioner, Nagar Nigam Vs. P.S. Chauhan

i) Case in Brief:

It was the Complainant's case that there was a vacant plot near his house which was being used as a dumping ground for trash and garbage and was also used by hut dwellers for private purposes and that his repeated requests to OP for cleaning of the said plot did not yield any result. The unhygienic conditions were leading to spread of various diseases. Complainant further alleged that he was suffering from chronic, recurrent allergy, bronchitis and fever and his wife was suffering from malaria. He contended that he had paid Samekit Kar to the OP and he was therefore entitled to various services and facilities under the Municipal Corporation Act. Alleging deficiency in service he

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filed complaint before the District Forum which was dismissed on the ground that Complainant did not fall within purview of consumer. Appeal filed by the Complainant was allowed by the State Commission vide impugned order against which the present Revision Petition had been filed. Revision Petition No.933 of 2008 filed by the Petitioner/OP was allowed and the impugned order of the State Commission was set aside. Revision Petition No.1026 of 2008 filed by the Complainant was dismissed.

ii) Order appealed against:

Revision Petition Nos.933 of 2008 and 1026 of 2008

From the order dated 08.01.2008 in First Appeal No.248/2007 of the Chhattisgarh State Consumer Disputes Redressal Commission, Raipur.

iii) Parties:

Revision Petition Nos.933 of 2008

Commissioner, Nagar Nigam - Petitioner/OP

Vs.

P.S. Chauhan - Respondent/Complainant

Revision Petition Nos.1026 of 2008

P.S. Chauhan - Petitioner/Complainant

Vs.

Commissioner, Nagar Nigam - Respondent/OP

iv) Case No and Date of Judgement:

Revision Petition Nos.933 of 2008 and 1026 of 2008 &

Date of Judgement: 18.02.2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986 and Section 132(1) of M.P. Municipal Corporation Act, 1956.

vi) Issues raised and decided:

- a) The Commission after perusal of Section 132(1) of M.P. Municipal Corporation Act, 1956 noted that OP imposed tax and cess on the owners of the building for the purposes mentioned in Clause (b) to Clause (e) of Section 132. The Commission held that tax cannot be equated with fees and as OP had not charged any fees

for providing any service as such, Complainant did not fall within the purview of consumer and that the State Commission had committed error in holding that Complainant fell within purview of consumer under the CP Act.

- b) The Commission noted that the Complainant himself had mentioned in the complaint that the house was in the name of his wife and OP had also mentioned in the written statement that no amount had been charged as consideration from the Complainant. The Commission held that only the owner of the property could have filed complaint and Respondent/Complainant had no *locus standi* to file complaint. It was held that on this count also the complaint was liable to be dismissed.
- c) Consequently the Revision Petition No.933 of 2008 filed by the Petitioner/OP was allowed and the impugned order of the State Commission was set aside. Revision Petition No.1026 of 2008 filed by the Complainant was dismissed.

vii) Citation:

I (2014) CPJ 503; 2014(1) CPR 720.

(i) CONSTRUCTION

1. The Orissa State Housing Board Vs. Santosh Kumar Nanda

i) Case in Brief:

Respondent/Complainants were allotted MIG houses by the Appellant in the year 1999. The possession of the houses was to be delivered by 31.12.1990. However, actual possession was given in and around September 1992. Aggrieved by the delay in delivery of possession, enhancement in costs, defects in construction etc., Respondents filed complaints in the State Commission. Upon consideration of the pleadings and the defects pointed out by a retired chief engineer Mr. S.S. Panda vide order dated 05.11.1997, the State Commission awarded various amounts to the Complainants. Being aggrieved the Appellant filed appeals before the National Commission which were disposed of by a common order dated 06.12.2006 *inter alia* observing that the related extracts of the vigilance squad and the report of the Public Undertakings Committee regarding defects in the houses should have

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been taken into account by the State Commission and the cases were remanded for fresh adjudication. The State Commission after taking into account the said reports estimated the expenditure to range between Rs.45,000/- to Rs.55,000/- and passed awards accordingly. The Respondents were also held to be entitled to interest at 9% p.a. from the date of delivery of possession to them. Aggrieved by the said order the present Appeals had been filed. All the four appeals were dismissed with modification regarding period of interest.

ii) Order appealed against:

First Appeal Nos.46 to 49 of 2008

From the order dated 26.11.2007 in C.D. Case No.118/1993, 135/1993, 159/1993 and 175/1993 of the Orissa State Consumer Disputes Redressal Commission, Cuttack.

iii) Parties:

First Appeal Nos.46 of 2008

The Orissa State Housing Board - Appellant

Vs.

Santosh Kumar Nanda - Respondent

First Appeal Nos.47 of 2008

The Orissa State Housing Board - Appellant

Vs.

B.N.R. Patnaik - Respondent

First Appeal Nos.48 of 2008

The Orissa State Housing Board - Appellant

Vs.

Prasanna Kumar Mishra - Respondent

First Appeal Nos.49 of 2008

The Orissa State Housing Board - Appellant

Vs.

Pradip Kumar Das, IRS - Respondent

iv) Case No and Date of Judgement:

First Appeal Nos.46 to 49 of 2008 & Date of Judgement: 05.01.2014.

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 despite specific opportunity afforded to it by the Commission while remanding the cases to the State Commission, the Appellant failed to produce any evidence in regard to the quality of construction and the defects/deficiency pointed out the Respondents. The Commission took into the account the evidence of Mr. Sachidananda Jena, Assistant Project Engineer and Sh. Indramani Sahu, Junior Engineer and held that there were defects/deficiencies in the subject houses at the time of delivery of the possession.
- b) The Commission held that the estimates for the amounts, claimed to have been spent by the Respondents on rectification of defects, suggested by the State Commission was quite fair. These were based on the valuer's report which was further reduced by the State Commission. The Commission observed that no material had been placed by the Appellant to controvert the said estimates. The Commission accordingly upheld the decision of the State Commission on the estimates for repairs.
- c) As regards interest of 9% p.a. allowed by the State Commission, the Commission felt that in the absence of precise details of the time when the expenditure was incurred by each of the Respondents, it would be proper and expedient to direct that simple interest @ 9% p.a. shall be payable on the estimated accounts from the date of filing of the complaint till 29.08.2008 when the Commission had directed payment/adjustment of the amount initially awarded by the State Commission.
- d) In the result, all the four appeals were dismissed with modification regarding period of interest. Respondents in First Appeal Nos.46, 47 and 48 of 2008 were held to be entitled to costs of proceedings quantified at Rs.25,000/- in each case (Respondent in Appeal No.49 of 2008 did not participate in the proceedings).

vii) Citation:

Not reported in CPJ and CPR.

2. Runwal Developers Pvt. Ltd. Vs. Dinesh Hegde

i) Case in Brief:

The Complainant was allotted Flat No.302 in the scheme Runwal Pride by the OP. He paid a sum of Rs.1,66,750/- by 15.03.2005 being 5% of the total value of the flat. According to the agreement signed between the parties on 11.04.2005, the possession of the flat was to be handed over by 31.10.2006 after completing the construction. Complainant had been making payments regularly as demanded by OP and final payment of Rs.2,89,713/- was also made on 19.10.2008. But possession of the flat was not handed over and OP demanded an additional sum of Rs.9,68,510/- towards interest vide letter dated 26.11.2009. The possession was given only after the said amount was paid. Consumer complaint was filed in which OP took the stand that the Complainant had opted for booking under the 'Advance Disbursement Facility' (ADF) as per which the amount of Rs.30 lakhs, after the initial payment of Rs.1,66,750/-, was to be paid in one go and since the Complainant paid in installments he had to pay interest. The District Forum dismissed the complaint. The State Commission, allowing the appeal, directed OP to refund the amount of Rs.9,68,510/- with interest at 9% p.a. Aggrieved by the said order, the Complainant had filed the Revision Petition demanding refund of the amount with interest at 18% p.a., compensation of Rs.6,75,000/- for 18 months delay in handing over possession, compensation of Rs.1,50,000/-, refund of Rs.54,000/- paid towards maintenance charges without receiving possession of flat, withdrawal of demand for additional Rs.23,675/- for maintenance from February 2008 to March 2010, demand of Rs.41,657/- for property tax and legal expenses of Rs.1,50,000/-. Another Revision Petition had been filed by the Developer/OP challenging the impugned order. Both the Revision Petitions were partly allowed.

ii) Order appealed against:

Revision Petition Nos.4108 of 2012 and 4890 of 2012

From the order dated 29.08.2012 in First Appeal No.A/11/444 of the Maharashtra State Consumer Disputes Redressal Commission.

iii) Parties:

Revision Petition No.4108 of 2012

Runwal Developers Pvt. Ltd.

- Petitioner

Vs.

Dinesh Hegde

- Respondent

Revision Petition No.4890 of 2012

Dinesh Vittal Hegde

- Petitioner

Vs.

Runwal Developers Pvt. Ltd.

- Respondent

iv) Case No and Date of Judgement:

Revision Petition Nos.4108 of 2012 and 4890 of 2012 &

Date of Judgement: 07.01.2014.

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 builder obtained the occupation certificate for the said project in February 2008 but possession of the flat was given only on 06.05.2010, although he had agreed to hand over by 31.10.2006. The flat was booked under ADF scheme but in all the letters sent by the OP to the Complainant after 03.03.2005 there was no mention of ADF scheme, only the progress of construction was intimated and the sum due was demanded. In the letter dated 13.04.2008 the balance amount due was indicated as Rs.2,89,713/-. In the letter dated 04.11.2008 vide which possession was offered there was no mention of ADF scheme. These facts gave rise to the presumption that there was some understanding between the parties to charge the amounts in installments and not in one installment as per ADF scheme. In the given circumstances the Commission held that it would be appropriate if the Complainant is made to pay only 50% of the additional demand of Rs.9,68,510/- raised by the OP and the balance is foregone by the builder/OP. The Commission ordered accordingly. As regards the other reliefs demanded by the Complainant, the Commission ordered that the builder should refund the maintenance charges taken from the Complainant i.e. Rs.5,40,000/- and also cancel his demand for additional maintenance charges because the Complainant should be required to pay maintenance charges only when the possession had been given to him.
- b) Both the Revision Petitions were allowed partly on the above lines and the order of the State Commission was set aside.

vii) Citation:

I (2014) CPJ 335; 2014(1) CPR 196.

3. Deepak Annasaheb Patil & Anr. Vs. Dr. Kaushali Vilas Rokade & Anr.

i) Case in Brief:

The Petitioners/OP No.1 and 2 are partners of M/s. Sunil Farm Engineering Company which transacts the business of construction and development of property. They had agreed to the construction of a shopping complex at the stadium of Osmanabad entrusted to them by OP No.3/Respondent No.2, the Chairman Tuljabhavani District Stadium Committee and Collector, Osmanabad. The developers were authorized to transfer the shops on lease basis for the period of 30 years in favour of occupiers. Both the Complainants had applied for purchase of shops for a consideration of Rs.6,31,000/- each. They had paid Rs.3,33,000/- each and a further sum of Rs.8,000/- and Rs.7,000/- each. It is their grievance that the Petitioners without any notice had made changes in the sanction plan making additional construction in the open space in front of their shops and asked the Complainants to pay extra amount. The District Forum before whom complaints were made directed OPs 1 to 3 to transfer the shops to the Complainants on payment of balance amount by them, return the uncashed cheques to them and further directed OP No.1 and 2 to pay cost of Rs.5,000/- each to the Complainants. The State Commission modified the order by discharging OP No.3 as it had no role to play in handing over possession of shops to the Complainants. Aggrieved by the said order the present Revision Petitions had been filed. Revision Petitions dismissed with costs of Rs.10,000/- each payable by the Petitioners to the Complainants.

ii) Order appealed against:

Revision Petition No.734 of 2014

From the order dated 18.10.2013 in Appeal No.56/2013 of the Maharashtra State Consumer Disputes Redressal Commission.

Revision Petition No.735 of 2014

From the order dated 18.10.2013 in Appeal No.57/2013 of the Maharashtra State Consumer Disputes Redressal Commission.

iii) Parties:

Revision Petition No.734 of 2014

Deepak Annasaheb Patil & Anr. - Petitioners

Vs.

Dr. Kaushali Vilas Rokade & Anr. - Respondents

Revision Petition No.735 of 2014

Deepak Annasaheb Patil & Anr. - Petitioners

Vs.

Dr. Adinath Sopan Rajguru & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.734 of 2014 with IA/449/2014 and Revision Petition No.735 of 2014 with IA/449/2014 & Date of Judgement: 07.02.2014.

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 going through the agreement between the parties noted that while the agreement authorized the Petitioners to make minor changes, they had made major changes without the knowledge of the Complainants. They had made additional construction of 351 sq. ft in front of each shop and the total construction of each shop was 528 sq. ft. and as per their new demand they were asking the Complainants to pay more than double the amount. The Commission observed that the Petitioners had taken the Complainants for a ride and dismissed the Revision Petitions with costs of Rs.10,000/- in each case payable by the Petitioners to the Complainants within 90 days. The Petitioners were further directed to execute the order of the State Commission within 90 days or else pay penalty in the sum of Rs.1,000/- per day to the Complainants.

vii) Citation:

I (2014) CPJ 524.

4. Dr. Chander Rekha Vs. Improvement Trust & Anr.

i) Case in Brief:

There were two rounds of litigation between the same parties. In the first round the consumer complaint filed by the Petitioner was allowed and the OP/Trust was directed to make payment of Rs.5,25,000/- to the Complainant as also Rs.25,000/- as cost for late delivery of possession of the plot after accepting the whole amount from the Complainant. The

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present complaint is the second complaint filed on 22.11.2007. The Complainant had alleged that OP had published a notice dated 31.08.2007 in the Newspapers that the construction on the site allotted to the Complainant should be completed by 31.12.2007, otherwise the said plot would be resumed. It was further alleged that basic amenities like sewerage, water supply, parking place, street light etc., had not been provided. The Complainant demanded that interest at 18% p.a. should be paid on the deposited amount from 04.09.2003, the date of delivery of the possession till the basic amenities are provided. The said complaint was partly allowed by the District Forum but the appeal filed by the Petitioner was dismissed and the appeal filed by the OP/ Trust was accepted by the State Commission. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 22.05.2012 in Appeal No.825/2008 of the Punjab State Consumer Disputes Redressal Commission.

iii) Parties:

Dr. Chander Rekha - Petitioner

Vs.

Improvement Trust & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3631 of 2012 with IA/1844/2013 &

Date of Judgement: 12.02.2014

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 Clause 8 of the allotment letter dated 25.06.1998, the building was to be constructed and completed within three years from the date of issue of the allotment letter, after getting demarcation of the plot on site and after getting the building plan approved from the OP. The Complainant's contention that basic amenities had not been provided was denied by the OP. In support of their stand OP had taken the plea that construction of a nursing home had already been done on the adjoining site. The Commission observed

that the Complainant had not been able to produce any proof to rebut the contention of the OPs. The Commission further noted that compensation had already been allowed for the late delivery of the possession to the Complainant. It was also noted that the State Commission had observed in their order that the water supply and sewerage connection had been provided in the year 1994 and the roads had been constructed in 1997. The letter of Sub Divisional Engineer, Punjab Water Supply and Sewerage Board had stated that sewerage was laid in the area on 18.12.1994. The Commission therefore held that basic amenities had been provided and the Petitioner was not entitled to any other relief. It was their duty to comply with the rules and regulations of the trust in so far as raising the construction on the site is concerned. The Commission did not find any merit in the Revision Petition and accordingly dismissed the same.

vii) Citation:

II (2014) CPJ 340; 2014(1) CPR 524.

5. M/s. Manikbag Automobiles, rep. by its Partner Sri. A.S.Mirji Vs. Hitech Structures Pvt. Ltd. & Anr.

i) Case in Brief:

Petitioner/Complainant had engaged the services of Respondent/OP No.1 for construction of a service station-cum-garage for Tata trucks for a consideration of Rs.18,99,826/-. The work included designing, fabrication, supply erection, transpiration of complete steel structure gable and walls etc. It is the Petitioner's case that soon after he took possession of the service station he noticed that cracks had developed on its roof wherever the sheet were joined and fixed. During the monsoon showers many pieces were blown off in the heavy winds causing severe damage to valuable spare parts and machinery. Respondent No.1/OP No.1, on being informed, deputed a Surveyor who also noted the various cracks. However, it is alleged that Respondent/OP No.1 refused to acknowledge his mistakes and stated that the problems occurred because of manufacturing defects in the AC sheets and other materials. Petitioner filed a consumer complaint before the District Forum which partly allowed the complaint and directed Respondent No.1/OP No.1 to pay Petitioner/Complainant Rs.2,03,710/- with 6% p.a. interest from the date of complaint till its

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realization apart from Rs.1,000/- as litigation expenses. Both the parties filed separate appeals before the State Commission which vide order dated 02.01.2009 dismissed the appeal of the Petitioner/Complainant as barred by limitation and allowed the appeal of Respondent/OP No.1 and set aside the order of the District Forum. Aggrieved by the said order Complainant had filed the present Revision Petition. Revision Petition allowed.

ii) Order appealed against:

From the order dated 20.07.2006 in Appeal No.1040/2004 of the Karnataka State Consumer Disputes Redressal Commission.

iii) Parties:

M/s. Manikbag Automobiles, rep. by its
Partner Sri. A.S.Mirji - Petitioner

Vs.

Hitech Structures Pvt. Ltd. & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.919 of 2009 & Date of Judgement: 20.02.2014.

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 agree with the State Commission's findings that the Respondents/OPs could not be held guilty of deficiency in service because they were merely contractors who carried out the necessary construction under the supervision of an architect appointed by the Petitioner/Complainant. The Commission found no evidence to this effect. It was held that the Petitioner/Complainant appointed an architect to survey the structure only after the various damages and defects came to light. It was held that the cracks in the roof and various other problems occurred because of the defects and deficiencies in service on the part of Respondent/OP No.1 who was entrusted with the entire task of constructing the structure including its design and execution. The Commission while coming to such a conclusion had taken into account the report of the surveyor deputed by Respondent/OP No.1.

b) The Commission accordingly allowed the Revision Petition and set aside the order of the State Commission.

vii) Citation:

I (2014) CPJ 521; 2014(1) CPR 655.

6. Ramesh Kumar Vs. Mrs. Prasanna Bhandary

i) Case in Brief:

Complainant purchased an apartment from OP for a total sale consideration of Rs.27,07,500/-. OP entered into a written agreement with the Complainant on 22.09.2007 as per which OP had agreed to deliver the apartment on or before 31.03.2009. It is the Complainant's case that OP not only failed to deliver the apartment as per the agreement but also failed to furnish the completion certificate, door number, marked the parking area, failed to form an Association and also collected extra amount as service tax. The District Forum, before whom a complaint was filed, allowed the complaint and directed OP to deliver actual possession immediately along with required documents and also refund Rs.17,591/- collected from the Complainant as additional amount, Rs.1,50,000/- as compensation and Rs.1,000/- as costs. The State Commission affirmed the order of the District Forum vide impugned order against which the present Revision Petition had been filed. Revision Petition dismissed with cost of Rs.10,000/-.

ii) Order appealed against:

From the order dated 29.05.2013 in First Appeal No.1063/2011 of the Karnataka State Consumer Disputes Redressal Commission.

iii) Parties:

Ramesh Kumar - Petitioner

Vs.

Mrs. Prasanna Bhandary - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3098 of 2013 with IA/5428/2013 (For Stay) & Date of Judgement: 21.02.2014.

v) Acts and Sections referred:

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

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vi) Issues raised and decided:

- a) The Commission noted that as per Clause 3 of the Agreement, the possession of the apartment had to be delivered to the Respondent on or before 31.03.2009. Further, as per this Clause, Petitioner shall not incur any liability by failure to deliver possession due to non-availability of electricity, water supply or on account of any other valid reason or ground such as non-availability of cement, steel or other building material. The Commission found nothing on record to show that Petitioner ever proved the above defence before the fora below.
- b) The Commission observed that the Respondent had paid the entire due amount along with interest to the Petitioner within the stipulated period. However, possession was not given as per the agreement. The Commission held that deficiency in service on the part of the Petitioner is writ large in this case.
- c) The Commission, relying on the decisions of the Commission in *Innovative Constructions Pvt. Ltd. Vs. Dr. Sangeeta H. Pikale*, First Appeal No.702 of 2012 decided on 26.04.2013 and *M/s. Sagar Shopping Developers Vs. Anil Dattatrey Kadam*, Revision Petition No.281 of 2013 decided on 01.05.2013, held that the order passed by the fora below did not call for any interference as they were well reasoned.
- d) The Revision Petition was accordingly dismissed with cost of Rs.10,000/- to be deposited in the name of Consumer Legal Aid Account of the Commission within four weeks.

vii) Citation:

II (2014) CPJ 301; 2014(1) CPR 642.

(j) CONSULTANCY SERVICES

1. Worldwide Immigration Consultancy Services Ltd. (WWICS) Ltd. & Anr. Vs. Jereena Job.P

i) Case in Brief:

Respondent/Complainant entered into an agreement with the Petitioners on 29.01.2009 for immigration to Canada. As per the agreement Respondent was to pay a total fee of Rs.50,000/- in two

installments. It was also agreed that Respondent would pay a sum of 1700 US \$ as visa processing fee and for meeting initial expenses on arrival of the Respondent in Canada. It was also agreed that Petitioner would refund 50% of the total fee collected or Rs.25,000/- whichever is less in case the Respondent was declared unqualified. Respondent paid the entire amounts and submitted all certificates including a certificate for job experience. However her application was rejected by the Canadian High Commission vide letter dated 19.11.2009 stating that her job experience was not sufficient for processing the application. Respondent requested the Petitioner to refund 50% of the professional charges and visa fee but Petitioners did not reimburse the amount. Respondent filed complaint before the District Forum which allowed the complaint in part and directed the Petitioners jointly and severally to refund 50% of the amount of Rs.50,000/- and to pay Rs.84,230/- (1700 US \$) together 12% interest p.a. from the date of complaint till realization. Petitioners' appeal was dismissed by the State Commission vide impugned order against which the present Revision Petition had been filed. Revision Petition dismissed with costs.

ii) Order appealed against:

From the order dated 27.03.2013 in Appeal No.641/2012 of the Kerala State Consumer Disputes Redressal Commission.

iii) Parties:

Worldwide Immigration Consultancy
Services Ltd. (WWICS) Ltd. & Anr. - Petitioners

Vs.

Jereena Job.P - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2555 of 2013 & Date of Judgement: 13.05.2014.

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 as per the Contract of Engagement between the parties, Petitioner was to provide the following services to the Complainant (a) assess the client according to the information provided by the client in the assessment form (b)

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assist the client in preparation of immigration case (c) review and identify submission of required documents and supporting evidences (d) submit the complete case with supporting documentation and evidence to the visa processing office (e) handle all correspondence with the High Commission (f) intimate the requirements sent by the visa processing office to the client (g) assist the client in keeping her file up to date (h) advise the client on subsequent changes in the immigration laws and any subsequent conditions applicable to meet the selection criteria. The Commission held that the Petitioners did not perform their above duties diligently and that is why the Respondent's application form was rejected. It was further held that deficiency was writ large in this case.

- b) The Commission accordingly held that there was no merit in the Revision Petition and dismissed the same with cost of Rs.10,000/- of which Rs.5,000/- was to be paid to the Respondent and remaining Rs.5,000/- to be deposited by way of Demand Draft in the name of Consumer Legal Aid Account of the Commission within six weeks.

vii) Citation:

II (2014) CPJ 710; 2014(2) CPR 795.

(k) COURIER SERVICE

1. DTDC Courier & Cargo and Anr. Vs. M/s Caterpillar India Pvt. Ltd and Anr.

i) Case in Brief:

One M/s. Sangam Mechanical Engineering Works, Mysore (for short, Sangam) raised an invoice on the Respondent No.1 for a sum of Rs.1,82,645/- for supplies made. Towards payment of the said amount, the Respondent No.1 made out a cheque drawn on Respondent No.2 in favour of Sangam. The cheque was signed by Mr. V.Ramarathnam and Mr. Sudanshu Panigrahi, the two authorized signatories of the Respondent No.1 Company. The said cheque was entrusted in a sealed cover to the Petitioner No.1 (courier service provider) through the Petitioner No.2 (agent and franchisee of OP.1). It was only when the

Respondent No.1 received reminder for payment from Sangam in January, 2007 that they became aware that cheque had not reached there. The Respondent No.1 after checking with its bankers came to know that the name of the drawee, i.e. Sangam was obliterated and was substituted with the name S.Ramakrisna and that forged signatures purporting to be that of the said authorized signatories of the Respondent No.1. Aggrieved by the act of OPs, he filed complaint before the District Forum which found that there was gross negligence and carelessness on the part of OP.1 and 2 and directed them jointly and severally to pay compensation of Rs.10,000/- along with a litigation cost of Rs.1,000/-. Dissatisfied with the order of the District Forum, Respondent No.1 filed an appeal for enhancement before the State Commission. The State Commission modified the order of the District Forum and directed OPs.1 & 2 to pay jointly and severally Rs.1,82,645/- to the complainant within two months from the date of the order. Against the order of the State Commission, the present revision petition has been filed by the Petitioners. Revision Petition dismissed with cost of Rs.10,000/-.

ii) Order appealed against:

Against the order dated 03.03.2008 in Appeal No.2135/2007 of the State Commission, Karnataka

iii) Parties:

DTDC Courier & Cargo and Anr. - Petitioners

Vs.

M/s Caterpillar India Pvt. Ltd and Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2153 of 2008 & Date of Judgement: 12-05-2014.

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 Petitioners were most negligent in the first instance as due care was not taken and an article given to their custody for delivery was allowed to be stolen by a third party by the carelessness of their staff or in collusion with their staff.

Deficiency in Service - Crop Insurance

Further, they did not inform the Respondent No.1 for five months. Had they done so, the Respondent No.1 could have taken up the matter with Respondent No.2 in time. Therefore, the Commission held that the Courier Service was liable to pay the amount covered under the cheque to the Respondent No.1.

- b) In view of the above, the Commission dismissed the present revision petition with cost of Rs.10,000/- to be paid by the OPs to the Consumer Legal Aid A/c of the Commission and held that the State Commission has rightly allowed the complaint of the Respondent No.1/Complainant.

vii) Citation:

2014(3) CPR 69.

(1) CROP INSURANCE

1. Agriculture Insurance Co. of India Ltd. Vs. Kishan Lal & Anr.

i) Case in Brief:

The facts and the issues arising therefrom are similar in all the three Revision Petitions and they have been disposed by a common order taking the facts of Revision Petition No.2607 of 2013. The Respondent had taken an insurance cover for Rs.1,35,000/- from the Petitioner Insurance Co. in respect of wheat crops cultivated by him. On 21.03.2009, during the validity period of the insurance cover, a severe thunderstorm accompanied by hailstones destroyed the entire crop putting the Respondent to heavy loss. His claim for insurance money was repudiated by OP. He filed complaint before the District Forum which allowed the same and directed OP to pay the Complainant within three months Rs.1,35,000/- towards loss of crops, Rs.1,000/- for mental agony and Rs.1,000/- as cost of litigation. The District Forum's order was upheld by the State Commission, vide impugned order, against which the present Revision Petition had been filed. Revision Petitions dismissed in all the three cases.

ii) Order appealed against:

Revision Petition No.2607 of 2013

From the order dated 16.04.2013 in Appeal No.358/2012 of the Rajasthan State Consumer Disputes Redressal Commission.

Revision Petition No.2608 of 2013

From the order dated 16.04.2013 in Appeal No.359/2012 of the Rajasthan State Consumer Disputes Redressal Commission.

Revision Petition No.2609 of 2013

From the order dated 16.04.2013 in Appeal No.360/2012 of the Rajasthan State Consumer Disputes Redressal Commission.

iii) Parties:

Revision Petition No.2607 of 2013

Agriculture Insurance Co. of India Ltd. - Petitioner(s)
Vs.

Kishan Lal & Anr. - Respondents

Revision Petition No.2608 of 2013

Agriculture Insurance Co. of India Ltd. & Anr. - Petitioners
Vs.

Sauji Lal & Anr. - Respondents

Revision Petition No.2609 of 2013

Agriculture Insurance Co. of India Ltd. - Petitioner(s)
Vs.

Ramesh & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition Nos.2607-2609 of 2013 &
Date of Judgement: 28.01.2014.

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 claim was repudiated by insurance company on the ground that the crops were destroyed because of hailstones which is not one of the covered risks as per the notification of the Rajasthan Government pertaining to the scheme. The Commission observed that the main objective of the scheme was to mitigate the hardships of the insured farmers against likelihood of financial loss on account of anticipated crop loss resulting from incidents of adverse

Deficiency in Service - Crop Insurance

conditions of weather parameters like increase in temperature, decrease in temperature, excess rainfall, humidity etc. Though destruction of crops due to hailstones may not be specifically mentioned, it was held that, it was not excluded under the scheme since the risks stated are illustrative and not comprehensive, as clearly indicated by the addition of the word etc. while listing out various adverse conditions. The Commission observed that the Petitioner insurance company unnecessarily harassed the Respondents by rejecting their bona fide claims. Under the circumstances the Commission upheld the orders of the fora below, dismissed the Revision Petitions and directed the Petitioner to comply with the orders of the fora below within a period of three months.

vii) Citation:

I (2014) CPJ 362; 2014(1) CPR 331.

2. Oriental Insurance Co. Ltd. Vs. Irawati & Ors.

i) Case in Brief:

Respondents had submitted their proposal for insurance of Tissue Culture Banana Crop in August 2002. After considering the same, Petitioner vide letter dated 13.10.2002 of the Divisional Officer had written to Smt. Meenaxi A.Agharkhed, GPA holder of the Respondents, that they were arranging for inspection of the farm by one of their veterinary doctors and requested them to remit the provisional premium of Rs.60,000/- stating that they were referring the proposal to the Regional office for acceptance. Respondent had requested SBI, Mannur to remit the amount of Rs.60,000/- on their behalf from their account which was done in December 2002. The Respondents claimed that the Petitioner did not issue the policy in spite of a letter written by the GPA holder. Instead the Petitioner returned the premium amount to the bank and wrote a letter on 14.06.2003 asking the bank to persuade the Respondents to accept the insurance for Rs.10,000/- per acre instead of Rs.45,000/- per acre as per the original proposal. Meanwhile the crop was hit by a strong summer wind in the second week of the June, 2003 resulting in total loss of the crop. On receipt of information of the said loss from the GPA holder, the Petitioner rejected the proposal for insurance. The Respondents' case is that the non-issuance of the claim form as well as the repudiation of their claim amounted

to deficiency in service. The District Forum, before whom a complaint was filed, held that the Complainants are entitled to recover a sum of Rs.5,00,000/- with interest @ 6% from the date of filing complaint till the date of realization. A sum of Rs.5,000/- towards compensation for mental agony and cost was also awarded. On appeal filed by the Petitioner, the State Commission modified the order of the District Forum and directed OP to pay Rs.1,00,000/- to the Complainant with interest @ 6% p.a. and Rs.5,000/- towards cost and mental agony vide impugned order against which the present Revision Petition had been filed. Revision Petition dismissed with cost of Rs.15,000/-.

ii) Order appealed against:

From the order dated 20.11.2007 in Appeal No.1552/2006 of the State Consumer Disputes Redressal Commission, Karnataka.

iii) Parties:

Oriental Insurance Co. Ltd.

- Petitioner

Vs.

Irawati & Ors.

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.783 of 2008 & Date of Judgement: 07.05.2014.

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 National Commission held that the Petitioner failed to explain the provision, the guideline or scheme under which they had asked for provisional premium of Rs.60,000/-. They had also failed to explain how the money was kept in deposit till January 2003 and why the amount was returned to the bank and not to the Respondent who asked for insurance. No evidence was adduced to show that the Respondents had been informed at any point of time that their proposal had not been accepted and the reasons thereof. The Commission held that the Respondents could not be faulted for believing that they had not received the policy due to delay in processing the case. Had they been informed about the rejection of their proposal, they could have made alternative arrangements towards insuring the crop. The

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Commission held that the Petitioner Company indulged in unfair trade practice and committed grave deficiency in service in not only asking for the provisional premium but keeping the amounts for many months and thereafter, casually returning the same without any interest to the bank and without informing the Respondents about the fate of the proposal for the insurance.

- b) The Commission held that there was no infirmity, material irregularity or jurisdictional error in the order of the State Commission to warrant interference. The Revision Petition was dismissed with cost of Rs.15,000/- of which Rs.5,000/- each was to be paid to the two Respondents and the remaining Rs.5,000/- was to be paid to the Consumer Legal Aid Account of the Commission within four weeks from the date of order.

vii) Citation:

III (2014) CPJ 248; 2014(3) CPR 131.

(m) DISABILITY INSURANCE

1. LIC of India & Ors. Vs. Kamlesh

i) Case in Brief:

Complainant/Respondent purchased an insurance policy worth Rs.25,000/- from the Petitioner on 10.05.2001. In the month of November 2003, she developed severe headache, became unconscious on 25.12.2003 and was under treatment in the All India Institute of Medical Sciences, New Delhi as an inpatient till 27.01.2004. She became 100% disabled and was issued a certificate to that effect by the Board of Directors of General Hospital, Jind on 02.06.2008. She filed claim under the policy with OP but the claim was repudiated on the ground that the disability suffered by the Complainant was not a consequence of an accident. Alleging deficiency in service she filed complaint through her husband. The District Forum allowed the complaint and directed OP to pay the full amount of policy along with other benefits to the Complainant within 30 days. The appeal filed by the OPs before the State Commission was dismissed vide impugned order against which the present Revision Petition had been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 30.07.2012 in First Appeal No.1398/2011 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

LIC of India & Ors. - Petitioners

Vs.

Kamlesh - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4476 of 2012 & Date of Judgement: 09.01.2014.

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 revolved around the definition and scope of the term 'accident' as envisaged by the insurance policy. The Commission, after going through Clauses 10(2), 10(4) and 10(5) of the policy dealing with claims of the insured relating to permanent disability suffered on account of her accident held that the word 'accident' in the context of the insurance policy means an event which is unintended and unforeseen and which is something that does not occur in the usual course of events. No doubt the headache followed by permanent disability to the Complainant occurred unexpectedly but this did not mean that aforesaid medical ailment was covered by the word accident as envisaged in the insurance policy. The Commission held that the word 'accident' used in the policy particularly under the accident benefit clause meant the accident as understood in common parlance and did not include disability caused by medical reasons.
- b) While coming to this decision the Commission relied on the decisions of the Hon'ble Supreme Court relating to interpretation of insurance contract in *Oriental Insurance Co. Ltd. Vs. Sony Cheriyan* (1996) 6 SCC 451, *General Assurance Society Ltd. Vs. Chandumull Jain* (1996) 3 SCR 500 and *United India Insurance Co. Ltd. Vs. Harchand Rai Chandan Lal* (2004) 8 SCC 644 wherein it was observed that "the terms of contract have to be strictly read and natural meaning must be given to it. No outside aid should be sought unless the meaning is ambiguous".

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c) The Commission held that the fora below had committed grave error in allowing the complaint by giving an expansive definition to the word 'accident' which is not envisaged by the insurance contract. The orders of the fora below were set aside and the Revision Petition was allowed. The complaint stood dismissed.

vii) Citation:

I (2014) CPJ 287; 2014(1) CPR 176.

(n) DRIP IRRIGATION

1. Asith Vs. G. Manjunath

i) Case in Brief:

It was the case of the Complainant that OP, proprietor of Akshay Enterprises, had undertaken and was paid for commissioning of a drip irrigation system in 28.28 acres of the Complainant's land but executed work only to the extent of 18 acres. Complainant claimed to have suffered loss of fruit crops planted in the remaining 10.28 acres and was also deprived of Central subsidy to be extent of Rs.4,50,000/-. His complaint was allowed by the District Forum which directed OP to pay Rs.2,40,364/- for implementation of drip irrigation in the remaining 10.28 acres, Rs.50,000/- towards labour, Rs.15,000/- towards compensation and Rs.5,000/- towards litigation. Both the parties filed appeals before the State Commission which dismissed both the appeals and confirmed the order of the District Forum. Aggrieved by the State Commission's order the present Revision Petition had been filed by the OP. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 21.10.2011 in Appeal No.2904/2010 of the Karnataka State Consumer Disputes Redressal Commission.

iii) Parties:

Asith

- Petitioner

Vs.

G. Manjunath

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.580 of 2012 & Date of Judgement: 11.03.2014.

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 District Forum had appointed the local Assistant Director of Horticulture as the Court Commissioner in the background of the claim made by the Complainant but the report of the Commissioner was of no help in determining the reason for non-coverage of about 9 acres falling between the total area and the covered area. The Commission therefore held that both the District Forum and the State Commission had rightly refused to place reliance on the report of the Court Commissioner which gave no clear cut finding in relation to the acreage of commissioning of drip irrigation by the OP. The Commission held that the concurrent findings of the fora below did not suffer from any illegality or material irregularity to justify intervention by the National Commission. The Revision Petition was accordingly dismissed as devoid of merit.

vii) Citation:

II (2014) CPJ 182; 2014(2) CPR 242.

(o) EDUCATIONAL SERVICES

1. Bhartiya College of Agriculture Vs. Sagar Sinha

i) Case in Brief:

Respondents/Complainants, Sagar Sinha and Anil Kumar, filed separate complaints against the Petitioners before the District Forum, Durg alleging deficiency in service on the ground that though they belonged to General category, the Petitioner withheld the results of the semester examination on the ground that caste certificate had not been produced nor did they refund the fees. The complaints were allowed by the Forum but no compensation to the Respondents was awarded. Both parties filed separate appeals challenging the District Forum's order. The State Commission allowed the appeals filed by the Respondents while the appeals of the Petitioner were dismissed. A compensation of Rs.50,000/- in each case was awarded. Challenging the said order the present Revision Petition had been filed. Since facts of both complaints were similar and common question of law was involved, the Revision

Deficiency in Service - Educational Services

Petitions were disposed of by a common order treating facts of RP.No.3187 of 2013 as the lead case. Revision Petitions dismissed with cost of Rs.10,000/-.

ii) Order appealed against:

Revision Petition No.3187 of 2013

From the order dated 25.07.2013 in First Appeal No.382/2012 of the State Consumer Disputes Redressal Commission, Chandigarh.

Revision Petition No.3188 of 2013

From the order dated 25.07.2013 in First Appeal No.383/2012 of the State Consumer Disputes Redressal Commission, Chandigarh.

Revision Petition No.3189 of 2013

From the order dated 25.07.2013 in First Appeal No.388/2012 of the State Consumer Disputes Redressal Commission, Chandigarh.

Revision Petition No.3190 of 2013

From the order dated 25.07.2013 in First Appeal No.389/2012 of the State Consumer Disputes Redressal Commission, Chandigarh.

iii) Parties:

Revision Petition No.3187 of 2013

Bhartiya College of Agriculture - Petitioner

Vs.

Sagar Sinha - Respondent

Revision Petition No.3188 of 2013

Bhartiya College of Agriculture - Petitioner

Vs.

Anil Kumar Sahu - Respondent

Revision Petition No.3189 of 2013

Bhartiya College of Agriculture - Petitioner

Vs.

Sagar Sinha - Respondent

Revision Petition No.3190 of 2013

Bhartiya College of Agriculture - Petitioner

Vs.

Anil Kumar Sahu - Respondent

iv) Case No and Date of Judgement:

Revision Petition Nos.3187-3190 of 2013 &

Date of Judgement: 06.03.2014.

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 not placed on record the Application Form for admission submitted by the Respondents at the time of taking admission which would have thrown light on the entire controversy as to whether they had applied for General category seats or for the OBC category. It was noted that the Respondents had deposited the requisite fee with the Petitioner College in July 2010 and thereafter had taken examination for first as well as second semester, but till date results qua the Respondents had not been declared. The Commission held that there was no fault on the part of the Respondents at all and the fault lay at the door of the Petitioner only. Under the circumstances the Commission found no infirmity or illegality in the order of the State Commission. The Revision Petitions were accordingly dismissed with cost of Rs.10,000/- to be paid in the name of Consumer Legal Aid Account of the Commission within four weeks.

vii) Citation:

II (2014) CPJ 50; 2014(1) CPR 564.

(p) ELECTRICITY CHARGES

1. Executive Engineer, Electricity Distribution Div-1, Lakhimpur Kheri Vs. Ashok Kumar Sharma

i) Case in Brief:

Complainant/Respondent was operating a diagnostic clinic in his house and had obtained an electricity connection for domestic consumption of power under the tariff plan known as LMV-1. The Petitioner sent a notice to him asking him to pay electricity charges under category LMV-2, as he was running the clinic for commercial purpose. Complainant took the stand that he was doing advisory business in a portion of his house and hence could not be compelled to pay the tariff

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for commercial purpose. He filed a complaint before the District Forum which allowed the same and held that his connection should be treated as domestic connection. An appeal filed against the order, having been dismissed by the State Commission, the Petitioner had filed the present Revision Petition. Revision Petition allowed.

ii) Order appealed against:

From the order dated 08.04.2008 in First Appeal No.1336/SC/2007 of the Uttar Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

Executive Engineer, Electricity Distribution Div-1,
Lakhimpur Kheri

- Petitioner

Vs.

Ashok Kumar Sharma

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3932 of 2008 & Date of Judgement: 07.01.2014.

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 rate schedules for electricity tariff issued by the U.P. Power Corporation Ltd. had been classified in two categories; the rate schedule LMV-1 for domestic power connection and LMV-2 for non-domestic power connections. The Commission went through the rate schedules effective from 16.09.2001 as issued vide notification dated 10.09.2001, rate schedules effective from 09.11.2002 issued by notification 02.11.2002 and rate schedules effective from 01.12.2004. In all the rate schedules the private diagnostic centre including X-ray plants had been included in rate schedule LMV-2. There was no mention of the word "Doctors" in the rate schedules effective from 16.09.2001 and 09.11.2002 but the word "Doctors" had been mentioned in the rate schedule effective from 01.12.2004. The present complaint was made in the year 2003 and at that time rate schedule effective from 09.11.2002 was applicable. The Commission did not agree with the findings of the fora below which made a distinction between a private diagnostic centre and

the Doctors' clinic saying that private diagnostic centre were covered under LMV-2 while Doctors' clinics were covered under LMV-1. The Commission held that running a clinic was not a domestic purpose and hence it cannot be covered under the rate schedule LMV-1 by any stretch of imagination.

- b) The Commission also noted that the Petitioner, as per the inspection carried out by the department on 27.08.2008 had stated that the Complainant was running a clinic at the premises in question but did not reside there.
- c) The Revision Petition was allowed and orders of the fora below were set aside. The consumer complaint stood dismissed.

vii) Citation:

I (2014) CPR 339; 2014(1) CPR 194.

2. Vishwanath Prasad Verma Vs. Superintending Engineer & Anr.

i) Case in Brief:

Complainant/Petitioner was provided Consumer No.K.P./EI D.S. 1726 by OP on 25.09.1998. He had been receiving and paying electricity bill regularly. For the month of December 2001, he received a bill for Rs.45,490.42. According to him the bill contained dues of Consumer No.K.P./EI D.S. 74 which had no connection with the Complainant. Since his request for rectification did not yield result, he filed consumer complaint before the District Forum. The Forum allowed the complaint and quashed the said bill and directed OP to issue bill only against connection D.S.1726. Appeal filed by the OP was allowed by the State Commission against which the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 21.05.2013 in First Appeal No.123/2007 of the Bihar State Consumer Disputes Redressal Commission, Patna.

iii) Parties:

Vishwanath Prasad Verma	-	Petitioner/Complainant
	Vs.	
Superintending Engineer & Anr.	-	Respondents/OPs

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iv) Case No and Date of Judgement:

Revision Petition No.2989 of 2013 with IA/5157/2013 (For Stay) & Date of Judgement: 21.01.2014.

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 disputed bill for the month of December, 2001 was given to the Petitioner and he protested on 15.01.2002. Again he requested for rectification on 03.07.2002 and 25.07.2002 and as per complaint no further action was taken by the Complainant and the complaint for quashing the aforesaid bill was filed on 27.06.2006 apparently after four and a half years. The Commission held that the State Commission had rightly taken the view that the complaint was time barred. The Commission did not accept the argument of the Petitioner that he was continuously pursuing the matter and as his grievances were not redressed, he was compelled to file complaint. It was held that mere persuasion does not extend limitation as held by the Commission in *Himachal Futuristic Communications Ltd. Vs. K.C. Aggarwal & Ors.*, IV (2013) CPJ 567 (NC).
- b) The Commission therefore held that the order passed by the State Commission was in accordance with law and did not call for any interference. The Revision Petition was accordingly dismissed.

vii) Citation:

2014(1) CPR 367.

3. B.S.E.S. Yamuna Power Limited Vs. Smt. Krishna

i) Case in Brief:

Petitioner/OP installed an electricity connection in the house of the Complainant/Respondent on 15.11.2003. The electricity bill was not issued by OP till 27.07.2008 when a bill for Rs.1,070/- was issued by OP which was paid by the Complainant on 01.10.2008. However, officials of OP slapped a huge bill in the sum of R.98,840/- on the Complainant

without any explanation. Alleging deficiency in service, Complainant approached the District Forum on 20.03.2009 which allowed the same and directed OP/Petitioner to recover only Rs.9,026/- from the Complainant along with subsequent amount on current bills. Compensation of Rs.5,000/- for mental agony and Rs.2,000/- towards cost were also awarded. 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 allowed.

ii) Order appealed against:

From the order dated 31.07.2012 in First Appeal No.243/2010 of the State Consumer Disputes Redressal Commission, Delhi.

iii) Parties:

B.S.E.S. Yamuna Power Limited	- Petitioner
Vs.	
Smt. Krishna	- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4317 of 2012 & Date of Judgement: 03.02.2014.

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 Counsel for OP argued that in terms of Regulation 16(ix) and (iv) of DERC Regulations, a consumer cannot be allowed to consume electricity without paying the bills for consumption. In *Maharashtra State Electricity Board Vs. Swastic Industries* (1996) CPJ 71 (NC), the Commission had upheld the demand raised after a span of nine years of actual consumption of electricity, clearly holding that raising bill for electricity consumed, howsoever belated, cannot be termed as deficiency in service.
- b) The Commission observed that it is well settled that the law of limitation was not applicable for recovery of electricity dues. Relying on the decisions in *H.D. Shourie Vs. Municipal Corporation of Delhi and Anr.* reported in 32 (1987) DLT 73 and in *B.S.E.S. Rajdhani Power Ltd. Vs. Consumer Grievance Redressal Forum W.P. (C) 13556/2006* with *Nalin Bhushan Chandlok Vs. B.S.E.S Rajdhani Power Ltd. W.P. (C) 14873/2006*, the Commission was of the view

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that the amount due and payable by the Complainant is public money. The series of judgments have recognized the legislative intent behind preventing loss of public money.

- c) The Commission observed that the OP had not specified about what was the rate per unit of electricity consumption during 2003 and that the huge bill in the sum of Rs.1,00,223/- till April 2009 raised by OP needed further scrutiny and clarification.
- d) The Revision Petition was accordingly allowed and OP was directed to issue fresh bill with proper calculation as per prevalent electricity rates during the period November 2003 to April 2004. Holding that it was a case of contributory negligence, the Commission directed that OP should charge only for units consumed and should not levy penalty or interest. It was further directed that the amount due from the Complainant be recovered from 12 equal monthly installments.

vii) Citation:

II (2014) CPJ 27.

(q) ELECTRICITY SERVICES / SUPPLY

1. Uttar Pradesh Power Corporation Ltd. & Anr. Vs. Om Prakash Kohli

i) Case in Brief:

Complainant/Respondent was carrying on cotton and woolen clothes business in his shop at Pilibhit. Petitioners supplied electricity to the shop. On the night of 26.01.2000 at about 1.00 a.m. there was a short circuit in the pole situated near the shop from which connection through cable was given to the shop and fire broke out in his shop. Clothes worth Rs.3,00,000/- kept in a shop got burnt. Respondent informed the Petitioner immediately. By the time the fire brigade could control the fire three more shops in the area had been burnt. Respondent filed a complaint in the District Forum claiming compensation of Rs.3,00,000/-. Partly allowing the complaint the Forum directed the Petitioners to pay Rs.80,000/- for the clothes destroyed in fire and Rs.10,000/- for reconstruction of shop and Rs.6,000/- as compensation. The State Commission, on appeal filed by the Petitioners, modified the order of the District Forum and directed the Petitioners

to pay a sum of Rs.50,000/- for loss of clothes and Rs.10,000/- for reconstruction of shop along with simple interest at 6% p.a. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 11.11.2010 in Appeal No.1604/2006 of the Uttar Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

Uttar Pradesh Power Corporation Ltd. & Anr. - Petitioners

Vs.

Om Prakash Kohli - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1331 of 2011 & Date of Judgement: 07.02.2014.

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 Counsel for Petitioners had relied on the report of junior engineer dated 01.09.2001 in which it was mentioned that the incident occurred due to short circuit and some fault must have occurred in the electricity meter. The Commission observed that no reliance can be placed on the said report which was prepared 19 months after the incident. The Commission observed that adequate evidence had been produced before the District Forum and the State Commission to suggest that the short circuit had caused the fire and that information was given immediately to the fire brigade which had also confirmed that short circuit had caused the fire. The Commission therefore held that there was clear cut negligence on the part of Petitioners. The Commission therefore found no infirmity or illegality in the order of the State Commission and dismissed the Revision Petition with cost of Rs.5,000/- to be paid to the Consumer Legal Aid Account of the Commission within four weeks.

vii) Citation:

I (2014) CPJ 555; 2014(1) CPR 509.

2. Shri Avinash Vs. Executive Engineer, Maharashtra State Electricity Distribution Co. Ltd. & Ors.

i) Case in Brief:

It is the case of the Complainant/Petitioner that the last date for payment of electricity bill of Rs.1,348.54 was 03.08.2004. It was paid by cheque on 02.08.2004. The amount was debited to the bank account of the Complainant on 04.08.2004. Still the Respondents disconnected power supply to the house of the Complainant on 19.08.2004 allegedly without giving proper notice as contemplated in Section 56 of the Electricity Act, 2003. Alleging deficiency in service he filed complaint before the District Forum which allowing the complaint awarded a compensation of Rs.1,000/- and cost of Rs.1,000/-. The Complainant filed an appeal before the State Commission seeking enhancement of compensation. It was dismissed with the observation that the matter ought to have ended with an apology from the OPs. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition was allowed enhancing the compensation and the impugned order set aside.

ii) Order appealed against:

From the order dated 18.07.2008 in Appeal No.1587/2005 of the Maharashtra State Consumer Disputes Redressal Commission.

iii) Parties:

Shri Avinash - Petitioner

Vs.

Executive Engineer, Maharashtra
State Electricity Distribution Co. Ltd. & Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3850 of 2008 & Date of Judgement: 25.03.2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986; Section 56 of the Electricity Act, 2003.

vi) Issues raised and decided:

The primary ground of challenge was that the State Commission should have gone into the basic question whether the law, as laid down in Section 56 of the Electricity Act, 2003 had been followed by the

Respondent before disconnection of power supply to the house of the Complainant. The Commission observed that the notice printed on the bill was in relation to the amount mentioned as "arrears". The bill itself showed that there was no arrears on the date and in fact, the bill showed negative arrears of Rs.2.74. The Commission observed that had the Respondents issued a notice under Section 56, Complainant's reply would have enlightened them on the payment of the bill. It was held that even if the Respondents were under the wrong information that the bill had not been paid, the act of disconnection of power supply on 19.08.2004 was in total disregard and violation of the requirement under Section 56 and 117 of the Electricity Act, 2003. The Commission further observed that the impugned order had not gone into these aspects and placed reliance on the fact that the supply was restored on 24.08.2004 and a letter of regret had been sent to the Complainant. The Commission was of the view that the conduct of the Respondents deserved to be viewed much more seriously. Precipitate action for disconnection of power supply without any evidence of prior verification of payment of bill was a serious lapse on the part of the Respondents. Consequently the Revision Petition was allowed, the impugned order was set aside, the amount of compensation awarded by the District Forum was enhanced from Rs.1,000/- to Rs.5,000/- and the cost from Rs.1,000/- to Rs.2,000/-.

vii) Citation:

II (2014) CPJ 229; 2014(2) CPR 169.

3. Dr. Prem Lata Vs. North Delhi Power Ltd.

i) Case in Brief:

It was the case of the Complainant/Petitioner that there was an electricity connection installed in the year 2007 at her premises. On 28.03.2008, the said electric connection was disconnected, due to non-payment of outstanding dues, but the Petitioner/Complainant allegedly restored the electric connection illegally. This fact came to the notice of the Respondent/OP when their officers visited the premises in question to ascertain the meter reading. It has been stated that they were not allowed to enter the premises for removing the disconnected meter. The Respondent/OP served a notice under Section 163 of the Electricity Act calling upon the Complainant/Petitioner to allow them

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to inspect the premises and remove the meter. However, the Complainant filed the consumer complaint in question, saying that the Respondent/OP be ordered to supply proper electrical/duplicate bill to the consumer cycle-wise, based on the actual consumption of the electricity. During the pendency of the complaint before the District Forum, there was settlement between the parties and on that basis, the District Forum directed the opposite party to raise a bill in conformity with formal and substantial requirement of bill as mandated by Regulation 12 of DERC (Performance Standards-Metering and Billing) Regulations 2002. The complainant filed an execution application before the District Forum for the issuance of a computerized bill. The State Commission, on appeal filed by the Respondent, directed the District Forum to proceed further as per law in the execution case, on the basis of fresh manually prepared bill filed before them. It is against this order that the present revision petition has been made. Revision Petition dismissed.

ii) Order appealed against:

Against the Order dated 21.01.2014 in Appeal No.452/2012 of the State Commission Delhi.

iii) Parties:

Dr. Prem Lata - Petitioner

Vs.

North Delhi Power Ltd. - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1432 of 2014 & Date of Judgement: 29.04.2014.

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 the settlement arrived at between the parties revealed that new bill was raised, which was duly paid by the complainant without any protest and a new connection was also released in her favour. In spite of that, the complainant filed the execution application, before the District Forum, requesting for the issuance of a computerized bill, when she had already made payment in question without any protest. The opposite party had explained

that because of permanent disconnection, the bill could not be raised through their computerised system and hence, they prepared the bill manually and an amount of Rs.37,908/- was raised, based on the final reading in the previous meter, and the same was paid without any protest.

- b) In view of the above, the present revision petition was dismissed and the order of the State Commission was upheld.

vii) Citation:

II (2014) CPJ 677; 2014(2) CPR 449.

4. Chakradhar Sahoo Vs. Khетramohan Parida & 5 Ors.

i) Case in Brief:

Petitioner/Complainant was owner of the property in question and he executed the sale deed dated 18.01.2008 in favour of OP No.1. The Sale Deed was executed although only part consideration had been paid by OP No.1. The change in ownership of the electricity connection was made by OP No.2 and 3 on 12.05.2008 in favour of OP No.1 based on the sale deed dated 18.01.2008. Later on, as per the version of the Petitioner, the sale deed was got cancelled on 31.12.2008. Civil litigation was pending between the two parties when the complaint was filed questioning the transfer of electricity connection. The District Forum after taking to account the evidence of the parties passed order dated 27.12.2011 dismissing the complaint stating that OPs 2 and 3 had discharged their statutory obligations in accordance with the provisions of statute and rightly transferred the ownership. An Appeal against this order filed before the State Commission was also dismissed vide impugned order against which the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 01.11.2012 in Appeal No.23/2012 of the State Consumer Disputes Redressal Commission, Orissa.

iii) Parties:

Chakradhar Sahoo	-	Petitioner
	Vs.	
Khетramohan Parida & 5 Ors.	-	Respondents

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iv) Case No and Date of Judgement:

Revision Petition No.159 of 2013 & Date of Judgement: 29.04.2014.

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 District Forum had passed their order based on regulation 13(10) and 103 of OERC (Condition of supply) Regulation 2004. It was also noted that the factum of cancellation of sale deed or its declaration as null and void was pending between the parties. In case the sale deed was declared null and void and the prayer of the Complainant was granted, the authorities in the electricity department can change the connection of the Petitioner at that time. The Commission held that at the present stage the orders of the State Commission or the District Forum did not suffer from any legal infirmity, material irregularity or jurisdictional error. Consequently the Revision Petition was dismissed as devoid of merit.

vii) Citation:

II (2014) CPJ 631.

(r) EMPLOYMENT OFFER

1. Shalini Vohra, Vice President (HR) Spice Jet Ltd. Vs. Akansha Singh Bhadoriya

i) Case in Brief:

Petitioner Company, Spice Jet, invited applications from candidates above 18 years of age for recruitment of "Trainee Cabin Attendants". Complainant also applied and was offered the job after an interview. She deposited a non-refundable amount of Rs.50,000/- for undergoing training. Subsequently, on scrutiny of her papers, it was noticed that she had wrongly mentioned her date of birth in her resume and she was actually below the age of 18 years. The company revoked the letter of offer sent to her and forfeited the deposit. Her prayer for refund of the deposit was turned down by the company. Alleging deficiency in service she filed complaint before the District Forum which was allowed. The District Forum's order was confirmed 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 07.12.2012 in Appeal No.752/2012 of the Rajasthan State Consumer Disputes Redressal Commission.

iii) Parties:

Shalini Vohra,

Vice President (HR) Spice Jet Ltd. - Petitioner

Vs.

Akansha Singh Bhadoriya - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1073 of 2013 & Date of Judgement: 28.02.2014.

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 contended by the Petitioner that the Respondent herself had admitted that she had misrepresented in her Resume as well as at the time of interview that her age was 20 years 1 month and 11 days whereas her actual date of birth being 02.11.1993, she was only 17 years 1 month and 11 days of age as on the date of interview. It was also stated that the amount was non-refundable as per the terms and conditions of the letter of offer to her. The Commission observed that it is trite law that an act of deliberate deception with a design to secure something, which is otherwise not due, tantamounts to fraud. The Hon'ble Supreme Court in *S.P. Chengalvaraya Naidu (Dead) by LRs. Vs. Jagannath (Dead) by LRs. & Ors.* (1994) 1 SCC 1 had observed that "a person whose case is based on falsehood has no right to approach the court. He can be summarily thrown out at the any stage of the litigation". In *United India Insurance Co. Ltd. Vs. Rajendera Singh & Ors.* and *United India Insurance Co. Ltd. Vs. Sanjay Singh & Ors.* (2000) 3 SCC 581, it was observed that "fraud and justice never dwell together is a pristine maxim which has never lost its temper over all the centuries". In *Ganpatbhai Mahijibhai Solanki Vs. State of Gujarat & Ors.* (2008) 12 SCC 353, the Supreme Court went to the extent of saying that if an order is obtained by reason of commission of fraud, even the principles of natural justice are not required to be complied with for setting aside such an order.

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- b) The Commission held that the present case was a clear case of misrepresentation and deception and that the fora below failed to address themselves on the vital aspect of misrepresentation. The orders of the fora below were set aside and the Revision Petition was allowed.

vii) Citation:

II (2014) CPJ 30; 2014(1) CPR 667.

(s) EXPORT OF GOODS / EXPORT GUARANTEE

1. M/s. Chaman Lal Setia Export Ltd. Vs. Export Credit Guarantee Corporation of India & Anr.

i) Case in Brief:

The Complainant obtained Whole Turnover Standard Policy from Export Credit Guarantee Corporation (India Ltd. OP No.1). The Complainant company shipped nine containers of basmati rice to M/s. Basmati GmbH in Germany. The non-negotiable set of documents was sent to the buyer vide letter dated 10.04.2005 but before the filing of the complete set of documents with the Punjab National Bank in Amritsar, the Petitioner received a mail dated 11.04.2005 from the buyer refusing to accept the consignment due to the reason that the rice, shipped earlier, gave an awful smell. On receipt of the mail the Petitioner recalled the consignment when the containers were in transit in at Singapore. Alleging deficiency in service and invoking the clause of "insured perils" under the Factoring Agreement, a complaint was filed before the District Forum. Both the complaint and the appeal before the State Commission having been dismissed, the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 31.05.2013 in First Appeal No.1437/2008 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh.

iii) Parties:

M/s. Chaman Lal Setia Export Ltd. - Petitioner

Vs.

Export Credit Guarantee Corporation of India & Anr.- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3284 of 2013 with IA/5804/2003 (Condonation of delay) & Date of Judgement: 07.01.2014.

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 dispute between the buyer and the Complainant in respect of some previous transaction and that on receipt of the mail dated 11.04.2005 from the buyer, the Petitioner itself recalled the consignment. The Complainant relied mainly on clause 1.1 (15) i.e. "insured perils" and the "sub-clause (c) dealing with the Contract Repudiation". The State Commission had held that the email cannot be considered to be contract repudiation but it was only a sort of business talk between the supplier and the buyer and as such there was no insured peril and the Respondents were not liable. It was also pointed out by the State Commission that the complete set of documents was not supplied to the bank and the documents were never presented to the buyer for acceptance. The National Commission agreed with the finding of the State Commission that there was no repudiation of contract by the buyer and "insured perils" clause will not apply in the present case. The Commission further observed that the contract stipulated that jurisdiction of the dispute lies in the country of buyer (Germany). Since the ship was called back at the instance of the Complainant itself, no deficiency can be attributed on the part of OPs. The Revision Petition was accordingly dismissed.

vii) Citation:

I (2014) CPJ 404.

2. Export Credit Guarantee Co. of India Ltd. & Anr. Vs. M/s. B.K. Office Needs P. Ltd.

i) Case in Brief:

Complainant had entered into a contract for export of granite to Singapore. The supply was made in 11 shipments. Payments in respect of 6 were received without any problem. These were sent on DP (delivery on payment) basis. But there was considerable delay in respect of

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payments on the other shipments which were made on DA (delivery on acceptance and payment within 90 days) basis. The importer/consignee alleged supply of defective material as the reason for non-payment. Complainant's assessment was that the importer had ordered excess quantity. Eventually the foreign buyer paid only US \$ 55,388.02 as against the full cost of US \$ 75,309.02. Complainant made a claim under the policy with the appellant, ECGC which was repudiated by the latter. The State Commission, with whom a complaint was filed, held that the claim was covered by the terms of policy issued by the OPs, allowed the complaint and directed OP/ECGC to pay Rs.7,63,054/- with 9% interest and costs. The order of the State Commission had been challenged by the appellant in the present appeal. Appeal dismissed.

ii) Order appealed against:

From the order dated 21.09.2007 in Complaint No.54/2002 of the Tamil Nadu State Consumer Disputes Redressal Commission.

iii) Parties:

Export Credit Guarantee Co. of India Ltd. & Anr. - Appellant

Vs.

M/s. B.K. Office Needs P. Ltd. - Respondent

iv) Case No and Date of Judgement:

First Appeal No.613 of 2007 & Date of Judgement: 21.02.2014.

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 question that came up before the State Commission was whether it was a case of "credit risk" as contended on behalf of the Complainant or a case of "trade risk" as claimed by OP. The State Commission in its detailed order had rejected the contention of OP that it was a case of "trade loss" which allegedly was a result of short payment mutually agreed with the foreign buyer, due to damage to the goods and therefore not covered under the policy. The State Commission had accepted the contention of the Complainant that he agreed to pass a credit note for the amount claimed from the OPs to prevent/minimize the loss. The policy did not contemplate that for taking such an

action by the Complainant he had to take an express permission from the OPs.

- b) The Commission noted that in the letter of 02.12.1998 itself, admittedly received in ECGC, the Complainant had informed that the credit note was given against return of stocks. In the Commission's view it would not become a trade discount in retrospect merely due to non-return of goods by the foreign buyer. The Commission agreed with the State Commission that the credit note was against return of stocks and not a price discount.
- c) The Commission rejected the contention of the OP that the Complainant had entered into unilateral negotiation with the foreign buyer resulting in agreement to accept return of goods and to issue credit note for the same. The Commission agreed with the State Commission that the OPs had been duly consulted by the Complainant and had made attempts to salvage the situation only on the advice of the OPs. The Commission accepted the Complainant's claim that it was in regular touch with the OPs.
- d) The Commission held that the decision of the State Commission to allow the complaint was based on proper appreciation of the evidence before it and upheld the same. Consequently the appeal was dismissed.

vii) Citation:

II (2014) CPJ 332; 2014(1) CPR 670.

(t) FAMILY BENEFIT SCHEME

1. The Chairman, Family Benefit Scheme, Indian Medical Association Vs. Tadinada Usha Rani

i) Case in Brief:

Complainant's husband, late Dr. T.V.S.Ramakrishna, was a life member of the Indian Medical Association, AP branch and had also contributed regularly to the Family Benefit Scheme till March 2010. He fell seriously ill in March 2010 and was treated in various hospitals before he expired on 15.10.2010. Complainant claimed that she came to know of the terms of the payment of the scheme for the first time on 27.12.2010, when she saw a reminder notice from the opposite party for Bill No.38

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dated 01.09.2010. The Complainant, on the next day itself, informed OP about her husband's illness, hospitalization and death and also sent a bank draft for Rs.2,215/-. On 01.03.2011, she received a bill directing her husband to pay Rs.1,440/- which was due by 31.03.2011. She made the payment and also requested OP to settle her claim under the scheme. But the claim was repudiated by OP stating that her husband had become a defaulter due to non-payment of subscription on 01.09.2010 and hence his name had been deleted from the list of members. The amounts of Rs.2,215/- and Rs.1,440/- were also returned by OP. The District Forum, before whom a complaint was filed, allowed the complaint and directed OP to pay a sum of Rs.4,93,085/- with interest at 9% p.a. from the date of filing complaint i.e. 08.08.2011 till payment and also cost of Rs.2,000/-. The appeal, filed before the State Commission, was dismissed vide impugned order against which the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 13.02.2013 in Appeal No.154/2012 of the Andhra Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

The Chairman, Family Benefit Scheme,
Indian Medical Association

- Petitioner

Vs.

Tadinada Usha Rani

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2002 of 2013 & Date of Judgement: 30.01.2014.

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 after going through the details of the scheme noted that termination of members takes place only, if a member does not clear his dues within six months after the demand raised by the Secretary and that also, after issuing a notice under registered cover. The Commission observed that in the present case, had the member lived beyond 15.10.2010, he could have cleared his default by making payment along with late fees.

- b) The Commission rejected the contention of the Petitioner that payment of a dead member cannot be accepted from his legal representatives on the ground that constitution of the scheme nowhere said so. It was observed that the deceased had been making regular payment of premium since 1992 and because of his illness, he could not make payment of subscription due in September 2010, in time and that his family cannot be allowed to suffer just for one default especially when provision existed for payment with late fees.
- c) The Commission observed that the orders passed by the fora below did not suffer from any illegality, irregularity or jurisdictional error and dismissed the Revision Petition.

vii) Citation:

I (2014) CPJ 612; 2014(1) CPR 322.

(u) FINANCIAL SERVICES

1. Life Insurance Corporation of India Vs. Smt. Sudhi P.P

i) Case in Brief:

Both the Revision Petitions were based on identical facts and involved similar question of law. R.P.No.2674 of 2013 has been taken as the lead case for narration of facts. The Respondent/Complainant deposited a sum of Rs.50,000/- in Growth Fund Market Plus policy issued on 11.12.2007 by the Petitioner company/OP. On 29.11.2011, when the Complainant approached OP for withdrawing the amount she was shocked to know that she would get only Rs.49,799/-. Alleging deficiency in service she filed consumer complaint. The District Forum dismissed the complaint. Appeal filed by the Respondent/Complainant was allowed by the State Commission with a direction to OP to refund Rs.50,000/- with interest at the rate of 9% p.a. from the dated of investment till date of refund. Aggrieved by the said order the present Revision Petitions had been filed. Revision Petitions allowed.

ii) Order appealed against:

From the order dated 08.03.2013 in Appeal Nos.541-542/2012 of the Kerala State Consumer Disputes Redressal Commission.

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iii) Parties:

Revision Petition No.2674 of 2013

Life Insurance Corporation of India - Petitioner

Vs.

Smt. Sudhi P.P - Respondent

Revision Petition No.2675 of 2013

Life Insurance Corporation of India - Petitioner

Vs.

Shri Sankunni P.P - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2674 & 2675 of 2013 &

Date of Judgement: 15.01.2014.

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 terms and conditions of the policy in question were quite elaborate and specific. While premature surrender was permissible after a minimum period of 3 years, the Market Plus being an unit linked policy was subject to market variation. Insurance being a contract, the parties are bound by the terms and conditions of the policy. The Commission observed that though the State Commission had not pointed out violation of any of the conditions of the policy on the part of insurance company which could constitute deficiency in service, yet it had reversed the finding returned by the District Forum on some strange and unjustified reasoning.
- b) The Commission did not agree with the State Commission's view that it was the duty of the OP to convince the insured that her money was invested and prudently managed by the OP in the share market and that OP failed to do so. The Commission noted that there was no such plea by the Complainant/Respondent in her complaint. The Commission further observed that the Petitioner is the largest company in the field which is required to manage billions of rupees deposited by the policy holders and

large number of professionals constantly oversee and advise the investments of the company in different products. The Commission therefore held that the State Commission's order was not only perverse but it based on lack of information on the subject.

- c) Consequently the Revision Petitions were allowed, the impugned orders were set aside and the orders of the District Forum were restored.

vii) Citation:

I (2014) CPJ 326; 2014(1) CPR 402.

2. Godrej Industries Ltd. Vs. Smt. Ritu Bhargava & Ors.

i) Case in Brief:

The Complainant, Ritu Bhargava, held 45 fully paid up shares of OP, Godrej Industries Ltd. OP framed a Scheme of Arrangement between the company and its shareholders which, among other things, provided for buy-back of 40% its shares. The scheme was approved by Bombay High Court. OP claimed that after sanction of the scheme it sent letters of offer to all the shareholders, including the Complainant, intimating that unless the shareholders specifically communicated their option to continue holding their shares, it would be presumed that consent for buy back of the shares had been given by them. Since the Complainant did not exercise her option, the company exercised its right to buy back her shares and remitted an amount of Rs.810/- to the Complainant through account payee cheque at Rs.18/- per share. Complainant returned the cheque stating that she neither received the alleged buy-back offer nor did she exercise any option for buy back. She filed consumer complaint before the District Forum which was dismissed. However, the appeal filed by her was allowed by the State Commission, which directed the OP/Company to credit the shares to the de-mat account of the Complainant and also to pay Rs.5,000/- as compensation and Rs.25,000/- as costs. Aggrieved by the said order both the parties had filed the present Revision Petitions. Revision Petition No.718 of 2008 filed by Godrej Industries was allowed and the order of the State Commission was modified. Revision Petition No.2982 of 2008 filed by the Complainant was dismissed.

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ii) Order appealed against:

Revision Petition Nos.718 of 2008 and 2982 of 2008

From the order dated 14.11.2007 in First Appeal No.2104/2006 of Madhya Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

Revision Petition Nos.718 of 2008

Godrej Industries Ltd. - Petitioner(s)

Vs.

Smt. Ritu Bhargava & Ors. - Respondents

Revision Petition Nos.2982 of 2008

Smt. Ritu Bhargava - Petitioner

Vs.

Godrej Industries Ltd. & Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition Nos.718 of 2008 and 2982 of 2008 &

Date of Judgement: 23.01.2014.

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 Scheme of Arrangement between the company and its shareholders was duly approved in the General Body Meeting of the shareholders and by the Bombay High Court vide their order dated 06.06.2002. The High Court had declined to entertain the objections raised by the SEBI and the Central Government. The SLP filed by SEBI in the Hon'ble Supreme Court was also dismissed. It was therefore held that the right of the company to take action according to the provisions of the scheme cannot be challenged in the present Revision Petition.
- b) The Commission also noted that the Record Date as per the scheme was 26.07.2002 which was duly intimated to the stock exchange on 26.06.2002 by an advertisement in the Newspapers on 18.07.2002 giving details of the Record Date and suspension of trading. A communication was sent to all the shareholders under Certificate of Post. An affidavit of the partner of the service

agent as also evidence of proof of mailing to the Complainant was filed by OP.

- c) The Commission therefore held that the only relief that can be granted to the Complainant is payment of the value of shares as on Record Date. The Commission directed the company to make payment of Rs.810/- along with interest at 12% p.a. from the date of payment of first offer to the Complainant i.e. 12th September, 2002.
- d) The Revision Petition No.718 of 2008 filed by Godrej Industries was allowed with the above modification. Revision Petition No.2982 of 2008 filed by Ritu Bhargava was dismissed.

vii) Citation:

I (2014) CPJ 377; 2014(1) CPR 349.

3. Natarajan Bohidar Vs. Citi Bank N.A.

i) Case in Brief:

Complainant obtained a loan of Rs.2,93,025/- from OP to purchase a car in the year 2000, repayable in 59 EMIs of Rs.7,089/- each commencing from December 1, 2001. He made regular EMI payments till September 2004 by ECS mode through his savings bank account in ABN AMRO Bank, New Delhi. From October - November, 2004, Complainant preferred to make payment by cheque. He revoked the ECS mandate and intimated OP not to make further demands of ECS transfer. It is the Complainant's case that he had given 9 cheques at the time of signing the loan agreement to OP, but OP instead of using the cheques, made ECS demand which were not honoured by Amro bank. OP issued a notice for default. Complainant paid the amount by cheque for 4 installments which were accepted by OP. Complainant alleged that in June 2005, when only 5 out of 59 installments remained to be paid, his car was forcibly taken from his possession by 4 to 5 persons. Complainant reported the matter to the police. OP subsequently sold the car without a presale notice and after crediting the proceeds in his account, raised an outstanding demand of Rs.5,000/-. Alleging deficiency in service, Complainant filed a consumer complaint. The District Forum partly allowed the complaint and directed OP to pay Rs.3,00,000/- as damages for loss and harassment caused to him and

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awarded Rs.25,000/- towards litigation charges. Complainant's appeal for enhancement of the quantum of award 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 08.05.2012 in First Appeal No.106/2011 of the State Consumer Disputes Redressal Commission, New Delhi.

iii) Parties:

Natarajan Bohidar - Petitioner

Vs.

Citi Bank N.A. - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3761 of 2012 & Date of Judgement: 03.02.2014.

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, after going through the OP bank statements and evidence on record, noted that OP made 4 times ESC installments demands from October 2004, which were not honoured by the Complainant's bank. Hence OP made Complainant pay delay charges or dishonour charges. There were only 4-5 installments which remained due for payment and OP was in possession of 9 undated cheques as security. The Commission wondered why OP did not disclose the reasons for not encashing the cheques in lieu of ECS.
- b) The Commission was not satisfied with the OP's conduct and the manner of forcible repossession of car without any intimation or prior notice to the Complainant. OP subsequently sold the car at a throw-away price, just equivalent to the outstanding amount of 4-5 installments. It was held to be a deliberate act and deficiency in service by OP.
- c) The Commission held that the fora below had considered all points and awarded a compensation of Rs.3,00,000/-. It was observed that the Complainant deserved further compensation for mental agony and cost. The Revision Petition was accordingly allowed directing the OP's to pay to the Complainant

Rs.3,00,000/- with interest at 6% p.a. from 15.06.2005, the date of repossession of car. Rs.40,000/- towards compensation for mental agony and Rs.10,000/- towards cost of litigation were also awarded.

vii) Citation:

II (2014) CPJ 19.

4. M/s. Alliance Inorganics Ltd. Vs. Pradeshiya Industrial & Investment Corporation of U.P. Ltd. & Ors.

i) Case in Brief:

The Complainant submitted a scheme to manufacture sodium dichromate and allied products to Respondent No.1/OP No.1 and U.P. State Financial Corporation, Respondent No.2/OP No.2 to have their financial assistance. As per the agreement between the parties OP No.1 agreed to advance Rs.90 lakhs and OP No.2 agreed to advance Rs.32.10 lakhs as term loan. The Complainant company was to arrange a total sum of Rs.42.90 lakhs. By November, 1990, OP No.1 had disbursed Rs.80 lakhs and OP No.2 Rs.15 lakhs. Due to non-availability of central investment subsidy, a rehabilitation package was approved by the OPs. But due to various reasons the project did not take off. OP No.2 issued notice dated 27.01.1995 under Section 29 of the State Financial Corporation Act of taking over physical possession of the project. OP No.1 issued notice under Section 29 of the SFC Act on 26.05.1999 and also advertised that they were going to auction the unit of the Complainant Company. Alleging failure of the OPs to disburse the loan amounts in time for the huge loss incurred by it, the Complainant filed complaint before the National Commission seeking compensation of Rs.389.96 lakhs and payment of interest at 18% p.a. Complaint dismissed with cost of Rs.10,000/- each to be paid to the OPs.

ii) Order appealed against:

Original Complaint.

iii) Parties:

M/s. Alliance Inorganics Ltd. - Complainant(s)

Vs.

Pradeshiya Industrial &
Investment Corporation of U.P. Ltd. & Ors. - Opposite Parties

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iv) Case No and Date of Judgement:

Consumer Complaint No.168 of 2001 & Date of Judgement: 06.02.2014.

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) The Commission after going through the records agreed with the OPs that the Complainant was a defaulter. Secondly, it was observed that the Complainant did not approach the Commission with clean hands. It did not disclose as to what happened to the Writ Petition No.12095/1995 filed by them in the High Court though they were aware that the writ petition had been dismissed for non-appearance of parties. The Complainant did not make any attempt to get the writ petition restored. The Complainant did not also disclose that he had filed a suit before the Civil Court, Kanpur and obtained an injunction order subject to deposit of entire dues on or before 30.09.1995. Since the Complainant failed to pay the dues, the said suit was dismissed. The Complainant also concealed the fact that the company did not transact any business because of dispute between the directors. The company had made persistent defaults in repayment of loan installments with the result that recovery certificate had to be issued against it under Section 3 of the U.P. Public Moneys (recovery dues) Act.
- b) Relying on the ratio of the decisions of the Hon'ble Apex Court/ Other Courts in *Punjab Financial Corporation vs. Surya Auto Industries*, (2010) 1 SCC 297, *Chairman cum Managing Director, Rajasthan Financial Corporation & Anr. vs. Commander S.C. Jain (Retd.) & Anr.* (2010) 4 SCC 107, *Chinar Fabrics vs. SBI*, decided on 17.11.2005 by Delhi High Court, it was held that the proceedings initiated by the Corporation and action taken for recovery of outstanding dues cannot be nullified except when such action is found to be in violation of any statutory provision resulting in prejudice to the borrower or where such proceeding/action is shown to be wholly arbitrary, unreasonable or unfair. It was further held that rescheduling of the loan is the sole discretion of the bank or the financial institution and the court cannot compel it to reschedule to loan or rehabilitate a sick company.

- c) Holding that the Complainant had wasted the time of the Commission for more than a decade, the Commission dismissed the complaint and imposed cost of Rs.10,000/- each to be paid to the OPs within a period of 90 days.

vii) Citation:

I (2014) CPJ 509.

5. Mr. Pradeep Kumar Goel Vs. M/s. J.K. Synthetics Ltd. & Anr.

i) Case in Brief:

The Complainant had deposited a sum of Rs.13,85,000/- in Fixed Deposit Receipts with M/s. J.K. Synthetics, OP No.1. The deposit receipts were issued in the joint names of Sh.Ram Swaroop Goel, Sh.Pradeep Kumar Goel and Mrs.Pushpa Goel during the year 1991-1992. Sh.Ram Swaroop Goel, father of the Complainant died in August, 1991. Complainant requested OP No.1 to delete his father's name and asked for premature withdrawal. Meanwhile Sh.Deepak Kumar Goel, brother of the Complainant contacted OP No.1 and requested them not to pay the amount to the Complainant. OPs advised him to claim 1/3rd share in the property of his father. But Sh.Deepak Kumar Goel asked them not to make any payment without the court order. He also filed suit for permanent injunction in the Civil Court of Kanpur. The matter went up to the Hon'ble Supreme Court. Meanwhile Complainant filed an Original Petition No.97 of 1995 before the National Commission for recovery of the amount which was dismissed on the ground that civil proceedings in respect of identical issues were pending in courts. The Complainant was requested to institute appropriate action in a competent civil court and to have his title to the amounts declared by the Civil Court. The Complainant filed the present complaint claiming that no civil suit was pending. The complaint was dismissed on the ground that the Commission was bound by the earlier order of the four Member Bench of the Commission.

ii) Order appealed against:

Original Petition.

iii) Parties:

Mr. Pradeep Kumar Goel	- Complainant
Vs.	
M/s. J.K. Synthetics Ltd. & Anr.	- Opposite Parties

iv) Case No and Date of Judgement:

Original Petition No.47 of 1997 & Date of Judgement: 06.03.2014.

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 bound by the order dated 06.12.1995 passed by the four Member Bench of the Commission headed by the then President Mr. Justice V.Balakrishna Eradi. Although the issues involved in the case were not adjudicated in the Original Petition No.97 of 1995, yet it was held that the Commission cannot ignore the directions given by the four Member Bench and pass a different order. It was further observed that no solid and concrete evidence was adduced to show that the civil suit was pending or not. As per the directions given by the previous bench of the Commission he should have filed a civil suit. The Commission further observed that though the OPs were ready to pay the amount, the Commission cannot order that the said amount be paid to the Complainant. The Commission advised the Complainant to approach the Civil Court as per law and permitted him to claim benefit of Section 14 of the Limitation Act to exclude the period spent in prosecuting the proceedings under the Consumer Protection Act. The complaint was dismissed with the above observations.

vii) Citation:

Not reported in CPJ and CPR.

6. S. Seshadri & Anr. Vs. The Housing Development Finance Co. Ltd.

i) Case in Brief:

Complainants/Petitioners availed home loan of Rs.7,00,000/- from OP/ Respondent on equitable mortgage of their property. As per request of the Complainants, payment was preponed and full payment was made under protest by letter dated 31.01.2004. Alleging deficiency on the part of OP in charging excess interest, penalty for prepayment and delay in returning documents, Complainants filed complaint before the District Forum which dismissed the complaint. Appeal filed by the

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Petitioners was dismissed by the State Commission vide impugned order against which this Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

Against the Order dated 28.02.2008 in Appeal No.746/2005 of the State Commission Tamil Nadu.

iii) Parties:

S. Seshadri & Anr. - Petitioner

Vs.

The Housing Development Finance Co. Ltd. - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1629 of 2008 & Date of Judgement: 11.03.2014.

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 interest and preponment charges had been levied as per loan agreement entered between the Petitioners and the Respondent and apparently, there was no delay in returning documents. Petitioners deposited amount on 31.01.2004 and OP asked the Complainants to take documents on 16.02.2004 and documents were returned on 19.02.2004. In such circumstances, orders passed by State Commission and District Forum were in accordance with law.
- b) Therefore, the Commission did not find any illegality, irregularity or jurisdictional error in the impugned order of the State Commission and hence the Revision Petition was dismissed.

vii) Citation:

2014(2) CPR 236.

**7. Union of India Ministry of Finance through its Secretary & Ors.
Vs. Bakshi Ram Ahuja**

i) Case in Brief:

Respondent/Complainant invested Rs.3,00,000/- on 18.05.2002 in 8% Relief Bonds, 2002 issued by the Petitioners. The investment was made in bonds of Rs.1,000/- each having maturity value of Rs.1,480.25. But on completion of the period of investment, the Complainant was paid only the invested amount of Rs.3,00,000/- in May 2007. Interest was denied on the ground that investment had been made in violation of Ministry of Finance Notification dated 22.04.2002. The District Forum awarded full interest on the bond as assured together with 6% interest from 01.12.2007. The State Commission confirmed the order of the District Forum observing that the contents of the notification dated 22.04.2002 had not been informed to the Complainant. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 05.02.2013 in First Appeal No.431/2012 of the Rajasthan State Consumer Disputes Redressal Commission.

iii) Parties:

Union of India

Ministry of Finance through its Secretary & Ors. - Petitioners

Vs.

Bakshi Ram Ahuja

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1006 of 2013 & Date of Judgement: 17/27.03.2014.

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 Petitioners' contention was that the investment of Rs.3,00,000/- was in utilization of the enhanced limit of investment from Rs.2,00,000/- to Rs.3,00,000/- under the notification dated 22.04.2002. The said notification also carried a condition that in case of retirement benefits, as in the present

case, the investment had to be made within three months of the date of receipt of retirement benefits. Since the Complainant had made investment on 18.05.2002 when the three month period had ended on 06.05.2002, it was contended that he was not entitled to the benefit of the interest. But the Commission after perusing the notification dated 22.04.2002 observed that it did not carry any clause which empowered the Petitioners to deny interest on the investment on its entirety, merely on the ground that the investment had been made beyond the permissible time limit of three months. The Commission further observed that the investment should have been refused in the first instance at the point of offer itself in May 2002.

- b) The Commission noted from the records produced on behalf of the Petitioners that the fact of investment being in contravention of the notification dated 22.04.2002 was brought to their notice during the course of departmental audit in July 2006. There was absolutely no explanation why the offer of refund of the principal amount could not be made immediately thereafter. There was no explanation why the Revision Petitioners waited till the completion of the entire period of investment of the bonds to enforce the condition of notification.
- c) The Commission rejected the argument that there was no relationship of consumer and service provided between the Complainant and the Petitioners.
- d) In view of the above the Commission dismissed the Revision Petition as devoid of merit.

vii) Citation:

II (2014) CPJ 574.

8. Vijay Karlekar & Anr. Vs. Karnataka State Financial Co. & Anr.

i) Case in Brief:

It was the case of the Complainants/Petitioners that OP/Respondent collected a sum of Rs.20,000/- and Rs.22,183/- in excess of their liability and in spite of their request had not refunded the amount. It was further alleged that Rs.13,000/- payable as subsidy by the Government was to be drawn by the OP and was to be adjusted towards liability of the Complainant but OP had neither drawn subsidy nor

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adjusted towards liability of the Complainant. Alleging deficiency on the part of the OP, Complainants filed complaint before the District Forum. The Forum, after hearing both the parties, allowed the complaint and directed OP to refund Rs.20,000/- plus Rs.22,183/- along with interest @ 15% p.a. and further allowed Rs.40,000/- as compensation on account of not disbursing subsidy of Rs.13,000/- and directed to OP to pay a total of Rs.1,06,183/- with 8% p.a. OP filed appeal before the State Commission which vide impugned order modified the order of the District Forum and directed OP to pay Rs.20,000/- plus Rs.22,183/- with 8% interest and further directed OP to pay Rs.13,000/- with interest @ 6% p.a. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 23.06.2008 in Appeal No.119/2008 of the Karnataka State Consumer Disputes Redressal Commission.

iii) Parties:

Vijay Karlekar & Anr.

- Petitioners

Vs.

Karnataka State Financial Co. & Anr.

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3279 of 2008 & Date of Judgement: 29.04.2014.

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 written statement filed by OP noted that OP refunded Rs.20,000/- plus Rs.22,183/- to the Complainant but the amount was not accepted by the latter. Since the Complainant had refused to accept the amount, it was held that the State Commission was right in allowing interest at 8% p.a. It was also held that the State Commission rightly set aside the compensation of Rs.40,000/- granted by the District Forum and rightly allowed 6% p.a. interest on Rs.13,000/-. The National Commission did not find any illegality, irregularity or jurisdictional error in the impugned order and accordingly dismissed the Revision Petition.

vii) Citation:

Not reported in CPJ and CPR.

9. ICICI Bank Vs. Naresh Kumar Jain & Anr.

i) Case in Brief:

Complainant purchased Government of India 6.5% Saving Bonds (Non taxable) from OP No.1 (ICICI Bank) worth Rs.20,80,000/- on 03.06.2004. Complainant approached OP No.1 for premature encashment of bonds but OP refused to redeem them on the ground that the bonds are redeemable only after a minimum lock-in period of 3 years. It was further alleged that OP was unjustified in deducting Rs.40,919/- on account of premature redemption of bonds. Alleging deficiency on the part of OPs, Complainants filed complaint before the State Commission which allowing the complaint partly directed OP No.1 to pay interest on Rs.20,80,000/- at 12% p.a. for six months. Challenging the said order, both the parties have filed the present appeals. Appeal No.318 of 2009 filed by OP/Appellant was allowed while Appeal No.485 of 2009 filed by Complainant, seeking compensation for the loss occurred due to non receipt of money in time, was dismissed.

ii) Order appealed against:

First Appeal No.318 of 2009 and First Appeal No.485 of 2009

From the order dated 06.06.2009 in Complaint No.13/2007 of the Madhya Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

First Appeal No.318 of 2009

ICICI Bank - Appellants

Vs.

Naresh Kumar Jain & Anr. - Respondents

First Appeal No.485 of 2009

Naresh Kumar Jain - Appellant

Vs.

ICICI Bank - Respondents

iv) Case No and Date of Judgement:

First Appeal Nos.318 of 2009 and 485 of 2009 &

Date of Judgement: 30.04.2014.

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 after going through Condition No.21 of Annexure A-1, Government of India Non Taxable Saving Bond held that the Complainant who purchased bonds on 03.06.2004 was entitled to surrender for premature payment after 03.06.2007 but was entitled to receive proceeds only after 03.12.2007 the date on which next interest was payable. This had also been clarified by RBI (Respondent No.2) in circular dated 12.04.2006. The Commission held that the payment made to the Complainant on 03.12.2007 was in accordance with the terms and conditions of the issued bonds.
- b) As far as deduction of interest on premature payment is concerned, the Commission noted that the aforesaid Condition No.21 made it clear that 50% of the interest due and payable for last six months to the holding period was to be recovered in case of premature encashment. It was held that OP No.1 had not committed any error in deducting 50% interest of the next six months from the date of surrender of bonds.
- c) Consequently the State Commission's order allowing 12% p.a. interest was set aside and Appeal No.318 of 2008 filed by the OP/ Appellant was allowed. Complainant's Appeal No.485 of 2009 was dismissed as infructuous.

vii) Citation:

II (2014) CPJ 627.

10. Piramal Enterprises Ltd. Vs. Sukhdev Mustafi & 4 Ors.

i) Case in Brief:

Complainant/Respondent No.1, Mr. Sukhdev Mustafi is a dealer of several pharmaceuticals including Nicholas Piramal India Ltd., OP No.1. His dealership firm is called edico Distributor. OP No.2 is the clearing and forwarding agent of OP No.1 within the territory of West Bengal and OP No.3 is the Customer Service Manager. It is the case of the Complainants that he had sent a demand draft for a sum of Rs.1,90,363/- on 23.08.2005 in favour of OP No.1 for the purpose of supply of stock of medicine. The very next day he requested OP No.1

to stop the consignment. His requests for refund of the amount and for supply of statement of accounts for the years 2005-2006 and 2006-2007 were not acted upon. Instead he was threatened by OPs. The District Forum allowed his complaint holding the OPs 1 to 3 jointly and severally responsible and directed them to pay Rs.1,90,263/- along with interest @ 9% p.a., Rs.15,000/- towards mental agony and Rs.5,000/- towards costs. Aggrieved by the said order both OP No.1 and the Complainants filed first appeals. Complainant's appeal was to include OP No.4 Partha Mustafi in the decree before the State Commission. State Commission dismissed both the appeals vide impugned order against which the Petitioner/OP No.1 has filed the present Revision Petition. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 13.12.2013 in Appeal No.674/2012 of the West Bengal State Consumer Disputes Redressal Commission.

iii) Parties:

Piramal Enterprises Ltd. - Petitioners

Vs.

Sukhdev Mustafi & 4 Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1434-1435 of 2014 &

Date of Judgement: 01.05.2014.

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 originally the Complainant had started a partnership firm with his brother Gopal Mustafi in the year 1980. The said firm was dissolved by executing a deed of dissolution of partnership and thereafter the said business was run on proprietorship basis. The Commission noted from the record that OP No.1 had issued a demand draft amounting to Rs.1,90,263/- in the name of edico Distributor. But OP No.4 had opened a new account in his own name and encashed the amount by putting his signature as proprietor.

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- b) The Commission noted that Petitioner/OP No.1 did not produce any cogent evidence showing the receipt of cheque by the Complainant. OP No.1 did not produce any document or bank account statement to show that Complainant had deposited the HDFC cheque received by OP No.1. Since Partha Mustafi, OP No.4 had encashed the cheque, it was deficiency in service on the part of Allahabad Bank. The Commission held that OPs 1 to 5 except OP No.4 had worked in cahoots with each other and that the Complainant deserved the refund of the amount of Rs.1,90,263/- with interest, compensation and costs.
- c) The Commission did not find any illegality or infirmity in the order passed by the State Commission and dismissed the Revision Petition.

vii) Citation:

III (2014) CPJ 206.

11. M/s. Saptami Kuries & Loans and Others Vs. Jayan M.R

i) Case in Brief:

Complainants/Respondents deposited Rs.50,000/- with OP/Petitioner No.1 on 25.6.1997 for a period of 8 years. OP promised to pay interest @ 12% p.a. and issued fixed deposit receipt No.40. OP paid interest for 2 years and thereafter neither principal amount nor interest was paid on maturity. Alleging deficiency on the part of OP, Complainant filed complaint before the District Forum which directed OP to return the amount of FDR with 9% p.a. interest. 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:

Against the Order dated 15.06.2012 in Appeal No.698/2011 of the State Commission, Kerala.

iii) Parties:

M/s. Saptami Kuries & Loans and Others - Petitioners
Vs.
Jayan M.R - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3069 of 2012 & Date of Judgement: 07.05.2014.

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 Petitioner had not adduced any evidence in support of his contention that FDR No.40 for Rs.50,000/- issued in favour of the complainant was a forged one. Onus was on the petitioner to prove that aforesaid FDR was a forged one and as he failed to discharge his onus, District Forum rightly allowed complaint and State Commission rightly dismissed the appeal filed by the Petitioner.
- b) In view of the above, the National Commission held that there was no illegality, irregularity or jurisdictional error in the impugned order of the State Commission and the Revision Petition was accordingly dismissed.

vii) Citation:

III (2014) CPJ 203; 2014(2) CPR 285.

12. Amit Goel Vs. M/s. Avlon Resorts Pvt. Ltd. & Anr.

i) Case in Brief:

Petitioner/Complainant purchased "Time Share Membership" from the Respondent/Opposite parties for 24 years by making payment of Rs.62,500/- on 01.07.2005 and further paying Rs.27,500/- on 05.07.2005, thus totaling Rs.90,000/-. It was alleged that despite making payment, OP failed to issue Time Share Certificate to the Complainant within a period of 90 days from making payment despite an agreement to that effect. Complainant requested the opposite party to cancel the membership and refund the amount deposited. But OP offered to refund Rs.70,000/- only after deducting Rs.10,000/- each towards administrative charges and commission. Complainant declined the offer and filed complaint before the District Forum. The Forum, having

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observed that OP had already returned Rs.90,000/- during the pendency of the complaint, ordered OP to pay a sum of Rs.10,000/- to the Complainant as lumpsum interest. An appeal filed by the Petitioner before the State Commission was dismissed vide impugned order against which the present Revision Petition had been filed. Revision Petition was dismissed.

ii) Order appealed against:

From the order dated 07.10.2013 in Appeal No.146/2012 of the State Consumer Disputes Redressal Commission, Delhi.

iii) Parties:

Amit Goel - Petitioner

Vs.

M/s. Avlon Resorts Pvt. Ltd. & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.705 of 2014 & 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 only issue to be decided was regarding the payment of interest on the deposited amount. The Commission noted that as per the agreement there was no provision for cancellation of the same. The amount deposited was also not refundable but still they offered a sum of Rs.70,000/- as a special case and during the pendency of the complaint before the District Forum the entire deposit of Rs.90,000/- had been refunded. The Commission held that there was no justification for enhancement of interest allowed by the District Forum which was also upheld by the State Commission. The Commission found no irregularity or illegality in the orders of the fora below to warrant interference. The Revision Petition was accordingly dismissed as devoid of merit.

vii) Citation:

II (2014) CPJ 714.

(v) FIRE INSURANCE

1. Mrs. Sunanda Kishor Bhand & Anr. Vs. United India Insurance Co. Ltd.

i) Case in Brief:

Complainants who were in the business of manufacturing corrugated boxes, sheets and rolls had insured their factory through four insurance policies with OP/Insurance company. On 30.03.1998, their factory was gutted in fire and all the machinery, raw material, furniture and fixtures, documents etc., were totally burnt. The insurance company and police were informed. Complainants estimated the loss of materials at Rs.32,53,000/- and machinery at Rs.7,55,253/-. The insurance company settled the claim by paying Rs.4,37,477/- on the basis of assessment made by the Surveyor. Complainants claimed that they accepted the amount under protest. The present complaint had been filed seeking a direction to reassess the claim of the Complainants and pay the balance amount of Rs.35,00,000/- with interest. Complaint dismissed.

ii) Order appealed against:

Original Complaint

iii) Parties:

Mrs. Sunanda Kishor Bhand & Anr. - Complainants

Vs.

United India Insurance Co. Ltd. - Opposite Party

iv) Case No and Date of Judgement:

Original Petition No.278 of 2000 & Date of Judgement: 15.01.2014.

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) The first question that fell for consideration was whether the Complainant had received the amount of Rs.4,37,477/- in full and final payment of the dispute pending between the parties. The Commission found that there was no cogent and plausible evidence and decided the issue in favour of the Complainant.

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- b) As regards adequacy of compensation, the Commission observed that the report of the Surveyor is crucial and very strong reasons are required to reject it. In the present case it was held that the Complainants had failed to prove that the Surveyor's report was wrong. Quoting extracts from the Surveyor's report which are very material and clinching, the Commission held that the Complainants had failed to substantiate their case. The complaint was accordingly dismissed.

vii) Citation:

I (2014) CPJ 369; 2014(1) CPR 415.

2. Jess Ram Khushi Ram Pvt. Ltd. & Anr. Vs. National Insurance Co. Ltd. & Ors.

i) Case in Brief:

Complainant, proprietor of Jess Ram Khushi Ram Pvt. Ltd., purchased two insurance policies in the sum of Rs.3.25 crores on stock and Rs.31.00 lakhs on building, plant, machinery and stock for the period from 03.06.2004 to 02.06.2005 from the Respondents/OPs. On 31.07.2004 a fire took place at the premises of Complainant resulting in huge loss. The Surveyor appointed by OP recommended a sum of Rs.49,09,160/- in respect of yarn and raw material damaged in the fire. After considering salvage and other deductions, the net loss was assessed Rs.36,78,833/-. After repeated attempts to get the insured sum from the OPs, the Complainant was paid a sum of Rs.17,47,726/- in October 2005 by way of full and final settlement by the OPs. The Complainant alleged that he signed the discharge voucher under coercive and pressurizing circumstances and filed complaint before the District Forum seeking release of the amount recommended by the Surveyor. The District Forum directed OPs to pay the sum of Rs.19,50,000/- together with at 12% p.a. from 20.10.2005 till realization and the sum of Rs.3,300/- as litigation expenses. OPs filed two appeals, FA No.930 of 2007 and 931 of 2007. The State Commission accepted the appeal FA No.930 of 2007 and set aside the order of the District Forum. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 06.06.2012 in First Appeal No.930/2007 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

Jess Ram Khushi Ram Pvt. Ltd. & Anr. - Petitioners

Vs.

National Insurance Co. Ltd. & Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.4100 of 2012 & Date of Judgement: 22.01.2014.

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 before the Commission was whether there was a “protest” exercised by the Complainant while accepting the cheques for Rs.17,47,726/- from the OPs and whether the Surveyor’s assessment was correct or not. The Commission after perusing the evidence on record, findings of both the fora and other documents like Surveyor’s report, investigation report, bank record etc., noted that the Complainant had received the amount by executing “consent letter” to their entire satisfaction. There was no written protest on the voucher nor were the cheques returned to the OPs. The Commission therefore held that the Complainant being owner of his private company signed the letter with full knowledge and therefore the question of pressure tactics by the OP did not arise.
- b) The Commission perused the Surveyor’s report and found several discrepancies and held that the OPs were justified in appointing another Surveyor who assessed the loss at Rs.17,57,726/-. The Commission held that the second Surveyor assessed the loss properly based on financial records and detailed investigation.
- c) In view of the above the Commission held that there was no ground to interfere in the impugned order of the State Commission and dismissed the Revision Petition.

vii) Citation:

II (2014) CPJ 280.

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3. National Insurance Co. Ltd. Vs. Vinod Puri & Anr.

i) Case in Brief:

Respondent No.1/Complainant, owner of a tyre retreading shop, insured his plant and machinery as well as the stock with the Petitioner/Appellant for the period 06.05.2008 to 05.05.2009. The plant, machinery and accessories were insured for Rs.5,00,000/- and stocks for Rs.6,00,000/-. During the currency of the policy, a fire broke out in one of the two godowns of the Respondent/Complainant about 30 metres away from the shop. Plant, machinery and stock worth Rs.13,00,000/- were destroyed. Complainant's claim was repudiated by the Petitioner on the ground that the insurance was only in respect of the plant, machinery and stock available in the shop and the stock or machinery kept in the godown was not covered. The complaint filed by the Respondent was allowed with direction to OP No.2 to pay Rs.2,61,534/- along with interest at 9% p.a., besides a compensation of Rs.10,000/- for harassment and Rs.3,000/- towards cost. The Petitioner's appeal was dismissed by the State Commission vide impugned order, against the present Revision Petition had been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 07.08.2012 in Appeal No.311/2011 of the Himachal Pradesh State Consumer Disputes Redressal Commission, Shimla.

iii) Parties:

National Insurance Co. Ltd. - Petitioner(s)

Vs.

Vinod Puri & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.4929 of 2012 & Date of Judgement: 22.01.2014.

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 both the fora below had proceeded on the assumption that huge stock worth Rs.6,00,000/- in the

form of raw material for retreading of tyres cannot be kept in the shop along with plant and machinery and that it can be reasonably presumed that the plant, machinery and stock lying in the godown which is a short distance from the shop was also covered. The Commission pointed out that the Hon'ble Supreme Court while deciding Civil Appeal No.2080 of 2002 titled as *Vikram Greentech (I) Ltd. & Anr. Vs. New India Assurance Co. Ltd.* had observed that "...The Court while construing the terms of policy is not expected to venture into extra liberalism that may result in rewriting the contract or substituting the terms which were not intended by the parties. The insured cannot claim anything more than what is covered by the insurance policy". The Court had made it clear that an insurance contract had to be construed like any other contract on the basis of its terms and conditions and outside aid for construction of insurance policy is impermissible.

- b) In the present case the policy clearly showed that only the plant, machinery and stock lying in the shop was insured. Therefore it was held that the Petitioner was justified in repudiating the claim of the Respondent in respect of the loss caused to the plant, machinery and stock lying in the godown due to fire. It was further held that the fora below had exceeded their jurisdiction by expanding the scope of the contract.
- c) The Revision Petition was allowed and the impugned order was set aside.

vii) Citation:

I (2014) CPJ 341; 2014(1) CPR 362.

4. Suresh Kumar S.S Vs. IFFCO-TOKIO General Insurance Co. Ltd. & Anr.

i) Case in Brief:

The Complainant's business premises were gutted in fire on 26.04.2008 during the subsistence of an insurance policy taken by him with the Respondents. The entire goods were totally damaged. Four adjacent shops were also damaged. Complainant made a claim of Rs.8,52,398/- with the Respondents. The insurance company appointed

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a Surveyor and based on his report offered to settle the claim at Rs.4,56,661/- as full and final settlement. The company also insisted that the demand draft would be paid in favour of M/s. Mini Muthoottu to which the Petitioner objected. It was the case of the Respondent that there was another policy issued by the National Insurance company and that they were liable to pay proportionate amount in the sum of Rs.4,56,661/-. The District Forum allowed the complaint and awarded a sum of Rs.8,52,398/- with interest at 10% p.a. from 10.06.2008 till realization and awarded cost in the sum of Rs.3,000/-. The State Commission on the basis of the Tariff Advisory Committee Directives, relied upon by the Respondents, held that the amount offered towards final settlement was reasonable and directed that Rs.4,56,661/- be paid to the Complainant with interest at 9% p.a. from the date of complaint till the date of realization. Rs.2,000/- was also awarded towards costs. The plea raised by OP that the amount could be released only through M/s. Mini Muthoottu was rejected. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 28.06.2013 in First Appeal No.521/2012 of the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram.

iii) Parties:

Suresh Kumar S.S - Petitioner

Vs.

IFFCO-TOKIO General Insurance Co. Ltd. & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.680 of 2014 with IA/339/2014, IA/340/2014 (Stay, Condonation of delay) & Date of Judgement: 03.02.2014.

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 Para 4 of the complaint the Complainant had objected to payment being made through M/s. Mini Muthoottu, a private money lending company and demanded that the amount be

released through a Nationalized Bank and expressed his willingness to accept the proposed offer of settlement for an amount of Rs.4,56,661/-. Thus there was admission on the part of Complainant himself. The Commission further observed that they were not aware what the agreement between the Petitioner and National Insurance Company was and noted that the non-filing of the case against National Insurance Company caused a film of doubt on their bona fides. The Revision Petition was therefore dismissed.

vii) Citation:

II (2014) CPJ 69.

5. Sri Priyaluckshmi Garments and others Vs. The Oriental Insurance Co. Ltd and others

i) Case in Brief:

This is a case where the goods were damaged in fire on 21.02.1998 and sums of Rs.2,14,01,500/-, Rs.46,35,000/- and Rs.72,45,000/- were claimed by the complainants No.1, 2 and 3, respectively, against insurance company with interest and costs. The claim of the Complainants was rejected by the Insurance Company/OP on the ground that the insured failed to submit the relevant records demanded by the Surveyors. Being aggrieved, the Complainants filed a complaint before the National Commission which directed the Insurance Company to appoint another Surveyor who is also a Chartered Accountant to assess the loss on the basis of the records already submitted to the previous Surveyor along with an instruction to assess the loss not on the basis of the debris but on the basis of the stock which was in existence as reflected in the account books and other documents and also directed the Insurance Company to pay to the Complainant: (i) Rs.2,64,205/- (ii) Rs.1,69,751/- (iii) Rs.5,25,799/- as assessed by the previous Surveyors with interest at the rate of 12% p.a. from 6 months after the date of fire, till its payment for the time being. Against the order of the National Commission, the opposite parties approached the Supreme Court of India which admitted the appeal but permitted the complainants to withdraw the amount. Civil appeal filed by the opposite parties was dismissed on 12.2.2007. Ultimately, a third Surveyor was appointed for assessing the loss, who filed their report on 15.12.2010. The Surveyor assessed the amount in the sum of Rs.52,65,423/-,

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Rs.14,94,827/-, Rs.60,40,069/- for the respective three firms. Complaint partly allowed broadly accepting the report of the Surveyor.

ii) Order appealed against:

Original Complaint

iii) Parties:

Sri Priyaluckshmi Garments and others - Complainants

Vs.

The Oriental Insurance Co. Ltd and others - Opp. Parties

iv) Case No and Date of Judgement:

Original Petition No.85 of 1999 & Date of Judgement: 01.05.2014.

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 Commission observed that the Surveyor rightly placed reliance on stock figures which were the audited accounts and the stock statements submitted to the bank but did not explain why there was difference between the books of accounts and the stock statement.
- b) The Commission also observed that the Complainants could not produce any evidence to show cutting waste of 1% from any of the records and mixed semi finished and finished goods which was not possible. They could not also show that export surplus would be only 2% whereas as per industry specialists it would be more than 10%.
- c) The Commission noted that the Complainants failed to indicate the quantity of goods lying with job workers and held that 20% deduction for goods with job workers was fair and reasonable.
- d) The National Commission on perusal of records found that in the case of Sri Priyaluckshmi Exports, complainant could not show that they did not export 14275 garments when they had a stock of 17,388 pieces from July 1997 and observed that the alleged stock of 17,388 pieces were either non-existent or non-exportable. Further in the case of Priyaluckshmi Apparels, the Commission found that the complainant did not produce the original purchase bills.

- e) In view of the above, the Commission relying on the report of the third surveyor directed the opposite parties to pay the complainants a sum of Rs.74,69,331/-, Rs.14,25,073/-, Rs.9,08,459/-, respectively, within a period of 90 days from the receipt of this order with interest @ 12% per annum from the date of incident i.e. 21.2.1998. The amount including interest which had already been deposited or paid shall be adjusted. The Commission also imposed compensation in the sum of Rs.5,00,000/-.

vii) Citation:

III (2014) CPJ 510; 2014(3) CPR 278.

6. The New India Assurance Co. Ltd and Anr. Vs. Jaspal Kaur

i) Case in Brief:

The Complainant/Respondent Jaspal Kaur is the owner of shop No.126. She obtained fire and special peril policy for insurance of her stock and khokha for an amount of Rs.3,25,000/- and Rs.25,000/- respectively from the Petitioner/OP. On 01.06.2007, fire broke out in the shop of the Complainant. The claim of the Complainant was rejected by the Insurance Company on the ground that stock within the premises of the shop No.126 belonged to her son Harminder Singh who was running the business in the name of M/s. Fashion Centre by combining three shops viz. 125, 126 and 319. Being aggrieved, Complainant filed complaint before the District Forum. 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 31.10.2012 in First Appeal No.1078/2008 of Punjab State Consumer Disputes Redressal Commission

iii) Parties:

The New India Assurance Co. Ltd & Anr. ...Petitioners/OPs

Vs.

Jaspal Kaur

...Respondent/Complainant

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iv) Case No and Date of Judgement:

Revision Petition No.398 of 2013 & Date of Judgement: 12.05.2014.

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 Harminder Singh had received full and final settlement in respect of Shop No.125. With regard to the complaint regarding Shop No.319 of Kamal Kumar, though the District Forum directed the insurance company to pay Rs.1,50,000/- to Harminder Singh, it was reversed by the State Commission and the complaint was dismissed.
- b) The issue was only regarding Shop No.126 of the Complainant Jaspal Kaur. The National Commission after perusal of the records found that Harminder Singh though being son of Jaspal Kaur did not entitle him to claim benefit under the policy taken by the latter when it was very clear that the policy was in the name of Jaspal Kaur, but the stock in question belonged to Harminder Singh. Held that Jaspal Kaur was entitled to be compensated for loss/damage to Khokha only and not for damage to the stocks.
- c) In view of the above, the present revision petition was allowed and the order passed by the State Commission in Appeal No.1078/2008 was set aside. The Complainant/Respondent was ordered to be entitled for payment of Rs.25,000/- minus the excess o amount of Rs.10,000/-, i.e. Rs.15,000/- along with interest @ 9% p.a. from the date of complaint till realisation. Records also revealed that over a period of time, certain improvements had also been made in the said premises; hence the depreciated value for the shop was not being taken for payment of claim. It was held, therefore, that Complainant/ Respondent, shall be entitled to receive a sum of Rs.15,000/- from the Insurance Company along with interest @ 9% p.a. from the date of filing of the complaint till realisation.

vii) Citation:

II (2014) CPJ 728; 2014(2) CPR 804.

(w) FOOD ITEMS / SOFT DRINKS

1. Hindustan Coca Cola Beverages Pvt. Ltd. Vs. Purushottam Gaur & Anr.

i) Case in Brief:

Complainant purchased a bottle of Fanta, a soft drink, on 03.05.2006 from one Raj Kumar of Indore (OP-4). On reaching his house he noticed that there were some insects in the bottle. He made a complaint to OP-4 who contended that it was the responsibility of the Coca Cola Company. Complainant filed a consumer complaint in the District Forum against the Petitioner Company. The District Forum dismissed the complaint. However the State Commission accepted the first appeal filed by the Complainant, granted a sum of Rs.10,000/- in his favour and imposed cost of Rs.3,000/- upon the OPs. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 06.01.2014 in Appeal No.241/2008 of the Madhya State Consumer Disputes Redressal Commission.

iii) Parties:

Hindustan Coca Cola Beverages Pvt. Ltd.	-	Petitioners
Vs.		
Purushottam Gaur & Anr.	-	Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1361 of 2014 with IA/1620/2014 &
Date of Judgement: 21.03.2014.

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 laboratory test report showed the presence of insects in the bottle. However the Petitioner argued that the bottle did not belong to them and it was not manufactured by them. The Commission however held that the onus of proof shifted to the OPs after the receipt of the report from the laboratory. They did not try to

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help the laboratory personnel. They did not even answer the questions posed by the in-charge of the laboratory. It was held that OPs should have enquired as to why the bottle was sold by OP-4. No effort was made by OPs 1 to 3 regarding the origin of the bottle. The Commission held that OPs 1 to 3 failed to rebut the evidence against them. The OPs should have appointed their own expert to find out who could manufacture bottles on their behalf. The silence on their part was considered pernicious. The Commission held that the case against OPs 1 to 3 stood proved and accordingly dismissed the Revision Petition as devoid of merit.

vii) Citation:

II (2014) CPJ 580; 2014(3) CPR 263.

(x) HEALTH INSURANCE

1. G.R. Yoganarasimha Vs. M/s. Reliance General Insurance Co. Ltd. & Ors.

i) Case in Brief:

Complainant who retired as Deputy General Manager with M/s. Federal Mogul Goetze Ltd. (OP No.3/Respondent No.3) had availed the company's Group Health Insurance Scheme. The insurance policy was floated by M/s. Reliance General Insurance Co. (OP No.1/Respondent No.1); M/s. Alankit Health Care Ltd. (OP No.2) was the authority who settled the claim. After retirement, the Complainant had been paying the premium from time to time through OP No.3. Though the insurance had been renewed up to 30.06.2010, the bills for Rs.43,402/- raised by Manipal Hospital and Rs.1,72,810/- towards dialysis and Rs.2,50,669/- towards renal transplantation were denied by OPs. Alleging deficiency in service, Complainant approached the District Forum which partly allowed his complaint and directed OPs 1 and 2 to pay Rs.43,402/- to the Complainant with interest at 12% p.a. from 19.01.2010. It was also held that Complainant would be entitled to make fresh claim and renew the insurance policy. Though the Complainant submitted a claim along with a demand draft of Rs.14,000/- for renewal of the policy it was returned by the OP No.3 stating that Complainant should make his own arrangements for insurance coverage. OP No.3 renewed the policy of other retired

employees. Alleging discrimination, Complainant filed another complaint before the District Forum for renewal of the policy and to pay the claim towards renal transplant and dialysis. The District Forum dismissed the complaint. The State Commission also dismissed the Complainant's appeal with observation that the remedy sought cannot be provided under the CP Act. Challenging the said order, the present Revision Petition had been filed. Revision Petition partly allowed.

ii) Order appealed against:

From the order dated 16.11.2011 in First Appeal No.3347/2011 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore.

iii) Parties:

G.R. Yoganarasimha

- Petitioner

Vs.

M/s. Reliance General Insurance Co. Ltd. & Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1018 of 2012 & Date of Judgement: 15.01.2014.

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 OP No.3's contention that the Complainant had neither paid any service charge to OP No.3 nor had OP No.3 collected any money from the Complainant for sending the amount to OP Nos.1 and 2 and that OP No.3 was only a postman doing free service and that they did not want to extend that service. It was also claimed that since Complainant is not a consumer of OP No.3 there was no deficiency from OP No.3. The Commission observed that since 2003, the OP No.3 used to receive premium from the Complainant and the policy was renewed from time to time. OP No.3 forwarded the premium for renewal of policy for other employees, except the Complainant since 2010. The Commission held that it was a discriminatory and intentional act of OP No.3 and constituted deficiency in service. Relying on the decision of the Hon'ble Supreme Court in *Biman Krishna Bose Vs. United India Assurance Co. Ltd. & Ors.* (2001) 6 SSC 477, the Commission held that the fora below had committed error in dismissing the complaint.

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b) In the result the complaint was partly allowed. OPs 1 and 2 were directed to settle claim of the Complainant to the extent of Rs.3.5 lakhs. OP No.3 was directed to renew the policy of the Complainant after taking premium of Rs.14,000/- for the expired period and to renew it further till the Complainant needs it. OP No.3 was directed to pay Rs.20,000/- towards mental agony and Rs.10,000/- towards cost.

vii) Citation:

I (2014) CPJ 359; 2014(1) CPR 421.

2. Life Insurance Corporation of India & Ors. Vs. Nita Bharadwaj

i) Case in Brief:

Complainant's husband, Ravinder Bharadwaj obtained an insurance policy for a sum of Rs.2,00,000/-. He expired on 13.06.2004. Complainant being nominee submitted her claim before OP/Petitioner which was repudiated on the ground that the insured had suppressed material facts regarding pre-existing disease while filing the proposal form. The District Forum, before whom complaint was filed, allowed the same and directed OP to pay policy amount with 6% interest p.a. from the date of complaint till realization and Rs.1,000/- as litigation 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.

ii) Order appealed against:

From the order dated 01.11.2007 in Appeal No.334/2006 of the Himachal Pradesh State Consumer Disputes Redressal Commission, Shimla.

iii) Parties:

Life Insurance Corporation of India & Ors. - Petitioners/OPs

Vs.

Nita Bharadwaj - Respondent/Complainant

iv) Case No and Date of Judgement:

Revision Petition No.2958 of 2008 & Date of Judgement: 21.01.2014.

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 from record that the deceased was on medical leave for a period of 39 days from 03.01.2003 to 10.02.2003. He had suppressed this fact as well as fact of jaundice which was an ailment pertaining to liver. The deceased had replied in the negative to all questions relating to his health in the proposal form. The Commission observed that in several cases e.g. *P.C. Chacko and Another Vs. Chairman, Life Insurance Corporation of India*, (2008) 1 SCC 321; *LIC & Anr. Vs. Smt. Kempamma*, in RP.No.3848 of 2007, decided on 24.01.2013; *Usha Rani & Anr. Vs. LIC & Ors.*, in RP. No.4875 of 2012 decided on 05.02.2013 and *LIC of India Vs. Smt. Gurvinder Kaur*, in RP. No.2722 of 2008, decided on 30.05.2013, it had been held that it was obligatory on the part of the insured to give correct answers at the time of obtaining insurance policy.
- b) Since the deceased had suppressed material facts relating to his previous disease and treatment, the Commission held that the State Commission had committed error in dismissing appeal and the District Forum had committed error in allowing complaint. The Revision Petition was accordingly allowed and the impugned order was set aside. The complaint stood dismissed.

vii) Citation:

I (2014) CPJ 409; 2014(1) CPR 365.

3. Ram Swaroop Agrawal & Ors. Vs. The New India Assurance Co. Ltd.

i) Case in Brief:

Petitioner No.1/Complainant No.1 and his wife, Shakuntala Devi Agrawal, obtained a mediclaim policy from the Respondent Insurance Company for the period from 31.12.2001 to 30.12.2012 for an amount of Rs.2,00,000/- which was subsequently renewed upto 30.12.2013. During the tenure of the policy Smt. Shakuntala Devi suffered from various ailments for which she took treatment in hospitals. A claim of

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Rs.1,24,682/- was made under the policy with respect to the expenditure incurred on her treatment. The claim was repudiated on the ground that she had been suffering from diabetes and hypertension for the past 15 years. Alleging deficiency in service, a complaint was filed before the District Forum. During the pendency of the case, Smt. Shakuntala Devi died and her sons were impleaded as parties. The District Forum dismissed the complaint. The State Commission, on appeal, also dismissed the complaint vide impugned order against which the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 03.11.2007 in First Appeal No.1581/2006 of the Madhya Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

Ram Swaroop Agrawal & Ors. - Petitioners

Vs.

The New India Assurance Co. Ltd. - Respondent(s)

iv) Case No and Date of Judgement:

Revision Petition No.1515 of 2008 & Date of Judgement: 30.01.2014.

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 the record that the policy holder, Mrs.Shakuntala Devi, was a known case of diabetes and hypertension and the said fact had been declared by the policy holder at the time of obtaining the policy. It was also observed that under the terms and conditions of the policy, any claim with respect of the treatment of these diseases was not payable to the Complainants. Though the Complainant claimed that Smt. Shakuntala Devi suffered from the ailments of fever, abdominal and chest pain and the expenditure incurred by them on her treatment was on account of those diseases, the Commission rejected the argument on the basis of what was stated in the discharge summary. The State Commission had also brought out that the single vessel disease diagnosed and treated was a complication of diabetes mellitus with hypertension. The National Commission further

observed that that the Complainants had not been able to prove that the treatment taken from the hospitals was not related to hypertension or diabetes. The Commission did not find any infirmity, illegality or jurisdictional error in the orders passed by the fora below and accordingly dismissed the Revision Petition.

vii) Citation:

I (2014) CPJ 615; 2014(1) CPR 477.

4. ICICI Lombard General Insurance Co. Ltd. Vs. Bhaneshwar Dayal Sharma

i) Case in Brief:

Complainant/Respondent availed a housing loan from the Petitioner/OP for which a mediclaim policy was also provided to him for the period from 28.09.2006 to 27.09.2011. An amount of Rs.26,756/- was collected from him on account of policy. On 07.07.2007 Complainant underwent an operation for Aortic Bifurcation Bypass Grafting and incurred an expenditure of Rs.1,25,000/-. His claim under the mediclaim policy was rejected by OP. Alleging deficiency in service he filed complaint before the District Forum which allowed the complaint and directed OP to pay a sum of Rs.1,25,000/- along with interest at 10% p.a., a sum of Rs.25,000/- towards mental agony and Rs.3,000/- towards litigation expenses. OP's appeal 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 24.09.2012 in First Appeal No.1077/2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

iii) Parties:

ICICI Lombard General Insurance Co. Ltd. - Petitioner

Vs.

Bhaneshwar Dayal Sharma - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4916 of 2012 & Date of Judgement: 03.02.2014.

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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 observed that the claim of the Complainant was repudiated on two grounds. Firstly, that the surgical procedure was outside the purview of the nine critical illness and procedure defined and covered in the policy. Secondly, as per exclusion clause 2.1.4 of the insurance policy, the disease was diagnosed on 14.12.2006 which fell within 90 days of the inception date of the insurance policy.
- b) The Commission observed that a clarification had been given Dr. Neerja Grova that the surgery underwent by the Complainant had nothing to do with heart or CABG operation but it was Aorto-Femoral by-pass. The fora below had misunderstood the medical terminology and interpreted the term by-pass as coronary artery by-pass graft (CABG). On perusal of operative notes, it was clearly observed that the operation was performed for the disease in the leg and it was not concerned with coronary arteries.
- c) The Commission therefore set aside the order of the fora below and allowed the Revision Petition.

vii) Citation:

II (2014) CPJ 17.

5. HDFC Bank Ltd. Vs. Vir Bhan Sharma

i) Case in Brief:

Complainant/Respondent, an advocate, purchased a mediclaim policy for his family including his wife and minor daughter for Rs.2,00,000/- from OP/Petitioner and paid Rs.950/- vide cheque dated 12.07.2004. OP issued two credit cards. On 26.08.2004, Complainant's wife Dr. Savita Sharma underwent angioplasty and was discharged from hospital on 07.09.2004. Hospital raised bill for Rs.1,58,786.71. Complainant could not avail mediclaim facility due to non-receipt of third party administrator identity card. OP sent three cards for the period 26.07.2005 to 25.07.2006, after more than a year from the receipt of application. Alleging deficiency, Complainant approached the District Forum which allowed the complaint and directed OP to pay

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Rs.1,58,786.71 plus 9% p.a. interest besides Rs.2,000/- as litigation 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.

ii) Order appealed against:

From the order dated 21.08.2012 in Appeal No.1250/2008 of the Maharashtra State Consumer Disputes Redressal Commission.

iii) Parties:

HDFC Bank Ltd.	Vs.	- Petitioner
Vir Bhan Sharma		- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.213 of 2013 with IA/392/2013, IA/393/2013 & Date of Judgement: 03.03.2014.

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 nowhere in the complaint any document pertaining to coverage of mediclaim on 26.08.2004 had been placed on record. As per averments in the complaint cheque of Rs.950/- for coverage was issued by the Complainant on 12.07.2004 and OP issued two credit cards but nowhere was it mentioned that any credit card covering medical facility from 26.08.2004 had been issued. The Commission further observed that merely by making payment by cheque on 12.07.2004, no liability can be fastened for reimbursing expenditure of hospital on 26.08.2004 as no medical policy was in force on that date.
- b) The Commission observed that as per Clause 6.3 of the policy, Complainant was under an obligation to submit his claim to the insurance company. Even without submitting the claim to the insurance company he was not entitled to recover any amount from OP for hospitalization.
- c) The Commission also observed that complaint was filed only against the Petitioner whereas insurance coverage was given by National Insurance Company and the Third Party administrator,

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Family Health Plus Limited, issued identity cards. Both these parties were necessary parties as claim was also to be submitted to National Insurance Company. Since Complainant had not impleaded both the parties as OP in the complaint, the complaint was liable to be dismissed on account of non-joinder of necessary parties.

- d) Consequently the Revision Petition was allowed and the impugned order of the State Commission was set aside.

vii) Citation:

II (2014) CPJ 439.

6. IFFCO Tokio General Insurance Co. Ltd. & Anr. Vs. Boddeda Satyavathi

i) Case in Brief:

Late Buddeda Venkata Ramana, husband of the Respondent/ Complainant had obtained a Group Personal Accident Policy for the period w.e.f. 16.01.2006 to 15.01.2007 and it covered accident risk of Rs.1 lakh. It is claimed by the complainant that on 22.02.2006, the insured accidentally fell from a coconut tree, sustained head injury and ultimately died. The death was immediately notified to the Village Gram Panchayat and insurance claim was filed with the Petitioner/ Insurance Company but the claim was not allowed on the ground that the reason for death of the insured was not the accident but jaundice. Being aggrieved, the respondent/complainant filed a consumer complaint before the District Forum which dismissed the complaint with cost of Rs.5,000/- as devoid of merit. Respondent/Complainant preferred an appeal before the State Commission which held that the death of the deceased was caused because of injuries suffered due to fall from the coconut tree and directed the OP to pay the insurance amount with 9% interest p.a. from the date of filing of complaint along with cost of Rs.5,000/-. It is against this order that the Petitioner had filed the revision petition. Revision Petition was allowed.

ii) Order appealed against:

Against the Order dated 18.09.2012 in Appeal No.743/2011 of the State Commission Andhra Pradesh.

iii) Parties:

IFFCO Tokio General Insurance Co. Ltd. & Anr. - Petitioners

Vs.

Boddeda Satyavathi - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.188 of 2013 & Date of Judgement: 12.04.2014.

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 certificate issued by one Dr.Sarat Chandra Babu (which had been strongly relied on by the State Commission) found that the medical certificate was highly suspect and even if it is taken as correct, it did not establish that the insured B.V.Ramana died because of head injury suffered in an accidental fall from coconut tree. Perusal of the translated copy of the insurance claim filed by the Respondent complainant also showed that in the aforesaid claim, against the column description of accident/cause of accident the answer given was jaundice. No information regarding the extent of injury, date or time of death was given.
- b) Further, against the column name/address of Hospital where insured was treated and name/address of Doctor who attended on the injured, neither the name of the hospital nor name of the doctor was mentioned.
- c) Otherwise also, on reading of the medical certificate, the Commission found that the medical certificate did not throw any light upon the cause of death of the deceased. It was also noted that Dr. K.V.V.Anand of Area Hospital Anakapalle in his testimony had stated that the OPD ticket of the hospital bearing No.14205 dated 20.02.2006 in the name of N.V.Rao aged 35 years was not in the handwriting of any of the medical officers working in the hospital. He further stated that medical certificate issued by Dr. Babu was not based upon OPD ticket. Therefore, OPD ticket itself was suspect.

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- d) Further, the Commission on perusal of Investigation Report dated 29.09.2006 of the Surveyor and Loss Assessor, noted that the Surveyor had spoken to all the family members of the deceased including the Complainant who had stated that the insured Sh.B.Venkata Ramana had died on 22.02.2006 at home due to jaundice and fever. Therefore, the Commission held that reliance could not be placed upon the medical certificate issued by Dr.G.Sarat Chandra Babu and OPD ticket.
- e) In view of the above, the present revision petition was allowed and the order of the State Commission was set aside.

vii) Citation:

II (2014) CPJ 135; 2014(2) CPR 219.

7. Appollo Munich Health Insurance Co. Ltd. & Anr. Vs. Kirti and Anr.

i) Case in Brief:

The Complainant Mrs. Kirti was advised diagnostic tests and surgery for symptoms of severe abdominal pain and menstrual problems. Accordingly, she underwent diagnostic Laparoscopy and Myomectomy at Ivy Hospital. As per policy conditions, prior to the admission, a cashless request was sent to the Petitioner Company/Apollo Munich Health Insurance Co. Ltd/OP.2. But, no avail came. Hence, the Complainant spent Rs.73,510/- on her treatment and thereafter lodged a claim with the OPs for payment of the said amount. However, OP No.1 & 2 repudiated the claim on the ground that said hospitalization was related to treatment of infertility (Primary Infertility since 1 years) which is excluded from policy under standard exclusion under Section 6-e. Therefore, alleging deficiency in service by OPs, who did not provide cashless facility, a complaint was filed before the District Forum which dismissed the complaint. Aggrieved by the order of District Forum, the Complainant filed the First Appeal before the State Commission which allowed the appeal and directed the Petitioners/OPs.1 and 2 to pay Rs.73,510/- as compensation, plus Rs.20,000/- towards mental agony, along with Rs.10,000/- as costs to the Complainant. Challenging the order of State Commission, the OP-1 and 2 had filed the present revision petition. Revision Petition dismissed.

ii) Order appealed against:

Against the Order dated 28.11.2013 in Appeal No.427/2013 of the State Commission Chandigarh.

iii) Parties:

Appollo Munich Health Insurance Co. Ltd. & Anr. - Petitioners

Vs.

Kirti and Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1298 of 2014 & Date of Judgement: 01.04.2014.

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.25,000/- and upheld the order of the State Commission for the following reasons:

- a) No doubt the patient/complainant was diagnosed as a case of Primary Infertility, but she was also diagnosed as having fundal fibroid. The Ivy Hospital performed diagnostic laparoscopy and then myomectomy. This operation was necessary to control her symptoms of heavy menstrual bleeding and her abdominal pain. Removal of fibroid was an absolute necessity, for better health of patient. Fibroid is one of the causes of infertility, but many patients, may conceive, even in presence of fibroids. The OP Company had rejected the claim on the basis that the primary cause for the surgery was Primary Infertility which was not correct.
- b) Further, perusal of the medical records revealed that the Insured was treated for fibroid, which was presented with heavy menstrual bleeding and lower abdominal pain. She got admitted to the hospital due to sickness or emergency health problems, not for Primary infertility. Therefore, insurance companies could not just assume a reason, for an ailment, according to their own

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convenience, and/or whims and fancies. Hence, the repudiation of claim by the OPs, under exclusion clause Section 6(e)(ix) was held to be an arbitrary act.

vii) Citation:

II (2014) CPJ 365; 2014(2) CPR 345.

8. COL. T.S. Bakshi Vs. Star Health and Allied Insurance Co. Ltd.

i) Case in Brief:

Petitioner is the power of attorney holder of Jaspreet Singh Bakshi who obtained medical insurance for self, his wife and his son Sahaj Singh for the period from 21.7.2010 to 20.7.2011 from the opposite party. Sahaj Bakshi developed signs of dengue fever on 14.8.2010 and got treatment and incurred an expenditure of Rs.83,570/- for the treatment. The Insurance claim filed by the insured was repudiated by the opposite party on the ground of exclusion Clause-2 of the insurance policy. Being aggrieved by the repudiation, the Petitioner filed complaint before the District Forum which held that the opposite party was right in repudiating the claim. Being aggrieved of 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 present revision petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

Against the Order dated 22.11.2012 in Appeal No.274/2012 of the State Commission Chandigarh.

iii) Parties:

COL. T.S. Bakshi	- Petitioner
Vs.	
Star Health and Allied Insurance Co. Ltd.	- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.852 of 2013 & Date of Judgement: 06.05.2014.

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 pointed out that if the insured contracts a disease within first 30 days of the commencement of insurance policy, the insurance company shall not be held liable to indemnify the insured for expenses unless it is shown that the insured had a continuous health insurance policy with some Indian Insurance Company just prior to taking of insurance cover. In the instant case, there was nothing on the record to suggest that the insured Sahej Singh had a previous health insurance cover for a continuous period of 12 months. Therefore, in view of the law laid down by the Apex Court, the Commission held that the fora below were right in dismissing the claim of the Petitioner under the insurance contract in view of the Exclusion Clause.
- b) Further, even if the plea of the Petitioner that the insured was not explained the terms and conditions of the insurance policy is accepted for the sake of arguments, then also, the petitioner has no case because of clause 10 of the insurance contract which deals with conditions for Free-look Period which was given to the petitioner with option to seek cancellation of policy within 15 days if he was not agreeable to the terms and conditions of the insurance policy. The insured concerned in the present case had not opted for cancellation of the policy.
- c) In view of the above, the Commission held that he could not be allowed to claim that he was not bound by the Exclusion Clause because it was not explained to him when he remitted the cheque for payment of insurance premium. Therefore, the Commission did not find any jurisdictional error or material irregularity in the impugned order of the State Commission and the present revision petition was dismissed.

vii) Citation:

II (2014) CPJ 620.

(y) HIRE PURCHASE

1. Bajaj Finance Ltd. Vs. Somesh N.K

i) Case in Brief:

Respondent/Complainant had taken a loan of Rs.24,000/- from the Petitioner on 23.9.2008 for purchase of Bajaj Pulsar Bike and had paid one monthly installment. Thereafter, he could not pay further amount due to his health problem. It is alleged that on 23.4.2011, some persons at the behest of the petitioner forcibly seized the vehicle. Thereafter, respondent met their officials and was told that he had to pay Rs.68,520/- and they were not ready to give back the bike. Therefore, the Complainant filed complaint before the District Forum which allowed the complaint in part holding, that there was deficiency in service on the part of the Petitioner and directed them to pay a sum of Rs.16,500/- to the Respondent with interest @ 12% per annum from 20.5.2011 until actual payment. Being aggrieved, Petitioner filed an appeal before the State Commission which dismissed the same vide its impugned order against which the present Revision Petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

Against the Order dated 26.06.2013 in Appeal No.1487/2012 of the State Commission Karnataka.

iii) Parties:

Bajaj Finance Ltd.	Vs.	- Petitioner
Somesh N.K		- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3062 of 2013 & Date of Judgement: 16.04.2014.

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 from the impugned order of the State Commission found that the respondent had raised a loan to the extent of Rs.26,040/- including the financial charges repayable

in 12 monthly installments at Rs.2,170/-. But the respondent had paid only one installment. Therefore, the vehicle in question was forcibly seized. The Commission noted that the District Forum had discussed about the total amount due by the Respondent and the amount adjusted towards sale proceeds of the vehicle and also considering the interest payable by the Respondent @ 18% p.a. had rightly allowed the complaint.

- b) Further, the contention of the OP that the Complainant had surrendered the vehicle on its own by the surrender letter, dated 26.4.2011 was not found tenable as there was no evidence on the part of OP to prove that. Therefore, the Commission held that in the absence of this material piece of evidence, the Commission had no option but to hold that the vehicle was forcibly seized by the Petitioner/OP in this case, which is against the settled principles of law.
- c) In view of the above, the Commission dismissed the present revision petition and upheld the orders of the fora below.

vii) Citation:

2014(2) CPR 576.

2. Rajnandgaon Motor Engineering Works & Anr. Vs. Chowa Ram Sahu & Anr.

i) Case in Brief:

A tractor was purchased by the Complainant from OPs 1 and 2 for a sum of Rs.5,63,000/-. Complainant paid a total sum of Rs.3,13,000/- and a loan of Rs.2,50,000/- was raised from L&T Finance Ltd., OP No.3. A sum of Rs.30,000/- was collected as part payment of 1st installment loan on 17.09.2010 by the representative of OP No.3. It is the Complainant's case that he was assured that the balance amount of the first as well as the second installment would be collected on the next due date i.e. 12.01.2011. However just a week before the due date of the next installment, the vehicle was forcibly taken away in the absence of the Complainant. When Complainant contacted OP No.2, he was asked to deposit Rs.2,50,000/- and take away the tractor. Despite sending a legal notice the OPs did not return the tractor. Complainant filed consumer complaint before the District Forum which allowed the

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complaint and directed OPs to pay the amount of Rs.3,43,000/- jointly and severally along with interest at 7% p.a. to the Complainant from the date of filing the complaint i.e. 26.03.2011 till realization and also pay an amount Rs.1,000/- for mental harassment and another Rs.1,000/- as cost of litigation. Two appeals were filed against the said order one by the dealer, Rajnandgaon Motor Engineering Works and another by L&T Finance Ltd. The State Commission dismissed both the appeals vide impugned order against which the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

Revision Petition No.1029 of 2013

From the order dated 14.02.2013 in Appeal No.571/2012 of the Chhattisgarh State Consumer Disputes Redressal Commission.

Revision Petition No.2029 of 2013

From the order dated 14.02.2013 in Appeal No.569/2012 of the Chhattisgarh State Consumer Disputes Redressal Commission.

iii) Parties:

Revision Petition No.1029 of 2013

M/s. L&T Finance Ltd. - Petitioners

Vs.

Chowa Ram Sahu & Ors. - Respondents

Revision Petition No.2029 of 2013

Rajnandgaon Motor Engineering Works & Anr. - Petitioners

Vs.

Chowa Ram Sahu & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition Nos.1029 of 2013 and 2029 of 2013 &

Date of Judgement: 22.04.2014.

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 were shifting the blame for repossession of the vehicle on each other. Even during the

course of arguments before the State Commission OPs 1 and 2 took the stand that the tractor was repossessed by OP No.3, whereas OP No.3 stated that the vehicle was repossessed by OPs 1 and 2. The Complainant however stated that he found the vehicle parked at the premises of OPs 1 and 2 and that he was asked to take the vehicle back after paying Rs.2,50,000/-. The State Commission had observed that in the terms and conditions of the loan offer letter, including the repayment schedule, it was nowhere stated that the financier was authorized to repossess the vehicle. The National Commission referred to an earlier decision of the Commission in First Appeal No.64/2007 *Agma Leasing Ltd. Vs. Prasan Mohapatra* decided on 31.05.2011 in which it was held that the repossession of the vehicle without any justification and without any notice amounted to an act of arbitrariness and deficiency in service. The Commission therefore found no justification to interfere with the well reasoned orders of the District Forum and State Commission. The Revision Petitions were accordingly dismissed.

vii) Citation:

II (2014) CPJ 544; 2014(2) CPR 533.

3. Pramod Kumar Mohapatra Vs. State Bank of India

i) Case in Brief:

Complainant/Petitioner obtained a loan of Rs.4,92,000/- from OP/ Respondent and purchased tractor. The amount was to be paid in 18 half-yearly instalments of Rs.27,333/-. The tractor was hypothecated with OP. Since Complainant failed to deposit instalments even after notice, the tractor was seized by OP on 18.01.2013. The outstanding dues from the complainant up to 30.11.2011 were Rs.5,83,073/- including interest. District Forum passed interim order directing OP to release tractor and trolley within 7 days. OP filed Revision Petition against order of the District Forum which was modified by the State Commission by impugned order against which the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 10.04.2013 in Appeal No.23/2012 of the Orissa State Consumer Disputes Redressal Commission.

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iii) Parties:

Pramod Kumar Mohapatra - Petitioner
Vs.
State Bank of India - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1668 of 2013 & Date of Judgement: 30.04.2014.

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 record noted that only tractor was seized by OP and trolley was not seized and apparently District Forum committed error in directing OP to release tractor along with trolley.
- b) The District Forum did not ask the Complainant to make any payment. The State Commission directed Complainant to pay Rs.80,000/- (which he was in a position to pay) and to make payment of rest of the amount in instalments and in such circumstances it was held that the order passed by the State Commission was in accordance with law. It was held that though the State Commission had exercised discretion in favour of the Complainant by allowing him to pay in instalments, he had filed the Revision Petition without any justification.
- c) Consequently the Revision Petition was dismissed.

vii) Citation:

II (2014) CPJ 629.

4. Smt. Sulakshana Talan Vs. Branch manager, M/s. Shriram Transport Finance Co. Ltd. & Anr.

i) Case in Brief:

Petitioner/Complainant took a loan of Rs.6,50,000/- vide loan-cum-hypothecation agreement dated 30.03.2007 from the Respondent repayable in 46 monthly installments. Complainant was in a position to pay only a sum of Rs.61,300/- and thereafter she surrendered the

vehicle in August 2007 before OP No.1 taking the plea that it was not possible for her to pay the remaining installments regularly and ply the vehicle. She further requested that an amount of Rs.5,88,000/- be adjusted against sale proceeds. It was alleged that though she approached the OP a number of times for statement of accounts there was no response. On 10.12.2010 Respondent sent a notice demanding that a sum of Rs.2,20,944/- was till due against the Complainant. Alleging that the said action was contrary to the provisions of law and amounted to unfair trade practice, she filed complaint before the District Forum seeking a direction to issue NOC in her favour besides awarding compensation and costs. Since both the District Forum and State Commission did not entertain her complaint the present Revision Petition had been filed. Revision Petition disposed of by quashing the notice dated 10.12.2010 and holding that both the parties have got no claim against each other.

ii) Order appealed against:

From the order dated 17.05.2012 in Appeal No.89/2012 of the Chhattisgarh State Consumer Disputes Redressal Commission.

iii) Parties:

Smt. Sulakshana Talan - Petitioner

Vs.

Branch manager,
M/s. Shriram Transport Finance Co. Ltd. & Anr. - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3021 of 2012 & Date of Judgement: 09.05.2014.

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 Commission noted that though the Respondent claimed that an Arbitrator was appointed for settlement of dispute between the parties, nothing was brought to the notice of the Commission as to what happened there. Secondly, the vehicle was surrendered in August 2007 but notice of demand in the sum of Rs.2,20,944/- was sent on 10.12.2010. It was held that the recovery of the amount after the expiry of three years and five

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months was barred by time, as was the claim of the Complainant. It was also held that OPs were negligent because they were not able to show what happened in August 2007. They could not inform the Commission when and for how much amount the vehicle was sold and how much money was adjusted towards the loan. They should have given prior notice to the Complainant that they were going to sell the vehicle and if she was interested, she could also buy the same. Their failure to do so indicated default on their part and unfair trade practice.

- b) Since there was a delay of four months only, the Commission assessed the depreciation value of the vehicle at Rs.61,300/- which already stood paid to the OPs. In the absence of solid evidence it was held that no amount was payable by any of the parties to the other. To that extent the complaint was accepted and the notice dated 10.12.2010 was quashed. The matter was disposed of accordingly.

vii) Citation:

II (2014) CPJ 659; 2014(3) CPR 73.

(z) HOUSING

1. Naveen Rawat Vs. U.P. Avas & Vikas Parishad & 2 Ors.

i) Case in Brief:

Petitioner/Complainant booked a house with OP by depositing registration money of Rs.90,000/- on 06.02.2009. Since he was declared eligible by OP for the house he deposited a further sum of Rs.6,76,000/- on 26.10.2009. It is his case that at the time of payment of first installment, the rate of developed land was Rs.6,200/- per sq.mtr., whereas he was made to pay Rs.7,500/- per sq.mtr., along with 12% of money as freehold charges. Alleging deficiency in service he filed complaint before the District Forum which was dismissed. The appeal filed by the Complainant was also dismissed by the State Commission vide impugned order against the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 16.09.2013 in Appeal No.1270/2013 of the Uttar Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

Naveen Rawat - Petitioner
Vs.
U.P. Avas & Vikas Parishad & 2 Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.4857 of 2013 & Date of Judgement: 07.02.2014.

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 before the Commission was whether the OPs should have charged the Petitioner for the cost of the house according to the rates prevalent at the time of booking or at the time of making payment. The OPs had clarified in their reply to the complaint that the provision made in 1986 in the Costing Manual was subsequently amended in the year 2006 for cases under self financing scheme and as per the amended provisions, the prevailing rate was to be charged from the allottee. The Commission observed that the Petitioner had not been able to show anywhere that the exercise of power in making amendment in the policy of the OP was arbitrary or whimsical in any manner. It was an accepted legal provision that the developer has a right to determine and adopt the pricing policy but the same should not be arbitrary or violative of accepted norms of practice. In this context reference was made to the decision of Delhi High Court in *Heelawanti & Ors. Vs. DDA & Anr.* 57 (1995) DLT 801 (FB) in which it had been held that in the matter of costing and fixation of prices, the scope of judicial review was very limited. A similar view had been taken by the Commission in *Kartar Singh Vs. DDA* (2008) CPJ 283 (C.P).
- b) In view of the above the Commission held that the District Forum and the State Commission had not committed any illegality or irregularity or jurisdictional error while passing the impugned orders. The said orders were upheld and the Revision Petition was dismissed.

vii) Citation:

I (2014) CPJ 593; 2014(1) CPR 450.

2. Greater Mohali Area Development Authority Vs. Archana Verma & Anr.

i) Case in Brief:

The Complainant/Respondent No.1, being a successful applicant in the draw of lots, received a letter from HDFC Ltd/Respondent No.3 for allotment of plot and offered a scheme for payment of allotment amount, as per their lending norms. The complainant wrote various letters to PUDA during 24.07.2001 to 20.07.2007 for allotment of plot, because the earnest money was not refunded to her. The HDFC bank also did not satisfy the complainant about the details of the refund of earnest money, till 21.11.2008. Also, they made them run, from pillar to post. Hence, the Complainant filed a complaint before the District Forum which allowed the complaint and directed OP-1 to allot plot of 200 sq. yard to the Complainant, as per terms and conditions of the original scheme within two months, from the date of the order and also to pay a sum of Rs.10,000/- towards compensation for harassment and litigation expenses in the sum of Rs.5,000/-. Aggrieved by the order passed by the District Forum, the OP No.1/Petitioner filed the Appeal before the State Commission which dismissed the appeal, with costs of Rs.3,000/- vide impugned order against which the present revision petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

Against the Order dated 09.09.2013 in Appeal No.831/2009 of the State Commission Punjab.

iii) Parties:

Greater Mohali Area Development Authority - Petitioner

Vs.

Archana Verma & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.796 of 2014 with IA/556/2014, IA/557/2014 & Date of Judgement: 04.03.2014.

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 several correspondence letters addressed by PUDA to the HDFC Zonal Head found that there was no evidence to show that either the refund of the earnest money by OP 2 and 3 was made or plot has been allotted by OP-1, to the Complainant, till 2007. From the above point, it was evident that the PUDA and HDFC were working in cahoots and unnecessarily troubled the complainant. Considering the entirety that some over-writings/cutting in the PUDA registers, containing draw-slips of successful allottees, placing a photocopy instead of the original, withholding the list of successful/un-successful candidates by OP-1 as well as OP-2 & 3, and furthermore, the statement of RW-1, S.K. Rana, the Estate Officer, the Commission was of the view that the OP-1 was at fault and it was a mala fide act on the part of the OPs, who did not issue the allotment letter in favour of the Complainant.
- b) Therefore, in view of the above, the present revision petition was dismissed and the orders of the fora below were upheld.

vii) Citation:

II (2014) CPJ 198.

3. HDFC Ltd. Vs. Neetu Singh & Anr.

i) Case in Brief:

The Complainants obtained a housing loan of Rs.7 lakhs in January, 2000 from the HDFC Limited at a fixed interest rate of 13.5%, for the purpose of purchasing a residential house. It has been stated that after some time, the interest rates of such loans got substantially reduced due to introduction of scheme of adjustable interest rates. The complainants got their housing loan converted into a loan with adjustable rate from fixed rate, after paying a conversion fee of Rs.1,000/- on 22.04.2002 and Rs.2,860/- on 23.04.2002. The interest rates got reduced further, but as alleged by the Complainants, the opposite party did not give them the benefit of further reduction in the interest rates. Being aggrieved, the complainants filed a complaint before the District Forum which directed to return the amount of additional interest i.e. Rs.99,720/- along with interest at the rate of

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9% per annum i.e. Rs.22,437/- and a further amount of Rs.12,689/- taken by them under various heads, besides litigation expenses of Rs.2,000/-. In this way, the opposite parties were directed to refund an amount of Rs.1,34,846/- to the complainant within one month from the date of the order. An appeal was filed before the State Commission, which was partly allowed and the order of the District Forum was modified and the opposite parties were directed to pay a sum of Rs.99,720/- along with interest at the rate of 7.5% per annum from 09.11.2004 i.e. from the date of filing the complaint till realization and a litigation cost of Rs.2,000/-. It is against this order that the present revision petition had been filed. Revision Petition allowed.

ii) Order appealed against:

Against the Order dated 08.04.2008 in Appeal No.29/2007 of the State Commission Uttaranchal.

iii) Parties:

HDFC Ltd. - Petitioner

Vs.

Neetu Singh & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2572 of 2008 & Date of Judgement: 04.03.2014.

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 letter dated 09.06.2004 issued by the OP to the Complainant noted that the HDFC was agreeable for reducing the rates of interest on the outstanding loan as on 01.07.2004 by converting the same into the newly introduced Adjustable Rate Home Loan (ARHL) scheme, according to which the rate of interest shall be linked to RPLR minus 200 basis points and the new rate applicable would be 7.75% per annum. It had also been stated that EMIs would be calculated on monthly rest basis and interest reset on quarterly basis. The conversion fee for taking advantage of the new ARHL scheme had been stated to be Rs.1,581/- as 0.25% of the outstanding amount of loan on 01.07.2004, i.e. Rs.6,32,360.00/-

The opposite party had also stated that the complainants failed to pay the conversion charges of Rs.1,581/- and hence, could not avail themselves of the fresh offer of reduction in rate of interest to 7.75% per annum. The Commission in view of the above transactions held that the complainants have not been able to give any plausible explanation, as to why they failed to deposit the conversion charges of Rs.1,581/- and this led to the irresistible conclusion that the complainants were not entitled to take the benefit of the scheme under which the interest rate was reduced to 7.75% per annum.

- b) In view of the above, the Commission allowed the present revision petition and set aside the orders of the fora below.

vii) Citation:

II (2014) CPJ 90; 2014(1) CPR 588.

4. Rajvir Singh Vs. U.P. Awas & Vikas Parishad

i) Case in Brief:

Complainant/Petitioner purchased house from OP/Respondent and paid for the same in installments. He alleged that the construction was of inferior quality and many parts were leaking and that he obtained possession in compelling circumstances. Alleging deficiency on the part of OP, he filed complaint before the District Forum. OP filed vakalatnama but did not file written statement and was proceeded ex-parte. The District Forum allowed complaint and directed OP to pay Rs.25,000/- along with interest. The State Commission, on appeal filed by OP, set aside the order of the District Forum and dismissed the complaint. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 08.07.2008 in Appeal No.907/2008 of the Uttar Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

Rajvir Singh

- Petitioner

Vs.

U.P. Awas & Vikas Parishad

- Respondent

Deficiency in Service - Housing

iv) Case No and Date of Judgement:

Revision Petition No.4321 of 2008 & Date of Judgement: 11.03.2014.

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 allowing the appeal had observed that Petitioner had failed to place any document on record regarding deficiencies in the house. It was noted that the sale deed was executed on 01.09.2005 and possession was given on 29.10.2005. At that time no defect was pointed out in writing. It was also observed that complaint was filed almost six months after taking possession. Had there been deficiencies in construction, Petitioner should have given notice, for removing deficiencies immediately after taking possession and filed the complaint also immediately. The Commission held that in the absence of satisfactory evidence on record, it cannot be presumed that there was any deficiency in the construction work which needed rectification. The Commission held that the State Commission had not committed any error in allowing the appeal. Consequently the Revision Petition was dismissed.

vii) Citation:

II (2014) CPJ 175; 2014(2) CPR 239.

5. M.P. Housing Board Vs. Subhash Chandra Vyas

i) Case in Brief:

The Complainant got registered under the HIG Housing Scheme offered by the Madhya Pradesh Housing Board/Petitioner/OP on 06.09.1999. On 23.06.2001, an allotment letter was issued to the Complainant and he was called upon to deposit a sum of Rs.75,183/- (including best location charges @ 5%) within 30 days before taking possession. The Complainant had made a request for charging of lease rent only for a period of three years, instead of eleven years and therefore, vide letter dated 20.12.2001, he was asked to deposit a sum of Rs.44,156/-, furnish two passport size photographs and a non-judicial paper of Rs.50/- for execution of agreement etc. The Complainant deposited the said amount of Rs.44,156/- on 22.01.2002, but did not furnish non-judicial paper and

the photographs. These were furnished only on 28.03.2002. On the same very day, the agreement was executed and possession of the house was handed over to him. However, alleging unfair trade practice on the part of the Housing Board, on 18.08.2003, the Complainant filed a complaint before the District Forum which allowed the complaint with a direction that the amount paid by the Complainant as best location charges shall be refunded along with interest @ 12% p.a. on the entire amount paid by the Complainant for the period from 01.01.2002 to 28.03.2002. Aggrieved, the Housing Board preferred appeal to the State Commission which dismissed the appeal vide impugned order against which the present revision petition has been filed. Revision Petition allowed.

ii) Order appealed against:

Against the Order dated 27.12.2006 in Appeal No.325/2006 of the State Commission Madhya Pradesh.

iii) Parties:

M.P. Housing Board - Petitioner

Vs.

Subhash Chandra Vyas - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1183 of 2007 & Date of Judgement: 13.03.2014.

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 two issues involved in this revision petition were (i) whether the Housing Board could charge from the Complainant an additional amount @ 5% for better location of the house; (ii) whether the Housing Board was liable to pay interest to the Complainant on account of alleged delay in handing over the possession of the house.
- b) As far as the first issue is concerned, the National Commission held that charging of extra amount @ 5% of the price by the Housing Board was justifiable relying on the decision of the Supreme Court in *Rajesh Kumar Gupta Vs. Estate Manager, M.P.H.D*

Deficiency in Service - Housing

wherein it was held that it has been specifically mentioned in the advertisement that the registration of the house shall be determined by the lottery and the terms and conditions of registration and allotment specifically provided for additional charges.

- c) So far the second issue is concerned, the Commission relying on the decision of the *Bangalore Development Authority Vs. Syndicate Bank - (2007) 6 SCC 711* held that having taken the possession of the house at the agreed price, the question of award of interest on the price paid by the Complainant did not arise. Besides there was no delay on the part of the Housing Board in delivery of possession, as it was the Complainant himself who delayed possession by not furnishing the photographs and non-judicial paper, demanded by the Housing Board vide letter dated 28.12.2001. The documents were furnished on 28.03.2002 and on the same day the possession of the house was handed over to the Complainant, who received possession without any protest. Therefore, the delay in execution of the agreement and the consequent delivery of possession was clearly attributable to the Complainant and not to the Housing Board, as alleged. The Commission also opined that the Fora below were not justified in awarding interest on the amount paid by the Complainant.
- d) In view of the above, the present revision petition was allowed and the orders of the fora below were set aside.

vii) Citation:

II (2014) CPJ 93; 2014(2) CPR 200.

6. Radha Verma Vs. Vice Chairman, Ghaziabad Development Authority

i) Case in Brief:

Petitioner/Complainant applied for allotment of house in the EWS Housing Scheme of the Respondent. She was declared successful in the draw of lots held on 12.06.2009 but the allotment letter was not issued to her. The Petitioner filed consumer complaint alleging that because of the enhancement of cost of the house in other schemes, Respondent was not issuing allotment to her. The District Forum directed that allotment letter should be issued to the Complainant and that the GDA

had the right to fix the price of the flat on their own. Accordingly allotment letter was issued by GDA for a consideration of Rs.3,75,060/-. Complainant's appeal against the District Forum's order 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 29.08.2013 in Appeal No.1588/2011 of the Uttar Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

Radha Verma

- Petitioner

Vs.

Vice Chairman, Ghaziabad Development Authority - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3667 of 2013 & Date of Judgement: 14.03.2014.

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 GDA had taken stand before the fora below that the price of the flat was revised from Rs.2 lakhs to Rs.3.25 lakhs which was not agreed to by the Petitioner and hence the allotment letter was not issued to her. After the District Forum passed the order giving the right to GDA to fix the price, a flat was allotted for a consideration of Rs.3,75,060/-. GDA had to revise the cost of flat since the proposed subsidy was not given by the Government. The Commission held that the Petitioner was not able to show anywhere that the Respondent authority had no right to revise the price of the flat. It was held that the District Forum and the State Commission had rightly observed that the determination of the price of the flat was within the domain of the GDA. Reliance was placed on the orders passed by National Commission in *National Consumer Awareness Group Vs. The Housing Commissioner Punjab* as reported in 1997(3) CPJ 88 (NC) and *Commissioner Gujarat Housing Board & Anr. Vs. Thakkar Somalal* as reported in 1996(2) CPJ 90 (NC) in which it had been held that the question of pricing of flat by a Housing Authority or Board is not a consumer dispute. Similar view was taken in *Ghaziabad Development Authority Vs.*

Deficiency in Service - Housing

Sandeep Singh Appeal No.2482 of 2011 decided on 22.12.2011. The Commission accordingly dismissed the Revision Petition and upheld orders of the fora below.

vii) Citation:

II (2014) CPJ 205; 2014(2) CPR 125.

7. Ambience Island Apartment Owners Vs. Raj Singh Gehlot & Ors.

i) Case in Brief:

The grievance of 66 flat owners of Ambience Island Apartment is against the Builder/Promoter, Mr. Raj Singh Gehlot who represented OPs 1 to 3 for not installing the full number of elevators and not maintaining the already installed lifts by M/s. Scan Elevators, OP No.4. Their complaint is that though the OPs had advertised that four high speed elevators would be provided for each of the four blocks i.e. C, E, F & H, housing 40 apartments each, only two elevators were provided in each block. The lifts were very slow and were prone to frequent break downs. They also lacked automatic rescue device because of which the occupants were frequently stuck between floors in the event of power failure. The occupants lodged several complaints and made several representations but to no avail. Hence the present complaint was filed demanding installation of eight more lifts, payment of compensation, interest etc. Complaint allowed.

ii) Order appealed against:

Original Complaint.

iii) Parties:

Ambience Island Apartment Owners - Complainants

Vs.

Raj Singh Gehlot & Ors. - Opposite Parties

iv) Case No and Date of Judgement:

Consumer Complaint No.93 of 2004 with MA/43/2013, IA/5797/2013, IA/7507/2013 & Date of Judgement: 19.03.2014.

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) The Commission held that no compensation in respect of lifts can be granted since there was an agreement between the Complainants and the OPs which superseded the brochures, advertisements, representations, sale plan etc.,
- b) The OPs contended that the case was barred by time since the Complainants were allotted the flats prior to November 2002 and the complaint was filed on 08.11.2004. This argument was rejected by the Commission since the year of maintenance changed with every year and fresh cause of action arose every year.
- c) The Commission also rejected the argument that there was no privity of contract between those who had sold the premises or where the tenants were residing. It was held that privity of contract stood established since they were getting maintenance allowance from them.
- d) The contention of the OPs that the Complainants had violated the bye-laws by way of carrying out illegal construction in their respective apartments and therefore did not deserve consideration was also rejected on the ground that the Director, Town and Country Planning was already seized of the matter and that the said question was not germane to the controversy.
- e) On the question of maintenance of elevators it was held that there was no evidence to show that any action, any work, any payment etc., was made to the maintainer of lifts by OP No.4 or any other maintenance company for more than a decade but maintenance charges were collected regularly from the occupants of the flats. The Commission directed that OPs 1 and 2 are liable to pay 70% of the maintenance charges from November 2002 till date.
- f) On the question of liability of OP No.4, the Commission noted that the agreement between OPs 1 to 3 and OP No.4 was not renewed. It was however held that OP No.4 should have maintained record showing details about appointment of guards, engineers, experts etc. The Commission held that OP No.4's role was limited and imposed costs in the sum of Rs.1,32,000/- to be paid within 90 days and to be divided by the Complainants.

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g) OPs 1, 2 and 3 were directed to maintain the lifts every day, month and year within a period of 90 days from the date of receipt of the order otherwise their liable to pay penalty of Rs.15,000/- each for blocks C, E, F and H per month. The Commission also imposed costs of Rs.5,000/- each to be paid to each of the 66 Complainants within a period of 90 days, else, it will carry interest at 9% p.a. till realization.

vii) Citation:

Not reported in CPJ and CPR.

8. DLF New Gurgaon Home Developers Pvt. Ltd. & 2 Ors. Vs. Hari Singh & Anr.

i) Case in Brief:

It is the case of the Complainants that he had applied for allotment of apartment in New Town Heights, DLF, in Sector 90, Gurgaon for a super area of 1760 sq. ft. with one parking and had paid Rs.5,00,000/- but the Appellants/OPs, without taking his consent, had allotted him a bigger size apartment of 2125 sq. ft in Sector 91, Gurgaon with two parking lots and demanded further payment of Rs.10,62,500/-. Since he was not interested in the allotment in Sector 91, he sent a legal notice to the OPs seeking refund of his money. OPs failed to return the amount. Alleging deficiency in service he filed complaint before the District Forum. The District Forum allowed the complaint and held that Complainant was entitled to allotment of an apartment measuring 1760 sq. ft. with one parking in Sector 90, within 30 days failing which he was entitled to refund of Rs.5,00,000/- with 12% interest along with compensation of Rs.20,000/- and litigation charge of Rs.10,000/-. The Petitioner's appeal 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 03.08.2012 in Appeal No.1486/2011 of the Haryana State Consumer Disputes Redressal Commission.

iii) Parties:

DLF New Gurgaon Home Developers Pvt. Ltd. & 2 Ors.- Petitioners

Vs.

Hari Singh & Anr.

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3847 of 2012 & Date of Judgement: 24.03.2014.

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 rejected the argument of the Petitioner's Counsel that it was a bona fide mistake. It was observed that the controversy could have been easily resolved by examining the broker who was the best person to state whether the Complainant had booked a flat in Sector 90 or Sector 91. Since the Petitioners had withheld the best evidence, the Commission was inclined to draw an adverse presumption that had the broker been examined as a witness, his version would not have supported the claim of the Petitioners.
- b) The Commission held that the allotment of higher area with two parking lots by the OPs to the Complainant against his request for allotment of an apartment of 1760 sq. ft. can at best be taken as a counter offer to the application of allotment submitted by the Complainant and cannot be termed as a concluded contract unless it was accepted by the Complainant. The Commission therefore held that the Petitioners had no right to forfeit the amount of Rs.5,00,000/- deposited by the Complainant.
- c) The Commission rejected the argument that the Complainant had booked the flat for speculative purposes since no evidence to lead to that conclusion had been advanced by the Petitioners.
- d) The Commission held that there was no infirmity or illegality in the impugned order to call for interference and dismissed the Revision Petition with cost of Rs.25,000/- to be paid by the Petitioners to the Respondent/Complainant.

vii) Citation:

II (2014) CPJ 159; 2014(2) CPR 145.

9. Malti Construction Vs. Arun K.Hirulkar & 3 Ors.

i) Case in Brief:

Seven Revision Petitions were decided by a common order taking facts from Revision Petition No.755 of 2014. All the Complainants purchased

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flats from OPs vide respective agreements of sale. All the three OPs were having 1/3 share in the land upon which the apartment comprising different flats was to be constructed by M/s. Malti Construction. The other OPs had given irrevocable power of attorney in favour of M/s. Malti Construction/OP No.1. The Complainants had paid full price and taken possession of the flats. Their grouse was that despite several requests the sale deeds were not executed by the OPs. Seven complaints were filed before the District Forum which dismissed them as premature. On appeal, the State Commission allowed the complaints and directed the three OPs/Respondents to execute sale deed of the respective flats including that of additional construction in favour of the respective Complainants within one month on receiving the additional price of the additional constructions which the Complainants were directed to pay to the OPs. Aggrieved by the said order the present Revision Petitions had been filed. Revision Petitions dismissed.

ii) Order appealed against:

From the order dated 30.09.2013 in Appeal No.581/2007 of the Maharashtra State Consumer Disputes Redressal Commission.

iii) Parties:

Malti Construction - Petitioner

Vs.

Arun K.Hirulkar & 3 Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.755/2014 & Date of Judgement: 01.04.2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 3, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Two issues were raised by the Petitioner. One was that the Complainants were liable to pay additional amount for excess area of more than 344 sq. ft. The National Commission noted that the State Commission had considered this aspect and given appropriate direction. The second argument was the consumer forum had no jurisdiction since complicated questions were

involved and only a Civil Court could adjudicate on those questions. This argument was rejected by the National Commission citing the provision in Section 3 of the Consumer Protection Act which gave parallel jurisdiction to the Commission.

- b) The Commission also noted that there was a civil case pending between OP No.1 on one side and OPs 2 and 3 on the other. OPs 2 and 3 claimed that they had revoked the power of attorney given to OP No.1 and cancelled the agreement between them and that the entire transaction was entered into with the Complainants by OP No.1 and that they were not liable to execute sale deed in favour of the Complainants and/or pay compensation to them. The National Commission observed that the State Commission rightly relying on the case of *G.L. Narasimham Vs. B.S.Venkateswarulu and Anr.* Revision Petition No.3415/2008 reported in 2010 (I) CLT 392 had held that the consumer cannot be made to suffer because of the dispute between the builder and the owner of the property when the consumer had paid substantial amount to the builder.
- c) The National Commission dismissed the Revision Petitions and directed the Complainants to pay the additional amount within 90 days to the OPs equally i.e. 1/3 share to each one of them. The Complainants were to deposit the amount with the District Forum and also give notice to OPs to execute the sale deed within 90 days. If the sale deeds are not executed, OPs were to pay penal costs of Rs.5,000/- each per OP per month to the Complainants till the decree stood satisfied. It was further held that the opposite parties will be bound by the order of the Civil Court.

vii) Citation:

II (2014) CPJ 590.

10. Saroj Devi Agarwal Vs. Manager, Sahara City Home & Ors.

i) Case in Brief:

The Complainant, Smt. Saroj Devi Agrawal, booked a flat with the Manager, Sahara City Home/OP.1 and its employees, OPs 2, 3 & 4. She was supposed to pay the total price of the flat, in the sum of Rs.17,15,000/-. The Complainant paid a sum of Rs.2,57,250/- to the

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OPs. A Lucky-draw under Bumper Silver Scheme was taken out for all the customers by the OPs, wherein the complainant got the lucky-draw Bumper in the sum of Rs.5,00,000/- which was deposited by the complainant under the said plot in Sahara City Home. Consequently, a sum of Rs.7,57,250/- was deposited. Thereafter, the complainant could not deposit the remaining installments and her allotment was cancelled. Being aggrieved, she filed a complaint before the District Forum which partly allowed the complaint and ordered that the OPs would pay an amount of Rs.2,57,250/-, with interest @ 18% p.a. from 15.08.2009, till payment of the amount, besides Rs.2,000/- as compensation. Appeal filed by the Complainant was dismissed by the State Commission as barred by time as well as on merits vide impugned order against which the present revision has been filed with a delay of 21 days. Delay condoned but revision petition dismissed.

ii) Order appealed against:

Against the Order dated 08.04.2013 in Appeal No.990/2012 of the State Commission Rajasthan.

iii) Parties:

Saroj Devi Agarwal - Petitioner

Vs.

Manager, Sahara City Home & Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2900 of 2013 & Date of Judgement: 01.04.2014.

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 contained in the application form found that failure to pay the installments on the stipulated date would lead to automatic cancellation of flat allotted. In the present case, there were several reminders dated 05.11.2009, 18.11.2009 and 04.12.2009 by the OPs for the eight pending installments but the Complainant turned a deaf ear. No receipt was shown that she paid the amounts as per schedule, mentioned by the OPs. The Commission

further held that as the allotment of flat was cancelled, she was not entitled to lucky draw amount of Rs.5,00,000/-.

- b) In view of the above, the present revision petition was dismissed as devoid of merit but the delay was condoned in the interest of justice.

vii) Citation:

II (2014) CPJ 405; 2014(2) CPR 325.

11. Gurdeep Singh Khurana & 24 Ors. Vs. M/S. KST Infrastructure Ltd.

i) Case in Brief:

All the 25 Complainants who were the ex-employees of State Bank of India, formed the State Bank Employees Housing Welfare Organisation (SBEHWO) and were Members of the said Society. Mr. T.N. Goel and Mr.A.K. Kapur were the President and Secretary of the above said Society. SBEHWO entered into an agreement with M/s. KST Infrastructure Ltd./OP for constructing Siddhi Vinayak Apartments in a piece of land measuring eight acres for its members. The land in question out of a total of 49 acres was purchased by one RPS Associates from some private land owners who entered into some arrangement with its sister concern, RPS Infrastructure Ltd., which in turn, had entered into alleged Agreement to sell with M/s. KST Infrastructure Ltd. and had also executed a Special Power of Attorney dated 22.03.2007, in favour of the OP. All the complainants under a genuine belief issued a cheque in favour of SBEHWO and handed over the same to the President and Secretary, till the period of early 2007, who, in turn, handed over the same to the OPs. The complainants had paid 30-40% of the total sale price of their respective individual flats. In some cases, it was even beyond 50%. At this juncture, it was alleged by the Complainants that some of the Members, including its office bearers, had been selectively allowed to withdraw from the said project after knowing that there was a defect in the title. RPS associates had also admitted that they have yet to take No Objection Certificate (NOC) which was to be taken by the OP from RPS Infrastructure Ltd. All these facts came to the knowledge of the complainants when the banks refused to grant loans to the disputed title of the land in question. It

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also came to the knowledge of the Complainants that the President and Secretary of the Association were working hand in glove with the opposite party. Being aggrieved, these complaints had been filed before the National Commission. Complaints allowed.

ii) Order appealed against:

Original Complaint

iii) Parties:

Gurdeep Singh Khurana & 24 Ors. - Complainants

Vs.

M/S. KST Infrastructure Ltd. - Respondent

iv) Case No and Date of Judgement:

Consumer Case No.243 of 2012 & Date of Judgement: 01.04.2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 13, 21(a)(i) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The National Commission forfeited the right of OP to file a written statement under Section 13 of the Act since they failed to do so even after adequate opportunity was given.
- b) The National Commission after perusal of the records came out with the following findings:
 - i. OP did not have any free, clear and marketable title.
 - ii. The President and Secretary of the Society were working hand in glove with the Promoters/Builders, otherwise, they would have joined as complainants.
 - iii. Neither the President nor the Secretary had got any interest in these apartments. That is why they never applied for apartments with the OP.
 - iv. The RPS Infrastructure Ltd could revoke the Power of Attorney, at any time.
- c) Therefore, the Commission allowed all the complaints and directed M/s. KST infrastructure Limited/OP, to refund to each of the complainant, the principal amount of money deposited by

each of the complainants, along with interest @ 18% p.a., calculated from the date of receipt of each installment and a total compensation of Rs.10,00,000/- (to be shared in equal proportion by all the complainants) towards litigation charges, harassment, mental agony, despair, anguish, frustration, sadness, etc relying on the decision of the Hon'ble Supreme Court in *K.A. Nagamani v. Karnataka Housing Board*, Civil Appeal Nos.6730-6731 of 2012, dated 19.09.2012 arising out of SLP (C) No.35226-35227 of 2011.

vii) Citation:

II (2014) CPJ 356; 2014(2) CPR 333.

12. Lakhwinder Singh Vs. Jalandhar Improvement Trust

i) Case in Brief:

Sh. Lakhwinder Singh, the complainant purchased Plot No.439-B from the OP/Jalandhar Improvement Trust by paying the entire consideration and the sale deed was executed. Although, five years had elapsed, yet possession was not given to the Complainant by the OP on one pretext or the other. Due to change in lay out, OP provided another plot. Being aggrieved, he filed complaint before the District Forum which dismissed the complaint. Aggrieved by that order, the complainant filed an appeal before the State Commission which directed the OP to allot another plot (No.494-B) to the Complainant vide impugned order against which the present revision petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

Against the Order dated 14.11.2013 in Appeal No.1838/2010 of the State Commission Punjab.

iii) Parties:

Lakhwinder Singh - Petitioner

Vs.

Jalandhar Improvement Trust - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1404 of 2014 & Date of Judgement: 01.04.2014.

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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 records pointed out that the petitioner was allotted the first plot bearing No.439-B. Meanwhile, the site plan was changed because there were firstly high tension wires of the electricity passing over the plot of the applicant and there were security reasons. It was held that both the allegations have not been bolstered with any kind of evidence.
- b) The Commission noted that the State Commission had passed the order after ascertaining the willingness of the Complainant to take Plot No.494-B.
- c) The Commission noted that the plot was yet to be auctioned and no third party interest had been created.
- d) In view of the above, the present revision petition was dismissed with the cost of Rs.5,000/- to be paid by the complainant to the OP and the order of the State Commission was upheld.

vii) Citation:

Not reported in CPJ and CPR.

13. Rajubhai Tank & Ors. Vs. Bindraben Bhartkumar Mavani & Anr.

i) Case in Brief:

17 Revision Petitions which had the same question of law and facts have been decided by a common order. The facts from Revision Petition No.2391 of 2013 have been taken into consideration. OPs used to purchase agricultural lands and convert the said lands into non-agricultural for residential purpose and became land developers. All the Complainants became members of the land developers and paid 36 installments as per the scheme. Vide letter dated 17.6.2009, the Complainant in RP.No.2391, Bindraben Bhartkumar Mavani was allotted a plot No.116 mentioned in the non-agricultural plan and it was

stated that an activity/procedure to convert the land into non-agricultural was going on. Other Complainants were allotted plots similarly. The grouse of the Complainants was that even after a lapse of a long period, sale deeds were not executed and possession of the flats had not been handed over to the Complainants. Consequently, the complainants filed separate complaints before the District Forum which directed to execute registered sale deed for the plot No.116 as per conditions mentioned in the letter dated 17.06.2009 addressed to the complainant and further directed the opponent to give compensation of Rs.3,000/- towards mental, physical harassment and Rs.2,000/- towards expenditure of the complaint. Aggrieved by that order, the Petitioners filed appeals before the State Commission. The State Commission dismissed the appeals vide impugned orders against which the present Revision Petitions have been filed. Revision Petitions dismissed.

ii) Order appealed against:

Revision Petition No.2391 of 2013

Against the Order dated 27.02.2013 in Appeal No.931/2013 of the State Commission Gujarat.

Revision Petition No.2398 of 2013

Against the Order dated 27.02.2013 in Appeal No.932/2013 of the State Commission Gujarat.

Revision Petition No.2399 of 2013

Against the Order dated 27.02.2013 in Appeal No.934/2013 of the State Commission Gujarat.

Revision Petition No.2400 of 2013

Against the Order dated 27.02.2013 in Appeal No.938/2013 of the State Commission Gujarat.

Revision Petition No.2401 of 2013

Against the Order dated 27.02.2013 in Appeal No.943/2013 of the State Commission Gujarat.

Revision Petition No.2408 of 2013

Against the Order dated 27.02.2013 in Appeal No.930/2013 of the State Commission Gujarat.

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Revision Petition No.2409 of 2013

Against the Order dated 27.02.2013 in Appeal No.933/2013 of the State Commission Gujarat.

Revision Petition No.2410 of 2013

Against the Order dated 27.02.2013 in Appeal No.935/2013 of the State Commission Gujarat.

Revision Petition No.2411 of 2013

Against the Order dated 27.02.2013 in Appeal No.936/2013 of the State Commission Gujarat.

Revision Petition No.2412 of 2013

Against the Order dated 27.02.2013 in Appeal No.940/2013 of the State Commission Gujarat.

Revision Petition No.2413 of 2013

Against the Order dated 27.02.2013 in Appeal No.942/2013 of the State Commission Gujarat.

Revision Petition No.2414 of 2013

Against the Order dated 27.02.2013 in Appeal No.944/2013 of the State Commission Gujarat.

Revision Petition No.2415 of 2013

Against the Order dated 27.02.2013 in Appeal No.945/2013 of the State Commission Gujarat.

Revision Petition No.2422 of 2013

Against the Order dated 27.02.2013 in Appeal No.937/2013 of the State Commission Gujarat.

Revision Petition No.2423 of 2013

Against the Order dated 27.02.2013 in Appeal No.939/2013 of the State Commission Gujarat.

Revision Petition No.2424 of 2013

Against the Order dated 27.02.2013 in Appeal No.941/2013 of the State Commission Gujarat.

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Revision Petition No.2425 of 2013

Against the Order dated 27.02.2013 in Appeal No.946/2013 of the State Commission Gujarat.

iii) Parties:

Revision Petition No.2391 of 2013

Rajubhai Tank & Ors. - Petitioners

Vs.

Bindraben Bharatkumar Mavani & Anr. - Respondents

Revision Petition No.2398 of 2013

Odhav Hari Developers Pvt. Ltd. & Ors. - Petitioners

Vs.

Ramilaben Jagdishbhai Jethi & Anr. - Respondents

Revision Petition No.2399 of 2013

Odhav Hari Developers Pvt. Ltd. & Ors. - Petitioners

Vs.

Pravinchandra B. Thakker - Respondents

Revision Petition No.2400 of 2013

Odhav Hari Developers Pvt. Ltd. & Ors. - Petitioners

Vs.

Krishnaben Dinesh Sendhani & Anr. - Respondents

Revision Petition No.2401 of 2013

Odhav Hari Developers Pvt. Ltd. & Ors. - Petitioners

Vs.

Shaktisinh Dilipsinh Jadeja & Anr. - Respondents

Revision Petition No.2408 of 2013

Odhav Hari Developers Pvt. Ltd. & Ors. - Petitioners

Vs.

Kaushikben Hareshbhai Vora & Anr. - Respondents

Revision Petition No.2409 of 2013

Odhav Hari Developers Pvt. Ltd. & Ors. - Petitioners

Vs.

Maya Dipak Preyani - Respondent

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Revision Petition No.2410 of 2013

Odhav Hari Developers Pvt. Ltd. & Ors. - Petitioners

Vs.

Puspa Dilip Preyani - Respondents

Revision Petition No.2411 of 2013

Odhav Hari Developers Pvt. Ltd. & Others - Petitioners

Vs.

Lalit Ashok Aahuja - Respondents

Revision Petition No.2412 of 2013

Odhav Hari Developers Pvt. Ltd. & Ors. - Petitioners

Vs.

Suganu F. Pardasnani - Respondents

Revision Petition No.2413 of 2013

Odhav Hari Developers Pvt. Ltd. & Ors. - Petitioners

Vs.

Dungershi T. Maheshwari - Respondents

Revision Petition No.2414 of 2013

Odhav Hari Developers Pvt. Ltd. & Ors. - Petitioners

Vs.

Dhara Jentilalbhai Parmar - Respondents

Revision Petition No.2415 of 2013

Odhav Hari Developers Pvt. Ltd. & Ors. - Petitioners

Vs.

Nayan Dungershi Maheshwari - Respondents

Revision Petition No.2422 of 2013

Odhav Hari Developers Pvt. Ltd. & Ors. - Petitioners

Vs.

Bhargav Hashmukhbhai Pandya & Anr. - Respondents

Revision Petition No.2423 of 2013

Odhav Hari Developers Pvt. Ltd. & Ors. - Petitioners

Vs.

Jagdishchandra V. Thakkar & Anr. - Respondents

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Revision Petition No.2424 of 2013

Odhav Hari Developers Pvt. Ltd. & Ors. - Petitioners

Vs.

Navinchandra Meghajibhai Rathod & Ors. - Respondents

Revision Petition No.2425 of 2013

Odhav Hari Developers Pvt. Ltd. & Ors. - Petitioners

Vs.

Divyeshkumar D. Joshi (minor) & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2391 of 2013 with IA/1365/2014, IA/3966/2013;
Revision Petition No.2398 of 2013 with IA/1365/2014, IA/3966/2013;
Revision Petition No.2399 of 2013 with IA/1365/2014, IA/3966/2013;
Revision Petition No.2400 of 2013 with IA/1365/2014, IA/3966/2013;
Revision Petition No.2401 of 2013 with IA/1365/2014, IA/3966/2013;
Revision Petition No.2408 of 2013 with IA/1365/2014, IA/3966/2013;
Revision Petition No.2409 of 2013 with IA/1365/2014, IA/3966/2013;
Revision Petition No.2410 of 2013 with IA/1365/2014, IA/3966/2013;
Revision Petition No.2411 of 2013 with IA/1365/2014, IA/3966/2013;
Revision Petition No.2412 of 2013 with IA/1365/2014, IA/3966/2013;
Revision Petition No.2413 of 2013 with IA/1365/2014, IA/3966/2013;
Revision Petition No.2414 of 2013 with IA/1365/2014, IA/3966/2013;
Revision Petition No.2415 of 2013 with IA/1365/2014, IA/3966/2013;
Revision Petition No.2422 of 2013 with IA/1365/2014, IA/3966/2013;
Revision Petition No.2423 of 2013 with IA/1365/2014, IA/3966/2013;
Revision Petition No.2424 of 2013 with IA/1365/2014, IA/3966/2013
Revision Petition No.2425 of 2013 with IA/1365/2014, IA/3966/2013
&

Date of Judgement: 02.04.2014.

v) Acts and Sections referred:

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

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vi) Issues raised and decided:

- a) The National Commission dismissed all the revision petitions with cost of Rs.10,000/- to be paid by OPs to each of the Complainants and assigned the following reasons:
- i. The OPs had given the advertisement without getting the plots converted as non-agricultural land. Unless or until they were sure that the complainants would get these plots free and clear, they should not have given the advertisement.
 - ii. If the premium was paid, land would become non-agricultural which the OP had failed to do.
 - iii. The OPs should have anticipated at the time of acquiring this land in the year 2004 or prior to that, what would be the condition/prevaling situation. They should have made it clear in the allotment letter that this premium to the collector would have to be paid by the consumers. The said condition was not shown to the Respondents.
- b) The OPs were also directed to get the agricultural land converted into non-agricultural land, meant for making the plots within 90 days from the receipt of the order; to execute the sale deeds within 180 days from the receipt of the order. In case of non-compliance, the petitioners would have to pay penalty in the sum of Rs.10,000/- per complainant/consumer for each month till the needful was done.

vii) Citation:

II (2014) CPJ 290; 2014(2) CPR 32.

14. Emani Sharada Devi Vs. G.V.R. Murthy, Proprietor Gayatri Constructions

i) Case in Brief:

Complainant/Petitioner entered into an agreement for purchase of apartment from OP/Respondent and paid a total amount of Rs.5,05,000/- in installments. OP executed agreement representing himself as Power of Attorney holder of Mr. A.S. Raja and further agreed to execute sale deed in respect of undivided share of land to the extent

of 35 sq. yards and further agreed to deliver possession of apartment in May 2005. Neither construction was completed nor sale deed was executed and OP demanded Rs.1,800/- per sq. ft. instead of agreed Rs.1,035/- per sq. ft. Alleging deficiency complaint was filed before the District Forum which dismissed the complaint and directed Complainant to approach competent Civil Court. 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 dismissed.

ii) Order appealed against:

From the order dated 22.07.2011 in Appeal No.233/2009 of the Andhra Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

Emani Sharada Devi - Petitioner

Vs.

G.V.R. Murthy, Proprietor Gayatri Constructions - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3551 of 2011 & Date of Judgement: 21.04.2014.

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 agreement between the Complainant and the OPs was for construction of apartment and it was not an agreement for sale of flat. In the said agreement Complainant had pretended himself to be the owner of the area purchased from A.S. Raja as general power of attorney holder of Y.Krishna Rao who was a necessary party in the complaint. OP in his written statement had denied execution of agreement. The Commission observed that the District Forum, looking to the denial of the agreement for sale of flat and not impleading necessary party, rightly dismissed the complaint and directed Complainant to approach the Civil Court for redressal of his grievances.

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- b) The Commission rejected the request of the Counsel for the Complainant that amount deposited by him with OP may be refunded since there was no such prayer in the complaint and in the absence of such prayer no such order for refund could have been passed by the District Forum.
- c) The Commission found no illegality, irregularity or jurisdictional error in the impugned order. Consequently the Revision Petition was dismissed.

vii) Citation:

III (2014) CPJ 261; 2014(2) CPR 540.

15. K.K. Chadha Vs. U.P. Avas Evam Vikas Parishad

i) Case in Brief:

Complainant/Petitioner registered for a HIG house with OP/Respondent by paying Rs.7,000/-, Rs.8,000/- and Rs.35,000/- on 26.03.1982, 23.11.1985 and 21.08.1987 respectively. Though registration number was allotted, house was not allotted. Alleging deficiency, Complainant approached the District Forum which allowed complaint and directed OP to make payment of deposited amount with 10% interest. Appeal filed by the OP was partly allowed by the State Commission reducing the interest payable from 10% to 6% with the observation that if the amount is not paid within two months interest at 10% p.a. would be payable. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 27.11.2013 in Appeal No.738/2011 of the Uttar Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

K.K. Chadha - Petitioner

Vs.

U.P. Avas Evam Vikas Parishad - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1285 of 2014 & Date of Judgement: 21.04.2014.

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 Counsel for Petitioner submitted that the District Forum had allowed 16% p.a. interest and the State Commission committed error in reducing it to 6%. The National Commission on perusal of records observed that the District Forum had allowed only 10% on refund of deposited amount and not 16%. The Commission however noted that the two months period stipulated by the State Commission for payment had already lapsed. It was therefore held that the Petitioner would be entitled to get 10% interest p.a. and that the Revision Petition had become infructuous. Consequently Revision Petition was dismissed.

vii) Citation:

2014(2) CPR 539.

16. M/s. Country Club (India) Ltd. & Ors. Vs. Nirmal Kumar Pandey

i) Case in Brief:

OPs 1 to 4, M/s. Country Club (India) Ltd. and M/s. Amrutha Estate were engaged in the business of purchasing and selling land sites in the name of developing Country Clubs. They published attractive brochures to allure prospective customers. Complainant had booked three plots (328, 329 and 330) of 150 sq. yard each in a scheme called Kuteeram Venture. When the OPs failed to transfer the properties, the first complaint was filed and there were criminal complaints between the parties. There was a mutual settlement as a result of which consumer complaint was withdrawn and a memorandum of understanding was signed on 06.06.2007 according to which four plots admeasuring 150 sq. yard each were to be given to the Complainant at some different place in a different scheme in lieu of three plots proposed to be given earlier. Development charge of Rs.10,000/- was to be paid for each plot and the registered deeds were to be executed within 18 months. It was also agreed if the OPs failed to transfer the said plots, Complainant would be entitled to get Rs.12 lakhs as damages. When the OPs failed to honour the commitment made in the MOU, a consumer complaint was filed on 23.04.2009. The District Forum allowing the complaint in part directed the OPs to complete the entire venture named as Golf Village and register the four plots totally admeasuring

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600 sq. yards in Yeswanthapur Village, Warangal District in the name of the Complainant or alternatively OPs were to pay Rs.12 lakhs and terms of the MOU. Complainant was also entitled to a compensation of Rs.25,000/- and costs of Rs.5,000/-. The District Forum's order was upheld 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 16.11.2012 in Appeal No.503/2011 of the Andhra Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

M/s. Country Club (India) Ltd. & Ors. - Petitioners

Vs.

Nirmal Kumar Pandey - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.237 of 2013 & Date of Judgement: 22.04.2014.

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 the statement of the Counsel for Petitioner that they were ready to execute the required registered deeds and wondered why they had challenged the orders passed by the State Commission and District Forum by way of Revision Petition rather than taking steps to implement the orders. The Commission did not find any illegality, infirmity or jurisdictional error in the orders of the fora below and dismissed the Revision Petition.

vii) Citation:

II (2014) CPJ 540; 2014(2) CPR 521.

17. New Okhla Industrial Development Authority Vs. Prakash Chandra Chandta Shukla

i) Case in Brief:

Complainant applied for a residential plot in the scheme floated by OP/NOIDA by depositing Rs.60,000/-. Since he was not successful he was offered a flat at a cost of Rs.17.5 lakhs under a new scheme under new

terms and conditions which he accepted. The Complainant was asked to deposit Rs.4,85,000/- by 08.08.2001 and the balance amount of Rs.12,05,000/- was stated to be recoverable in 16 half-yearly installments of Rs.1,31,870/- each and hence, the total amount demanded by the OP was Rs.26,54,072/-. The complainant wrote to OP for exemption from the payment of interest and additional price, but his demand was rejected by the OP. Aggrieved by the acts of OP, he filed complaint before the District Forum which directed the OP to pay interest @ 12% p.a. on Rs.60,000/- from 07.06.2000 till 09.07.2001 and in this way, the District Forum by implication, rejected the demand of the complainant for not realizing the additional price along with penal interest. Two appeals were filed against the order of the District Forum before the State Commission one by the complainant and the other by the OP/NOIDA. During the pendency of the appeal before the State Commission, the complainant deposited a total sum of Rs.23,48,819/- with the OP and hence the dispute remained regarding the penal rate of interest. The State Commission vide impugned order, dismissed the appeal of OP/NOIDA, but allowed the appeal filed by the complainant, saying that after the deposit of Rs.23,48,819/- as lump sum amount, there was no justification for demand of penal interest. It is against this order that the present petitions have been filed by both the parties. Revision Petitions dismissed.

ii) Order appealed against:

Revision Petition No.118 & 1153 of 2008

Against the Order dated 11.01.2007 in Appeal No.2129/2004 of the State Commission Uttar Pradesh.

iii) Parties:

Revision Petition no.118 of 2008

New Okhla Industrial Development Authority - Petitioner

Vs.

Prakash Chandra Chandta Shukla - Respondent

Revision Petition No.1153 of 2008

Prakash Chandra Chandta Shukla - Petitioner

Vs.

New Okhla Industrial Development Authority - Respondent

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iv) Case No and Date of Judgement:

Revision Petition No.118 & 1153 of 2008 &
Date of Judgement: 22.04.2014.

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 both the revision petitions and upheld & agreed with the order of the State Commission on the following lines:
- i. While passing the impugned order dated 01.11.2007, the State Commission observed that the complainant had deposited the entire amount of Rs.23,48,819/- as one lump sum amount on 09.12.2005 in pursuance of the order dated 07.11.2005 and hence, the OP/NOIDA received the entire amount about 4 years prior to the last date of payment. The said order was not challenged by either party and had attained finality.
 - ii. The State Commission held that the demand made by OP/NOIDA for penal interest was not justified, as payment of huge amount of Rs.23,48,819/- had been made in lump sum.
 - iii. The State Commission also observed that the allotment letter in which the terms and conditions of the allotment as well as payment of price of the flat were clearly stipulated, was totally silent on the issue of interest.

vii) Citation:

II (2014) CPJ 512; 2014(2) CPR 517.

18. K.J.Deepak Reddy Vs. P. Vasantha and others

i) Case in Brief:

The Complainant/K.G. Deepak Reddy purchased a flat for a sale consideration of Rs.37 lakhs from the OPs. It was the case of the Complainant that he was given an impression by the OPs that the entire apartment building was regularised under the Building Penalisation Scheme (BPS), but he found later on, that there was

neither BPS regularisation nor the building had been constructed as per the norms and regularisation scheme of Greater Hyderabad Municipal Corporation (GHMC). The complainants alleged that it was an unauthorised construction and a clear-cut case of cheating and unfair trade practice, amounting to deficiency in service on the part of the OPs and filed a complaint before the State Commission. The State Commission had allowed refund of an amount of Rs.37 lakhs received as sale consideration of the flat, along with interest @ 10.70% p.a. from the date of the payment till realisation. The State Commission had also allowed the sum of Rs.1.5 lakh towards stamp duty, registration charges etc. and also Rs.1.5 lakh for the wood work got done by the complainant. The Complainant was directed to re-convey the title of the subject flat duly in favour of the OPs by executing necessary registered document. The State Commission had also stated that if the complainant wanted to get the said construction regularised, the OPs shall have to reimburse the necessary charges, legally to be paid by the complainant and also cooperate with him by submitting the necessary documents etc. Not satisfied with the relief provided by the State Commission, the Complainant has filed the present First Appeal. Appeal dismissed.

ii) Order appealed against:

Against the Order dated 27.12.2013 in Complaint No.26/2013 of the State Commission Andhra Pradesh.

iii) Parties:

K.J.Deepak Reddy

- Appellant

Vs.

P. Vasantha and others

- Respondents

iv) Case No and Date of Judgement:

First Appeal No.118 of 2014 & Date of Judgement: 23.04.2014.

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 held that the order of the State Commission had been made by carrying out a rational analysis of the facts and circumstances on record, and the relief asked for in the complaint had been provided to a substantial and reasonable extent. Therefore, the

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National commission did not find any illegality, infirmity or jurisdictional error in the said order. The appeal was, therefore dismissed and the orders passed by the State Commission were upheld.

vii) Citation:

II (2014) CPJ 536; 2014(2) CPR 502.

19. M/s. Vyas Enterprises Vs. Das Darshan Co-op. Housing Society Ltd.

i) Case in Brief:

On 05.05.1982, a partnership firm in the name and style of Vyas Enterprises purchased the plot in dispute from Sh. Sadashiv Musle and others. The said partnership firm was dissolved on 01.04.1996. Sh. Mahendra Vyas, one of the partners of the said partnership firm became the sole owner of this plot, who retained the same name. Petitioner/ OP, M/s. Vyas Enterprises constructed six-storey building which was sold to different intending buyers who formed a Co-operative Housing Society, by the name of M/s. Das Darshan Co-operative Housing Society/ Complainant. The grouse of the Society was that opponent has not conveyed the property under MOFA Act, in favour of the Society for which the Society, from time to time, requested the opponent to do the needful. However, the opponent did not care. Therefore, complaint was filed before the District Forum which directed the opposite party to execute the conveyance deed within three months, otherwise the opposite party shall pay for the delay period, a compensation of Rs.1,000/- per week, to the complainant along with costs of Rs.10,000/- upon the opposite party. Being aggrieved, the OP preferred First Appeal before 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 20.08.2013 in Appeal No.289/2012 of the State Commission Maharashtra.

iii) Parties:

M/s. Vyas Enterprises	Vs.	- Petitioner
Das Darshan Co-op. Housing Society Ltd		- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3723 of 2013 & Date of Judgement: 01.05.2014.

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 perusal of the necessary records dismissed the revision petition and sustained the orders of the foras below for the following reasons:

- a) The original owners and builder had got a dispute inter se. The consumers/complainants have to do nothing with it. There was no privity of contract between the owners and the complainants. The builder/promoter/person holding the Power of Attorney has to solve his/her problem with the owners only.
- b) Further, there was not even an iota of evidence to show that the complainants knew about irrevocable Power of Attorney. The OP has made misrepresentation before the complainants/consumers. He is estopped from taking another plea.
- c) The OP has committed an egregious mistake by making a wrong representation that he was the owner of the said property. He should not have led the complainant, up the garden path, unless and until, he had full authority. On one hand, he says that he is the owner, vide agreement, and on the other hand, the counsel for the OP admitted that he did not file any suit for specific performance, as per his own stand taken in the agreement with the complainant

vii) Citation:

II (2014) CPJ 741; 2014(3) CPR 169.

**20. Rajasthan Housing Board Vs. Gyanwati Jain (Now deceased)
Through LRs. & Anr.**

i) Case in Brief:

Complainant applied for a allotment of MIG House in General Registration Scheme in 1982 of the Petitioner Board and was allotted seniority No.1198 in Sanganer Housing Scheme of the Board through

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lottery/draw on 28.12.1985. She paid a total amount of Rs.25,000/- in three installments between January 1994 and January 1995. Later the three seed amounts/installments were revised upwards but the Complainant could not deposit the amount as per demand. The possession letter was given to the complainant on 28.09.1999 and she was asked to receive possession upto 14.11.1999 by depositing the initial amount plus interest @ of Rs.72,052/-. Monthly installment payable was fixed at Rs.3,152/-. The Complainant did not deposit the demanded amount till 18.05.2001. Consequently her registration was cancelled on 18.07.2001. She filed complaint before the District Forum which directed OP to make available to the Complainant a house in two months, situated in Sanganer Pratap Nagar Scheme, at the value and rate prevalent in 1995 and ordered to pay Rs.25,000/- as compensation and Rs.3,000/- as costs. On appeal filed by the OP the State Commission modified the order of the District Forum directing OP to allot to the complainant the house which was originally allotted on 28.09.1999 or similar house on the same date at the value and rate prevalent on the said rate and new allotment letter and possession letter be issued to her. Rest of the orders were not disturbed. Aggrieved by the said order the present Revision Petition had been filed. Revision petition allowed.

ii) Order appealed against:

From the order dated 21.08.2012 in Appeal No.1320/2011 of the State Consumer Disputes Redressal Commission, Rajasthan.

iii) Parties:

Rajasthan Housing Board

- Petitioner

Vs.

Gyanwati Jain (Now deceased) Through LRs. & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.4579 of 2012 & Date of Judgement: 02.05.2014.

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 observed that the Petitioner herself had agreed to purchase the house on hire purchase basis. Installments were

fixed at her own request. There was no evidence that she paid the monthly installments from 1991 to 2001. She was required to pay a sum of Rs.3,152/- per month but there was no compliance of this condition. The Commission further noted that the Complainant could not deposit the three installments of seed money in the year 1998 in the sum of Rs.17,000/-, Rs.15,000/- and Rs.15,000/-. Under the circumstances it was held that no deficiency of service could be attributed to the Petitioner.

- b) The Commission further observed that registration of allotment was cancelled on 18.07.2001 but the complaint was filed after a period of 3-4 years and therefore the complaint was barred by time. The Commission relied on the judgements of the Apex Court in *Dolphin Offshore Enterprises (I) Ltd. Vs. United India Insurance Co. Ltd.* Special leave to Appeal (Civil) No.9307 of 2013 decided on 08.03.2013; *Sunil Kumar Vs. B.M. Sahara Commercial Corporation Ltd.* Special Leave to Appeal (Civil) No.29487 of 2012 decided on 10.10.2012; *Tapan Kumar Ghosh Vs. Manager Sh.Krishna Builders and Developer*, Special Leave to Appeal (Civil) No.39938 decided on 21.01.2013 etc.
- c) The Revision Petition was accordingly accepted, the orders of the fora below were set aside and the complaint was dismissed. The sum of Rs.25,000/- obtained from the Complainant was ordered to be returned with interest @ 10% p.a. from the date of deposit till its realization.

vii) Citation:

II (2014) CPJ 738; 2014(3) CPR 155.

21. Subhash Chander Mahajan & Anr. Vs. Parsvnath Developers Ltd.

i) Case in Brief:

Complainants in complaint No.144 of 2011 booked a three bedroom residential flat measuring 1855 sq. ft. in Greater Noida. They were issued a provisional allotment letter dated 23.02.2007. It was agreed that the flat would be completed within a period of 36 months from the date of commencement of construction and that for any delay OP would pay the Complainants Rs.5/- per sq. ft. per month for the period of delay. Complainants made full payment towards the flat in question in

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May 2007 after taking a loan of Rs.20,00,000/- from HDFC Bank. But the construction of the premises was stopped in January 2008. The reason for the delay was not explained to the Complainants. It was stipulated in the agreement that interest @ 24% p.a. would be charged in case of default in payment by the Complainants. Complainants claimed that OPs should pay the same interest from July 2011 in the sum of Rs.80,74,423/- besides the principal amount of Rs.57,08,998/- . They filed the present complaint demanding the said amounts along with compensation for harassment and mental agony and interest paid by them to HDFC Bank.

In a similar case, another Complainant, Shri Abhishek Kumar Dwivedi had also booked a flat and paid Rs.56,02,399/- with the OP. There was similar delay in his case also and he also filed the complaint No.200 of 2011.

Both the complaints were allowed partly and OP was directed to pay a sum of Rs.50,78,998/- (in complaint No.144 of 2011) and Rs.56,02,399/- (in complaint No.200 of 2011) along with interest @ 18% p.a. from the date of deposit till its realization, besides Rs.7,00,000/- towards compensation and Rs.2,00,000/- towards costs in each case.

ii) Order appealed against:

Original Complaint.

iii) Parties:

Consumer Complaint No.144 of 2011

Subhash Chander Mahajan & Anr. - Complainants

Vs.

Parsvnath Developers Ltd. - Opposite Parties

Consumer Complaint No.200 of 2011

Abhishek Kumar Dwivedi - Complainant

Vs.

Parsvnath Developers Ltd. - Opposite Parties

iv) Case No and Date of Judgement:

- i) Consumer Complaint No.144 of 2011
 - ii) Consumer Complaint No.200 of 2011
- & Date of Judgement: 05.05.2014.

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 Commission held that the Complainants were bound by the agreement entered into with OP and therefore cannot claim interest @ 24% p.a. It was however noted that there was a huge delay in handing over possession of the premises in dispute i.e. about 4 years. The Complainants (in C.No.144 of 2011) did not have any independent house to live in and were forced to live with their daughter. The Commission noted that the Apex Court had granted interest @ 18% p.a. wherein the money in the respect of the flat was returned. This was so held by the Apex Court in the case of *K.A. Nagamani Vs. Karnataka Housing Board*, Civil Appeal Nos.6730-6731 of 2012 decided on 19.09.2012. The Commission accordingly accepted the complaint and directed OP to pay sum of Rs.50,78,998/- with interest @ 18% p.a. from the date of deposit till realization. Compensation in the sum of Rs.7,00,000/- (@ Rs.1,00,000/- per year from 2007 onwards) and Rs.2,00,000/- towards costs was also ordered to be paid within 90 days failing which it would carry interest @ 24% p.a.
- b) The complaint No.200 of 2011 was also disposed of on the same lines the only difference being in the principal amount which was Rs.56,02,399/- in this case.

vii) Citation:

II 2014) CPJ 719; 2014(3) CPR 142.

22. PUDA & Anr. Vs. Dr. Santosh Arora

i) Case in Brief:

Complainant/Respondent was allotted Plot by OP/Petitioners and the entire sale price of the plot was paid. Complainant applied for no dues certificate, but OP raised an illegal demand of Rs.1,04,894/- for the period from 2003 to 2005 on account of non-construction against the rules and regulations. Alleging deficiency on the part of OP, complainant filed complaint for quashing the demand. District Forum directed OP to charge non-construction fee in accordance with rule 13 of 1995 Act.

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Appeal filed by the Petitioner was dismissed by State Commission vide impugned order against which, the present revision petition has been filed. Revision Petition allowed.

ii) Order appealed against:

Against the Order dated 27.02.2013 in Appeal No.787/2008 of the State Commission Punjab.

iii) Parties:

PUDA & Anr. - Petitioners

Vs.

Dr. Santosh Arora - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2466 of 2013 & Date of Judgement: 05.05.2014.

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 pointed out that plot was allotted to the complainant on 13.10.1999 and 3 years period for completion of construction was provided. Construction was not completed within this period and in the light of Notification dated 8.10.2001, amending rule 13, demand was raised. District forum also directed OP to charge non-construction fee in accordance with rule 13 of the 1995 Act. As necessary amendment has been incorporated in rule 13, apparently, the Commission did not find any error in raising demand in pursuance to amended rule 13 of the Act and even then, if complainant feels that such demand cannot be raised, he may have resort to any other appropriate remedy for quashing the aforesaid demand.
- b) The Commission further held that Consumer Fora has no jurisdiction to go into the correctness of demand for extension fee relying on the decision of the Hon'ble Apex Court in *HUDA Vs. Sunita* (2005) 2 SCC 479.

c) In view of the above, revision petition filed by the petitioner was allowed and the impugned order passed by the State Commission was set aside.

vii) Citation:

II (2014) CPJ 562; 2014(2) CPR 382.

23. Shobhit Elhance & Anr. Vs. M/s. Matrix Build Well Pvt. Ltd. & Ors.

i) Case in Brief:

Complainants/Petitioners paid consideration amount for purchase of flat from OP/Respondent inclusive of External Development Charges (EDC) @ Rs.261/- sq. ft. of the super area of allotted flats. It was alleged that OP demanded over and above the amount agreed upon. Complainants paid extra amount under pretext in order to take possession of flat. Alleging deficiency in service, Complainant filed three complaints before the District Forum. The Forum allowed the complaints and directed OP to refund Rs.2,50,000/- with 18% interest and further allowed Rs.5,000/- as litigation expenses. Both the parties filed appeals before the State Commission which allowed the appeal of the Complainant and directed OP to pay the amount of EDC charged in excess of the amount charged as per agreement. The appeal filed by the OP was dismissed. Aggrieved by the said order the present Revision Petition had been filed by the Petitioners. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 08.01.2014 in Appeal No.751/2013 of the Haryana State Consumer Disputes Redressal Commission.

iii) Parties:

Shobhit Elhance & Anr. - Petitioners

Vs.

M/s. Matrix Build Well Pvt. Ltd. & Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1864 of 2014 & Date of Judgement: 08.05.2014.

v) Acts and Sections referred:

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

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vi) Issues raised and decided:

- a) On perusal of records the Commission noted that in the complaint, Complainant had submitted that OP paid EDC charges to the Government @ Rs.79.91 per sq. ft but charged @ Rs.261/- per sq. ft. from the Complainant. However in the Revision Petition, Complainant/Petitioner had submitted that OP deposited EDC charges @ Rs.102.99 per sq. ft. arrived at on the basis of RTI information dated 23.10.2009. The Commission observed that as per the RTI information it cannot be inferred that OP paid EDC charges @ Rs.102.99 per sq. ft. and that what was paid was an interim rate.
- b) The Commission noted that the Counsel for the Petitioners admitted before the State Commission that he would be satisfied if the excess amount of EDC above Rs.261/- per sq. ft. is returned to them and they did not press the complaint. The Commission further noted that the State Commission passed the impugned order based on submission by the Counsel for the Petitioner which amounted to consent order against which no Revision Petition was maintainable. Consequently Revision Petition filed by the Petitioners was dismissed.

vii) Citation:

II (2014) CPJ 667; 2014(2) CPR 280.

24. Meerut Development Authority Vs. Smt. Manju Gupta

i) Case in Brief:

Respondent/Complainant was allotted plot and the estimated price of the said plot of 300 sq. meters was Rs.1,05,000/- at the rate of Rs.350/- per sq. meter, out of which respondent deposited a sum of Rs.15,000/- at the time of registration and Rs.25,000/- at the time of allotment. Balance amount had to be paid in eight half yearly installments. Respondent in all had deposited a sum of Rs.61,400/-. After deposit of the aforesaid amount, petitioner cancelled the allotted plot without issuing any notice to the respondent and without undertaking the development work on the plot. It was also the case of the Complainant/Respondent that she was ready to pay interest on the outstanding amount but no satisfactory reply was received from the

petitioner. It was further alleged that petitioner had made allotment to the people of the same category after having recovered interest on the outstanding amounts but was adopting biased policy against the respondent. Aggrieved by the act of the OP, Complainant filed complaint before the District Forum which directed the Petitioner/OP to refund the amount deposited by the complainant i.e. Rs.61,400/- with interest at the rate of 15 percent per annum from the dates of deposits and to pay a sum of Rs.5,000/- as cost and Rs.10,000/- as compensation. Being aggrieved, Petitioner filed an appeal before the State Commission. However, appeal was rejected vide the impugned order against which the present revision petition has been filed. Revision Petition allowed.

ii) Order appealed against:

Against order dated 01.05.2012 in First Appeal No.773 of 2005 and 232 of 2006 of the State Consumer Disputes Redressal Commission, Uttar Pradesh.

iii) Parties:

Meerut Development Authority - Petitioner

Vs.

Smt. Manju Gupta - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2779 of 2012 & Date of Judgement: 09.05.2014.

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 Respondent herself had applied for the refund of the amount. In pursuance thereof, she had received a cheque of Rs.52,258/- from the petitioner. Moreover, the cheque had already been encashed by the respondent more than 12 years ago. However, respondent for reasons best known to her had concealed all the material facts from all the Consumer Fora. Once respondent had claimed the refund amount, then she ceased to be a Consumer and the consumer complaint of the Complainant under these circumstances was also not maintainable.

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b) The Commission further observed that it is well settled that any litigant who approaches any judicial forum with un-clean hands and conceals the material facts, is not entitled to any relief in equity. Under these circumstances, since respondent had concealed the material and relevant facts, the Commission allowed the revision petition with cost of Rs.10,000/- to be paid to Consumer Legal Aid Account by the Complainant. Consequently, the complaint filed by the respondent before the District was dismissed.

vii) Citation:

II (2014) CPJ 705; 2014(3) CPR 76.

25. Bechu Ram Chakraborty Vs. Mahesh Shaw

i) Case in Brief:

Complainant/Respondent entered into an agreement on 29.09.2009 with the Petitioner/OP (landowner and developer of the proposed building) for purchasing a flat for a consideration of Rs.13 lakhs, out of which he paid Rs.1 lakh as earnest money at the time of execution of agreement. However, the OP failed to honour his commitment of providing the property within the stipulated period and asked the complainant to wait for another two months. Complainant sent a legal notice to the OP on 28.07.2010 asking him to hand over possession of the flat and to execute the registration deed but OP sent reply notice on 19.08.2010 saying that the said agreement dated 29.09.2009 had been cancelled. Being aggrieved, the complainant filed a consumer complaint before the District Forum which directed the OP to get the completion certificate, register the deed of conveyance and hand over possession and also pay compensation of Rs.20,000/- for mental harassment and Rs.5,000/- as cost of litigation. The Complainant was also directed to pay the balance amount on the date of registration. An appeal was filed before the State Commission against this order by the petitioner/OP which was dismissed vide impugned order. It is against this order that the present revision petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 10.10.2013 in First Appeal No.FA/747/2012 of West Bengal State Consumer Disputes Redressal Commission.

26. Abha Sinho & 3 Ors. Vs. M/s. Ansal Buildwell Ltd.

i) Case in Brief:

On 31.05.1997 the four Complainants/Petitioners booked a flat bearing F-242, ground floor in the project named Shalimar Residency with the OP for a price of Rs.19,95,000/- with discount of Rs.50,000/- for initial booking. Possession was promised within three years i.e by June 2000. In September 2000, on the suggestion of OP, Complainants opted for some other flat in another scheme called Royal Residency the price of which was Rs.13,75,000/- with rebate. By that time Complainants had already paid 85% of the total cost of the flat. OP had promised to pay the Complainants interest at 15% p.a. on advance payment. However no possession was given till 18.03.2004. Complainants filed complaint before the District Forum which directed OP to handover the flat No.296 FF, in Royal Residency Scheme to the complainants/allottees after charging the balance amount of Rs.3,12,336/-. OP was also directed to pay compensation of Rs.15,00,000/- for deficiency in services, causing mental agony and using the money of the Complainant for several years, from which Rs.3,12,336/- may be deducted. OP was also directed to pay litigation cost of Rs.20,000/-. On appeal filed by the Petitioners, the State Commission modified the order of the District Forum and held that the Petitioners were not entitled for any compensation as they still had to pay Rs.3,12,336/-. Aggrieved by the said order, the present Revision Petition had been filed. Revision Petition allowed and the order of the District Forum was upheld.

ii) Order appealed against:

From the order dated 29.04.2013 in Appeal No.1012/2008 of the State Consumer Disputes Redressal Commission, Delhi.

iii) Parties:

Abha Sinho & 3 Ors. - Petitioners

Vs.

M/s. Ansal Buildwell Ltd. - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3054 of 2013 & Date of Judgement: 13.05.2014.

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 the Complainants had applied in 1997 and the prices of the land had increased by leaps and bounds. It was observed that the OP had itself stated that it will pay interest at 15% p.a. to the Complainants on the delay. The prices had escalated more than 10 times since then and the Complainants could get the fruit of their hard earned money only after 16 years. Consequently the Commission held that the order of the District Forum cannot be faulted and that it should be complied with within 90 days from the date of receipt of the order. Otherwise it will carry interest at 18% till its realization. The Commission relied on the judgement of the Hon'ble Apex Court in *K.A.Nagamani Vs. Housing Commissioner, Karnataka Housing Board*, Civil Appeal Nos.6730-6731 of 2012 dated 19.09.2012 while fixing the interest at 18% for delay in handing over possession.

vii) Citation:

III (2014) CPJ 402.

(aa) IMMIGRATION SERVICES

1. Mr. Aditya Kumar Vs. M/s. Worldwide Immigration Consultancy Services Ltd. (WWICS Ltd.)

i) Case in Brief:

Complainant/Petitioner, a skilled worker, with an intention to settle down permanently in Canada approached Respondent/OP for availing himself of their services. He paid Rs.25,000/- for professional services and further sums of 1400 Canadian dollars and Rs.19,000/- and signed an agreement with OP. It is the Complainant's case that he submitted all requisite documents to the Respondent. OP forwarded the case of the Complainant vide letter dated 27.08.2004 to the Canadian High Commission. An acknowledgement was sent by the High Commission on 08.10.2004. Later on vide letter dated 13.10.2008, the High Commission asked for some more documents. However, his application was rejected on 02.06.2009 which fact was informed to the Complainant by OP on 09.07.2009. Alleging deficiency in service he filed complaint before the District Forum. Allowing the complaint the Forum directed OP to refund the sums of Rs.25,000/- and 1400 Canadian dollars and a further sum of Rs.50,000/- as compensation for mental agony and harassment and

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Rs.1,000/- as litigation cost. Appeal filed by OP was allowed 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 05.07.2012 in First Appeal No.90/2012 of the U.T. Chandigarh State Consumer Disputes Redressal Commission.

iii) Parties:

Mr. Aditya Kumar - Petitioner

Vs.

M/s. Worldwide Immigration
Consultancy Services Ltd. (WWICS Ltd.) - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3830 of 2012 & Date of Judgement: 23.01.2014.

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) OP had objected to non-impleading of Global Strategic Business Consultancy, Dubai as a party since the Complainant had entered into a separate agreement with them in which details of services, charges to be paid and duties of the client had been listed. The Commission rejected the contention of the OP on the ground that Mr. Parvinder Sandhu, stated to be a member of the Canadian Society of Immigration Consultants (CSIC), was actively handling both the companies and it was under his signature that the case for grant of visa was sent to the High Commission on 27.08.2004.
- b) The Commission also observed that on the day the case of the Complainant was forwarded to the Canadian High Commission i.e. 27.08.2004, OP claimed to have sent a letter to the Petitioner asking for documents, copies of passport and police clearance certificate within a period of 30 days. But the Complainant stated that he never received the said letter. The Commission wondered why OP had forwarded the case for immigration visa to the Canadian High Commission if the documents were not complete and held that it was the duty of WWICS/OP to ensure that all documentation was completed before recommending the case.

- c) The Commission further observed that after 27.08.2004, the OP had not taken any steps to monitor the fate of visa application. Even after the receipt of letter dated 13.10.2008, no effective steps had been taken by OP to ensure that requisite information was supplied to the Canadian High Commission. The Commission held that there was clear deficiency in service on the part of OP who should have played a pro-active role.
- d) The Commission observed that the amount of Rs.19,000/- sent by the Complainant to the OPs for sending the same to the High Commission as visa processing fee had not been allowed by the District Forum and Petitioner had also not challenged that part of the order. It was therefore held that there was no ground to order refund of the amount in the present Revision Petition.
- e) In sum, the Revision Petition was allowed and the order of the State Commission was set aside. The Petitioner was held entitled to refund of the amount of compensation ordered by the District Forum.

vii) Citation:

I (2014) CPJ 391; 2014(1) CPR 345.

2. Worldwide Immigration Consultancy Services Ltd. & Anr. Vs. Charanjit Singh Sra

i) Case in Brief:

OPs' Company are service providers for immigration and claimed themselves as experts in immigration to Canada. In July 2002, Complainant, who was working as CTO in Punjab and Sind Bank and was duly qualified to apply for immigration, approached the OP to forward his case and submitted all the documents. He also paid Rs.65,000/- as fees. He waited for three years and when he approached OP in 2005, he was informed that it would take three more years. On 05.05.2008 he received a letter from the Canadian High Commission informing that OPs were not authorized to represent his case and asking him to re-present his case himself. His case was subsequently rejected on the ground that he did not have sufficient experience in the categories in which the application had been made. He came to know that OP had filed his application under the wrong category due to which he lost his chance and future prospects. He filed complaint

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before the District Forum claiming compensation to the tune of Rs.10,00,000/-. District Forum allowed the complaint and directed the OP to refund Rs.65,000/- along with interest at 10% and to pay Rs.10,000/- towards compensation and litigation expenses. Both the parties filed appeals before the State Commission. Appeal filed by the OP was dismissed while the appeal filed by the Respondents for enhancement of compensation was allowed. A sum of Rs.3,00,000/- was awarded as compensation as against the Rs.10,000/- awarded by the District Forum. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 03.09.2013 in Appeal No.18/2010 of the State Consumer Disputes Redressal Commission, Punjab.

iii) Parties:

Worldwide Immigration Consultancy Services Ltd. & Anr.- Petitioners

Vs.

Charanjit Singh Sra

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1259 of 2014 & Date of Judgement: 09.05.2014.

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 as per the agreement the OPs were to assist the Complainant in submission of application for permanent residence in Canada by assessment of education and experience and were to advise him about Canadian Immigration Rules. The OPs were duty bound, while submitting the application to CHC, to satisfy them that the Complainant was having the requisite experience under the category the application was being filed. But the OP filed an application under category in which the Complainant was not having the requisite experience. It was held that the conduct of OP amounted to deficiency in service due to which the Complainant was kept waiting for six long years, wasted a crucial time and lost his chance of future prospects. The Revision Petition was therefore dismissed as devoid of merit.

vii) Citation:

2014(3) CPR 89.

(ab) INSURANCE CLAIM

1. Tecon Valves Pvt. Ltd. Works & Office Vs. The New India Assurance Co. Ltd.

i) Case in Brief:

It was the case of the Petitioner that he was running a business of making steel valves of different dimensions for industrial use with the help of 4-5 workers solely for the purpose of his livelihood. He had got his business insured with the Respondent. On the night intervening 17/18.08.2011, a theft accompanied by forcible entry into the locked premises of the Petitioner resulted in loss to the tune of Rs.2,00,456/-. Intimation was given to the police as well as the Respondent. The Surveyor appointed by the Respondent visited the site, took photographs and sought clarifications. But the claim was repudiated by the Respondent on the ground that only "burglary" was covered under the policy in question and not any theft. Alleging deficiency in service, complaint was filed before the District Forum. The complaint as well as the appeal before the State Commission having been dismissed, the present Revision Petition had been filed. Revision Petition dismissed with costs.

ii) Order appealed against:

From the order dated 23.09.2013 in Appeal No.381/2013 of the State Consumer Disputes Redressal Commission, U.T. Chandigarh.

iii) Parties:

Tecon Valves Pvt. Ltd. Works & Office - Petitioner

Vs.

The New India Assurance Co. Ltd. - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.602 of 2014 &
Date of Judgement: 07.01.2014 (2015).

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 operative clause from the Burglary and Housebreaking Insurance Policy (Business Premises) showed that presence of ingredient of actual, forcible and violent entry of and/or exit from

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the premises was required to be established for maintainability of the claim.

- b) After perusing the complaint given by the Petitioner and the orders of the fora below, the Commission observed that though the incident of theft occurred on the night intervening 17/18.08.2011, the FIR was lodged only on 14.10.2011. There was no explanation at all for the long delay in lodging of the FIR. More so, there was no mention of “forcible entry” in the FIR. The Commission observed that the Petitioner improved its case at the time of filing of consumer complaint before the District Forum by alleging that there was “forcible entry” into his premises, which was not its case at all initially.
- c) The Commission observed that as per copy of the policy schedule, initially, the insurance was in the name of “M/s. Telcon Valves (NL5833634)” whereas complaint was filed in name and style of “Tecon Valves Pvt. Ltd.”. Interestingly, the policy was endorsed in the name of “Tecon Valves Pvt. Ltd.” only on 19.08.2011, i.e. after the date of incident.
- d) The Commission held that there was no privity of contract between the Petitioner and Respondent on the date of theft. The Surveyor had also taken note of the same. Since there was no privity of contract between the parties, it was held that the consumer complaint was not maintainable.
- e) The Commission held that there was no jurisdictional error, infirmity or illegality in the impugned order and accordingly dismissed the Revision Petition with cost of Rs.10,000/- to be paid to the Consumer Legal Aid Account of the Commission.

vii) Citation:

II (2015) CPJ 490.

2. New India Insurance Co. Ltd. Vs. Dr. Gurbaksh Chaudhary

i) Case in Brief:

The Complainant/Respondent got installed a C.T. Scan machine at his diagnostic centre at Pathankot. The machine was purchased through finance from Punjab National Bank in the year 2002 and was insured with the Petitioner insurance company for Rs.50 lakhs. It was the case

of the Complainant that the machine broke down in March 2004 and that the insurance company was informed in writing on 08.03.2004. Petitioner/OP advised him to attach the estimate of repairs along with the letter. The Complainant thereafter contacted the engineers of JAP Imaging Services, Chandigarh who gave an estimate for Rs.7,70,000/-.Complainant then sent claim letter to the company on 11.03.2004 along with estimated loss. The engineers visited the premises on 14.03.2004 and the machine was repaired. The Complainant alleged that the Surveyor was not deputed till 28.03.2004. Since no payment was forthcoming even after the visit of the Surveyor a consumer complaint was filed before the District Forum. The Forum awarded a sum of Rs.5,10,830/- to the Complainant along with interest at 9% p.a. Appeal filed against the order was dismissed by the State Commission vide impugned order against which the present Revision Petition had been filed. Revision Petition partly allowed.

ii) Order appealed against:

From the order dated 05.07.2012 in First Appeal No.480/2007 of the Punjab State Consumer Disputes Redressal Commission.

iii) Parties:

New India Insurance Co. Ltd.

- Petitioner

Vs.

Dr. Gurbaksh Chaudhary

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3975 of 2012 & Date of Judgement: 10.01.2014.

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, after perusing the record, that there was no reference in the Complainant's letter dated 11.03.2004 to the earlier letter allegedly written by him on 08.03.2004. There was also no evidence on record to show that the Complainant informed the company about the repair of the machine done on 14.03.2004. The Commission observed that according to the Surveyor's report the machine was made in the year 1987 and they had mentioned the exact dates of manufacturing of various parts of the machine. According to the report, the parts replaced

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were old and not new. They had further stated that though the machine was insured for Rs.41.90 lakhs, as per the valuation report of M/s. Sanjeev Gupta and Associates, the cost of machines was only Rs.16 lakhs, being old. The Surveyor had therefore calculated the net loss at Rs.2,55,415.42, after making a depreciation of 50% on the assessed amount. The Commission observed that it had been stated in a number of cases viz. *United India Insurance Co. Ltd. & Ors. Vs. Roshal Lal Oil Mills Ltd. & Ors.* [2000 (10) SCC 19], that report of the Surveyor is an important document and it should be considered before arriving at a judgment. The Commission observed that in the present case the Complainant had not been able to give any cogent and convincing explanation to rebut the conclusions arrived at by the Surveyor.

- b) In view of the above facts, the Revision Petition was partly allowed and it was held that the Complainant was entitled to a compensation of Rs.2,55,415.42 as assessed by the Surveyor along with interest at 9% p.a. from the date of filing the complaint till realization. The orders of the fora below were modified accordingly.

vii) Citation:

I (2014) CPJ 314; 2014(1) CPR 166.

3. Oriental Insurance Co. Ltd. Vs. Delhi Assam Roadways Corporation

i) Case in Brief:

Respondent/Complainant took Cash in Transit insurance policy from Petitioner/OP which was valid for the period from 11.08.2009 to 10.08.2010. On the intervening night of 06/07.10.2009, there was a theft in the premises of the Complainant. The thieves allegedly took away an amount of Rs.1,18,246/- from the safe by breaking open the lock of the room in which the safe was kept. The police was informed immediately and an FIR was registered. OP was also informed. However, the Complainant's claim was repudiated on the ground that there was no threat or violence involved for obtaining the keys. Alleging deficiency in service, a complaint was filed before the District Forum which allowed the same and directed OP to pay Rs.1,18,246/- along with interest at 9% p.a. from the date of repudiation till its actual payment along with Rs.10,000/- as litigation cost. OP's appeal 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 02.05.2012 in First Appeal No.22/2012 of the State Consumer Disputes Redressal Commission, U.T. Chandigarh.

iii) Parties:

Oriental Insurance Co. Ltd. - Petitioner

Vs.

Delhi Assam Roadways Corporation - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3324 of 2012 & Date of Judgement: 03.02.2014.

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 Counsel for the Respondent/Complainant argued before the National Commission that the police had already investigated the matter and arrested the thieves in the case. However, the Commission did not find any evidence on record to show that the thieves were arrested and whether investigation, if any, was pending or concluded qua the alleged thieves. The Commission observed that there was a delay of 31 days in filing the FIR and giving intimation to the insurance company. It was held such delay in reporting would be a violation of condition of policy as it deprives valuable right of insurer to investigate the case. In *United India Insurance Co. Ltd., Vs. M/s. Harchand Rai Chandan Lal* (2004) 8 SCC 644, the Hon'ble Supreme Court had held that the terms of policy have to be construed as it is and nothing can be added or subtracted from the same. The policy provided that in case of theft, the matter should be reported immediately. Similar view was taken by the Commission in *New India Assurance Co. Ltd. Vs. Trilochan Jane* FA/321/2005 decided on 09.12.2009.
- b) The Commission also observed that the insured had not taken all reasonable precautions for safety of the property which was insured. The keys were taken from below the pillow of the employee without the use of any threat or violence. Complainant

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was negligent and did not comply with the terms and conditions of the policy. Consequently the Revision Petition was allowed and the order of the State Commission was set aside.

vii) Citation:

II (2014) CPJ 10.

4. M/s. Radhika Fancy Stores Vs. Bajaj Allianz General Insurance Co. Ltd.

i) Case in Brief:

Petitioner/Complainant who was carrying out the business of dealing with gift articles and handicrafts had taken an insurance cover against theft and natural calamities for the period from 24.05.2008 to 23.05.2009 and then from 16.06.2009 to 15.06.2010. When the policy was about to expire, the Petitioner took another policy for Rs.10,67,000/- lakhs from the Respondent company which was to take effect from 10.06.2010. Due to heavy rain fall on 10.08.2010 there was water around the shop up to 7 to 8 feet resulting in damage to the stocks. The Surveyor appointed by the insurance company assessed the damage to goods at Rs.4,83,991/- and to furniture at Rs.1,43,550/-. However OP repudiated the claim of the Petitioner on the ground that earlier insurance had been taken from National Insurance Company and claims had also been filed with that company. A consumer complaint was filed before the District Forum which partly allowed the complaint and directed OPs to pay Rs.3,97,692/- with interest at 7.5% p.a. from 14.11.2010 till date of payment. Rs.2,500/- was also ordered to be paid for mental harassment and cost. Appeal filed by the OP before the State Commission was allowed setting aside the order of the District Forum. Aggrieved by the said order of the State Commission the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 20.06.2013 in Appeal No.886/2011 of the Gujarat State Consumer Disputes Redressal Commission.

iii) Parties:

M/s. Radhika Fancy Stores	Vs.	- Petitioner(s)
Bajaj Allianz General Insurance Co. Ltd.		- Respondent(s)

iv) Case No and Date of Judgement:

Revision Petition No.3113 of 2013 & Date of Judgement: 07.02.2014.

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 material on record observed that the Respondents had accepted the proposal form on bona fide belief that the information given in the proposal form was correct whereas the Petitioner had deliberately suppressed material facts about the existing insurance policy with other insurers and about the previous claims made by them. It was observed that the assured was under solemn obligation to make full disclosure of material facts which could be relevant for taking a decision by the new insurer to issue fresh insurance policy. The Commission further noted that the State Commission had observed in the impugned order that the Petitioner had received claims time and again and was in the habit of filing and receiving such claims. The Commission did not find any illegality, irregularity or jurisdictional error in the impugned order in accordingly dismissing the Revision Petition.

vii) Citation:

I (2014) CPJ 583; 2014(1) CPR 458.

5. Dr. Ajay Singh Bhambri Vs. M/s. Axis Bank Ltd. & Anr.

i) Case in Brief:

Respondent No.1/OP No.1 sanctioned a loan of Rs.52,08,975/- for the purpose of purchase of house to the Complainant, Dr. Ajay Singh Bhambri and his wife Smt. Vandana Bhambri. The loan was to be repaid in monthly installments for the period from 01.12.2009 to 01.06.2031. There was an agreement between the parties according to which the loanees were to be insured for the said period from Respondent No.2/OP No.2, M/s. Met Life Insurance Co. The premium amount of Rs.3,24,260/- was paid to OP No.2 by debiting the said amount from their account on 28.11.2009. As per the terms and conditions of the insurance policy, if any person died during the tenure of the loan, the rest of the payment with regard to the loan was to be borne by the

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insurance company. Smt. Vandana Bhambri died on 09.12.2009 due to heart attack. Complainant requested the insurance company to pay the rest of the loan amount to OP No.1. But OP No.1 refused to do so on the ground that medical examination with regard to taking of the policy was pending due to which the policy had not been issued. Complainant filed complaint before the State Commission which dismissed the same vide impugned order. Challenging the said order the present Appeal had been filed. Appeal dismissed.

ii) Order appealed against:

From the order dated 16.09.2013 in Complaint No.15/2011 of the Punjab State Consumer Disputes Redressal Commission.

iii) Parties:

Dr. Ajay Singh Bhambri - Appellants

Vs.

M/s. Axis Bank Ltd. & Anr. - Respondents

iv) Case No and Date of Judgement:

First Appeal No.881 of 2013 with IA/8106/2013 &

Date of Judgement: 07.02.2014.

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 after going through the factual matrix of the case observed that although the proposal form had been submitted and the premium paid to the insurance company, the policy had not been issued when the Complainant's wife passed away. It was held that no concluded contract came into existence between the parties. It was noted that the State Commission had relied upon the orders of the Hon'ble Supreme Court in *Life Insurance Corporation of India Vs. Raja Vasireddy Komalavalli Kamba & Ors.* (1984) 2 SCC 719 in which it had been held that merely filling any proposal for insurance and depositing first premium with the Life Insurance Corporation do not create a binding contract between the parties. The State Commission had also relied on the order passed by the National Commission in *LSA Tony Phillip*

Vs. LIC of India & Ors. [I(2009) CPJ 18 (NC)] in which a similar view had been taken.

- b) Consequently the Commission held that the State Commission had rightly taken the view that there was no liability on the insurance company to pay the loan amount in question. The order of the State Commission was upheld and the Revision Petition was dismissed.

vii) Citation:

I (2014) CPJ 544; 2014(1) CPR 448.

6. M/s. Lakshya Garments Vs. National Insurance Co. Ltd.

i) Case in Brief:

Petitioner got his garments shop insured with the Respondent/OP for Rs.5,00,000/- for the period with effect from 03.11.2003 to 02.11.2004. It is alleged that during the intervening night of 30/31.10.2004 there was a burglary in the shop and garments worth Rs.3,50,000/- were stolen. Police and the Respondent were both informed. Respondent deputed a Surveyor who, after investigation, reported that it was a false claim. However as per the stock statement collected from UCO bank, the Surveyor considered the claim equivalent to Rs.46,842/- as reasonable. But the Respondent closed the claim for want of sufficient proof. Aggrieved by the action of the Respondent, Petitioner filed Consumer complaint. The District Forum allowed the complaint and directed OP to pay Rs.3,50,000/- towards loss along with interest at 10% p.a. and another Rs.500/- as cost. The Respondent's appeal was allowed by the State Commission and the complaint was dismissed vide impugned order. Challenging the said order, the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 07.06.2011 in Appeal No.2895/2006 of the Haryana State Consumer Disputes Redressal Commission.

iii) Parties:

M/s. Lakshya Garments

- Petitioner

Vs.

National Insurance Co. Ltd.

- Respondent

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iv) Case No and Date of Judgement:

Revision Petition No.2968 of 2011 & Date of Judgement: 26.02.2014.

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 contended that the goods were hypothecated with UCO Bank and the stock had been inspected periodically by the bank officials. Petitioner also placed on record copies of the stock statements. After perusal of the statements, the Commission found that they had been signed by the Petitioner alone and no official of the bank had signed anywhere to indicate that they were checked by the bank officials. The Commission found that the Petitioner had not filed any affidavit of the Field Officer of the Bank nor was he examined as a witness. Under the circumstances it was held that no reliance can be placed on the unsigned stock statements.
- b) The Commission observed that the Complainant did not maintain the account books with respect to the stock in the insured shop. The photo copies of the bills obtained from persons from whom the Petitioner had allegedly made purchases were sent by the Surveyor to the concerned firms on the addresses given on those bills for confirmation but the same were returned with the reports that the firms were not in existence in the area. The Commission therefore held that the Complainant produced bogus bills for getting false claim. The Commission observed that the District Forum had failed to appreciate these facts.
- c) The Commission held that there was no infirmity or illegality in the order passed by the State Commission and accordingly dismissed the Revision Petition.

vii) Citation:

II (2014) CPJ 430; 2014(1) CPR 630.

7. Bajaj Allianz General Insurance Co. Ltd. Vs. M/s. Om International

i) Case in Brief:

The Respondent purchased a water filling machine for Rs.9 lakhs from Swami Samarth Aqua Filling Industries, Thane. The said machine was

to be delivered from Barsai to Gaygal at the office of the Complainant/ Respondent through a truck. Before booking the machine with the transport company, the Complainant got it insured from the Petitioner. When the machine was delivered, it was found to be in a damaged condition. The fact was noted at the back of the GR (bilty) and the insurance company as well as the vendor were informed. A claim was also lodged with the insurance company. Complainant got it repaired on payment of Rs.2,08,783/-. The claim was however repudiated on the ground that the machine was not given proper packaging. A consumer complaint was filed before the District Forum which dismissed the complaint. The appeal filed before the State Commission was however allowed vide impugned order and the complainant was held entitled to get Rs.1,40,174/- as assessed by the Surveyor with interest at 9% p.a. from the date of complaint and Rs.10,000/- as cost. The present Revision Petition had been filed challenging the said order. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 27.11.2012 in Appeal No.329/2012 of the Rajasthan State Consumer Disputes Redressal Commission.

iii) Parties:

Bajaj Allianz General Insurance Co. Ltd. - Petitioner

Vs.

M/s. Om International - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.32 of 2013 & Date of Judgement: 26.02.2014.

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 record noted that the Petitioner had appointed M/s. Wings Surveyor for the sole purpose of verification of mode of packing and the said Surveyor had categorically stated in their report that the machine during transit was packed with polythene/ plastic cover only as per standard practice. This point had been noted by the State Commission in their order. Further the suppliers of the machine had also stated in their letter that all their machines were

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delivered under strict standard packaging and no machine was dispatched without packaging. The transporter had given the certificate that the machine was damaged during transit only due to bad road condition. The Commission therefore found no reason to differ with the findings of the State Commission because the machine was packed as per standard practice. The Commission held that the order of the State Commission did not suffer from any illegality, irregularity or jurisdictional error of any kind. Consequently the Revision Petition was dismissed.

vii) Citation:

II (2014) CPJ 353; 2014(1) CPR 607.

8. Aviva Life Insurance Co. India Pvt. Ltd. Vs. Shelly Sharma & Anr.

i) Case in Brief:

Complainant/Respondent No.1 purchased one Freedom Life Plan in 2008 and paid premium of Rs.25,000/- each in 2008, 2009 and 2010. It is alleged that OP did not send her terms and conditions of the policy despite making request. After expiry of three years, Complainant wanted her invested amount along with profits but OP paid her only Rs.28,590/- against the invested amount of Rs.75,000/-. Alleging deficiency in service she filed complaint before the District Forum which after hearing the parties dismissed the complaint. But the State Commission allowed the appeal filed by the Complainant and directed Petitioners to pay Rs.44,910/- besides Rs.10,000/- as compensation and Rs.5,000/- as cost of litigation but dismissed complaint against OP No.1/Respondent No.2 (Shri Rajender Mann). Aggrieved by the said order the present Revision Petition had been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 07.02.2013 in Appeal No.385/2012 of the State Consumer Disputes Redressal Commission, Chandigarh.

iii) Parties:

Aviva Life Insurance Co. India Pvt. Ltd.	- Petitioner
Vs.	
Shelly Sharma & Anr.	- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2356 of 2013 with IA/3914/2013 &

Date of Judgement: 03.03.2014.

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 had paid premium only for a period of three years and as per Article 5 of the Freedom Life Plan, on surrender of policy, the surrendered value was returned by OP to the Complainant. The Commission observed that the State Commission had passed the impugned order in the light of notification dated 01.07.2010 which was not applicable on the policy obtained by the Complainant. It had been made clear in the notification that the regulations would apply only from the date of publication to all products of linked life insurance cleared by the authority thereafter. In the case in hand the policy had been obtained by the Complainant on 12.05.2008 and therefore the regulations contained in the notification dated 01.07.2010 were not applicable to the policy of the Complainant.
- b) The Commission also observed that the Respondents failed to place on record any written assurance of definite returns given by the Petitioner. The Commission noted that Respondent No.2 acting as an agent cannot assure Respondent No.1 of definite returns. Respondent No.2 is an advocate and he had the option to cancel the policy within 15 days but he had not availed the facility. The Commission further observed that it cannot be presumed that terms and conditions of policy were not supplied to him for many years.
- c) The Commission observed that Respondent No.1 is free to take appropriate action against Respondent No.2 for assuring definite returns.
- d) Consequently the Revision Petition was allowed, the impugned order of the State Commission was set aside and the order of the District Forum was confirmed.

vii) Citation:

2014(1)CPR 593.

9. M/s. Navneet Textile Pvt. Ltd. Vs. United India Insurance Co. Ltd.

i) Case in Brief:

It was the case of the Complainant that he got its premises insured from United India Insurance Co. Ltd./OP. On 08.10.2001, due to short circuit, fire broke out in the factory premises of the complainant. The matter was reported to the Insurance Company who appointed the surveyor and assessed the loss as Rs.5,15,566/-. The Complainant submitted claim to the OP for Rs.42,74,309/-. But it was repudiated by the OP on the ground that the Complainant had manipulated the claim. Being aggrieved, he filed complaint before the National Commission. Complaint partly allowed.

ii) Order appealed against:

Original Complaint

iii) Parties:

M/s. Navneet Textile Pvt. Ltd. - Complainant

Vs.

United India Insurance Co. Ltd. - Opp. Party

iv) Case No and Date of Judgement:

Consumer Case No.319 of 2002 & Date of Judgement: 05.03.2014.

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 after perusal of the records partly allowed the complaint for the following reasons:
 - i. OP did not produce cogent and plausible evidence from an electrical expert. Therefore, due to short circuit, the building might have got fire.
 - ii. The stock register had been clearly manipulated by the Complainant.
 - iii. The Commission also came to know from the EB bills that the factory was not working in the months of September – October.
 - iv. The loss of Rs.5,15,566/- as assessed by the surveyor was in consonance with the Bank Statement.

v. The claim made by the Complainant was on the higher side and exaggerated one.

b) Therefore, the Commission granted a compensation of Rs.5,15,566/- in favour of the Complainant and against the OP.

vii) Citation:

II (2014) CPJ 142.

10. Branch Manager, Puri Gramya Bank Vs. Susama Kumari Biswal and others

i) Case in Brief:

The case of Complainant/Respondent No.1 was that in order to start a Dairy Farm under loan basis, she sent her proposal to avail a loan of Rs.3,69,000/- to the Appellant/Bank. Appellant/Bank sanctioned the loan amount of Rs.3,00,000/- in favour of Respondent with an instruction that 20 number of cows should be purchased in two phases. However, Appellant issued funds for purchase of 7 numbers of cows only on three different dates, i.e. on 20.4.1999, 30.4.1999 and 4.05.1999. As a result thereof, Respondent No.1 could not run a full-fledged Dairy unit to enable her to earn profit and to repay the loan. In the meanwhile, she could not repay monthly installment except the first installment as her Dairy unit and 7 numbers of cows were destroyed due to the Super Cyclone on 29/30.10.1999. Respondent No.1 reported this matter to Respondent No.2/Collector. Respondent No.4/Insurance Company which had insured 5 cows, sanctioned a sum of Rs.33,000/- and had not yet given the insurance claim for the other 2 cows. Alleging deficiency in service, Complainant/Respondent No.1 filed complaint before the State Commission which directed OP.No.1 to pay Rs.1,35,000/- and also directed that the insured amount with OP No.4 should be adjusted against the outstanding loan amount of the complainant and also to settle the claim with interest at the prevailing commercial Bank rate of interest within thirty days of receiving copy of this order. Being aggrieved, Appellant had filed the present First Appeal. Appeal allowed.

ii) Order appealed against:

Against the Order dated 01.05.2006 in Complaint No.150/2003 of the State Commission Orissa.

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iii) Parties:

Branch Manager, Puri Gramya Bank - Appellants

Vs.

Susama Kumari Biswal and others - Respondents

iv) Case No and Date of Judgement:

First Appeal No.65 of 2009 & Date of Judgement: 13.03.2014.

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 Condition No.5 of the insurance policy found that it was for the Respondent No.1 to have the farm building, livestock, feed stock etc, insured for full value. Above condition nowhere stated, that it was for the appellant to get the renewal of the insurance. There was also nothing on record to show that Respondent No.1 ever got the farm building, livestock and feed stock etc. insured. Nor there was any document to show, that Respondent No.1 asked the appellant to get the same insured. So the Commission opined that under these circumstances, no liability could be fastened upon the Appellant.
- b) In view the above, the present first appeal was allowed and order of the State Commission was set aside. As a result the complaint filed before the State Commission stood dismissed.

vii) Citation:

II (2014) CPJ 107; 2014(2) CPR 198.

11. Virupaxappa I. Yaragatti Vs. Senior Branch Manager, LIC of India

i) Case in Brief:

The case of the Petitioner was that the Policy Bond issued by the Respondent was due to mature on 25.06.2009 and therefore the premium demand notice sent by the Respondent and received by him on 24.05.2010 was unjust and improper. He further claimed that the

annuity payment was to start on 01.07.2010 and the Respondent failed to make payment. Alleging deficiency in service he approached the District Forum which allowed the complaint in part and directed the Respondent to pay Rs.1,000/- monthly from 01.07.2000 along with Rs.500/- as cost of litigation. The appeal filed by the Respondent was allowed 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 14.09.2011 in Appeal No.5199/2010 of the Karnataka State Consumer Disputes Redressal Commission.

iii) Parties:

Virupaxappa I. Yaragatti	- Petitioner
Vs.	
Senior Branch Manager, LIC of India	- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3833 of 2011 & Date of Judgement: 19.03.2014.

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 had noted that in the Jeevan Dhara Policy signed by the Complainant, it was clearly mentioned that the period after which annuity starts is to vest with 32 years. Therefore the last payment premium payable is on 25.06.2019 and payment of maturity starts on 25.06.2020. The State Commission noted that the Complainant had tried to take undue advantage of the mistake found in the policy. It was observed that he who seeks equity, must do equity and come with clean hands. But in the instant case the approach of the Complainant was otherwise. When Complainant himself is liable to pay premium up to 2019, he cannot seek payment of the matured annuity starting from 01.07.2010.
- b) The National Commission cited the Judgment of the Hon'ble Supreme Court in *H.P. Forest Company Ltd. Vs. M/s. United India Insurance Co. Ltd.*, Civil Appeal No.6347 of 2000 wherein it was

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held that insured cannot get benefit of a typographical mistake. The Commission observed that typographical mistakes can be rectified as and when they are noticed. The Respondent had not committed any error in asking the Petitioner to make payment of premium as per the term plan. The Commission held that there was no deficiency in service on the part of the Respondent.

- c) The Commission found no irregularity, illegality or infirmity in the impugned order of the State Commission in dismissing the complaint of the Petitioner and allowing the appeal of the Respondent. Revision Petition was accordingly dismissed.

vii) Citation:

II (2014) CPJ 156; 2014(2) CPR 116.

12. Murli Cold Storage Ltd. Vs. Oriental Insurance Co. Ltd. & Anr.

i) Case in Brief:

Complainant was an owner of a cold storage used for storing potatoes for preservation. He had taken an insurance policy from the Respondents against deterioration of stocks from the year 1993-1994 to the extent of Rs.5,80,80,000/-. On 03.07.1999, when the policy in currency, there was a leakage of ammonia gas in the cold storage resulting in heavy damage to the potatoes stored in chambers 3 and 4. The accident was reported to the insurance company. The Surveyor appointed by the company assessed the loss in chambers 3 and 4 respectively at Rs.68,69,974/- and Rs.26,00,000/-. In October 2000, the insurance company settled the claim of the Complainant in respect of chamber 3 and paid Rs.68,69,974/-. However the claim in respect of chamber 4 was repudiated on the ground that the Complainant had constructed an intermediate window (Architrave) in the common wall of chambers 3 and 4 which amounted to deviation from the original layout plan for which permission was not taken. Alleging deficiency in service Complainant filed complaint before the State Commission which dismissed the complaint vide impugned order against which the present appeal had been filed. Appeal allowed.

ii) Order appealed against:

From the order dated 24.12.2007 in S.C. Case No.27/0/2004 of the West Bengal State Consumer Disputes Redressal Commission.

iii) Parties:

Murli Cold Storage Ltd.

- Appellant

Vs.

Oriental Insurance Co. Ltd. & Anr.

- Respondents

iv) Case No and Date of Judgement:

First Appeal No.212 of 2008 & Date of Judgement: 03.04.2014.

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 the State Commission had dismissed the complaint mainly on two grounds: (i) despite advice, the Complainant had failed to procure approval/clearance from the Directorate of Agricultural Marketing and (ii) the partition window was constructed in contravention of WB Cold Storage Act and Rules 1967. The Commission after personal discussion with the Executive Engineer of the Department of Agricultural Marketing and going through the report of M/s. Yokel Engineering Services, Calcutta, a reputed engineering firm observed that (a) a partition wall is non-load bearing number (b) an access on a partition wall is a common phenomena in the cold storage (c) an access is a passage for movement of the operators without using the main entrance (d) an access is basically an alternative means of escape/approach and (e) an access helps to maintain temperature equilibrium in both chambers during loading period. The Commission also held that an access on the partition wall between two refrigerated chambers is a minor functional adjustment and it does not violate/hamper the normal operational conditional in any way.
- b) The Commission observed that insurance company chose to ignore to report of the Surveyor in which he had accepted the explanation offered by the Complainant. No material had been placed on record to show any error, factual or legal, in the reports submitted by the Surveyor elaborately dealing with the points raised by the insurance company and accepting the stand of the insured that the construction of the Architrave in question was not unauthorized in terms of Section 10(1)(b) of the WB Act.

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- c) The Commission further observed that it was strange that if the opening in wall between the two chambers was breach of condition of the policy qua chamber No.4, by the same analogy, why it was not a breach of condition in respect of chamber No.3 for which the loss assessed by the Surveyor was duly paid.
- d) In the result the appeal was allowed and the Respondents were directed to pay the Complainant the amount of loss assessed by the Surveyor in respect of chamber No.4 with interest at 9% p.a. from the date of complaint till the date of payment. Rs.25,000/- was directed to be paid by the Respondent to the Complainant towards costs.

vii) Citation:

II (2014) CPJ 593; 2014(3) CPR 270.

13. M/S. United India Insurance Co. Ltd. Vs. M/S. Manik Bhai Jewellers and another

i) Case in Brief:

Respondent/Complainant had obtained from the Appellant/OP/ Insurance Company a Jeweller Block Policy commencing at midnight on 30.10.1996 and ending at midnight on 30.10.1997 against a premium of Rs.15,488/-. It has been stated in the complaint that on 15.02.97 at about 8 PM, when Mr. Lalit, an employee of the complainant was keeping a briefcase containing jewellery in the dickey of the car, two persons snatched the bag containing jewellery from him at gun-point and escaped. A detailed statement of articles lost in theft was handed over to the OP within 14 days of the theft, giving the estimate of actual value of the articles lost. However, the claim was repudiated by the Insurance Company vide letter dated 06.01.98 on the ground that the loss had occurred outside the insured shop premises and beyond business hours while the jewellery was in transit which was not covered under the terms and conditions of the Policy. Being aggrieved, Complainant filed complaint before the State Commission which stated that repudiation of the claim by the OPs was not justified and ordered the OP to pay a sum of Rs.5,93,933/- being cost of the jewellery and Rs.5,000/- as compensation and cost. Against the order of the State Commission, the present First Appeal has been filed. Appeal dismissed.

ii) Order appealed against:

Against the Order dated 14.09.2007 in Complaint No.C-85/1998 of the State Commission Delhi.

iii) Parties:

M/S. United India Insurance Co. Ltd. - Appellant

Vs.

M/S. Manik Bhai Jewellers and another - Respondents

iv) Case No and Date of Judgement:

First Appeal No.787 of 2007 & Date of Judgement: 22.04.2014.

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 dismissed the revision petitions and upheld the order of the State Commission for the following reasons:
 - i. While Section I of the policy relates to insurance on the premises of the shop, Section II of the Policy deals with the insurance cover for the loss occurring outside the premises of the shop.
 - ii. It is quite evident that at the time of theft, the jewellery/ property in question was in custody of the employees of the complainant and this fact has not been denied anywhere.
 - iii. It has also been stated that the purpose of carrying jewellery was to show it to the customers for sale. The State Commission had also observed that the two thieves and one more accomplice were arrested by the Police and they admitted that they had committed the robbery on their own.
 - iv. Moreover, the vehicle was not unattended as one Rakesh Makkar who lodged the FIR and four other employees were there when the robbery took place.
 - v. It is true that it has been stated that stocks worth more than Rs.2 lakhs should be secured in a burglary proof safe after business hours at all times but in the present case,

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the State Commission had rightly observed that the jewellery could not be reasonably accepted to be kept in safe at all times when the employees or representatives of the complainant were dealing with or handling jewellery.

- b) In view of the above, the Commission held that the claim of the complainant was covered under the terms and conditions of the Policy under Section II of Schedule B.

vii) Citation:

II (2014) CPJ 518; 2014(2) CPR 525.

14. Nagaraj T.V Vs. Branch manager L.I.C. of India

i) Case in Brief:

The Petitioner/Complainant obtained Jeevan Dhara Policy for a sum of Rs.1,20,000/- from the LIC, with date of maturity as 19.10.2006. The complainant contended that he was entitled to Rs.4,800/- as monthly installment of annuity from the date of maturity, whereas the OP was paying him a monthly installment of Rs.1,200/- only. He also contended that in addition to the sum assured under the policy, he was entitled to receive 1% of the enhanced amount and also entitled for the bonus declared by the LIC/OP. LIC took the stand that as per the circular, the Complainant was entitled to receive 1% of the Gross Insurance Value Element (GIVE) and hence the monthly installment of annuity was fixed at Rs.1,200/-. They had already paid Rs.3,600/- as onetime payment under the policy. The petitioner contended that he was eligible for bonus at two stages; the first stage at the end of the deferred period as addition to the GIVE amount and proportionately increasing the annuity, and the second stage as addition to GIVE amount, payable on death. Despite taking up the matter with the zonal office of the OP and the Insurance Ombudsman, he failed to get proper relief. Being aggrieved, he filed complaint before the District Forum which directed the LIC to add bonus as admissible to any other annuity policy for 15 years, to the GIVE amount and to enhance the annuity at 1% of the enhanced GIVE amount and also directed to pay Rs.5,000/- as litigation cost. Aggrieved by this order of the District Forum, the LIC preferred an appeal before the State Commission, which upheld the version of the LIC that no bonus had been declared under the Jeevan Dhara policy issued in favour of the complainant and hence, the OP was not bound

to pay bonus to the complainant. It is against this order that the present revision petition has been filed. Revision petition dismissed.

ii) Order appealed against:

Against the Order dated 02.04.2008 in Appeal No.1428/2007 of the State Commission Karnataka.

iii) Parties:

Nagaraj T.V

- Petitioner

Vs.

Branch manager L.I.C. of India

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1003 of 2008 & Date of Judgement: 23.04.2014.

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 in so far as endorsement of Rs.1,24,800/- on the copy of the policy produced on record is concerned, LIC had denied that any endorsement was made by them to this effect on the policy and it was not proved anywhere that there was an addition of Rs.4,800/- to the policy amount of Rs.1,20,000/- making it a total of Rs.1,24,800/-. Further, the Commission held that under the Jeevan Dhara Policy, no bonus had been declared. Furthermore, one-time payment of Rs.3,600/- as Guaranteed Maturity Addition (GMA) had been paid to the complainant.
- b) In view of the above, the present revision petition was dismissed and the order of the State Commission was upheld.

vii) Citation:

II (2014) CPJ 529; 2014(2) CPR 508.

15. Life Insurance Corporation of India & Anr. Vs. Anand Rao Ramchandra Salunke

i) Case in Brief:

Respondent/Complainant obtained an insurance policy with sum assured of Rs.5,000/- on 11.11.1993 with the date of maturity

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11.11.2008. The Respondent failed to pay the premium from August 2002 onwards resulting in lapse of the policy. The Complainant had taken a loan against the policy. Complainant applied to release of surrender value of the policy since he was not in a position to pay arrears of premium for revival of policy. The Petitioner/Insurance Company assessed the surrender value and offered to pay a sum of Rs.2,268/- after adjusting the loan amount due from the Complainant. The Complainant did not accept the offer because while computing the surrender value, bonus amount of Rs.37,800/- was not taken into account. Claiming this to be deficiency in service he approached the District Forum which allowed his complaint and ordered the OP to pay an amount of Rs.29,888/- with interest at 9% p.a. from the date of filing of the complaint along with cost of Rs.1,000/-. The Petitioner's appeal 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 10.04.2013 in Appeal No.744/2005 of the Maharashtra State Consumer Disputes Redressal Commission.

iii) Parties:

Life Insurance Corporation of India & Anr. - Petitioners

Vs.

Anand Rao Ramchandra Salunke - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2822 of 2013 & Date of Judgement: 28.04.2014.

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 that came up for consideration was that while computing the surrender value of the insurance policy before the maturity date, can the insurance company reduce the amount of cash value of declared bonus to 30%.
- b) The Commission noted that a similar question came up for consideration before a 5 member bench of the Commission in the matter of Branch Manager, *LIC of India & Anr. Vs. A.Paulraj II* (1996) CPJ 69 (NC). A view was taken by the larger bench that

while computing surrender value of a lapsed policy, the cash value of the accrued bonus cannot be the same if the payment is made before the maturity of the policy. The Commission held that in view of the above Judgment, the insurance company was right in applying the formula of 30% of total amount viz-a-viz the accrued bonus while computing the surrender value of the insurance policy. The Commission observed that the fora below had committed a grave error in allowing the complaint of the Respondent in utter disregard of the Judgment of the larger bench in the case of Branch Manager, *LIC of India & Anr. Vs. A.Paulraj* (supra).

- c) The Revision Petition was therefore allowed and the impugned orders of the fora below were set aside.

vii) Citation:

III (2014) CPJ 258; 2014(2) CPR 451.

16. State Bank of India Vs. M/s. Sri Easwari Vaccines & Om Vaccine Clinic & Anr.

i) Case in Brief:

Complainant/Respondent No.1 availed a loan of Rs.5,00,000/- from State Bank of India, the OP No.1 on the basis of trade and business. There was a tie-up with the New India Assurance Company Ltd., the OP No.2 to insure the goods/stock of the Complainant to the guarantee of the loan. On 25.11.2005 the Complainant's clinic was completely damaged due to heavy inundation caused by floods. Surveyor of OP No.2 conducted the spot inspection and estimated the damages. OP No.2 repudiated the claim on the ground that there was no renewal of policy. Complainant filed a complaint before the District Forum alleging deficiency in service on the part of OPs. District Forum, allowing the complaint directed OP No.1 to pay Rs.2,59,512/- towards insurance claim Rs.10,000/- as damages and Rs.1,000/- as costs. The State Commission on appeal filed by OP No.1 modified the order of the District Forum reducing the amount payable from Rs.2,59,512/- to 1,29,756/- while rest of the order was retained. Aggrieved by the said order, the present Revision Petition had been filed. Revision Petition dismissed.

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ii) Order appealed against:

From the order dated 27.09.2011 in Appeal No.480/2009 of the Tamil Nadu State Consumer Disputes Redressal Commission, Chennai.

iii) Parties:

State Bank of India - Petitioner

Vs.

M/s. Sri Easwari Vaccines &
Om Vaccine Clinic & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.217 of 2012 & Date of Judgement: 01.05.2014.

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 after perusing the MOU between SBI and The New India Insurance Co. Ltd. noted that OP No.1 had advanced loan and to protect its own interest remitted the insurance premium to OP No.2. It was held that when the Banker OP No.1 was in possession of entire loan documents including the policy, it was OP No.1's obligation to renew the policy on due date i.e. 30.03.2005. The Commission noted that the Complainant had also not been prudent enough as he had closed the term loan account on 27.10.1995. The damage to the machineries had taken place on 25.11.2005. At the time of the closure, the Complainant had not verified the documents and not questioned the OP No.1 about non-renewal of policy. The Commission therefore held that there was contributory negligence on the part of the Complainant.
- b) Consequently the Commission held that there was no illegality in the order passed by the State Commission and dismissed the Revision Petition.

vii) Citation:

III (2014) CPJ 106; 2014(3) CPR 174.

17. United India Insurance Company Ltd. Vs. N.T. Babu

i) Case in Brief:

The Complainant took a shopkeeper policy for the sum assured Rs.5,25,000/-. On 20.04.2003, an advertisement board which was installed on the roof of adjacent building got uprooted from its foundation and fell on the shop of the Complainant, resulting in damages to his shop, including furniture and electric fittings, etc. and he intimated it to United India Insurance Company Ltd., the Petitioner/ OP. The OP deputed a surveyor who assessed the loss at Rs.56,767/-. The OP offered Rs.40,765/-, after deducting the salvage value of Rs.6,000/- and policy Excess of Rs.10,000/-. The Complainant declined the offer and filed complaint before the District Forum which directed the insurance company to pay a sum of Rs.3,44,016.50/- with 12% interest from the date of filing till the date of realization along with a costs of Rs.3,000/-. Aggrieved by the order of District Forum, the OP filed the first appeal before State Commission which dismissed the appeal. Against the order of State Commission, this present revision petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 22.01.2013 in First Appeal No.330/2012 of State Consumer Disputes Redressal Commission, Kerala, Thiruvananthapuram.

iii) Parties:

United India Insurance Company Ltd.	- Petitioner
Vs.	
N. T. Babu	- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2868 of 2013 & Date of Judgement: 01.05.2014.

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 after perusal of the photographs available on file produced by the Complainant and the report of the surveyor came to the conclusion that that the entire stock had been damaged

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in rain, hence the value of the total articles came to Rs.3,44,016.50/-. The Commission was also surprised as to how the OP arrived at the conclusion that the admissible claim was Rs.40,765/- only. It was a meager amount and was not acceptable. The Commission held that the Surveyor report is not a final word and relied on the following decisions: *National Insurance Co. Ltd. Vs. Giriraj Proteins* IV (2012) CPJ 151 (NC); *Mahinder Bansal vs. UHBVNL* IV (2012) CPJ 154 (NC); *Noor Ali Vs. National Insurance Company Limited* (2009) 17 SCC 565; *Nifty Chemicals Private Limited Vs. Union of India & Ors.* (2009) 17 SCC 566.

- b) In view of the above, the present revision petition was dismissed as devoid of merit and the orders of fora below were sustained.

vii) Citation:

III (2014) CPJ 108; 2014(3) CPR 172.

18. United India Insurance Co. Ltd. Vs. The Director, National Heart Institute

i) Case in Brief:

It was the First Appeal filed by the Appellant/United India Insurance Co. Ltd which repudiated the insurance claim of Complainant/ Respondent, All India Heart Foundation, New Delhi. The claim itself had arisen from an alleged incident of fire on 18.6.1999 in the Cardiac Catheterization Lab, resulting in damage to the HT Transformer and four connected Printed Circuit Boards (PCBs). In the consumer complaint before the State Commission, the complainant claimed indemnification of loss of Rs.12,23,750/- with compensation of Rs.1 lakh. The claim comprised Rs.3,43,750/- for the four PCBs and Rs.8,80,000/- for replacement of the transformer. The State Commission, in its decision of 2.12.2008, held that the claim for the transformer was not admissible under the policy and only the claim for four PCB/PCs was covered. Therefore, it allowed Rs.3,43,750/- with 9% interest and Rs.50,000/- as compensation. The claim for Rs.8,80,000/- towards the transformer was disallowed. Dissatisfied with the decision of the State Commission, the United India Insurance Co. Ltd. filed the present first appeal with a delay of 79 days. Delay condoned but appeal was dismissed as devoid of merit.

ii) Order appealed against:

Against the Order dated 02.12.2008 in Complaint No.44/2001 of the State Commission Delhi

iii) Parties:

United India Insurance Co. Ltd. - Appellant

Vs.

The Director, National Heart Institute - Respondent

iv) Case No and Date of Judgement:

First Appeal No.350 of 2009 & Date of Judgement: 06.05.2014.

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 main grounds on which the first appeal was filed were 1) the State Commission did not consider the fact that on inspection by the Surveyor, no evidence of fire as such was found. The damage, if any, was only due to the breakdown caused by electric faults (sparking or short circuit) within the transformer. This is specifically excluded under exclusion No.6; 2) to decide the indemnification for loss/damage to the printed circuit boards for which the claim has been allowed by the State Commission.
- b) Regarding the first issue, the Commission held that the damage caused to the four PCBs was due to a reason independent of the burning of the Transformer. There was nothing in the report of the Surveyor to show that the PCBs had not suffered damage and had not become irreparable, as opined in the Siemens Report. For this reason, the claim for damage to the PCBs would be clearly covered under the proviso contained in the Exclusion Clause. Therefore, the National Commission held that the State Commission was right in allowing the claim for damage to the PCBs.
- c) Regarding the second issue, the Appellant had claimed that the State Commission had wrongly allowed Rs.3,43,750/- while the Surveyor had assessed the loss at Rs.2,61,250/- only. This contention was not factually correct. The Surveyor's report referred to the claim of Rs.3,43,750/- for the four PCBs and of

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Rs.8,80,000/- for the Transformer. While recording its assessment of the loss, the report made a deduction of Rs.4,40,000/- i.e. 50% for the Transformer, on the express ground of being second hand. No reduction was proposed for the PCBs. With the adjustment of 50% for the Transformer, the total loss was assessed at Rs.7,83,750/-. The State Commission has referred to this assessment of the Surveyor. The figure of Rs.2,61,250/-, relied upon by the appellant, is after reduction for under insurance. It is not the assessed loss for PCBs, as argued. The Commission therefore, rejected this argument as being factually wrong.

- d) In view of the above, the Commission dismissed the present first appeal as devoid of merit and upheld that the impugned order of the State Commission.

vii) Citation:

III (2014) CPJ 208; 2014(2) CPR 295.

19. Japjeet Singh Chadda Vs. United India Insurance Co. Ltd. & Anr.

i) Case in Brief:

Petitioner/Complainant obtained Burglary and House Breaking Insurance Policy for Rs.6.00 lakhs from Respondent No.1 for the stock and trade at his business premises w.e.f. 03.12.2002 to 02.12.2003. On the night intervening 20-21st January, 2003, shop of the petitioner was burgled. According to the petitioner, mobile phones stocked in the shop worth Rs.6.00 lakhs were stolen but the Surveyor through his report opined that the story of the burglary put forth by the Petitioner appeared to be false. Consequently, the insurance claim of petitioner was repudiated by the Insurance Company/OP. Aggrieved by the act of OPs, he filed complaint before the District Forum which directed Respondent No.1 to pay to the Petitioner a sum of Rs.4,14,608/- with 9% interest thereon w.e.f. 29.03.2004, Rs.2,000/- as compensation for harassment and Rs.1,000/- as litigation expenses. Being aggrieved of the order of the District Forum, Respondents/OPs approached the State Commission which accepted the plea of limitation raised by the respondents and allowed the appeal. But the State Commission had failed to decide the issue of repudiation of the claim which led to the filing of the present revision petition. Revision Petition allowed.

ii) Order appealed against:

Against the Order dated 14.03.2012 in Appeal No.363/2010 of the State Commission, Maharashtra.

iii) Parties:

Japjeet Singh Chadda - Petitioner

Vs.

United India Insurance Co. Ltd. & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2387 of 2012 & Date of Judgement: 06.05.2014.

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 which needed determination in this revision petition was whether the final cause of action arose on 29.03.2004 when the insurance claim of the petitioner was repudiated or the cause of action was still continuing because of the fact that review of repudiation was still not decided.
- b) The National Commission on perusal of the records found that the cause of action first arose on the date of which alleged burglary took place, the cause of action for filing of the complaint again arose when the insurance claim was repudiated by the insurance company vide letter dated 29.03.2004. The respondent, however, before the expiry of limitation of two years from the date of repudiation vide its letter dated 28.12.2004 registered the protest of the complainant against the repudiation of the claim and intimated him vide letter dated 28.12.2004 that his claim file was being reviewed. This obviously gave an impression to the petitioner that his request for review was accepted and his claim file was under consideration. Therefore, he was justified for awaiting the outcome of the review instead of rushing for judicial remedy. The Commission further held that since the review had not been decided, the cause of action was still continuing. The National Commission also opined that the State Commission had failed to appreciate the above aspect of the matter and consequently fallen in error.

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- c) In view of the above, the National Commission held that the order of the State Commission dismissing the complaint as barred by limitation in view of section 24-A of the Act and also in view of violation of the term of the insurance contract, was not sustainable particularly when the final decision to disclaim the liability to the insured was yet to be taken.
- d) In view of the above, Revision petition was allowed and the impugned order of the State Commission was set aside and the matter was remanded back to the State Commission to decide the appeal on merits after hearing the parties.

vii) Citation:

2014(2) CPR 305.

20. Pavan K. Dagga Vs. Universal Somp General Insurance Co. Ltd. & 2 Ors.

i) Case in Brief:

Petitioner obtained from Future Generali India Insurance Co. Ltd. a policy for the period from 27.09.2008 to 26.09.2009. Thereafter there was a break and according to the Petitioner, renewed policy was taken from Universal Somp General Insurance Ltd. on 16.10.2009. The exclusion Clause in the policy stated as follows: "Hospitalization/ Expenses for any disease which incepts during first 30 days of commencement of this insurance cover except in case of a renewal and/or accidental injuries". The petitioner suffered an injury on 07.11.2009 and 14.11.2009 prior to the expiry of 30 days. He claimed benefit on the ground that his policy was a renewal of the earlier policy. When his claim was repudiated by OP, he filed complaint before the District Forum which decided the case in his favour but an appeal by the OP, the State Commission set aside the District Forum's order. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 19.01.2012 in Appeal No.5042/2010 of the Karnataka State Consumer Disputes Redressal Commission.

iii) Parties:

Pavan K. Dagga

- Petitioner

Vs.

Universal Sompo General Insurance Co. Ltd. & 2 Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1583 of 2012 & Date of Judgement: 09.05.2014.

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 noted that there was a break between two policies and the policies were taken from two different insurance companies. There was no inkling in the second policy that it was a renewal policy. Moreover OP had mentioned that the policy would be renewed on payment of renewal premium but OP had retained the right not to renew the policy under certain circumstances. The Commission noted that the renewal premium was not paid and by no stretch of imagination it could be said that the policy was renewed. The Commission observed that the case came within the exclusion clause and upheld the order of the State Commission. The Revision Petition was accordingly dismissed.

vii) Citation:

Not reported in CPJ and CPR.

21. ICICI Prudential Life Insurance Co. Ltd. Vs. Rajshri Simant Sukale & 2 Ors.

i) Case in Brief:

Mr.Simant D.Sukale (since deceased), the husband of Rajshri, Complainant No.1 availed loan from ICICI Home Finance Co. Ltd. He also obtained two insurance policies from the OP/Petitioner for the loan amount as well as for securing his own life. Unfortunately on 23.05.2009, during the currency of policies, Mr.Simant expired. OP honoured the claim under the policy for securing home loan and paid a sum of only Rs.4,57,888/- to the finance company after considerable delay, but not the interest. OP refused to pay the sum assured of

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Rs.5,00,000/- with regard to the life policy. Complainants approached the District Forum which held the OP liable for unfair trade practice and ordered to pay Rs.25,000/- as compensation and to refund the premium amount of Rs.4,121/- with interest at 15% p.a. from 17.12.2009 and to pay Rs.10,000/- as litigation expenses to the Complainant. Both the parties filed appeals before the State Commission. The State Commission, dismissing the appeal of the OP and partly allowing the appeal of the Complainant, directed OP to pay to the Complainant a sum of Rs.5,00,000/- @ 9% p.a. from 17.12.2009 along Rs.25,000/- for mental agony and Rs.10,000/- as costs. Aggrieved by the said order, OP had filed the present Revision Petition. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 04.03.2014 in Appeal No.973/2011 and 282/2012 of the State Consumer Disputes Redressal Commission, Maharashtra.

iii) Parties:

ICICI Prudential Life Insurance Co. Ltd. - Petitioner

Vs.

Rajshri Simant Sukale & 2 Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1770-1771 of 2014 &

Date of Judgement: 09.05.2014.

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:

It was contended by the OP before the National Commission that the deceased life assured was diagnosed with epato Cellular Carcinoma for the first time during/within the waiting period and hence the claim was denied. The Commission after going through the various Clauses in the agreement, especially Clauses 2 and 5(2) held that waiting period would not be applicable where the claim occurred as a result of death of the life assured. The Commission noted that the Complainant did not ask benefit under Critical illness or Total and Permanent disability due to sickness but she asked benefit towards death claim. It was therefore held that the OP could not take benefit of Clause 5(2) to refund the premium only. It was further held that repudiation of

death claim was a wrong decision and amounted to deficiency in service. The Commission accordingly upheld the order of the State Commission and dismissed the Revision Petition.

vii) Citation:

II (2014) CPJ 744; 2014(3) CPR 83.

22. LIC of India Vs. Yog Raj Chauhan & 2 Ors.

i) Case in Brief:

OP No.1/Respondent No.3 (Shri Thakur Dass) was agent of LIC of India, OP No.2/Petitioner. It was the case of Respondent No.1/Complainant No.1 that he gave Rs.3,00,000/- to OP No.1 on 15.06.2006 and another Rs.3,00,000/- on 13.07.2007 for investment in Future Plus and Market Plus schemes of LIC. OP No.1 invested a sum of Rs.50,000/- each in favour of his two daughters and obtained two policies. He handed over premium receipt dated 24.10.2006 for Rs.1,00,000/- paid by Complainant to LIC for Policy No.151959219 stating that this amount was invested in Market Plus scheme. Latter on LIC, who did not issue the Policy, informed Complainant No.2 that the cheque for the aforesaid policy stood dishonoured and that the receipt may be treated as cancelled. It was alleged by the Complainant that OP No.1 returned Rs.3,00,000/- to the Complainant but some money was not refunded. Alleging deficiency in service he approached the District Forum which allowed the complaint and directed OPs 1 and 2 (LIC of India and its Agent) to pay Rs.1,00,000/- jointly and separately with 9% interest and further directed to recover Rs.1,00,000/- from OP No.1 with cost of Rs.2,000/-. 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. State Commission's order was set aside and District Forum's order modified exonerating the Petitioner from making any payment to the Complainant.

ii) Order appealed against:

From the order dated 14.05.2012 in Appeal No.130/2008 of the Himachal Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

LIC of India

- Petitioner

Vs.

Yog Raj Chauhan & 2 Ors.

- Respondents

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iv) Case No and Date of Judgement:

Revision Petition No.3447 of 2012 & Date of Judgement: 12.05.2014.

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, relying on the judgement of the Hon'ble Supreme Court in Harshad J. Shah and Anr. Vs. LIC of India and Ors. (1997) 5 SCC 64, held that LIC cannot be held responsible for the amount of premium received by the Agent. In the present case nowhere it had been pleaded by the Complainant that LIC by its conduct induced Complainants to believe that the Agent was authorized to receive premium on behalf of Respondent No.2. In such circumstances Petitioner could not have been held liable for refund of the premium amount received by the Agent on behalf of the Petitioner. The Commission therefore held that the District Forum committed error in allowing complaint against the Petitioner up to the extent of Rs.1,00,000/- and the State Commission further committed error in dismissing appeal.
- b) Consequently Revision Petition was allowed and the impugned order of the State Commission was set aside. The order of the District Forum was partly modified and the Petitioner/OP No.2 was exonerated from making any payment to the Complainant.

vii) Citation:

III (2014) CPJ 213; 2014(2) CPR 814.

23. M/s D. D. Tyres Vs. The United India Insurance Co. Ltd.

i) Case in Brief:

The case of the Complainant was that a theft took place in his shop on the night falling between 10-11 April, 2012 and automotive tyres and tubes worth about Rs.3,00,000/- were stolen by some unknown person. Complainant informed OP with whom he had insured the stock. Two Surveyors appointed by the OP assessed the loss. The Second Surveyor arrived at a figure of Rs.1,96,950/-. The District Forum before whom a complaint was filed granted a sum of Rs.1,96,950/- in favour of the Complainant along with interest at 9% p.a. A sum of Rs.1,000/- was

also awarded as cost. Complainant filed an appeal before the State Commission which was dismissed vide impugned order against which the Revision Petition has been filed. Revision Petition partly allowed.

ii) Order appealed against:

From the order dated 08.08.2012 in Appeal No.1649/2007 of the Haryana State Consumer Disputes Redressal Commission.

iii) Parties:

M/s D. D. Tyres

- Petitioner

Vs.

The United India Insurance Co. Ltd.

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4463 of 2012 & Date of Judgement: 15.05.2014.

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 there were two Surveyors' report on record, the first report dated 15.02.2013 was a long detailed report and even the books were checked. The Surveyor had assessed the loss at Rs.2,30,607.12. Thereafter another Surveyor was appointed who gave his report on 13.03.2013. The Commission observed that the OP had placed reliance on the second Surveyor's report without giving any cogent or plausible reason as to why the first Surveyor's report was rejected and why there was need to appoint a second Surveyor. The Commission further observed that out of the two reports the one that favoured the Complainant has to be relied upon.
- b) The Commission noted that the Complainant had failed to bolster his case that he suffered a loss of Rs.3,00,000/- Since there was no solid and unflappable evidence to support his case, the plea of the Complainant was not accepted.
- c) Consequently the Commission modified the orders passed by the fora below and directed OP to pay a sum of Rs.2,30,607.12 with interest at 9% p.a. from the date of filing of complaint.

vii) Citation:

2014(2) CPR 791.

24. Consumer Guidance Society & Anr. Vs. New India Assurance Co. Ltd. & Anr.

i) Case in Brief:

Smt. Dhanalakshmi/Complainant, owner of a Rice Mill, availed insurance policy from the New India Assurance Co. Ltd./OP for a sum of Rs.6,00,000/- for the period from 03.03.2008 to 02.03.2009. The said Rice Mill was completely damaged in the torrential rain on 08-09 August 2008. OP-1 was informed about the damage. Since the claim was not settled despite legal notice, the complaint was filed before the District Forum. The Forum allowed the complaint and directed OPs to pay Rs.4,49,000/- to the Complainant with interest at 9% p.a. and to pay Rs.2,000/- as costs. The State Commission allowed the appeal filed by the OP and dismissed the complaint. Aggrieved by the order of the State Commission the present Revision Petition has been filed by the Complainant. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 19.03.2012 in Appeal No.651/2010 of the State Consumer Disputes Redressal Commission, Andhra Pradesh.

iii) Parties:

Consumer Guidance Society & Anr. - Petitioners

Vs.

New India Assurance Co. Ltd. & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2510 of 2012 & Date of Judgement: 15.05.2014.

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 non-agricultural tax receipt dated 03.04.2008 disclosed that the owner of the property was Chilkuri Raghavendra Rao and that there was no document to show that the ownership of the property was transferred in the name of the Complainant. Hence on the date of insurance the property was in the name of Chilkuri Raghavendra Rao and the Complainant had no insurable interest at the time of the policy.

- b) The Commission further noted that as per condition No.3 of the policy, it was the duty of the insured to inform the insurer if the mill was closed for 30 days or more which was not done in this case. The Surveyor had opined that due to poor maintenance of mill premises, it had collapsed due to heavy rains.
- c) The Commission observed that the Complainant did not produce Gazette notification issued by AP Government showing flood affected village in which the rice mill was situated.
- d) The Tahsildar/Revenue office report did not show the extent of damage to the rice mill of the Complainant.
- e) Consequently it was held that there was no merit in the Petition and it was accordingly dismissed.

vii) Citation:

IV (2014) CPJ 102.

(ac) LEGAL SERVICES

1. Ramesh Chauhan Vs. Mohinder Singh Kanwar

i) Case in Brief:

It is the case of the Complainant/Petitioner that he had filed civil suit in the Court of Civil Judge, Shimla in the year 2006 and engaged OP/ Respondent as an advocate and paid Rs.10,000/- as fees. OP committed acts of deficiency in service while pursuing his suit and in such circumstances complainant engaged another counsel in the year 2008. It was alleged that OP tried to get the suit compromised without his consent, did not place on record all the documents, did not appear in the court and refused to issue NOC for engaging another counsel. Alleging deficiency on the part of OP, he filed complaint before the District Forum. The Forum after hearing the parties dismissed the complaint. Appeal filed by the Petitioner was also 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 19.11.2013 in Appeal No.211/2013 of the Himachal Pradesh State Consumer Disputes Redressal Commission.

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iii) Parties:

Ramesh Chauhan - Petitioner

Vs.

Mohinder Singh Kanwar - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1270 of 2014& Date of Judgement: 17.04.2014.

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 State Commission's order clearly revealed that as per authorization in the power of attorney, Respondent was authorized to compromise the suit without the consent of the Petitioner and further observed that the suit was not compromised. As regards the allegation of non-submission of documents the State Commission had observed that all the documents supplied by the Complainant were submitted by OP before the Court. It was further observed that Complainant himself had appeared before the Civil Judge on 05.08.2008 and sought time for engaging a new counsel. It was therefore not obligatory on the part of OP to appear before Civil Judge on 05.08.2008. The State Commission also observed that the new counsel appeared before the Civil Judge on 08.08.2008 which showed that OP had no objection in engaging new counsel by the Complainant.
- b) The National Commission held that the Revision Petition had been filed without any basis just to waste time of the Commission and with an intention to harass the Respondent.
- c) Consequently the Revision Petition was dismissed with cost of Rs.5,000/- to be paid within four weeks to the Consumer Legal Aid Account of the Commission.

vii) Citation:

II (2014) CPJ 486; 2014(2) CPR 549.

(ad) LIFE INSURANCE

1. Mrs. Shynni Valsan Pombally Vs. State Bank of India & Anr.

i) Case in Brief:

Complainant's husband, late Valsan Shankaran Pombally, had taken a housing loan Rs.10 lakhs in January 2008 from State Bank of India repayable in 222 monthly installments of Rs.10,131/- each. Complainant stood as guarantor for the repayment of the said loan. He had also taken a group insurance policy known as SBI Life Super Suraksha, from SBI Life Insurance Company Ltd. (Respondent No.2) meant for housing loan borrowers of the State Bank of India as a protection cover in the event of death of the borrower. Before obtaining the policy the Complainant's husband had submitted a consent-cum-authorization-cum health declaration on 04.02.2008. A health questionnaire was also signed by the deceased on 04.02.2008. The insured died on 07.11.2008 after undergoing treatment at Manipal and Mangalore Hospitals for "cirrhosis of liver with hepatic failure with hepato-renal shutdown". Complainant's claim was disallowed by the insurance company on the ground that the deceased had given a false "good health" certificate. Complainant approached the District Forum which allowed the complaint and directed Respondent No.2 to pay to the Complainant a sum of Rs.10 lakhs along with compensation of Rs.50,000/- on account of financial loss, mental tension and agony suffered by her and sum of Rs.20,000/- as cost of litigation. The appeal preferred by the OPs was allowed 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 04.07.2013 in F.A.No.28/2013 of the Goa State Consumer Disputes Redressal Commission.

iii) Parties:

Mrs. Shynni Valsan Pombally - Petitioner

Vs.

State Bank of India & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3947 of 2013 & Date of Judgement: 13.01.2014.

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 law enjoins on the insured an absolute duty to disclose correctly all material facts which are within his personal knowledge or which he ought to have known had he made reasonable enquires. Relying on the judgment of the Hon'ble Supreme Court in *Satwant Kaur Sandhu Vs. New India Assurance Co. Ltd.*, (2009) 8 SCC 316, it was observed that any fact, which goes to the root of the contract of insurance and has a bearing on the risk involved would be "material" and if the proposer has knowledge of such fact, he is obliged to disclose it, particularly while answering questions in the proposal form. In the present case, the insured had replied in the negative to questions whether he had been treated for or told that he was suffering from diabetes and whether he had been treated or told that he had any liver disease. The Commission noted that the deceased was suffering from "diabetes mellitus" for which he was on regular medication for over three years. It was not possible to even comprehend that the insured would not know that he was suffering from diabetes as stated by him in answer to question number 3. It was held that it was a material fact within the knowledge of the insured only and he was obliged to disclose the same correctly in the questionnaire. Since he had suppressed the said fact, it was held that the insurance company was within its rights to repudiate the claim of the Complainant and therefore there was no deficiency of service on their part.
- b) The Commission held that the impugned order did not suffer from any illegality or irregularity to warrant interference and dismissed the Revision Petition.

vii) Citation:

I (2014) CPJ 387; 2014(1) CPR 429.

2. Life Insurance Corporation of India Vs. Smt. Shankravva

i) Case in Brief:

The daughter of the Respondent/Complainant had taken an insurance policy for an assured sum of Rs.30,000/- in October, 2005 on payment of first premium of Rs.1,522/-. The premium was to be paid on yearly basis. Though the Complainant's daughter was married, she had

nominated the Complainant as beneficiary under the policy. On 08.06.2006 Complainant's daughter was murdered. The deceased left behind a minor female child aged about 7 years who was in the custody of the Complainant. The insurance claim filed by the Complainant was not honoured by the Petitioner. A consumer complaint was filed which was allowed by the District Forum. OP's appeal was dismissed by the State Commission vide impugned order, against which the present Revision Petition had been filed. Revision Petition allowed with some modification of the State Commission's order.

ii) Order appealed against:

From the order dated 05.06.2012 in First Appeal No.862/2012 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore.

iii) Parties:

Life Insurance Corporation of India - Petitioner

Vs.

Smt. Shankravva - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3559 of 2012 & Date of Judgement: 22.01.2014.

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 ground on which the claim was repudiated was that as per Clause 4 (B) of the Insurance Policy, the nominee was entitled only to the return of the premium. The Commission on bare reading of Clause 4 (B) of the Insurance Policy held that it was clear that if the life assured died as a result of an accident other than an accident in a public place or murder within three years from the date of commencement of insurance policy, the liability of the Petitioner Corporation is limited to the amount paid by the assured by way of premium under the policy. In the instant case, admittedly, life assured died homicidal death on 08.06.2006 i.e. within one year of the date of commencement of the insurance policy. The Commission held that both the fora below were wrong in allowing the complaint of the Respondent to the extent of the amount for which the assured insured her life. It was further held that the liability of the insurance company, in view of Clause 4 (B) of the Insurance Contract, was restricted only up to the amount of premium paid by the assured.

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- b) The Commission noted that the Petitioner Company offered to pay the amount of premium vide its letter dated 04.01.2011 and wondered why the Company took almost five years to offer the return of the premium paid by the assured. The delay in making the offer was held to be deficiency in service for which the Petitioner was required to compensate the Complainant.
- c) The Commission partly allowed the Revision Petition and modified the impugned order directing the Petitioner to pay Rs.1522/- along with compensation of Rs.10,000/- for mental trauma and harassment caused.

vii) Citation:

I (2014) CPJ 291; 2014(1) CPR 359.

3. Smt. Devamma Vs. Branch Manager, LIC

i) Case in Brief:

Complainant's husband took two life insurance policies of Rs.50,000/- each from OP. Complainant/Petitioner was the nominee in both the policies. The policy holder, Kempaiah, died on 06.07.2009. The Complainant/Petitioner claimed the insurance amount from OP by furnishing relevant documents. While OP settled the claim with respect to policy No.720799225, the claim in respect of the other policy bearing No.724020986, was repudiated on the ground that the policy holder had suppressed material information at the time of obtaining the policy. The District Forum, before whom a complaint was filed, dismissed the complaint. The appeal filed before the State Commission was also dismissed, vide impugned order, against which the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 09.08.2012 in First Appeal No.3808/2011 of the Karnataka State Consumer Disputes Redressal Commission.

iii) Parties:

Smt. Devamma	-	Petitioner
	Vs.	
Branch Manager, LIC	-	Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4323 of 2012 & Date of Judgement: 30.01.2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986 and Section 45 of the Insurance Act, 1938.

vi) Issues raised and decided:

- a) The Commission noted from the records that the policy bearing No.724020986 commenced with effect from 28.11.2007 and the husband of the Petitioner died on 06.07.2009, i.e. after a period of one year, seven months and eight days after taking the policy. It was also noted from evidence of the doctor that the deceased was a cancer patient and had taken treatment at Mandya Institute of Medical Sciences, Mandya from 20.11.2007. From the answers given by the policy holder in the proposal form, it was evident that he had concealed the above material information before taking the policy in question.
- b) The Commission observed that as per the provision contained in Section 45 of the Insurance Act, 1938, if a period of two years had passed after obtaining the insurance policy, the policy cannot be called in question on ground of misstatement and unless the insurer shows that material facts had been suppressed with a fraudulent motive. In the present case, the death occurred before the expiry of two years from the date of commencement of policy. It was held that the insurance company was therefore well within its rights to repudiate the claim upon discovery that correct information was not given at the time of obtaining the policy.
- c) The Commission did not find any infirmity, illegality or jurisdictional error in the order passed by the State Commission and the District Forum and upheld the orders. The Revision Petition was dismissed.

vii) Citation:

II (2014) CPJ 3; 2014(1) CPR 328.

4. Max New York Life Insurance Co. Ltd. Vs. Amresh Reddy

i) Case in Brief:

Smt. Shardhamma, the mother of the Complainant took a life insurance policy for the sum assured of Rs.4,65,034/- from Max New York Life Insurance Co. Ltd. (OP). The commencement of risk was from 22.05.2009. The Complainant was a nominee of the said policy. Smt.

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Shardhamma died on 11.11.2009. Complainant's claim was repudiated by OP on the ground of suppression of material fact relating to pre-existing disease. Alleging deficiency in service Complainant approached the District Forum which partly allowed the complaint and directed OP to pay Rs.4,65,034/- with interest at 6% p.a. from the date of complaint along with Rs.1,000/- towards litigation expense. OP's appeal 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 30.05.2011 in Appeal No.1198/2011 of the Karnataka State Consumer Disputes Redressal Commission.

iii) Parties:

Max New York Life Insurance Co. Ltd. - Petitioner(s)

Vs.

Amresh Reddy - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.610 of 2012 & Date of Judgement: 05.02.2014.

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 from perusal of District Hospital medical records that the deceased was suffering from heart valve ailments (RHD) prior to taking the policy which amounted to material medical non-disclosure. The Commission cited the case of *Satwant Kumar Sandhu Vs. New India Assurance Co. Ltd.* (2009) 8 SCC 315 in which the Hon'ble Supreme Court had observed that in any contract of insurance, any fact which would influence the mind of a prudent insurer in deciding whether to accept the risk is a material fact. If the proposer has knowledge of such fact, he is obliged to disclose it particularly while answering the questions in the proposal form. In *PC Chacko and Anr. Vs. Chairman, Life Insurance Corporation of India and Ors.* (2008) 1 SCC 321, the Supreme Court had upheld repudiation of contract of insurance on the ground of non-disclosure and mis-statement in the proposal form to the various questions to which answers were given by the insured. In the light of

the above decisions the Commission set aside the orders of the fora below, allowed the Revision Petition and dismissed the complaint.

vii) Citation:

II (2014) CPJ 67.

5. Kuldip Studley Vs. ICICI Prudential Life Insurance Co. Ltd. & Ors.

i) Case in Brief:

It is the Petitioner's case that she took two insurance policies, one in her name and in the name of her two minor children through Respondent No.2 (Branch Manager, ICICI Prudential Life Insurance) and another in the name of her husband Sh.Nigel Studley along with her minor daughter aged 5 years through Respondent No.3 (Area Manager, Bharti Airtel Ltd.). She gave two cheques drawn on HSBC Bank for Rs.36,000/- each to Respondent No.3. She received a policy No.12339976 for Rs.36,000/- on 02.08.2009 only in her name. The names of her husband or the children were not included. She claimed that she had paid Rs.72,000/- to have one time policy for the whole family. Alleging deficiency in service, she filed a consumer complaint which was dismissed by the District Forum. Her appeal to the State Commission was also dismissed vide impugned order against which the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 06.04.2011 in Appeal No.10/2011 of the State Consumer Disputes Redressal Commission, Chandigarh.

iii) Parties:

Kuldip Studley - Petitioner

Vs.

ICICI Prudential Life Insurance Co. Ltd. & Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1607 of 2011 & Date of Judgement: 06.02.2014.

v) Acts and Sections referred:

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

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vi) Issues raised and decided:

The main grouse of the Petitioner was that the Respondents did not cover the entire family of the Petitioner under the life insurance scheme despite having received premium of Rs.72,000/- for insuring the entire family. The Commission after going through the orders passed by the District Forum and State Commission observed that in respect of one policy she had paid the annual premium of Rs.36,000/- nominating her husband as the nominee in the proposal form. There was nothing to show that she intended to obtain two policies. It was further observed that in case the appellant was not satisfied with the terms of the policy issued to her, she could revoke the same within 15 days, the free look period, from the date of receipt of the policy documents. However she failed to revoke the policy within the free look period. The National Commission noted that there were concurrent findings of facts to the effect that the proposal form was only for the Petitioner alone and not for the family members. The Commission did not find any illegality or infirmity in the order passed by the State Commission and upheld the same. The Revision Petition was dismissed as devoid of merit.

vii) Citation:

I (2014) CPJ 561.

6. LIC of India Vs. Archana Dayanand Vakade

i) Case in Brief:

Complainant's husband had obtained two insurance policies from OP/LIC for sums assured of Rs.1,00,000/- and Rs.2,00,000/- which were issued on 08.02.2007 and 02.03.2007 respectively. Complainant's husband died a natural death on 28.02.2008. However Complainant's claim was repudiated by LIC on the ground that the insured had withheld material information regarding his health at the time of taking the policies and had given wrong answers to some questions. The consumer complaint filed by the Complainant was allowed by the District Forum and LIC was directed to pay the insured amount along with interest at 9% p.a. from 03.07.2009 and Rs.1,000/- as cost of litigation. Appeal filed by the OP was dismissed by the State Commission vide impugned order against which the present Revision Petition had been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 29.08.2012 in Appeal No.442/2011 of the Maharashtra State Consumer Disputes Redressal Commission.

iii) Parties:

LIC of India - Petitioner

Vs.

Archna Dayanand Vakade - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4822 of 2012 & Date of Judgement: 07.02.2014.

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, on the basis of the available record, that the insured remained admitted in hospital from 16.08.2006 to 22.08.2006 on complaint of giddiness/headache etc. A CT scan was done upon him and as per its report he was found to be suffering from right temporal hematoma. These facts had not been disclosed by the insured while filing the proposal form. His answers to questions relating to admission to any hospital or nursing home and ailments pertaining to liver, stomach, heart, brain etc., had been wrongly given which amounted to suppression of material information. Relying on the judgments of Hon'ble Supreme Court in *Satwant Kaur Sandhu Vs. New India Assurance Co. Ltd.* (2009) 8 SCC 316 and *C.Chacko & Anr. Vs. Chairman LIC of India & Anr.* (2008) 1 SCC 321, the Commission held that a contract of insurance is a contract of good faith on the part of the assured and that non-disclosure of material facts may enable the insurer to repudiate its liability under the policy. It was held that in the present case the insurance company was well within its rights to repudiate the claim. Consequently the Revision Petition was allowed and the orders of the fora below were set aside. The consumer complaint was dismissed.

vii) Citation:

I (2014) CPJ 587; 2014(1) CPR 454.

7. LIC of India & Anr. Vs. S.S. Jamuna

i) Case in Brief:

The husband of the Respondent/Complainant had obtained an insurance policy on 10.03.2005 for a sum of Rs.50,000/-. He had paid three installments of the half-yearly premium of Rs.1,673/- each. He died on 29.03.2006. The claim submitted by the Complainant for the insured amount was repudiated by OP on the ground that the insured had intentionally suppressed real facts and had violated the terms of the policy. The District Forum before whom complaint was filed dismissed the same. However Respondent's appeal was allowed by the State Commission which directed OP to pay the Complainant the assured sum of Rs.50,000/- along with interest at 6% p.a. from the date of complaint till realization. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition allowed. The State Commission's order was set aside and the District Forum's order was upheld. The complaint was dismissed.

ii) Order appealed against:

From the order dated 18.03.2008 in Appeal No.2308/2007 of the Karnataka State Consumer Disputes Redressal Commission.

iii) Parties:

LIC of India & Anr.	Vs.	- Petitioners
S.S. Jamuna		- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2770 of 2008 & Date of Judgement: 17.02.2014.

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 after going through the medical records produced by the Petitioners found that the life assured was taking treatment prior to the date of taking the policy which was 10.03.2005. On 03.02.2005, he had visited Holy Cross Hospital, Chikmagalur for heart burn in the abdomen for the last two months as also pain while passing urine. He was also a smoker. He was advised to quit smoking. Based on the Gastroscopey on 24.02.2005 he was diagnosed as suffering from Distal Oesophagitis

and AC Duodenitis. From the medical records on file it was quite apparent that he was suffering from pain in the abdomen, backache, heart burn, fatigue and vomiting and epigastric tenderness and continued to take treatment for the same till his death on 29.08.2006. As per the medical records, he had also undergone surgery at a Bangalore Hospital. In view of the above facts, the Commission held that the life assured had evidently withheld information with regard to his true state of health prior to his death. It was also evident that he had not died accidentally as given in the complaint by the Respondent. Hence as per Clause 6 of the conditions of the policy, it was held that the Petitioner had rightly repudiated the claim of the Complainant.

- b) Consequently the Revision Petition was allowed, the State Commission's order was set aside and the District Forum's order was upheld. The complaint was dismissed.

vii) Citation:

I (2014) CPJ 496; 2014(2) CPR 7.

8. Bharti & 5 Ors. Vs. Manager, Bajaj Allianz Life Insurance Co. Ltd. & Anr.

i) Case in Brief:

One Shri Ramappa, husband of Complainant No.1 and father of Complainants 2 to 6 took insurance policy from OP/Respondent on 13.06.2008 for a sum of Rs.9,45,000/- and paid premium of Rs.35,000/-. The said Ramappa died on 12.09.2008 due to cardiac arrest. Complainants filed claim before OP which was repudiated on the ground of misrepresentation of age and fake documents. Alleging deficiency in service, Complainant/Petitioner filed complaint before the District Forum which was dismissed. Appeal filed by the Complainant before the State Commission was also dismissed, vide impugned order against which the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 09.07.2012 in Appeal No.40/2011 of the Karnataka State Consumer Disputes Redressal Commission.

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iii) Parties:

Bharti & 5 Ors.

- Petitioners

Vs.

Manager, Bajaj Allianz Life Insurance Co. Ltd. & Anr.- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.4289 of 2012 & Date of Judgement: 18.02.2014.

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 deceased had given his age as 35 at the time of taking policy whereas he was 46 years old. He had further mentioned in the proposal form that he was having only two children whereas in the complaint five children had been impleaded as sons and daughters of the deceased. Since the insured had obtained the policy by misrepresentation of age and family members, the policy became null and void and it was held that the District Forum had not committed any error in dismissing the complaint.
- b) The Commission observed that the State Commission had inadvertently mentioned suppression of pre-existing disease, whereas suppression of number of children was to be mentioned but order passed by the State Commission was held to be in accordance with law.
- c) The Commission found no irregularity, illegality or jurisdictional error in the impugned order and dismissed the Revision Petition.

vii) Citation:

I (2014) CPJ 502; 2014(1) CPR 722.

9. LIC of India & Anr. Vs. Chandra Shekhar

i) Case in Brief:

Sangeeta, wife of Complainant/Respondent obtained a policy for Rs.1,00,000/- from OP/Petitioner on 28.08.1997. Unfortunately she died on 29.04.1999. Complainant's claim was repudiated by OP on the ground that the policy holder died under mysterious circumstances. Alleging

deficiency in service Complainant approached the District Forum which allowed the complaint and directed OP to pay Rs.1,00,000/- with 9% interest p.a. and cost of Rs.5,000/-. 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 04.03.2008 in Appeal No.306/2005 of the Delhi State Consumer Disputes Redressal Commission.

iii) Parties:

LIC of India & Anr.

- Petitioners

Vs.

Chander Shekhar

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2561 of 2008 & Date of Judgement: 11.03.2014.

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 perusal of Clause 4B of the policy made it clear that if within a period of 3 years from taking the policy, death of assured occurs as a result of intentional self injury, suicide, accident other than an accident in a public place, LIC's liability will be limited to the sum equal to the total amount of premium paid under the policy without interest.
- b) The Commission found that the Complainant and his father had filed an affidavit that the deceased met with an accident while returning from a marriage party in the intervening night of 28.04.1999 and 29.04.1999 and was taken by some passers-by to Jaina Hospital and was shifted to Maharaja Agarsen Hospital the next day. However there was no mention of such an accident in the complaint. No FIR was filed regarding the accident. In his statement to the LIC, Complainant had mentioned had Sangeeta fell down in the bathroom which caused immediate death due to neck born fracture. The Commission also found that the deceased was taken from Jaina Hospital against medical advice and she was brought to Maharaja Agarsen Hospital only after death. No

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post-mortem was placed on record. In such circumstances the Commission held that it cannot be believed that Sangeeta died due to injuries sustained in road accident. The Commission also held that Complainant was entitled to only premium paid by the assured and not the policy amount. It was further held that both the District Forum and the State Commission had committed error in allowing complaint fully.

- c) Consequently the Revision Petition was allowed and the impugned order passed by the State Commission as well as the District Forum were set aside. It was held that Complainant was entitled to refund of premium paid by assured to OP.

vii) Citation:

II (2014) CPJ 210; 2014(2) CPR 240.

10. Life Insurance Co. of India Vs. Help Line Grahak Mandal & Anr.

i) Case in Brief:

Mukesh Patel, husband of the Complainant No.2/Respondent No.2 obtained insurance policy for Rs.5,00,000/- on 30.11.2000 from OP/petitioner. Mukesh Patel died on 13.12.2000. Complainant preferred claim before OP, which was repudiated on the ground of suppression of illness in proposal form. Alleging deficiency on the part of OP, complainant filed complaint before District Forum which directed OP to pay Rs.5,00,000/- along with interest @ 9% p.a. and further allowed Rs.3,000/- towards cost of proceedings. Appeal filed by the petitioner was dismissed by State Commission by impugned order against which, this revision petition had been filed. Revision Petition allowed.

ii) Order appealed against:

Against the Order dated 19.09.2011 in Appeal No.244/2008 of the State Commission Gujarat.

iii) Parties:

Life Insurance Co. of India - Petitioner

Vs.

Help Line Grahak Mandal & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.4240 of 2011 & Date of Judgement: 11.03.2014.

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 health of the insured was not good and he was admitted in the hospital just prior to obtaining insurance policy; even then, he suppressed material fact regarding his health and illness and previous treatment and in such circumstances, OP had not committed any error in repudiating claim. The judgment of the Hon'ble Apex Court reported in *Satwant Kaur Sandhu Vs. New India Assurance Co. Ltd.* (2009) 8 SCC 316, wherein it was held that the assured is under a solemn obligation to make a true and full disclosure of the information on the subject which is within his knowledge, was cited in this context. Obligation to disclose extends only to facts which are known to the applicant and not to what he ought to have known. Whether the information sought for is material for the purpose of the policy is a matter not to be determined by the proposer.
- b) In the case in hand, although insured was aware of the fact that he was suffering from chronic diabetes and renal failure, he did not disclose the said fact in the proposal form for the policy. Hence, it was held that the Petitioner had not committed any deficiency in repudiating claim on account of suppression of material fact while taking policy from the Petitioner.
- c) In view of the above, the present revision petition was allowed and the orders of the fora below were set aside and the complaint stood dismissed.

vii) Citation:

II (2014) CPJ 176; 2014(2) CPR 232.

11. Life Insurance Corporation of India Vs. C.Venkataramudu

i) Case in Brief:

Sh.C.Venkataramudu, the Complainant took Asha Deep Policy, from Life Insurance Corporation of India/OP for the sum assured Rs.2,00,000/-.

As per the policy conditions, if the life assured is hospitalized, because of cancer, paralysis, heart and kidneys ailment, then the said Insurance Corporation will pay 50% of the sum assured i.e. Rs.1,00,000/- to the policy holder. The proposal form was submitted on 10.05.2002. On 25.9.2003, complainant had undergone a By Pass Surgery at Sri. Satya Sai Institute of Medical Sciences, and thereafter, filed a claim with the OP. The claim was repudiated on the ground that, the Complainant suppressed the material fact and took treatment after submitting the proposal form, but before paying the first premium. The complainant suppressed about his consultation with Cardiologist for CAG. Aggrieved by the repudiation, Complainant filed a complaint before the District Forum which dismissed the complaint. Against the order of District Forum, the Complainant preferred an appeal before the State Commission which allowed the appeal and set aside the order of District Forum and ordered that the Complainant was eligible for 50% of the sum assured i.e. Rs.1,00,000/- @ 9% p.a., from the date of complaint and costs of Rs.3,000/-. Aggrieved by the order of State Commission, the OP/Petitioner filed the present revision petition. Revision Petition allowed.

ii) Order appealed against:

Against the Order dated 21.02.2013 in Appeal No.25/2012 of the State Commission Andhra Pradesh.

iii) Parties:

Life Insurance Corporation of India - Petitioner

Vs.

C.Venkataramudu - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2241 of 2013 & Date of Judgement: 11.03.2014.

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 declaration given by the Complainant, on 28.08.2002 found that the answers given under the heading of additional Personal History have been falsely declared. The Commission also found that the complainant, being a RMP himself, deliberately suppressed such material fact, about Cardiology Consultation and knowingly, paid First Premium.
- b) Therefore, the Commission was of the view that under the terms and conditions of the said policy, it was the duty of the proposer to give correct answers to all the questions, in the proposal form with regard to state of health, as the contract of insurance, unlike other contracts, is based on utmost good faith and in the event of any false statement or concealment of material facts, by the proposer/life assured, the same is rendered, null and void, *ab initio*. The sole responsibility of filling complete proposal form is on the proposer. It is also the responsibility of the proposer to read and understand the forms, before signing the same.
- c) In view of the above, the Commission set aside order passed by State Commission and dismissed the complaint. The revision petition filed by the Petitioner was allowed.

vii) Citation:

II (2014) CPJ 190.

12. LIC of India Vs. Veena & Ors.

i) Case in Brief:

Sri Manje Gowda, an agriculturist and husband of Complainant No.1/ Respondent No.1 and father of Complainants/Respondents 2 and 3 took an insurance policy for Rs.1,00,000/- on 27.04.2001 from OP/Petitioner. Manje Gowda expired on 14.04.2003. The claim submitted by the Respondents was not settled on the ground that death occurred within two years from the date of policy and the insured suffered from Ischemic heart disease for about a year and ten months before issuance of policy, took treatment in different hospitals but suppressed the fact in the proposal form. Complainants approached the District Forum with a complaint which was allowed and the OP was directed to pay Rs.1,00,000/- with 10% p.a. interest along with Rs.5,000/- for mental

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agony and Rs.2,000/- 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.

ii) Order appealed against:

From the order dated 19.11.2007 in Appeal No.223/2007 of the Karnataka State Consumer Disputes Redressal Commission.

iii) Parties:

LIC of India - Petitioners

Vs.

Veena & Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1184 of 2008 & Date of Judgement: 14.03.2014.

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 records produced by the Petitioner noted that the life assured had replied in the negative to some of the queries relating to his health in the proposal form whereas it was evident that he had consulted a cardiologist on 06.07.1999 and was diagnosed to have Ischemic heart disease. He had also undergone treatment in KMC Hospital, Manipal in December 1999 and in Nanjappa Hospital in April 2000. It was held that the insured had given false answers, wrong declaration and obtained the policy fraudulently and that the Petitioner had not committed any error in repudiating claim.
- b) The Commission observed that even if it is presumed that the cause of death had no nexus with the disease suffered by the insured, the Complainants were not entitled for any claim as held by the Commission in II (2007) CPJ 51 (NC) *LIC of India Vs. Kishan Chander Sharma* as there was clear suppression of material facts regarding the health of the insured.
- c) The Commission held that the Complainants had not come with clean hands and that the District Forum committed error in

allowing the complaint and the State Commission committed further error in dismissing the appeal. The Revision Petition was accordingly allowed and the orders of the fora below were set aside.

vii) Citation:

II (2014) CPJ 95; 2014(2) CPR 127.

13. Rajender Singh Vs. LIC of India & Anr.

i) Case in Brief:

Petitioner/Complainant got his son Pawan Kumar, a minor, insured with the Respondents for Rs.70,000/-. Unfortunately Pawan Kumar died on 15.03.2007. OPs refunded only an amount of Rs.8,295/- to the Complainant because as per the terms and conditions of the policy only premium paid before the deferred date was refunded. Complainant approached the District Forum which allowed the complaint and directed OPs to pay full insured value along with other benefits and interest at 12% p.a. from the date of death of life assured till its realization and also Rs.2,200/- as litigation charges. Appeal filed by the OPs was allowed by the State Commission on the premise that the insurance policy was to commence after the child attained 7 years of age and dismissed the complaint. Aggrieved by the order of the State Commission the present Revision Petition had been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 22.02.2013 in Appeal No.36/2013 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

Rajender Singh

- Petitioner

Vs.

LIC of India & Anr.

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2215 of 2013 & Date of Judgement: 19.03.2014.

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 policy in which the date of commencement was shown as 28.11.2004 and the deferred date was mentioned as 28.11.2007. The Commission found the special provisions of the policy very confusing. The Counsel for OP was unable to specify the correctness of applicability of “deferred date”. The Petitioner contended that the special provisions on which the Respondent relied were neither read over to the Petitioner nor was there any evidence that these were brought to the notice of the Petitioner. The Counsel for the Complainant relied upon the Judgment of the Commission in *Murali Agro Products Vs. Oriental Insurance Co. I* (2005) CPJ 1 (NC) wherein it was held that it is the duty of the insurer to disclose all material facts in their knowledge and that if the contract is vague, benefit should be given to the insured. It was further held that the exclusion term of the insurance policy must be read down so as to serve the main purpose of policy. In *Devi alias Rita Gupta Vs. National Insurance Co. Ltd.* 2008 (1) CLT Page 70, it was held that in case of insurance claim when two reasonable interpretations of the terms of the policy are possible, the interpretation which favours the insured is to be accepted and not the interpretation which favours the insurer.
- b) In the instant case, the Commission held that the OPs miserably failed to point out that any such terms and conditions were explained to the Complainant who represented the insured. It was held as deficiency in service by the OP.
- c) Accordingly the impugned order was set aside, the Revision Petition was allowed and the order of the District Forum was restored.

vii) Citation:

II (2014) CPJ 194; 2014(3) CPR 267.

14. Megarathi Malik Vs. LIC of India & Anr.

i) Case in Brief:

Complainant/Appellant’s uncle Vinod Kumar obtained an insurance policy from OP/Respondent for a sum of Rs.10 lakhs on 28.03.2003 and Complainant was the nominee in the policy. Assured died in a road

accident on 17.05.2003. Complainant's claim was repudiated by the OP on the ground of deliberate misstatement and withholding correct information regarding income. Alleging deficiency on the part of the OP, Complainant filed complaint before the State Commission. OP resisted complaint and submitted that the brother of the deceased reported that Vinod Kumar did not die in an accident but he was murdered and his annual income was only Rs.55,000/-. It was further submitted that insurance for a huge sum was taken by insured with mala fide intention and the claim involved complicated and complex questions of fact which cannot be adjudicated in summary proceedings. The State Commission after hearing both parties dismissed complaint and allowed Complainant to seek remedy from the competent court of civil jurisdiction. The present appeal had been filed challenging the said order. Appeal dismissed.

ii) Order appealed against:

From the order dated 10.06.2009 in Complaint No.5/2005 of the Uttaranchal State Consumer Disputes Redressal Commission.

iii) Parties:

Megarathi Malik

- Appellant

Vs.

LIC of India & Anr.

- Respondents

iv) Case No and Date of Judgement:

First Appeal No.277 of 2009 & Date of Judgement: 21.03.2014.

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 the State Commission had detailed several glaring aspects of the case and observed that the claim of insurance involved complicated and complex questions of fact, which are pregnant with meaningful suspicion and therefore the complaint, based on such facts cannot be adjudicated in summary proceedings. The State Commission had also observed that one Dr. Prem Chand Shastri, one of the three brothers of the deceased, had during investigation by the LIC averred in an

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affidavit that the life assured was unmarried and was treated and kept like a domestic servant by another brother Vijender, whose son is the Complainant nominee and that probably the death of life assured was homicidal and not as a result of injuries in the accident.

- b) The National Commission relying on the decision of the Commission in Complaint No.217 of 2006 *Bhagwanji D. Patel & Anr. Vs. The Chairman and Managing Director, Indian Bank*, decided on 06.05.2011 had rightly dismissed complaint and directed complainant to approach Civil Court of competent jurisdiction.
- c) Looking to the complex question of death of assured in mysterious circumstances and other factors mentioned in the order of the State Commission, the National Commission held that there was no illegality in the order and accordingly dismissed the appeal.

vii) Citation:

II (2014) CPJ 164; 2014(2) CPR 151.

15. Mangal Singh Vs. Life Insurance Corporation of India & Ors.

i) Case in Brief:

The Complainant, Sh. Mangal Singh, a retired BSF Constable, during his service took a life insurance policy, through his department from the OP-1, LIC of India, for a sum of Rs.2,000/- dated 20.02.1970 for a 15 year term. The policy was to mature on 20.02.1985. The complainant authorized the Commandant, 21st Battalion, BSF, HQ Dera Baba Nanak (OP-2) to deduct the monthly premium from April 1970 and same be deposited with LIC- OP-1. The said policy got matured on 20.02.1985, but nothing was paid to the complainant. Hence, the Complainant filed a complaint before District Forum which directed the LIC to make payment of the maturity amount, along with interest @ 9% per annum, from the date of maturity, till payment and compensation of Rs.25,000/- and costs of Rs.5,000/-. The OP.1/LIC filed the First Appeal before the State Commission which partly allowed the appeal and set aside the compensation of Rs.25,000/- on the ground that interest and compensation cannot be awarded together. Aggrieved by the State Commission's order the present revision petition has been filed. Revision Petition allowed.

ii) Order appealed against:

Against the Order dated 17.01.2013 in Appeal No.1039/2010 of the State Commission Punjab.

iii) Parties:

Mangal Singh - Petitioner

Vs.

Life Insurance Corporation of India & Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2823 of 2013 & Date of Judgement: 01.04.2014.

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 the LIC had unnecessarily dragged the matter for a meagre maturity amount of Rs.2,000/-, for more than two decades. The Commission opined that it was absolutely improper and unfair.
- b) Considering the Complainant's poor condition, the Commission held that he deserved sufficient compensation for his suffering and for the deficiency in service due to the conduct of OP.1. Therefore, the Commission restored the entire order of the District Forum along with additional punitive cost of Rs.25,000/- to be paid by the Petitioner to the Complainant and thus the present revision petition was allowed and the order of the State Commission was set aside relying 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].

vii) Citation:

II (2014) CPJ 427; 2014(2) CPR 342.

16. Kishore Prasad Vs. LIC of India

i) Case in Brief:

Petitioner/Complainant obtained a Life Insurance Policy for a sum of Rs.20,000/- on 02.08.1986 through an agent. The term of the policy was

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20 years and monthly premium was Rs.158.60. Later the mode of premium payment was changed from monthly to half-yearly basis. Complainant surrendered the policy on 16.11.1993. He claimed that he had paid premium till 02.08.2006 amounting to Rs.11,426/- and that the Respondent failed to return the money. Alleging deficiency in service he filed consumer complaint. The Respondent stated that the surrender value of the insurance policy was Rs.5,528/- and that the maturity value was wrongly mentioned as Rs.11,423/- due to clerical error in the letter dated 18.07.2006. The District Forum accepted the statement of the Respondent but did not accept the plea of the Respondent that the surrender value of Rs.5,528/- had already been paid to the Complainant. The Forum directed the Respondent to pay to the Complainant a sum of Rs.5,528/- with 9% simple interest with effect from 16.11.1993 besides compensation of Rs.20,000/- and litigation charges of Rs.5,000/-. Petitioner's appeal 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 05.11.2012 in Appeal No.160/2011 of the State Consumer Disputes Redressal Commission, Delhi.

iii) Parties:

Kishore Prasad

- Petitioner

Vs.

LIC of India

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.414 of 2013 & Date of Judgement: 11.04.2014.

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 Respondent, in the written statement, had explained that the figure of Rs.11,423/- as maturity value was the result of clerical error while the actual value, as per rules, was Rs.5,528/-. Pursuant the direction of the Commission, an officer of the LIC also filed an affidavit along with calculation sheet and surrender value table. On perusal of the

aforsaid affidavit and other documents, the Commission came to the conclusion that the surrender value of the policy at relevant time was Rs.5,528/- and not Rs.11,423/- which figure had crept in due to a clerical error.

- b) The Commission did not find any material irregularity or jurisdictional error in the impugned order and accordingly dismissed the Revision Petition.

vii) Citation:

II (2014) CPJ 424; 2014(2) CPR 372.

17. Shakuntla Vs. LIC of India

i) Case in Brief:

Rajinder Singh, husband of the Petitioner obtained life insurance policy of Rs.1,00,000/- from OP on 28.04.2004. He died on 07.11.2004. The insurance claim was filed in the year 2010 on the plea that the Petitioner had no knowledge of the policy and therefore the claim could not be filed earlier. OP repudiated the claim. Alleging deficiency in service Petitioner filed a consumer complaint before the District Forum which allowed the complaint and held that complainant is only entitled to the claim amount of Rs.1,00,000/-. The request for grant of interest and compensation was rejected. OP preferred an appeal before the State Commission which was allowed and the complaint was dismissed vide impugned order against which the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 30.11.2012 in Appeal No.1047/2012 of the Haryana State Consumer Disputes Redressal Commission.

iii) Parties:

Shakuntla - Petitioner

Vs.

LIC of India - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.578 of 2013 & Date of Judgement: 11.04.2014.

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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 record noted that while submitting the proposal form, the insured had given certain answers to questions about the previous history of his health which were factually incorrect. The insured had undergone surgery for removal of his gall bladder in December 2003 prior to the submission of proposal form in April 2004 and the aforesaid fact was concealed for the Respondent/Insurance Company. Holding that it was a clear of concealment of material information regarding surgery by the insured, it was held that the State Commission was right in dismissing the complaint filed by the Petitioner in the light of Judgment of the Hon'ble Supreme Court in *Satwant Kaur Sandhu Vs. New India Assurance Co. Ltd.* (2009) 8 SCC 316.
- b) The Commission further observed that the husband of the Complainant died on 07.11.2004 but the Consumer complaint was filed after 7 years. The Petitioner had tried to explain this delay by making a bald allegation that she had no knowledge about the insurance policy. The Commission was not inclined to accept this submission particularly when the exact date on which the Petitioner came to know about the insurance policy was not mentioned. It was therefore held that the order of the State Commission even on the point of limitation cannot be faulted.
- c) The Revision Petition was accordingly dismissed.

vii) Citation:

III (2014) CPJ 517; 2014(2) CPR 253.

18. Seema Vs. New India Assurance Co. Ltd. & Anr.

i) Case in Brief:

Rajesh Mehta, husband of complainant/petitioner had taken individual personal accident insurance policy from the Respondent/opposite party/ insurance company, covering risk on his life for Rs.1 lakh, on his wife, Seema for Rs.2 lakhs and on his two children for Rs.50,000/- each. It

has been stated that the said Rajesh Mehta was found dead under mysterious circumstances for which FIR No.32 dated 07.05.2003 was registered at Police Station and post-mortem examination was also conducted. The claim made by the wife of the assured was rejected by the insurance company on the ground that claim was not payable under the terms and conditions of the policy as Rajesh Mehta was under influence of intoxicating drugs, at the time of his death. Aggrieved by the act of OPs, she filed complaint before the District Forum which directed the Respondent/OP to pay insurance claim of Rs.1 lakh along with interest @ 9% from the date of final repudiation till realization and Rs.4,000/- as compensation, on account of deficiency in service and Rs.1,000/- as cost of litigation. An appeal was filed against this order before the State Commission, which was accepted and the order of the District Forum was set aside. It is against this order that the present petition has been made. Revision Petition dismissed.

ii) Order appealed against:

Against the Order dated 29.02.2012 in Appeal No.140/2009 of the State Commission Punjab.

iii) Parties:

Seema

- Petitioner

Vs.

New India Assurance Co. Ltd. & Anr.

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2393 of 2012 & Date of Judgement: 16.04.2014.

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 report of the Chemical Examiner & Post-mortem report came to the conclusion that the deceased died due to intake of Aluminium Phosphide, which is a poisonous substance.
- b) Therefore, the National Commission agreed with the views of the State Commission that it was a clear-cut case of suicide, which bars the claim for insurance.

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c) In view of the above, the present revision petition was dismissed and the order of the State Commission was upheld.

vii) Citation:

II (2014) CPJ 480; 2014(2) CPR 559.

19. Sheela Devi Vs. LIC of India and others

i) Case in Brief:

Complainant/Petitioner's husband Bhagwan Das obtained insurance policy of Rs.1 lakh from OP/Respondent on 07.11.2006. He left his house on 01.01.2008 on scooter for his place of duty, met with an accident on the way to duty and died. His body was taken out of a canal on 03.01.2008. Complainant lodged claim with the opposite party which was repudiated by opposite party on the ground of non-renewal of the policy on 07.11.2007. Alleging deficiency in service on the part of the opposite party, Complainant filed complaint before the District Forum which directed opposite party to pay money due under the policy with interest and further awarded Rs.1,500/- as litigation expenses. Appeal filed by the opposite party was allowed 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 31.07.2012 in Appeal No.250/2010 of the State Commission Himachal Pradesh.

iii) Parties:

Sheela Devi - Petitioner

Vs.

LIC of India and others - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.4179 of 2012 & Date of Judgement: 16.04.2014.

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 pointed out that it was not disputed that deceased Bhagwan Das obtained insurance policy from opposite party on 07.11.2006 and premium due on 07.11.2007 was not paid. It is also not disputed that payment of premium was made on 1.1.2008 at 12 noon. As per clause 2 of the terms and conditions of policy, grace period of 30 days was allowed for payment of yearly and half-yearly premium and if premium is not paid within the grace period, the policy lapses. Admittedly, premium was not paid within 30 days from 07.11.2007 due date for payment of premium, and policy stood lapsed on 01.01.2008. As per condition 3, policy can be revived subject to payment of arrear of premium with interest but LIC has right to accept or decline the revival of discontinued policy. Revival of discontinued policy shall be effective only after the same is approved by the Corporation and specifically communicated to the life assured. Further, there was no document to substantiate that revival of discontinued policy has been approved by respondent and communicated to the life assured or petitioner.
- b) In view of the above, the present revision petition was dismissed and the order of the State Commission was upheld.

vii) Citation:

II (2014) CPJ 484; 2014(2) CPR 557.

20. Resham Devi Vs. New India Assurance Co. Ltd. & Anr.

i) Case in Brief:

Karam Chand, husband of Complainant/Petitioner purchased 16 insurance policies from OP No.1/Respondent No.1 through OP No.2/ Respondent No.2 (National Federation of the Blind) for a sum of Rs.1,00,000/- each for a period of one year from 18.06.2002 to 17.06.2003. On 30.03.2003 Karam Chand fell down the stair case, taken to hospital and died there on 02.04.2003. Claim was filed by the Complainant for the amount of 16 polices and Rs.50,000/- as expenses incurred in treatment. Since the amount was not paid, she filed complaint before the District Forum. OP No.1 resisted complaint on the ground that it was premature and that one person could have been

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given only one policy and that OP was liable to pay only Rs.1,00,000/- subject to accidental death and genuine claim. The forum allowed the complaint partly and directed OP No.1 to pay Rs.1,00,000/- along with 10% p.a. interest along with Rs.2,000/- as litigation expenses. 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 dismissed.

ii) Order appealed against:

From the order dated 28.03.2012 in Appeal No.338/2012 of the Haryana State Consumer Disputes Redressal Commission.

iii) Parties:

Resham Devi - Petitioner

Vs.

New India Assurance Co. Ltd. & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2527 of 2012 & Date of Judgement: 17.04.2014.

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) On perusal of policies the Commission noted that the benefits under the policy were available only when an accident is caused by external violent and visible means meaning thereby, he must have died due to visible external injuries caused by someone violently whereas in the case on hand, injuries on account of which Karam Chand died were not caused by violent means by any third person. It was further noted that Complainant neither produced injury report nor postmortem report and in its absence, it cannot be presumed that Karam Chand died on account of external, violent, visible injuries.
- b) The Commission observed that the Complainant had nowhere in the complaint pleaded that terms and conditions of the policy were not supplied to the insured. It was noted by the District Forum that terms and conditions were supplied to OP No.2. It was held that it cannot be presumed that assured was not made aware of the terms and conditions of the policy by OP No.2 acting

as an agent of OP No.1. As per 227 of Indian Contract Act, OP No.1 being principal is not bound by the acts of agent OP No.2 when OP No.2 exceeded its authority in issuing 16 policies to the assured Karam Chand whereas only one policy could have been issued.

- c) The Commission did not find any illegality, irregularity or jurisdictional error in the impugned order and dismissed the Revision Petition.

vii) Citation:

II (2014) CPJ 488; 2014(2) CPR 546.

21. Divisional Manager, Divisional Office, LIC of India Vs. Mamta Rani & Anr.

i) Case in Brief:

Complainants 1 and 2, wife and daughter of late Shiv Kumar, are nominees of two different policies taken by the deceased from OP/Petitioner. On the death of the insured, when the Complainants' claim for release of the amount along with bonus and accident benefit was repudiated by OP, they filed complaint before the District Forum. Allowing the complaint the Forum directed the OP/Respondents to release the amounts in respect of the two policies to Complainants 1 and 2 along with bonus and accident benefit and pay interest @ 12% p.a. after three months of the death of the insured and Rs.10,000/- as compensation for causing mental agony, harassment and litigation expenses. The appeal preferred by the Petitioner was dismissed by the State Commission vide impugned order against which the present Revision Petition had been filed. Revision Petition allowed modifying the order of the State Commission.

ii) Order appealed against:

From the order dated 02.08.2012 in Appeal No.140/2007 of the Haryana State Consumer Disputes Redressal Commission.

iii) Parties:

Divisional Manager, Divisional Office, LIC of India		- Petitioner
	Vs.	
Mamta Rani & Anr.		- Respondents

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iv) Case No and Date of Judgement:

Revision Petition No.4468 of 2012 & Date of Judgement: 25.04.2014.

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 as per Clause 10.02 of the two insurance policies, the terms and conditions of both of which were similar, additional accident benefit equal to the sum assured was payable only if the life assured suffered bodily injury or death resulting solely and directly from an accident by outward, violent and visible means. In the instant case, as per the record, the life assured died on 01.07.2002 due to heart attack. There was no evidence to indicate that he died because of some injury suffered in an accident. It was therefore held that the fora below had committed a material illegality in awarding the accident benefit to the Respondents against the terms and conditions of the insurance contract.
- b) Consequently the Revision Petition was allowed and the Petitioner was directed to release to the Respondents a sum of Rs.1,50,000/- assured under the respective policy with the accrued bonus along with 12% interest on the aforesaid amount after three months of the death of the insured besides Rs.10,000/- as compensation for mental agony, harassment and litigation expenses.

vii) Citation:

II (2014) CPJ 624; 2014(2) CPR 457.

22. Bajaj Allianz Life Insurance Co. Ltd. & Ors. Vs. Raj Kumar

i) Case in Brief:

Complainant's husband, Kalyan Singh, took a life insurance policy from OP No.1 and paid a premium of Rs.25,000/-. The policy was in force from 28.12.2007. He died on 24.04.2008. The claim submitted before the insurance company was repudiated on the ground that the insured had obtained the policy after concealment of material facts about his previous illness. Alleging deficiency in service, Complainant approached

the District Forum, which dismissed the complaint but allowed OP to refund Rs.25,000/- deposited by the deceased policy holder. Complainant filed first appeal before the State Commission which allowed the appeal and directed the insurance company to pay to the Complainant Rs.2,50,000/- with interest @ 9% p.a. plus compensation of Rs.25,000/-towards mental agony and costs. Aggrieved by the said order, the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 14.11.2013 in Appeal No.1495/2009 of the Rajasthan State Consumer Disputes Redressal Commission.

iii) Parties:

Bajaj Allianz Life Insurance Co. Ltd. & Ors. - Petitioners

Vs.

Raj Kumar - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1318 of 2014 & Date of Judgement: 01.05.2014.

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 there was no proof of any previous illness or ailment of the deceased/insured prior to 07.03.2008 when he was discharged from Government Hospital. He was treated only for typhoid and malaria during hospitalization. The renal insufficiency and Multiple Myeloma was undiagnosed till the deceased was admitted in Monilek Hospital on 08.04.2008 and discharged on 19.04.2008. Hence it was held that it cannot be presumed that the insured was aware of the aforesaid ailments and concealed them at the time of submission of proposal form on 27.12.2007.
- b) The Commission further held that even if it is presumed that the patient was suffering from Multiple Myeloma/Blood Cancer for the past two-three years, the OP should have produced some cogent evidence to prove that the insured had taken treatment from some other Cancer Hospital.

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c) In view of the above, the Commission held that there was no reason to interfere with the order of the State Commission and dismissed the Revision Petition as devoid of merit.

vii) Citation:

III (2014) CPJ 221.

23. LIC of India & Anr. Vs. Smt. Munesh

i) Case in Brief:

Shri. Madan Pal applied for Life insurance policy of Rs.1,00,000/- on 11.10.2001 and paid the requisite insurance premium. The Petitioner/LIC issued the premium receipt on 15.10.2001 wherein the date of commencement of risk was mentioned as 13.10.2001. The insurance policy was issued on 20.10.2001 wherein date of commencement of policy was mentioned as 13.10.2001. Unfortunately the life assured Shri. Madan Pal died on 14.10.2001. The insurance claim filed by his widow, the Respondent herein, was repudiated on ground that the contract of insurance had not been concluded before the death of the life assured. The District Forum from whom a complaint was filed allowed the complaint and directed the Petitioner to pay all benefits of the policy with interest along with Rs.1,000/- as compensation and Rs.250/- as cost. Petitioner's appeal was dismissed by the State Commission vide impugned order against which the present Revision Petition had been filed. Revision Petition partly allowed and the Petitioner was directed to refund only the premium of Rs.4,289/- along with 12% interest to the Respondent.

ii) Order appealed against:

From the order dated 15.11.2004 in Appeal No.A-601/2004 of the State Consumer Disputes Redressal Commission, Delhi.

iii) Parties:

LIC of India & Anr.

- Petitioner

Vs.

Smt. Munesh

- Respondent

iv) Case No. and Date of Judgement:

Revision Petition No.1966 of 2008 &

Date of Judgement: 15.05.2014 / 19.09.2014 / 15.07.2015.

v) Acts and Sections referred:

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

vi) Issues raised and decided:

- a) In this case there was disagreement between the two members who constituted the Bench and the matter was referred to the Hon'ble President NCRDC under Section 20(1)(iii) of the CP Act for appropriate direction. The point of difference was "whether petitioner is liable to make payment of sum assured where first premium receipt issued on 15.10.2001 indicating that risk commences from 13.10.2001 and policy was issued on 20.10.2001 whereas assured died on 14.10.2001".
- b) The Commission held that life insurance contract comes into existence when the proposal submitted by the life insured is accepted by the competent authority as was decided by the Hon'ble Supreme Court in *Life Insurance Corporation of India Vs. Raja Vasireddy Komalavalli Kamba and Ors.* 1984 (2) SCC 719, which was followed by the National Commission in the matter of *LIC of India Vs. Geeta Sharma II* (2010) CPJ 231 (NC). In the instant case, the proposal submitted by the assured, Madan Pal, was accepted by the competent authority on 15.10.2001 consequent upon which cash receipt was issued on 15.10.2001 and the insurance policy was issued on 20.10.2001. Shri Madan Pal had died before acceptance of his proposal. It was held that acceptance had no meaning at all because the life assured was no more alive at the time of acceptance of the proposal and there could be no valid contract with a dead person.
- c) The Commission noted that the Petitioner company had failed to refund Rs.4,289/- the premium received along with proposal form. While holding that the Petitioner was justified in repudiating the claim, the Commission held that the Petitioner had no right to retain the insurance premium. Accordingly the Petitioner was directed to refund Rs.4,289/- with 12% interest thereon from the date of repudiation to the Respondent.
- d) The Commission observed that the mismatch about the date of commencement of risk and the date on which the proposal was accepted could be intentional or otherwise. Since such a situation

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reduces the period of risk coverage, it was directed that in future, in all cases in which the assured takes term insurance, the date of commencement of risk/policy should be the date on which the policy is accepted and the insurance contract comes into force.

vii) Citation:

Not Reported in CPJ and CPR.

24. LIC of India Vs. Saroj Kumari

i) Case in Brief:

The case of the Complainant/Saroj Kumari before the District Forum was that her husband, late Anand Kumar, had taken a life insurance policy for Rs.30,000/- for which half yearly premium of Rs.804/- was paid to the agent of LIC on 27.05.2003 and policy was issued to him. The date of commencement of policy was stated as 28.05.2003. Anand Kumar died on 17.06.2003. Complainant submitted a claim to the Petitioner which was however repudiated on the ground that Anand Kumar died before the payment of premium in full to the LIC. The Petitioner's stand was that of the said amount of Rs.804/-, a sum of Rs.697/- was deposited by the Agent on 28.05.2003, another Rs.7 was deposited on 12.06.2003 and the third installment Rs.100/- was deposited on 19.06.2003. Since the insured died on 17.06.2003 i.e. before the payment of the first installment in full, the claim was repudiated. The District Forum allowed the complaint and ordered LIC to pay Rs.30,000/- with interest at 9% p.a. and further awarded Rs.1,000/- as litigation expenses. An appeal filed before the State Commission was also dismissed vide impugned order against which the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 07.11.2007 in Appeal No.2206/2007 of the Uttar Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

LIC of India		- Petitioner
	Vs.	
Saroj Kumari		- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1642 of 2008 &

Date of Judgement: 15.05.2014 / 03.03.2015.

v) Acts and Sections referred:

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

vi) Issues raised and decided:

- a) In this case there was disagreement between the two members who constituted the Bench and the matter was referred to the Hon'ble President NCRDC under Section 20(1)(iii) of the CP Act for appropriate direction. The legal issue which arose was "whether the Petitioner/OP is liable to make payment of policy of which first installment premium was paid in three parts and assured died before payment of last part of the first installment".
- b) The Commission noted that the District Forum, in its order, had specifically referred to the Premium Intimation Letter issued by LIC in which it was stated that premium received was Rs.804/- and the policy had commenced with effect from 28.05.2003. The order had also noted that the relevant entries in the "Last Due paid" and "Due date" columns were shown as "05/2003" and "11/2003" respectively. This communication had not been denied by LIC.
- c) LIC had repeatedly stated that the premium was paid on 19.06.2003. The District Forum had aptly observed that the insured could not have paid the amount after his death and LIC did not disclose from whom the premium was received. It was also observed that in the affidavit evidence of the Branch Manager, LIC, it was claimed that the first premium was paid in three installments. On the other hand there was no mention of three installments in the pleadings of the OP/LIC. The District Forum had therefore held that the premium had been paid on 28.05.2003.
- d) The State Commission confirming the above view had observed that the record showed that the policy had been issued and sent to the insured based on the premium paid in May, 2003 and next premium was shown as due in November, 2003.

Deficiency in Service - Lift Operations

- e) The National Commission wondered why three different receipts were not issued if the payment was received in three parts. If only Rs.697/- was received on 28.05.2003, which was Rs.107/- short of the first installment premium, the proposal should have been rejected on the same day for inadequacy of the premium amount.
- f) The Commission held that the Petitioner had failed to make out a case that on the date of the death of the insured, the first premium had remained unpaid, fully or partly. The Revision Petition was accordingly dismissed as devoid of merit.

vii) Citation:

II (2015) CPJ 444.

(ae) LIFT OPERATIONS

1. Mrs. Rashmi Handa & Ors. Vs. OTIS Elevator Company (India) Ltd. & Ors.

i) Case in Brief:

On 20.03.2003, at about 10.40 am, Mr. Vipin Handa, an officer belonging to the Indian Revenue Service (Customs and Central Excise) who was working as Director in the Research and Analysis Wing under the Cabinet Secretariat took Lift No.6 on the 11th floor of the building in the CGO complex, Lodhi Road, New Delhi after attending a meeting of Senior Officers. During the trip down, the lift abruptly stopped between 6th and 7th floor due to voltage fluctuation. The main supply Miniature Circuit Breaker (MCB) was switched off on the 11th floor and three persons from the control room opened the lift door on the 7th floor with a manual key and started rescuing the stranded officers one by one. When Mr.Handa was being rescued the lift abruptly moved downwards for about 5-7 seconds crushing Mr. Handa's neck between the cabin roof panel and the floor causing his instantaneous death. Alleging negligence, the instant complaint had been filed by Mrs. Rashmi Handa, wife of the deceased and by their daughter and son against OTIS Elevator Company (OP-1), Secretary Cabinet Secretariat (OP-2) and Military Engineering Service through Engineer and Chief (OP-3), claiming compensation and damages to the tune of Rs.1,89,05,922/- with interest at 20% which was subsequently revised to Rs.3,01,48,195/-. Complaint allowed.

ii) Order appealed against:

Original Complaint

iii) Parties:

Mrs. Rashmi Handa & Ors. - Complainants

Vs.

OTIS Elevator Company (India) Ltd. & Ors. - OPs

iv) Case No and Date of Judgement:

Original Petition No.25 of 2005 & Date of Judgement: 21.01.2014.

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 rejected the arguments on the maintainability of the complaint on technical grounds stating that the objections were raised merely for the sake of cavil.
- b) The argument, that the case involved adjudication of complex questions of facts relating to causation of the accident and appreciation of detailed evidence and cannot be decided in summary proceedings, was also rejected relying on the decision of the Apex Court in *Dr. J.J. Merchant & Ors. Vs. Shrinath Chaturvedi*, AIR (2002) CPJ 8 (SC), in which it was held that the judges who were heading the Commissions were competent to decide complicated issues of law and facts.
- c) As regards the negligence and deficiency the Commission observed that the OPs had tried to put the blame on each other for the unfortunate accident. The Commission went by the observations and findings of the Technical Report of Lift Accident Investigation submitted to Delhi Police by Professor C.M. Bhatia, in which it was held that the sudden downward movement of the lift was caused due to someone entering the Machine Room and releasing the lift brakes through the Brake Release Key.
- d) The Commission wondered how OP No.1 could have installed the lifts without voltage stabilizer when voltage fluctuations were common. OP-1's defence that no tender was made for voltage stabilizer was found not worthy of credence. The Commission also wondered how OP-1 could have given the assurance that the

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lift will perform satisfactorily for a minimum period of 20 years in the absence of a voltage stabilizer. It was also noted that complaints had been made earlier that Lift Nos.5 and 6 had stopped 32 times previously. The Commission wondered how the lift was being operated on continuous basis despite knowledge of breakdown of similar nature. The Commission also observed that there was no evidence on record that OP-1 had given training to OP-2 and OP-3 about the steps to be followed in case of sudden stoppage of lift. No record was produced to show that previously rescue operations were carried out. The Commission also observed that the contract between OTIS and one Mr. Harish, a sub contractor, which was a crucial document, was withheld by OP-1 for reasons best known to them. In view of the said facts the Commission held that OP-1 is primarily liable for negligence.

- e) The Commission also held that OP-2 was deficient in (i) installing the lifts without voltage stabilizer (ii) not seeing whether the contract was being followed properly and (iii) in not compelling OP-1 to rectify the defects. It was held that OP-2 is a “consumer” qua, the OP-1 and OP-3. OP-2 is not a “consumer” qua, the deceased. On the contrary the deceased was a “consumer” qua, OP-2.
- f) The Commission held that OP-3 which was in charge of maintenance of the complex had to bear responsibility for keeping the Machine Room door on the 11th floor open during rescue operation. OP-3 failed to provide evidence that they ensured that the engineer from OTIS visited the place regularly as per the contract.
- g) The Commission relying on the decision of the Apex Court in *Dr. Balram Prasad Vs. Dr. Kunal Saha*, 2013 (13) SCALE 1, allowed the claim made by the Complainants in the sum of Rs.3,01,48,195/- jointly and severally with interest at 9% p.a. from 20.03.2003, the date of death of Shri. Vipin Handa, to be paid within 90 days. It was held that the liability of OP-2 would be limited to 5% of decretal amount and liability of OP-3 would be limited to 25% of the decretal amount. The rest of the amount will be paid by OP-1.

vii) Citation:

I (2014) CPJ 344; 2014(1) CPR 373.

(af) MANUFACTURING DEFECT

1. M/s. Escorts Limited Vs. K.V. Jyarajan & Anr.

i) Case in Brief:

Respondent No.1/Complainant purchased a tractor on 16.02.2007 from Respondent No.2/OP No.1, M/s. Malabar Motors. The tractor was manufactured by Revision Petitioner/OP No.2. Alleging frequent break downs and repeated repairs, a consumer complaint was filed seeking replacement of the tractor with compensation. The District Forum allowed the complaint partly and directed the OPs jointly and severally to pay a compensation Rs.50,000/- with cost of Rs.2,000/-. OPs did not challenge the award of the District Forum. The appeal filed by the Complainant was allowed by the State Commission which directed the Respondents/OPs to refund the cost of the vehicle with 9% p.a. interest together with compensation and cost. Challenging the said order, the present Revision Petition had been filed by Petitioner/OP No.2 on the ground that possession of the tractor was not with the Petitioner. Revision Petition allowed.

ii) Order appealed against:

From the order dated 24.04.2013 in Appeal No.595/2012 of the Kerala State Consumer Disputes Redressal Commission.

iii) Parties:

M/s. Escorts Limited - Petitioner

Vs.

K.V. Jayarajan & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2867 of 2013 & Date of Judgement: 13.02.2014.

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 contended by the Revision Petitioner as well as the Complainant that the tractor remained in the possession of the dealer/OP No.1. It was brought to the attention of the Commission by the present Revision Petitioner that a finding had already

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been reached by the National Commission on this issue in Revision Petition No.2741 of 2013 filed by OP No.1/M/s. Malabar Motors. The said Revision Petition challenging the order of the State Commission in F.A.No.595 of 2012 was dismissed by the National Commission holding that the impugned order did not suffer from any illegality or material irregularity which could justify intervention of the Commission. While doing so the Commission had observed that it is not in dispute that the tractor in question was sent for repairs for a number of times to the Petitioner, as defects were there and that after alleged repairs the tractor was lying with the Petitioner (Malabar Motors). It was argued by the present Revision Petitioner that the Commission had categorically held that the tractor was sent to OP/Malabar Motors for repairs and was thereafter lying with it and that for the same reason, no liability would lie on M/s. Escorts Limited/ OP No.2.

- b) In the above back ground the Commission held that the question of joint and several liabilities on the present Revision Petitioner/ M/s. Escorts Limited did not arise. Consequently the Revision Petition was allowed and the impugned order was set aside to the extent of the liability fixed on the Petitioner, Escorts Limited.

vii) Citation:

I (2014) CPJ 595; 2014(1) CPR 522.

2. Muktaji Vishnuji Chemate Vs. Escorts Limited & Others

i) Case in Brief:

Complainant/Petitioner purchased tractor on 10.08.2004 from opposite party No.5/Respondent No.2, which was manufactured by O.P No.1 to 4/Respondents No.1, 3 to 5. Respondents advertised and assured that tractor would require 2.5 litre diesel per hour whereas it was consuming 6 litres diesel per hour from time to time. Tractor was taken to O.P. No.5 and he changed some parts but problem was not solved. Alleging deficiency on the part of the opposite party, Complainant filed complaint for replacement of tractor and damages before the District Forum which directed O.P. Nos.1 to 4 to replace tractor by new one, having no manufacturing defect and further allowed Rs.10,000/- as

compensation, Rs.5,000/- towards mental agony and Rs.2,000/- as cost of litigation. Appeal filed by OPs No.1 to 4 was partly allowed by State Commission vide impugned order and State Commission modified the order of the District Forum and directed them to replace the engine by new engine, against which this revision petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

Against the Order dated 07.01.2013 in Appeal No.2667/2006 of the State Commission Maharashtra.

iii) Parties:

Muktaji Vishnuji Chemate - Petitioner

Vs.

Escorts Limited & Others - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1278 of 2013 & Date of Judgement: 12.03.2014.

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 as alleged in the complaint, deficiency in tractor was only regarding consumption of excess diesel, State Commission rightly directed opposite parties to replace engine. No other deficiency was pointed out in the tractor and in such circumstances; State Commission rightly modified the order. There was no necessity to replace tractor by a new tractor.
- b) In view of the above, the Commission did not find any illegality, irregularity or jurisdictional error in the impugned order of the State Commission and revision petition was dismissed.

vii) Citation:

II (2014) CPJ 97; 2014(2) CPR 227.

3. Krishanpal Singh Vs. Tata Motors Limited & Anr.

i) Case in Brief:

The Complainant purchased a Tata Indigo Car from HIM Motors Pvt. Ltd/OP.2, the dealer of Tata Motors Ltd/OP.1. From the very beginning, the car was malfunctioning and revealed symptoms of basic defect of the product. The Complainant informed OP.1 that the said car had a number of defects and handed it over for repairs. Not satisfied with the services of OP.1, the Complainant filed complaint before the District Forum which directed OP.1 and OP.2 jointly or severally to refund the Complainant Rs.4,63,341/- towards cost of the vehicle along with a compensation of Rs.50,000/- for the harassment caused to the complainant and also Rs.10,000/- towards litigation cost. Aggrieved against the order of District Forum, two appeals were filed before the State Commission which partly modified the order of the District Forum to the extent that the OPs shall pay Rs.3,00,000/- to the Respondent being the refund of the price after depreciation, Rs.50,000/- to the Respondent for mental agony and Rs.10,000/- as litigation cost. Both the parties filed revision petitions against the impugned order of the State Commission. Revision Petitions were disposed of by directing the OP to repair the car and return it to the Complainant in a roadworthy condition.

ii) Order appealed against:

Revision Petition No.4575 of 2012 and 4787 of 2012

From order dated 03.09.2012 in Case No.FA-925/09 of the State Consumer Disputes Redressal Commission, Delhi.

iii) Parties:

Revision Petition No.4575 of 2012

Krishanpal Singh - Petitioner

Vs.

Tata Motors Limited & Anr. - Respondents

Revision Petition No.4787 of 2012

Tata Motors Limited - Petitioner

Vs.

Krishanpal Singh & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.4575 & 4787 of 2012 &

Date of Judgement: 07.05.2014.

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 found that there was not even an iota of evidence that the vehicle suffered from manufacturing defect. The vehicle in question had covered 36,000 kms and one-and-a-half years had elapsed. Consequently, the question of manufacturing defect could not be raised in view of *Telco Ltd. Vs. Gajanan Mandrekar*, AIR 1997 SC 2774 and *Tata Motors Vs. Kushal Singh Thakur* vide order dated 21.08.2009 in RP No.1153 of 2005. Both the fora below have wrongly concluded that the vehicle was having manufacturing defect. The Complainant had failed to show having suffered any loss or injury on account of negligence by the Petitioner.
- b) The National Commission observed that it was a case of contributory negligence and held that the car could neither be replaced nor its amount could be refunded. The Commission modified the order passed by the State Commission and ordered that no refund could be made as already ordered by the District Forum and the State Commission. It was also ordered that the vehicle with HIM Motors Pvt. Ltd. OP2, shall be repaired and the General Manager of Tata Motors would issue a certificate to the effect that the car was roadworthy and it would not endanger the lives of the complainant and his family members. The roadworthy car should be handed over to the complainant/consumer, within a period of 30 days from the receipt of the order with a warranty period of 12 months commencing from the date of the order. For the number of visits made by the Complainant to the Service Station, the Commission ordered compensation of Rs.1,30,000/- and Rs.50,000/- for advocate's fee and litigation expenses.

vii) Citation:

II (2014) CPJ 731; 2014(3) CPR 110.

4. Tata Motors Ltd. Vs. Shri Manoj Gadi and another

i) Case in Brief:

Respondent No.1/Complainant purchased a Tata Indigo Car from respondent No.2 M/s. Sanya Automobiles Pvt. Ltd. on 29.06.2006. According to the complainant, the petitioner and respondent No.2 sold a second hand car to him that started giving problems immediately after purchase. He reported the matter to the OPs and he was assured that the defects in the vehicle would be removed. However, the problem could not be rectified, despite several repairs. Being aggrieved, he filed complaint before the District Forum which directed that the vehicle should be replaced with a new car by the petitioner and a sum of Rs.25,000/- as compensation for mental harassment and Rs.5,000/- as cost of litigation should be paid to him. The petitioner preferred appeal before the State Commission against this order. Vide impugned order, the State Commission modified the order passed by the District Forum and directed that the cost of the vehicle should be refunded to the complainant after completing the formalities of transfer of registration certification in the name of the petitioner. Against the order of the State Commission, the present revision petition has been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 17.12.2007 in First Appeal No. A-07/663 of Delhi State Consumer Disputes Redressal Commission

iii) Parties:

Tata Motors Ltd. - Petitioner

Vs.

Shri Manoj Gadi and another - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2321 of 2008 & Date of Judgement: 08.05.2014.

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) During the hearing before the National Commission on 18.09.2013, the complainant/respondent No.1 stated that he had sold the said vehicle as it was getting rusted. The Commission

observed that the respondent should not have sold the said vehicle during the pendency of the proceedings before the National Commission. It further held it is not possible to have the order of the State Commission executed because the vehicle no longer remains with the petitioner, relying on the decision in *Rajiv Gulati versus M/s. Tata Engineering & Locomotive Company Ltd. & Ors.* (FA.No.466 of 2008 decided on 23.04.2013) wherein it had been clearly stated that when the vehicle had been sold, it was not possible to establish by cogent evidence that it suffered from any manufacturing defect. The Commission also pointed out that the factum of any manufacturing defect being there or not, could also not be ascertained by any expert evidence at this stage.

- b) In view of the above, the revision petition was allowed and the consumer complaint was dismissed.

vii) Citation:

II (2014) CPJ 665; 2014(2) CPR 277.

(ag) MEDICAL REIMBURSEMENT

1. District Project Coordinator & Ors. Vs. Smt. Vidhya Devi

i) Case in Brief:

Complainant's husband was working under Rajasthan Primary Education Council (Petitioner No.2/OP No.2) in District Primary Education Programme. He died of cancer on 13.12.2007 after taking treatment at different hospitals including Tata Memorial Hospital, Mumbai. The Complainant submitted bills of Rs.5,24,675/- before the OPs for reimbursement. The claim was not allowed on the ground that treatment was taken in private hospital without prior permission. Alleging deficiency in service, Complainant approached the District Forum which allowed the same and directed OP to pay Rs.5,24,675/- to the Complainant with interest at 12% p.a. Appeal filed by the Petitioners 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 03.02.2012 in First Appeal No.953/2010 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

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iii) Parties:

District Project Coordinator & Ors. - Petitioners

Vs.

Smt. Vidhya Devi - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1122 of 2012 & Date of Judgement: 15.01.2014.

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 after going through the Rajasthan Civil Services Medical Attendant Rules, 1970 (which were in vogue at that point of time) and the office memorandum of the State of Rajasthan vide No.F.12(1)FD/(Gr-2)/89 dated 21.02.1989 noted that Tata Memorial Hospital, Mumbai had been identified and recognized as one of the referral hospitals for specialized treatment of cancer outside the State. The Commission observed that right to health is integral to right to life as held by the Hon'ble Supreme Court in *Surjeet Singh Vs. State of Punjab and Ors.*, JT 1996 (2) SC 28 and *State of Punjab Vs. Mohinder Singh Chawla*, JT 1997 (1) SC 416. The Commission also recalled the order of Rajasthan High Court in *Shanker Lal Vs. State of Rajasthan*, (2000) 3 WLC (Raj.) 585=RLW 2001(1) Raj. 1, in which it was held that "the State Government is liable to reimburse such expenses without insisting for certification from the authorized medical attendant or other competent officer, when such a facility was not available in the State of Rajasthan".
- b) The Commission held that since there was provision for referral of cancer patient to Tata Memorial Hospital, Mumbai and the claim about the expenditure incurred and bills was genuine, the denial of reimbursement of medical bills was unjust and amounted to deficiency in service on the part of OPs.
- c) Revision Petition was accordingly dismissed.

vii) Citation:

I (2014) CPJ 384; 2014(1) CPR 424.

2. State Trading Corporation of India Vs. H.C. Goel

i) Case in Brief:

Complainant/Respondent retired as Chief Legal Adviser on 31.07.1998 from the office of OP/Petitioner and was extended all the benefits including reimbursement of medical expenses. Complainant was operated in emergency and incurred expenses of Rs.18,965/-. He claimed that he was entitled to receive from OP Rs.18,965/- on account of expenditure incurred on operation and another Rs.18,500/- on account of fixed amount to which he was entitled every year. Since the amounts were not paid, he filed complaint before the District Forum which allowed the complaint and directed OP to pay Rs.37,465/- and further awarded compensation of Rs.20,000/- and cost of Rs.5,000/-. Appeal filed by the Petitioner was partly allowed and compensation of Rs.20,000/- was reduced Rs.10,000/- and rest of the order was affirmed by the State Commission vide impugned order against which the present Revision Petition had been filed. Revision Petition partly allowed and the some of the observations made by the State Commission were set aside.

ii) Order appealed against:

From the order dated 26.05.2008 in Appeal No.905/2007 of the State Consumer Disputes Redressal Commission, Delhi.

iii) Parties:

State Trading Corporation of India - Petitioner

Vs.

H.C. Goel - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3520 of 2008 & Date of Judgement: 07.05.2014.

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 submitted before the National Commission that payment as per the order of the State Commission had already been made and that the Revision Petition was filed only for expunging certain observations made by the State Commission.

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- b) The State Commission in Para 6 of the order had observed that the circular dated 08.10.1997 referred to by the Appellant therein was applicable to persons who are on the employment and not to ex-employees. The National Commission held that this was wrong since the perusal of the circular revealed that it was applicable to retired employees or the employees who joined services of the corporation from other public sector organizations and had served the corporation for a minimum period of two years.
- c) The State Commission had observed in Para 8 of the order that no rule prevented any retired employee from giving any advice to employees against the interests of the Appellant Company. The National Commission held that this observation was also wrong since the circular dated 08.10.1997 clearly revealed that retired employees who indulged in any activity which went against the interest of the corporation shall be debarred from availing medical facilities after retirement.
- d) The National Commission held that the observations made by the State Commission in Paras 6 and 8 of its order were incorrect and were liable to be struck down. Accordingly the Revision Petition was partly allowed and the observations made in Paras 6 and 8 of the impugned order were set aside.

vii) Citation:

III (2014) CPJ 211; 2014(2) CPR 282.

(ah) MEDICAL NEGLIGENCE

1. Dr. Girja Kotha Koal Vs. J.K. Tripathi & Ors.

i) Case in Brief:

The Complainant No.2, Kusum Tripathi had been under the treatment of the Petitioner and she had been visiting her hospital from time to time. On 22.03.2000, she felt mild pain in her stomach and explained the problem to the doctor. It is alleged that the doctor did not apply her mind diligently as she was busy in abortion cases. She advised that there was infection in the urine and it was not a labour pain. However, within a few hours, at 2 a.m. on 23.03.2000, the Complainant developed unbearable pain and was taken to St. Stephens Hospital where she

delivered a premature child after 7 months of pregnancy. The child had to be kept on incubation for 57 days. Alleging negligence and deficiency in service, Complainants demanded a sum of Rs.1,01,000/- through the District Forum. The Forum dismissed the complaint. However, the State Commission allowed the appeal and directed the Petitioner to pay compensation of Rs.25,000/- to the Complainants. It is against this order that the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 15.01.2008 in First Appeal No.A-26/04 of Delhi State Consumer Disputes Redressal Commission.

iii) Parties:

Dr. Girja Kotha Koal - Petitioner

Vs.

J.K. Tripathi & Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2387 of 2008 & Date of Judgement: 07.01.2014.

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, who was fully qualified to deal with cases of pregnancy, had stated in her reply to the complaint before the District Forum that it was not possible to comment on the contents of the paragraph under reply in the absence of any document. However, in the Revision Petition she had clearly admitted that she had prescribed medicine to the Complainant on 20.12.1999 and then again on 04.01.2000. All the medicines prescribed by her were for preventing threatened abortion or premature delivery. The Commission noted that there was enough material to show that the Complainant visited the Petitioner on 22.03.2000 and got her urine examination done in her laboratory. However, the Petitioner had tried to say that she was not aware whether the Complainant came to her on that day. The Commission also noted that an expert opinion had been given by Dr.C.P.Rai, MBBS, MD (Obst. & Gyna.), in which he had stated

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that it was a case of clear-cut deficiency and negligence in service due to carelessness. Dr.Rai had clearly stated that at the stage of threatened abortion of 12 weeks, proper treatment was not given. If the diagnosis was clinched properly at the time, the pregnancy could have been pushed to full term.

- b) The Commission observed that the Hon'ble Supreme Court in *Indian Medical Association Vs. V.P. Shanta & Ors.*, 1995 (6) SC 651 had reached the conclusion that it was a case of medical negligence particularly when the doctor happened to be a skilled person and possessed requisite medical qualification. The Commission held that in the present case the Petitioner did not make any attempt to examine the patient and find out whether she was suffering from labour pain when the Complainant visited her on 22.03.2000.
- c) The Commission held that the impugned order had been passed after making detailed analysis and correct appreciation of facts on record. The Commission found no infirmity or illegality in the order and upheld the same. The Revision Petition was accordingly dismissed.

vii) Citation:

I (2014) CPJ 281; 2014(1) CPR 187.

2. Dr. Raj Kumar Garg & Anr. Vs. Radhey Sham & 2 Ors.

i) Case in Brief:

The deceased Meeran, wife of the Complainant Radhey Sham, was operated upon on 13.12.2009 for Gall Stones by the Petitioners Dr. Raj Kumar Garg and Dr. Kamlesh Garg. The operation was not successful. It was alleged that they failed to stitch the GB properly and there was leakage which the OPs 1 and 2 could not stop. The patient's condition deteriorated due to infection and she died on 22.01.2010. Alleging medical negligence the complaint was filed before the District Forum which allowed the complaint and directed OPs 1 and 2 to pay Rs.3,00,000/- as consolidated compensation. OPs' appeal was dismissed by the State Commission vide impugned order against which the present Revision Petition had been filed. Revision Petition was allowed and the complaint dismissed.

ii) Order appealed against:

From the order dated 27.08.2013 in Appeal No.822/2011 of the Punjab State Consumer Disputes Redressal Commission.

iii) Parties:

Dr. Raj Kumar Garg & Anr. - Petitioners

Vs.

Radhey Sham & 2 Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3916 of 2013 & Date of Judgement: 07.02.2014.

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 hospital records found that OPs 1 and 2 were qualified physicians and OP No.3, Dr. Maninder Singh, who performed the surgery, was a qualified surgeon. The Commission further noted that the operative notes written by OP No.3 showed that the surgery was performed by him and OP No.1 had assisted him. This was also supported by the affidavit of the Anesthesiologist. The Commission perused the medical board report of PGI, Chandigarh which also did not support the Complainant's allegations. The report had stated that the patient had persistent bile leak and repeated ultra sound was done on 21.12.2009. The patient was diagnosed as a case of adenocarcinoma and subsequently she developed malignant ascites. It was advised to take her to Cancer Hospital, Bikaner. But the said advice was not followed and she expired after a month. In the Commission's opinion the death of the patient was neither due to wrong surgery nor any delay in reference to cancer hospital. The condition of the patient deteriorated as she developed malignant ascites. As per medical literature on the subject, the prognosis in such a case will be extremely poor and very remote chance of survival for one to two months. The Commission relying on the decision in *Kusum Sharma and others v. Batra Hospital and Medical Research Centre and others*, (2010) 3 SCC 480 relating to medical negligence, concluded that in the present case, the standard medical practice was followed and there was no medical negligence.

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Hence the orders of the fora below were set aside, the Revision Petition was allowed and the complaint was dismissed.

vii) Citation:

II (2014) CPJ 42.

3. Sh. Santosh Kumar Das Vs. Dr. P.C. Dey

i) Case in Brief:

Petitioner/Complainant met with an accident as a result of which the femur bone of his right leg was fractured. After being in Government Hospital, Balasore for a while, he approached Respondent/OP, Dr.P.C.Dey and on his advice got himself admitted in a nursing home where he was operated upon by OP/Respondent on 25.10.1999. He was discharged on 06.11.1999. It was alleged that he suffered serious pain despite taking various medicines. He consulted other orthopedic specialists and on the advice of Dr.C.P.Das underwent a second surgery on 22.03.2001 at Kalinga Hospital. It is his case that he had to spend another Rs.40,000/- for the surgery. After the second operation the union of bones took place but his leg was shortened by one inch and it is alleged that he became physically handicapped by 55%. Alleging medical negligence he filed complaint before the District Forum which by a majority judgment of two to one allowed the complaint and directed OP/Respondent to pay Rs.40,000/- spent for the second surgery and Rs.50,000/- as compensation for physical handicap and mental agony. The 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.

ii) Order appealed against:

From the order dated 28.11.2007 in Appeal No.116/2004 of the Orissa State Consumer Disputes Redressal Commission.

iii) Parties:

Sh. Santosh Kumar Das	Vs.	- Petitioner
Dr. P.C. Dey		- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1654 of 2008 & Date of Judgement: 07.02.2014.

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 after a close examination of the order passed by the State Commission noted that Dr.N.K.Aggarwal retired Head of Department of Orthopedics in SCB Medical College, Cuttack had stated in his affidavit that he examined the Petitioner on 07.06.2000 and found that the earlier operation done by Dr.P.C.Dey was absolutely correct. The said operation was done by Kailing but the non-union of the bone happened due to lack of formation of callus which is a physiological process and happened in many cases. Dr.C.P.Das who conducted the second operation had also opined that non-union of such fractures required a more aggressive approach and he adopted interlocking nailing after removal of kail at Kalinga Hospital. The State Commission had quoted extensively from the medical literature bringing out clearly the various causes for non-union or delayed union of the fractures and had come to the conclusion that the Respondent Dr.Dey cannot be blamed for non-union after the first operation.
- b) In the light of the above, the National Commission held that the allegation of medical negligence had not been established. The Respondent might have adopted a different approach for treatment of fracture but it was held that there was no medical negligence on his part. The State Commission's order was accordingly upheld and the Revision Petition was dismissed.

vii) Citation:

I (2014) CPJ 591; 2014(1) CPR 452.

4. Dr. Shivaji Basu Vs. Devapriya Ghosh

i) Case in Brief:

Complainant suffered urinary tract infection and approached OP for treatment on 18.05.1998. OP No.1 advised certain tests and later prescribed Mikacin 500 mg injection daily for 4 days along with other medicines. After other tests like X-ray, ECG etc., OP No.1 advised surgical operation at Samaritan Clinic which was conducted on

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10.06.1998. Complainant paid Rs.20,000/- for the operation and Rs.5,923/- for post operative care at the nursing home. Complainant met OP No.1 after 4 weeks as advised with pathological/USG reports. Complainant was administered 10 ampoules of Mikacin 500 mg. It is the Complainant's case that the said injection is harmful to patients having serum creatinine level of 3.5 mg/100 ml and above which was the tested level in the case of Complainant. He should have been given 250 mg daily whereas he was administered 500 mg injection for 4 days initially and again twice daily for 5 days which was overdose. He also contended that he had renal ailments and so OP No.1 should have been especially careful while prescribing Mikacin 500 mg injection. It was further contended that OP No.1 should have cautioned him regarding the chance of impairing the audiosensitivity of the patient but no such caution was sounded by OP No.1. Consequently his hearing capacity had been impaired. Alleging medical negligence on the part of the OP he filed complaint before the State Commission which, after hearing the parties, allowed the complaint partly against OP No.1 and directed him to pay Rs.2,00,000/- as compensation and further awarded Rs.3,000/- as litigation cost. Aggrieved by the said order the present Revision Petitions had been filed by both the parties, the Complainant seeking enhancement of the compensation. Appeal No.222 of 2008 filed by Appellant/OP No.1 was allowed. Appeal No.509 of 2008 filed by Complainant was dismissed.

ii) Order appealed against:

First Appeal Nos.222 of 2008 and 509 of 2008

From the order dated 10.01.2008 in S.C. Case No.75/O/2000 of the West Bengal State Consumer Disputes Redressal Commission, Kolkata.

iii) Parties:

First Appeal No.222 of 2008

Dr. Shivaji Basu

- Appellant/OP

Vs.

1. Devapriya Ghosh

- Respondent/Complainant

2. Indian Medical Association

- Respondent

First Appeal No.509 of 2008

Devapriya Ghosh

- Appellant/Complainant

Vs.

1. Dr. Shivaji Basu

2. Indian Medical Association

- Respondents/OPs

iv) Case No and Date of Judgement:

First Appeal Nos.222 of 2008 and 509 of 2008 &

Date of Judgement: 20.02.2014.

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, after perusal of record, held that the Complainant had not adduced any expert evidence except his own statement whereas OP had adduced evidence of two experts. Both the experts held that it could not be said that Mikacin prescribed by OP was an overdose as a consequence of which audibility of the Complainant had been impaired. It was further held that Complainant had not adduced any evidence in support of his contention that OP No.1 was aware about the renal ailment of the Complainant and in such circumstances doses of Mikacin prescribed by OP No.1 cannot said to be overdose. The Commission further held that the Complainant had not filed any expert opinion or report to prove that overdose of Mikacin was the cause of his hearing impairment.
- b) Consequently the Appeal No.222 of 2008 was allowed and the impugned order was set aside. Appeal No.509 of 2008 filed by Complainant for enhancement of compensation stood dismissed.

vii) Citation:

I (2014) CPJ 602; 2014(1) CPR 698.

5. Oriental Insurance Co. Ltd. Vs. Jagrut Nagarik Trust & 2 Ors.

i) Case in Brief:

OP No.1 M/s. Sheth M.L. Vaduwal Eye Hospital held and eye camp wherein the Complainants were operated upon for Cataract of eye. According to the Complainants the doctors and the surgery team of the above noted hospital were negligent in conducting surgery inasmuch as they used non-sterilized surgery appliances, contaminated medicines and inferior quality lenses. Consequently Complainants developed infection of eye and suffered loss of vision. The Complainants along

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with Consumer organization, Jagrut Nagrik Trust filed separate complaints seeking compensation from the hospital and the insurance company. Allegations against the insurance company were that they had issued Professional Indemnity Dr. (IMA) Insurance Policies in the names of Dr. Shan Anisha, Dr. Vadhani Rajshree, Dr. Pala Sajida Ismail, Dr. Thakkar Bhadrash, Dr. Jiruwala Fakhri and Dr. Chokshi Neelam Chirayu. The District Forum allowed the complaints and directed the OPs to pay Rs.1,70,000/- as compensation with 9% interest. Though the liability of both the opponents was joint and several, the award was enforced against opponent No.2, the insurer. The appeal filed by the Petitioner having been dismissed by the State Commission, the present Revision Petition had been filed. Revision Petition was allowed qua the Petitioner/Insurance Company. However it was made clear that the impugned order would remain operative against OP No.1 namely Medical Supdt./Managing Director, Sheth M.L. Vaduwal Eye Hospital.

ii) Order appealed against:

From the order dated 30.11.2012 in Appeal No.393/2010 of the Gujarat State Consumer Disputes Redressal Commission.

iii) Parties:

Revision Petition Nos.2143 to 2166 of 2013

Oriental Insurance Co. Ltd. - Petitioner

Vs.

Jagrut Nagarik Trust & 2 Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition Nos.2143 to 2166 of 2013 with IA/4639/2013 & Date of Judgement: 26.02.2014.

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 record, found that there was no specific allegation of medical negligence against any of the 6 doctors who had been issued Professional Indemnity Dr. (IMA) Insurance Policies by the Insurance Company. These doctors had also not been arrayed as opposite parties in the complaint. No relief was claimed against the doctors. It was also noted that Complainants had failed to

lead any evidence which may suggest that the above noted doctors or any one of them was associated with the subject cataract surgeries. It was observed that the fora below had held the Petitioner jointly and severally liable to pay compensation without returning a finding of medical negligence against any of the 6 doctors who had been covered by the insurance policies. It was held that the fora below had committed a grave error and issued orders based upon a misreading of the insurance contract. The impugned orders were therefore set aside qua the Petitioner/Insurance Company. However it was made clear that the impugned order would remain operative against OP No.1, namely M/s. Sheth M.L. Vaduwal Eye Hospital, Vadodara.

vii) Citation:

II (2014) CPJ 350; 2014(1) CPR 627.

6. National Insurance Company Ltd. Vs. Radhey Shyam Balwada & Anr.

i) Case in Brief:

Since the year 2003, the Complainant, took a Hospitalization Benefit (a mediclaim) policy covering himself and his family members, for the period from 25.06.2011 to 24.06.2012 for the sum of Rs.1,50,000/- and Rs.60,000/- as bonus; thus the total amount of the insurance policy was Rs.2,10,000/-. The policy was renewed, from time to time, since the year 2003. During the existence of the policy, the Complainant suffered abdominal pain during 25.07.2011 to 03.09.2011, and it was diagnosed that he had a stone in the gall bladder. The Complainant spent a sum of Rs.1,31,257/- on his treatment during the period and submitted the claim form for the aforesaid amount, before the OP, but the OP made a payment of Rs.52,505/- only, as full and final payment, against the claim. Hence, a complaint was filed before the District Forum for payment of balance amount to the Complainant. The District Forum allowed the complaint and directed the OP to pay a sum of Rs.78,752/- to the Complainant, within a period of one month. Thereafter, being aggrieved by the said order of District Forum, the Petitioner filed First Appeal before the State Commission which confirmed the findings of District Forum vide impugned order against which the present revision petition had been filed. Revision Petition dismissed.

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ii) Order appealed against:

Against the Order dated 29.05.2013 in Appeal No.185/2013 of the State Commission Rajasthan.

iii) Parties:

National Insurance Company Ltd. - Petitioner

Vs.

Radhey Shyam Balwada & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3258 of 2013 with IA/5741/2013 &

Date of Judgement: 04.03.2014.

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 deduction of Rs.78,752/- under the garb of exclusion clause of the policy and of Condition No.3.1 of the policy was valid or not.
- b) The National Commission on perusal of the terms and conditions of the policy found that there was no evidence on record to show that condition No.3.1 and the exclusion clause were explained to the Complainant-insured, at the time of submission of the proposal form by him. Therefore, the Commission held that the OP was not justified in making payment of Rs.52,505/- only. The Commission observed that such act of OP, was an intentional and technical one, to harass the bonafide customer when the customer availed the Mediclaim insurance policy, with the hope that medical treatment expenses would be reimbursed by the Insurer. So the Commission held that the act of OP was unjust and unfair towards the Complainant.
- c) In view of the above, the Commission did not find any flaw or disparity in the orders passed by both the fora below; hence the present revision petition was dismissed.

vii) Citation:

II (2014) CPJ 201.

7. A. Sujata Vs. LIC of India & Anr.

i) Case in Brief:

Sh. A. Venkatravi, (since deceased) husband of Petitioner/Complainant had purchased life insurance policy of Rs.5,00,000/- on 24.04.2006 from Respondents/Opposite Parties. He died on 07.10.2008 on account of renal failure with other ailments. Death was intimated to the agent of the Respondents and claim was preferred. However, Respondents repudiated the claim on the ground that deceased was suffering from pre-existing ailments at the time of making proposal for insurance. Being aggrieved, she filed a complaint before the District Forum which directed the OP to pay Rs.5,00,000/- to the Complainant with 6% interest p.a with cost of Rs.1,000/-. Against the order of the District Forum, Respondents 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 had been filed. Revision Petition dismissed.

ii) Order appealed against:

Against the Order dated 27.01.2011 in Appeal No.528/2010 of the State Commission Chhattisgarh.

iii) Parties:

A. Sujata	-	Petitioner
Vs.		
LIC of India & Anr.	-	Respondents

iv) Case No and Date of Judgement:

Revision Petition No.776 of 2011 & Date of Judgement: 04.03.2014.

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:

- a) The National Commission on perusal of the treatment papers and based on the averment made by the doctor who attended the deceased (Complainant) came to the conclusion that since the deceased was suffering from Cirrhosis of liver, CKD and was on Hemodialysis since 2005, it became clear that the deceased had suppressed the material facts from the Respondents, while

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obtaining the insurance policy in question and therefore, committed breach of confidence between the insured and insurer under the insurance contract in terms of Section 45 of the Insurance Act, and also the declaration made by him at the time of proposal. Decisions of *Satwant Kaur Sandhu Vs. New India Assurance Co. Ltd*, IV (2009) CPJ 8(SC), in Paras 12, 13, 17 and 18; *United India Insurance Co. Ltd. Vs. M.K.J. Corporation*, III (1996) CPJ 8 (SC) =(1996)6 SCC 428 and *Modern Insulators Ltd. Vs. Oriental Insurance Co. Ltd.*, II (2000)SLT 323 = I(2000) CPJ 1 (SC)=(2000)2 SCC 734 were referred to in this context.

- b) In view of the above, revision petition was dismissed and the order of the State Commission was upheld.

vii) Citation:

2014(1) CPR 553.

8. Dr. Vishwanath Shivling Birajdar Vs. Gangadhar Sangram Mitkari & 3 Ors.

i) Case in Brief:

Ganesh, son of Complainants Sh. Gangadhar Mitkari and Smt. Kamblabai Mitkari, was operated on 05.06.2003 for piles by the Petitioner/OP No.1 at his hospital. It was alleged that the injection Voveron prescribed by OP No.1 was given by an untrained compounder leading to complication. OP No.1 did not attend to calls when the patient's condition worsened during the day. On 06.06.2003, at 6 a.m. OP No.1 referred the patient to Vivekanand Hospital (OP No.2) Latur where he was operated by a surgeon who was not a neuro surgeon. Unfortunately Ganesh died. Alleging negligence on the part of OP No.1 in not attending to the patient after the operation when he suffered from convulsion and vomiting, delay in referring the patient to OP No.2 hospital and not referring to a neuro surgeon and also alleging negligence on the part of OP No.2, consumer complaint was filed. The District Forum directed OP No.1 and 3 (the Insurance Company) to pay Rs.50,000/- plus Rs.29,457/- with 9% p.a. interest besides Rs.2,000/- towards cost. Both the parties filed appeals before the State Commission. The appeal filed by the Complainants was dismissed while the appeal filed by OP No.1 was partly allowed and appeal filed by the

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OP No.3 was allowed. Aggrieved by the said order the present Revision Petition had been filed by OP No.1. Revision Petition partly allowed.

ii) Order appealed against:

From the order dated 29.09.2011 in Appeal No.2567/2005 of the Maharashtra State Consumer Disputes Redressal Commission.

iii) Parties:

Dr. Vishwanath Shivling Birajdar - Petitioner

Vs.

Gangadhar Sangram Mitkari & 3 Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2156 of 2012 & Date of Judgement: 07.03.2014.

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 find any merit in the arguments that there was delay on the part of OP No.1 to refer the patient to OP No.2 and that OP No.1 had obtained signatures on blank forms by pressurizing.
- b) Based on the evidence of a neuro surgeon from Solapur whose opinion was sought by the District Forum, the Commission came to the conclusion that there was no negligence committed either by OP No.1 or at Vivekanand Hospital in conducting their respective surgeries. The Commission relied on the principles laid down in *Bolam V. Frien Hospital Management Committee* (1957) 1 WLR 582) and by the Hon'ble Supreme Court in *Jacob Mathew Vs. State of Punjab & Anr.* (2005) 6 SCC 1.
- c) The Commission however held that employing untrained compounder and administering injection to the deceased through him was a deficiency in service on the part of OP No.1.
- d) The Commission allowing the Revision Petition partly directed OP No.1 to pay Rs.25,000/- compensation to the Complainant within 90 days; otherwise it will carry interest at 9% p.a. till realization.

vii) Citation:

II (2014) CPJ 184.

9. Dr. K. Ranga Rao Vs. Shaik Dadoo Saheb

i) Case in Brief:

Sheikh Hasina, daughter of the Complainant, Shaikh Dadoo Saheb, consulted the Petitioner/OP on 27.07.2008 for severe abdominal pain. OP examined her on OPD basis. On 28.09.2008 she complained of unbearable pain again in the abdomen. OP advised her to get scanning report (USG) from Dr.Jaya Kishore. The Ultrasound was done on 29.09.2008 and the Complainant was advised to take the patient to Srinivasa Hospital. From there the patient was advised to be taken to Andhra Hospital, Vijayawada since her condition was serious. She was again shifted to Nagarjun Hospital, Vijayawada where she expired at 9 p.m. Alleging negligence on the part of OP for delay in diagnosis and referral, Complainant approached the District Forum. His complaint was allowed and the Forum directed the Petitioner/OP to pay Rs.50,000/- as compensation and Rs.5,000/- as costs. 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 dismissed.

ii) Order appealed against:

From the order dated 20.03.2013 in Appeal No.663/2011 of the Andhra Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

Dr. K. Ranga Rao - Petitioner

Vs.

Shaik Dadoo Saheb - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2190 of 2013 & Date of Judgement: 11.03.2014.

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 and his family members had been taking treatment from OP and his hospital for nearly 20 years and that OP could be called their family physician. It was the responsibility of the family physician to make

appropriate referrals without any delay. It was held that if a diagnosis is made and a referral to a specialist should be made, the failure to communicate this to the patient, would be negligence. In the present case it was held that OP had failed to advise proper investigations and USG study for Hasina when he knew that it was a case of chronic ulcer disease.

- b) The Commission also observed that OP had not produced a single document or medical record showing the past treatment of the deceased. He had not produced any cogent evidence about the treatment and advice that he gave to the Complainant on 27.09.2008. The Commission did not agree with the contention of the OP that the Complainant delayed the matter and wasted time in securing necessary funds to go to another hospital.
- c) The Commission was critical of the fact that OP had delegated his duty of referral, through the diagnostic centre, to send the patient to some other hospital. The patient who was in a critical condition was referred to three different hospitals. The Commission observed that OP did not exercise reasonable care and caution and his conduct amounted to deficiency in service. Applying the Bolam principles of Standard of Practice and Reasonable Care, it was held that OP No.1 was liable for medical negligence.
- d) Consequently the Revision Petition was dismissed.

vii) Citation:

II (2014) CPJ 188.

10. Dr. Chander Mohan Vs. Gurcharanjit Sharma & 3 Ors.

i) Case in Brief:

The Complainant was advised cataract surgery on right eye by Petitioner/OP No.1 and the operation was conducted by OP No.1 at Rattan Hospital, Amritsar on 04.10.2006. It was claimed that the Complainant paid Rs.3,000/- as fee to OP No.1 who was posted at Civil hospital Amritsar and was also practicing privately. It was alleged that OP No.1 did not attend on the patient despite several calls during the post-operative period with the result Complainant's eyes got damaged and he lost eyesight. Complainant was referred to Dr. Om Prakash

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Satyam Netralaya on 05.10.2006 where he was examined by a specialist and was informed that he had lost his eyesight permanently. Alleging negligence on the part of OP No.1, Complainant filed complaint before the District Forum which dismissed the complaint and advised the Complainant to seek remedy before the Civil Court of competent jurisdiction. Complainant filed first appeal before the State Commission which allowed the appeal and directed OP to pay Rs.5,00,000/- to the Complainant as lump sum compensation. The State Commission dismissed the complaint qua OPs 2 and 3. Aggrieved by the order of the State Commission the present Revision Petition had been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 29.07.2013 in Appeal No.234/2010 of the Punjab State Consumer Disputes Redressal Commission.

iii) Parties:

Dr. Chander Mohan - Petitioner

Vs.

Gurcharanjit Sharma & 3 Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3239 of 2013 with IA/5687/2013 &

Date of Judgement: 19.03.2014.

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 medical records on file and the evidence adduced before the fora below. The affidavit evidence submitted by two Senior Vitrio Retinal Surgeons indicated that the patient suffered Expulsive Haemorrhage which is a well known complication of many types of intraocular eye surgery that can happen even at the best hospital with all precautions. This can occur intra-operatively and post-operatively due to sudden and spontaneous rupture of blood vessels at the back of eye.
- b) Evidence was produced before the Commission that the Complainant was operated upon in the free eye camp organized by the District Blindness Control Society.

- c) The Commission further noted that the Complainant produced certain documents which appeared erroneous, incomplete and forged. The Commission was unable to rely upon the records produced by him because the record of Rattan Hospital was devoid of any post-operative Expulsive Haemorrhages but showed only reference to higher centre.
- d) It was held that the Complainant developed Expulsive Haemorrhage post-operatively and his problem was not due to medical negligence of OP No.1 during cataract operation.
- e) It was further held that the Complainant approached the Consumer Forum with unclean hands but refrained from imposing any punitive cost on him since he had lost his right eye. The impugned order was set aside and the Revision Petition was allowed.

vii) Citation:

II (2014) CPJ 192.

11. Vasnatha Samkutty Vs. Marthoma Medical Mission Centre & Anr.

i) Case in Brief:

Petitioner/Complainant was admitted in the hospital of Respondent No.1/OP No.1 on 08.01.2000, was operated for appendicitis on the same day and was discharged on 15.01.2000. Since her condition was serious, on reference from Respondent Hospital, she was admitted in General Hospital, Pattinamthitta where she was treated by Dr.K.T.Sebastian till 29.01.2000. She was again admitted on 28.03.2000 and discharged on 06.04.2000. Alleging that she suffered monetary loss due to rash, negligent and irresponsible treatment of the Respondents, she filed complaint before the District Forum. The complaint was allowed and the Petitioner was awarded compensation, treatment expenses, cost of proceedings and interest. Aggrieved by the order of the District Forum, Respondent No.1 filed an appeal before the State Commission which allowed the same vide impugned order. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 12.11.2010 in Appeal No.1038/2004 of the Kerala State Consumer Disputes Redressal Commission.

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iii) Parties:

Vasnatha Samkutty - Petitioner

Vs.

Marthoma Medical Mission Centre & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.897 of 2011 & Date of Judgement: 25.03.2014.

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:

After considering the facts of the case in the context of what constituted medical negligence as laid down by the Hon'ble Supreme Court in *Jacob Mathew Vs. State of Punjab*, (2005) 6 SCC 1, the Commission pointed out that the Petitioner's own witness, PW-2, Dr. Sebastian had said in his statement that there was no negligence on the part of OP No.2 (Dr. P.V. George) who conducted the previous surgery on the Complainant and that the procedure adopted by him was the proper procedure. The Commission held that the order passed by the State Commission holding that there was no medical negligence was based on sound reasoning. There was no jurisdictional or legal error calling for interference under Section 21(b) of the Act. Consequently the Revision Petition was dismissed as devoid of merit.

vii) Citation:

II (2014) CPJ 747; 2014(3) CPR 257.

12. Madaan Surgical & Maternity Hospital & Anr. Vs. Santosh & Anr.

i) Case in Brief:

The Complainant Smt. Santosh went to Madaan Surgical & Maternity Hospital/OP.1 and Dr. Sushma Madaan/OP.2 did her Ultra-Sonography (USG) on 17.08.2000. The OP-1 told the complainant that the child had died and dried in the uterus. Thereafter, the Complainant went to Maharaja Agrasen Hospital, who referred her to Madhumita Diagnostic Centre/ OP.3, for another USG. On 18.08.2000, OP-3 performed USG and reported no evidence of pregnancy, no mass, no free fluid seen in

pouch of Douglas, urinary bladder is normal. Thus, alleging that it was a case of medical negligence and deficiency of service the Complainant filed a complaint before District Forum which held OP.1&2 liable and ordered them to pay jointly and severally the sum of Rs.1,00,000/- to the complainant for negligent services as well as for mental harassment, and the sum of Rs.2,000/- towards costs. Aggrieved by the order of the District Forum, the OP.1 & 2 filed the First appeal before the State Commission which was dismissed. Challenging the said order of the State Commission, OPs.1 and 2 had filed the present revision petition. Revision Petition partly allowed.

ii) Order appealed against:

Against the Order dated 17.05.2012 in Appeal No.587/2003 of the State Commission Haryana.

iii) Parties:

Madaan Surgical & Maternity Hospital & Anr - Petitioners

Vs.

Santosh & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3527 of 2012 & Date of Judgement: 01.04.2014.

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 Hon'ble Supreme Court in the case of *Dr. Laxman Balkrishna Vs. Dr.Triambak*, AIR 1969, SC 128 had held that the skill of a medical petitioner differs from doctor to doctor and it is incumbent upon the Complainant to prove that the doctor was negligent in the line of treatment that resulted in loss or damage. This view was reiterated in the case of *Indian Medical Association v. V.P.Shantha and others* (1995) 6 SCC 651. The National Commission held that the Complainant did not produce any expert evidence to establish any negligence on the part of OP No.1.
- b) The National Commission on perusal of the medical records found that there was a breach of duty by OP.1 who was a Pathologist and performed USG which amounted to deficiency in service. It

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was a breach of duty per se actionable. The Commission suggested imposition of penalty on Dr.Sushma/OP.2 to stop such practices and to protect the prospective patients who would approach her in future.

- c) The Commission also directed OP.1 to pay Rs.20,000/- as a compensation to the Complainant within 90 days and granted liberty to the Complainant to seek redressal from MCI or any appropriate Regulatory Body in this case, if so advised.

vii) Citation:

II (2014) CPJ 368; 2014(2) CPR 351.

13. Suresh Chandra Vs. Dr. Kailash Kabra & Ors.

i) Case in Brief:

On 15.09.2006, the Complainant, Mr. Suresh Chandra, took his son Mangalam, aged 15 years for treatment of kidney stone in OP.1 Hospital. On that day, OP-1, Dr. Kailash Kabra was not present and the Complainant was informed by the subordinate staff that OP-1 had gone out for some work. The stone of 13 mm. was crushed into pieces, medicines were prescribed and the patient was called for follow up and regular check-up. Thereupon, OP-1 advised the Complainant to come to Bhilwada clinic, on 27.11.2006, along with all the papers of treatment of his son. Sonography of his son was taken and OP-1 stated that it was normal and assured the Complainant that his son would recover soon, but there was no improvement in the condition of the patient. Thereafter, the patient was taken to Kidney Line Health Care Hospital, Ahmadabad on 08.01.2007 for treatment and a sum of Rs.85,993/- was spent. The Complainant alleged that OP-1 issued misleading advertisements and conducted the operation of his son in a hasty manner by lithotripsy which amounted to gross medical negligence. Hence he filed a complaint before the District Forum which held OP Nos.1 to 4, liable for medical negligence and awarded a lump-sum amount of Rs.1,11,000/-, on the basis of contractual liability (Indemnity). It also directed OP No.6/M/s. Bajaj Alliance General Insurance Co. Ltd. to pay the awarded amount of Rs.1,11,000/- to the Complainant. Aggrieved by the order of District Forum, Complainant filed First appeal for enhancement of compensation before the State

Commission which dismissed the appeal and passed a non-speaking order. Hence, the Petitioner/Complainant filed the present Revision Petition. Revision Petition allowed.

ii) Order appealed against:

Against the Order dated 19.07.2011 in Appeal No.1298/2011 of the State Commission Rajasthan.

iii) Parties:

Suresh Chandra - Petitioner

Vs.

Dr. Kailash Kabra & Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.4115 of 2011 & Date of Judgement: 01.04.2014.

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 of the case found that the Complainant's son was a young and bright student; he lost his academic year for 11th standard because of negligence of OP Nos.1-4. He further suffered pyonephrosis and renal stones. The hospital records from Kidney line Centre, Ahmadabad clearly established that the complainant visited Ahmadabad for regular follow-up treatment and investigations. In such circumstances, the Commission observed that the compensation awarded by District Forum was not just and proper and therefore, it enhanced the total compensation to a sum of Rs.4 lakhs.
- b) Further, the contention of the Insurance Company that five claims were registered against the said hospital/doctor, OP-6 could not be proved with cogent evidence. As there was no hint as to whether OP-6 had already paid or yet to pay the indemnified amount in all the five claims, the Commission fastened the entire liability of this case upon the Insurance Company to pay the awarded amount.

Deficiency in Service - Medical Negligence

c) In view of the above, the Commission allowed the revision petition and held that OPs 1-4 were liable for medical negligence. As OPs 1-4 were covered under Professional Indemnity from the insurance company (OP-6), OP-6 was directed to pay Rs.4 lakhs to the Complainant, within 90 days from the date of receipt of the order.

vii) Citation:

II (2014) CPJ 371; 2014(2) CPR 355.

14. Rohini Morghode Vs. Dr. A.V. Sapre & Anr.

i) Case in Brief:

Petitioner/Complainant, Smt. Rohini Morghode met with an accident. She consulted Dr. A.V. Sapre Respondent/OP who diagnosed it as fracture of right femoral neck. The complainant was operated upon by the Respondent/OP on 31.07.2003, during which, nailing was done. She was discharged from the hospital on 12.08.2003. It was revealed later on, from an x-ray that the nail fixed during operation on 31.07.2003 had shifted and the bone did not unite. Another operation was done on 04.10.2003 by the same doctor, wherein the nail was placed in position, along with the hip screw to support and prevent the nail to displace again. It has been stated that the procedure done by the respondent/opposite party is called SP-Nail fixation. It has been alleged that despite second surgery, the fracture could not be united and the complainant experienced continuous pain. The complainant was then operated upon third time by Dr. Jinsiwale of Indore on 31.01.2004, whereupon the complainant recovered and joined her duty on 16.03.2004. Later on, the complainant consulted one Dr. Y.C. Pande, MBBS, D. Ortho (Bombay) and after examination of the concerned reports and documents, he gave the opinion that the Respondent/OP had been negligent in performing the said procedure upon the complainant. Therefore, she filed the consumer complaint before the District Forum which dismissed the complaint, saying that the allegation of negligence against the opposite parties was not proved. An appeal filed against this order before the State Commission was also dismissed vide impugned order against which the present revision petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

Against the Order dated 30.04.2008 in Appeal No.2053/2006 of the State Commission Madhya Pradesh.

iii) Parties:

Rohini Morghode - Petitioner

Vs.

Dr. A.V. Sapre & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3102 of 2008 & Date of Judgement: 23.04.2014.

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 it had not been proved anywhere from the medical literature placed on record that SP Nailing technique had become obsolete, or was not being used elsewhere. The Respondent, Dr. A.V. Sapre, had a Masters degree in Surgery (MS) acquired in the year 1973. Evidently, he is a qualified doctor and well-equipped to handle such cases. Even if, it is proved that he failed to update his knowledge about the modern techniques in the field, the broad question that arises for consideration is, whether this amounts to negligence or deficiency in service. The Commission held that the concerned doctor may not be in a position to apply or follow the best possible technique, but if he is able to follow the standard method of an ordinary skilled man, he cannot be accused of being negligent in the performance of his duty by applying the Bolam Test.
- b) The Commission further held that the Petitioner/Complainant had produced on record the expert opinion of Dr. Y.C. Pande, which states that it was a case of improper surgery. The said doctor has the qualification D. Ortho, which is diploma in Orthopaedics whereas the Respondent/OP has a Masters degree in surgery, meaning thereby that he is better qualified and supposed to have better knowledge about the technical aspects of the subject.

Deficiency in Service - Medical Negligence

c) In view of the above, the Commission did not find any substance in the allegations of medical negligence against the doctor nor had there been any mala fide act, negligence or ignorance on the part of the doctor. Hence, present revision petition was dismissed and the orders of the fora below were upheld.

vii) Citation:

II (2014) CPJ 526; 2014(2) CPR 510.

15. Oriental Insurance Co. Ltd and others Vs. Baby Simran Kaur

i) Case in Brief:

Complainant/Respondent Baby Simran Kaur daughter of Nirmal Jeet Singh, was a minor and she filed the complaint in question through her father for reimbursement of the expenses incurred on her treatment availed against medi-claim policy, obtained in her favour and other members of the family for the period from 16.06.99 to 15.07.2000. Baby Simran Kaur was admitted in the hospital on 10.09.99 for operation of Lumber Spine. A total sum of Rs.1,46,520/- was spent on the treatment, along with other expenses and a claim was lodged for reimbursement with the OP/Insurance Company. However, the claim was repudiated by the OP on the ground that the claimant had a pre-existing congenital disease, which was not disclosed, while taking the policy in question. Aggrieved by the act of the OP, the Complainant filed complaint before the District Forum which dismissed the complaint in question, saying that the claim had been rightly repudiated by the OP as the complainant was suffering from that disease since birth. An appeal was filed against the order of the District Forum before the State Commission, which was allowed vide impugned order dated 09.08.2007 and it was directed that payment of Rs.1,46,520/- should be made to the complainant along with Rs.5,000/- as compensation for mental harassment and cost of litigation. It is against this order that the present revision petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

Against the Order dated 09.08.2007 in Appeal No.A-476/2003 of the State Commission Delhi.

iii) Parties:

Oriental Insurance Co. Ltd and others - Petitioners

Vs.

Baby Simran Kaur - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.519 of 2008 & Date of Judgement: 23.04.2014.

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 to be decided in the present case was that whether the insured had prior knowledge of the disease before taking policy.
- b) The National Commission after perusal of the records of the case agreed with the following views of the State Commission:
 - i. There was no material on record to show that the complainant had ever been hospitalized for the disease in question or was ever operated upon for the disease in the near proximity of obtaining the insurance policy or even a year or two before obtaining the policy.
 - ii. Until and unless a person is hospitalized or undergoes operation for a particular disease, he does not know the medical terminology of the disease he had been treated for.
 - iii. An analysis of the case with reference to the medical literature would show that the baby's condition may be categorized as congenital external disease. The exclusion Clause 4.3 of the insurance policy was therefore not attracted.
 - iv. There was no element of suppression of material facts or misrepresentation of any kind on the part of the policy holder.
- c) Further, medical literature indicated that the condition may be more befitting to be called a congenital external disease.

Deficiency in Service - Medical Negligence

d) In view of the above, the present Revision Petition was dismissed and the order of the State Commission was upheld.

vii) Citation:

II (2014) CPJ 515; 2014(2) CPR 504.

16. Dr. Baidyanath Chakraborty & Ors. Vs. Chandi Bhattacharjee & Ors.

i) Case in Brief:

Complainant and his wife, who had had two miscarriages, consulted Appellant No.1 who claimed to be a specialist in reproductive medicine. After a few visits, the lady conceived a third time. On one of the visits to Appellant's Institute, a consent form for treatment at the institute was got signed by the Complainant and his wife. When the Complainant's wife felt discomfort on 10.02.1997 and was taken to the Institute, she was advised to get admitted in Merryland Nursing Home (OP No.4/Respondent No.3). She was discharged after prescribing some medicines. She had to be admitted again in the 28th week of her pregnancy. She was attended by the same doctor who had attended earlier. Neither Appellant No.1 nor his wife, Appellant No.2 visited her even when she was in great pain. On 08.03.1997 around 9.30 p.m., Appellant No.2 performed the preterm delivery in the absence of any Neonatologist. Since there was no arrangement for neonatal care in the nursing home, the baby had to be shifted to Peerless Hospital and B.K. Roy Research Centre in a taxi at 2.10 a.m. on 09.03.1997. However the baby expired a few hours later at 8.55 a.m. Alleging gross negligence on the part of the Appellants, Complainant filed complaint before the State Commission claiming a compensation of Rs.10 lakhs for the death of the baby and the loss of mental balance of his wife. The State Commission allowing the complaint, directed Appellants 1 and 2 to pay the Complainant a sum of Rs.1.5 lakh and Rs.1 lakh respectively on account of their negligence. Aggrieved by the said order the present Appeal had been filed. Appeal dismissed.

ii) Order appealed against:

From the order dated 31.10.2008 in Complaint No.110/2000 of the West Bengal State Consumer Disputes Redressal Commission.

iii) Parties:

Dr. Baidyanath Chakraborty & Ors. - Appellants

Vs.

Chandi Bhattacharjee & Ors. - Respondents

iv) Case No and Date of Judgement:

First Appeal No.19 of 2009 & Date of Judgement: 24.04.2014.

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 claim of Appellant No.1 that he specialized in treatment of couples with problems of infertility and recurrent pregnancy wastage and that his institute was providing the best treatment to patients had raised legitimate expectation in the mind of the patient that she would get the best possible treatment and care. However though she was a “high risk” patient, she was attended by a junior doctor while the Appellant No.1 and other doctors were attending a conference. No Neonatologist was present though it was necessary to have one at the time of premature delivery. The Commission was of the opinion that the Appellants, particularly Appellant No.1 had failed to provide the Complainant and his wife the requisite ante-natal care. It was also noted that the baby was shifted in a taxi and not in an ambulance and that too after two hours of his birth. The Commission held that the three ingredients of negligence namely ‘duty’, ‘breach and resulting ‘damage’ as enunciated in *Jacob Mathew Vs. State of Punjab & Anr.* (2005) 6 SCC 1 had been established in this case and the Appellants were guilty of medical negligence.
- b) The Commission, relying on the decision in *Samira Kohli Vs. Dr. Prabha Manchanda & Anr.* (2008) 2 SCC 1 also held that the consent procured by the Appellants did not absolve them from their obligation to render due care to the Complainant’s wife and their preterm baby.

Deficiency in Service - Medical Negligence

c) The Appeal was dismissed as bereft of merit. The prayer for enhancement of compensation was also rejected. Complainant was awarded cost of Rs.50,000/-.

vii) Citation:

II (2014) CPJ 601; 2014(2) CPR 490.

17. Rajiv Gandhi Cancer Institute and Research Centre & Ors. Vs. Lt. Col. (Retd.) Zile Singh Dahiya

i) Case in Brief:

Respondent/Complainant's wife, Mrs. Krishna Kumari, was diagnosed of cancer of the cervix in August 1999. She underwent radiation therapy at PGI MS, Rohtak during August - September 1999 followed by Radical Hysterectomy at OP No.1 Cancer Institute on 22.10.1999. It was alleged that OP No.3 (Dr.Y.P.Bhatia) decided to rush through the treatment without proper tests, that there was negligence and deficiency in the manner the operation was performed as a result of which metastasis developed within a period of 10 months. It was further alleged that Fine Needle Aspiration Cytology (FNAC) report of 16.10.2000 indicated growth of secondaries of cancer but Dr.A.K.Chaturvedi and Dr.K.K.Pandey declined to accept the presence of malignancy as result of which the patient's condition deteriorated and she died on 06.02.2001. The State Commission before whom a complaint of medical negligence was filed, after hearing of parties and examining the material on record, allowed the complaint and awarded a lump sum compensation of Rs.5 lakhs in favour of the complainant. Aggrieved by the said order the present appeal was filed. Appeal partially allowed.

ii) Order appealed against:

From the order dated 17.04.2008 in Complaint No.C-108/2001 of the State Consumer Disputes Redressal Commission, Delhi.

iii) Parties:

Rajiv Gandhi Cancer Institute
and Research Centre & Ors.

- Appellants

Vs.

Lt. Col. (Retd.) Zile Singh Dahiya

- Respondent

iv) Case No and Date of Judgement:

First Appeal No.251 of 2008 & Date of Judgement: 24.04.2014.

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 fact that nearly one year later secondaries were found to have developed in another part of the patient's body is not proof in itself that Radical Hysterectomy was inadequately or negligently performed at Appellant No.1/Hospital and that the allegation therefore remained an unsubstantiated assumption. More so when the patient had chosen not to report to the OP Hospital for an inordinately long period of one year after the surgery. The National Commission therefore held that this finding of the State Commission could not be sustained.
- b) The Commission also noted that in the discharge summary, the Cancer Institute had noted on 28.10.1999 that the patient was being discharged with advice to be on a "three monthly follow-up for this year and six monthly" thereafter. In clear violation of the advice the patient was brought to the hospital only on 16.10.2000 i.e. a whole year after discharge from the Cancer Institute.
- c) The Commission noted that the diagnosis in 1999 had been one of cancer of the cervix. The follow-up surgery itself was performed by the Appellants/OPs in 1999. The reports of tests done in September-October, 2000 had consistently and unequivocally pointed towards a conclusion that the disease had returned. Yet the OPs chose to consider every test result as merely indicative/suggestive of metastasis, needing further evaluation. The Commission noted that the same reports allowed the Army Hospital, the Apollo Hospital and the Tata Memorial Hospital, Mumbai to reach a finding of metastasis, independently of each other.
- d) The Commission noted that there was no explanation why the patient was not immediately admitted when she reported on 16.10.2000. Until another two months the OP Institute had made no final diagnosis and therefore did not commence any treatment.

Deficiency in Service - Medical Negligence

It was held that the conduct of the Appellants/OPs clearly fell below the standard of “an ordinary competent person exercising ordinary skill in that profession”. In the Commission’s view the three ingredients of negligence namely ‘duty’, ‘breach’ and resulting ‘damage’ as enunciated in *Jacob Mathew Vs. State of Punjab* (2005) 6 SCC 1 had been established and that this was a clear case of medical negligence as well as deficiency in service.

- e) The Commission observed that since OP No.1 Institute was a premier Institution of great repute, persons deciding to be treated in such an Institution will have the expectation of higher quality of treatment and care. The status of a hospital carried an implied assurance that the quality of diagnostic, clinical, surgical, paramedical and other services offered by it would be commensurate with its status and reputation.
- f) In view of the above although the National Commission disagreed with the findings of the State Commission in so far as they related to Radical Hysterectomy performed on the deceased patient at OP No.1 Institute in 1999, it was not considered appropriate to reduce the compensation allowed by the State Commission.
- g) The Appeal was partly allowed. The findings of the State Commission to be extent they related to the surgery performed at Appellant No.1/Hospital in 1999 were set aside and the rest of the order was confirmed.

vii) Citation:

II (2014) CPJ 464; 2014(2) CPR 475.

18. M/s. Singhal Maternity and Medical Centre & Anr. Vs. Master Nishant Verma & Ors.

i) Case in Brief:

Three appeals have been disposed of by a common order, since the parties and the facts are common, by taking the facts of First Appeal No.223 of 2007. Shri Bijendra Singh Verma (Complainant No.2) father and guardian of Master Nishant Verma (Complainant No.1) had taken his pregnant wife Smt. Renu Verma (Complainant No.3) to M/s. Singhal

Maternity and Medical Centre (OP No.1) for ante-natal care and delivery under the Gynecologist, Dr.Pratibha Singhal (OP No.2) who along with her husband Dr. R.K.Singhal, Anesthesiologist (OP No.3) owned and ran the medical centre (OP No.1). It is the Complainant's case that after the delivery on 16th August 2002, OP No.2 informed Complainant No.2 that the patient faced extreme difficulty in having a normal delivery, that it became necessary to use forceps and in the process of extracting the baby with forceps, the nerves of the upper right limb appeared to have got damaged and his head had also been injured and heavily pulped on both sides. His neck and shoulder had turned blue due to bleeding under the skin. Complainant No.2 thereafter got the baby examined by various Neurologists and specialists who confirmed that all the five nerves had got totally damaged. Despite surgery conducted in France and USA, Complainant No.1 continued to suffer from various disabilities. Alleging medical negligence on the part of OPs, Complainants claimed compensation of Rs.1 crore. The State Commission allowed the complaint partly and directed that compensation of Rs.17 lakhs be paid to the Complainants (Rs.15 lakhs from National Insurance Co. Ltd. in terms of policy and Rs.2 lakhs from Dr.Pratibha Singhal) for deficiency in service caused by OPs 1 and 2. Aggrieved by the said order the present appeals have been filed by all the three parties. All the three appeals were dismissed.

ii) Order appealed against:

Appeal Nos.217 of 2007, 223 of 2007 and 391 of 2007

From the order dated 06.03.2007 in Complaint No.48/2004 of the Uttar Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

First Appeal No.217 of 2007

M/s. Singhal Maternity and Medical Centre & Anr. - Appellants

Vs.

Master Nishant Verma & Ors. - Respondents

First Appeal No.223 of 2007

Master Nishant Verma & Ors. - Appellants

Vs.

M/s. Singhal Maternity and Medical Centre & Ors. - Respondents

Deficiency in Service - Medical Negligence

First Appeal No.391 of 2007

National Insurance Co. Ltd.

- Appellants

Vs.

M/s. Singhal Maternity and Medical Centre & Ors. - Respondents

iv) Case No and Date of Judgement:

- i) First Appeal No.217 of 2007 with IA/3446/2013, IA/4436/2013
- ii) First Appeal No.223 of 2007 with IA/3446/2013, IA/4436/2013
- iii) First Appeal No.391 of 2007 with IA/3446/2013, IA/4436/2013 &
Date of Judgement: 24.04.2014.

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) Applying the principles of what constitutes medical negligence as settled by the judgements 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, the Commission held that even though OPs 2 and 3 were well qualified doctors they did not exercise reasonable degree of care and skill both in terms of conducting the ante-natal checks and the diagnosis thereof.
- b) The Commission, relying on the judgement of the Hon'ble Supreme Court in *Achutrao Haribhau Khodwa and others V. State of Maharashtra and others* [(1996) 2 SCC 634] held that there was no medical negligence or deficiency in service in OP No.2's taking a decision to conduct a forceps delivery.
- c) The Commission further held that there was no medical negligence or deficiency in service on the part of OPs in respect of medical care of Complainant No.1 after delivery.
- d) Consequently First Appeal No.217 of 2007 filed by OPs 1 and 2 and First Appeal No.391 of 2007 filed by OP No.4/Insurance Company were both dismissed.
- e) First Appeal No.223 of 2007 filed by Complainants for enhancement of compensation was also dismissed since the Commission observed that the physical injuries at that time of

delivery had not fortunately impacted on the IQ and general mental development of Complainant No.1. However though OPs 1 and 2 were found guilty of medical negligence on lesser counts than concluded by the State Commission, there was no change in the compensation of Rs.17 lakhs awarded by the State Commission.

vii) Citation:

II (2014) CPJ 441; 2014(2) CPR 464.

19. Prawati Devi Vs. Dr. Ramanand Jha, Central Coal Fields Ltd.

i) Case in Brief:

Petitioner/Complainant's husband was a patient of hypertension and diabetes mellitus (DM). On 15.04.2008, he developed dyspnoea with cough and mild chest pain and was admitted to Regional Hospital, Dhori under Coal Fields Ltd. where the OP/Doctor was on duty. He examined the patient, diagnosed DM with hypertension and Myocardial Infarction. He administered the injection "streptokinase" to the patient which allegedly led to Cerebral Hemorrhage. The patient was referred to Bokaro General Hospital (BGH) the same day. However the patient died at BGH on 25.04.2008 at 3.00 a.m. Alleging medical negligence on the part of OP/Doctor, a complaint was filed before the District Forum which allowed the complaint and directed payment of Rs.12,000/- as compensation and Rs.3,000/- as cost of litigation by the doctor to the Complainant. Appeals were filed by both the parties before the State Commission. The State Commission, vide impugned order, dismissed the appeal filed by the Complainant and allowed the appeal filed by the OP/Doctor against which the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 08.08.2012 in Appeal No.265/2009 of the Jharkhand State Consumer Disputes Redressal Commission.

iii) Parties:

Prawati Devi

- Petitioner

Vs.

Dr. Ramanand Jha, Central Coal Fields Ltd.

- Respondent

Deficiency in Service - Medical Negligence

iv) Case No and Date of Judgement:

Revision Petition No.4156 of 2012 & Date of Judgement: 30.04.2014.

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 from the record that the patient was in a serious condition when he was brought to the CCL Hospital, Dhori. It was also noted that the relatives were advised to take him to BGH and only on their insistence initial treatment was given. However within a few hours of admission in the CCL Hospital, the patient was shifted to BGH, where he died after 10 days i.e. 25.04.2008. As regards the allegation that OP/Doctor was not qualified to give the injection streptokinase, the Commission noted the evidence of one Dr. Neeraj Prasad, Department of Cardiology that streptokinase can be given by all qualified MBBS doctors and also by trained paramedics. It was therefore held that OP/Doctor had not indulged in any negligence by just giving the said injection. The Commission further noted that there was affidavit on record given by 4 doctors that Dr. Ramanand Jha consulted all of them and other doctors as per the system and practice in the hospital and it was unanimously decided to inject streptokinase to save the life of the patient.
- b) In the light of the above facts, the Commission agreed with the State Commission's finding that the allegation of medical negligence was not proved. The Revision Petition was accordingly dismissed.

vii) Citation:

II (2014) CPJ 559; 2014(2) CPR 415.

20. Sir Dorabji Tata Trust Aided Hospital & Ors. Vs. Rajeswari

i) Case in Brief:

Complainant's husband, Hariharan was admitted in Petitioner hospital (OP No.1) on 13.12.2002 since he was suffering from severe pain and high fever. It is the Complainant's case that the patient's condition did not improve and she wanted to move him to Amrita Institute of Medical

Science and Research Centre (AIMS) but the OP No.4/Petitioner No.3 (Dr. S.Krishna Iyer of OP No.1) would not allow them to do so. On 16.12.2004, after testing the urine, blood and spit of the patient, OP No.4 informed the Complainant that the patient was suspected to be infected by jaundice for which there was no facility for treatment at their hospital. The Complainant got the patient discharged at about 1.00 p.m. and he was admitted in Amrita Hospital around 2.00 p.m. He was taken to the intensive care unit and after various tests he was detected to be inflicted by rat fever (leptospirosis). His liver and kidney had been badly damaged and he died on the same day at 10.05 p.m. Alleging medical negligence, Complainant filed a complaint in the District Forum which allowed the complaint and directed the Petitioners (OPs 1, 2 & 4 in the complaint) to pay a sum of Rs.2,00,000/- jointly and severally as compensation along with Rs,2,000/- as cost. On an appeal filed by the Petitioners, the State Commission modified the order of the District Forum reducing the compensation from Rs.2,00,000/- to Rs.1,00,000/- vide impugned order against which the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 31.08.2011 in Appeal No.279/2005 of the Kerala State Consumer Disputes Redressal Commission.

iii) Parties:

Sir Dorabji Tata Trust Aided Hospital & Ors. - Petitioners

Vs.

Rajeswari - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.169 of 2012 & Date of Judgement: 30.04.2014.

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 agreed with the State Commission that there was serious lapse on the part of OPs in not referring the deceased to a higher centre at the earliest. The Commission found no substance in the argument of the Petitioners that the diagnoses for rat fever can only be made after blood culture test which would take 7 to 10 days.

Deficiency in Service - Medical Negligence

It was pointed out that the doctors at AIMS were able to diagnose within a matter of hours that the patient was suffering from leptospirosis (rat fever). The Commission also noted that one Dr. Ganapathy Rao had given a statement that the diagnosis can be made within 24 hours by antibody test. Based on the material on the record the Commission held that the concurrent findings of the lower fora cannot be brushed aside. The Commission further held that the State Commission's well reasoned judgement reducing the compensation from Rs.2,00,000/- to Rs.1,00,000/- did not suffer from any illegality, irregularity or jurisdictional error to warrant interference. Accordingly the Revision Petition was dismissed as devoid of merit.

vii) Citation:

II (2014) CPJ 644; 2014(2) CPR 142.

21. Sucheta Sanyal Vs. Dr.M. Bhowmik & Ors.

i) Case in Brief:

Complainant, a primary school teacher in Assam, consulted OP No.1, an eye specialist who was a resident of Kolkata and used to visit and work in Alipurduar for 3 days a week at St. Mary Nursing Home (OP No.2). OP No.1, after examination of the Complainant on 17.07.2001 advised immediate cataract surgery of right eye. The surgery was performed on 18.07.2001. The bandage was removed next day but Complainant had to visit OP No.1 on 20.07.2001 due to unbearable pain. On his advice she visited Kolkata on 24.07.2001, got admitted at Alok Eye Center and was treated by a team of doctors including OP No.1 till 27.07.2001. Since there was no improvement she again visited Kolkata on 04.08.2001 and according to the Complainant OP No.1 did not explain the seriousness of her condition. She consulted another surgeon at Sri Sankaradeva Nethralaya Medical Research Foundation at Guwahati where her condition was diagnosed as post-operative Endophthalmitis (inflammation/infection) Schleral and Limbal necrosis (death of part) and conjunctival sloughing (shedding of skin). Complainant visited OP No.1 again with the above findings but he suggested continuation of the medicines he had prescribed earlier. She consulted another specialist who advised removal of her right eye immediately as there was possibility of brain hemorrhage. Her right eye was removed at Sankar Nethralaya, Chennai on 29.09.2001 and she was discharged on

03.10.2001. Alleging deficiency in service on the part of OP No.1 for failure to diagnose and treat the serious complications, she filed the present complaint claiming Rs.30,00,000/- as total compensation. Complaint dismissed.

ii) Order appealed against:

Original Complaint.

iii) Parties:

Sucheta Sanyal - Complainant

Vs.

Dr. M. Bhowmik & Ors. - Opposite Parties

iv) Case No and Date of Judgement:

Consumer Case No.25 of 2002 & Date of Judgement: 05.05.2014.

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 Commission referred to several decisions of the Hon'ble Supreme Court on medical negligence. In *Indian Medical Association v. V.P.Shantha and others* (1995) 6 SCC 651 and *Jacob Mathew v. State of Punjab and another*, (2005) 6 SCC 1, AIR (2005) SC 3180, it was held that a professional may be held liable on one of two findings: either he was not possessed of requisite skill which he professed to have possessed, or, he did not exercise with reasonable competence, the skill which he did possess. Referring to Bolam's case the Commission held that three principles were applied to decide negligence of a doctor. In the instant case it was held that OP No.1 was a qualified doctor having experience and skills in his specialty and he used his best professional judgement and due care in treatment of patient during post-operative care.
- b) The Commission after going through the medical records, the documents filed by both the parties and the case summaries of Shri Sankaradeva Nethralaya, Guwahati and Shankar Nethralaya, Chennai, did not agree that there was delay in diagnoses and management of Endophthalmitis by OP No.1. It was held that OP No.1 had acted as per standard of practice and there was no

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deviation. There was no act of omission or commission on his part and hence no negligence.

c) The complaint was accordingly dismissed.

vii) Citation:

II (2014) CPJ 762; 2014(3) CPR 146.

22. Vijay Dutt Vs. Dr.R.D. Nagpal & Anr.

i) Case in Brief:

Complainant was suffering from migraine. Higher investigations revealed aneurysm in the right side of the brain. He got himself admitted in Jaslok Hospital, Mumbai (OP No.2) for treatment under OP No.1. He claimed that he was forced to undergo surgery immediately as otherwise his life was in danger. The operation was performed by “clipping method” and not to by “coiling method”. It was the case of the Complainant that OP.1 & 2 were guilty of medical negligence and deficiency in service as OP-1 wrongly applied the clip on the artery instead of the aneurysm. Due to such negligence, he suffered severe impairment of speech and paralysis on the right side. He incurred heavy medical expenses for operation, the physiotherapy, speech therapy and prolonged hospitalization. He suffered mental agony. Therefore, the Complainant, Vijay Dutt filed this complaint through his wife Dr. Mrs. Veena Dutt seeking a total relief of Rs.53,46,200/- Complaint dismissed.

ii) Order appealed against:

Original Complaint

iii) Parties:

Vijay Dutt - Complainant

Vs.

Dr. R.D. Nagpal & Anr. - Opp. Parties

iv) Case No and Date of Judgement:

Consumer Case No.199 of 2001 & Date of Judgement: 07.05.2014.

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:

The National Commission dismissed the complaint for the following reasons:

- a) On perusal of the degree and experience certificates of OP-1, the Commission found that OP-1/Dr. R.D. Nagpal is an experienced Super Specialist, Neuro-Surgeon, working in OP-2 hospital.
- b) The Medical Board Report from AIIMS, New Delhi dated 23.06.2012 opined that the OP adopted correct method of surgery and adopted proper treatment during emergency re-surgery.
- c) It was not an accident or mishap during or after surgery. The witness, Dr. Srinivas Desai, an Interventional Neuro-radiologist also opined that the surgical clipping is the preferred method of choice in wide neck aneurysms.
- d) The Commission confirmed the above said facts after going through several medical text books on neuro-surgery, research articles on the subject of MCA aneurysms and its management which reiterate the advantages of Clipping (Surgical) over Coiling (endovascular) method: surgical clipping is the preferred treatment for aneurysms of the middle cerebral artery.
- e) The Commission also relied on several decisions of the Honble Apex Court like *Dr. Laxman Balkrishna Joshi Vs. Dr. Trimbak Babu Godbole, Achutrao Haribahau Khodwa and Ors. Vs. State of Maharashtra and Ors*, MANU/SC/0600/1996 & other decisions like *Bolam Vs. Frien Hospital Management Committee*, (1957) 1 WLR 582, *Hucks v. Cole* (1968) 118 New LJ 469.
- f) In view of the above, the Commission did not find any negligence committed by OP-1, during, and/or after operation and held that OP-1 has adopted the Clipping method, as the best choice.

vii) Citation:

2014(3) CPR 120.

23. Mr. Rajmal Singh & Ors. Vs. Dr. Madhu Gupta & Ors.

i) Case in Brief:

Complainant No.1 and his five minor sons, Complainants No.2 to 6 had filed this complaint in the year 2002 alleging medical negligence on the part of Dr. Madhu/OP No.1 of Navjeevan Hospital, OP No.2, Dr. Atul

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Agarwal, OP No.3 of Shivam Hospital, OP No.4 due to which Complainant No.1's wife, Smt. Krishna Singh died. The complaint was that Smt. Krishna Singh was suffering from abdominal pain and wanted removal of her uterus. OP No.1 whom she consulted in May 1999 advised her that there was no need for Hysterectomy and advised medication. Again on 14.08.1999 Mrs. Singh visited OP No.1 at OP No.2 hospital. She was admitted there and after conducting of a few tests she was discharged the same evening. Due to severe pain, she was again admitted on 15.08.1999. It was the case of Complainant No.1 that OP No.1 performed urgent surgery on his wife without anybody's consent in the labour room of OP No.2 where there were no facilities. Consequently the patient developed septicemia and became more critical. She was shifted to ICU of OP No.4 hospital, where she was kept on ventilator from 16.08.1999 to 10.09.1999. Since there was no improvement she was shifted to Batra Hospital, New Delhi on 10.09.0999 where she expired on 20.09.1999. Alleging negligence in diagnosis, the performance of surgery and in post-operative care, a complaint was filed before the National Commission seeking a compensation of Rs.24,79,453/-. Complaint was allowed and a compensation of Rs.10,00,000/- with interest at 6% p.a. from the date of filing complaint and litigation cost of Rs.30,000/- was awarded.

ii) Order appealed against:

Original Complaint.

iii) Parties:

Mr. Rajmal Singh & Ors. - Complainants

Vs.

Dr. Madhu Gupta & Ors. - Opposite Parties

iv) Case No and Date of Judgement:

Consumer Complaint No.207 of 2000 & Date of Judgement: 08.05.2014.

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 Commission after perusing the affidavit evidences on file, the hospital records, the opinion given by one Dr. Kadam and relevant medical literature came to the conclusion that it was a case of

wrong diagnoses and that at the first instance itself, in May 1999, the patient's abdominal pain was not properly assessed by OP No.1. It was held that OP No.1 and 3 had not adopted a standard surgical management in the case of Strangulated hernia.

- b) The Commission also held that no informed consent was taken from the patient, though she was conscious, before the surgery which amounted to negligence. It was noted that the patient was a conscious and competent adult and there was no question of waiting for her husband or anyone else to get the consent.
- c) The Commission applied the following principles to arrive at the question of negligence i) whether the doctor possessed the medical skills expected of an ordinary skilled practitioner in the field ii) whether the doctor adopted the practice that would be adopted by a doctor of ordinary skill in accord with at least one of the reasonable bodies of opinion of professional practitioners in the field and iii) whether the standards of skills/knowledge expected of the doctor, according to the said body of medical opinion, were of the time when the events leading to the allegation of medical negligence occurred and not of the time when the dispute was being adjudicated. The Commission held that the answer was "yes" to question (i) and "No" to questions (ii) and (iii).
- d) The Commission held that treatment given to the patient was not as per standards of practice. The hospital records lacked several details pertaining to operative notes, procedural aspects etc., It was further held that OPs did not exercise reasonable competence in this case and tried to shift their onus on Batra Hospital which was not acceptable.
- e) Holding OPs 1 and 3 liable for medical negligence, the Commission directed them to pay the Complainants/LRs, jointly and severally a total sum of Rs.10,00,000/- with interest at 6% p.a. from the date of filing complaint till its realization and further to pay Rs.30,000/- towards litigation charges.

vii) Citation:

III (2014) CPJ 230; 2014(3) CPR 99.

24. Tarun Garg Vs. Dr.R.K. Gupta

i) Case in Brief:

Complainant met with a road accident at 2.00 p.m. on 01.05.2006. He got first aid there. On the next day OP performed a surgery for fixation of fracture of his left arm which went on for 5 hours. Alleging that OP used highly inferior and substandard implants which resulted in complication in his recovery, the Complainant filed complaint before the District Forum claiming Rs.8,00,000/- towards expenditure, mental agony and trauma. The District Forum on the basis of opinion from Department of Orthopedics, UCMS and GTB Hospital held OP for minor medical negligence and directed him to pay Rs.30,000/- along with Rs.5,000/- towards cost of litigation to the Complainant. Both the parties filed first appeals before the State Commission. The State Commission allowed the appeal of OP and dismissed the Complainant's appeal vide impugned order against which the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 10.07.2012 in Appeal No.899/2009 of the State Consumer Disputes Redressal Commission, Delhi.

iii) Parties:

Tarun Garg - Petitioner

Vs.

Dr. R.K.Gupta - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1122 of 2013 & Date of Judgement: 09.05.2014.

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 perusing the evidence on record and medical text books of orthopedics did not find evidence to establish cause-effect relationship between the surgery conducted by OP and the alleged damage caused to the body of the Complainant. It was also held that the operation which was conducted in an emergent situation had saved

the Complainant's upper limb. The Commission also noted that the opinion from the Department of Orthopedics, UCMS and GTB Hospital showed that the patient had received satisfactory treatment. The Commission observed that the complaint suffered from the vice of "*suppressio veri and suggestio falsi*" in that it lacked the relevant facts and gave only a partial picture. The Commission did not find any causal relation between the surgery performed by OP and the numbness of the little finger of the Complainant. In the light of the principles laid down in the judgments of the Hon'ble Supreme Court in *Achutrao Haribhau Khodwa and others V. State of Maharashtra and others* [(1996) 2 SCC 634] and *Kusum Sharma and others V. Batra Hospital and Medical Research Centre and others*, (2010) 3 SCC 480 and that of Bolam case (*Bolam Vs. Frien Hospital Management Committee* (1957) 1 WLR 582), the Commission held that OP acted as a reasonably competent surgeon and dismissed the Revision Petition.

vii) Citation:

II (2014) CPJ 700; 2014(3) CPR 80.

25. Ms. Parveen Gandhi & Ors. Vs. Dr.K.N. Singla & Ors.

i) Case in Brief:

Mr. Anil Gandhi (since deceased), son of a business man, was admitted in Golden Century Hospital (OP-2) on 01.07.1999 for treatment of fever under OP1. He was given one bottle of Glucose. Since his condition improved, he was given another bottle of Glucose the next morning. But he started shivering, his BP collapsed and his condition deteriorated. OP 1 and 2 advised the Complainants to shift him to Jaipur Golden Hospital for further treatment. He was kept on artificial ventilation but he died at 12.45 p.m. The Complainants claimed that after about two months they came to know that the patient died due to administration of adulterated glucose and because of negligent treatment of OP-1 at both the hospitals. Complainants filed the present complaint claiming a compensation of Rs.22 lakhs besides Rs.50,000/- towards mental agony and Rs.22,000/- as litigation costs. Complaint dismissed.

ii) Order appealed against:

Original Complaint.

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iii) Parties:

Ms. Parveen Gandhi & Ors. - Complainants

Vs.

Dr. K.N. Singla & Ors. - Opposite Parties

iv) Case No and Date of Judgement:

Consumer Complaint No.281 of 2000 & Date of Judgement: 16.05.2014.

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:

The Commission after perusing the medical records found no evidence to prove that the Complainant had sent the glucose bottle for chemical analysis. No postmortem was conducted. No Police complaint was lodged at the time of death. No complaint was lodged against the chemist and the manufacturer of the said glucose. The Commission held that OP-1 treated the patient of high grade fever with due caution and due to serious deteriorating condition of the patient, he referred him to another hospital for further management. Referring the patient to another hospital is a standard medical practice and cannot be considered as negligence. The Commission held that the few discrepancies in the hospital records of Jaipur Golden Hospital brought to its notice were unintentional and were made during handling of dire emergent situation. Relying upon the Bolam test and the judgement of the Hon'ble Supreme Court in *Achutrao Haribhau Khodwa and Ors. Vs. State of Maharashtra and Ors.* (1996) 2 SCC 634, it was held that merely because the doctor chooses one course of action in preference to another, he would not be liable to action. Lord Denning's observation in *Hucks V. Cole* (1968) 118 New LJ 469 that "medical practitioner would be liable only were his conduct fell below that of the standards of a reasonably competent practitioner in his field" was cited and the Commission held that the Complainant failed to prove negligence on the part of OP. The complaint was accordingly dismissed.

vii) Citation:

IV (2014) CPJ 48.

(ai) NON-COMPLIANCE OF TRIBUNAL'S ORDER

1. Union of India & Anr. Vs. Krishna Kumar Mani Tiwari

i) Case in Brief:

Disciplinary Proceedings were initiated against the Complainant, while he working as Assistant Cashier, for alleged negligence in his part in not sealing a bag in which an amount of Rs.15,000/- was to be sent to another Post Office. A penalty of Rs.10,000/- was imposed on him for the said lapse on 15.02.1990 and it was recovered on 04.11.1992. However the said order was quashed by the Central Administrative Tribunal, Allahabad Bench in 1996. Although the order was accepted by the Petitioners, the amount recovered from the Complainant was not refunded to him. Even after the Complainant's superannuation on 31.01.2006, the aforesaid amount was not refunded. The Complainant, alleging deficiency in service, approached the District Forum which directed the OPs to pay to the Complainant the sum of Rs.10,000/- withheld by them along with a sum of Rs.70,000/- towards interest etc., The Appeal filed by the OPs was dismissed by the State Commission in default on account of non-appearance of the Counsel vide impugned order against which the present Revision Petition had been filed along with an application for condonation of delay. Both the application for condonation of delay and the Revision Petition were dismissed.

ii) Order appealed against:

From the order dated 05.09.2012 in Appeal No.1241/2007 of the Uttar Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

Union of India & Anr.

- Petitioners

Vs.

Krishna Kumar Mani Tiwari

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1184 of 2014 & Date of Judgement: 24.04.2014.

v) Acts and Sections referred:

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

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vi) Issues raised and decided:

- a) The Commission held that the Petitioners had failed to make out “sufficient cause” for condonation of inordinate delay of 324 days, especially when the Petitioners had the benefit of advice of senior law officers. Relying on the decisions in a catena of cases namely *Oriental Aroma Chemical Industries Ltd v. Gujarat Industrial Development Corporation & Anr.*, (2010) 5 SCC 459, *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 *Rajeev Hitendra Pathak & Ors. Achyut Kashinath Karekar & Anr.* (2011) 9 SCC 251, the Commission declined to condone the delay.
- b) The Petitioners, citing the decision of the Hon’ble Supreme Court in *Jagmittar Sain Bhagat & Ors. Vs. Director, Health Services Haryana & Ors.* (2013) 10 SCC 136 that the Government servant cannot raise any dispute regarding his service conditions or for payment of gratuity or GPF or any of his retiral benefits before any of the forums constituted under the Act, held that the complaint was not maintainable and the fora below had committed a serious error in entertaining the complaint. The National Commission observed that, though strictly speaking the complaint was not maintainable, considering the quantum of the amount involved and the conduct of the Petitioners in not refunding the amount in spite of the orders of CAT quashing the penalty, taking a year to challenge the order of the State Commission and almost seven years in questioning the correctness of the order passed by the District Forum and not contesting the complaint on the merits of the claim in their written statement filed before the District Forum, held that it would be a travesty of justice to direct the Complainant to approach an appropriate forum for refund of the amount of Rs.10,000/-.
- c) Considering the peculiar facts and circumstances of the case the Commission decided not to exercise their revisionary jurisdiction and dismissed the Revision Petition.

vii) Citation:

2014(2) CPR 486.

(aj) OVER-PRICING

1. D.K. Chopra Vs. Snack Bar

i) Case in Brief:

It was the case of the Complainant/Petitioner that the Respondent, who had a Snack Bar at Chennai Air Port, sold two Red Bull Energy Drink cans to him at Rs.150/- per can on 01.11.2009 while M.R.P was Rs.75/-. Again on the same day another can was sold to him at Rs.140/-. The Complainant approached the District Forum with a complaint which was dismissed. The first appeal filed before the State Commission was also dismissed vide impugned order against which the present Revision Petition had been filed. Revision Petition allowed with punitive cost.

ii) Order appealed against:

From the order dated 10.04.2012 in Appeal No.118/2011 of the Tamil Nadu State Consumer Disputes Redressal Commission.

iii) Parties:

D.K. Chopra - Petitioner

Vs.

Snack Bar - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4090 of 2012 with IA/5132/2013, IA/5133/2013 & Date of Judgement: 04.03.2014.

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 evidence of the Airport Authority of India of having given permission to sell the energy drink at a price higher than the MRP. The Commission observed that a person who purchases an energy drink, while standing, is not obliged to pay the fees which is prescribed for the restaurant. Restaurants provide service. A Snack Bar, just like a tea stall or a Pan/Beedi stall hardly provides any service to its customers.

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- b) The Commission observed that the Airport Authorities are working in cahoots with the stall owners so that they may pay them higher rate of the license which is not permissible in law.
- c) Holding that MRP itself includes the commission/profit for the shop keeper, the Commission allowed the complaint and set aside the orders of the fora below. OP was directed to pay compensation in the sum of Rs.10,000/- to the Complainant within 90 days; otherwise it will carry interest at the rate of 9% p.a.
- d) The Commission observed that the OP had exploited the public prior to and after the incident under the very nose of the Airport Authority and that OP has no right to keep and misappropriate public money. Accordingly the OP was ordered to deposit a sum of Rs.50 lakhs, the estimated rough amount, with the Consumer Welfare Fund of the Ministry of Consumer Affairs within 90 days from the date of receipt of the order; otherwise it will carry interest at the rate of 9% p.a.

vii) Citation:

II (2014) CPJ 493.

(ak) PAYMENT OF INTEREST / STAMP DUTY

1. Ropar Improvement Trust & Anr. Vs. Baldev Raj

i) Case in Brief:

Respondent/Complainant filed a consumer complaint against the Petitioner Trust and its Executive Officer alleging deficiency in service before the District Forum. Allowing the complaint, the Forum directed the Petitioners to withdraw the letter qua resumption of plot, deliver possession of the same, execute the sale deed and provide two years time for construction. The Forum's order was confirmed by the State Commission with some modification. The aforesaid order of the State Commission dated 30.05.2005 became final. Since it was not implemented by OP, Respondent filed an Execution Petition under Section 27 of the C.P Act. During the pendency of the Execution Petition, the Petitioner executed sale deed in favour of the Respondent on stamp papers of Rs.76,000/- on the basis of stamp duty calculated as per the reserved price of the plot at the time of allotment. The sale deed was impounded by the Sub Registrar, when presented, on the

ground that the stamp duty paid was insufficient. The Collector, Ropar directed that a sum of Rs.1,61,730/- with interest should be recovered and the sale deed be returned to the parties. Respondent's appeal against the Collector's order was dismissed by the Commissioner. The District Forum allowed the application filed by the Respondent under Section 27 and directed the Trust through the EO to pay fine in the sum of Rs.10,000/-. Respondent's appeal against the said order was partly allowed by the State Commission directing the Petitioners to make good the deficiency in stamp duty as demanded by Revenue Authorities. Challenging the order of the State Commission the present Revision Petition had been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 29.04.2013 in F.A.No.553/2009 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh.

iii) Parties:

Ropar Improvement Trust & Anr. - Petitioners

Vs.

Baldev Raj - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3220 of 2013 with IA/5645/2013 (Stay) &

Date of Judgement: 09.01.2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19, 21(b) and 27 of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Commission on perusal of the record found that the order which was the subject matter of application under Section 27 was passed on 30.09.2005. The sale deed was executed by the Petitioners after a long delay of more than two years on 16.01.2008. The question was whether the delay had resulted in putting the Respondent/Complainant under liability to pay enhanced stamp duty. The Commission noted that the rates of stamp duty were increased by Government w.e.f. 22.10.2002 and the sale deed submitted by the Complainant for registration was impounded because of lesser stamp duty as per the rates applicable w.e.f. 22.10.2002. The Commission therefore held that delay on the part of the Petitioners to execute the sale deed had not added to the

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liability of the Respondent/Complainant to pay enhanced Court fee because the order under execution was passed on 30.05.2005 and even if the Petitioner had executed the sale deed on the same date, the liability of the Respondent/Complainant viz-a-viz the stamp duty would have been the same. The Commission therefore held that the State Commission had committed an grave illegality by directing the Petitioner to make good the deficiency in stamp duty. The order of the State Commission was therefore set aside and the Revision Petition was allowed. The order of the District Forum was restored.

vii) Citation:

I (2014) CPJ 284; 2014(1) CPR 172.

2. United India Insurance Co. Ltd. Vs. Balrampur Chinik Mills Ltd.

i) Case in Brief:

Complainant/Respondent obtained insurance policies from OP/ Petitioners for various years from 1993 to 2000 and paid excess premium. Despite repeated requests, OP refunded premium after a long delay. Complainant claimed Rs.4,70,607/- as interest at 18% p.a. on the late refund of excess premium and filed complaint before the District Forum. The Forum allowed the complaint and directed OP to pay Rs.4,47,823/- along with 16% p.a. interest and Rs.3,000/- as costs. The State Commission, on appeal filed by the Petitioner, reduced the interest from 16% to 9% p.a. against which the present Revision Petition had been filed. Revision Petition partly allowed.

ii) Order appealed against:

From the order dated 14.02.2008 in Appeal No.222/2004 of the Uttar Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

United India Insurance Co. Ltd. - Petitioner(s)

Vs.

Balrampur Chinik Mills Ltd. - Respondent(s)

iv) Case No and Date of Judgement:

Revision Petition No.2730 of 2008 & Date of Judgement: 13.02.2014.

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 had failed to prove that claim was refused on 10.01.2000 or 10.01.2001 and in such circumstances claim for interest Rs.53,256/-, Rs.1,44,960/- and Rs.8,878/- regarding first three policies premium refund which was made upto 18.11.1997 was time barred and the District Forum had committed error in allowing claim in toto.
- b) The Commission further held that the Respondent had not placed any material on record to substantiate that Respondent was taking loan at 18% p.a. and in such circumstances it would be appropriate to allow interest at 12% p.a. instead of 18% p.a. as claimed by the Complainant.
- c) The Commission further held that decretal amount whether in the form of interest or principal, the decree holder is entitled to get interest on that amount and the State Commission had not committed error in allowing 9% interest on the aforesaid amount.
- d) Consequently the Revision Petition was allowed partly and it was held that Complainant/Respondent was entitled to get Rs.1,75,856/- as interest on the delayed refund of premium and further interest at 9% p.a. from 13.02.2001 till realization on this amount as allowed by the State Commission with cost of Rs.3,000/- as allowed by the District Forum. The orders of the fora below were modified on the above lines.

vii) Citation:

2014(1) CPR 516.

(al) PENSION SCHEME

1. Regional Commissioner, CMPF, Dhanbad Vs. Anant Sethi

i) Case in Brief:

Complainant/Respondent, Anant Sethi was initially appointed in National Coal Development Corporation (NCDC) on 02.03.1962. Later on NCDC merged with Coal India Limited and the Complainant joined one of its subsidiary companies namely Bharat Cooking Coal Limited (BCCL) on 11.09.1969. Complainant exercised his option in March 1970 to

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remain governed by the service conditions of NCDC. Accordingly he was sanctioned pension at 25% of last drawn wages. The Complainant, quoting circulars of Coal India Limited and BCCL, claimed that he was entitled for payment of pension at 50% of his basic pay. Since his representations did not elicit a positive response, he filed complaint before the District Forum. The Forum dismissed the complaint. However, the appeal filed by the Complainant was allowed by the State Commission which directed the OPs to refix his pension and pay the dues. Challenging the said order the present Revision Petitions had been filed by the OPs. Both the Revision Petitions allowed.

ii) Order appealed against:

From the order dated 18.05.2012 in Appeal No.404/2009 of the Jharkhand State Consumer Disputes Redressal Commission.

iii) Parties:

Revision Petition No.3036 of 2012

Regional Commissioner, CMPF, Dhanbad - Petitioner

Vs.

Anant Sethi - Respondent

Revision Petition No.4370 of 2012

Project Officer - Petitioner

Vs.

Anant Sethi & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition Nos.3036 of 2012 and 4370 of 2012 with IA/2445/2013 & Date of Judgement: 13.03.2014.

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 respect of RP No.3036/2012, the Commission accepted the contention of OP that they are a statutory authority created by an Act of Parliament and that they were supposed to give pension at 25% of the salary as per provisions of the Coal Mines Pension Scheme, 1998 and that they were not bound by the circulars of Coal India Limited or BCCL. The Revision Petition was therefore

allowed and the order passed by the State Commission qua the Petitioner, the Regional Commissioner, CMPF was set aside.

- b) In respect of RP No.4370/2012, it was noted that the Respondent Anant Sethi was appointed to the service on 02.03.1962 and he was not one of the absorbed pre-1956 employees. The Petitioners had clarified that OM dated 02.05.2001 was issued by Coal India Limited to regulate pension in respect of such pensioners, who on absorption from the Central/Railway Services, rendering pensionable service had retired under available scales of pay and that it did not apply to the present Respondent. The Commission did not find any evidence to show that the Respondent was covered by the Circular/OM. The Commission held that the State Commission had taken an erroneous view that the memorandum dated 17.04.2008 which was a modification of the earlier OMs dated 02.05.2001 and 21.08.2007 was applicable to the Respondent. Consequently the Revision Petition No.4370/2012 was also allowed and the State Commission's order was set aside.

vii) Citation:

2014(2) CPR 194.

2. Chairman-cum-Managing Director, ONGC & Ors. Vs. Consumer Education Research Society & 2 Ors.

i) Case in Brief:

All the Revision Petitions related to payment of pension. The District Forum and the State Commission had given concurrent findings in favour of the Complainants who were employees of ONGC. The Petitioners through the Revision Petitions have called into question the orders rendered by the fora below mainly on the ground that the Consumer Fora are not armed with the power to adjudicate pension matters. Revision Petitions dismissed with costs of Rs.5,000/- payable to each of the Complainants.

ii) Order appealed against:

Revision Petition No.3382 of 2013

From the order dated 17.06.2013 in Appeal No.872/2010 of the Gujarat State Consumer Disputes Redressal Commission.

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Revision Petition No.3383 of 2013

From the order dated 17.06.2013 in Appeal No.873/2010 of the Gujarat State Consumer Disputes Redressal Commission.

Revision Petition No.3384 of 2013

From the order dated 17.06.2013 in Appeal No.874/2010 of the Gujarat State Consumer Disputes Redressal Commission.

Revision Petition No.3385 of 2013

From the order dated 17.06.2013 in Appeal No.875/2010 of the Gujarat State Consumer Disputes Redressal Commission.

Revision Petition No.3386 of 2013

From the order dated 17.06.2013 in Appeal No.876/2010 of the Gujarat State Consumer Disputes Redressal Commission.

Revision Petition No.3387 of 2013

From the order dated 17.06.2013 in Appeal No.877/2010 of the Gujarat State Consumer Disputes Redressal Commission.

Revision Petition No.3388 of 2013

From the order dated 17.06.2013 in Appeal No.878/2010 of the Gujarat State Consumer Disputes Redressal Commission.

Revision Petition No.3389 of 2013

From the order dated 17.06.2013 in Appeal No.879/2010 of the Gujarat State Consumer Disputes Redressal Commission.

iii) Parties:

Revision Petition No.3382 to 3389 of 2013

Chairman-cum-Managing Director, ONGC & Ors. - Petitioners

Vs.

Consumer Education Research Society & 2 Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3382 to 3389 of 2013 &

Date of Judgement: 20.03.2014.

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 Petitioners, citing the authority of the Hon'ble Supreme Court in *Dr. Jagmittar Sain Bhagat Vs. Dir. Health Services, Haryana & Ors.* decided on 11.07.2013 in Civil Appeal No.5476 of 2013, contended that Government servants do not fall under the definition of a "consumer" as defined under Section 2(1)(d)(ii) of the Act. However the Commission held that the said Judgment must be read holistically. In Para 15 of the said Judgment the Hon'ble Supreme Court had discussed the applicability of the Act to the case of the Regional Provident Fund Commissioner and held that the later came squarely within the definition of "service giver" within the meaning of Section 2(1)(o) of the Act and that members of the Family Pension Scheme who were availing of the services rendered by the Commissioner were covered by the definition of "consumer". The same view had been taken in *Regional Provident Fund Commissioner Vs. Shiv Kumar Joshi*, 2000 SCC 98. The National Commission had also taken the same view in *Assistant Provident Fund Commissioner, Raichur Vs. Vasant Madhav Kerur* (RP No.765 of 2013) and other connected 27 Revision Petitions decided on 09.04.2013.
- b) The Commission held that the Complainants in the instant case are not Government servants. They work in a semi-government institution. They cannot approach the State Administrative Tribunal or Civil Court. By virtue of Section 3 of the Consumer Protection Act, 1986, it was held that they have got the remedy of redressal of their grievances in the Consumer Fora itself.
- c) The Revision Petitions were accordingly dismissed as devoid of merit and the Petitioners were directed to pay Rs.5,000/- as costs to each of the Complainants within three months.

vii) Citation:

2014(2) CPR 156.

3. Regional Provident Commissioner, Guntur & Anr. Vs. S.Siva Sankar Rao

i) Case in Brief:

Six Revision Petitions have been disposed of by a Common order taking the facts from RP.No.1617 of 2014. The Complainant/Respondent worked

Deficiency in Service - Pension Scheme

as a bus conductor in the Andhra Pradesh State Road Transport Corporation. He was a member of Family Pension Scheme, 1971 and paid his contribution under that scheme. He had rendered 10 years service upto 15.11.1995 and had served for a total period of 25 years before his retirement. In 1995 he opted for the Employees Pension Scheme, 1995. It was the case of the Complainant that the Regional Provident Fund Commissioner (OP No.1) and Assistant Provident Fund Commissioner (OP No.2) failed to give weightage of two years under Para 10(2) of the Employees Pension Scheme, 1995 and wrongly fixed the pension at Rs.1,656/- instead of Rs.2,378/-. The District Forum before whom he filed a complaint allowed it and directed OPs to fix the pension of the Complainant at Rs.2,023/- per month with effect from 01.12.2010 and to pay arrears of Provident Fund at Rs.367/- per month till fixation of pension at Rs.2,023/- per month. The appeal preferred by OPs was dismissed along with 49 other appeals in similar cases by the State Commission vide impugned order against which the present Revision Petition had been filed. Revision Petitions dismissed.

ii) Order appealed against:

From the orders dated 27.09.2013 in First Appeal No.329/13, 330/13, 766/13, 768/2013, 758/13 of the State Consumer Disputes Redressal Commission, A.P. Hyderabad.

iii) Parties:

REVISION PETITION NO.1617 OF 2014

Regional Provident Commissioner, Guntur & Anr. - Petitioner

Vs.

S.Siva Sankar Rao - Respondent

REVISION PETITION NO.1618 OF 2014

Regional Provident Commissioner, Hyderabad & Anr - Petitioner

Vs.

Ch. Nageswara Rao - Respondent

REVISION PETITION NO.1619 OF 2014

Regional Provident Commissioner, Hyderabad & Anr - Petitioner

Vs.

Ch. Prabhakar Rao - Respondent

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REVISION PETITION NO.1620 OF 2014

Regional Provident Commissioner, Hyderabad & Anr - Petitioner

Vs.

Ch. Nageswara Rao

- Respondent

REVISION PETITION NO.1645 OF 2014

Regional Provident Commissioner

- Petitioner

Vs.

Ch. Nirikshana Rao

- Respondent

REVISION PETITION NO.1796 OF 2014

Regional Provident Commissioner, Hyderabad & Anr - Petitioner

Vs.

B. Siva Ramaiah

- Respondent

iv) Case No and Date of Judgement:

- i) Revision Petition No:1617 of 2014 with IA/2154/2014, IA/2155/2014 (Stay, Condonation of Delay)
- ii) Revision Petition No:1618 of 2014 with IA/2156/2014, IA/2157/2014 (Stay, Condonation of Delay)
- iii) Revision Petition No:1619 of 2014 with IA/2158/2014, IA/2159/2014 (Stay, Condonation of Delay)
- iv) Revision Petition No:1620 of 2014 with IA/2160/2014, IA/2161/2014 (Stay, Condonation of Delay)
- v) Revision Petition No:1645 of 2014 with IA/2205/2014, IA/2206/2014 (Stay, Condonation of Delay)
- vi) Revision Petition No:1796 of 2014 with IA/2495/2014, IA/2496/2014 (Stay, Condonation of Delay) &

Date of Judgement :01.05.2014.

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 held that Para 10(2) of the EPS 1995 clearly, specifically and unequivocally provided that anyone "who superannuates on attaining the age of 58 years and who had

Deficiency in Service - Postal Services

rendered 20 years pensionable service”, his pensionable service shall be increased by adding a weightage of two years. The pensionable service for which contributions are received or receivable under new scheme [Para 2(xv)] whereas “past service” means service rendered by an existing member from the date of attaining till 15.11.1995 [Para 2(xii)].

- b) The Commission noted that the State Commission had placed reliance on an earlier judgement of the National Commission in *Assistant Provident Fund Commissioner, Raichur Vs. Vasant Madhav Kerur & Ors.* III (2013) CPJ 244 NC and *Regional Provident Fund Commissioner Vs. Mallikarjun Devendrappa Varapur*, in RP.No.3970 of 2009 dated 29.06.2010.
- c) The Revision Petitions were accordingly dismissed with cost of Rs.10,000/- each under Section 27 of CP, Act, 1986 to be paid to the Respondent/Complainants within 90 days.

vii) Citation:

II (2014) CPJ 570; 2014(2) CPR 406.

(am) POSTAL SERVICES

1. Kumari Meena Vs. Post Master, Sub Post Office, Awagarh & Ors.

i) Case in Brief:

Petitioner received a cheque for Rs.20,000/- dated 23.12.2006 drawn on the State Bank of India under a scheme of U.P Government for poor girls, which was deposited by her in her Savings Bank Account with OP Post Office at Awagarh on 20.01.2007. Since the amount was not credited to her account she gave a letter to the post office and also to District Magistrate, Etah but no action was taken by the post office. Eventually the cheque was returned after 6 months saying that the validity of the cheque had lapsed and signature of the Petitioner on plain paper was allegedly taken on 01.06.2007. Alleging deficiency in service a consumer complaint was filed before the District Forum which allowed the complaint and directed OPs 1 and 2 to make payment of Rs.20,000/- to the Complainant with interest at 9% p.a. from 20.01.2007 till payment. OPs 1 and 2 were also ordered to pay Rs.3,000/- towards physical and mental harassment and Rs.2,000/- as cost of litigation. OPs 1 and 2 went in appeal before the State Commission which vide

impugned order allowed the appeal, dismissing the complaint. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 24.08.2011 in F.A.No.2011/2008 of the U.P. State Consumer Disputes Redressal Commission, Lucknow.

iii) Parties:

Kumari Meena - Petitioner

Vs.

Post Master & Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.666 of 2012 & Date of Judgement: 15.01.2014.

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 contention of OPs 1 and 2 was that the cheque in question was forwarded for collection on 20.01.2007 through the Post Master, Etah Post Office who in turn further sent it to Post Master, Firozabad vide registered letter No.5096 dated 26.01.2007 but this registered letter did not reach the proper place but reached other places like Faizabad, Azamgarh and Basti and eventually was received back at the Sub Post Office Awagarh from Basti Post Office vide registered post. In the meanwhile validity of the cheque had expired. The Respondent No.3 i.e. U.P Government took the stand that it was not in a position to revalidate the cheque because the funds which were received under the scheme had already lapsed and there was no budget making payment to the Petitioner.
- b) The Commission held that it was case of deficiency of service on the part of the postal authorities in handling with cheque. It was further held that Section 6 of the Indian Post Office Act, 1898, which provides for exemption from liability for loss, misdelivery, delay or damage of a postal article will not be applicable to the present case and the State Commission had committed a grave error in accepting the plea of the OPs that Section 6 of the Indian Post Office Act would be attracted.

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c) The Revision Petition was allowed, the impugned order was set aside and the order of the District Forum restored.

vii) Citation:

I (2014) CPJ 318; 2014(1) CPR 408.

2. Meena Vs. Union of India & Ors.

i) Case in Brief:

There are two Revision Petitions involving similar facts and identical question of law. Revision Petition No.1674 of 2012 has been taken as the lead case. The Complainant had opened a TD account in the New Grain Market Post Office, Sangrur (OP/Respondent No.3) for which sums of Rs.50,000/- and Rs.35,000/- were collected from her by OP No.5/Respondent No.5, Shri Akhil Gupta, Post office agent by way of initial deposits. Necessary entries were made in the pass book issued by OP Nos.3 and 4. The Complainant came to know through OP No.3 that OP No.5 had not deposited the entire amounts of Rs.50,000/- and Rs.35,000/- in her TD accounts. It is her case that since the deposits were made through the authorized agent of the department, the OP is estopped from taking the plea of non-deposit of the entire amount. Alleging deficiency in service, a consumer complaint was filed. The District Forum held that the matter required production of elaborate evidence including opinion of document expert and dismissed the complaint advising the Complainant to seek remedy before the Civil Court. Complainant filed an appeal before the State Commission along with an application for condonation of delay which was dismissed by the State Commission. Aggrieved by the said order the present Revision Petition had been filed. Revision Petitions allowed in both the cases.

ii) Order appealed against:

Revision Petition No.1674 of 2012

From the order dated 11.01.2012 in Appeal No.1908/2011 and 3239/2011 of the Punjab State Consumer Disputes Redressal Commission.

Revision Petition No.1675 of 2012

From the order dated 11.01.2012 in Appeal No.1909/2011 and 3240/2011 of the Punjab State Consumer Disputes Redressal Commission.

iii) Parties:

Revision Petition No.1674 of 2012

Meena - Petitioner

Vs.

Union of India & Ors. - Respondents

Revision Petition No.1675 of 2012

Keshav Bansal - Petitioner

Vs.

Union of India & Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition Nos.1674-1675 of 2012 &

Date of Judgement: 04.02.2014.

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) There were two issues which were considered by the National Commission: i) whether the State Commission was justified in refusing to condone the delay of 2167 days in filing the appeal and ii) whether the case deserved consideration on merits.
- b) On the first issue the Commission observed that there was an extraordinary delay of 6 years during which the Petitioner's Counsel kept on dragging the matter without filing the appeal. The Commission held that, despite the delay it was a fit case for being considered in the light of the ratio and guidelines laid down by the Hon'ble Apex Court in the case of *Collector, Land Acquisition Anantnag & Anr. Vs. Mst. Katiji and Ors.* [(1987) 2 SCC 107]. The Commission observed that ordinarily a litigant does not stand to benefit by lodging an appeal late and refusing to condone delay can result in the meritorious matter being thrown out at the very threshold and cause of justice being defeated. It was further observed that judiciary is respected not an account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so. The Commission also relied on the observation of the Apex Court in the case of *N.Balakrishnan Vs. M.Krishnamurthy* [(1998) 7 SCC 123]

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and held that the Appellants conduct does not warrant to castigate him/her as an irresponsible litigant. The Commission held that in the circumstances of the case, the State Commission ought to have condoned the delay and decided the case on merits.

- c) On the second issue, the Commission noted that the facts of the case are identical to the facts obtaining in RP No.3551, 3552 and 3553 of 2008 decided by the Commission on 14.05.2009. In those Revision Petitions, on similar complaints filed by the respective Complainants, the District Forum had allowed the complaints against OPs 1, 2, 3, 5 and 7 and dismissed the same against OPs 4 and 6. Aggrieved by the order, the Union of India and the State of Punjab appeared before the State Commission which allowed the appeal of Union of India and dismissed the appeal of State of Punjab. The National Commission in their order dated 14.05.2009, on Revision Petitions filed by the affected parties, confirmed the order of the State Commission modifying the order of the District Forum with regard to payment of compensation by OPs. Since the facts of the present case were identical to the three cases referred to above, the Commission set aside the common order dated 22.12.2005 of the District Forum and the impugned order passed by the State Commission and allowed the Revision Petitions against the Government of Punjab and dismissed the same against the Respondents 1, 2, 3, 4 and 6. The Government of Punjab was directed to pay to the Petitioner/ Complainant in each case a sum of Rs.85,000/- respectively along with interest on the premium deposited as per rules along with compensation of Rs.20,000/- and Rs.5,000/- towards litigation expenses within one month.

vii) Citation:

I (2014) CPJ 565; 2014(1) CPR 480.

3. N.D. Sharma Vs. Union of India Department of Post & Telegraphs & Anr.

i) Case in Brief:

The Petitioner and his wife Smt. Narindra Sharma had a joint account in Head Post Master, Mandi (OP No.2). OPs had floated monthly income scheme. As per the scheme OP No.2 was to pay Rs.4,000/- p.m. as

interest for the period of 6 years and Rs.6,60,000/- was to be paid on the date of maturity on 11.09.2010. More over bonus on the original account of both the account holders was to be paid. Unfortunately Smt. Narindra Sharma died on 11.03.2010. It is the Complainant's case that he informed the Post Master about the death and was advised that survivor can operate joint account in case of death of one of the joint holders. After the maturity, Complainant was paid only Rs.5,55,750/- . Alleging deficiency in service over the deduction of Rs.1,04,250/- he filed consumer complaint before the District Forum. The complaint was allowed and the OPs were directed to pay to the Complainant Rs.1,02,250/- along with interest at 9% p.a. and costs in the sum of Rs.1,000/-. The appeal filed by the OPs was accepted 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 20.07.2012 in Appeal No.259/2011 of the Himachal Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

N.D. Sharma - Petitioner

Vs.

Union of India Department of Post &
Telegraphs & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3437 of 2012 & Date of Judgement: 18.02.2014.

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 notification DG No.110-23/2001-SAB dated 07.01.2003 provided that, in the event of death of one of the depositors of the joint account holders, the joint account will be treated as single deposit account and the surviving the depositor will not be entitled for further interest, immediately, after the death of one of the joint account holders. The single account will stand closed and no interest will be levied on this account. The OP's case was also supported by Rule 9(2). The State

Deficiency in Service - Postal Services

Commission while passing the order had relied on *Post Master, Dargamitta H.P.O, Nellore Vs. Raja Prameelamma*, 1995 STPL (LE) 20881 SC and judgment of the National Commission in RP No.1020 of 2002 titled *K.M.Singh Vs. Senior Post Master, Ramesh Nagar, New Delhi* decided on 15.11.2002. The Commission also noted that Para 168 (8) of the Post Office Savings Bank Manual Volume-I, while listing the salient features of the Monthly Income Account Scheme, 1987 mentioned that in case of the death of one of the joint account holders, MIS account is to be treated as a single account and no interest is to be paid on the said account after the death of a joint account holder.

- b) The Commission also observed that the Complainant who was an advocate failed to prove that he had informed OP No.2 that his wife had expired. He did not produce any documentary evidence to that effect.
- c) The Commission found no merit in the Revision Petition and accordingly dismissed the same.

vii) Citation:

I (2014) CPJ 528; 2014(2) CPR 5.

4. Chetan Dass Batra (Now deceased) Through Legal Heirs & Anr. Vs. Union of India & Ors.

i) Case in Brief:

Petitioners/Complainants had sent applications Nos.19108 and 19109 along with Bank Drafts dated 25.06.1999 for Rs.37,298/- and Rs.37,298/- respectively to Respondent No.3/OP No.3 (Estate Officer, Haryana Urban Development Authority) for allotment of residential plots. But the Petitioners were not successful in the draw of lots. Respondent No.3 returned the amounts vide receipt No.2447 and 2433 dated 12.06.2000 to the Petitioners through Respondent No.2 (Post Master, HPO) but the said drafts had not been received by the Petitioners. They pursued the matter with the authorities but to no avail. Alleging deficiency in service they filed consumer complaint. The District Forum allowed the complaint and directed Respondents to pay the amounts to the Petitioners with 9% interest p.a. Rs.5,000/- towards compensation and Rs.1,000/- towards litigation charges were also

allowed. The appeal filed by the Respondents was allowed 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 15.04.2010 in Complaint Case No.2261/2003 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

Chetan Dass Batra (Now deceased)
Through Legal Heirs & Anr. - Petitioners

Vs.

Union of India & Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3113 of 2010 & Date of Judgement: 03.03.2014.

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 earnest money deposited by the Petitioners had been refunded by Respondent No.3 vide cheque No.7433 & 3793 dated 31.05.2000 by registered post at the address given by the Petitioners in their application. It was also noted that the Kanpur Kshetriya Gramin Bank had informed Respondent No.3 that the said cheques were encashed by Shri Mool Chandra Batra, Shri Chetan Das Batra and Shri Naresh Kumar Batra. The introducer was Mr. Triloki Nath Gupta, resident of Ompurwa, Kanpur. It was further noted that after conducting an enquiry, Respondent No.2 had confirmed that both the registered letters were received in Kanpur RMS dated 14.06.2000 but the disposal of the said articles was not traceable. Hence it was not the case of Respondent No.2 that the said registered letter were lost in transit but it was confirmed that they had received the letters in Kanpur RMS and were not traceable thereafter. The Commission observed that the District Forum after going through the records carefully and hearing the parties had come to the conclusion that there was deficiency in service on the part of Respondent Nos.1 and 2. The Commission wondered how the State Commission came to a different conclusion since no enquiry held by Respondent Nos.1 and 2 or by the

Deficiency in Service - Post Office Savings

police had exonerated Respondent Nos.1 and 2. The Commission held that Respondents 1 and 2 have to be held accountable for registered letters entrusted to their custody for its safe delivery. The Commission also observed that Respondents 1 and 2 have not placed on record the result of the inquiry held by them with regard to the misplaced letters except stating that they were not traceable. In the circumstances the Commission allowed the Revision Petition with cost of Rs.20,000/- of which Rs.5,000/- each was to be paid to the two Petitioners and the balance to be deposited in the Consumer Legal Aid Account of the Commission within four weeks.

vii) Citation:

II (2014) CPJ 475.

(an) POST OFFICE SAVINGS

1. Union of India through Secretary, Ministry of Communication & Ors. Vs. George Mathew & Ors.

i) Case in Brief:

Complainant/Respondent No.1 had invested Rs.1,00,000/- on 31.03.1999, another Rs.1,00,000/- on 28.08.1999 and two cheques of Rs.50,000/- each on 01.12.1999 in Monthly Income Scheme of the postal department through Respondents 3 and 4/OPs 9 and 10, who were authorized agents of National Savings Scheme and Small Savings Scheme. The said agent, Respondent No.3 fraudulently encashed the cheques for himself and did not deposit the money in the MIS scheme. The postal department refused to pay anything to the Complainant who filed consumer complaint. The District Forum directed the Postal Department, the Regional Director, NSO and the agents to refund the money jointly and severally with 6% interest p.a. besides awarding Rs.10,000/- towards mental agony and Rs.3,000/- towards cost. OPs' appeal was dismissed by the State Commission vide impugned order against which the present Revision Petition had been filed. Revision Petition dismissed with cost of Rs.1,00,000/-.

ii) Order appealed against:

From the order dated 26.03.2009 in Appeal No.1499/2008 of the Maharashtra State Consumer Disputes Redressal Commission.

iii) Parties:

Union of India through Secretary,
Ministry of Communication & Ors. - Petitioners

Vs.

George Mathew & Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2059 of 2009 & Date of Judgement: 26.02.2014.

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 dispute that Respondent No.1 had handed over to Respondent No.3, four cheques to be deposited in the Post Office Monthly Income Scheme in the joint account of George Mathew and Mercy Mathew. Through letters dated 22.09.2000 and 06.02.2001, the Senior Superintendent of Post Offices (Petitioner No.4) had admitted the fact that the said cheques had been received by the post offices concerned and credited into accounts other than those of Respondent No.1 and the amounts so deposited had been withdrawn. The Commission held that the Petitioners cannot escape their liability by stating that Respondent No.3 was appointed by Respondent No.2 (Regional Director, National Savings Organization). They cannot also escape their liability for deficiency of service and negligence which led to misappropriation and fraud. It was also noted that it was under the signature of the Assistant Post Masters in each case that the cheques were credited to savings account to other than Respondent No.1 and allowed to be withdrawn also by persons other than Respondent No.1. It was observed that once a cheque is received by the post master, he de facto becomes the custodian of the amount of money so entrusted to him. In case of doubt he should have checked with Respondent No.1 through letter or on phone. This is more so as it was mentioned that there were numerous complaints regarding Respondent No.3 on the basis of which his agency was thereafter cancelled.
- b) The Commission held that Respondent No.2 also cannot escape its liability as Respondent No.3 was appointed by Respondent No.2

Deficiency in Service - Provident Fund

and as a Principal, he was certainly also responsible for the act of the agent and the State Government was squarely liable for fraud and misappropriation of investor's money by the agent appointed by one of its authorized officers.

- c) The Commission held that there was no jurisdictional or legal error in the detailed and well reasoned orders of the fora below. The Revision Petition was accordingly dismissed with cost of Rs.1,00,000/- of which Rs.50,000/- was to be paid to Respondent No.1 and the balance amount was to be paid to the Consumer Legal Aid Account of the Commission within four weeks.

vii) Citation:

II (2014) CPJ 315; 2014(1) CPR 610.

(ao) PROVIDENT FUND

1. Krishan Kumar Batra Vs. Punjab National Bank

i) Case in Brief:

The Petitioner and his wife Smt. Madhu Batra were both employees of the Respondent Bank. They had jointly obtained a housing loan of Rs.6,00,000/- from their employer which was repayable in equal monthly installments of Rs.5,850/- p.m. It was alleged by the Petitioner that the monthly installments were recovered from his salary for some time but due to certain disputes between him and the employer, the enquiry of which was pending, the banks officials stopped his salary and the housing loan installments were also stopped. But the Petitioner came to know in July 2009, from a statement of account in respect of his provident fund that the bank had deducted Rs.5,81,334.74 from his provident fund account in two installments and credited the same in the joint housing loan account of the Petitioner and his wife. Alleging that the bank had no right to adjust the amount in his provident fund against the housing loan dues he filed complaint before the District Forum. The District Forum dismissed the complaint after observing that the Petitioner himself had given a letter of authorization to the Trustee of PNB Employees Provident Fund Trust to adjust the dues as done by the bank. The Petitioner's appeal to the State Commission having been dismissed, he had filed the present Revision Petition. Revision Petition dismissed with cost.

ii) Order appealed against:

From the order dated 17.01.2013 in Appeal No.163/2012 of the Punjab State Consumer Disputes Redressal Commission.

iii) Parties:

Krishan Kumar Batra - Petitioner

Vs.

Punjab National Bank - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.806 of 2013 & Date of Judgement: 21.02.2014.

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 from the facts on record that the Petitioner's service had been terminated by his employer on 10.04.2006. Though he filed the complaint on 30.07.2009, he had misled the Court and concealed the fact in his complaint.
- b) As regards the Petitioner's contention that the loan installments could have been recovered from his wife's salary, it was held that the loan application were made by the Petitioner and his wife had stood guarantor for the loan and that she had not authorized the bank to recover the installments from her salary. There was nothing on record to show that the Petitioner and his wife had made joint application to recover the balance amount from her salary after his termination.
- c) Both the fora below had observed that the provident fund deducted from the salary of the Petitioner was deposited with the PNB Employees Provident Fund Trust, New Delhi as per service rules. The Petitioner himself had executed and signed a letter of authorization dated 18.01.1996 and 27.02.2000 addressed to the Trustee of the said Trust authorizing them to utilize the amount of gratuity, PF etc., and all other dues whatsoever payable to him on ceasing to be in the employment of the bank due to retirement, termination of service etc., towards payment of outstanding amount and interest accruing due to the above loan and that the authority was irrevocable until the loan mentioned above with

Deficiency in Service - Purchase of Machinery

interest thereon is paid in full and handed over to the Respondent.

- d) The Commission found no reason to disagree with the finding of the fora below and dismissed the Revision Petition with cost of Rs.5,000/- to be deposited by the Petitioner in the name of the Consumer Legal Aid Account of the Commission.

vii) Citation:

I (2014) CPJ 467; 2014(1) CPR 636.

(ap) PURCHASE OF MACHINERY

1. Zakir Hussain Abdul Gaffar Deshmukh Vs. Mazhuvanoor Rubber Products & Ors.

i) Case in Brief:

The Complainant, manufacturer of slippers (Hawai slippers), used to order rubber sheets and rubber straps from the OPs, 1, 2 & 3, since the year 2002. On 06.03.2006, the OPs approached the complainant and asked him to purchase some machineries for manufacturing slippers so that the complainant may advance his business. The OPs supplied Quotation regarding price of the machineries. The Complainant approached the Central Bank of India and it sanctioned a loan in the sum of Rs.10,35,000/- and issued five DDs in favour of the OPs. The complainant paid another sum of Rs.3,45,000/- in cash and desired to purchase the machineries worth Rs.13,80,000/-. The grievance of the complainant was that the said machineries were not delivered to him. Therefore, the Complainant filed a complaint before the District Forum which directed the OP to refund Rs.10,35,000/- with interest @ 9% p.a. from 02.05.2006 and also directed them to pay Rs.5,000/- towards mental agony and Rs.1,000/- as costs, to the complainant. Aggrieved by that order, the OPs had filed First Appeal before the State Commission which was accepted while dismissing the complaint vide impugned order against which the present revision petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

Against the Order dated 18.11.2013 in Appeal No.1046/2008 of the State Commission Maharashtra.

iii) Parties:

Zakir Hussain Abdul Gaffar Deshmukh - Petitioner
Vs.
Mazhuvanoor Rubber Products & Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.690 of 2014 & Date of Judgement: 01.04.2014.

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 involved in this case was about the genuineness of the Quotation dated 06.03.2006 issued by the OPs for machineries.
- b) The National Commission dismissed the revision petition as it was devoid of merit for the following reasons:
 - i. The OPs transacted the business of manufacturing rubber sheets only and there was no evidence to show that they are suppliers of machineries.
 - ii. The Complainant did not mention the name of any person as to who, in fact, had supplied the Quotation in person.
 - iii. In the alleged quotation dated 06.03.2006, there was rubber stamp with signature of the appellants/OPs. The said stamp had been marked on the left side of the page i.e. also not in proper manner. The alleged order sheet dated 07.07,2006 was also not properly marked.
 - iv. It was also transpired that before placing order DDs were issued by the bank and were forwarded by Complainant to the Appellants/OPs.
 - v. Further, the Central Bank of India issued letter to the Appellant asking them to supply slipper manufacturing machineries to the Complainant. Why the Central Bank of India took interest in the matter of complainant while granting loan was not known. Action on the part of Central Bank of India was uncalled for and unwarranted.

Deficiency in Service - Purchase of Vehicle

vi. Further, the Appellants/OPs produced delivery receipt of the rubber sheets supplied in consideration of Rs.9,05,000/-. Said rubber sheets were received by the Complainant which was admitted by the Complainant vide letter dated 11.06.2006.

c) In view of the above, the Commission opined that there was no merit in the case of the Complainant and accordingly dismissed.

vii) Citation:

II (2014) CPJ 396; 2014(2) CPR 331.

(aq) PURCHASE OF VEHICLE

1. Colonel C.P. Raghunandan Vs. Area Manager, Canteen Stores Department Ministry of Defense, GOI

i) Case in Brief:

Complainant/Petitioner, a retired colonel from Indian Army booked a Tata Indica DLS Car of Arizona Ocher colour through OP/Respondent and paid Rs.3,22,760/- on 26.03.2007. Car was to be delivered by M/s. VST Motors, Chennai. Complainant who subsequently settled at Trichur issued cheques for tax, registration charges, insurance etc., to M/s. VST Motors on 11.05.2007. When Complainant went to M/s. VST Motors to take delivery, he found that the car was of silver colour and not of Arizona Ocher for which he had placed the order. Complainant approached the OP for cancellation of the car and booking another car, Maruti Swift Diesel by paying additional amount but OP refused. Alleging deficiency on the part of OP, Complainant approached the District Forum which after hearing the parties dismissed the complaint. Appeal filed by the Complainant before the State Commission was partly allowed directing OP to pay Rs.25,000/- as compensation along with interest and Rs.3,000/- as cost. Aggrieved by the said order, the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 21.11.2012 in Appeal No.857/2011 of the Tamil Nadu State Consumer Disputes Redressal Commission.

iii) Parties:

Colonel C.P. Raghunandan

- Petitioner

Vs.

Area Manager, Canteen Stores Department
Ministry of Defense, GOI

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.876 of 2013 & Date of Judgement: 29.04.2014.

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 M/s. VST Motors was impleaded in the first complaint but deleted later on. It was observed that complaint was not maintainable only against OP as it could not have been privy to what transpired between the Complainant and VST Motors who delivered the car. Perusal of indent form revealed that Arizona Ocher colour was only a preference of colour choice and nowhere, it was mentioned that other colours would not be acceptable. In such circumstances, merely by filing preference colour, Complainant was not entitled to get registration of car cancelled and get refund of the money.
- b) Perusal of record further revealed that Complainant himself visited M/s. VST Motors and signed necessary papers and on the basis of those papers, car of silver colour was registered in the name of the Complainant. It was held that Complainant himself was negligent in accepting delivery of silver colour car and once the car was registered in his name it could not have been cancelled on the basis of difference in colour.
- c) The National Commission held that the State Commission had not committed any error in partly allowing the appeal and holding that Complainant had not made out a case for refund of the whole amount.
- d) Revision Petition was accordingly dismissed.

vii) Citation:

II (2014) CPJ 686; 2014(2) CPR 437.

Deficiency in Service - Purchase of Vehicle

2. Mahindra & Mahindra Ltd. & Anr. Vs. Ram Lakhan

i) Case in Brief:

Complainant/Respondent purchased a Tractor on 01.06.2011 for a total cost of Rs.4,70,000/- from OP No.1. He paid Rs.70,000/- in cash and Rs.4,00,000/- through cheque/demand draft drawn on Punjab and Sind Bank, Branch Jhandi, OP No.3. OPs 1 and 2 assured the Complainant of one year warranty. It was the Complainant's case that as soon as he took the tractor to his residence he noticed Mobil leakage from the silencer. He returned the tractor the next day and informed OP No.3/ Bank also. After several communication OP No.1 asked the Complainant to take delivery of the tractor by paying Rs.20,000/- towards repair charges. Complainant refused to pay as the tractor was under warranty period and filed complaint before the District Forum. The Forum directed OP No.1 to return the cost of the tractor, granted interest @ 18% p.a., compensation of Rs.1,00,000/- and cost of Rs.5,000/-. Appeal filed by the OP before the State Commission was dismissed vide impugned order against which the present Revision Petition had been filed. Revision Petition partly allowed.

ii) Order appealed against:

From the order dated 01.11.2013 in Appeal No.1056/2012 of the Uttar Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

Mahindra & Mahindra Ltd. & Anr. -Petitioners

Vs.

Ram Lakhan - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1202 of 2014 & Date of Judgement: 01.05.2014.

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 perused the agreement letter, the tractor delivery challan dated 25.03.2011 and the job cards for the first and second free services done on 19.05.2011 and 22.05.2011. The Commission also perused receipt No.312 dated 01.06.2011 towards

the payment of Rs.4,70,000/-. The Commission held that the fora below had committed an error in concluding that Complainant's signatures were forged by the OPs without taking the opinion/evidence of any handwriting expert. The Commission further noted that the fora below had not held that the tractor suffered from any manufacturing defects. Both the fora did not take any opinion or did not appoint any approved agency to test the tractor. Consequently the order of the fora below to replace the tractor or return the cost was held to be not sustainable. The Commission relied on the Judgments of the Hon'ble Supreme Court/National Commission in *Maruti Udyog Ltd. Vs. Susheel Kumar Gabgotra & Anr.* I (2006) CPJ 3(SC), *Maruti Udyog Ltd. Vs. Hamukh Lakshmidhand & Anr.* III (2009) CPJ 229 NC, *Classic Automobiles Vs. Lila Nand Mishra & Anr.* I (2010) CPJ 235 (NC) SLP Civil Appeal No.19967 of 2013 decided on 01.07.2013.

- b) The Commission held that OP is liable in deficiency in service since OP demanded Rs.20,000/- for repair during the warranty period.
- c) Consequently the Commission directed OP No.1 to hand over tractor with proper repairs with a warranty for one year from the date of delivery. OP was also directed to pay compensation of Rs.50,000/- with interest @ 9% p.a. from 01.06.2011 till payment.

vii) Citation:

II (2014) CPJ 760; 2014(3) CPR 176.

3. M/s. ABT Maruti Vs. Sakthivel

i) Case in Brief:

Complainant/Respondent No.1 booked a Swift Dezire Car by paying an advance of Rs.50,000/- on 16.10.2009. Later he paid Rs.6,25,320/- making a total of Rs.6,75,320/-. The car was delivered on 14.04.2010. The Complainant's grievance was that though the total invoice price of the car was Rs.6,69,816/-, he was made to pay a sum of Rs.6,75,320/-. He claimed refund of Rs.5,504/- and interest on the booking amount of Rs.50,000/-. Petitioner/OP No.2 sent a cheque for Rs.2,285/- dated 15.04.2010 without any covering letter. A consumer complaint was filed requesting that excess amount of Rs.5,504/- along

Deficiency in Service - Purchase of Vehicle

with compensation and litigation costs should be paid. The District Forum directed the Petitioner/OP No.2 to pay a sum of Rs.2,500/- as already agreed to by them. However, on appeal filed by the Complainant, the State Commission directed that a sum of Rs.5,504/- should be paid to the Complainant along with Rs.25,000/- as compensation and Rs.2,500/- as litigation cost. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 25.03.2013 in First Appeal No.573/2011 of Tamil Nadu State Consumer Disputes Redressal Commission.

iii) Parties:

M/s. ABT Maruti	Vs.	- Petitioner/OP No.2
1. Sakthivel		- Respondent/Complainant
2. M/s. Maruti Suzuki India Ltd.		- Respondent/OP No.1

iv) Case No and Date of Judgement:

Revision Petition No.2724 of 2013 & Date of Judgement: 13.05.2014.

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 a cheque of Rs.2,285/- dated 15.04.2010 was received by the Complainant which was presumably meant for the interest on the booking amount. The Commission observed that when the Complainant took up the issue for return of Rs.5,504/-, the Petitioner offered to refund Rs.2,500/- on account of inspection charges, water washing charges, stock yard rent, security charges and incidental charges. It was further observed that the District Forum after carrying out a detailed analysis of the facts and circumstances of the case, brought out that the Tamil Nadu Transport Department had collected a sum of Rs.1,900/- as road tax, registration charges etc. The Commission held that this money was not payable to the Complainant. Further some amount was spent on expenses on diesel, driver etc., for taking the vehicle for registration. The Commission observed that the Complainant had not been able to

prove as to how he was entitled for refund of Rs.5,504/-. It was further observed that the State Commission had not given cogent reasons for allowing a sum of Rs.5,504/- to the Complainant. On the other hand it was held that the order passed by the District Forum reflected a correct analysis of the facts and circumstances on record.

- b) In the light of the above discussion, the Revision Petition was accepted. The impugned order of the State Commission was set aside and the order passed by the District Forum was upheld.

vii) Citation:

III (2014) CPJ 437.

(ar) PURCHASE / TRANSFER OF SHARES

1. CH. N.V. Sriram Vs. Karvy Stock Broking Ltd.

i) Case in Brief:

Complainant/Petitioner was trading in shares through the OP/respondent for the last two years preceding the date of the complaint. By 8.11.2006, complainant had 43 MRF shares in his Trading account. In spite of repeated requests, shares were not transferred to complainant's Demat account. Alleging deficiency on the part of OP, complainant filed complaint before District Forum which directed OP to transfer 40 MRF shares and further directed to pay Rs.5,000/- as compensation and Rs.1,000/- as cost. Appeal filed by the OP was partly allowed by State Commission vide impugned order and direction to transfer 40 MRF shares was set aside and rest of the order was upheld. This revision petition had been filed challenging the order of the State Commission. Revision Petition dismissed.

ii) Order appealed against:

Against the Order dated 29.10.2010 in Appeal No.925/2008 of the State Commission Andhra Pradesh.

iii) Parties:

CH. N.V. Sriram

- Petitioner

Vs.

Karvy Stock Broking Ltd

- Respondent

Deficiency in Service - Purchase / Transfer of Shares

iv) Case No and Date of Judgement:

Revision Petition No.39 of 2011 & Date of Judgement: 29.04.2014.

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 never purchased MRF shares and by mistake shares were transferred from the common pool of OP to complainant's trading account and after intimation to the complainant, shares were re-transferred by OP to its common pool account from complainant's trading account. Complainant failed to lead any evidence to prove that he ever purchased MRF shares which were transferred in his trading account.
- b) In view of the above, the Commission dismissed the present revision petition and upheld the order of State Commission.

vii) Citation:

II (2014) CPJ 669; 2014(2) CPR 441.

(as) RAILWAYS

1. U.O.I through DRM, Sealdah Division (ER) & Anr. Vs. Sh. Susanta Kumar Saha

i) Case in Brief:

On 26.09.2011, Complainant purchased his rail ticket from the Railway Reservation Counter at Barrackpur Railway Station. It was a sleeper class reservation for Utkal Kalinga Express and the date of journey was on 11.10.2010 from Kharagpur to Puri. On the date of journey as per enquiry made at Howrah Station and also with Railway Service Enquiry, he got confirmation that the train would run through Kharagpur and not from Howrah. When he went to Kharagpur station at 8.20 p.m. to board the train, he learnt from the station master that the said train would not be touching Kharagpur station since the route had been diverted since May 2010. Ultimately he could not board the train. Alleging deficiency in service he filed complaint before the District

Forum which dismissed the same. However, his appeal before the State Commission was allowed and he was awarded Rs.1,00,000/- compensation and Rs.1,000/- as cost of litigation. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 20.11.2013 in First Appeal No.FA/709/2012 of the West Bengal State Consumer Disputes Redressal Commission, Kolkata.

iii) Parties:

U.O.I through DRM, Sealdah Division (ER) & Anr. - Petitioners

Vs.

Sh. Susanta Kumar Saha - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4882 of 2013 & Date of Judgement: 21.01.2014.

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 Counsel for OP submitted before the Commission that the case was covered under "force majeure" as the route of Utkal Kalinga Express was diverted for the time being due to Naxalite attack/accident of Gyaneswari Express. It was further submitted that the information of route diversion was disseminated through media in advance and also through the newspapers. The Commission was not impressed with the said arguments. It was held that it was the duty of OP staff manning the ticket counter to know every information about the running of trains between the starting and destination points while issuing tickets. The Commission observed that in the reservation form filled by the Complainant, all the information about the passenger such as his address, telephone/mobile number etc., had been given. It was held that OP should have made an attempt to have sent sms or communicated on the address of such passengers to whom reservations were issued. The Commission held that OP had not acted cautiously and the explanation provided by the OP/Railway authority was not satisfactory.

vi) Issues raised and decided:

The Commission noted that there was no dispute that the first set was replaced by another set. The Commission observed that the Complainant had not adduced any evidence to prove the fact that the second set supplied by OP was worse than the first set or was not up to the mark. It was also noted that Complainant had not summoned the complaint book in which he had made the complaint in writing. The Commission observed that the State Commission had mentioned wrong fact in the order that feed back form bore signatures of all the passengers whereas it bore signature of only one passenger. The Commission held that the State Commission was wrong in taking the view that the discrepancies in the notice and the complaint are an account of human behavior. The Commission accordingly allowed the Revision Petition, set aside the order of the State Commission and affirmed the order of the District Forum.

vii) Citation:

I (2014) CPJ 407; 2014(1) CPR 368.

3. KU. Sangita Tukaramji Rokde Vs. Union of India through Chairman Railway Board & 12 Ors.

i) Case in Brief:

The Complainant is an Advocate and orthopedically handicapped with 40% disability. It was her case that Sh. Pritpal, TTE and Sh. Arvind, TTE (OPs 3 and 4) approached her while she was travelling in an A/C coach and demanded a sum of Rs.840/- as bribe and misbehaved with her when she asked for receipt. The actual rate was only Rs.200-300/-. It was also claimed that there were witnesses. The Complainant reported the matter to OP-13, Shri Mudaliyar (Guard), TTE but allegedly he also did not heed her complaint and threw her out of the compartment. Complainant reported to all the officers in the hierarchy upto GM but according to her they all worked in cahoots with each other. She filed complaint before the National Commission on 20.03.2014 seeking payment of Rs.5 crores as compensation for what she called OPs “extremely negligent attitude and for reason of continuous and consistent harassment”. Complaint was dismissed with liberty to the Complainant to approach the Civil Court or Criminal Court to get redressal of her grievance(s).

Deficiency in Service - Railways

ii) Order appealed against:

Original Complaint.

iii) Parties:

KU. Sangita Tukaramji Rokde - Complainant

Vs.

Union of India through
Chairman Railway Board & 12 Ors. - Opposite Parties

iv) Case No and Date of Judgement:

Consumer Complaint No.76 of 2014 & Date of Judgement: 16.05.2014.

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:

The Commission noted that the Complainant was not an Income Tax payee and that for a meagre sum of Rs.500/- she claimed Rs.5 crores as compensation. The Commission observed that the Commission under the Act is a summary court and examination of witnesses and their cross examination was not permitted. It was further observed that the Commission does not deal with cases of bribery and fraud which entail a lot of evidence and proper investigation. The Commission noted that the allegations made by the Complainant cannot be proved through mere affidavits and interrogatories. 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) and *Synco Industries Vs. State Bank of Bikaner & Jaipur and Others*, (2002) 2 SCC 1 (wherein the prayer was for Rs.15 crores), the Commission dismissed the complaint with liberty to the Complainant to approach the Civil Court or Criminal Court to get redressal of her grievance(s) as per law.

vii) Citation:

III (2014) CPJ 398.

(at) RENEWAL OF INSURANCE

1. National Insurance Company Ltd. Vs. Ashok Kumar Mondal & Anr.

i) Case in Brief:

Respondent No.1/Complainant was holding medi-claim policy for Rs.1,00,000/- for himself and his wife from OP Nos.1 & 2/Petitioner since 2002. Policy was renewed till 2007 in time and he was also granted bonus. Respondent No.1 issued a cheque dated 26.07.2008 drawn on OP No.3/Respondent No.2 (United Bank of India) through agent of Petitioner for renewal of policy which was deposited on 31.07.2008. Due to negligence on the part of Respondent No.2, cheque was returned to the Petitioner with the remark "fund insufficient", though there were sufficient funds available with the Bank. Respondent No.1 immediately contacted Respondent No.2, the mistake was detected and Respondent No.2 wrote a letter to the Petitioner on the same day i.e 09.08.2008 and requested to re-present the cheque. Respondent No.1 also requested Petitioner to accept the request of Respondent No.2 and renew the medi-claim policy. Petitioner did not do so and deposited the cheque after five days of issue. Alleging deficiency on the part of the Petitioner, a complaint was filed before the District Forum which allowed the same and directed the Petitioner to renew the policy on receipt of premium and further directed the Petitioner/Respondent No.2 to pay compensation of Rs.5,000/- each to Respondent No.1. Appeal filed by the Petitioner was dismissed with cost of Rs.3,000/- against which the present Revision Petition had been filed. By a majority decision, the National Commission allowed the Revision Petition, set aside the order of the State Commission and modified the order of the District Forum.

ii) Order appealed against:

From the order dated 25.05.2012 in Appeal No.300/2011 of the West Bengal State Consumer Disputes Redressal Commission.

iii) Parties:

National Insurance Company Ltd. - Petitioner(s)

Vs.

Ashok Kumar Mondal & Anr. - Respondents

Deficiency in Service - Renewal of Insurance

iv) Case No and Date of Judgement:

Revision Petition No.3145 of 2012 & Date of Judgement: 09.05.2014/
29.08.2014/15.07.2015.

v) Acts and Sections referred:

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

vi) Issues raised and decided:

- a) The legal issue that arose was “whether there was any deficiency on the part of OP No.1 in not renewing medi-claim policy for want of premium”. Since there was disagreement between the two members who constituted the Bench, the matter was referred by the President to a third member as per provision contain in Section 20(1)(iii) of the CP Act.
- b) The National Commission by a majority view held that there was no deficiency on the part of OP No.1 & 2/Petitioner in not re-submitting the cheque and not renewing the medi-claim policy as it was not obligatory on the part of the Petitioner to re-submit cheque after 11.08.2008, as policy had already lapsed before the date. Referring to Condition No.7.1, the Commission held that in case the OP choses to renew the policy, if premium is received within 7 days from the date of lapse of policy, policy holder is entitled to receive benefit of bonus but he cannot insist for renewal of policy and merely because cheque was presented by OP No.1 after 5 days, no deficiency of service can be imputed on the part of OP No.1.
- c) Consequently the Commission allowed the Revision Petition, set aside the order of the State Commission and partly modified the order of the District Forum. Direction No.2 was set aside and liability of OP No.1 in Direction No.4 was also set aside. Complaint stood dismissed against the Petitioner.

vii) Citation:

Not reported in CPJ and CPR.

(au) RETAIL SERVICES

1. Kanha Sweet Shop Vs. Mohan Lal Prajapat

i) Case in Brief:

It was the case of the Respondent/Complainant that he purchased two kgs of Kaju Katli on 26.10.2011 and made payment through credit card. When the sweet was served to the guests on 27.10.2011, it was found that it smelled foul and the taste was also not good. Respondent reported the matter to the Petitioner. Someone from the shop came on 28.10.2011 and he too found that the sweet did not smell or taste good. The matter was reported to the District Supply Officer and the Chief Medical and Health Officer. The analysis of the sweet showed that it was infested with fungus. A complaint was filed before the District Forum which allowing the same directed the Petitioner to make payment of Rs.1,328/- along with interest at 18% and Rs.4,00,000/- towards damages of which Rs.50,000/- was to be paid to the Respondent in the remaining amount was to be deposited in the State Consumer Welfare Fund, Jaipur. Rs.5,000/- was also awarded towards cost. The 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 dismissed.

ii) Order appealed against:

From the order dated 16.07.2013 in Appeal No.547/2012 of the Rajasthan State Consumer Disputes Redressal Commission.

iii) Parties:

Kanha Sweet Shop - Petitioner

Vs.

Mohan Lal Prajapat - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3010 of 2013 with IA/5186/2013, IA/5408/2013, IA/6275/2013 & Date of Judgement: 06.02.2014.

v) Acts and Sections referred:

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

Deficiency in Service - Retail Services

vi) Issues raised and decided:

- a) The main ground taken by the Petitioner was that though he received the notice from the District Forum for 17.01.2012, due to lawyers' strike he could not appear before the Forum and therefore the District Forum had decided the matter ex-parte. The National Commission observed that the appellant or his counsel could have appeared on the next dates. The appellant or his counsel did not show any justifiable reason for his absence on 17.02.2012 and subsequent dates. There was nothing on record to show that the Petitioner made any effort to enquire about the next date of hearing. The Commission observed that he had been pursuing the case before the District Forum in a very casual and careless manner. Under the circumstances it was held that the District Forum had rightly proceeded ex-parte against the Petitioner.
- b) Even on merits it was observed that the report of the food analyst clearly revealed that the sample was unfit for analysis due to "fungus infestation". It was therefore not in conformity with the prescribed standards and the sweet was not fit for human consumption.
- c) The Commission found no jurisdictional or legal error to call for interference in exercise of the powers under Section 21(b) of the Act and accordingly dismissed the Revision Petition.

vii) Citation:

Not reported in CPJ and CPR.

(av) SUPPLY OF CHEMICALS AND FERTILIZERS

1. Jaswinder Singh Vs. M/s. Punjab Pesticides and Seeds & Ors.

i) Case in Brief:

It is the Complainant's case that he had sown paddy crop in 32 killas of land and sprayed the insecticides, weedicides and bio-chemicals manufactured by Agrimass Chemical Ltd. (Respondent No.2) and Vam Organic Chemical Ltd. (Respondent No.3/OP No.3) purchased from the shop of OP No.1/Respondent No.1. He claimed that he mixed the chemicals with fertilizer and sprayed the same on the paddy crop. A

few days later, the crop started withering and was completely damaged. The Petitioner lodged a complaint against Respondent No.1 with the Assistant Plant Protection Officer who along with Agriculture Officer inspected the spot and submitted his report. Alleging deficiency on the part of OPs, he filed complaint before the District Forum which allowed the same against OPs 1 and 3 and directed them to pay Rs.3,20,000/- on account of loss of crop, Rs.27,000/- which was paid by the Complainant to the Gram Panchayat as Theka, Rs.9,100/- towards cost of product and Rs.15,000/- as compensation for mental harassment. Complaint against OP No.2 was dismissed. Complainant as well as OPs filed appeals before the State Commission which, vide impugned order, dismissed the appeal filed by the Complainant but allowed the appeal filed by the OPs. The present Revision Petition had been filed challenging the order of the State Commission. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 05.05.2008 in First Appeal No.1278/2003 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh.

iii) Parties:

Jaswinder Singh - Petitioner/Complainant
Vs.

M/s. Punjab Pesticides and Seeds & Ors. - Respondents/OPs

iv) Case No and Date of Judgement:

Revision Petition No.2659 of 2008 & Date of Judgement: 30.01.2014.

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 on the following grounds:

- i) Once the Complainant filed an application on 19.07.2002 to the Assistant Plant Protection Officer and had invited him for spot inspection, he should have kept the paddy crop un-ploughed for inspection purposes. Though the Assistant Plant Protection Officer and the Agricultural Development Officer visited the spot within three days, the crops had already been ploughed.

Deficiency in Service - Supply of Chemicals and Fertilizers

The Officers therefore could not say whether the crop was damaged because of the use of Ramban Fertilizer as was alleged by the Petitioner or because of the bad quality of sub-soil water and shortage of rain water as was reported by the wife of the Petitioner and owners of adjoining fields.

- ii) The crop of the adjoining fields had also withered due to bad quality of sub-soil water and for want of rain water.
- iii) Neither Ramban Fertilizer had been tested by the appellant against which he had complained originally nor had he got tested the mixture of all the chemicals.
- iv) It was possible that because the “power plus” and “agriano” were not kept in proper temperature away from the sunshine by the Petitioner the strength of the insecticides/weedicides/fertilizers got reduced as claimed by the Respondents.
- v) Petitioner did not lead any evidence to prove that sample from insecticides/fertilizers purchased by the Petitioner from Respondents was sent for analysis by the District Forum.

vii) Citation:

I (2014) CPJ 618; 2014(1) CPR 445.

(aw) SUPPLY OF EQUIPMENTS / GOODS

1. Koto Trade and Services (P) Ltd. Vs. Sh.B.D. Gupta

i) Case in Brief:

Complainant purchased a Solar Water Heater System from OP-1 on 10.02.2010. It had a warranty of one year. Complainant had spent a total sum of Rs.28,350/- towards cost and installation charges of the system. However, in the month of May 2010 the water system started leaking. OP-1 sent his employee to the Complainant's house but the employee damaged the insulation of the tank and told the Complainant that he cannot repair the tank. Complainant again contacted OP-1 and gave oral and written complaints but to no avail. Ultimately he purchased a new system for Rs.27,000/- and spent another Rs.2,000/- on parts and Rs.1,000/- on labour. He also filed a consumer complaint seeking refund of the amount. The District Forum partly

allowed the complaint and directed the OPs to pay jointly and severally the cost of water heater Rs.22,750/- with 9% interest p.a. and to pay Rs.2,000/- for mental agony and Rs.2,000/- as cost. OP's appeal was partly allowed by the State Commission, reducing the interest awarded from 9% to 6% p.a. and disallowing Rs.2,000/- for mental agony. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 22.04.2013 in First Appeal No.181/2012 of the Uttarakhand State Consumer Disputes Redressal Commission, Dehradun.

iii) Parties:

Koto Trade and Services (P) Ltd. - Petitioner

Vs.

Sh. B.D. Gupta - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2429 of 2013 & Date of Judgement: 03.02.2014.

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 Clause (vii) of the Terms and Conditions of supply stated that if the system is shifted/handled by outsider mechanic the warranty will cease. Clause (xi) stated that if any substandard accessories are used by the customer, the responsibility of damage will be of customers. The Commission after going through the documents on file and evidence on record observed that the OP had not produced any cogent evidence with regard to shifting and mishandling of the Solar Water System by the Complainant. There was no evidence either that the Complainant used substandard accessories. Both the parties had admitted that the solar system was installed in the presence of the company's employee. The employee should have objected to any fault during installation. It was held that OP cannot take the plea that the grounding and foundation quality work was very poor and due to this the system had fallen. The Commission held that OP did not provide proper service to the Complainant and it amounted to deficiency due

Deficiency in Service - Supply of Equipments / Goods

to which Complainant was forced to install another solar system and incur additional expenditure. The Commission held that the State Commission's order was a well considered one and did not suffer from any illegality. The Revision Petition was accordingly dismissed.

vii) Citation:

II (2014) CPJ 13.

2. Essen Multipack Limited Vs. Bapu Chintamani Range & 2 Ors.

i) Case in Brief:

The Complainant, an agriculturist, wanted to dig a water tank in his field. He required multilayer polythene sheets for storing water in the said tank. He purchased polythene sheets from OP No.1/Petitioner through its dealer S.P.A Flora Pvt. Ltd. (Respondent No.2) arrayed as OP No.2 in the complaint. The polythene sheets were laid by Sh. Omkar Agro, Respondent No.3/OP No.3. The said sheets were purchased on 26.08.2007 and kept in cold storage. They were actually laid on 05.07.2008. It transpired that the sheets were leaking and the water from the tank percolated elsewhere affecting other portions of land. The Complainant who suffered a loss filed complaint before the District Forum. The Forum allowed the complaint and directed OP to pay a sum of Rs.2,05,013/- towards cost of polythene sheets and Rs.50,000/- towards compensation. OP No.1 filed appeal before the State Commission which modified the order of the District Forum and directed the Petitioner/OP No.1 to pay Rs.2,05,013/- minus Rs.13,336/- total being Rs.1,92,000/- with cost of Rs.50,000/- with interest at 12% p.a. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition was dismissed.

ii) Order appealed against:

From the order dated 25.10.2013 in Appeal No.115/2011 of the Maharashtra State Consumer Disputes Redressal Commission.

iii) Parties:

Essen Multipack Limited - Petitioner

Vs.

Bapu Chintamani Range & 2 Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.970 of 2014 with IA/753/2014, IA/754/2014, IA/755/2014, IA/756/2014 & Date of Judgement: 11.02.2014.

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 submitted that the Complainant had committed forgery by writing 500 microns in hand on the invoice. The Commission asked the Petitioner to produce the original invoice since forgery could be proved only if the original was compared with the copy. But the Petitioner could not produce the original. Hence his contention was rejected.
- b) The Petitioner also submitted that the price of 300 microns and 500 microns is the same. The Commission did not subscribe to this view since the weights were different and so the prices could not be the same. It was held that the appellant could have established that SUNCOOL BL 3206 POND LINING FILM was in fact a 300 micron sheet itself and not 500 micron sheet. But the appellant had not done so. The Commission therefore drew an adverse inference.
- c) The Commission found that the sheets had developed cracks. This could not have happened during cold storage. It was held that the loss to the Complainant was attributable to the defective material which was supplied to him. The Commission held that deficiency in service on the part of OP No.1 was clearly proved.
- d) Consequently the Revision Petition was dismissed as devoid of merit.

vii) Citation:

I (2014) CPJ 526.

3. Tata Coffee Ltd. Vs. N. Sreenivasalu

i) Case in Brief:

The Complainants in all the four cases are brothers who purchased block board (in a single transaction) from the Respondent for making of furniture, box type wardrobe, TV cabinet, dressing table and other

Deficiency in Service - Supply of Equipments / Goods

furniture items for their houses. After some time the block boards were found to be affected by borer infestation. They took up the matter with the vendor. Since there was no response they filed consumer complaint before the District Forum, Bellary. The Forum allowed the complaints and ordered refund of the purchased price jointly to the four Complainants along with interest at 9% p.a. Appeals were filed by both the parties, four by the Complainants and four by the OP. The State Commission allowed the appeals of the Respondents/Complainants and dismissed the ones filed by the Revision Petitioner/OP. The present Revision Petitions have been filed against the concurrent findings of fact by the fora below. Revision Petitions dismissed.

ii) Order appealed against:

Revision Petition No.2475 of 2010

From the order dated 06.04.2010 in Appeal No.2688/2009 of the Karnataka State Consumer Disputes Redressal Commission.

Revision Petition No.2476 of 2010

From the order dated 06.04.2010 in Appeal No.2702/2009 of the Karnataka State Consumer Disputes Redressal Commission.

Revision Petition No.2477 of 2010

From the order dated 06.04.2010 in Appeal No.2703/2009 of the Karnataka State Consumer Disputes Redressal Commission.

Revision Petition No.2478 of 2010

From the order dated 06.04.2010 in Appeal No.2704/2009 of the Karnataka State Consumer Disputes Redressal Commission.

iii) Parties:

Revision Petition No.2475 of 2010

Tata Coffee Ltd. - Petitioner

Vs.

N. Sreenivasalu - Respondent

Revision Petition No.2476 of 2010

Tata Coffee Ltd. - Petitioner

Vs.

Sri N. Murari - Respondent

Revision Petition No.2477 of 2010

Tata Coffee Ltd. - Petitioner

Vs.

Sri N. Venkatesh - Respondent

Revision Petition No.2478 of 2010

Tata Coffee Ltd. - Petitioner

Vs.

Sri N. Balaji - Respondent

iv) Case No and Date of Judgement:

Revision Petition Nos.2475 to 2478 of 2010 &

Date of Judgement: 07.03.2014.

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 ground raised on behalf of the Petitioner was that the complaint was barred by limitation since it was filed in 2009 in relation to materials purchased in 2005. The Commission held that the fora below had rightly rejected this contention since the Complainants could have written to the Petitioner only after clearly noticing the infestation and not before.
- b) The Commission also noted that the OPs did not produce any evidence in support of their contention before the District Forum whereas the Complainants had, through the evidence of the carpenter before the District Forum had discharged their responsibility. It was also noted that when the Complainants moved the application before the State Commission to appoint an architect engineer as an independent expert to evaluate the damage caused to the furniture, it was opposed by the present Revision Petitioners.
- c) The Commission also rejected the contention of OP that the District Forum, Bellary had no jurisdiction to hear the case. It was pointed out that it terms of the provision in Section 11(1)(c) the jurisdiction would lie where the cause of action had arisen, whether wholly or in part. In the present case since the cause of action arose in Bellary where the goods were physically

Deficiency in Service - Supply of Seeds

received and utilized, it was held that the District Forum, Bellary had rightly exercised its jurisdiction.

- d) The Commission found no justification to interfere with the concurrent findings of the fora below and dismissed the Revision Petitions.

vii) Citation:

II (2014) CPJ 207.

(ax) SUPPLY OF SEEDS

1. Maharashtra Hybrid Seeds Co. Ltd. Vs. Garapati Rinivas Rao & Anr.

i) Case in Brief:

Nine Revision Petitions filed by the Petitioner against different Complainants have been disposed of by a common order since the facts are identical. Revision Petition No.2602 of 2008 has been taken as the lead case. Respondents/Complainants were agriculturists raising crops like cotton and chilli in their fields. They purchased hybrid seeds – Tejaswini – MHP1 from Respondent No.2/OP No.1 for Rs.5,775/- on 18.06.1996. The said seeds were produced and marketed by the Petitioner. It is the Complainant's case that he sowed the seeds in his land and used all the fertilizers and pesticides as per the norms spending nearly Rs.60,000/-. In the month of November-December, 1996 the crops size was found to be very small and the growth was not proper. He complained to the Mandal Agricultural officer who on inspection found that the variety of seeds supplied was not notified in that area. It is the Complainant's case that he suffered crop loss of 20 quintals per acre and the market rate was Rs.2,500 to 3,000/- per quintal. All the Complainants filed complaint before the District Forum seeking compensation. The Forum dismissed the complaints. But their appeal was allowed by the State Commission vide impugned orders against which the present Revision Petitions had been filed. Revision Petitions allowed.

ii) Order appealed against:

Revision Petition No.2602-2610 of 2008

From the orders dated 27.02.2008 in Appeal Nos.1600-1608/2005 of the Andhra Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

Revision Petition No.2602 of 2008

Maharashtra Hybrid Seeds Co. Ltd. - Petitioner

Vs.

Garapati Srinivas Rao & Anr. - Respondents

Revision Petition No.2603 of 2008

Maharashtra Hybrid Seeds Co. Ltd. - Petitioner

Vs.

Garapati Venkateswar Rao & Anr. - Respondents

Revision Petition No.2604 of 2008

Maharashtra Hybrid Seeds Co. Ltd. - Petitioner

Vs.

Totakuri Krishnarjuna Rao & Anr. - Respondents

Revision Petition No.2605 of 2008

Maharashtra Hybrid Seeds Co. Ltd. - Petitioner

Vs.

Garapati Satyanarayana & Anr. - Respondents

Revision Petition No.2606 of 2008

Maharashtra Hybrid Seeds Co. Ltd. - Petitioner

Vs.

Gadesula Venkata Satyanarayana & Anr. - Respondents

Revision Petition No.2607 of 2008

Maharashtra Hybrid Seeds Co. Ltd. - Petitioner

Vs.

Gadesula Venkateswar Rao & Anr. - Respondents

Revision Petition No.2608 of 2008

Maharashtra Hybrid Seeds Co. Ltd. - Petitioner

Vs.

Totakuri Harinath & Anr. - Respondents

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Revision Petition No.2609 of 2008

Maharashtra Hybrid Seeds Co. Ltd. - Petitioner

Vs.

Totakuri Bhaskar Rao & Anr. - Respondents

Revision Petition No.2610 of 2008

Maharashtra Hybrid Seeds Co. Ltd. - Petitioner

Vs.

Gadesula Harinath & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition Nos.2602-2610 of 2008 &
Date of Judgement: 12.02.2014.

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 during the pendency of the complaints before the District Forum, an Advocate Commissioner was appointed by the Forum for assessing the loss and damage caused to the Complainants. After examining the reports of the Mandal Agricultural officer and the Advocate Commissioner, the Commission observed that the said reports had been given merely on the basis of visual inspections of the field and that none of the reports stated that the seeds sown by the Complainants were defective. The Commission observed that it is well settled that the crops can be affected due to various reasons viz. poor quality of seeds, fertilizers, inadequate rainfall or irrigation and also due to poor quality or inadequate or overdose of pesticides/ insecticides. It was further observed that the crops were affected by thrips and other diseases and that the Complainants did not take any remedial measures as recommended by the Agriculture Officer. The Commission concluded that in the present cases there was no cogent evidence to prove the allegations of the Complainants that due to defective seeds the crops had failed.
- b) While arriving at the decision the Commission relied on the judgments of the Hon'ble Supreme Court in *Haryana Seeds Corporation Ltd. Vs. Sadhu and Anr.* (2005) 3 SCC 198 as well as in

Mahyco Seeds Co. Ltd. Vs. Basappa Channappa Mooki & Ors. Civil Appeal No.2428 of 2008 in which it was held that variation in condition of crops need not necessarily be attributed to quality of seeds but to other facts unless there is specific mention in the concerned report about inferior quality of seeds and that the onus to prove that there was a defect in the seeds was on the Complainant.

- c) The Commission allowed the Revision Petitions and set aside the orders of the State Commission. All the complaints filed by the Respondents/Complainants stood dismissed.

vii) Citation:

I (2014) CPJ 538; 2014(1) CPR 543.

(ay) TRAVEL AGENCY / SERVICE

1. Bhupender Singh Ghangas Vs. Make My Trip Pvt. Ltd & Anr.

i) Case in Brief:

It was the case of the Complainant/Petitioner that he approached Make My Trip Pvt. Ltd/OP.2 for a tour package of Mauritius which cost Rs.71,999/- including stay at 4-Star Hotel namely Jalsa for which he deposited Rs.30,000/- on 24.09.2012. Later, he was informed that there was no vacancy in Jalsa Hotel and Hotel Causarian was booked and the complainant had to pay Rs.8,000/- more for the package of 6 nights and 7 days. After that, the complainant did not receive any information from the OPs. After making the remaining payment of Rs.50,000/-, when the Complainant contacted the office of OP.2, he was informed that his tour had been postponed. So, the complainant asked the OPs to cancel and refund his money, since they were not in a position to give booking for 04.11.2012. His money was not refunded and he came to know that he had been charged Rs.80,000/- instead of Rs.68,999/- for the same package. Aggrieved by the act of OPs, he filed complaint before the District Forum which partly allowed the complaint and granted 50% of the amount paid by the complainant, i.e., Rs.40,000/- and awarded costs of litigation in the sum of Rs.5,000/-. The appeal filed before the State Commission was dismissed vide impugned order against which the present revision petition has been filed. Revision Petition dismissed.

Deficiency in Service - Travel Agency / Service

ii) Order appealed against:

Against the Order dated 30.09.2013 in Appeal No.322/2013 of the State Commission Chandigarh.

iii) Parties:

Bhupender Singh Ghangas

- Petitioner

Vs.

Make My Trip Pvt. Ltd & Anr.

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.691 of 2014 & Date of Judgement: 01.04.2014.

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 Complainant had concealed the following facts:

- a) He had booked for two persons as a Honeymoon trip. He was to travel with one Ms. Sonia Hooda whereas he was married to one Ms. Deepti. But in the averments he had mentioned that he was the only person.
- b) Postponement of tour from 04.11.12 to 17.01.2013 was done only at the instance of the Complainant for attending his friend's marriage. Whenever the OP tried to contact the Complainant in this regard, all his mobile numbers were switched off. But the OPs had sent mail communication as and when necessary.
- c) In the final e-mail sent to the Complainant, OP had clearly mentioned that in case of no response, they would proceed with the new dates Jan 17th – 23rd Jan, 2013 with an additional cost of INR 15000 per person and for which also there was no reply from the Complainant side.
- d) The Commission observed that as per terms and conditions of the package, the entire amount of Rs.80,000/- was liable to be forfeited and that the fora below had taken a lenient view in favour of the Complainant. The Revision Petition was accordingly dismissed.

vii) Citation:

II (2014) CPJ 408; 2014(2) CPR 322.

2. M/s. Ganga Immigration & Education Service (P) Ltd. & Anr. Vs. Reena Pandey and Anr.

i) Case in Brief:

Complainants/Respondents had hired the services of the Petitioners/OPs for getting work permit for Malaysia for livelihood and betterment of life. They had entered into an agreement dated 18.10.2012 and paid a total sum of Rs.90,000/- as part payment on 13.12.2012. They were taken to Malaysia by Ms.Shradhya, an employee of the petitioners on tourist visa, with the assurance that it would be converted into work visa within 15 to 30 days. It was alleged by the Complainants that OPs had given a rosy picture of working conditions in Malaysia to the complainants and gave false promises of food, accommodation, insurance, overtime and air fare and a salary between 1200 to 1500 MR but they did not fulfill their promise. Rather, the agent of the OPs took their passports and intimidated them and they had to get emergency certificate from Indian High Commission and come back to Mumbai. The Respondents on returning back to India approached the Petitioners to pay back their amount but they tried to make fool of the respondents delaying the matter on one pretext or the other. It is the Respondents' case that they had to leave their job which they were doing here in India, were still unemployed and as such they had suffered a huge loss. They had also sold their jewelery and motor cycle to settle abroad. Therefore, alleging deficiency in service and unfair trade practice on the part of the Petitioners/OPs, Complainants filed complaint before the District Forum which directed the OPs jointly and severally to make payment of an amount of Rs.1,40,000/- paid by the complainants to them plus an amount of Rs.40,000/- spent by them at Malaysia making a total of Rs.1,80,000/-, Rs.50,000/- for harassment and mental agony and Rs.11,000/- as costs. Aggrieved by the order of the District Forum, Petitioner filed an appeal before the State Commission which dismissed the appeal being devoid of merit vide impugned order against which the present revision petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

Against the Order dated 09.12.2013 in Appeal No.515/2013 of the State Commission Chandigarh.

Deficiency in Service - Travel Agency / Service

iii) Parties:

M/s. Ganga Immigration &
Education Service (P) Ltd. & Anr. - Petitioners

Vs.

Reena Pandey and Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1397 of 2014 & Date of Judgement: 01.04.2014.

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 agreement entered between the Petitioners and Respondents was extremely vague and general having no clarity as to the services to be rendered by Ganga Immigration & Education Services P. Ltd. the amounts to be paid and the terms and conditions of the agreement. It also transpired that the Petitioners had taken unfair advantage of the Respondents by indulging in unfair trade practices to collect money and having collected their money abandoned them to their own devices after taking their passports. They forced them to do labour work on very cheap salaries. Petitioners promised them to give all other facilities like accommodation, food, medical insurance etc. which were denied them. So the Petitioners were held liable not only of unfair trade practice but also deficiency in service. The Commission also observed that the Petitioners must have also similarly duped other individuals with their misleading advertisements and glib promises.
- b) In view of the above, the Commission held that the orders of the fora below did not call for any interference nor they suffered from any infirmity or erroneous exercise of jurisdiction or material irregularity. Thus, present petition was dismissed with costs of Rs.1,00,000/- (Rupees One Lakh only). Out of the above costs, Rs.25,000/- (Rupees Twenty Five Thousand only) each to be paid by way of demand draft in the name of Respondent No.1 and 2 respectively. The remaining cost of Rs.50,000/- (Rupees Fifty

Thousand only) was to be deposited in the Consumer Legal Aid Account of the National Commission.

vii) Citation:

II (2014) CPJ 410; 2014(2) CPR 316.

(az) VEHICLE INSURANCE

1. New India Assurance Co. Ltd. Vs. Pritam Gumber

i) Case in Brief:

Respondent/Complainant's vehicle was insured with the Petitioner for a sum of Rs.2,81,400/- for the period from 11.01.2003 to 10.01.2004. The vehicle met with an accident on 15.10.2003 due to some technical fault and fell into a deep gorge and got badly damaged. FIR was lodged and intimation was given to the Petitioner. The Surveyor appointed by the Petitioner inspected the vehicle in the absence of the Respondent. It is alleged that on the oral directions of the Petitioner the Respondent got the vehicle towed from the site of the accident and got it repaired spending Rs.1,67,282/-. However, the Complainant's claim was repudiated by the Petitioner. Alleging deficiency in service, Complainant approached the District Forum which allowed the appeal. Petitioner's appeal before the State Commission was partly allowed modifying the order of the District Forum to the extent that Petitioner would pay the Respondent a sum of Rs.1,67,282/- with interest at 6% p.a. from the date of accident till the actual payment and litigation expenses of Rs.1,000/-. The award of compensation of Rs.3,000/- passed by the District Forum was set aside. Not satisfied with the order of the State Commission, the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 28.04.2011 in Appeal No.14/2006 of the Uttrakhand State Consumer Disputes Redressal Commission.

iii) Parties:

New India Assurance Co. Ltd.	-	Petitioner
	Vs.	
Pritam Gumber	-	Respondent

Deficiency in Service - Vehicle Insurance

iv) Case No and Date of Judgement:

Revision Petition No.2458 of 2011 with IA/1/2011 (For Star) &
Date of Judgement: 06.01.2014.

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 as per the written statement filed by the Petitioner before the District Forum, the claim of the Respondent was dismissed on 08.09.2004 on appropriate ground. But Petitioner had not placed any document to show on what basis the claim was repudiated. Despite the opportunity granted to the Petitioner, the said repudiation letter dated 08.09.2004 was not made available to the Commission. It was therefore observed that adverse inference had to be drawn against the Petitioner for not placing the material piece of evidence before the Commission.
- b) The Commission also observed that the Petitioner in his written statement had categorically admitted the submission made in Para 4 of the complaint regarding receipt of information of the accident. However, the Petitioner had taken a somersault by stating that the Respondent did not inform the Petitioner Company about the factum of the accident.
- c) The Commission held that the fora below had given detailed and reasoned order which did not call for any interference since they did not suffer from any illegality, irregularity or jurisdictional error. The Revision Petition was accordingly dismissed with cost of Rs.5,000/- to be deposited in the Consumer Legal Aid Account of the Commission.

vii) Citation:

II (2014) CPJ 170.

2. Ramesh Chandra Vs. ICICI Lombard General Insurance Co. Ltd. & Anr.

i) Case in Brief:

Petitioner/Complainant insured his truck with Respondent/OP for the period 12.02.2008 to 11.02.2009. The truck was stolen on the night

intervening 4/5.04.2008 at about 01 to 01.30 a.m., when the driver of the truck went to the fields to attend the call of nature. The matter was reported to the police vide FIR No.107 on 15.04.2008. The insurance company was also informed about the theft. Petitioner's claim was repudiated by OP resulting in filing of consumer complaint. The District Forum allowed the complaint on non-standard basis and directed OP to pay 75% of the insured amount to the non-complainant (Respondent No.2/Tata Motors Finance Co. Ltd.) and to pay the balance amount, if any, to the Complainant. A sum of Rs.3,000/- towards compensation for mental agony and litigation expenses was also awarded. Both the parties filed appeals before the State Commission, the OP challenging the order and the Complainant seeking enhancement of compensation. The State Commission, vide impugned order, allowed the appeal of OP and dismissed the complaint against which the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 12.07.2013 in F.A.No.861 and 891/2011 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

iii) Parties:

Ramesh Chandra - Petitioner

Vs.

ICICI Lombard General Insurance Co. Ltd. & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3548-3549 of 2013 & Date of Judgement: 13.01.2014.

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 as per the complaint, the theft was reported to the police on 15.04.2008, 11 days after the event. It was also noted that there was nothing in the complaint to indicate when the theft was reported to the insurance company. The Commission observed that it could be safely inferred that the theft was reported by the Petitioner to the authorities after a delay of 11 days. It was held that the aforesaid delay prevented

Deficiency in Service - Vehicle Insurance

the insurance company as also the police to start timely investigation to locate and recover the truck. The Commission therefore did not find any fault with the order of the State Commission that by failing to promptly inform the theft to the police and the insurance company the Petitioner had failed to take proper care to protect the interest of the respondent insurance company. It was therefore held that the respondent insurance company was justified in repudiating the claim.

- b) The Commission held that the fact that one Akbar was arrested later who confessed to have stolen the truck, was of no avail to the Petitioner particularly when he had violated the terms and conditions of the policy. The Commission also held that the ratio of the judgment of the Hon'ble Supreme Court in the matter of *Amalendu Sahoo Vs. Oriental Insurance Co. Ltd.*, II (2010) CPJ 9 (SC) would not apply to the present case since it was based on its own peculiar facts.
- c) The Commission held that the order of the State Commission did not suffer from any illegality or infirmity to warrant interference and dismissed the Revision Petition.

vii) Citation:

I (2014) CPJ 321; 2014(1) CPR 427.

3. Smt. Seema Garg Vs. The Oriental Insurance Co. Ltd.

i) Case in Brief:

A trailer vehicle bearing registration no.CG-13A/9924 insured with the OP insurance company was damaged in a road accident on 29.06.2009 when the policy was in currency. A Surveyor was appointed by the insurance company to assess the loss. However, the claim was repudiated on the ground that the vehicle was being driven by a person not having a valid and effective driving licence at the relevant time. The present Petitioner filed the consumer complaint which was allowed by the District Forum with the direction that the Petitioner was entitled to receive a sum of Rs.1,44,849/- (after adjusting the amount of Rs.32,811/- already received) towards vehicle repair bill with interest at 9% p.a., besides compensation of Rs.4,000/- towards mental agony

and Rs.1,000/- towards cost of litigation. The appeal filed by the OP was allowed by the State Commission on the ground that there was a material violation of the conditions of the policy. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 11.02.2013 in Appeal No.FA/12/403 of the Chhattisgarh State Consumer Disputes Redressal Commission, Raipur.

iii) Parties:

Smt. Seema Garg

- Petitioner

Vs.

The Oriental Insurance Co. Ltd.

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4611 of 2013 with IA/7598/2013 (Condonation of delay) & Date of Judgement: 15.01.2014.

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) Though there was a delay of 200 days in filing the Revision Petition, the delay was condoned stating that the Petitioner should not suffer for the fault of her counsel.
- b) The Commission noted that the Petitioner/Complainant had admitted in the grounds of the Revision Petition that although the driver of the vehicle in question was having licence to drive motorcycle, LMV etc., the endorsement to drive transport vehicle was made with effect from 09.11.2009 only whereas the accident took place prior to that i.e. 29.06.2009. It was clear, therefore, that the driver of the vehicle was not in possession of a valid and effective driving licence at the time of accident. The Commission observed that in a large number of cases decided by the Hon'ble Apex Court and the National Commission, it had been held that when a driver does not have a valid and effective driving licence at the time of incident, the insurance company is not liable to pay compensation for the loss.

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c) The Commission did not find any illegality, irregularity or jurisdictional error in the order of the State Commission and upheld the same. The Revision Petition was dismissed.

vii) Citation:

II (2014) CPJ 5; 2014(1) CPR 400.

4. The New India Assurance Co. Ltd. & Anr. Vs. Akbar S/o. Nabeesa

i) Case in Brief:

Complainant/Respondent purchased motor cycle from M.Ali on 16.01.2006 and got registration certificate transferred in his name. He intimated to OP/Petitioner with a request to change name in the insurance policy issued by OP for a period of one year from 18.06.2005 to 17.06.2006. Motor cycle was stolen during intervening night of 5/6.02.2006. FIR was lodged with the police and claim was lodged to the OP. As claim was not settled, consumer complaint was filed which was resisted by OP on the ground that there was no privity of contract between the Complainant and OP. The District Forum allowed the complaint and directed OP to make payment for loss of vehicle along with Rs.500/- as cost of proceedings. 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 30.05.2008 in First Appeal No.35/2008 of the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram.

iii) Parties:

The New India Assurance Co. Ltd. & Anr. - Petitioners/OPs

Vs.

Akbar S/o. Nabeesa - Respondent/Complainant

iv) Case No and Date of Judgement:

Revision Petition No.3597 of 2008 & Date of Judgement: 16.01.2014.

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, relying on Hon'ble Apex Court's decision in *Complete Insulation (P) Ltd. Vs. New India Assurance Co. Ltd.* 1996

ACJ 65, held that in spite of intimation of transfer of vehicle by the Complainant to the insurance company, Complainant was not entitled for indemnification of damages of the vehicle till policy is transferred in Complainant's name. The Commission further observed that in the light of the India Motor Tariff Regulations that came into force from 01.07.2002, the Complainant was not entitled for indemnification as held by the Commission in *Madan Singh Vs. United India Insurance Co. Ltd.* (2009) CPJ 158 (NC). It was further held that Complainant was entitled for reimbursement of damages only if the policy had already been transferred in his name before theft took place.

- b) Consequently the Revision Petition was allowed and the State Commission's order was set aside. The complaint stood dismissed.

vii) Citation:

I (2014) CPJ 395; 2014(1) CPR 397.

5. ICICI Lombard Motor Insurance and Anr. Vs. Nikhil Syal

i) Case in Brief:

Respondent/Complainant got his Honda car having registration No.HR-68-B(T) 0003 insured with the Petitioners/OP for the period 22.08.2008 to 21.08.2009. It was alleged that the said vehicle got fire during the early hours of 19.02.2009 when the vehicle was parked outside the residence of the Complainant. The vehicle got damaged. A DDR was lodged with the police station and a claim was filed with the OP. Since OP failed to settle the claim even after 6 months despite legal notice, a complaint was filed before the District Forum. The Forum dismissed the complaint holding that the car burnt was not insured with the insurance company vide the policy in question and that the loss was not covered under the terms of the policy. Respondent's appeal was allowed by the State Commission which directed OPs to pay to the Complainant the insured value of the vehicle (Rs.7,18,411/-) after deducting the depreciation value. Rs.20,000/- as compensation for mental agony and Rs.10,000/- as costs were also awarded vide impugned order against which the present Revision Petition had been filed. Revision Petition dismissed.

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ii) Order appealed against:

From the order dated 16.01.2012 in F.A.No.180/2011 of the U.T. State Consumer Disputes Redressal Commission, Chandigarh.

iii) Parties:

ICICI Lombard Motor Insurance and Anr. - Petitioners

Vs.

Nikhil Syal - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1641 of 2012 & Date of Judgement: 17.01.2014.

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 OP which was accepted by the District Forum was that it had insured vehicle with registration No.HR-68-B-0003 and not the car bearing registration No.HR-68-B(T)-0003. It was also claimed that the car was burnt purposely by sprinkling of petroleum product. The National Commission held that the State Commission had rightly set aside the order of the District Forum which had gravely erred in concluding that the claim of the Complainant was not payable.
- b) So far as the quantum of compensation was concerned the Commission noted that the Investigator appointed by the OPs had held that the DDR lodged by the Complainant was genuine and that the incident was also found to be genuine. The State Commission had held that no tangible evidence was led by the OPs to rebut the findings of the Investigator. Keeping in view the assessment done by the Surveyor in monetary terms and also the fact that the damage to the vehicle was on account of fire, the Commission held that the State Commission was right in granting indemnification to the Complainant on total loss basis.
- c) The Commission held that the order of the State Commission was fair and just in the given facts and circumstances, upheld the same and dismissed the Revision Petition.

vii) Citation:

I (2014) CPJ 397; 2014(1) CPR 394.

6. Budha Ganesh Vs. New India Insurance Co. Ltd.

i) Case in Brief:

Complainant/Petitioner had insured his tractor and trolley with OP insurance company for the period from 31.12.2005 to 30.12.2006. It was alleged that the tractor and trolley were stolen on 09.09.2006. However, the FIR was filed on 13.09.2006 and the insurance company was informed on 19.09.2006. The investigator appointed by the insurance company gave a report that the incident of theft was false and concocted. The claim was repudiated by OP on the ground of delay in reporting the matter. Alleging deficiency in service Complainant filed a consumer complaint. The District Forum allowing the complaint directed OP to decide the claim within 60 days and if not paid, the Complainant would be entitled to get 12% interest on the price of tractor (Rs.2,96,593/-). The OP was also directed to pay Rs.3,000/- for deficiency in service and Rs.5,000/- towards cost. The State Commission, on appeal by OP, set aside the order of the District Forum vide impugned order against which the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 17.07.2012 in Appeal No.344/2008 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

iii) Parties:

Budha Ganesh - Petitioner

Vs.

New India Insurance Co. Ltd. - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3936 of 2012 & Date of Judgement: 21.01.2014.

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 set aside the order of the District Forum relying on the judgment of the National Commission in *New India Assurance Co. Ltd. Vs. Trilochan Jane* (pronounced on 09.12.2009 in Appeal No.321 of 2005). In that

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case it was held that “the delay in lodging the FIR after two days of the coming to know of the theft and 9 days to the insurance company, can be fatal as, in the meantime, the car could have travelled a long distance or may have been dismantled by the time and sold to *Kabaadi* (scrap dealer)”. The Commission did not accept the argument of the Complainant’s Counsel that the claim can be settled to the extent of 75% of the value of the vehicle insured keeping in view the ratio laid down by the Apex Court in the case of *National Insurance Co. Ltd. Vs. Nitin Khandelwal*, (2008) 11 SCC 259. The Commission held that the ratio of Nitin Khandelwal case cannot be applied to the present case because that judgment was totally in a different context. In that case the plea taken by the insurance company was that the vehicle though insured for personal use was being used as taxi in violation of the terms of the policy. The plea raised by the insurance company was rejected and it was observed that in the case of theft breach of condition is not germane. In the present case the Petitioner did not care to inform the insurance company for a period of 10 days which could be fatal to the investigation.

- b) In view of the above the Commission did not find any infirmity in the order of the State Commission to justify any interference and dismissed the Revision Petition.

vii) Citation:

I (2014) CPJ 411; 2014(1) CPR 370.

7. National Insurance Co. Ltd. Vs. Ajay Kumar Amichand Kheera

i) Case in Brief:

The case of the Complainant was that the driver and cleaner of the truck belonging to him had stopped at night on 22.06.2003 for their meals at a dabha. They had parked the vehicle near the National Highway where several other vehicles were also parked. When they returned after their meals the truck was found to be missing. The driver lodged a complaint at the local police station. OP/Insurance Company was also informed. The claim of the Complainant was repudiated by OP on the ground that the driver had kept the keys in the parked vehicle and left it unattended. This was treated as

negligence on his part and violation of condition No.5 of the policy. The complaint filed before the District Forum was allowed by the Forum. The appeal filed by OP before the State Commission was also dismissed, vide impugned order, against which the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 11.04.2012 in First Appeal No.A/11/978 of the Maharashtra State Consumer Disputes Redressal Commission.

iii) Parties:

National Insurance Co. Ltd. - Petitioner

Vs.

Ajay Kumar Amichand Kheera - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3434 of 2012 & Date of Judgement: 27.01.2014.

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 vehicle remained untraced for 7 months and the police also filed an untraced report which was accepted by the Chief Judicial Magistrate, Udaipur. The Commission further noted that OP appointed one M.A. Qureshi as investigator in this case whose report showed that, investigating from all angles, he did not find, other than the statements of vehicle staff and the owner themselves, even an iota of evidence regarding the fate of the vehicle. The OP/Insurance Company later appointed another investigator Shri V.V. Joshi. His report of 20th March, 2006 was substantially on the same lines as that of Shri Qureshi. He had concluded that the claim of theft was true and correct and had recommended that it should be admitted in accordance with the policy of the company.
- b) The Commission observed that the vehicle was parked in a place where transport buses and tourist vehicles are normally parked on the station road. The Commission therefore did not accept the claim of OP that there was violation of condition No.5 of the policy as per which the insured was required to take all reasonable steps to safeguard the vehicle from loss or damage.

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c) In the result the Commission did not find any illegality or irregularity in the orders of the fora below which could justify intervention of the Commission in exercise of the power under Section 21(b) of the Act. The Revision Petition was accordingly dismissed.

vii) Citation:

I (2014) CPJ 430.

8. United India Insurance Co. Ltd. & Anr. Vs. Shri Gurinder Singh through LRs

i) Case in Brief:

Complainant/Respondent's vehicle was insured by OP/Petitioner. During subsistence of the policy, the vehicle met with an accident. Complainant intimated OP and as per advice of OP got his vehicle repaired spending Rs.1,10,918/-. However, the claim was repudiated by OP on the ground that at the time of accident, the son of the Complainant was driving the vehicle without any valid licence. The Consumer complaint filed before the District Forum was allowed directing OP to pay Rs.1,10,918/- with 12% p.a. interest besides cost of Rs.250/-. Appeal filed by the Petitioner was dismissed by the impugned order against which the present Revision Petition had been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 05.03.2010 in First Appeal No.1019/2005 of the Punjab State Consumer Disputes Redressal Commission.

iii) Parties:

United India Insurance Co. Ltd. & Anr. - Petitioners/OPs

Vs.

Shri Gurinder Singh

through LRs

- Respondents/Complainants

iv) Case No and Date of Judgement:

Revision Petition No.2172 of 2010 & Date of Judgement: 27.01.2014.

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 core question before the Commission was who was driving the vehicle at the time of the accident.
- b) Complainant had submitted in the complaint that at the time of accident the vehicle was driven by Surjit Singh, whereas it was argued on behalf of OP that the vehicle was driven by Gundeep Singh, son of the Complainant. OP filed affidavit of Mr. R.K.Sharma, Assistant Manager, in support of reply in which it was stated that in the claim form filled by Complainant (Ex.R-7), the name of the driver of the vehicle has been mentioned as Gundeep Singh, son of Gurinder Singh. The investigator, National Detective and Consultancy services had also opined that Gundeep Singh was driving the vehicle at the time of accident. The State Commission had dismissed the appeal on the ground that Petitioner had not submitted/pleaded claim form Ex.R-7 in its reply. But the National Commission observed that the Complainant nowhere had denied in his statement that Ex.R-7 did not bear his signature. The Commission noted that signatures of claim form Ex.R-7 tallied with the signatures on affidavit filed by the Complainant. The Commission observed that when the Complainant himself had mentioned in the claim form that at the time of accident Gundeep Singh was driving the vehicle, then by no stretch of imagination it can be presumed that the vehicle was driven by Surjit Singh. The Commission further noted that no driving licence of Gundeep Singh had been produced by the Complainant because Gundeep Singh was minor at the time of the accident. It was held that as the vehicle was driven by the minor without a driving licence, the Petitioner is not liable to reimburse any damages to the vehicle.
- c) Consequently the Revision Petition was allowed and the orders of the fora below were set aside. The complaint stood dismissed.

vii) Citation:

I (2014) CPJ 365; 2014(1) CPR 343.

9. Mohd. Unis Vs. United India Assurance Co. Ltd.

i) Case in Brief:

Complainant/Petitioner got his vehicle insured from OP/Respondent insurance company for the period 20.07.2005 to 19.07.2006. The vehicle met with an accident on 08.10.2005. FIR was registered with the concerned police station and intimation given to the insurance company. Complainant claimed that he got the vehicle repaired from Shree Balaji Motors Palwal at a cost of Rs.3,85,158/-. But the Surveyor sent by the insurance company assessed the loss to the tune of Rs.2,49,000/-. OP however repudiated the claim on the ground that the vehicle was being used for hire and reward. Alleging deficiency in service, Complainant approached the District Forum which accepted the complaint on non-standard basis and directed OP to pay Rs.2,62,500/- as compensation with interest at 9% p.a. and also awarded cost of Rs.2,200/-. The 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 allowed.

ii) Order appealed against:

From the order dated 22.10.2012 in F.A.No.1366/2010 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

Mohd. Unis - Petitioner

Vs.

United India Assurance Co. Ltd. - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.443 of 2013 & Date of Judgement: 03.02.2014.

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 question before the National Commission was whether the District Forum was correct in applying the ratio laid down by the Apex Court in the case of *Amalendu Sahoo Vs. Oriental Insurance Co. Ltd.* [(2010) CTJ 485 SC]. The Commission noted that the State Commission had reversed the order of the District Forum relying on the later judgment of the

Apex Court in *M/s. Suraj Mal Ram Niwas Oil Mills (P) Ltd. Vs. United India Insurance Co. Ltd. & Anr.* [(2011) CTJ 11 SC] on the ground that courts have to strictly construe the terms of a contract of insurance in terms of the words used therein without adding deleting or substituting any words. The Commission held that the observation of the Apex Court was specifically with reference to the question of coverage of the risk under the policy so as to determine the liability of the insurer. The question before the Hon'ble Supreme Court in *Suraj Mal (supra)* was regarding claim in respect of dispatch of goods which had not been declared so as to cover them in terms and conditions of the policy. There was also an allegation of insurance company regarding the Complainant exceeding the limit of coverage. It was with reference to these two questions that the court had held that the rights and obligations of the parties under an insurance contract are governed by the terms of the contract which have to be strictly construed. In the present case however though the vehicle was registered as a private vehicle and was used for hire and reward and carried more passengers than the permissible limit, it was held that the Petitioner had taken a comprehensive policy for the vehicle in question and the District Forum had rightly accepted the claim of the Petitioner keeping view the ratio in the case of *National Insurance Co. Ltd. Vs. Nitin Khandelwal* (2008 (7) SCALE 351) reiterated in the case of *Amalendu Sahoo (supra)*. The Revision Petition was accordingly allowed setting aside the order of the State Commission and confirming the order of the District Forum.

vii) Citation:

II (2014) CPJ 381; 2014(1) CPR 491.

10. Praveen Dalal Vs. Oriental Insurance Co. Ltd. & Ors.

i) Case in Brief:

Complainant got her truck insured with OPs 1 and 2 for the period from 18.10.2006 to 17.10.2007 for a sum of Rs.12 lakhs. The truck was allegedly stolen in the intervening night of 14th/15th April, 2007. FIR was filed on 15.04.2007 but the matter was reported to OP after a period of more than 17 days. Complainant's claim was repudiated by OP on the ground that information was not given immediately and thereby the terms and conditions of the policy had been violated. Complainant went to the District Forum but her complaint was dismissed. Her

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appeal to the State Commission was also dismissed vide impugned order against which the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 30.08.2011 in Appeal No.1156/2011 of the Haryana State Consumer Disputes Redressal Commission.

iii) Parties:

Praveen Dalal - Petitioner

Vs.

Oriental Insurance Co. Ltd. & Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.4172 of 2011 & Date of Judgement: 04.02.2014.

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 short point that fell for consideration was whether there was any delay in reporting the incident to the police and the insurance company. The Commission noted that the District Forum after perusal of the relevant records had returned the finding that it was not proved that the Complainant intimated the police regarding the incident on 16.04.2007 but had informed the police only on 02.05.2007 after an unexplained delay of 17 days. The Forum had also held that the Complainant had not informed the Respondent company immediately as there was no evidence to that effect. The State Commission had upheld the finding returned by the District Forum in this regard.
- b) The Commission rejected claim of the counsel for the Petitioner that the immediate appointment of the Surveyor would show that the insurance company was informed immediately after the incident. The Commission noted that the copy of the Surveyor report dated 24.03.2008 filed by the Petitioner along with the Revision Petition indicates on top of the report that the Surveyor was deputed on 05.07.2007 which is more than two months after the date of the incident of theft. The Commission observed that the Petitioner had not produced any other document to prove that

the insurance company was informed immediately after the occurrence of theft.

- c) The Commission did not find any illegality or irregularity in the impugned orders non-suiting the claim of the Petitioner and dismissing the complaint. The Revision Petition was accordingly dismissed.

vii) Citation:

I (2014) CPJ 546; 2014(1) CPR 473.

11. National Insurance Co. Ltd. Vs. B. Venkataswamy

i) Case in Brief:

Complainant got his vehicle insured with OP for the period from 08.04.2009 to 07.04.2010 for Rs.5 lakhs. On 07.04.2009, the vehicle was confiscated on the ground of having IMFL liquor bottles in the vehicle and a police case was registered. The vehicle was detained by the Deputy Commissioner of Prohibition and Excise. On the intervening night of 02/03 October, 2009 flood waters entered into Kurnool city and the vehicle was damaged. On intimation the insurance company deputed a Surveyor who took photographs of the damaged vehicle. The vehicle could be repaired at a cost of Rs.1,08,680/- only when the DC issued proceedings for release of the vehicle in the first week of February 2010. Since OP did not entertain the claim for compensation, a complaint was filed before the District Forum which dismissed the same. The appeal filed by the Complainant was partly allowed by the State Commission and OP was directed to pay Rs.1,08,680/- with interest at 9% p.a. to the Complainant from the date of repudiation together with cost of Rs.3,000/-. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 26.04.2013 in Appeal No.1073/2011 of the Andhra Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

National Insurance Co. Ltd.	-	Petitioner(s)
	Vs.	
B. Venkataswamy	-	Respondent

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iv) Case No and Date of Judgement:

Revision Petition No.2852 of 2013 with IA/4906/2013 &
Date of Judgement: 06.02.2014.

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 State Commission held that the Complainant had proved that the vehicle was lying with the Excise Department and it was an admitted fact that there were floods in Kurnool at that point and therefore the repudiation of claim by OP, merely because there was delay in making the claim was wholly unjustified. The Commission observed that the State Commission had taken note of the circular No.IRDA/HLTH/MISC/CIR/216/09/2011 dated 20.09.2011 issued by the Insurance Regulatory and Development Authority pertaining to delay in claim intimation/document submission. It had been mentioned therein that the insurer's decision to reject the claim shall be based on sound logic and valid grounds and that the limitation clause does not work in isolation and is not absolute. One needs to see the merits and good spirit of clause without compromising on bad claims. It was further stated that rejection of claims purely on technical grounds in a mechanical fashion will result in policyholders losing confidence in the insurance industry giving rise to excessive legislation. The Commission therefore held that the action of the OP and closing the claim of the Complainant was unjustified. Taking into consideration the facts and circumstances of the case, it was held that there was no need of interference in the well considered order of the State Commission. The Revision Petition was accordingly dismissed.

vii) Citation:

II (2014) CPJ 65.

12. New India Assurance Co. Ltd. Vs. Birbal Singh Jhakhar

i) Case in Brief:

Motor Vehicle No.RJ 23 T 0765 belonging to Sunil Jhakhar, son of Respondent was insured with the Petitioner Company. On 26.01.2009 the aforesaid vehicle was hit by a bus around midnight on the road

from Bhadhadar to Sikar as a result of which Sunil Jhakar and 5 other passengers suffered fatal injuries and the vehicle was damaged. The Petitioner Company was informed. The Surveyor sent by the company assessed the damage at Rs.1,94,950/-. But the claim was repudiated by the company on the ground that at the time of the accident, the vehicle was being plied without a route permit and fitness certificate. A consumer complaint was filed before the District Forum which dismissed the same. But the State Commission, allowing the appeal filed by the Complainant, directed the Petitioner to pay to the Respondent a sum of Rs.1,94,950/- minus Rs.500/- as excess clause. Interest at 9% p.a. from the date of filing the complaint besides a compensation of Rs.25,000/- and litigation cost of Rs.10,000/- were also awarded. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 17.04.2012 in Appeal No.1626/2011 of the Rajasthan State Consumer Disputes Redressal Commission.

iii) Parties:

New India Assurance Co. Ltd. - Petitioners

Vs.

Birbal Singh Jhakar - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2476 of 2012 & Date of Judgement: 06.02.2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986; Sections 66(1) and 192(A) of the Motor Vehicles Act, 1988.

vi) Issues raised and decided:

The Commission observed that Section 66(1) of the Motor Vehicles Act mandated that no transport vehicle can be used on any public space without a valid permit. For the violation of the said provision, there is a penal liability provided under Section 192(A) of the said Act. The Commission, from a bare reading of the Policy Schedule-cum-Insurance Certificate, observed that under the insurance contract between the parties, the insurance cover extended to the insured subject to the use of the vehicle only under a permit within the meaning of Motor Vehicles Act. It further observed that the insurance contract is a species of

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commercial transaction and it must be construed like any other contract as per its own terms and conditions. Admittedly in the present case, at the time of the incident the vehicle was being plied on a public place without a permit and therefore the insurance cover was not available to the insured in view of the Clause relating to limitation as to use. The Commission therefore held that the impugned order of the State Commission had been passed ignoring the basic condition of the insurance policy and accordingly set aside the order. The Revision Petition was allowed and the complaint filed by the Respondent/Complainant was dismissed.

vii) Citation:

I (2014) CPJ 597; 2014(1) CPR 460.

13. Mallikarjun Sakri Vs. Oriental Insurance Co. Ltd. & Anr.

i) Case in Brief:

Complainant was the registered owner of a mini-lorry which was insured with the Respondent/Insurance Company from 02.04.2007 to 01.04.2008. During the subsistence of the said policy, on 09.10.2007, the said vehicle met with an accident while trying to avoid dashing against a bullock cart as a result of which the vehicle fell 15 feet in to a canal causing extensive damage to the vehicle. Intimation about the accident was given to the police and the Respondent/Insurance Company immediately. The vehicle was inspected by a Surveyor appointed by the Respondent. Thereafter Complainant got the vehicle repaired and sent a bill amounting to Rs.85,234/- along with necessary documents. Since the claim was not settled, Petitioner filed a complaint before the District Forum. The District Forum allowing the complaint held that Petitioner/Complainant was entitled to recover the amount of Rs.90,235/-, rounded off to Rs.90,200/- as also interest at 9% p.a. Six weeks time was given to comply with order. The Respondent's appeal was allowed 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 25.11.2010 in Appeal No.3881/2009 of the Karnataka State Consumer Disputes Redressal Commission.

iii) Parties:

Mallikarjun Sakri - Petitioner

Vs.

Oriental Insurance Co. Ltd. & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.171 of 2011 with IA/302/2013 &

Date of Judgement: 13.02.2014.

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 agree with the finding of the State Commission that at the time of the accident, the driver of the vehicle did not have a valid licence. It was noted that there was a clear endorsement on the Complainant's driving licence permitting him to also drive a heavy transport vehicle which was valid from 24.11.2006 to 23.11.2009 while the licence to drive a light motor vehicle was valid from 22.11.2000 to 21.11.2020. Thus both licences were valid at the time of the accident on 09.10.2007.
- b) The Commission noted that the Surveyor's report showed serious damages to the vehicle but the Surveyor had substantially reduced the repair costs purportedly on the ground that it was in consonance with the market price. Though the Surveyor's report normally had substantial evidentiary value, in the instant case that was held that the documents produced by the Petitioner/Complainant carried more credibility than the Surveyor's report because it clearly indicated item wise damage caused to the vehicle as also the cost of repairs. The Commission also observed that it was difficult to accept that the vehicle which had suffered extensive damage could be repaired for a relatively small amount of Rs.32,500/-.
- c) The Commission allowed the Revision Petition, set aside the order of the State Commission and restored the order of the District Forum. The insurance company was directed to comply with the order of the District Forum within a period of two months.

vii) Citation:

I (2014) CPJ 490; 2014(1) CPR 519.

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14. Sandeep Gupta Vs. United India Insurance Co. Ltd. & Anr.

i) Case in Brief:

Complainant/Respondent No.2, Jit Singh, along with Prem Singh was owner of a truck and got it insured from OP/Respondent No.1 for a period of one year commencing from 09.11.2005 to 08.11.2006. Jit Singh and Prem Singh sold their truck to the Complainant/Petitioner, Sandeep Gupta on 13.11.2005. On 13.04.2006 the vehicle was stolen. A report was lodged on the same day and intimation was also given to OP. However the claim was repudiated by OP. A complaint was filed before the District Forum which was contested by OP on the ground that though the vehicle was transferred, the insurance policy had not been transferred and that the Complainant had no insurable interest. The District Forum allowed the complaint and directed OP to pay insurance claim along with interest and awarded Rs.3,000/- as costs. 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.

ii) Order appealed against:

From the order dated 30.03.2012 in Appeal No.1538/2007 of the Punjab State Consumer Disputes Redressal Commission.

iii) Parties:

Sandeep Gupta - Petitioner

Vs.

United India Insurance Co. Ltd. & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2355 of 2012 & Date of Judgement: 14.02.2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986 and Section 157 of Motor Vehicles Act.

vi) Issues raised and decided:

- a) The question that came up for consideration was whether the insurance company was liable to make payment to the subsequent registered owner without transfer of insurance policy in his name. The Hon'ble Apex Court in *Complete Insulations (P) Ltd. Vs. New India*

Assurance Co. Ltd. I (1996) CPJ 1 (SC) had held that since the insurer had not transferred the policy of insurance in relation to the transferee, the insurer was not liable to make good the damage to the vehicle. In *Rikhi Ram & Anr. Vs. Sukhrania & Ors.* (2003) 3 SCC 97, the Supreme Court while interpreting the provisions of Section 157 of Motor Vehicles Act held that although with the transfer of vehicle the insurance company remains liable towards third party claims but the transferee cannot get any personnel benefit under the policy unless there is a compliance of the provisions of the Act. It was further held that the insurance company would be liable to third parties but it would be open to the insurance company to recover the said amount either from the insured or from the transferee of the vehicle. In the light of the above said judgments, the Commission was of the view that if the transferee fails to inform the insurance company about the transfer of registration certificate in his name and the policy is not transferred in the name of the transferee, then the insurance company cannot be held liable to pay the claim in case of damage of the vehicle.

- b) The Commission did not find any illegality, irregularity or jurisdictional error in the impugned order of the State Commission. Accordingly the Revision Petition was dismissed.

vii) Citation:

2014(2) CPR 13.

15. Ramprasad Vs. Bajaj Allianz General Insurance Co. Ltd. & Anr.

i) Case in Brief:

Petitioner had obtained an insurance policy in respect of his tractor for a period of one year commencing from 19.11.2010. The said tractor was stated to have been stolen on the night intervening 22nd and 23rd September, 2011 while parked in front of the house of the Petitioner's elder son in the village. The Petitioner claimed to have reported the theft orally at PS Manendergarh on 23.09.2011. He gave written information at PS Gohparu, District Sahdol, Madhya Pradesh on 23.09.2011. Another written complaint was given at PS Jaitpur, District Sahdol on 24.09.2011. Complainant lodged FIR on 26.09.2011. Respondent was informed by fax on 05.10.2011 and by registered letter

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on 07.10.2011. Since the claim was repudiated, consumer complaint was filed in the District Forum which allowed the complaint and directed OP to pay Rs.4,28,702/- to the Complainant with interest at 9% p.a. and cost of Rs.2,000/-. Respondent/OP preferred an appeal before the State Commission which allowed the same vide impugned order against which the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 14.01.2013 in Appeal No.497/2012 of the State Consumer Disputes Redressal Commission, Chhattisgarh.

iii) Parties:

Ramprasad - Petitioner

Vs.

Bajaj Allianz General Insurance Co. Ltd. & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1964 of 2013 with IA/3241/2013 &
Date of Judgement: 18.02.2014.

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 before the National Commission was whether or not the delay in giving intimation of theft to the insurance company was fatal to the claim of the Respondent. When a similar question came up before the Hon'ble Supreme Court in *Oriental Insurance Co. Ltd. Vs. Parvesh Chander Chadha* in Civil Appeal No.6739 of 2010 arising out of SLP (C) No.12741 of 2010, decided on 17.08.2010, the Hon'ble Supreme Court observed that "on account of delayed intimation, the appellant was deprived of its legitimate right to get an inquiry conducted into the alleged theft of vehicle and make an endeavour to recover the same". In the present case though the theft allegedly took place on the night intervening 22nd and 23rd September, intimation of theft was given by the Petitioner to the Respondent by fax on 05.10.2011 and by registered post on 05.10.2011. In view of the law laid down by the Supreme Court, it was held that the Respondent/Insurance

Company cannot be saddled with liability to pay compensation to the Petitioner who had not complied with the terms of the insurance of the policy.

- b) The Commission also observed that the story of the Complainant regarding information of theft given to the police was highly suspect. No one from PS Manendergarh had been examined to corroborate the version of the Petitioner regarding oral intimation of theft. There was no explanation as to why the Complainant instead of submitting written information of theft at PS Manendergarh, approached PS Gohparu as also PS Jaitpur who had no jurisdiction to investigate the theft which took place within the jurisdiction of Manendergarh police station. It was therefore held that the story put forth by the Petitioner could not be believed.
- c) Since there was violation of terms of insurance policy the Commission found no ground to interfere with the order of the State Commission and accordingly dismissed the Revision Petition.

vii) Citation:

I (2014) CPJ 531; 2014(1) CPR 735.

16. Sagar Kumar Vs. United India Insurance Co. Ltd.

i) Case in Brief:

Complainant/Petitioner is in the business of Tours and Travels. He had obtained insurance on 30.06.1991 for his Tata Sumo car for Rs.5.14 lakhs from the Respondent Company for a period of one year. The vehicle was stolen on 25.12.2006 around 10 p.m. Petitioner lodged an FIR on 27.12.2006 and informed the Respondent about the theft. Petitioner's claim of the insured amount was repudiated by the Respondent on the ground that insurance company was informed after six months by sending a letter dated 27.06.2007. Petitioner's complaint was allowed by the District Forum and the Respondent was directed to pay the insured sum along with interest at 9% p.a. from the date of claim besides Rs.25,000/- for harassment and mental agony. The Respondent's appeal was allowed by the State Commission vide impugned order against which the present Revision Petition had been filed. Revision Petition dismissed.

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ii) Order appealed against:

From the order dated 01.03.2012 in Appeal No.649/2011 of the State Consumer Disputes Redressal Commission, Delhi.

iii) Parties:

Sagar Kumar - Petitioner

Vs.

United India Insurance Co. Ltd. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2341 of 2012 with IA/2072/2013 &

Date of Judgement: 03.03.2014.

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 there was a delay of about six months in informing the Respondent about the theft of the vehicle and it is a clear cut violation of the mandatory terms and conditions of the policy. The Commission observed that in *New India Assurance Co. Ltd. Vs. Trilochan Jane* (First Appeal No.321 of 2005, decided on 09.12.2009), it had been held that it is incumbent upon the Respondent to inform the police about theft immediately, say within 24 hours, otherwise valuable time would be lost in tracing the vehicle. Similarly the insurer should also be informed within a day or two so that the insurer can verify as to whether any theft had taken place and also to take immediate steps to get the vehicle traced. In *Oriental Insurance Co. Vs. Parvesh Chander Chadha* in Civil Appeal No.6739 of 2010, decided on 17.08.2010, the Apex Court had held that on account of delayed information, the Appellant was deprived of its legitimate right to get an enquiry conducted into the alleged theft of the vehicle and make an endeavor to recover the same. It was further held that the Appellant cannot be saddled with liability to pay compensation to the Respondent despite the fact that he had not complied with the terms of the policy.
- b) The Commission found no jurisdictional or legal error in the order passed by the State Commission to warrant interference

under Section 21(b) of the Act. The Revision Petition was dismissed as devoid of merits.

vii) Citation:

II (2014) CPJ 33; 2014(1) CPR 663.

17. Reliance General Insurance Co. Ltd. Vs. Shivakumara S

i) Case in Brief:

Respondent/Complainant insured his motor cab/taxi with the Petitioner/OP. The unladen weight of the insured vehicle was 980 kgs. The vehicle met with an accident on 20.09.2007 and was damaged beyond repairs. FIR was registered and intimation was given to the Petitioner/Insurance Company. The claim was repudiated by the latter on the ground that at the time of the accident the vehicle was being driven by a person not having an effective driving license which amounted to violation of the conditions of the insurance policy. Being aggrieved, Respondent filed a consumer complaint before the District Forum which was allowed by the Forum with a direction to the Petitioner to pay to the Respondent/Complainant the IDV of the vehicle i.e Rs.3,13,790/- after adjusting the cost of salvage within 60 days. Petitioner's appeal to the State Commission was dismissed vide impugned order against which the present Revision Petition had been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 13.04.2010 in Appeal No.1291/2010 of the Karnataka State Consumer Disputes Redressal Commission.

iii) Parties:

Reliance General Insurance Co. Ltd. - Petitioner

Vs.

Shivakumara S - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2450 of 2010 & Date of Judgement: 07.03.2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986; Sections 2(21), 2(35), 2(47), 3 and 75(2) of the Motor Vehicles Act, 1988.

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vi) Issues raised and decided:

- a) The Commission noted that according to the driver clause of the insurance policy, the insurance contract was subject to the condition that the insured vehicle shall be driven by a person holding an effective driving license authorizing him to drive the vehicle of such category.
- b) The question before the Commission was whether the license held by the driver was an effective license authorizing him to drive the vehicle for carriage of passengers for hire and reward.
- c) Going by the definition of light motor vehicle under Section 2(21) of the Motor Vehicle Act, the Commission held that the vehicle in question was covered within the definition of light motor vehicle since it had an unladen weight of less than 7500 kgs. The Commission also held that the subject vehicle was a public service vehicle since it was a motor cab used for carriage of passengers for hire and reward. Therefore, it was squarely covered under the definition of transport vehicle.
- d) The Commission also noted that the driver of the vehicle did not have an endorsement authorizing him to drive a transport vehicle. He had an effective driving license authorizing him to drive a Light Motor Vehicle (LMV) other than a transport vehicle. Therefore, in view of Section 3 of the Motor Vehicle Act, he cannot be termed as a person having effective driving license.
- e) The Commission therefore held that the fora below had fallen in grave error in allowing the complaint ignoring the provisions of the Motor Vehicle Act as well as the terms and conditions of the insurance policy. Relying on the decisions of the Hon'ble Supreme Court in *Oriental Insurance Company Ltd. Vs. Angad Kol and Ors.* III (2009) SLT 586; *New India Assurance Company Ltd. Vs. Prabhu Lal*, (2008) CPJ 1 (SC); *National Insurance Co. Ltd. Vs. Kusum Rai* II (2006) CPJ 8 (SC); *General Insurance Society Ltd. Vs. Chandanmall Jain and Anr.* (1996) 3 SCR 500 and *Ashok Gangadhar Maratha Vs. Oriental Insurance Co. Ltd.* (1999) 6 SCC 620, it was held that the impugned order could not be sustained.
- f) The Revision Petition was accordingly allowed and the orders of the fora below were set aside.

vii) Citation:

II (2014) CPJ 57.

18. National Insurance Co. Ltd. Vs. Abraham M.P. Mascarenhas

i) Case in Brief:

The Complainant/Respondent got his bus insured with the Petitioner/Opposite party/Insurance Company for the period from 15.02.2009 to 14.02.2010. On 17.01.2010, the said bus met with an accident. Intimation was immediately sent to the Opposite party/Insurance Company and a claim was also lodged with the opposite party on 10.02.2010. As per the complainant, it was a case of total loss as the vehicle was not in a repairable condition since the chassis, engine, body etc. were damaged and twisted. The surveyor appointed by the Insurance Company stated that the bus could be repaired and also forwarded a repair estimate. However, the complainant requested for appointment of a second surveyor which was not accepted by the insurance company. Finally, he sent a legal notice to the opposite party calling upon them to settle his claim on total loss basis. On their failure to do so, he filed complaint before the State Commission which directed the OP/Insurance Company to pay a sum of Rs.22,46,750/- to the complainant as total loss of vehicle and also to pay compensation of Rs.1 lakh for mental harassment and Rs.5,000/- as cost of litigation. Against the order of the State Commission, the present revision petition had been filed. Revision Petition disposed of with directions to OP.

ii) Order appealed against:

Against the Order dated 18.04.2013 in Complaint No.13/2010 of the State Commission Goa.

iii) Parties:

National Insurance Co. Ltd. - Appellant

Vs.

Abraham M.P. Mascarenhas - Respondent

iv) Case No and Date of Judgement:

First Appeal No.463 of 2013 with IA/3958/2013, IA/3959/2013 &

Date of Judgement: 13.04.2014.

v) Acts and Sections referred:

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

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vi) Issues raised and decided:

The National Commission, on perusal of the factual matrix of the case and considering the report produced by the surveyor, appointed by appellant/opposite party, decided to give an opportunity to the Appellant to make attempt for the repair of the vehicle on their own and at their own cost, restore it back to its original condition and hand over the same to the complainant with a certificate duly signed by appropriate technical authority that the vehicle is in a perfect road-worthy condition. For this purpose, the Commission gave a time of three months for doing the needful and provide the vehicle back to the Respondent. The Commission also observed that in case the Petitioner/OP were not in a position to do the needful within the stipulated period, the appeal shall stand automatically dismissed and order of the State Commission would be sustained. Accordingly, the appeal was decided with these directions.

vii) Citation:

II (2014) CPJ 71; 2014(2) CPR 203.

19. Manager, ICICI Lombard General Insurance Co. Ltd. & Ors. Vs. Gafur Alamgeer Sayyad

i) Case in Brief:

Complainant had insured his car for Rs.6.72 lakhs with OPs/Petitioners. During the currency of the policy the car met with an accident. Despite the Surveyor's report the claim was repudiated on the ground that the vehicle was used on hire basis at the time of the accident in violation of the terms and conditions of the policy though it was insured for private use. The District Forum held that the OPs should have settled the claim on non-standard basis and directed the OPs to pay Rs.4.5 lakhs to the Complainant with 6% interest from the date of repudiation. The order of the District Forum was challenged by both sides before the State Commission which upheld the order of the District Forum and dismissed both the appeals. Aggrieved by the said order OPs had filed the present Revision Petition. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 18.08.2010 in Appeal No.2455/2009 of the Karnataka State Consumer Disputes Redressal Commission.

iii) Parties:

Manager,

ICICI Lombard General Insurance Co. Ltd. & Ors. - Petitioners

Vs.

Gafur Alamgeer Sayyad

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.949 of 2011 & Date of Judgement: 14.03.2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986;
Regulation No.14 of the Consumer Protection Regulations, 2005.

vi) Issues raised and decided:

- a) The Commission noted that there was a delay of 123 days in filing the Revision Petition. Though an application for condonation of delay was filed, the explanation given for the inordinate consumption of time was found far from satisfactory. It was held that the Revision Petition was liable to be dismissed on the ground of limitation alone.
- b) On merits, the Commission observed that it was not the case of OP/Insurance Company that there was any vital nexus between the accident of the vehicle and the deviation of purpose in its use. The evidence of the driver before the District Forum showed that a tractor trolley loaded with sugarcane had collided with the vehicle and the fault was that of the tractor trolley. It was held that while the use of the vehicle was irregular, it did not constitute any fundamental breach due to which the owner of the vehicle should be denied indemnification by the insurer. The Commission relied on the decisions of the Hon'ble Supreme Court in *National Insurance Co. Vs. Nitin Khandelwal*, IV (2008) CPJ 1 (SC) and *Amalendu Sahoo Vs. Oriental Insurance Co. Ltd.*, II (2010) CPJ 9 (SC).
- c) The Commission agreed with the findings of the fora below and consequently dismissed the Revision Petition both on grounds of limitation and merit.

vii) Citation:

II (2014) CPJ 104; 2014(2) CPR 130.

20. Ram Singh Vs. Reliance General Insurance Co. Ltd.

i) Case in Brief:

Petitioner/Complainant had a Scorpio vehicle which was insured with OP/Insurance company for the period 29.05.2009 to 28.05.2010 for an amount of Rs.6,19,200/-. It was alleged that the said vehicle was stolen by some unknown persons on 14.07.2009. Complainant's claim was repudiated by the OP on the ground that the vehicle had been sold to one Satish Chand even before the policy was taken and since the purchaser had no insurable interest, the claim was not payable. Satish Chand in his complaint to the police had also stated that the vehicle was stolen before transfer in his name. Alleging deficiency in service Complainant approached the District Forum which allowed that complaint and ordered OP to pay 75% of the assured amount on non-standard basis along with interest at 9% p.a. and Rs.5,000/- litigation expenses. The State Commission allowed the appeal filed by the OP vide impugned order against which the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 29.08.2012 in Appeal No.786/2012 of the Haryana State Consumer Disputes Redressal Commission.

iii) Parties:

Ram Singh - Petitioner

Vs.

Reliance General Insurance Co. Ltd. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.4776 of 2012 & Date of Judgement: 14.03.2014.

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 vehicle in question was sold by the Petitioner, Ram Singh to Satish Chand on 07.02.2008. In accordance with Rule 55 of the Central Motor Vehicle Rules, 1989 the factum of transfer was reported to the registering authority by the transferor Ram Singh on the prescribed Form-29 and by the transferee Satish Chand on Form-30. The Commission wondered how the petitioner took the insurance policy in his name valid from 29.05.2009 to 28.05.2010

when he had already sold the vehicle. It was also noted from the record that the alleged theft took place from the custody of the transferee Satish Chand only. Since the insurance policy continued to be in the name of the transferor, the purchaser did not have any insurable interest with regard to the vehicle. It was held that even if the registration of the vehicle as well as the insurance policy stood in the name of Ram Singh, he would not be entitled to get the claim since he had declared on appropriate proforma that he had sold the vehicle to Satish Chand. The Commission found no illegality, irregularity or jurisdictional error in the order of the State Commission to warrant interference. The Revision Petition was dismissed as devoid of merit.

vii) Citation:

II (2014) CPJ 99; 2014(2) CPR 119.

21. Dr. Anshu Sanjay Sharma Vs. Royal Sundaram Alliance Insurance

i) Case in Brief:

Petitioner's vehicle got submerged in water due to extraordinary floods on 26th and 27th July, 2005. Vehicle was repaired at Patel Auto incurring a total expenditure of Rs.4,50,000/- allegedly on the assurance from the Surveyor of Respondent/OP. When the Petitioner lodged her claim with the Respondent, she was offered only a sum of Rs.1,72,361/- towards full and final settlement. Petitioner did not agree to that amount and filed a consumer complaint before the District Forum. The complaint was dismissed with cost. However the Forum directed that the sum of Rs.1,71,361/- deposited by the Respondent be paid to the Petitioner. Complainant's appeal was dismissed by the State Commission vide impugned order against which the present Revision Petition had been filed. Revision Petition dismissed with cost of Rs.5,000/-.

ii) Order appealed against:

From the order dated 14.01.2011 in Appeal No.28/2010 of the Maharashtra State Consumer Disputes Redressal Commission.

iii) Parties:

Dr. Anshu Sanjay Sharma	- Petitioner
Vs.	
Royal Sundaram Alliance Insurance	- Respondent

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iv) Case No and Date of Judgement:

Revision Petition No.2325 of 2011 & Date of Judgement: 24.03.2014.

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 had observed in its order that the Complainant had failed to substantiate her case about actual repairs. The National Commission noted that the Complainant herself had not appeared in the witness box nor had filed her own affidavit to substantiate her claim. Moreover the documents regarding repairs of the vehicle had not been proved at all. There was nothing on record to show that M/s. Patel Auto had appeared before the Consumer Forum to prove how much actual expenditure had been incurred for repairs of the vehicle.
- b) The Commission observed that the fora below had returned concurrent findings of facts and since there was no jurisdictional or legal error, there was no case for interference under Section 21(b) of the Act. Consequently the Revision Petition was dismissed as devoid of merit with cost of Rs.5,000/- to be deposited in the name of the Consumer Legal Aid Account of the Commission.

vii) Citation:

II (2014) CPJ 232; 2014(2) CPR 173.

22. Oriental Insurance Co. Ltd. Vs. Rajnesh Tandon

i) Case in Brief:

Respondent/Complainant purchased a Tata Sumo Maxi Cab for the purpose of livelihood by way of self employment after obtaining a loan from Canara Bank. He got the vehicle insured with the Petitioner/ Insurance Company for a sum of Rs.2,80,000/-. The vehicle met with an accident on 30.07.2001. It went off the road and fell into a 250 ft. gorge. The insurance company, on being informed, deputed a Surveyor for a detailed report. Though all the papers were submitted a second Surveyor was sent to assess the loss who recommended indemnification to the tune of Rs.1,70,000/- without salvage and Rs.1,10,000/- with salvage. It was alleged by the Complainant that after playing a game

of hide and seek, the insurance company repudiated the claim on the ground that the driver of the vehicle did not have a valid driving licence. The complaint filed by the Respondent was allowed by the District Forum with a direction to the Petitioner to indemnify the Complainant to the extent of Rs.2,04,788/- along with interest @ 12% p.a. The appeal filed by the Petitioner was partly allowed by the State Commission vide impugned order reducing the interest from 12% to 9% against which the present revision petition has been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 12.06.2006 in Appeal No.50/2005 of the Himachal Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

Oriental Insurance Co. Ltd. - Petitioner

Vs.

Rajnesh Tandon - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1569 of 2007 & Date of Judgement: 25.03.2014.

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 the driver of the vehicle did not have a valid driving licence at the time of the accident. The Fora below took the view that since the Respondent had a valid insurance policy and there was no dispute about the accident, the question about the driving license being fabricated was of no consequence. The National Commission held that it was for the Respondent to bring material on record to show that the certificate issued by the transport authorities was not an authentic one at the time of the accident and that the driver had a valid driving license on the date of the accident.
- b) Consequently the Revision Petition was allowed, the orders of the fora below were set aside and the complaint was dismissed.

vii) Citation:

II (2014) CPJ 148; 2014(2) CPR 139.

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23. United India Insurance Co. Ltd. Vs. N.M. Mohammed Jakeer Hussain

i) Case in Brief:

Complainant purchased a lorry, got the registration certificate changed with effect from 30.12.1995, installed a rig unit on it, and used it as a non-transport vehicle from 21.09.1996. The said vehicle was insured with the Petitioner/OP. The said lorry met with an accident around mid-night on 06.10.2004. Complainant on getting information rushed to the spot and informed police and fire service authorities. By the time the fire brigade service reached the spot, a major portion of the rig had been burnt out. These facts were reported to the Complainant at about 11.00 a.m. on 07.10.2004. As advised by the insurance company, Complainant got quotations from leading companies and engineers for repairs which ranged from Rs.20 to 27 lakhs. OP expressed their inability to settle the claim despite a legal notice sent by the Complainant. A complaint was filed before the District Forum which allowed the complaint and directed OP to pay a sum of Rs.15 lakhs to the Complainant within two months along with interest @ 9% p.a., Rs.5,000/- as compensation for mental harassment and Rs.1,000/- as cost. Appeal filed by the Petitioner before the State Commission was dismissed vide impugned order against which the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 27.09.2006 in Appeal No.653/2006 of the Karnataka State Consumer Disputes Redressal Commission.

iii) Parties:

United India Insurance Co. Ltd. - Petitioner

Vs.

N.M. Mohammed Jakeer Hussain - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.442 of 2007 & Date of Judgement: 28.03.2014.

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 arguments advanced by the Petitioner were: i) the Complainant did not qualify to be a consumer since he was

indulging in commercial activity related to digging of tube well bores ii) the vehicle had no fitness certificate and iii) the claim for total loss was not substantiated.

- b) The National Commission observed that OP had issued the insurance policy in question showing the IDV of the vehicle as Rs.15 lakhs fully knowing that it was a vehicle used for tube well boring and for that purpose a rig was mounted on the chassis of a truck. Since the vehicle was registered as non-transport vehicle by the transport department, the version of the OP that a fitness certificate was required was rejected. It was also observed that it was the job of the transport department to see whether a fitness certificate was required and the insurance company should not raise such objections after accepting the premium and issuing the policy.
- c) The Commission noted that the District Forum had reached the conclusion that the vehicle could not be repaired and allowed the claim on total loss basis. It was also noted that the cost of repair would be more than the IDV of the vehicle. The version of the District Forum had been upheld by the State Commission by observing that 6 tyres, disk cabin, engine parts, compressor, batteries and bore well machinery of the vehicle were damaged. The Motor Vehicle Inspector had also stated that the vehicle could not be repaired.
- d) The Commission observed that the orders of the fora below were well reasoned and did not find any justification for any modification. The said orders were confirmed and the Revision Petition was dismissed.

vii) Citation:

II (2014) CPJ 235; 2014(2) CPR 158.

24. New India Assurance Co. Ltd and Anr. Vs. Rajesh Yadav and Anr.

i) Case in Brief:

Complainant, Sh. Rajesh Yadav got his Car insured with New India Assurance Co. Ltd/Petitioner/OP.1, for a sum of Rs.5,38,960/- for the period from 24.07.2009 to 23.07.2010. The said vehicle was given temporary registration No.HR 99-DS-9623. On 18.08.2009, the vehicle was stolen by someone, when it was parked near the house of the

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Complainant. He lodged a complaint with the concerned Police Station, New Delhi, on the same day and informed the OP on 31.08.2009. The claim of the Complainant was repudiated on 29.04.2010, on the ground that at the time of alleged theft, the vehicle in question was being brought from Haryana State to Delhi without valid permit. Being aggrieved, he filed complaint before the District Forum which directed the insurance company to pay a sum of Rs.4,40,326/- @ 9% interest, from the date of claim, till its realization and awarded a sum of Rs.1,50,000/- as compensation, for the harassment to the Complainant out of which, Rs.50,000/- was to be deducted from the salary of the Divisional Manager, who had repudiated the claim. Aggrieved by this order, the insurance company filed First Appeal before the State Commission, which dismissed the appeal vide impugned order against which the present revision petition has been filed by the insurance company. Revision Petition allowed.

ii) Order appealed against:

Against the Order dated 22.05.2013 in Appeal No.924/2012 of the State Commission Delhi.

iii) Parties:

New India Assurance Co. Ltd and Anr. - Petitioners

Vs.

Rajesh Yadav and Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3101 of 2013 & Date of Judgement: 01.04.2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986 & Section 66(1) of the Motor Vehicle Act, 1988.

vi) Issues raised and decided:

- a) The main issue was whether the Complainant was entitled to drive the vehicle from Haryana to Delhi without valid permit.
- b) The National Commission on perusal of the records found that the Complainant informed New India Assurance Co. Ltd. on 31.08.2009, wherein it was stated that his car had been stolen. He did not mention either the temporary number or the permanent number. The numbers HR-99-DS-9623 and HR-47-BT-0295 were of the same vehicle. The first one, was the Temporary Registration number and the second one was the

Permanent Registration Number. It was being confirmed when he gave the permanent registration number to the MLO, RTO and National Crime Records Bureau, Motor Vehicle Co-ordination System. This fact was hidden by the Complainant. Perhaps, this fact had escaped the notice of the fora below which had allowed the complaint even though the vehicle was not having valid permit for Delhi.

- c) The Commission further observed that having permit for a particular place, is a necessary condition as per Section 66(1) of the Motor Vehicle Act, 1988 & according to the terms and conditions of the policy and its violation does not help the complainant to have the compensation on on-standard basis. The Commission held that the complaint of the Complainant was liable to be dismissed on this score only.
- d) Again, there was a huge delay in informing about the theft to the insurance company. The theft took place on 18.08.2009, but the information was given to the insurance company, on 31.08.2009. Delay in informing the insurance company was fatal as it deprived the insurance company of its legitimate right to enquire into the alleged theft of vehicle and make an endeavor to recover the same relying on the decisions of *Oriental Insurance Co. Ltd. Vs. Parvesh Chander Chadha* Civil Appeal No.6739/2010, decided on 17.08.2010 and *Mohammadali Liyakatali Pathan Vs. Reliance General Insurance Co. Ltd.*, RP No.3183 of 2011, decided on 12.07.2012.
- e) In view of the above, the revision petition filed by the insurance company was allowed and the orders of the fora below were set aside in their entirety and the complaint was dismissed. No action was called for against the Divisional Manager, New India Assurance Company Ltd.

vii) Citation:

II (2014) CPJ 398; 2014(2) CPR 328.

25. Oriental Insurance Co. Ltd. Vs. Satpal Singh & Anr.

i) Case in Brief:

The Complainant, Sh. Satpal Singh along with his father, Joginder Singh purchased a Truck by paying a sum of Rs.7.67 lakhs, for his livelihood and got it insured by OP-3, effective from 15.05.2006 to

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14.06.2007, but no policy or terms and conditions, were supplied. The said truck met with an accident, on 01.09.2006, and Sh. Joginder Singh, father of complainant, died on the spot and the vehicle was badly damaged. On the same day, a FIR was registered and intimation of the incident was given to Insurance Company/OP-3. OP.3 appointed a Surveyor who gave a report that vehicle was totally damaged and not repairable, and that Insurance Company would have to pay full insured amount. But the claim of the Complainant was rejected by the insurance company. Aggrieved by the acts of OP, Complainant filed a complaint before the District Forum which directed OP Nos. 1 to 3 to pay the insured declared value assessed at Rs.7,30,000/- along with interest @ 9% p.a. from 21.12.2006, till payment. It also awarded a sum of Rs.2,511/- as fee paid to the surveyor, along with costs of Rs.2,000/-. Aggrieved by the impugned order dated 23.04.2008, the Petitioner/OP-1 filed first appeal for setting aside of the order of the District Forum, while the Complainant filed First appeal FA/131/2009 for enhancement of compensation. The State Commission dismissed both the appeals. Aggrieved by the order of the State Commission, the Petitioner/Insurance Co. filed the present revision petition. Revision Petition dismissed.

ii) Order appealed against:

Against the Order dated 14.05.2013 in Appeal No.644/2008 & 131/2009 of the State Commission Punjab.

iii) Parties:

Oriental Insurance Co. Ltd.

- Petitioner

Vs.

Satpal Singh & Anr.

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3165-3166 of 2013 &

Date of Judgement: 01.04.2014.

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 and held that the act of Petitioner was arbitrary and amounted to deficiency in service and unfair trade practice for the following reasons:

- a) Onus of proof lies upon OP Nos.1 to 3 to prove that policy, along with terms and conditions, was supplied to the Complainant. OPs had not produced any cogent evidence in this regard.
- b) The Counsel for OP-1 argued that the intimation of the accident was given to the company, after a delay of 19 days, but the Counsel failed to produce any cogent evidence or document to prove this contention.
- c) Even, the affidavit of Surveyor appeared to be an afterthought, improvement and just to frustrate the claim. After the spot survey, the Insurance Company was supposed to appoint a Surveyor and loss assessor for final survey, but it never appointed.

vii) Citation:

II (2014) CPJ 374; 2014(2) CPR 357.

26. Ismail Khan Amir Khan Vs. National Insurance Co. Ltd.

i) Case in Brief:

Complainant/Petitioner, owner of a matador had insured his vehicle with OP for a period of one year from 28.01.2005. On 26.06.2005, the vehicle met with an accident. Report was lodged with the Police and intimation was given to OP. OP appointed Surveyor who inspected vehicle at the spot and assessed loss. Complainant got an estimate prepared by Ujjwal Auto Private Ltd. for Rs.5,61,098/- and submitted claim to OP. Since the claim was not settled, a complaint was filed before the District Forum. The forum allowed the complaint and directed OP to pay Rs.4,50,000/- with interest and further allowed Rs.2,000/- for mental agony. OP filed appeal before the State Commission which vide impugned order reduced compensation from Rs.4,50,000/- to Rs.1,84,575/- against which the present Revision Petition had been filed. Revision Petition partly allowed. Respondent was directed to pay Rs.50,000/- in addition to amount of Rs.1,84,575/-.

ii) Order appealed against:

From the order dated 27.09.2011 in Appeal No.2599/2006 of the Maharashtra State Consumer Disputes Redressal Commission.

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iii) Parties:

Ismail Khan Amir Khan - Petitioner

Vs.

National Insurance Co. Ltd. - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1239 of 2012 & Date of Judgement: 17.04.2014.

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 Complainant had not pleaded total loss in the complaint and in such circumstances District Forum committed error in allowing Rs.4,50,000/- on the basis of total loss.
- b) The Commission also noted several discrepancies between the spot survey report and the Surveyor's report. For instance in the Surveyor report, some items mentioned at serial numbers 40 to 45 had been kept open as vehicle was not dismantled, though Surveyor had mentioned that these items seemed to be unaffected. The Commission observed that without opening vehicle and the assembly items, Surveyor rightly did not assess loss but it could be presumed that some loss must have been caused to these items. It was considered appropriate to allow Rs.50,000/- in addition to the amount awarded by the State Commission which will meet expenses to be incurred on repairs and replacement of parts which had not been dismantled and kept open by the Surveyor for assessment.
- c) Consequently Revision Petition was partly allowed and Respondent was directed to pay Rs.50,000/- in addition to amount of Rs.1,84,575/- awarded by the State Commission as per the Surveyor report.

vii) Citation:

II (2014) CPJ 483; 2014(2) CPR 545.

27. National Insurance Co. Ltd. Vs. Jai Bhagwan

i) Case in Brief:

One Rajesh Jaglan, registered owner of Car No.HR32 C 8787, got it insured with the opposite party for a period of one year from 29.12.2009 to 28.12.2010. He sold the car to the Respondent/Complainant and registration was transferred in his name 11.08.2010. The car met with an accident on 24.08.2010 resulting in damage. Complainant filed insurance claim and the Insurance company/Petitioner deputed a Surveyor who assessed the monetary value of the car to the tune of Rs.1,85,007/-. However the claim was repudiated on the ground that the insurance policy was not transferred in the name of the Complainant. The complaint filed by the Respondent before the District Forum was allowed and the Petitioner was directed to pay a sum of Rs.1,85,007/- as assessed by the Surveyor within a period of 30 days. The State Commission confirmed the order of the District Forum vide impugned order against which the present Revision Petition had been filed. Revision Petition allowed and the orders of the fora below were set aside.

ii) Order appealed against:

From the order dated 04.10.2012 in Appeal No.1006/2012 of the Haryana State Consumer Disputes Redressal Commission.

iii) Parties:

National Insurance Co. Ltd.

- Petitioner

Vs.

Jai Bhagwan

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.118 2013 & Date of Judgement: 25.04.2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986, Section 157(2) of the Motor Vehicles Act, 1988 and GR 17 of the Motor Tariff Regulations.

vi) Issues raised and decided:

- a) The Petitioner, referring to Section 157 of the Motors Vehicle Act, 1988 as well as GR 17 of the Indian Motor Tariff Regulations, had contended that there was no privity of contract between the Petitioner and the Respondent and therefore repudiation of claim

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was justified. The Commission on conjoint reading of the above cited Section 157 with GR 17 of the Regulations noted that in the case of package insurance policy, the transfer of the policy in favour of the transferee shall be done by the insurance company in case specific request in writing is made by the transferee of the vehicle within 14 days from the date of transfer of ownership. The Commission observed that the Complainant had neither produced any evidence to prove that he applied for insurance in writing nor had he produced evidence to show that the previous owner gave his consent for transfer of the policy in his name.

- b) The Commission did not accept the argument that the repudiation of the claim was unjustified since the accident took place before the expiry of 14 days for applying for transfer of insurance as provided under Section 157(2) of the MV Act and GR 17 of the Motor Tariff Regulations. It was observed that even if the accident took place before the expiry of 14 days period, the Respondent/ Complainant could easily have applied for transfer of ownership with requisite consent of transferor within the requisite period despite the accident. There was nothing on record that the consent of the previous owner was submitted along with the claim form. In the light of the said facts, the Commission held that the fora below had committed an error in allowing the complaint.
- c) Consequently the orders of the fora below were set aside and the Revision Petition was allowed.

vii) Citation:

II (2014) CPJ 640; 2014(2) CPR 459.

28. Lakhan Lal Keshri Vs. Branch Manager, United India Insurance & 3 Ors.

i) Case in Brief:

Complainant/Petitioner's Jeep which was insured by OP/Respondent was robbed by miscreants on 07.09.2008 during the currency of the insurance policy. Matter was reported to the Police and to the OP and claim was preferred before the OP. But OP repudiated the claim on the ground that the vehicle was used for hire/reward against the terms and conditions of the policy. Alleging deficiency on the part of OP,

Complainant filed complaint before the District Forum. The Forum allowed the complaint and directed OP to pay Rs.3,52,250/- along with 8% p.a. interest and further awarded Rs.10,000/- as compensation. On appeal filed by OP, the State Commission modified the order of the District Forum and directed OP to pay 75% of the sum insured instead of full amount. Rest of the order was confirmed. Aggrieved by the said order, the Complainant had filed the present Revision Petition. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 22.03.2013 in Appeal No.83/2011 of the State Consumer Disputes Redressal Commission, Jharkhand.

iii) Parties:

Lakhan Lal Keshri

- Petitioner

Vs.

Branch Manager, United India Insurance & 3 Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2538 of 2013 & Date of Judgement: 29.04.2014.

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 reports lodged by the driver with the Police station noted that the driver had taken Rs.1,000/- as fare from the passengers when the vehicle was taken to Deoghar. During the journey something was given to him for eating by the passengers and on account of giddiness, he could not drive the vehicle which was then taken away by the passengers. The Commission concluded that at the time of accident the vehicle was used for hire/reward and that the State Commission had not committed error in reducing the claim to 75% on non-standard basis.
- b) The Commission held that there was no illegality, irregularity or jurisdictional error in the impugned order. The Revision Petition was accordingly dismissed.

vii) Citation:

II (2014) CPJ 688; 2014(2) CPR 435.

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29. New India Assurance Co. Ltd. Vs. Gulshan Bhatia & Ors.

i) Case in Brief:

Complainant/Respondent No.1 got his Tata Indica Car insured with OP No.1/Petitioner for Rs.2,80,000/- for a period of one year commencing from 18.10.2004 to 17.02.2005. The vehicle met with an accident on 13.06.2005. Complainant got estimate of repair from OP No.3 for Rs.2,94,412.70. OP No.1, after appointing a Surveyor to assess the final loss, informed Complainant that car was not repairable and asked him to settle the claim on total loss basis. As claim was not settled, Complainant filed complaint before District Forum which allowed the complaint and directed OP No.1 to pay Rs.1,30,000/-. The Appeal filed by the Complainant was allowed by the State Commission vide impugned order enhancing the compensation to Rs.1,80,000/-. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition partly allowed and the loss was assessed at Rs.1,55,000/- instead of Rs.1,80,000/-.

ii) Order appealed against:

From the order dated 15.05.2012 in Appeal No.1066/2008 of the Haryana State Consumer Disputes Redressal Commission.

iii) Parties:

New India Assurance Co. Ltd. - Petitioners

Vs.

Gulshan Bhatia & Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3012 of 2012 & Date of Judgement: 30.04.2014.

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 District Forum had allowed Rs.1,30,000/- as the car had run 150 km. per day in the last 14 months and the State Commission had allowed Rs.1,80,000/- on the basis of Surveyor Report. The Commission was of the view that as Tata Indica was of 2003 model and had run about 1,16,000 km before accident, it would be appropriate to assess market value of the car to be Rs.2,25,000/- instead of Rs.2,50,000/-

assessed by the Surveyor and after deducting cost of salvage, loss can be presumed as Rs.1,55,000/- instead of Rs.1,80,000/- assessed by the Surveyor.

- b) Consequently Revision Petition was partly allowed and the order of the State Commission was modified assessing the loss at Rs.1,55,000/- instead of Rs.1,80,000/-. Rest of the order of the District Forum was affirmed.

vii) Citation:

II (2014) CPJ 630.

30. Oriental Insurance Co. Ltd. Vs. G. Velkumar

i) Case in Brief:

Complainant/Respondent is the owner of a Tata-407 vehicle insured with the Petitioner/OP for the period 06.05.2001 to 05.05.2002. The said vehicle was badly damaged in an accident on 04.04.2002. Intimation was given to the Petitioner who deputed a Surveyor to assess the loss. Complainant got his vehicle repaired by incurring an expenditure of Rs.86,820/-. But his claim for the amount was repudiated by his insurance company on the ground that although it was a goods-carriage vehicle, a large number of passengers were being carried resulting in breach of the policy condition. The District Forum allowing the complaint of the Respondent directed insurance company to pay a sum of Rs.29,883/- towards repair charges with interest @ 9% p.a. from the date of repudiation of the claim together with a sum of Rs.5,000/- as compensation for mental agony and Rs.1,000/- as cost. An 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 06.04.2007 in Appeal No.545/2004 of the Tamil Nadu State Consumer Disputes Redressal Commission.

iii) Parties:

Oriental Insurance Co. Ltd.

- Petitioner

Vs.

G. Velkumar

- Respondent

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iv) Case No and Date of Judgement:

Revision Petition No.2942 of 2007 & Date of Judgement: 30.04.2014.

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 vehicle in question was registered and insured as a goods-carrying vehicle. It was therefore prohibited from carrying passengers. The very fact that about 40 persons were travelling in the vehicle indicated that there was a breach of conditions of the policy as well as of the permit issued by the transport department. The Commission did not agree with the State Commission's findings that there was no fundamental breach of the conditions of the policy. The Commission referred to an earlier order of the Commission in *Oriental Insurance Co. Vs. Pabindra Narayan Uzir IV* (2006) CPJ 396 (NC), in which the view was taken that there was a breach of the conditions of the policy since the vehicle in the said case carried nearly 60 persons. Consequently the Revision Petition was allowed and the orders of the fora below were set aside.

vii) Citation:

II (2014) CPJ 647; 2014(2) CPR 410.

31. Oriental Insurance Co. Ltd. Vs. Shyam Sunder

i) Case in Brief:

Complainant/Respondent got his Tempo insured from the OP/petitioner for a period of one year from 23.5.2011. It is his case that on 12.7.2011, he and his son Puneet Kumar were coming to Agra from Aligarh along with goods and the owner of the goods, that the complainant stopped his vehicle under the jurisdiction of Police Station Khair, where he and his son came out of the vehicle to attend natural calls and parked the vehicle on the road and in the meantime, owner of the goods fled away with the vehicle. Claim was submitted to the OP who repudiated it on the ground of violation of condition No.5 of the policy. Alleging deficiency on the part of OP, complainant filed complaint before District forum which directed OP to pay Rs.3,50,000/- along with interest and Rs.2,000/- for mental agony and Rs.2,000/- for litigation charges.

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.

ii) Order appealed against:

Against the Order dated 09.07.2013 in Appeal No.866/2013 of the State Commission Uttar Pradesh.

iii) Parties:

Oriental Insurance Co. Ltd. - Petitioner

Vs.

Shyam Sunder - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3251 of 2013 & Date of Judgement: 05.05.2014.

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 in the FIR, intimation to Insurance Company and in the complaint it had been pleaded that while going for easing out they had left key in the vehicle and the vehicle was taken away by the owner of the goods, who was sitting in the vehicle; whereas in the claim form, the complainant tried to justify the fact that the vehicle was snatched by the owner of the goods along with 2 persons at gun point after tying Puneet and throwing him out of the vehicle. The Commission noted that the version of the Complainant did not inspire confidence and that the Complainant had not come with clean hands. The Hon'ble Supreme Court in *United India Insurance Co. Ltd. Vs. Rajendra Singh & Ors.* [SLP(C) No.8479 of 1999] had observed that "fraud and justice never dwell together".
- b) As per condition No.5 of the insurance policy, Complainant was required to take all reasonable steps to safeguard the vehicle from loss or damage and to maintain it in efficient condition. Therefore he was under an obligation to take key of the vehicle with him while going to ease out. While he himself had left the key in the vehicle, he violated Condition No.5 of the policy and

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in such circumstances; OP had not committed any deficiency in repudiating claim of the complainant.

c) Consequently the Revision Petition was allowed and the orders of the fora below were set aside.

vii) Citation:

II (2014) CPJ 567; 2014(2) CPR 387.

32. Oriental Insurance Co. Ltd. Vs. Seema Sharma

i) Case in Brief:

Complainant/Respondent had a transport vehicle which was insured with Oriental Insurance Company Ltd./OP. The insured declared value was in the sum of Rs.1,40,000/-. During the pendency of the insurance policy the vehicle met with an accident and the driver, Manoj Kumar, succumbed to his injuries. The insurance claim was repudiated on the ground that in the licence of the driver the date of birth was shown as 12.10.1985 whereas as per his matriculation certificate, his date of birth was 12.10.1987. It was contended that the driver was only 16 years of age when he was given the licence. The Complainant got a favourable order in the lower fora. The present Revision Petition had been filed challenging the order of the State Commission. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 26.11.2013 in Appeal No.215/2013 of the Himachal Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

Oriental Insurance Co. Ltd. - Petitioner

Vs.

Seema Sharma - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1683 of 2014 & Date of Judgement: 21.04.2014.

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 age of the driver was a matter between the Transport officer and the Insurance Company. The former must have made enquiry and issued the licence after verifying all the facts. It was not the concern of the Consumer Fora. If the Petitioner/Insurance Company had any issue it should have taken it up with the transport authority. There was nothing on record to show that the licence was fake.
- b) The Commission keeping its focus on the first licence produced before it held that the driver was allowed to drive transport vehicle with effect from 17.05.2006 i.e prior to accident. It was held that the judgement reported in the case of *United India Insurance Company Ltd. Vs. Lehru & Ors.* 2003(3) SCC 338 clearly applied to this case. If a person shows the driving licence containing all the particulars, then the owner will stand satisfied and will not make any further enquiry. The Commission held that no fault can be attributed to the owner of the vehicle.
- c) Revision Petition was accordingly dismissed as devoid of merit.

vii) Citation:

III (2014) CPJ 112; 2014(2) CPR 297.

33. Oriental Insurance Co. Ltd. Vs. K.K. Valsalan

i) Case in Brief:

Complainant/Respondent got insured his vehicle (Lorry) from the OP/petitioner. During currency of insurance policy, vehicle was stolen on 18.3.2007. Claim filed by the Complainant was repudiated by OP on the ground of negligence of the driver. Alleging deficiency on the part of OP, complainant filed complaint before the District Forum which directed OP to pay Rs.5,38,500/- as compensation and Rs.1000/- as costs. 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:

Against the Order dated 17.08.2013 in Appeal No.456/2012 of the State Commission Kerala.

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iii) Parties:

Oriental Insurance Co. Ltd. - Petitioner

Vs.

K.K. Valsalan - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4521 of 2013 & Date of Judgement: 07.05.2014.

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 theft occurred due to negligence of the driver who left the key in the vehicle and left the vehicle unattended and thus violated Condition No.5 of the policy. The plea of the Complainant that both the ignition keys were left in the vehicle was held not tenable and negligence was attributed on the part of driver. The Commission held that it was evident that the driver left the vehicle unattended without proper precaution.
- b) In view of the above, the Commission held that Petitioner had not committed any deficiency in repudiating claim. It was further held that the claim of the Complainant that both ignition keys were kept together in the unattended vehicle and theory of theft of the vehicle was suspicious. Consequently, revision petition was allowed and the impugned order of the State Commission was set aside.

vii) Citation:

II (2014) CPJ 201; 2014(2) CPR 287.

34. New India Assurance Co. Ltd. Vs. Maha Singh

i) Case in Brief:

Complainant/Respondent got insured his tractor for a period of 2.5.2002 to 1.5.2003 from the OP/Petitioner. Complainant sold this tractor to Wazir Singh. On 16.1.2003, tractor was stolen by some unknown person. FIR was lodged on 11.2.2003 and intimation was given to OP on

01.05.2003. Complainant submitted claim before OP, which was repudiated on the grounds that tractor was being used for transportation of stones for commercial purposes, that complainant had no insurable interest in the tractor at the time of theft and that intimation of theft was given to OP with a delay of three months. Alleging deficiency on the part of OP, Complainant filed complaint before District forum which directed OP to pay Rs.1,80,000/- along with interest and further awarded Rs.2,200/- as litigation charges. Appeal filed by the Petitioner 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 10.02.2012 in Appeal No.155/2012 of the State Commission Haryana.

iii) Parties:

New India Assurance Co. Ltd. - Petitioner

Vs.

Maha Singh - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2057 of 2012 & Date of Judgement: 07.05.2014.

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 there was a delay of 26 days in lodging FIR and delay of 3 months in giving intimation to the insurance company which amounted to violation of the conditions of policy and that the State Commission committed error in dismissing the appeal. The Commission relied on the earlier decision of the Commission in FA.No.321 of 2005, *New India Insurance Company Ltd. Vs. Trilochan Jane*, decided by the Commission on 09.12.2009 in which the claim of the complainant was dismissed as FIR was lodged after 2 days and intimation to insurance company was given after 9 days.
- b) The National Commission on perusal of the records found that Complainant had already sold the vehicle to Wazir Singh long before the accident and obtained insurance policy without any

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insurable interest which was void *ab initio* and it was a clear violation of the terms and conditions of the policy. Therefore, the revision petition was allowed and the order of the State Commission was set aside.

vii) Citation:

III (2014) CPJ 204; 2014(2) CPR 284.

35. Shri Aftab Khatib Vs. M/s. Reliance General Insurance Co. Ltd.

i) Case in Brief:

Petitioner/Complainant purchased a Ford Fiesta vehicle on 04.07.2008 from one Leonardo Savio Colaco who had insured the said vehicle with the Respondent/OP. The Petitioner/Complainant filed an application before the RTO and got the vehicle transferred in his name on 22.10.2008. The insurance policy of the vehicle was due to expire on 27.09.2008. The Petitioner got the insurance policy renewed in the name of the original owner for another year i.e. up to 26.09.2009. The Petitioner however did not apply to the insurance company to transfer the policy in his name. The vehicle met with an accident on 13.08.2009. Though intimation was given to the insurance company on the same day, the claim was repudiated by the Respondent on the ground that the insurance policy was in the name of the original owner and the vehicle was in the name of the Petitioner. The District Forum before whom a complaint was filed directed OP to pay a sum of Rs.40,399/- along with interest at 9% p.a. with effect from 19.08.2009 and also awarded compensation to the extent of Rs.5,000/-. The appeal filed against the order by the Respondent was allowed 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 25.10.2012 in Appeal No.24/2012 of the State Consumer Disputes Redressal Commission, Goa.

iii) Parties:

Shri Aftab Khatib

- Petitioner

Vs.

M/s. Reliance General Insurance Co. Ltd.

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.196 of 2013 & Date of Judgement: 13.05.2014.

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 observed that the Petitioner had no authority to get the policy renewed in the name of the original owner since the vehicle was no longer with the original owner. The Petitioner's action was held to be not in accordance with law.
- b) The Commission observed that the State Commission had rightly placed reliance on the orders passed by the Hon'ble Supreme Court in *Complete Insulations (P) Limited Vs. New India Assurance Company Limited* (1996) 1 SCC 221 and that of the National Commission in "*United India Insurance Company Limited Vs. V.V. Deenadayal & Anr.*" (2009) STPL (CL) 2874 NC. It had been held therein that under section 157 of the Motor Vehicles Act, 1988, the certificate of insurance shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred but the said provision was applicable only in relation to third party risk and did not apply to the policy, covering risk of damage to the vehicle or person of the insured. Moreover it had been clearly laid down in Section 157 (2) of the Motor Vehicles Act that the transferee shall apply within 14 days from the date of transfer to the insurer for making necessary changes in the certificate of insurance. In the present case the Petitioner himself admitted that he never made such an application.
- c) Consequently the Commission held that there was no irregularity, illegality or jurisdictional error in the impugned order of the State Commission. The Revision Petition was accordingly dismissed.

vii) Citation:

III (2014) CPJ 439.

V. DELAYING THE PROCEEDINGS

1. M/s. Dudhal Associates Vs. Mr. Swatantra Kumar Mishra & Ors.

i) Case in Brief:

A consumer complaint, No.166 of 2013, was filed before the State Commission by the Petitioner Dudhal Associates. Petitioner was served in this case on 10.06.2013. When the case was taken up on 09.07.2013 the Complainant as well as the Counsel was absent. On 23.07.2013, the Petitioner moved an application for adjournment contending that settlement talks were going on between the Complainants and the OPs. A further adjournment was prayed on 23.10.2013. On the same day State Commission passed the impugned order adjourning the case to 13.01.2014 directing the Complainant to file evidence as per Section 13(2)(b)(ii) r/w Sec. 13(4) of the CP Act. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 23.10.2013 in First Appeal No.CC/13/166 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai.

iii) Parties:

M/s. Dudhal Associates - Petitioner

Vs.

Mr. Swatantra Kumar Mishra & Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.4610 of 2013 & Date of Judgement: 05.02.2014.

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 Commission, after perusal of record, observed that there was no inkling that negotiations for compromise were going on. Even the Counsel for OP No.1 was not present. He appeared through his proxy Counsel. On the contrary arguments for interim relief were heard and the interim relief was granted. It was noted that no joint request was

ever made in order to get the case adjourned. It was held that the Petitioner wanted to procrastinate the proceedings for one reason on the other. The Commission observed that the Petitioner routinely asked for time without any substance. Relying on the judgment of the Hon'ble Supreme Court in *Kailash vs. Nanhku and Ors.* AIR 2005 SC 2441, the Commission held that there should be reasonable and pressing grounds as described in para 39 of the said judgment. In the present case it was noted that the Counsel for the Petitioner wanted to delay the case unnecessarily. The Revision Petition was accordingly dismissed.

vii) Citation:

I (2014) CPJ 585; 2014(1) CPR 471.

VI. EX-PARTE DECREE

1. Volkart Fleming Shipping & Services Ltd. Vs. M/s. Sangrur Agro Ltd. & Others

i) Case in Brief:

Complainant/Respondent No.1 filed complaint before State Commission against OP No.1&2/Respondent No.2&3 and OP NO.3/Petitioner. OP No.3 was proceeded ex-parte on 16.10.2001 as notice sent through Regd. A.D. was not received back after a period of 30 days and none appeared for OP.No.3. OP.Nos.1&2 contested the complaint and ultimately by impugned order complaint was allowed. OP No.3 also filed application for recall of ex-parte order which was dismissed by State Commission vide order dated 18.10.2007 and this appeal has been filed against both the orders. Appeal partly allowed.

ii) Order appealed against:

Against the Order dated 18.10.2007 in Complaint No.42/2001 of the State Commission Chandigarh.

iii) Parties:

Volkart Fleming Shipping & Services Ltd. - Appellant

Vs.

M/s. Sangrur Agro Ltd. & Others - Respondents

iv) Case No and Date of Judgement:

First Appeal No.642 of 2007 & Date of Judgement: 12.03.2014.

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 observed that as far as order dated 18.10.2007 is concerned, State Commission rightly declined to recall the order and appeal to this extent was held liable to be dismissed. Counsel for the appellant submitted that State Commission restored execution application dismissed in default on 18.10.2007, but dismissed application of the appellant for recalling ex-parte order and thus passed

contradictory orders. At this stage, the Commission were not concerned with the order dated 18.10.2007 restoring execution application, but impugned order dated 18.10.2007 refusing to recall ex-parte order was held to be in accordance with law.

- b) The Commission accepted the contention of the Appellant that he had vacated the premises to which notices were sent by the State Commission and therefore he did not receive them.
- c) Consequently, appeal filed by the Appellant was partly allowed and impugned order dated 31.07.2006 passed by State Commission was set aside to the extent of Appellant and matter was remanded back to the State Commission to take written statement of Appellant on record and decide complaint afresh in accordance with law after giving an opportunity of being heard to the Appellant. Appellant was directed to appear before State Commission on 21.04.2014 and further directed to file written statement on or before this date.

vii) Citation:

2014(2) CPR 217.

VII. EXECUTION OF ORDERS

1. Kal Three Wheeler Owners Association & 17 Ors. Vs. M/S. Kerala Automobiles Ltd.

i) Case in Brief:

Vide order rendered by the District Forum on 11.11.1996, it was directed that OP/M/s. Kerala Automobiles Ltd. were to rectify the defects of the vehicles belonging to the Complainants/Petitioners. The said order was upheld by the State Commission as also the National Commission. The decree holders filed execution petitions before the District Forum. They also filed applications seeking modification of the order of the District Forum dated 11.11.1996 and claimed value of the vehicle on the ground that the vehicles cannot be rectified. The said applications were dismissed by the District Forum. The Review Petitions were also dismissed. The Revision Petitions filed before the State Commission were also dismissed vide impugned order against which the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 05.04.2013 in Appeal No.58/2012 of the Kerala State Consumer Disputes Redressal Commission.

iii) Parties:

Kal Three Wheeler Owners Association & 17 Ors. - Petitioners

Vs.

M/S. Kerala Automobiles Ltd. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3407 of 2013 with IA/1126/2014 &

Date of Judgement: 03.03.2014.

v) Acts and Sections referred:

Sections 19, 21(b) and 25 of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Commission held that the decree passed by the consumer forum dated 11.11.1996 had attained finality. It cannot be disturbed by applications moved by decree holders subsequently. It was observed

that executing court cannot go behind the decree. The duty is cast on the executing court to get the decree executed by all means. The Execution Petitions cannot be said to be time barred. They can execute the decree within 12 years from the date of decree and that period is further extended by 12 years on moving any applications or rejection of their appeal. The Commission held that if advised, the Petitioners can file fresh execution petition and get the decree extended. With the above observations the Revision Petition was dismissed.

vii) Citation:

2014(1)CPR 600.

VIII. FRIVOLOUS / VEXATIOUS LITIGATION

1. General Manager, Marketing Division Ashok Leyland Ltd. Vs. Gopal Sharma & 2 Ors.

i) Case in Brief:

Complainant had purchased a truck/chassis on 20.08.2002 for a sum of Rs.6,78,916/- and got the body of the truck built. His grievance was that within a month of purchase the engine of the vehicle started giving trouble. He sent first notice to the Petitioner on 09.04.2003, second notice on 02.09.2003 and third notice on 31.01.2004. The Deputy General Manager (Legal), Ashok Leyland who was arrayed as OP No.3 had admitted that one piston, two liner rings set and one big end bearing had been replaced by September, 2003 and that the third piston exhaust valve was changed on 26.04.2004 without charging any money even though the warranty period was over. Complainant sent notices again on 09.04.2004 and 14.09.2004. Finally a complaint was filed before the District Forum on 17.01.2009 which was dismissed on merits. However the State Commission on appeal directed OPs to replace the engine within one month or pay money equivalent to the price of the engine in question together with interest at 9% p.a. A sum of Rs.1,00,000/- was also awarded as damages for pecuniary loss and Rs.10,000/- for litigation expenses. The three OPs were directed jointly and severally to satisfy the order. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition dismissed with cost.

ii) Order appealed against:

From the order dated 23.03.2012 in Appeal No.348/2010 of the Himachal Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

General Manager, Marketing Division
Ashok Leyland Ltd.

- Petitioner

Vs.

Gopal Sharma & 2 Ors.

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2299 of 2012 & Date of Judgement: 03.03.2014.

v) Acts and Sections referred:

Sections 13(3), 19, 21(b) and 26 of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The main argument of the Petitioners was that the case was barred by time since the warranty period had expired on 22.02.2004 and the complaint was filed only on 17.01.2009. However the National Commission after going through the file of the District Forum noted that the Complainant had filed the first consumer complaint on 31.01.2005 and since there was a formal defect of jurisdiction on the face of the complaint, he was permitted to withdraw the same and file a fresh complaint. The Commission observed that the Petitioners had not come to Court with clean hands and that their case deserved dismissal at the threshold.
- b) The argument that the complainant was not a consumer was also rejected by the Commission since the Complainant had purchased the vehicle from the Petitioners who were service providers.
- c) The argument that no expert evidence was provided to prove the Complainant's case was also rejected as the facts were very clear that the engine was not working from day one. The report of the Deputy General Manager (Legal) was considered as crucial evidence which could not be brushed aside.
- d) The Commission held that the Petitions were of frivolous and vexatious nature and dismissed the same with cost of Rs.10,000/- on each Petitioner/OP under Section 26 of the Act to be paid to the Complainant within 90 days.
- e) The Commission also ordered that the order of the State Commission be complied with within 90 days from the date of receipt of the order; otherwise it will carry penalty of Rs.250/- per day jointly and severally.

vii) Citation:

II (2014) CPJ 394.

2. M/s. Citi Communications and others Vs. The Bank of Rajasthan Ltd and others

i) Case in Brief:

It was the case of the Petitioner No.2/Complainant No.2 that he had obtained loan for self-employment to procure one EPABX Unit from the

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Respondent/Bank. Petitioner No.3-S.C. Verma/Complainant No.3 was a Guarantor. It was alleged that Bank did not credit the amount in their loan A/c which was paid to the Bank by the Principal Debtor. Respondent mortgaged the Title Deed valued at Rs.4,00,000/- (Rupees Four lakhs only) for the loan. Petitioner No.2/Complainant No.2 instructed the Respondent/Bank to sell the EPABX Unit to repay the loan amount completely. It was stated that Petitioner No.2 had to incur huge expenditure for the upkeep & maintenance of EPABX unit. It was further stated that Respondent/Bank had recovered Rs.3,38,055/- from Petitioner No.3 on 14.12.2004 when no amount payable was ever outstanding against the loan dues. The loan dues were finally paid as per agreement by surrendering the loan security of Rs.2,75,000/- to the Respondent/Bank on 9.10.2000. Even then the Respondent/Bank recovered Rs.3,38,055/- from Petitioner No.3 by coercion and force on 14.12.2004. However, Respondent Bank did not return the Title Deed. Being aggrieved, he filed complaint before the District Forum which dismissed the complaint stating that there was no deficiency on the part of the bank parties. Aggrieved by order of the District Forum, petitioners filed an appeal before the State Commission, which dismissed the same vide its impugned order against which the present revision petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

Against the order dated 23.2.2011 in Appeal No.1625/2007 of the State Commission, Rajasthan.

iii) Parties:

M/s. Citi Communications and others - Petitioners

Vs.

The Bank of Rajasthan Ltd and others - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1572 of 2011 & Date of Judgement: 07.05.2014.

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 pointed out that Petitioners in the entire complaint had nowhere mentioned about the litigation pending before the Civil Court. Nor had they mentioned anything about the proceeding initiated against them, under the Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Further, the Commission held that as per the facts and circumstances of the case, Petitioners did not fall within the meaning of Consumer as defined under the Consumer Protection Act, 1986.
- b) The Commission held that the petition was a bogus and frivolous one which had been filed to waste the time of the Commission. It was accordingly dismissed with cost of Rs.10,000/- to be paid to the Consumer Legal Aid A/c of the National Commission.

vii) Citation:

III (2014) CPJ 109; 2014(3) CPR 129.

IX. JURISDICTION OF CONSUMER FORA

1. Uttar Haryana Bijili Vitran Nigam Ltd. & Anr. Vs. Man Singh & Anr.

i) Case in Brief:

The Complaint pertained to offence committed u/s. 135 Indian Electricity Act and against the assessment made by the Assessment Officer for the theft of electricity. The District Forum quashed the demand raised by OP on the basis of checking report and tampering of seals of electricity meter. The State Commission dismissed the appeal filed by the OP as it was filed with a delay of 36 days as well as on merits. Aggrieved by the said order the present Revision Petition had been filed along with an application for condonation of delay of 111 days. Revision Petition allowed.

ii) Order appealed against:

From the order dated 07.05.2012 in First Appeal No.470/2007 of the Haryana JHH State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

Uttar Haryana Bijili Vitran Nigam Ltd. & Anr. - Petitioners

Vs.

Man Singh & Anr. - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4586 of 2012 & Date of Judgement: 07.01.2014.

v) Acts and Sections referred:

Sections 13, 14, 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986; Section 135 Indian Electricity Act.

vi) Issues raised and decided:

The Commission held that in the light of the judgment passed by Hon'ble Apex Court in Civil Appeal No.5466 of 2012 "*U.P. Power Corporation Ltd. & Ors. Vs. Anis Ahmad*", the complaint was not maintainable before the District Forum under Consumer Protect Act, 1986. As the complaint itself was not maintainable before the District Forum, the Commission deemed it appropriate to condone the delay of

111 days in filing the Revision Petition as well as the delay of 36 days in filing appeal before the State Commission subject to payment of Rs.5,000/- as costs by the Petitioner to Respondent within a month. Consequently the Revision Petition was allowed and the impugned order passed by the State Commission was set aside. The complaint stood dismissed.

vii) Citation:

2014(1) CPR 230.

2. Dakshini Haryana Bijili Vitran Nigam Ltd. & Ors. Vs. Surinder Mohan

i) Case in Brief:

The Complaint pertained to offence committed u/s. 135 Indian Electricity Act and against the assessment made by the Assessment Officer for the theft of electricity. The District Forum quashed the demand raised by OP on the basis of checking report and tampering of seals of electricity meter. The State Commission dismissed the appeal filed by the OP as it was filed with a delay of 110 days as well as on merits. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 26.07.2012 in First Appeal No.664/2008 of the Haryana JHH State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

Dakshini Haryana Bijili Vitran Nigam Ltd. & Ors. - Petitioners

Vs.

Surinder Mohan - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4585 of 2012 & Date of Judgement: 07.01.2014.

v) Acts and Sections referred:

Sections 13, 14, 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986; Section 135 Indian Electricity Act.

vi) Issues raised and decided:

The Commission held that in the light of the judgment passed by Hon'ble Apex Court in Civil Appeal No.5466 of 2012 "*U.P. Power Corporation Ltd. & Ors. Vs. Anis Ahmad*", the complaint was not maintainable before the District Forum under Consumer Protect Act, 1986. As the complaint itself was not maintainable before the District Forum, the Commission deemed it appropriate to condone the delay of 18 days in filing the Revision Petition as well as the delay of 110 days in filing appeal before the State Commission subject to payment of Rs.5,000/- as costs by the Petitioner to Respondent within a month. Consequently the Revision Petition was allowed and the impugned order passed by the State Commission was set aside. The complaint stood dismissed.

vii) Citation:

I (2014) CPJ 317; 2014(1) CPR 229.

3. Ms. Melanie Das Vs. Royal Sundaram Alliance Insurance Co. Ltd.

i) Case in Brief:

The Appellant took a Single Trip Secure Class Silver Policy from the Regional office of the Respondent company at Gurgaon (Haryana) before leaving for the US. A premium of Rs.17,101/- was paid by cheque on 01.03.2011 at Gurgaon. During her stay in the US she started having episodes of a medical condition known as Diplopia each lasting for 15 to 20 seconds 3 or 4 times a day. She was advised to undergo an MRI scan. She informed the insurance company and as per their advice contacted US helpline of the insurance company. The US helpline permitted her to undergo MRI. The MRI revealed that she was suffering from Right Posterior Clinoid Meningioma. As per the doctor's advice she underwent a procedure called GKRS for which she spent US\$39339. The imaging centre sent their bill for \$4688 to the registered office of the insurance company at Chennai for release of payment for the MRI conducted by them. But the insurance company repudiated the claim on the ground that the Complainant had a pre-existing disease, the treatment for which was not covered by the policy. Complainant filed a consumer complaint before the State Commission seeking reimbursement of medical expenses incurred by her with punitive

damages, legal notice fee, cost of proceedings etc. totaling Rs.31,23,467/-. The State Commission upheld the preliminary objection raised by the insurance company that the cause of action did not arise within the jurisdiction of the State Commission at Panchkula and dismissed the complaint. Aggrieved by the said order the present appeal had been filed. Appeal allowed.

ii) Order appealed against:

From the order dated 12.02.2013 in Complaint No.21/2012 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

Ms. Melanie Das - Appellant

Vs.

Royal Sundaram Alliance Insurance Co. Ltd. - Respondents

iv) Case No and Date of Judgement:

First Appeal No.225 of 2013 & Date of Judgement: 13.01.2014.

v) Acts and Sections referred:

Sections 17(2), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The National Commission observed that a plain reading of Sub Section 2 of Section 17 of the Act makes it clear that a complaint can be instituted in a State Commission within the limits of whose jurisdiction any one of the three situations contemplated in the provision is shown to exist. The Commission further observed that the use of the word “or” at the end of sub-clauses (a) and (b) of the said sub section is significant and reflects the objects of the legislation, leading to the conclusion that each of the three contingencies enumerated therein is independent of each other and not cumulative. Sub-clause (c) provides scope for entertaining a complaint if “*the cause of action, wholly or in part arises*” within the jurisdiction of the State Commission. The Commission relying on the decisions of the Hon’ble Supreme Court in *Oil & Natural Gas Commission Vs. Utpal Kumar Basu & Ors.* 1994 (4) SCC 711, *Navinchandra N. Majithia Vs. State of Maharashtra & Ors.* (2007) 7 SCC 640 and *Kandimalla Raghavaiah & Co. Vs. National Insurance Co. Ltd. & Anr.* (2009) 7 SCC 768 regarding the

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meaning and import of the term “cause of action” held that since the Complainant had paid the premium for the policy at the Regional office of the insurance company at Gurgaon and obtained the policy from there, these are material foundational factors, giving rise to “cause of action” partly, if not wholly, conferring jurisdiction on the Haryana State Commission.

- b) For the above reasons the Commission allowed the appeal, set aside the impugned order and restored the complaint before the Haryana State Commission for being decided on merits. The Appellant was also awarded the cost of appeal quantified at Rs.25,000/-.

vii) Citation:

I (2014) CPJ 302; 2014(1) CPR 439.

4. V.K. Chaturvedi Vs. Commissioner, Municipal Corporation & 2 Ors.

i) Case in Brief:

Petitioner/Complainant filed a consumer complaint against Respondent/ OP not to realize any taxes from him as his colony was not supervised or maintained by them. He had pleaded that his house at the relevant time was not located within the territorial limits of the Respondent. The District Forum rejected the complaint on the ground that it was not maintainable. Petitioner’s appeal was also dismissed by the State Commission. Aggrieved by the said order, the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 18.07.2007 in Appeal No.1035/2007 of the Uttar Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

V.K. Chaturvedi - Petitioner

Vs.

Commissioner, Municipal Corporation & 2 Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1453 of 2012 & Date of Judgement: 05.02.2014.

v) Acts and Sections referred:

Sections 13, 14, 15, 17, 18, 19, 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Commission noted, based on record, that some of the reliefs sought by the Petitioner in his amended complaint before the District Forum were different from the reliefs which the Petitioner was seeking in the present Revision Petition. The Commission observed that the Petitioner cannot change the nature of its complaint before the District Forum.
- b) It was further noted that the case of the Petitioner was that the Respondent cannot realize any taxes since the Petitioner's house at the relevant time was not located within the territorial limits of the Respondents. The State Commission had observed that according to the Complainant himself neither any service was rendered by the Municipal Board nor his residential colony could have been subjected to levy of Municipal taxes. When there was no service, there was no question of deficiency in service. It was held that the Petitioner should have sought relief before the Civil Court and the complaint before the fora was not maintainable.
- c) The Commission did not find any illegality or infirmity in the impugned order of the State Commission and accordingly dismissed the same.

vii) Citation:

II (2014) CPJ 384; 2014(1) CPR 467.

5. M/s. Heights Trade (P) Ltd. Vs. UCO Bank

i) Case in Brief:

The Complainant had obtained orders in May-June, 2013 for export of rice for a total consideration of US \$ 10 million. The Complainant booked forward contracts with OP (UCO Bank) to secure exchange rate of amount equivalent to export orders at the time of signing export contracts at the hedging rate as available and applicable on that particular day. On 09.07.2013 the foreign buyer cancelled all the orders on account of fluctuation of currency, problem of heavy monsoon etc.

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The contracted rice was to be procured from Chhattisgarh and the State Government of Chhattisgarh banned the export of rice. It is the Complainant's case that the change in policy amounted to force majeure clause which would operate to relieve the Complainant of the forward contract with the bank. Complainant's request for cancellation of the forward contract was not accepted by the bank. Out of 15 forward contracts the bank cancelled only one. Complainant took up the matter with the higher officials of UCO Bank but to no avail. He filed a Writ Petition in the High Court which was permitted to be withdrawn later with permission to approach RBI for redressal of his grievance or approach the National Commission. Alleging deficiency in service the Complainant filed the present original complaint seeking a compensation of Rs.2.89 crores and other reliefs. Complaint held to be not maintainable and was dismissed giving liberty to seek redressal at the appropriate forum.

ii) Order appealed against:

Original Complaint.

iii) Parties:

M/s. Heights Trade (P) Ltd. - Complainant

Vs.

UCO Bank - Opp. Party

iv) Case No and Date of Judgement:

Consumer Complaint No.360 of 2013 with IA/148/2014, IA/266/2014, IA/781/2014, IA/7002/2013 & Date of Judgement: 19.02.2014.

v) Acts and Sections referred:

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

vi) Issues raised and decided:

The National Commission observed that the Complainant had been unable to show that he is a consumer and that there was deficiency in service by the insurer. Relying on the decisions of the Commission in *Monstera Estate Pvt. Ltd. Vs. Ardee Infrastructure Pvt. Ltd.* IV (2010) CPJ 299 (NC) and *M/s. Purusharath Builders Pvt. Ltd. Vs. Uppal Housing Ltd & Anr.* in Consumer complaint No.112 of 2012 (which was upheld by the Hon'ble Supreme Court), the Commission held that the activity covered

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Revision Petition No.2799 of 2012

Uttar Haryana Bijli Vitran Nigam Ltd. - Petitioner(s)

Vs.

Ram Kumar - Respondent

iv) Case No and Date of Judgement:

Revision Petition Nos.4857 of 2012 and 2799 of 2012 &

Date of Judgement: 27.02.2014.

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 Commission noted that the Hon'ble Supreme Court in *U.P. Power Corporation Ltd. & Ors. Vs. Anis Ahmad* (Civil Appeal No.4566/2012 decided on 01.07.2013) had held that consumer fora has no jurisdiction to decide cases involving theft of power and they have to be dealt with under the provisions of the Electricity Act. Consequently the order of the State Commission was set aside in both the cases and the Revision Petitions were allowed giving liberty to the Complainants to seek remedy in the appropriate forum.

vii) Citation:

II (2014) CPJ 432.

7. Rakesh Kumar Sharma Vs. ICICI Prudential Life Insurance Company Ltd. & Anr.

i) Case in Brief:

Petitioner/Complainant, an existing policy holder of ICICI Prudential Life Insurance Co. Ltd./OP.1, for a minimum 5 year lock-in-period, in order to get maximum returns was approached by OP-2, who was the Associate Financial Services Manager of OP-1 Company, for enlistment in Policy No.14396634 under the plan ICI Pru Life Stage Wealth which was especially designed for existing policy holders. Keeping in view the assurances made by OP-2, the Complainant agreed for the Later Policy and signed the policy form and handed over a cheque for a sum of

Rs.30,100/- to OP-2, which was made in favour of OP-1. Thereafter, the Complainant noticed about the fraudulent act and conduct of inducing him by OPs by partially withdrawing the amount of Rs.30,100/- from the Earlier Policy and thereby transferring it to the Later Policy and thereafter cancelling it, on false and frivolous grounds. Hence, the Complainant filed a complaint before the District Forum which dismissed the complaint stating that the said case was not a fit case for summary adjudication as it involved complicated questions of law and facts, which could be decided only by way of detailed evidence and production of witness, before the Civil Court and advised the complainant to approach the Civil Court of competent jurisdiction for redressal of his grievance. Aggrieved by the order of the District Forum, the Complainant filed an appeal before the State Commission which dismissed the appeal. Against the order of State Commission, the Petitioner has filed the present revision petition along with a delay of 63 days. Revision Petition dismissed and delay not condoned.

ii) Order appealed against:

Against the Order dated 19.06.2013 in Appeal No. 251/2013 of the State Commission Chandigarh.

iii) Parties:

Rakesh Kumar Sharma

- Petitioner

Vs.

ICICI Prudential Life Insurance Company Ltd. & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.4535 of 2013 with IA/7417/2013, IA/7418/2013 & Date of Judgement: 04.03.2014.

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 allegation made by the Complainant was that the proposal form was never filled-in by him and it was filled subsequently, either by OP-2 or by someone else, on OP directions. It was also averred by him that he had never issued any cheque of Punjab

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National Bank, as alleged by the OPs. Besides this, there were allegations of cheating against the OPs. Considering all these circumstances, the Commission held that it was not a fit case for summary adjudication before the Consumer Forum. Regarding the condonation of delay, the Commission held that the delay caused was not satisfactorily explained.

- b) In view of the above, the Commission dismissed the revision petition both on merits and the delay caused and upheld the orders of fora below.

vii) Citation:

II (2014) CPJ 196.

8. MSTC Ltd. Vs. Export Credit Guarantee Corporation of India Ltd.

i) Case in Brief:

All the 36 complaints were between the same parties involving same questions of facts and law. Facts of case No.224 of 2010 were taken into consideration. Export Credit Guarantee Corporation of India (CGC)/OP was established by Government of India to strengthen the export promotion drive by covering the risk of exporting on credit. The Complainant, MSTC Limited, is a Government of India Company, involved in trading activities and transacts the business of export of gems, gold, jewellery and other products on the basis of collection without LC on post-shipment basis against coverage by OP. The Complainant would be the exporter in the transaction and Associates would be engaged who would be the suppliers as well as the shippers of the gold and jewellery. The ECGC/OP issued an Export Turnover Policy, dated 29.08.2007, covering transactions for the period 29.07.2007 to 31.08.2008. Under the terms of the policy, in the event, a buyer willfully defaults or in case of a protracted default, a claim is to be made in the prescribed format within two years from the due date of payment of the insured date. The Complainant submitted an application under Form No.144 applying for an approval of the credit limit in respect of foreign buyer, which, in the present case, was one, Noor Jahan General Trading LLC. The OP approved the credit limit for a sum of Rs.9.00 crores. Subsequently, OP enhanced the credit limit to Rs.20.00 crores. Prior to that, four purchase orders were issued by the said Noor Jahan General

Trading LLC to Space Mercantile Co. Pvt. Ltd., the Associate of the Complainant for supply of jewellery. The buyers, however, failed to make the payment within the prescribed period. The Complainant, on 31.03.2009, lodged its claim for recovery of insured sum under the contract with OP, which was ultimately repudiated, on 17.07.2010. Being aggrieved, the present complaint was filed before the National Commission. In the remaining complaints, similar prayer was made, with different insured sums. All the complaints dismissed.

ii) Order appealed against:

Original Complaint

iii) Parties:

MSTC Ltd. - Complainant

Vs.

Export Credit Guarantee Corporation of India Ltd. - Opp. Party

iv) Case No and Date of Judgement:

Consumer Cases No.224 of 2010, 147-150 of 2011, 178-184 of 2011, 184 of 2011, 193 of 2011, 203-208 of 2011, 217-220 of 2011, 225-228 of 2010; 5-6 of 2012; 67-72 of 2012 &

Date of Judgement: 16.04.2014.

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 involved in this case was that whether the National Commission has the jurisdiction to entertain this case.
- b) The National Commission on perusal of the all the records found that the dispute was of a civil nature. The Commission also observed that the case in hand involving complicated and contentious issues required a full probe by a competent court with detailed examination of witnesses and cross examination which could not be done by the National Commission. Therefore, the Commission, relying on the decision of *Joshi Bullion Gem and Jewellery P. Ltd., Vs. K.A. Malle Pharmaceuticals Ltd. & Ors.*, [2014] 182 Comp Cas 555 (Bom), held that it could not poach into the jurisdiction of the civil court or other appropriate forum. Thus, all

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the 36 cases were dismissed, with no order as to costs. However, liberty was granted to the complainant to approach the civil court or any other forum, having the jurisdiction, to get redressal of its grievances and could seek help on the limitation point, from the Hon'ble Apex Court authority reported in *Laxmi Engineering Works Vs. P.S.G. Industrial Institute*, (1995) 3 SCC 583.

vii) Citation:

II (2014) CPJ 453; 2014(2) CPR 561.

9. Dilbag Vs. UHBVNL & Anr.

i) Case in Brief:

Complainant/Petitioner challenged the checking report dated 2.3.2010 as well as notice dated 19.3.2010 by which, demand of Rs.2,12,961/- (Rs.1,53,961/- on account of penalty and Rs.60,000/- on account of compounding fee) had been made by the OP/respondent from the Complainant in respect of his electricity connection. OP contested complaint and submitted that demand was raised on the basis of checking report dated 2.3.2010, which was prepared in the presence of the complainant. As per checking report, complainant was found using electricity for running a dairy and it was the case of unauthorized use of energy; so, penalty and compounding fees was levied. District Forum allowed complaint against which, appeal filed by the OP was partly allowed by State Commission vide impugned order and compounding fee of Rs.60,000/- for compounding the offence of theft was set aside. Aggrieved by the State Commission's order, this revision petition was filed. Revision Petition dismissed.

ii) Order appealed against:

Against the Order dated 21.07.2011 in Appeal No.1032/2010 of the State Commission Haryana.

iii) Parties:

Dilbag

- Petitioner

Vs.

UHBVNL & Anr.

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3612 of 2011 & Date of Judgement: 29.04.2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986 & Sections 126 to 135 of Electricity Act, 2003.

vi) Issues raised and decided:

- a) Perusal of the Checking report revealed the following:
 - i. Checking was done in the presence of the complainant Shri Dilbagh who had affixed his left thumb impression on the checking report in token of its correctness. He had also acknowledged receipt of the copy of the checking report which was duly signed by all the members of the checking team.
 - ii. It was found that the complainant was having 5.900 KW connected load against the sanctioned load of 1.700 KW.
 - iii. The meter was found fixed inside the premises of Dilbagh Dairy.
 - iv. On checking the meter on load, the pulse was found to be blinking and meter was found excessively slow.
 - v. Some abnormal scratches were observed on the meter body.
 - vi. Supply was disconnected and meter was got removed and it was packed in a cardboard box duly paper sealed.
 - vii. Meter be got checked from M&T Lab.
- b) In view of the above, it became clear that it was the case covered under Section 126 to Section 135 of Electricity Act, 2003 and as per judgment of the Apex Court in Civil Appeal No.5466 of 2012 U.P. Power Corporation Ltd. & Ors. Vs. Anis Ahmad, the Consumer fora had no jurisdiction to entertain such cases.
- c) Therefore, as appeal had been partly allowed and respondent has not filed revision petition against the impugned order, the Commission did not interfere with the order of the State Commission to the extent of setting aside demand of Rs.60,000/-, but, revision petition filed by the petitioner challenging impugned order was held not to be maintainable in the light of judgment of the Apex Court and petitioner was given liberty to approach to the appropriate authority for redressal of his grievance as per provisions of Indian Electricity Act.

vii) Citation:

II (2014) CPJ 664; 2014(2) CPR 438.

X. LIMITATION

1. Haryana Urban Development Authority & Anr. Vs. Dr.Raj Kumar Gupta

i) Case in Brief:

Facts in the two Revision Petitions are common and the same question of law is involved. They have been disposed of by a common order. Respondent/Complainant in RP.No.4509 of 2010 purchased a plot originally allotted to one Mrs. Nancy Chopra in May 1979. The said plot was re-allotted to the Complainant in May 1989. The conveyance deed was executed on 29.09.1992. It has been alleged that the Petitioner did not concede the genuine request of the Complainant for a detailed statement of account indicating the amounts paid and the interest charged. Complainant has further alleged that he was forced to pay an additional amount of Rs.1,87,965/- towards the price of the house in question. Alleging deficiency in service he filed complaint before the District Forum. The complaint was allowed and OP was directed to withdraw the impugned demand raised vide letter dated 13.10.2008. A sum of Rs.3,000/- as compensation for harassment and litigation expenses was also awarded. Petitioners' appeal 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:

Revision Petition Nos.4509 and 4510 of 2010

From the order dated 30.08.2010 in Appeal Nos.1151 and 1152/2010 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

Revision Petition Nos.4509 of 2010

Haryana Urban Development Authority & Anr. - Petitioners

Vs.

Dr. Raj Kumar Gupta - Respondent

Revision Petition Nos.4510 of 2010

Haryana Urban Development Authority & Anr. - Petitioners

Vs.

Pritam Singh Kalra - Respondent

iv) Case No and Date of Judgement:

Revision Petition Nos.4509 and 4510 of 2010 &
Date of Judgement: 02.12.2013/02.01.2014

v) Acts and Sections referred:

Sections 19, 21(b) and 24A of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The only issue that arose for consideration was whether the complaint before the District Forum was within the period of limitation or it was barred by limitation.
- b) The Commission observed that Section 24A of the Consumer Protection Act on limitation is peremptory in nature requiring the consumer fora to see at the time of entertaining of the complaint whether it had been filed within the stipulated period of two years from the date of cause of action. The Hon'ble Apex Court in *Kandimalla Raghavaiah & Co. vs. National Insurance Co. Ltd. & Anr.*, 2009 CTJ 951 (SC) (CP) and *State Bank of India vs. B.S. Agricultural Industries*, 2009 CTJ 481 (SC) (CP) had dealt at length with the meaning of the term "cause of action". In the present case the Commission rejected the contention of the Appellant that cause of action arose from the date of legal notice dated 06.02.2008. It was observed that the law is well settled that by serving the legal notice or by making representation, the period of limitation cannot be extended by the Appellant.
- c) The Commission held that both the complaints filed by the Respondents before the District Forum were hopelessly barred by limitation and no application for delay was filed on behalf of the Respondents. Under the circumstances the orders passed by the fora below were set aside. The Revision Petition was allowed and the complaint before the District Forum was dismissed.

vii) Citation:

2014(1) CPR 218.

2. Jay Grih Nirman Pvt. Ltd. Vs. Arunoday Apartment Owners Association

i) Case in Brief:

Jupiter Drug Company purchased land from three original land owners and entered into an agreement with the Petitioner on 23.08.1988 for

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development of land by constructing flats. The flats along with car parking area, one assembly hall, maintenance area etc., were constructed and sale deeds were executed in the year 1990 in respect of the flats and parking area. The flat owners formed an association called Arunoday Apartment Owners Association in June 2003. The association wanted possession of the “assembly hall” and “maintenance area” whereas the Petitioner/Developer’s stand was that both the areas belonged to them. Alleging deficiency in service the Respondent/ Association filed a consumer complaint on Oct. 30, 2006. The District Forum dismissed the complaint stating that the terms of the contract did not provide any rights to the purchasers of flats beyond the built up area of the flat. The Complainant/Association filed an appeal before the State Commission which was decided in their favour. Aggrieved by the said order the present Revision Petition had been filed by OP/ Developer. Revision Petition allowed.

ii) Order appealed against:

From the order dated 09.09.2008 in S.C. Case No.FA/08/237 of the West Bengal State Consumer Disputes Redressal Commission.

iii) Parties:

Jay Grih Nirman Pvt. Ltd.	-	Petitioner
Vs.		
Arunoday Apartment Owners Association	-	Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3949 of 2008 & Date of Judgement: 13.01.2014.

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 contention of the Petitioner was that the complaint was barred by limitation.
- b) The Commission observed that Section 24A of the Act bars any Forum set up under the Act from admitting a complaint unless the complaint is filed within two years on which the “cause of action” has arisen. In *SBI Vs. B.S. Agriculture Industries* (2009) 5 SCC 121, the Hon’ble Supreme Court had observed that “if the complaint is barred by time and yet, the consumer forum decides

the complaint on merits, the forum would be committing an illegality and, therefore, the agreed party would be entitled to have such order to set aside". The meaning and import of the term "cause of action" had also been explained by the Hon'ble Supreme Court in *Kandimalla Raghavaiah and Company Vs. National Insurance Company and Another* (2009) 7 SCC 768 that the term "cause of action" is cause of action which gives occasion for and forms the foundation of the suit. Tested on the touchstone of the principle, the Commission observed that the complaint preferred by the Complainant Association on Oct. 30, 2006 was barred by limitation and in the absence of an application for condonation of delay, it could not be admitted by the fora below for adjudication. In the present case it was held that even if it is assumed that the cause of action did not arise in 1994 when the possession of the flat and parking area were delivered to the purchaser, it definitely arose in the year 1996 when the developer allegedly tried to convert the "assembly hall" and "maintenance area" into two flats which action was successfully foiled by the flat owners.

- c) The Revision Petition was allowed and the orders of the fora below were set aside.

vii) Citation:

I (2014) CPJ 307; 2014(1) CPR 434.

3. Dattu Krishna Kadam Vs. Same Deutz Fahr India Pvt. Ltd. & Anr.

i) Case in Brief:

Petitioners/Complainants purchased tractors from M/s. Dhanashree Tractors, Respondent No.2/OP No.3 during the period ranging from 11.01.2000 to 27.02.2001. The tractors were manufactured by M/s. Same Greaves Tractors Ltd./OP No.1 (Now known as Same Deutz Fahr India Pvt. Ltd./Respondent No.1). It was alleged that there were certain technical defects during the period of free services which were brought to the knowledge of the manufacturer as well as the dealer. Since the tractors were not running properly, Complainants had to incur unnecessary expenses on repairs. They filed complaints before the District Forum praying that the manufacturer/dealer be directed to take back the defective tractors and refund the amount. The complaints were resisted by the OPs on the ground of limitation, among

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others. The District Forum allowed the complaints. The appeals filed by the Respondent No.1 were allowed by the State Commission vide impugned orders against which the present Revision Petitions had been filed. Revision Petitions dismissed in all the four cases.

ii) Order appealed against:

Revision Petition Nos.2747-2750 of 2011

From the order dated 15.11.2010 in Appeal Nos.2252 to 2255/2005 of the Maharashtra State Consumer Disputes Redressal Commission.

iii) Parties:

Dattu Krishna Kadam (RP.No.2747 of 2011)

Hanumantu Ramchandra Kale (RP.No.2748 of 2011)

Bapu Sripathy More (RP.No.2749 of 2011)

Dyaneshwer Bhagwan Mutkule (RP.No.2750 of 2011) - Petitioners

Vs.

Same Deutz Fahr India Pvt. Ltd. & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition Nos.2747-2750 of 2011 &

Date of Judgement: 27.01.2014.

v) Acts and Sections referred:

Sections 19, 21(b) and 24A of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Commission observed that it is a well settled principle of law that any relief can be claimed under the Consumer Protect Act within two years from the date on which cause of action accrued. The Commission further observed that the provision contained in Section 24A of the Act is peremptory in nature requiring the Consumer fora to see, at the time of entertaining the complaint, whether it has been filed within the stipulated period of two years from the date of cause of action. In *State Bank of India vs. B.S. Agricultural Industries*, 2009 CTJ 481 (SC) (CP) = JT 2009 (4) SC 191, the Apex Court had held that “if the complaint is barred by time and yet the Consumer Forum decided the complaint on merits, the Forum would be committing an illegality and therefore, the aggrieved party would be entitled to have such order set aside”.

- b) The Commission observed that the Petitioners had nowhere stated in their complaints as to when the cause of action arose against the Respondents. They had admittedly purchased the tractors during the period between 11.01.2000 and 27.02.2001 whereas consumer complaints had been filed in the year 2004. On the fact of it the complaints were barred by limitation since no application for condonation was filed before the District Forum. Under the circumstances it was held that there was no infirmity in the impugned order of the State Commission and accordingly the Revision Petitions were dismissed.

vii) Citation:

2014(1) CPR 334.

4. Yasmin J. Dhanani Vs. ICICI Lombard Insurance Co. Ltd.

i) Case in Brief:

Appellant's husband died in a railway accident on 30.06.2004. She filed a claim before the Railway Claims Tribunal on 09.09.2004 which granted her a sum of Rs.4,00,000/- as compensation vide order dated 21.07.2010. After receiving the said amount, she filed consumer complaint before the State Commission on 16.10.2012 along with an application for condonation of delay of six years three months and sixteen days. The State Commission vide impugned order dismissed the application for condonation of delay as also the complaint. Aggrieved by the said order, the present appeal had been filed. Appeal dismissed with cost of Rs.5,000/-.

ii) Order appealed against:

From the order dated 21.11.2012 in Complaint No.294/2012 & 370/2012 of the Maharashtra State Consumer Disputes Redressal Commission.

iii) Parties:

Yasmin J. Dhanani - Appellant(s)

Vs.

ICICI Lombard Gen. Ins. Co. Ltd. - Respondent(s)

iv) Case No and Date of Judgement:

First Appeal No.701 of 2013 with IA/6295/2013 &

Date of Judgement: 05.02.2014.

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v) Acts and Sections referred:

Sections 19, 21(a)(ii) and 24A of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The State Commission had noted that the accident involving the Complainant's husband had taken place in 2004 and immediately claim was lodged with the Railway Claims Tribunal. Similarly, she could have filed claim against the insurance company. However, the said claim was not filed. There were no valid reasons and sufficient cause for not filing the claim with the consumer fora. The State Commission observed that it was a belated attempt on the part of the applicant/complainant to recover another compensation without any valid reason. The State Commission further observed that as per applicant's own case she was confined to bed only for a period of six months from June 2011 and even if that period is excluded, there was no explanation for long delay of more than five and half years in filing complaint before the State Commission. The State Commission, invoking Section 24A of the CP Act relating to limitation rejected the application for condonation of delay.
- b) The National Commission observed that the order passed by the State Commission was very well reasoned and left no scope for any interference by the Commission. It was further observed that even before the National Commission there was delay of 208 days in filing First Appeal. The only plea taken by the applicant was that she is a poor lady and due to insufficient funds she had to arrange for money and as such delay took place. The applicant had nowhere stated as to how she arranged the funds now and what was the source of funds. Relying on the decision of the Hon'ble Apex Court in *Anshul Agarwal v. New Okhla Industrial Development Authority* (2011) 14 SCC 578, IV (2011) CPJ 63 (SC), the Commission held that the present appeal was nothing but gross abuse of the process of law and dismissed the same with cost of Rs.5,000/- to be deposited in the name of the Consumer Legal Aid Account of the Commission.

vii) Citation:

2014(1) CPR 464.

5. Agra Development Authority Vs. Army Welfare Housing Organization

i) Case in Brief:

In January 1991, Complainant society applied for allotment of 5 acres of land in Taj City - Phase-II. 20% of the total cost of land was deposited as registration amount. Since the land was not allotted for over two years, the Complainant requested the authority to refund the amount deposited along with interest at bank rate. On being sent a legal notice, the appellant refunded Rs.26,52,247.20 along with interest at 6% vide cheque dated 18.12.1993 which was duly received by the Complainant. On 10.08.1998 Complainant filed complaint before the State Commission claiming interest at 18% p.a. on the aforesaid amount. The complaint was allowed by the State Commission which directed the authority to pay interest at 14% p.a. from the date of deposit till the date of actual payment after adjusting the interest already paid. Aggrieved by the order the present appeal had been filed. Appeal was allowed and the complaint was dismissed on the ground of limitation.

ii) Order appealed against:

From the order dated 11.05.2007 in Complaint No.91/1998 of the Uttar Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

Agra Development Authority - Appellant

Vs.

Army Welfare Housing Organization - Respondent

iv) Case No and Date of Judgement:

First Appeal No.80 of 2008 & Date of Judgement: 18.02.2014.

v) Acts and Sections referred:

Sections 15, 17, 18, 19, 21(a)(ii) and 24A of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The first question before the Commission was whether in the absence of any objection by the OP in its written version to the maintainability of the complaint under the Act on the ground of

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limitation such an objection could be entertained by the State Commission by way of oral submissions? The Commission held that a bare reading of Section 24A of the CP Act shows that it is pre-emptory in nature and mandates that no consumer fora, set up under the Act, shall admit a complaint unless it has been filed within two years from the date of approval of cause of action. The Commission referred to the Hon'ble Supreme Court's decisions in *Gannmani Anasuya & others Vs. Parvatini Amareanra Chwdhary & others* (2007) 10 SCC 296 wherein it was emphasized that it is the duty of the court to determine whether a suit is barred by limitation or not, regardless of the fact whether such a plea had been raised by the parties. Such jurisdictional fact need not be even pleaded.

- b) The Commission held that the explanation for the delay in filing the complaint was totally unsatisfactory. The cheque for the amount refunded was accepted and the proceeds were realized by the Complainant immediately thereafter without any protest. Thus the cause of action in respect of claim for higher rate of interest arose on 18.12.1993. The complaint having been filed on 10.08.1998 was clearly barred by limitation. It was therefore held that it was unnecessary to examine the claim made in a complaint on merits.
- c) Resultantly the appeal was allowed. The impugned order was set aside and the complaint was dismissed on the ground of limitation.

vii) Citation:

II (2014) CPJ 44; 2014(1) CPR 676.

6. Lis Deepasthambham & Anr. Vs. Mammen Koshy

i) Case in Brief:

Complainant/Respondent deposited a sum of Rs.6,95,000/- with OP/petitioner in 24 spans from 27.5.2005 to 19.10.2005 on the assurance that deposited amount will be doubled in few months. In spite of frequent visits to opposite party office over a period of 5 years, the deposited amount as promised was not given. Alleging deficiency on the part of OP, complainant filed complaint before District Forum which

directed OP to refund Rs.6,95,000/- with interest @ 9% p.a. and further allowed compensation of Rs.10,000/-. 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:

Against the Order dated 01.02.2012 in Appeal No.74/2012 of the State Commission Kerala.

iii) Parties:

Lis Deepasthambham & Anr. - Petitioners

Vs.

Mammen Koshy - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1966 of 2012 & Date of Judgement: 12.03.2014.

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 National Commission on perusal of the records found that the complainant had deposited Rs.6,95,000/- with the OP from 27.05.2005 to 19.10.2005. He had specifically mentioned in the complaint that close to five years had elapsed, but money has not been returned to him. Admittedly, complaint was filed in the year 2010. Therefore, the Complaint was barred by almost 3 years and no application was filed for condonation of delay. The Commission held that in such circumstances, District Forum ought to have dismissed the complaint as barred by limitation instead of proceeding on merits. The Commission observed that the District forum had not assigned any reason for brushing aside the arguments on limitation and surprisingly the State Commission had also not dealt with this aspect and dismissed appeal.

b) In view of the above, the present revision was allowed and the orders of the fora below were set aside.

vii) Citation:

2014(2) CPR 215.

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7. Mopuri Obanna Vs. M/s. Sai Chaitanya Housing Private Ltd.

i) Case in Brief:

Respondent/OP floated a venture and promised to develop the venture as per the norms of HUDA/ DTCP. Being induced by the representations made by the OP, the Complainant/Petitioner paid a total sale consideration of Rs.10,44,700/-. Though the sale deed was handed over to the Complainant, the OP had not handed over the copy of HUDA/DTCP approved plan in spite of repeated demands made by the petitioner. Though the legal notice was served, the OP did not give any reply nor furnished a copy of the approved plan. The stoic silence maintained by the OP revealed that they had not obtained any approval for the said layout either from HUDA or DTCP. Aggrieved by the act of OPs, Complainant filed complaint before the District Forum which directed the OP to repay the entire amount of Rs.10,44,700/- (Rupees Ten Lakhs Forty Four Thousand Seven Hundred only) along with 12% interest p.a. from 02.11.2006 till date of realization along with cost of Rs.2,000/-. Aggrieved by the order of the District Forum the respondent/opposite party filed an appeal before the State Commission which modified the order of the District Forum and directed to supply copy of HUDA/DTCP approved layout and pay an amount of Rs.25,000/- to the Complainant. Against the order of the State Commission, the present revision petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

Against the Order dated 31.12.2013 in Appeal No.1010/2013 of the State Commission Andhra Pradesh.

iii) Parties:

Mopuri Obanna

- Petitioner

Vs.

M/s. Sai Chaitanya Housing Private Ltd.

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1157 of 2014 & Date of Judgement: 12.03.2014.

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 observed that it is an undisputed fact that even as per the complaint of the petitioner the cause of action had arisen in 2006. The complaint was filed in 2013. Even as per the case of the petitioner he paid Rs.10,44,700/- to the respondent in the year 2006 and the respondent executed the registered sale deed in favour of the petitioner on 18.11.2006; the petitioner next wrote to the respondent only on 15.11.2012 and filed the complaint before the District Forum in January 2013.
- b) In view of the above, the National Commission held that the State Commission had correctly held that the complaint was filed seeking refund of the amount six years after the sale deed had been executed and possession was delivered to the respondent. Relying on the ratio laid down by the Hon'ble Supreme Court in *Haryana Urban Development Authority Vs. B K Sood*, (2006) I SCC 164, the Commission held that the complaint being barred by limitation should not have been entertained. Hence, the order of the State Commission was set aside, the revision petition as also the complaint were dismissed as the complaint was not maintainable, with a cost of Rs.5,000/- (Rupees five thousand only) to be deposited by the Petitioner to the Consumer Legal Aid Account of the Commission.

vii) Citation:

II (2014) CPJ 125; 2014(2) CPR 210.

8. Seema Ganpati Kashi Vs. Silver Line Industries & Anr.

i) Case in Brief:

Petitioner purchased certain shares of Respondent No.1/OP No.1 Company and submitted the same to Respondent No.2/OP No.2 for transfer in her name. The transfer was effected in 1995 but the certificates were lost in transit. She filed consumer complaint in 1999. District Forum allowed the complaint and directed the Respondents jointly and severally to pay the Petitioner Rs.3,00,000/- along with interest at 6% from 01.04.2000 till the date of payment. They were further directed to pay dividend to the Petitioner as declared along with 6% interest and also to pay Rs.10,000/- as compensation for mental agony and Rs.5,000/- as costs. Not satisfied with the order Petitioner

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filed an appeal for enhancement of the compensation whereas Respondent filed appeal for setting aside the order of the District Forum. The State Commission vide impugned order dismissed the appeal of the Petitioner and allowed the appeal of the Respondents and consequently dismissed the complaint. Challenging the said order the present Revision Petition had been filed. Revision Petition dismissed as barred by limitation.

ii) Order appealed against:

From the order dated 15.04.2010 in Appeal No.340-344/2009 of the Maharashtra State Consumer Disputes Redressal Commission.

iii) Parties:

Seema Ganpati Kashi

- Petitioner

Vs.

Silver Line Industries & Anr.

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.4459-4460 of 2010 &

Date of Judgement: 04.04.2014.

v) Acts and Sections referred:

Sections 19, 21(b) and 24A of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The National Commission observed that the State Commission had gone into the question of limitation in detail and noted that the shares were purchased in the year 1993 and were transferred within two or three years and therefore the cause of action arose in 1993 or 1995-96. Since the complaint was filed in 1999, the State Commission had observed that the District Forum erred in passing orders in favour of the Complainant as the complaint was barred by limitation and should not have been entertained. Relying on the decisions of the Hon'ble Supreme Court in *Kandimalla Raghvaiah & Co v. National Insurance Co. Ltd and another*, (2009) CTJ 951 (SC) (CP) and *State Bank of India v. B.S.Agricultural Industries*, 2009 CTJ 481 (SC) (CP) = JT 2009 (4) SC 191, the Commission held that the complaint was barred by limitation and no application for condonation of delay had been filed by the Petitioner and that the Revision Petition was liable to be dismissed on the ground alone.

- b) Even on merits, the Commission observed that the Petitioner has no case since she is not a consumer within the meaning of the Act. In this context reference was made to the Judgement of the Hon'ble Supreme Court in the case of *Morgan Stanley Mutual Fund Vs. Kartick Das*, (1994) 4 SCC 225.
- c) Since there was jurisdictional or legal error in the order passed by State Commission, the Revision Petition was dismissed.

vii) Citation:

II (2014) CPJ 376; 2014(2) CPR 360.

9. M/s. Yeturu Biotech Ltd. Vs. National Insurance Co. Ltd. & Anr.

i) Case in Brief:

Petitioner/Complainant, who is in the business of manufacture of Biotech Products, procured flexi tubes from M/s. Printo Tech Global Limited, Noida and consigned the said goods to M/s. Sarvotham Care Limited, Hyderabad through M/s. New Bharat Golden Road Carriers. The consignment was insured with the Respondent Company for a sum of Rs.3,07,197/-. It was claimed by the Complainant that during transit the consignment was damaged. The claim in this regard submitted to the Respondent was not settled by the OP. Claiming this to be deficiency in service, Consumer complaint was filed before the District Forum which allowed the same and directed OP/Respondent to pay a sum of Rs.3,07,197/- along with 9% interest with effect from 01.11.2006 till the date of payment besides cost of Rs.2,000/-. Respondent/OP filed an appeal before the State Commission which allowed the appeal on the ground that the complaint was barred by limitation. Aggrieved by the impugned order of the State Commission the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 27.09.2013 in Appeal No.434/2012 of the Andhra Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

M/s. Yeturu Biotech Ltd.		- Petitioner
	Vs.	
National Insurance Co. Ltd. & Anr.		- Respondents

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iv) Case No and Date of Judgement:

Revision Petition No.4506 of 2013 & Date of Judgement: 28.04.2014.

v) Acts and Sections referred:

Sections 19, 21(b) and 24A of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The National Commission after going through the State Commission's order observed that the Respondent/Complainant's claim had been repudiated vide Surveyor report dated 22.10.2006. Though the Respondent/Complainant denied having received the Surveyor report in the year 2006, the State Commission noted that the Complainant himself had filed the Surveyor report and got it marked as one of the exhibits along with other documents. The said exhibit did not contain the seal or stamp of IRDA office or signature or sign of the official of IRDA to conclude that the IRDA officials handed over the report to the Respondent/Complainant in the year 2011. The State Commission also observed that the Complainant had remained silent for 5 years till 19.11.2011 and not filed any application for condonation of delay in filing the complaint under Section 24A of the Act and therefore set aside the District Forum's order and dismissed the complaint.
- b) The National Commission on perusal of the impugned order did not find any jurisdictional error or material irregularity in the finding of the State Commission to warrant interference. The Revision Petition was accordingly dismissed.

vii) Citation:

II (2014) CPJ 679; 2014(2) CPR 454.

10. DLM Enclave & Anr. Vs. Naresh Batham

i) Case in Brief:

Complainant/Respondent entered into an agreement with Petitioners/OPs on 20.02.2000 according to which he was to purchase a plot for his own use from the Petitioners/OPs measuring 2000 sq. ft. at the rate of Rs.12/- per sq. ft. As per the agreement he was to pay Rs.24,000/- towards registration fee and Rs.1,000/- as membership fee. The Complainant made payment of Rs.25,000/- by 08.07.2003.

Since no action was taken by OPs to get the sale deed registered, he filed consumer complaint before the District Forum seeking a direction to get the sale deed registered in his favour or to refund the cost of the flat at Rs.700/- per sq. ft. along with compensation of Rs.5,00,000/-. The Petitioners filed an application before the District Forum seeking dismissal of the Complaint as time barred under Section 24A of the Act. The District Forum passed an order saying that the consumer complaint was within the period of limitation and dismissed the application. An appeal against this order filed before the State Commission was also dismissed vide impugned order against which the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 20.05.2013 in Appeal No.54/2013 of the Madhya Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

DLM Enclave & Anr.

- Petitioners

Vs.

Naresh Batham

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2984 of 2013 & Date of Judgement: 30.04.2014.

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:

The Commission after going through the agreement copy noted that the Complainant was required to pay only Rs.25,000/- which he had done and that the developer was to provide facilities like approach road to the plot, electricity, water etc,. It was also stated that balance payment will be recovered according to the rules of the company and if regular payment is not made by the purchaser, the rate can be enhanced or the allotment can be cancelled. It was further noted that in the agreement itself, no schedule of payment had been given. The Commission did not find any document in support of the Petitioners version that the plot stood cancelled and the amount in question stood forfeited. The Commission, relying on the judgement in *avi Developments Builder and Developers & Ors. Vs. Jayanthibhai V.Ranka* in

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RP.No.1058/2014, held that there was continuous cause of action because the Petitioners had not handed over the possession nor did they refund the amount paid by the Complainant. It was also held that the provisions of Section 24A are not applicable to the present case. The Commission did not find any merit in the Revision Petition and accordingly dismissed the same.

vii) Citation:

2014(2) CPR 421.

11. Shri Niloba Ghanshyam Naik & Anr. Vs. M/s. Lodha Pranik Developers Pvt. Ltd. & 3 Ors.

i) Case in Brief:

Complainants booked a 4 BHK flat with OPs in Mumbai. The consideration of this said flat was Rs.4,90,73,850/-. They paid a sum of Rs.9,00,000/- by cheque on 13.11.2010 and OPs had issued a receipt. However no agreement for sale of the flat was executed. It is alleged that the Complainants made several oral requests but they fell on deaf ears. It is the case of the Complainants that they sent email to the OPs on 22.12.2010 requesting to give time to make payment till 10.01.2011 and not to charge interest for the same. However the OPs informed the Complainants that they would give only 3 days grace period. The Complainants asked for refund of the earnest amount of Rs.9,00,000/- but OPs did not respond till 11.01.2011. On 30.08.2011 Complainants sent another email asking for refund of the earnest money. On 06.09.2011 OPs informed the Complainants that the amount of earnest money was forfeited. Alleging deficiency in service and unfair trade practice the present complaint had been filed. Complaint dismissed as barred by time.

ii) Order appealed against:

Original Complaint.

iii) Parties:

Shri Niloba Ghanshyam Naik & Anr. - Complainants

Vs.

M/s. Lodha Pranik Developers Pvt. Ltd. & 3 Ors. - Opposite Parties

iv) Case No and Date of Judgement:

Consumer Case No.89 of 2014 & Date of Judgement: 01.05.2014.

v) Acts and Sections referred:

Sections 21(a)(i) and 24A of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Commission noted that the Complainants were told about the forfeiture of their earnest money on 06.09.2011. The cause of action therefore arose on that day. The case was not filed within 2 years. The Commission held that correspondences, representations and legal notice do not extend the period of limitation. The complaint was held to be barred by time. The Commission relied on the judgements of Hon'ble Supreme Court in *Dolphin Offshore Enterprises (I) Ltd. Vs. United India Insurance Co. Ltd.* Special leave to Appeal (Civil) No.9307 of 2013 decided on 08.03.2013 and that of the *National Commission in HUDA Vs. B.K. Sood* (2006) 1 SCC 164; *SBI Vs. B.S. Agricultural Industries (I)* (2009) 5 SCC 121; *Kandimalla Raghavaiah Vs. National Insurance Company* (2009) CTJ 951 (SC) (CP) and *V.N. Shrikhande (Dr.) Vs. Anita Sena Fernandes* (2011) 1 SCC 53.
- b) The complaint was accordingly dismissed. The Complainant were directed to seek remedy of their grievances from the appropriate forum as per law.

vii) Citation:

2014(2) CPR 396.

12. Saroja Vs. Selvan, Proprietor, Sudha Finance

i) Case in Brief:

It was the case of the Complainant/Petitioner that she pledged 120 gms of jewels with the OP/Respondent on 23.11.2004 and availed loan of Rs.65,000/-. She could not redeem the jewels within one year and seven days. OP went abroad and returned on 08.10.2010. Complainant approached OP for redemption of the jewels and sent legal notice. Alleging deficiency in service she filed complaint before the District Forum which allowed the complaint and directed OP to return 105 gm. of jewels after receiving Rs.1,22,000/- from the Complainant and

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further directed to pay Rs.5,000/- as compensation 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 dismissed.

ii) Order appealed against:

From the order dated 18.09.2013 in Appeal No.557/2012 of the Tamil Nadu State Consumer Disputes Redressal Commission.

iii) Parties:

Saroja - Petitioner

Vs.

Selvan, Proprietor, Sudha Finance - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4774 of 2013 & Date of Judgement: 12.05.2014.

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:

The Commission noted that the Complainant did not pay the full amount within the prescribed period of one year and seven days for redeeming the jewels and that the Respondent had sold it in public auction. The complaint was filed in the year 2010. The complaint had been dismissed by the State Commission as barred by limitation. It was held that the complaint should have been filed within a period of two years from the date of redemption or from the date auction. The Commission further noted that the Complainant had not filed any application under Section 24A for condonation of delay in filing the complaint. The Commission did not find any illegality, irregularity or jurisdictional error in the order of the State Commission to warrant interference and accordingly dismissed the Revision Petition.

vii) Citation:

2014(2) CPR 809.

XI. NON-APPEARANCE OF THE PARTIES

1. Sri Chandranath Bandopadhyay Vs. State of West Bengal through Secretary & Ors.

i) Case in Brief:

The case was filed in the Commission on 30.04.2013. Since there were defects in the Petition, notice was sent by the Registry to remove the defects. Though the Petitioner claimed that the defects were removed when the matter was posted on 25.11.2013, according to the office note the defects had not been rectified. However, the case was listed for admission hearing on 07.01.2014. The opportunity given to the proxy counsel to argue the case was not availed on that date. Further opportunities were given to the counsel for the Petitioner on 10.01.2014 and 23.01.2014. But none was present. The Revision Petition was therefore dismissed in default.

ii) Order appealed against:

From the order dated 30.01.2013 in SC Case No.FA/202/2011 of the West Bengal State Consumer Disputes Redressal Commission, Kolkata.

iii) Parties:

Sri Chandranath Bandopadhyay - Petitioner

Vs.

State of West Bengal through Secretary & Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1827 of 2013 & Date of Judgement: 23.01.2014.

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:

vii) Citation:

2014(1) CPR 358.

Non-appearance of the Parties

2. Vidya Devi Vs. Dr. Jatinder Chadda & Anr.

i) Case in Brief:

Though notice was sent to the Petitioner through her Counsel more than 30 days before the date of hearing, none was present for the Petitioner despite second call. The Revision Petition was therefore dismissed in default.

ii) Order appealed against:

From the order dated 22.08.2013 in Appeal No.318/2013 of the Haryana State Consumer Disputes Redressal Commission.

iii) Parties:

Vidya Devi - Petitioner

Vs.

Dr. Jatinder Chadda & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.4757 of 2013 & Date of Judgement: 28.02.2014.

v) Acts and Sections referred:

Sections 12, 13, 14, 18, 19, 21(b) and 22 of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

NIL.

vii) Citation:

II (2014) CPJ 363; 2014(2) CPR 340.

3. Managing Director, Army Welfare Housing Organisation (AWHO) & Anr. Vs. Raj Kumar Dingra

i) Case in Brief:

Since none appeared for the Petitioners even in the second round, the Petition was dismissed in default.

ii) Order appealed against:

From the order dated 06.02.2011 in Appeal No.1162/2010 of the Haryana State Consumer Disputes Redressal Commission.

iii) Parties:

Managing Director, Army Welfare
Housing Organisation (AWHO) & Anr. - Petitioners

Vs.

Raj Kumar Dingra - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1110 of 2012 & Date of Judgement: 05.11.2012/
22.04.2014.

v) Acts and Sections referred:

Sections 12, 13, 14, 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

NIL.

vii) Citation:

2014(2) CPR 528.

4. Abdul Rehemana Vs. Oriental Insurance Co. Ltd.

i) Case in Brief:

Since none appeared for the Petitioner even in second round, the Revision Petition was dismissed in default.

ii) Order appealed against:

From the order dated 12.06.2012 in Appeal No.1403/2011 of the Haryana State Consumer Disputes Redressal Commission.

iii) Parties:

Abdul Rehemana - Petitioner

Vs.

Oriental Insurance Co. Ltd. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3948 of 2012 &
Date of Judgement: 25.09.2013/23.04.2014.

Non-appearance of the Parties

v) Acts and Sections referred:

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

vi) Issues raised and decided:

NIL

vii) Citation:

II (2014) CPJ 538; 2014(2) CPR 500.

5. Sanjiv Kaushal Vs. Rajiv Sharma

i) Case in Brief:

Since no one was present on behalf of the Petitioner even on second call, the Revision Petition was dismissed in default.

ii) Order appealed against:

From the order dated 23.12.2010 in Appeal No.192/2007 of the Punjab State Consumer Disputes Redressal Commission.

iii) Parties:

Sanjiv Kaushal - Petitioner

Vs.

Rajiv Sharma - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.659 of 2009 &

Date of Judgement: 03.09.2012 / 29.04.2014.

v) Acts and Sections referred:

Sections 13(1)(g), 13(3A), 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

NIL

vii) Citation:

Not Reported in CPJ and CPR.

6. Shriram General Insurance Co. Ltd. & Anr. Vs. Mangeram

i) Case in Brief:

Though notice was issued to the Respondent it could not be delivered due to incomplete address. When the case was taken up, none appeared for the Petitioner even in third round. The Revision Petition was accordingly dismissed in default.

ii) Order appealed against:

From the order dated 17.05.2013 in Appeal No.377/2013 of the State Consumer Disputes Redressal Commission, Rajasthan.

iii) Parties:

Shriram General Insurance Co. Ltd. & Anr. - Petitioners

Vs.

Mangeram - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2527 of 2013 with IA/4238/2013 and IA/4239/2013 & Date of Judgement: 08.05.2014.

v) Acts and Sections referred:

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

vi) Issues raised and decided:

Nil.

vii) Citation:

Not reported in CPJ and CPR.

7. Shilaben Ashwinkumar Rana Vs. Dr. Bhavin K. Shah & Anr.

i) Case in Brief:

Since none of the parties appeared despite several calls the National Commission dismissed the Revision Petition in default.

ii) Order appealed against:

From the order dated 21.02.2012 in Appeal No.242/2011 and 923/2011 of the State Consumer Disputes Redressal Commission, Gujarat.

Non-appearance of the Parties

iii) Parties:

Shilaben Ashwinkumar Rana

- Petitioner

Vs.

Dr. Bhavin K. Shah & Anr.

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2938 of 2012 & Date of Judgement: 12.05.2014.

v) Acts and Sections referred:

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

vi) Issues raised and decided:

Case dismissed due to non-appearance of parties.

vii) Citation:

II (2014) CPJ 707; 2014(2) CPR 816.

XII. NON-PROSECUTION OF THE CASE

1. Bharti Hexacom Limited Vs. Komal Prakash

i) Case in Brief:

Since no one appeared for the Petitioner in spite of many opportunities the Revision Petition was dismissed for non-prosecution as well as in default.

ii) Order appealed against:

From the order dated 04.12.2012 in Appeal No.1134/2011 of the State Consumer Disputes Redressal Commission, Rajasthan.

iii) Parties:

Bharti Hexacom Limited - Petitioner

Vs.

Komal Prakash - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1228 of 2013 with IA/2246/2013 and IA/2247/2013 & Date of Judgement: 02.05.2014.

v) Acts and Sections referred:

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

vi) Issues raised and decided:

Nil.

vii) Citation:

Not reported in CPJ and CPR.

XIII. PARALLEL PROCEEDINGS

1. Shri Pavel Garg, Proprietor M/s. Combitic Global Vs. The New India Assurance Co. Ltd.

i) Case in Brief:

On 25.05.2006, appellant had filed 19 complaints before the State Commission, Haryana at Panchkula. It is alleged that on legal advice, he also filed 18 fresh complaints on 16/17.11.2006 before the State Commission, U.T. Chandigarh since the competent authority to take decision on the claims was at regional office at Chandigarh. Thereafter, appellant on 13.03.2007 withdrew 18 complaints pending before Haryana State Commission while one was mistakenly left behind and was dismissed for non-prosecution. The complaints pertained to non-delivery of the consignment of pharmaceutical products, covered by 18 invoices, exported by him to a consignee in Russia. 16 out of 18 complaints were allowed by a common judgment dated 01.10.2007 and the remaining two complaints were decided by another common judgment dated 14.01.2009. Respondent challenged the award passed by the State Commission before the National Commission. Vide order dated 15.12.2009, the appeals were allowed and the orders of the State Commission were set aside on the ground that it had no jurisdiction to decide the complaints. However, liberty was granted to the appellant to file complaints before the Haryana State Commission within four weeks of the order. Thereafter, State Commission Haryana vide impugned order dated 21.12.2012 dismissed all the complaints being barred by limitation. Aggrieved by the said order the present appeals had been filed. Taking serious note of the fact that the appellant had not approached the Commission with clean hands, the appeals were dismissed with cost of Rs.25,000/- in each appeal.

ii) Order appealed against:

First Appeal Nos.100-118 of 2013

From the order dated 21.12.2012 in Complaint Nos.03-20/2010 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

First Appeal Nos.100-118 of 2013

Shri Pavel Garg, Proprietor

M/s. Combitic Global

- Appellant

Vs.

The New India Assurance Co. Ltd.

- Respondent

iv) Case No and Date of Judgement:

First Appeal Nos.100-118 of 2013 & Date of Judgement: 28.02.2014.

v) Acts and Sections referred:

Sections 13, 14, 15, 17, 18, 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Commission observed that it is well settled that where a litigant approaches any judicial fora with unclean hands, conceals and suppresses material facts and tries to hoodwink the fora, then the petition of such litigant should be thrown out on the threshold itself. The Commission noted there was nothing on record to show that the appellant ever brought to the notice of the State Commission, Chandigarh (U.T) that the earlier complaints filed by it before the State Commission, Haryana, Panchkula were already pending. He had cleverly in the present appeals not filed copies of the second set of complaints filed before the State Commission, Chandigarh (U.T). This showed that the appellant was pursuing two sets of complaints before two different fora at the same time and that too after concealing this important and relevant fact from both the State Commissions. Relying on the decisions in *Ramji Pandey and others Vs. Swaran Kali* (SC) reported in 2011 (3) RCR (Civil), *State Bank of India Vs. B.S. Agricultural Industries*, 2009 CTJ 481 (SC) (CP) = JT 2009(4) S C 191 and *V.N. Shrikhande (Dr.) Vs. Anita Sena Fernandes*, 2011 CTJ 1 (Supreme Court) (CP), it was held that the complaints are not maintainable being barred by limitation and therefore cannot be decided on merit.
- b) The Commission also observed that “Forum Hopping” or “Forum Shopping” was writ large in these cases. In view of the mischievous conduct on the part of the appellant it was held that the present appeals were liable to be thrown away at the threshold. Relying on the observations of the Hon’ble Supreme Court in *Dalip Singh Vs. State of U.P* (2010) 2 SCC 114 and *Ramrameshwari Devi and Ors. Vs. Nirmala Devi and Ors.*, Civil Appeal Nos.4912-4913 of 2011, decided on July 4, 2011 regarding litigants who make false pleas or approach courts with unclean hands, it was held that the appellant in the present case is not entitled to be heard on the merit of his grievance.
- c) The Commission, taking serious note of the fact that the appellant filed the complaints by concealing material facts and misled the

Parallel Proceedings

fora below, dismissed the appeals imposing cost of Rs.25,000/- in each appeal to be deposited in the name of Consumer Legal Aid Account of the Commission.

vii) Citation:

2014(1) CPR 601.

2. Beverly Park Maintenance Services Ltd. Vs. Kashmir Fab Styles Pvt. Ltd.

i) Case in Brief:

It is claimed that Complainant/Respondent booked space in order to earn its livelihood with OP/Petitioner and Complainant was allotted a shop and he paid Rs.11,20,847/-, but opposite party did not open Mall. Meanwhile, arbitrator initiated arbitration proceedings and issued letter on 03.08.2010 and in compliance to that letter, Complainant appeared before the arbitrator on 28.08.2010, whereas complaint before the State Commission was filed on 31.08.2010. Alleging malpractice and deficiency on the party of the opposite party, Complainant filed complaint for refund of deposited amount and expenses incurred on interiors and compensation before the State Commission. The State Commission dismissed the complaint against which the present revision petition has been filed. Revision Petition allowed.

ii) Order appealed against:

Against the Order dated 17.04.2012 in Appeal No.271/2010 of the State Commission Delhi.

iii) Parties:

Beverly Park Maintenance Services Ltd.	- Petitioner
Vs.	
Kashmir Fab Styles Pvt. Ltd.	- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2064 of 2012 & Date of Judgement: 13.03.2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 3, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The issue involved in this case was that whether two parallel proceedings for similar relief could be persuaded before two different forums.

- b) The National Commission on perusal of the records of the case held that Complainant/Respondent was entitled to prove his claim before the arbitrator by leading evidence, whereas proceedings before the State Commission were to be disposed summarily. Once respondent participated in proceedings before the arbitrator for the same relief, proceedings for similar relief could not have been initiated before the State Commission and the State Commission committed error in holding that both proceedings may go simultaneously. The National Commission relied on an earlier decision of the Commission in *Hanuman Prasad vs. The New India Assurance Co. Ltd I* (1994) CPJ 1 (NC), wherein it was held that when a case is pending in a court in which full evidence is to be recorded the Forums constituted under the Consumer Protection Act, 1986 should not entertain the complaint with respect to the same cause of action.. The words “in addition” appearing in S.3 of the C.P. Act enables complainant to file complaint before Consumer Fora also if not filed before other forum.
- c) Regarding the merits of the case, the Commission held that the State Commission observed in its order that in para 5 of the complaint, the complainant categorically pleaded that complainant had obtained shop on lease basis for earning his own livelihood. Admittedly complainant is a private limited company, which booked space and was allotted shop in the Mall of opposite party. By no stretch of imagination, it can be said that complainant booked this space for earning its livelihood. Only a living person can plead that he booked premises for earning his livelihood. Complainant being private limited company is distinct from its members as held by privy Council in *Soloman vs. Soloman & Co.* The State Commission committed error in holding that complaint was maintainable as shop was taken on lease for earning his own livelihood and not for commercial purpose.
- d) In view of the above, the present revision petition was allowed and the order of the State Commission was set aside and the complaint also stood dismissed.

vii) Citation:

II (2014) CPJ 109; 2014(2) CPR 207.

XIV. PECUNIARY JURISDICTION

1. Consumer Welfare Association & Anr. Vs. M/s Webb Hill Resort Corporation

i) Case in Brief:

This complaint had been filed by the Complainant alleging deficiency in service and adoption of unfair trade practice by the OP in respect of handing over possession of bungalow No.A/3 admeasuring 636 sq. ft. by the stipulated period or till the date of complaint. The Complainant had valued the complaint at Rs.1,27,60,000/- in support of which he had enclosed an inspection cum valuation report prepared by M/s. Doshi & Co, Chartered Engineers and Surveyors. The complaint was dismissed on ground that the value of relief claimed by the Complainant should not have been more than Rs.24,00,000/-.

ii) Order appealed against:

Original Complaint.

iii) Parties:

Consumer Welfare Association & Anr. - Complainant

Vs.

M/s Webb Hill Resort Corporation - Opposite Party

iv) Case No and Date of Judgement:

Consumer Complaint No.188 of 2013 & Date of Judgement: 13.05.2014.

v) Acts and Sections referred:

Section 21(a)(i) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Commission on perusal of records found that the OP had agreed to develop the project, construct the bungalow and deliver possession to the Complainant in consideration of Rs.3,50,000/-. The valuer had estimated the value of the bungalow constructed in 60 sq. mt. at the rate of Rs.40,000/- per sq. mt. at Rs.24,00,000/-. Besides the aforesaid value he had added the value of surrounding plot and facilities at Rs.1,03,60,000/-. The Commission held that there was no justification in adding the figure especially when the agreement with the opposite party was only in respect of bungalow constructed on 60 sq. mt. The

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Commission therefore held that the value of relief sought for should not have been more than Rs.24,00,000/-. The complaint was accordingly rejected. The Complainant was however given the liberty to approach the appropriate forum having pecuniary jurisdiction within a period of one month.

vii) Citation:

II (2014) CPJ 658.

State Commission in those cases. The State Commission had allowed all the appeal and had set aside the order of the District Forum. The Commission wondered how the State Commission dismissed the appeal of the Petitioner in the present case relying upon its earlier order dated 10.05.2010 passed in Appeals No.1428 to 1434 of 2009 which clearly showed that there was total non-application of mind on the part of the State Commission while deciding the appeal of the Petitioner. The State Commission had passed a non-speaking order without mentioning the facts as well as the contention of the two parties.

- b) The Commission further observed that in the present case, the State Commission in spite of specific instructions given by the National Commission, did not give any reason while deciding the appeal. The Commission relying on the judgments of the Hon'ble Apex Court in *HVPNL v. Mahavir* (2001) 10 SCC 659 and *Canadian 4 Ur Immigration Ser & Anr. Vs. Lakhwinder Singh*, Special Leave to Appeal (Civil No.(s) 8811 of 2009, 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(1) CPR 231.

2. Sh. D. Vilas Rao Vs. Shri. Amit Kumar Sharma

i) Case in Brief:

Complainant/Respondent entered into loan agreement with OP/Petitioner for purchasing a new Tata Indica car for Rs.2,90,000/- which was to be paid in 47 monthly installments of Rs.7,854/-. Complainant deposited 47 post dated cheques. The cheques were cleared till 11.09.2003. Complainant could not pay installment in October 2003 and promised to pay two installments in November 2003. It is alleged that on 13.11.2003 some unknown persons forcibly snatched the vehicle from Complainant's driver. Alleging deficiency in service, a complaint was filed before the District Forum. OP contended that as per the loan

Procedure Adopted / Followed by the Fora

agreement the matter was to be referred to an Arbitrator. The District Forum allowed complaint ex-parte and directed OP to pay compensation of Rs.50,000/- and further awarded 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 had been filed. Revision Petition was allowed and the matter remanded back to the District Forum to decide complaint after giving an opportunity to the Petitioner to file written statement.

ii) Order appealed against:

From the order dated 20.03.2008 in First Appeal No.87/2008 of the State Consumer Disputes Redressal Commission, Delhi.

iii) Parties:

Sh.D. Vilas Rao

- Petitioner/OP

Vs.

Shri. Amit Kumar Sharma

- Respondent/Complainant

iv) Case No and Date of Judgement:

Revision Petition No.2386 of 2008 & Date of Judgement: 07.01.2014.

v) Acts and Sections referred:

Sections 13, 14, 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986; Section 8 of the Arbitration and Conciliation Act, 1996.

vi) Issues raised and decided:

The Commission noted that the District Forum had dismissed application under Section 8 of the Arbitration and Conciliation Act, 1996 filed by OP on account of non-appearance of OP and allowed complaint ex-parte. The Commission accepted the argument of the Counsel for the Petitioner that the District Forum should have given an opportunity to OP to file written statement and lead evidence in counter to affidavit filed by the Complainant and held that the District Forum wrongly mentioned in the order that OP contested the complaint, led evidence and he was heard. Consequently the Revision Petition was allowed, the impugned order was set aside and the matter was remanded back to the District Forum to decide complaint after giving an opportunity to the Petitioner to file written statement and lead evidence.

vii) Citation:

2014(1) CPR 205.

3. M/s. Sunita Jain Vs. Modern Threads (India) Ltd.

i) Case in Brief:

Complainant/Appellant and their relatives made deposits with OP who assured the depositors that they would be provided interest on principal and interest. But OP did not issue cheques. Alleging deficiency in service complaints were filed before the State Commission. OP resisted complaints on the ground that operating agency had been appointed by BIFR. It was also submitted that the complaints were time barred. The State Commission vide impugned orders held that Complainants were free to take action before operating agency against which the present appeals had been filed. Appeals were allowed and the cases were remanded back to the State Commission for deciding the matter on merits.

ii) Order appealed against:

From the order dated 03.05.2012 in Complaint Nos.27, 26 and 252/2010 of the Rajasthan State Consumer Disputes Redressal Commission.

iii) Parties:

First Appeal No.307 of 2012

M/s. Sunita Jain - Appellant/Complainant

Vs.

Modern Threads (India) Ltd. - Respondent/OP

First Appeal No.308 of 2012

M/s. Sunita Jain - Appellant/Complainant

Vs.

Modern Terry Towels Ltd. - Respondent/OP

First Appeal No.309 of 2012

M/s. Sunita Jain - Appellant/Complainant

Vs.

Modern Denim Ltd. - Respondent/OP

iv) Case No and Date of Judgement:

First Appeal Nos.307-309 of 2012 & Date of Judgement: 16.01.2014.

v) Acts and Sections referred:

Sections 13, 14, 15, 17, 18, 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) It was contended before the State Commission that in spite of appointment of operating agency, the State Commission had jurisdiction to deal with the complaints. In support of the said contention, judgment of the National Commission in *Mahesh Chandra Sharma Vs. M/s. Modern Threads (India) Ltd.* in R.P.No.2355 of 2006, decided on 10.10.2007 in which it was held that deposits made with the company cannot be termed as loan and complaints were maintainable before the consumer fora. Same principle was followed in *Abhishek Bhansali Vs. The Chairman, M/s. Modern Denim Ltd.* in R.P.No.310 of 2007, decided on 25.09.2012 and in *Sneha Dyechem Ltd. Vs. Jyoti Rathore*, II (2006) CPJ 195 (NC). The Commission therefore held that the complaints were maintainable before the Consumer Forum and the State Commission had committed error in disposing complaints on the basis of an earlier judgment of the Commission in R.P.No.417-431 of 2000 – *Modern Thread (India) Ltd. Vs. Lt. Col. B.K. Sharma (Retd)* as Hon'ble Apex Court had held that original proceedings before any other legal forum are maintainable.
- b) In the light of the aforesaid discussion, the Commission set aside the order of the State Commission, allowed the appeals and remanded the cases back to the State Commission for deciding the matters on merits giving an opportunity of being heard to the parties.

vii) Citation:

2014(1) CPR 398.

4. Ashok Kumar Sharma Vs. Reliance General Insurance Co. Ltd. & Ors.

i) Case in Brief:

Complainant/Petitioner's jeep which was insured with OP/Respondent for a period of one year from 21.01.2009 was stolen during the currency of the policy. FIR was lodged on the same day and OP was also informed. The claim was repudiated by OP on the ground of delay of 83 days in intimation to insurance company. Alleging deficiency in service, consumer complaint was filed in the District Forum which was allowed partly, directing OP to pay 60% of the claim amount on non-standard basis besides awarding Rs.3,000/- as compensation. Appeal

filed by OP was dismissed by the State Commission vide impugned order against which the present Revision Petition had been filed. Revision Petition was allowed and the matter remanded back to the State Commission to decide appeal afresh on merits.

ii) Order appealed against:

From the order dated 29.11.2011 in First Appeal No.1268/2011 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

iii) Parties:

Ashok Kumar Sharma - Petitioner/Complainant

Vs.

Reliance General Insurance Co. Ltd. & Ors. - Respondents/OPs

iv) Case No and Date of Judgement:

Revision Petition No.819 of 2012 & Date of Judgement: 20.01.2014.

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 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 judgment 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(1) CPR 390.

5. Shri Gurmit Singh Vs. Haryana Urban Development Authority & Anr.

i) Case in Brief:

Complainant/Petitioner filed complaint before the District Forum and the Forum allowed the complaint vide order dated 16.08.2004 with a number of directions which included one that the OPs shall prepare a

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fresh statement of account in the light of the other directions and shall serve the same to the Complainant within 30 days of the receipt of copy of the order. Complainant filed Execution Petition before the Forum and the Forum observed that account statement was delivered after 3 to 4 years and excess interest was also refunded after 4 to 5 years and in such circumstances, observing violation of the order, imposed penalty of Rs.25,000/- on OP. OP filed appeal before the State Commission which reduced penalty to Rs.1,000/- vide impugned order against which the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 16.05.2012 in First Appeal No.1376/2010 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

Shri Gurmit Singh - Petitioner/Complainant

Vs.

Haryana Urban Development Authority & Anr. - Respondents/OPs

iv) Case No and Date of Judgement:

Revision Petition No.3582 of 2012 & Date of Judgement: 27.01.2014.

v) Acts and Sections referred:

Sections 13, 14, 15, 17, 19 and 21(b) of the Consumer Protection Act, 1986 and Section 27 of the Civil Procedure Act.

vi) Issues raised and decided:

- a) The Commission noted that the State Commission had rightly observed that grievance of the Complainant was only to the extent that statement of account as directed by the District Forum was not submitted within the stipulated period. The Commission further noted that the State Commission had observed that statement of account submitted by OP was not incorrect. In such circumstances the State Commission had reduced penalty from Rs.25,000/- to Rs.1,000/-.
- b) The Commission observed that Section 27 of the Civil Procedure Act provided that fine exceeding Rs.10,000/- cannot be imposed whereas the District Forum imposed penalty of Rs.25,000/- which was contrary to the provisions of the Act. As per Section 27

penalty of less than Rs.2,000/- cannot be imposed but the State Commission had reduced penalty to Rs.1,000/- as there was only delay in submitting statement of account. The Commission observed that, in normal course, penalty should not have been reduced below Rs.2,000/-, but looking to the facts and circumstances, it was held that it would not be appropriate to enhance the amount of penalty as there was only delay in submission of statement of account.

c) Consequently the Revision Petition was dismissed.

vii) Citation:

I (2014) CPJ 330; 2014(1) CPR 341.

6. Unit Trust of India & Ors. Vs. Kamlesh Chhabra

i) Case in Brief:

Complainant/Respondent had taken unit of Rs.32,000/- as per scheme called SCUP of Unit Trust of India and was provided medical insurance cover, the premium of which was to be deducted from the policy of the Complainant. As per offered documents, a maximum sum of Rs.5,625/- was to be deducted as premium for first four years and thereafter a maximum sum of Rs.4,975/- for next three years. From the account statement received by her on 07.01.2008, Complainant noted that the OP had wrongly deducted a sum of Rs.16,954.41 in excess from her account, a residual amount of Rs.12,578/- and annuity amount of Rs.2,900/-. She filed complaint before the District Forum which allowed the complaint and directed OPs to pay Rs.12,578/- balance amount of the scheme plus Rs.2,900/- per year annuity for the period from 20.10.2004 to 04.03.2008 with interest at 9% p.a. and further awarded Rs.3,300/- as litigation expenses. Appeal filed by the OPs 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 25.10.2012 in First Appeal No.900/2012 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

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iii) Parties:

Unit Trust of India & Ors. - Petitioners
Vs.
Kamlesh Chhabra - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.619 of 2013 with IA/1086/2013 (Stay) &
Date of Judgement: 27.01.2014.

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:

- a) The Commission noted that the State Commission had dismissed the appeal on assumption that Petitioner terminated scheme without issuing any prior notice to the Complainant whereas Complainant had nowhere challenged termination of scheme in the complaint. It was also noted that the State Commission had observed that the Complainant incurred expenses of hospitalization to the tune of Rs.32,000/- at the age of 53 years and Rs.20,800/- at the age of 61 years and that the Complainant was entitled for aforesaid payment. But the National Commission observed that no such claim had been made in the complaint. The Complainant had only prayed for refund of Rs.29532.41 and Rs.2,900/- p.a. from 15.11.2003 till its realization and had nowhere claimed refund of Rs.32,000/- and Rs.20,800/-. It was held that the impugned order of the State Commission was based on erroneous assumptions and facts and therefore the order was liable to be set aside.
- b) Consequently the Revision Petition was allowed, the impugned order was set aside and the matter remanded back to the State Commission to decide the matter afresh on the basis of pleadings, after giving an opportunity of being heard to the parties.

vii) Citation:

2014(1) CPR 338.

7. Shree Hiralal Tel Udyog Vs. United India Insurance Co. Ltd. & Anr.

i) Case in Brief:

Complainant/Petitioner had taken a marine insurance policy for the period from 15.03.2008 to 14.03.2009 for a sum of Rs.2 crores for transportation of goods. On 06.04.2008, he sent 152 quintals mustard oil through a tanker to M/s. Kanak Enterprises, Kolkata the value of goods being Rs.9.29 lakhs. However, the goods never reached the destination and after a few days the empty tanker was found lying in a gorge at a place in District Hooghly in unclaimed condition. Complainant's claim was repudiated by the insurance company stating that the transport carrier was responsible for the incident. Complainant approached the District Forum which allowed the complaint and directed OP to pay an amount of Rs.9.29 lakhs along with interest at 9% p.a. from the date of filing of complaint i.e. 20.08.2008 till realization and Rs.2,000/- as cost of litigation. The 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 allowed and the case remanded to the State Commission for analysis of the evidence in depth.

ii) Order appealed against:

From the order dated 19.07.2012 in First Appeal No.1838/2010 of the Rajasthan State Consumer Disputes Redressal Commission.

iii) Parties:

Shree Hiralal Tel Udyog - Petitioner

Vs.

United India Insurance Co. Ltd. & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3986 of 2012 & Date of Judgement: 30.01.2014.

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 core issue involved the movement of a consignment of mustard oil from Bharatpur to West

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Bengal and its non-receipt by the consignee, M/s. Kanak Enterprises. The Commission went through the report of Bharatpur police and the copy of FIR lodged with West Bengal police which mentioned the name of the driver as Munna Singh. The Commission agreed with the observation of the State Commission that if the truck had moved from Bharatpur to West Bengal, there could have been receipts issued by the check-posts which came on the way. It was observed that the State Commission should have asked the parties to produce the required documents and further evidence if any. The State Commission, it was further observed, should come to a firm conclusion bringing out clearly whether the theft of the material in question is proved on record. The Commission accordingly set aside the order of the State Commission and remanded the case to the State Commission with the direction that parties should be asked to lead further evidence which should be analyzed in depth by the State Commission and conclusion should be reached looking at the circumstances of the case in totality. The Revision Petition was allowed on the above lines.

vii) Citation:

2014(1) CPR 325.

8. Delhi International Airport Pvt. Ltd. Vs. Chief Justice (Retd.) S.S. Sodhi & Anr.

i) Case in Brief:

Respondent No.1/Complainant filed a consumer complaint against the Petitioner/OP No.2 as well as against the Petitioner-Airport Authority of India/OP No.1 (RP No.1349 of 2013) on the allegation that on 16.06.2011, Complainant's foot tripped over the hole just opposite the entry gate of Terminal-3 at IGI Airport, New Delhi. Complainant suffered severe injury and alleging failure on the part of OPs to ensure safety in public area and other deficiency, he filed consumer complaint before the State Commission seeking compensation of Rs.10 lakhs and other reliefs. The State Commission passed the impugned order on 22.03.2013 closing the evidence of OP No.1 on the ground that it had not filed any evidence nor sought any time and fixing 10.04.2013 for arguments. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 22.03.2013 in Appeal No.312/2011 of the Delhi State Consumer Disputes Redressal Commission.

iii) Parties:

Delhi International Airport Pvt. Ltd. - Petitioners

Vs.

Chief Justice (Retd.) S.S. Sodhi & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1301 of 2013 with IA/2409/2013, IA/2410/2013 and IA/3012/2013 & Date of Judgement: 04.02.2014.

v) Acts and Sections referred:

Sections 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Commission, after going through the records, observed that after filing the complaint before the State Commission none appeared for the Complainant on 09.11.2011 as well as on 19.01.2012. The State Commission had shown indulgence to the Complainant by not dismissing the complaint for its non-appearance on two consecutive dates. So, on the principles of parity, it was held that the Petitioners herein are also entitled to certain indulgence in this case. The Commission cited the observations of the Hon'ble Supreme Court in *Topline Shoes Ltd Vs. Corporation Bank*, AIR 2002 SC 2427 in which it was held that all facts and circumstances of the case must be taken into account while allowing time for filing reply and that the Statement of Objects and Reasons of the Act also provided that principles of natural justice have to be kept in mind. The Commission held that, given the facts of the case, the Petitioners should be given one more opportunity to file their written statement/evidence. The Commission accordingly allowed the Revision Petitions and directed the Petitioner/Delhi International Airport Pvt. Ltd. (RP No.1301 of 2013) and Petitioner-Airport Authority of India (RP No.1349 of 2013) to file written statement/evidence by way of affidavits within 6 weeks subject to payment of cost. The parties were directed to appear before the State Commission on 28.03.2014 for further proceedings.

vii) Citation:

I (2014) CPJ 572; 2014(1) CPR 487.

9. Madhu Rani Vs. Shivakant Verma

i) Case in Brief:

Complainant/Respondent filed complaint before the District Forum which allowed the complaint on 05.02.2008 and directed OP to hand over flat to the Complainant as per terms and conditions of the agreement within 30 days or return Rs.7,50,000/- with interest at 8% p.a. with compensation of Rs.5,000/- for harassment. Complainant filed Execution Petition before the District Forum and the Forum vide order dated 10.07.2010 directed OP/Judgment Debtor to hand over physical possession of flat within 30 days. Judgment Debtor was given liberty to withdraw Rs.7,50,000/- deposited by him in the account of the decree holder. Appeal filed by the Judgment Debtor was dismissed by the State Commission further directing the Judgment Debtor to pay Rs.5,000/- per month as compensation for the period and Rs.20,000/- as cost of litigation. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 22.05.2013 in Appeal No.109/2012 of the Jharkhand State Consumer Disputes Redressal Commission.

iii) Parties:

Madhu Rani - Petitioner

Vs.

Shivakant Verma - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2438 of 2013 with IA/4041/2013 &

Date of Judgement: 07.02.2014

v) Acts and Sections referred:

Sections 13, 14, 15, 17, 18, 19, 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Commission on perusal on record noted that in compliance of the order dated 05.02.2008, the Petitioner had deposited Rs.7,50,000/- in Respondent's account on 04.03.2008 i.e. within the stipulated period of 30 days. There was delay in payment of cost and interest. Merely

because there was delay of sometime in depositing interest amount it was held that the District Forum committed error in directing the Petitioner to hand over possession of flat and withdraw Rs.7,50,000/- . It was further observed that the State Commission should not have allowed Rs.5,000/- per month as compensation beyond the scope of decree in original complaint. As compliance of the order of the District Forum dated 05.02.2008 had been made by the Petitioner, the Revision Petition was allowed and the impugned orders of the fora below were set aside. The Execution Petition stood dismissed.

vii) Citation:

I (2014) CPJ 549; 2014(1) CPR 512.

10. M/s. Media Video Ltd. Vs. Sanjeet Kumar

i) Case in Brief:

Complainant/Respondent booked flat with OP/Petitioner and made payment of Rs.1,86,000/-. OP assured to hand over possession of the flat within one and a half or two years. It is the Complainant's case that possession was not handed over within the stipulated period. Complaint was filed before the District Forum with a prayer to refund the deposited amount with interest. The District Forum allowed the complaint and directed OP to refund the deposited amount with 6% p.a. interest and awarded Rs.5,000/- as costs. 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 was allowed and the matter was remanded back to the State Commission to decide the matter afresh after giving an opportunity of being heard to both the parties and to pass a speaking order.

ii) Order appealed against:

From the order dated 26.08.2013 in Appeal No.1499/2012 of the Rajasthan State Consumer Disputes Redressal Commission.

iii) Parties:

M/s. Media Video Ltd.	- Petitioner
Vs.	
Sanjeet Kumar	- Respondent

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iv) Case No and Date of Judgement:

Revision Petition No.3375 of 2013 with IA/6006/2013 & Date of Judgement: 12.02.2014.

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:

- a) The National Commission after perusal of the impugned order observed that it neither contained any fact, nor law nor any reason for upholding the order of the District Forum. Petitioner had taken the ground of jurisdiction in reply filed before the District Forum and had also raised plea of forfeiting of earnest money an account of non-payment of installments. It was observed that the State Commission ought to have dealt with all the contentions raised by the Petitioner in the memo of appeal.
- b) 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:

I (2015) CPJ 13; 2014(4) CPR 662.

11. M/s. Media Video Ltd. Vs. Karam Singh

i) Case in Brief:

Complainant/Respondent booked flat with OP/Petitioner and made payment of Rs.1,86,000/- on 15.05.2006. OP assured to hand over possession of the flat within one and a half or two years. It is the Complainant's case that possession was not handed over within the stipulated period. Complaint was filed before the District Forum with a prayer to refund the deposited amount with interest. The District Forum allowed the complaint and directed OP to refund the deposited

amount with 6% p.a. interest and awarded Rs.5,000/- as costs. 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 was allowed and the matter was remanded back to the State Commission to decide the matter afresh after giving an opportunity of being heard to both the parties and to pass a speaking order.

ii) Order appealed against:

From the order dated 23.08.2013 in Appeal No.104/2013 of the Rajasthan State Consumer Disputes Redressal Commission.

iii) Parties:

M/s. Media Video Ltd. - Petitioner

Vs.

Karam Singh - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3379 of 2013 with IA/6010/2013 &

Date of Judgement: 12.02.2014.

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:

- c) The National Commission after perusal of the impugned order observed that it neither contained any fact, nor law nor any reason for upholding the order of the District Forum. Petitioner had taken the ground of jurisdiction in reply filed before the District Forum and had also raised plea of forfeiting of earnest money an account of non-payment of installments. It was observed that the State Commission ought to have dealt with all the contentions raised by the Petitioner in the memo of appeal.
- d) 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

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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:

I (2015) CPJ 13.

12. M/s. Media Video Ltd. Vs. K.S. Saini

i) Case in Brief:

Complainant/Respondent booked flat with OP/Petitioner and made payment of Rs.2,32,500/- on 22.05.2006. OP assured to hand over possession of the flat within one and a half or two years. It is the Complainant's case that possession was not handed over within the stipulated period. Complaint was filed before the District Forum with a prayer to refund the deposited amount with interest. The District Forum allowed the complaint and directed OP to refund the deposited amount with 6% p.a. interest and awarded Rs.5,000/- as costs. 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 was allowed and the matter was remanded back to the State Commission to decide the matter afresh after giving an opportunity of being heard to both the parties and to pass a speaking order.

ii) Order appealed against:

From the order dated 23.08.2013 in Appeal No.103/2013 of the Rajasthan State Consumer Disputes Redressal Commission.

iii) Parties:

M/s. Media Video Ltd.	Vs.	- Petitioner
K.S. Saini		- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3378 of 2013 with IA/6009/2013 &
Date of Judgement: 12.02.2014.

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:

- e) The National Commission after perusal of the impugned order observed that it neither contained any fact, nor law nor any reason for upholding the order of the District Forum. Petitioner had taken the ground of jurisdiction in reply filed before the District Forum and had also raised plea of forfeiting of earnest money on account of non-payment of installments. It was observed that the State Commission ought to have dealt with all the contentions raised by the Petitioner in the memo of appeal.
- f) 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:

I (2015) CPJ 13; 2014(1) CPR 541.

13. M/s. Media Video Ltd. Vs. Hasim Khan

i) Case in Brief:

Complainant/Respondent booked flat with OP/Petitioner and made payment of Rs.1,74,000/-. OP assured to hand over possession of the flat within one and a half or two years. It is the Complainant's case that possession was not handed over within the stipulated period. Complaint was filed before the District Forum with a prayer to refund the deposited amount with interest. The District Forum allowed the complaint and directed OP to refund the deposited amount with 6% p.a. interest and awarded Rs.5,000/- as costs. 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 was allowed and the matter was remanded back to the State Commission to decide the matter afresh after giving an opportunity of being heard to both the parties and to pass a speaking order.

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ii) Order appealed against:

From the order dated 23.08.2013 in Appeal No.100/2013 of the Rajasthan State Consumer Disputes Redressal Commission.

iii) Parties:

M/s. Media Video Ltd.

- Petitioner

Vs.

Hasim Khan

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3377 of 2013 with IA/6008/2013 &

Date of Judgement: 12.02.2014.

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:

- g) The National Commission after perusal of the impugned order observed that it neither contained any fact, nor law nor any reason for upholding the order of the District Forum. Petitioner had taken the ground of jurisdiction in reply filed before the District Forum and had also raised plea of forfeiting of earnest money an account of non-payment of installments. It was observed that the State Commission ought to have dealt with all the contentions raised by the Petitioner in the memo of appeal.
- h) 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:

I (2015) CPJ 13; 2014(1) CPR 540.

14. M/s. Media Video Ltd. Vs. Asha

i) Case in Brief:

Complainant/Respondent booked flat with OP/Petitioner and made payment of Rs.4,56,700/-. OP assured to hand over possession of the flat within two or three years. It is the Complainant's case that possession was not handed over within the stipulated period. Complaint was filed before the District Forum with a prayer to refund the deposited amount with interest. The District Forum allowed the complaint and directed OP to refund the deposited amount with 6% p.a. interest and awarded Rs.5,000/- as costs. 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 was allowed and the matter was remanded back to the State Commission to decide the matter afresh after giving an opportunity of being heard to both the parties and to pass a speaking order.

ii) Order appealed against:

From the order dated 26.08.2013 in Appeal No.99/2013 of the Rajasthan State Consumer Disputes Redressal Commission.

iii) Parties:

M/s. Media Video Ltd.	Vs.	- Petitioner
Asha		- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3376 of 2013 with IA/6007/2013 &
Date of Judgement: 12.02.2014.

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:

- a) The National Commission after perusal of the impugned order observed that it neither contained any fact, nor law nor any reason for upholding the order of the District Forum. Petitioner had taken the ground of jurisdiction in reply filed before the District Forum and had also raised plea of forfeiting of earnest money an account of non-payment of installments. It was observed

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that the State Commission ought to have dealt with all the contentions raised by the Petitioner in the memo of appeal.

- b) 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:

I (2015) CPJ 13; 2014(1) CPR 538.

15. M/s. M.K.S. Compaq Systems Pvt. Ltd. & Ors. Vs. Surendra Nagpal

i) Case in Brief:

It was the case of Complainant/Respondent, an advocate, that he purchased computer from OP/Petitioner No.1 and paid Rs.22,000/- for which no bill was given. He had ordered a Pentium-IV computer system but OP delivered Celron computer. The computer started giving problems from the inception. Complainant requested OP to change the computer but it was not done. Alleging deficiency he filed complaint before the District Forum which dismissed the complaint. On appeal the State Commission remanded the matter the District Forum which then allowed the complaint and directed OP to refund Rs.32,000/- on taking back Celron computer. 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 was allowed and the matter remanded back to the State Commission to decide it afresh.

ii) Order appealed against:

From the order dated 05.08.2008 in Appeal No.585/2008 of the Delhi State Consumer Disputes Redressal Commission.

iii) Parties:

M/s. M.K.S. Compaq Systems Pvt. Ltd. & Ors.	- Petitioners
Vs.	
Surendra Nagpal	- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3657 of 2008 & Date of Judgement: 12.02.2014.

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:

- a) The National Commission on perusal of records noted that the Petitioner had filed application on 20.08.2008 before the State Commission for restoration of appeal as inadvertently wrong date was noted by the counsel for the appellant as 18.08.2008 instead of 05.08.2008 and hence counsel could not appear before the State Commission. The State Commission rightly dismissed the application as it had no power to review the order. The National Commission observed that the State Commission passed the impugned order without hearing Petitioner on account of noting down wrong date of hearing. The impugned order revealed that the State Commission had not given any reason for dismissing the appeal and had not dealt with the grounds of appeal mentioned in memo of appeal. The Commission therefore felt that it would be appropriate to remand the matter back to the State Commission for disposal of appeal after hearing the Petitioner.
- b) Accordingly the Revision Petition was allowed, the impugned order passed by the State Commission was set aside subject to payment of Rs.5,000/- as cost to Respondent and the matter was remanded back to the State Commission to decide it afresh after hearing an opportunity of being heard to both the parties.

vii) Citation:

2014(1) CPR 536.

16. Santa Banta.Com Limited & Anr. Vs. M/s. Porsche Cars, Rep. by its MD & Ors.

i) Case in Brief:

The Appellants decided to buy a Porsche Cayenne Car from M/s. Stanley Motors Pvt. Ltd. (Respondent No.3 in the complaint), dealers of M/s. Porsche Cars (Respondent No.1). The price of the vehicle was settled at Rs.68.93 lakhs. The appellants were to pay 60% of the price

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in advance and the remaining 40% on delivery. The appellants were told that they will have to pay Rs.5.35 lakhs and the balance would be arranged through a finance company. Accordingly the appellants paid Rs.5.35 lakhs by cheque on 30.07.2008 to Respondent No.3, at Chandigarh. A sum of Rs.34,81,880/-, after deducting one installment from the loan of Rs.36 lakhs was directly paid by the finance company Tata Capital Ltd., Chandigarh to Respondent No.3 on 31.07.2008. Though the appellant paid 13 monthly installments of Rs.1,15,020/- to the finance company at Chandigarh, the car was not delivered to the appellants despite legal notice sent by them. Alleging deficiency in service appellants filed complaint before the State Commission. Accepting the preliminary objection of the Respondents that the State Commission, Chandigarh had no jurisdiction to entertain the complaint since no cause of action had arisen at Chandigarh, the State Commission dismissed the complaint vide impugned order against which the present appeal had been filed. The appeal was allowed, the order of the State Commission was set aside and the matter was restored to the State Commission, Chandigarh for being decided on merits.

ii) Order appealed against:

From the order dated 10.05.2012 in Complaint No.46/2011 of the State Consumer Disputes Redressal Commission, UT, Chandigarh.

iii) Parties:

Santa Banta.Com Limited & Anr. - Appellants

Vs.

M/s. Porsche Cars, Rep. by its MD & Ors. - Respondents

iv) Case No and Date of Judgement:

First Appeal No.409/2012 & Date of Judgement: 14.02.2014.

v) Acts and Sections referred:

Sections 13, 14, 15, 17, 18, 19, 21(a)(ii) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Commission observed that the question to be decided was whether the cause of action, wholly or in part, arose at Chandigarh in order to meet the requirement of Sub section 2 (c) of Section 17 of the Act.

- b) The Commission noted that the expression “cause of action” was neither defined in the Act nor in the Code of Civil Procedure, 1908. However in a catena of decisions of the Supreme Court, the said expression had been described as a bundle of essential facts necessary for the plaintiff to prove and obtain a decree but does not comprise evidence necessary to prove such facts. It had been held that even if a small fraction of the cause of action arose within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit/petition. In the light of the aforesaid principle, the Commission observed that circumstances like confirmation of payment by the branch of the finance company at Chandigarh, issue of monthly installments in favour of the finance company at Chandigarh, the initial payment of Rs.5.35 lakhs drawn on Citi Bank, Chandigarh in favour of Respondent No.3 etc., do tend to support the averments that a part of the cause of action arose at Chandigarh.
- c) In view of the above the appeal was allowed, the order of the State Commission was set aside and the complaint was restored before the State Commission, UT, Chandigarh for being decided on merits.

vii) Citation:

2014(2) CPR 19.

17. Kavitha Vs. Reliance Life Insurance Co. Ltd. & 2 Ors.

i) Case in Brief:

Complainant/Petitioner’s husband Mallikarjun Kante got his life assured for a sum of Rs.1,00,000/- from OP/Respondent. The policy commenced from 21.10.2008. Mallikarjun Kante died on 25.12.2008. Complainant’s claim was repudiated by OP on the ground of suppression of material fact. Alleging deficiency in service Complainant filed complaint before the District Forum which allowed the complaint and directed OP to pay the assured amount of Rs.1,00,000/- along with Rs.5,000/- as cost. 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 was allowed, the impugned order of the State Commission was set aside and the matter remanded

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back to the District Forum to decide the application of Complainant for summoning the original record of the hospital.

ii) Order appealed against:

From the order dated 14.12.2011 in Appeal No.4584/2010 of the Karnataka State Consumer Disputes Redressal Commission.

iii) Parties:

Kavitha - Petitioner

Vs.

Reliance Life Insurance Co. Ltd. & 2 Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1240 of 2012 & Date of Judgement: 14.02.2014.

v) Acts and Sections referred:

Sections 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Commission noted that OP had placed reliance on the outpatient record dated 12.06.2008 of Prayavi Hospital whereas the Complainant had disputed this record and submitted that it was a forged document. Complainant moved application on 11.08.2010 for calling original record from Prayavi Hospital. The District Forum without deciding on the said application had allowed complaint. The District Forum did not believe the photocopy of record of the Prayavi Hospital but the State Commission relied on the said record of the hospital as outpatient record and held that material facts had been suppressed by the insured and on that basis complaint was dismissed. As there was dispute regarding genuineness of record of Prayavi Hospital, the National Commission held that it would be appropriate to set aside the orders of the fora below and remand the matter back to the District Forum to first decide the application of Complainant filed for summoning original record and then decide the complaint after hearing both the parties. Consequently the Revision Petition was allowed and the orders of the fora below were set aside. The matter was remanded back to the District Forum to decide the application dated 11.08.2010 filed by the Complainant and decide the matter afresh after giving opportunity of being heard to both the parties.

vii) Citation:

2014(2) CPR 17.

18. Softvision Biotechnology & Science College & Anr. Vs. Ruchika & Anr.

i) Case in Brief:

The present Revision Petition had been filed against the order passed by the State Commission dismissing the appeal in default as none appeared for the appellants. It was submitted that the State Commission should not have dismissed the appeal in default but should have decided the appeal on merits. The National Commission deemed it appropriate to set aside the impugned order and restore the appeal for disposal on merits. The State Commission was directed to give an opportunity of being heard to the parties and dispose of the appeal on merits.

ii) Order appealed against:

From the order dated 27.08.2013 in Appeal No.264/2008 of the Madhya Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

Softvision Biotechnology & Science College & Anr. - Petitioners

Vs.

Ruchika & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3609 of 2013 & Date of Judgement: 17.02.2014.

v) Acts and Sections referred:

Sections 13, 14, 15, 17, 18, 19, 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Petitioners contended before the Commission that the State Commission ought to have disposed of the appeal on merits instead of dismissing it default. In support of that contention, reliance was placed on 2006 (2) CCC 28 *Deepak Jaiswal Vs. Oriental Insurance Co.* 1993 (1) CTJ 843 *General Manager, Telecom, Rajkot Vs. Jayanti Lal Hemchand Gandhi* and 1996 (4) CTJ 863 *Durgappa Rajaram Bailpattar Vs. General Manager, Bajaj Auto Ltd., Akurdi, Pune* in which it was held that instead of dismissing appeal in default, the State Commission ought to have decided appeal on merits. The National Commission therefore deemed it appropriate to set aside the impugned order. Consequently the Revision Petition was

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allowed, the impugned order was set aside and the appeal was restored to its original number. The State Commission was directed to dispose of the appeal after giving an opportunity of being heard to the parties.

vii) Citation:

Not reported in CPJ and CPR.

19. Softvision Biotechnology and Science College & Anr. Vs. Manoj Tejawat & Anr.

i) Case in Brief:

The Petitioners had filed appeals in the State Commission which were dismissed in default as none appeared for the appellants. Aggrieved by the said orders, which were similar, the present Revision Petitions had been filed. Revision Petitions were allowed subject to payment of cost of Rs.2,000/- to Respondent No.1 in each case and appeals were restored to the original number. The State Commission was directed to dispose of the appeals on merits after giving an opportunity of being heard to the parties.

ii) Order appealed against:

Revision Petition No.3607 of 2013

From the order dated 27.08.2013 in First Appeal No.A-261/08 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

Revision Petition No.3608 of 2013

From the order dated 27.08.2013 in First Appeal No.A-262/08 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

Revision Petition No.3610 of 2013

From the order dated 27.08.2013 in First Appeal No.A-266/08 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

Revision Petition No.3611 of 2013

From the order dated 27.08.2013 in First Appeal No.A-268/08 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

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Revision Petition No.3612 of 2013

From the order dated 27.08.2013 in First Appeal No.A-269/08 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

Revision Petition No.3613 of 2013

From the order dated 27.08.2013 in First Appeal No.A-272/08 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

Revision Petition No.3620 of 2013

From the order dated 27.08.2013 in First Appeal No.A-2771/07 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

Revision Petition No.3621 of 2013

From the order dated 27.08.2013 in First Appeal No.A-263/08 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

Revision Petition No.3622 of 2013

From the order dated 27.08.2013 in First Appeal No.A-265/08 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

Revision Petition No.3623 of 2013

From the order dated 27.08.2013 in First Appeal No.A-267/08 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

Revision Petition No.3624 of 2013

From the order dated 27.08.2013 in First Appeal No.A-270/08 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

Revision Petition No.3625 of 2013

From the order dated 27.08.2013 in First Appeal No.A-271/08 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

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iii) Parties:

Revision Petition No.3607 of 2013

Softvision Biotechnology and
Science College & Anr.

- Petitioners/OPs

Vs.

Manoj Tejawat & Anr.

- Respondents/Complainants

Revision Petition No.3608 of 2013

Softvision Biotechnology and
Science College & Anr.

- Petitioners/OPs

Vs.

Mahendra Vishwakarma & Anr.

- Respondents/Complainants

Revision Petition No.3610 of 2013

Softvision Biotechnology and
Science College & Anr.

- Petitioners/OPs

Vs.

Neha Jain & Anr.

- Respondents/Complainants

Revision Petition No.3611 of 2013

Softvision Biotechnology and
Science College & Anr.

- Petitioners/OPs

Vs.

Ajay Patel & Anr.

- Respondents/Complainants

Revision Petition No.3612 of 2013

Softvision Biotechnology and
Science College & Anr.

- Petitioners/OPs

Vs.

Jayesh & Anr.

- Respondents/Complainants

Revision Petition No.3613 of 2013

Softvision Biotechnology and
Science College & Anr.

- Petitioners/OPs

Vs.

Poras & Anr.

- Respondents/Complainants

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Revision Petition No.3620 of 2013

Softvision Biotechnology and
Science College & Anr.

- Petitioners/OPs

Vs.

Ghanshyam Dangi & Anr.

- Respondents/Complainants

Revision Petition No.3621 of 2013

Softvision Biotechnology and
Science College & Anr.

- Petitioners/OPs

Vs.

Abhishek & Anr.

- Respondents/Complainants

Revision Petition No.3622 of 2013

Softvision Biotechnology and
Science College & Anr.

- Petitioners/OPs

Vs.

Sonu Soni & Anr.

- Respondents/Complainants

Revision Petition No.3623 of 2013

Softvision Biotechnology and
Science College & Anr.

- Petitioners/OPs

Vs.

Sanjay Patel & Anr.

- Respondents/Complainants

Revision Petition No.3624 of 2013

Softvision Biotechnology and
Science College & Anr.

- Petitioners/OPs

Vs.

Vishal Ketale & Anr.

- Respondents/Complainants

Revision Petition No.3625 of 2013

Softvision Biotechnology and
Science College & Anr.

- Petitioners/OPs

Vs.

Meghraj Rajppot & Anr.

- Respondents/Complainants

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iv) Case No and Date of Judgement:

Revision Petition Nos.3607, 3608, 3610-3613, 3620-3625 of 2013 &
Date of Judgement: 17.02.2014.

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:

It was contended before the Commission that State Commission ought to have disposed of appeals on merits instead of dismissing appeals for default. In support of this contention, reliance was placed on *Deepak Jaiswal Vs. Oriental Insurance Co.* 2006 (2) CCC 28; *General Manager, Telecom Rajkot Vs. Jayanti Lal Hemchand Gandhi* 1993 (1) CTJ 843 and *Durgappa Rajaram Bailpattar Vs. General Manager, Bajaj Auto Ltd., Akurdi, Pune* 1996 (4) CTJ 863 in which it was held that instead of dismissing appeals in default, the State Commission ought to have decided on merits on appeals. The Commission therefore found it appropriate to set aside the impugned orders and restore the appeals for disposal on merits. Consequently the Revision Petitions filed by the Petitioners were allowed, the impugned orders were set aside subject to payment of cost of Rs.2,000/- to Respondent No.1 in each case and appeals were restored to the original number. The State Commission was directed to dispose of the appeals on merits after giving an opportunity of being heard to the parties.

vii) Citation:

2014(2) CPR 16.

20. Tata Motors Vs. Ashish Aggarwal & Anr.

i) Case in Brief:

Complainant/Respondent No.1 filed complaint before the District Forum alleging that the Tata Indigo Car purchased by him from OP and manufactured by OP/Petitioner had manufacturing defect. The District Forum, rejecting the application of OP for obtaining expert opinion, allowed the complaint and directed OP to replace the car by a new one or in the alternative, to pay Rs.5,47,472.76 along with 9% interest and further allowed Rs.20,000/- for harassment and Rs.2,000/- as cost.

Appeal filed by the OPs was partly allowed by the State Commission vide impugned order deleting interest, cost and compensation of Rs.20,000/- allowed by the Forum against which the present Revision Petition had been filed. Revision Petition allowed and the matter remanded back to the District Forum for deciding the matter after considering the expert opinion and objections filed by the parties.

ii) Order appealed against:

From the order dated 28.09.2007 in Appeal No.2256/2006 of the Uttar Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

Tata Motors

- Petitioner

Vs.

Ashish Aggarwal & Anr.

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.12 of 2008 & Date of Judgement: 18.02.2014.

v) Acts and Sections referred:

Sections 13, 14, 15, 17, 18, 19, 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Commission observed that the question as to whether there was or was not any manufacturing defect could not have been decided by the allegation and counter allegations by the District Forum and could have been decided effectively and successfully only after obtaining expert opinion in their behalf. It was further observed that the State Commission ought to have accepted the prayer made on behalf of the Petitioner to obtain expert opinion. The Commission arranged to get expert opinion through the Transport Commissioner, UP. Petitioner filed objections to the report. It was deemed appropriate by the Commission to remand the matter back to the District Forum to decide the complaint after considering the expert opinion and objections filed by the parties. Consequently the Revision Petition was allowed, the orders of the fora below were set aside and the matter was remanded to the District Forum to consider the expert opinion and the objections, if any, of the parties thereto and dispose of the matter.

vii) Citation:

2014(1) CPR 717.

21. Birla Sun Life Insurance Co. Ltd. Vs. Lalitha & Anr.

i) Case in Brief:

One Smt. Ratnavva had taken a life insurance policy on 23.07.2007 from the Petitioner/Insurance Company/OP No.2 for a sum of Rs.4,99,180/-. The premium of Rs.23,140/- was payable once in a quarter and an additional sum of Rs.1,631/- was to be kept in the suspense account. The policy lapsed once and was revived. The policy again lapsed when the premium due on 23.04.2008 was not paid. To revive the same the life assured sent cheque dated 26.08.2008 for Rs.69,420/- in respect of two quarterly premia due from 23.04.2008 which was received by the Petitioner/Insurance Company/OP No.2 on 30.09.2008. On the same day a receipt was issued subject to "realization of the cheque". A computer generated letter was issued on 06.10.2008 stating that the policy stood revived with effect from 05.10.2008. However, later on the same date the Syndicate Bank/OP No.1 informed the Petitioner/Insurance Company that the said cheque had been dishonoured due to insufficient funds. The Petitioner/Insurance Company/OP No.2 was informed that the life assured had passed away on 06.10.2008. When a claim was made for the insured amount, OP No.2 did not indemnify the claim treating the policy as having lapsed. Aggrieved by this action, Respondent No.1, daughter of the life assured and nominee in the insurance policy filed a complaint in the District Forum. The Forum allowed the complaint and directed OP to pay Respondent No.1/Complainant the insured amount of Rs.4,79,659/- after deducting the money already paid with cost of Rs.500/-. Syndicate Bank/OP No.1 was directed to pay Rs.5,000/- as compensation for deficiency in service. While the Bank/OP No.1 accepted the order of the forum, the insurance company/OP No.2 filed an appeal before the State Commission which was dismissed vide impugned order against which the present Revision Petition had been filed. Revision Petition was allowed and the matter remanded back to the State Commission to consider the matter afresh.

ii) Order appealed against:

From the order dated 30.06.2010 in Appeal No.3602/2009 of the Karnataka State Consumer Disputes Redressal Commission.

iii) Parties:

Birla Sun Life Insurance Co. Ltd. - Petitioner

Vs.

Lalitha & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3365 of 2010 & Date of Judgement: 18.02.2014.

v) Acts and Sections referred:

Sections 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Commission after hearing the parties and going through the evidence of record found that the Syndicate Bank/OP No.1 had, without properly verifying the account of life assured, had supplied wrong information to the Petitioner/Insurance Company/OP No.2 that the premium cheque had to be dishonoured because of insufficient funds. It was this misinformation emanating from the bank that was solely the cause for repudiation of the claim by the Petitioner/Insurance Company. The Commission held that the State Commission should have taken into consideration the said fact while returning the liability of the opposite parties qua each other. Accordingly the Commission allowed the Revision Petition and remanded the matter to the State Commission for considering the matter afresh in the light of the admitted facts.

vii) Citation:

I (2014) CPJ 506; 2014(1) CPR 714.

22. Regional Provident Fund Commissioner (Jaipur) Vs. Sayed Sakhawat Hussain

i) Case in Brief:

Complainant/Respondent used to work at Sehkari Upbhokta Bhandar at Ajmer from where he took voluntary retirement on 31.07.2000. It is his grievance that though regular deductions were made by his organization for his Provident fund contribution which was deposited in account No.RJ1244/15 with the Petitioner/OP, he was not being paid his pension despite taking up the matter several times with the OP. He filed complaint before the District Forum. The District Forum allowed the

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complaint saying that the Petitioner/OP should pay the amount due to him with interest at 9% p.a. within two months and pay Rs.1,000/- as litigation cost. The appeal filed by the Petitioner before the State Commission having been dismissed the present Revision Petition had been filed. Revision Petition was allowed and the case was remanded back to the State Commission with the direction to hear the parties again and pass a detailed speaking order.

ii) Order appealed against:

From the order dated 02.04.2012 in Appeal No.156/2012 of the Rajasthan State Consumer Disputes Redressal Commission.

iii) Parties:

Regional Provident Fund Commissioner (Jaipur) - Petitioner

Vs.

Sayed Sakhawat Hussain - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1901 of 2012 & Date of Judgement: 19.02.2014.

v) Acts and Sections referred:

Sections 13, 14, 15, 17, 18, 19, 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The National Commission after going through the order passed by the State Commission observed that the latter had not cared to go into the merits of the case at all nor carried out any detailed analysis of the facts and circumstances of the case before coming to their conclusion. The Petitioner had taken the stand that since a total sum of Rs.44,016/- had been transferred to the account of the Complainant, he was not eligible under the 1995 scheme to get pension and therefore the same was not paid. The Commission observed that it would be in the fitness of things if the merits of the case are discussed by the State Commission after hearing both the parties and a clear-cut finding given on each issue. The Commission relying on the judgment 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(1) CPR 702.

23. M/s. ICICI Prudential Life Insurance Co. Ltd. & Ors. Vs. Prof. Arun K. Lall

i) Case in Brief:

Complainant had subscribed for three different policies with OP/ Petitioners, two in the name Life State RP and one in the name Life State Pension, by paying Rs.3,00,000/- in total. The policies were issued in his name on 04.09.2007, 22.09.2007 and 31.012.2007 respectively. It is his case that he did not get assured return of 20% to 25%. On the advice of his agent he foreclosed one policy and renewed another. The third policy was in a paid up status. Since there was no improvement in the returns he filed a complaint alleging deficiency in service. The complaint was resisted by the OP on the ground that investments were subject to market and other risks. The District Forum after hearing both the parties allowed the complaint and directed OP to pay Rs.2,00,000/- illegally retained with 9% interest p.a. and further allowed Rs.1,00,000/- as compensation on account of deficiency in service. Both the parties filed appeals before the State Commission. The State Commission vide impugned order allowed both appeals, enhanced quantum and modified order and directed OP to pay Rs.3,00,000/- and Rs.25,000/- for deficiency in service and kept intact the order of the District Forum allowing Rs.2,00,000/- to be returned by the OP to the Complainant against which the present Revision Petition had been filed. Revision Petitions were allowed and the cases remanded back to the State Commission for taking additional documents on record subject to payment of cost of Rs.5,000/-.

ii) Order appealed against:

From the order dated 07.03.2013 in Appeal No.435/2012 & 03/2013 of the State Consumer Disputes Redressal Commission, Chandigarh.

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iii) Parties:

M/s. ICICI Prudential Life Insurance Co. Ltd. & Ors. - Petitioners

Vs.

Prof. Arun K. Lall

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2689-2690 of 2013 with IA/4566/2013, IA/4567/2013 & Date of Judgement: 20.02.2014.

v) Acts and Sections referred:

Sections 13, 14, 15, 17, 18, 19, 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Commission observed that OP/Petitioner had filed application for filing additional documents and submitted that due to misunderstanding of the appellant company with its counsel, documents which had been referred in the written statement could not be placed on record. The State Commission had dismissed the application vide impugned order. The National Commission held that though these said documents should have been filed by the OP before the District Forum, since these documents had been referred in the written statement filed before the District Forum and their genuineness had not been assailed by the Respondent, the State Commission should have allowed the application and should have taken the documents on record. Consequently the Revision Petitions were allowed, the orders of the State Commission were set aside and the matter remanded back to the State Commission for deciding the appeal afresh after considering the documents taken on record vide the application filed by the Petitioner and documents, if any, filed by the Respondent in rebuttal.

vii) Citation:

2014(1) CPR 674.

24. Mr. Swapan Bera Vs. Mr. Shyamal Sengupta & Anr.

i) Case in Brief:

Complainant/Petitioner's father entered into a joint venture agreement dated 22.07.2002 with OP/Respondent for construction of multi-storied building on the piece of land purchased by Complainant's father. OP was to hand over five flats to the Complainant's father. Father of the

Complainant gifted two flats out of five to the Complainant before his death on 25.02.2006. Complainant alleged that the two flats became discoloured and due to leakage of pipe lines and fittings of bathroom walls were damaged. Cracks had developed in the ceilings. Alleging deficiency on the part of OP, Complainant filed complaint claiming Rs.3,00,000/- for repairs of two flats. The District Forum dismissed the complaint. Appeal filed by the Complainant was also dismissed by the State Commission on the ground that Complainant did not fall within the purview of consumer under the CP Act. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition was allowed and the case remanded back to the State Commission to decide the matter afresh on merits.

ii) Order appealed against:

From the order dated 30.04.2008 in S.C. Case No.165/A/2007 of the West Bengal State Consumer Disputes Redressal Commission, Kolkata.

iii) Parties:

Mr. Swapan Bera - Petitioner/Complainant

Vs.

Mr. Shyamal Sengupta & Anr. - Respondents/OPs

iv) Case No and Date of Judgement:

Revision Petition No.4114 of 2013 & Date of Judgement: 20.02.2014.

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 Commission noted that the Hon'ble Apex Court in *Faqir Chand Gulati Vs. Uppal Agencies Pvt. Ltd. & Anr.* 2008 (3) CPR 76 (SC) had held that "the important aspect is the availment of services of a builder by the land owner for a house construction (construction of owner's share of the building) for a consideration. To that extent, the land owner is a consumer, the builder is a service provider and if there is deficiency in service in regard to construction, the dispute raised by the land owner will be a consumer dispute. We may mention that it makes no difference for this purpose whether the collaboration agreement is for construction and delivery of one apartment or one floor with the owner

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or whether it is for construction and delivery of multiple apartments or more than one floor to the owner". The Commission therefore held that availment of the services of the builder for a house construction falls within the purview of CP Act and the State Commission had committed error in dismissing appeal. Consequently the Revision Petition was allowed, the impugned order of the State Commission set aside and the case was remanded back to the State Commission to decide the matter afresh after giving an opportunity of being heard to the parties.

vii) Citation:

I (2014) CPJ 606; 2014(1) CPR 696.

25. Bundel Financing & Manufacturing Pvt. Ltd. Vs. Sukriya Devi & Anr.

i) Case in Brief:

It is the case of the Complainant/Respondent No.1 that she intended to purchase Piaggio Auto Tempo from OP No.1/Petitioner, but OP misled the Complainant and sold arlo Tempo which was not roadworthy. Complainant had paid a sum of Rs.60,000/- from her own saving and Rs.79,000/- financed by OP No.2/Respondent No.2. It was alleged that there were many manufacturing defects in the Auto. Complainant visited showroom of OP No.1 for repairs but found that the showroom was closed and shifted to Gaya. Alleging deficiency on the part of OP, Complainant filed complaint before the District Forum. OP No.1 was proceeded ex-parte. The District Forum after hearing the Complainant and OP No.2 allowed complaint and directed OP No.1 to pay Rs.1,39,000/- and compensation of Rs.50,000/- and litigation cost of Rs.10,000/- to the Complainant. Revision filed by the Petitioner was dismissed by the State Commission vide impugned order against which the present Revision Petition had been filed. Revision Petition was allowed and the matter remanded back to the State Commission to decide the complaint on merits after taking written statement of OP No.1/Petitioner on record as per law.

ii) Order appealed against:

From the order dated 17.08.2012 in Appeal No.23/2011 of the Jharkhand State Consumer Disputes Redressal Commission.

iii) Parties:

Bundel Financing & Manufacturing Pvt. Ltd. - Petitioner

Vs.

Sukriya Devi & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.4008 of 2012 & Date of Judgement: 24.02.2014.

v) Acts and Sections referred:

Sections 13, 14, 15, 17, 18, 19, 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Commission after perusing the record observed that the Complainant purchased Auto from Bundel Financing & Manufacturing Pvt. Ltd. whereas in the complaint Kapil Deo Singh Automobiles Pvt. Ltd. had been impleaded as OP No.1 and on the same address notice had been sent by registered post and courier. The notices were received back with the endorsement "incomplete address". The Commission observed that Kapil Deo Singh Automobiles Pvt. Ltd. was not the correct nomenclature of OP No.1 and that M/s. Bundel Financing & Manufacturing Pvt. Ltd. should have been impleaded as OP No.1 and notice should have been sent to them. As Complainant had not impleaded correct party it was held that the District Forum committed error in proceeding ex-parte against OP No.1 impleaded in the wrong name. It was observed that the State Commission also committed error in upholding the order of the District Forum.
- b) The National Commission rejected the contention of the Petitioner that the Revision Petition was filed after two years of the District Forum's order. It was held that there was a delay of 265 days and in the circumstances explained above the delay should have been condoned.
- c) Consequently the impugned order was set aside and the matter was remanded back to the District Forum to decide the complaint on merits after taking the written statement of OP No.1/Petitioner on record.

vii) Citation:

2014(1) CPR 634.

26. National Insurance Co. Ltd. Vs. Jagan Nath

i) Case in Brief:

Complainant's car which had been insured by the Petitioner company was stolen on 18.03.1999. FIR was registered. Intimation was given to the insurance company and claim was submitted. But OP vide letter dated 16.08.2002 apprised that cover note had not been issued by the company. Alleging deficiency in service, Complainant approached the District Forum. OP resisted complaint and alleged that no theft was committed and it was a concocted story. The District Forum after hearing the parties dismissed the complaint. Appeal filed by the Complainant was allowed by the State Commission which directed OP to pay a sum of Rs.90,000/- along with 12% p.a. interest to the Complainant and further awarded cost of Rs.20,000/-. Challenging the said order the present Revision Petition had been filed. Revision Petition was allowed and the matter remanded back to the State Commission to decide on taking additional documents on record.

ii) Order appealed against:

From the order dated 23.04.2008 in Appeal No.68/2008 of the State Consumer Disputes Redressal Commission, Chandigarh.

iii) Parties:

National Insurance Co. Ltd.

- Petitioner

Vs.

Jagan Nath

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2925 of 2008 & Date of Judgement: 24.02.2014.

v) Acts and Sections referred:

Sections 13, 14, 15, 17, 18, 19, 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Commission observed from the order of the District Forum that the Complainant did not file necessary documents in support of his complaint in the District Forum and had filed about 21 documents before the State Commission along with application for taking documents on record. The Commission further observed that the State Commission without allowing the said application and taking documents

on record considered documents not forming part of record of fora below. It was held that the State Commission could have considered only those documents which were either filed before the District Forum or taken on record by State Commission after allowing application for taking additional documents on record. In the circumstances it was held that impugned order was liable to be set aside. Consequently the Revision Petition was allowed and the matter remanded back to the State Commission to first decide the application for taking additional documents on record and then decide appeal after giving an opportunity of being heard to both parties.

vii) Citation:

2014(2) CPR 633.

27. Mithuna Developers and Builders Pvt. Ltd. & Ors Vs. Ramanand T.V.

i) Case in Brief:

Complainant paid Rs.7,00,000/- to OPs for allotment of 7 sites in Mithuna Bhadavane. It was claimed that a sum of Rs.2,00,000/- was given through cheque and Rs.5,00,000/- was given in cash. As per the Complainant, OPs failed to get the 7 sites registered. OPs claimed that out of Rs.7,00,000/- received from the Complainant, Rs.3,00,000/- had been repaid to him. Complainant approached the District Forum which allowed the complaint partly with cost of Rs.5,000/- and directed OPs to register site numbers 9 to 15 in favour of the Complainant or in the alternative return a sum of Rs.7,00,000/- along with compensation of Rs.1,00,000/- per site towards damages to the future interest at 9% p.a. from the date of complaint till realization. Appeal filed by the OPs was dismissed by the State Commission while observing that the District Forum should have either granted interest at 18% p.a. or damages by way of compensation. Aggrieved by the said order the present Revision Petition had been filed. Revision Petition allowed and the matter remitted back to the State Commission with the direction to hear the parties again and take a fresh decision.

ii) Order appealed against:

From the order dated 19.04.2012 in First Appeal No.609/2012 of the Karnataka State Consumer Disputes Redressal Commission.

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iii) Parties:

Mithuna Developers and Builders Pvt. Ltd. & Ors - Petitioners

Vs.

Ramanand T.V. - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2121 of 2012 & Date of Judgement: 26.02.2014.

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:

- a) The Commission noted that the Petitioner/OP had taken the plea in the written statement as well as the arguments that the Complainant was not a "consumer" as he had planned to buy 7 sites in one go and hence it was a commercial transaction. The Petitioners had also taken the plea that out of Rs.7,00,000/-, a sum of Rs.3,00,000/- had been returned to the Complainant through cheque. It was held that it was the duty of the District Forum and the State Commission to call for the relevant record and verify the facts as stated above before coming to a conclusion.
- b) The Commission further observed that the District Forum had awarded compensation of Rs.1,00,000/- per site for damages as well as interest at 9% p.a. on the said amount. Though the State Commission had observed that it was improper to give the Complainant the benefit of interest as well as compensation it still upheld the order. The Commission noted that the State Commission had not carried out a correct analysis of the facts and circumstances of the case.
- c) Consequently the Commission allowed the Revision Petition, set aside the order of the State Commission and remitted the matter back to the State Commission with a direction to hear the parties again and take a fresh decision based on the facts and circumstances of the case.

vii) Citation:

2014(1) CPR 625.

28. Nagar Palika, Nathdwara Vs. Vikram & Anr.

i) Case in Brief:

It was the case of the Complainant that the mother of Respondent No.1, Vikram and Respondent No.2, Kishan Lal were allotted two plots of land by the Petitioner, Nagar Palika, Nathdwara in February 1983. The site maps for carrying out construction on the said plots were also sanctioned by the Petitioner on 01.07.1983. However it was alleged that the actual possession of the plots could not be handed over as some other persons were found to be having possession on the spot. Complainants approached the District Forum which allowing the complaint directed the Petitioner to hand over the possession of the allotted plots or plots in any other place in lieu thereof within two months. The appeal filed before the State Commission having been dismissed, the present Revision Petition had been filed. Revision Petition was allowed and the case remanded back to the State Commission to give clear cut findings on the issues involved.

ii) Order appealed against:

From the order dated 06.01.2011 in Appeal No.602/2006 of the Rajasthan State Consumer Disputes Redressal Commission.

iii) Parties:

Nagar Palika, Nathdwara

- Petitioner

Vs.

Vikram & Anr.

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1232 of 2011 & Date of Judgement: 26.02.2014.

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 Commission observed from the grounds taken in the memo of appeal and the entire record that the main issues related to the question whether the complaint was not maintainable in view of the fact that the mother of Respondent No.1 was not made a party. Another important issue to be determined was whether the contention of the

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Petitioner that possession was handed over to the allottees immediately after the allotment was true or not. The Commission observed that these issues and other issues given in the memo of appeal should have been gone into in depth by the State Commission and they should have given clear cut findings on all issues before pronouncing their order. The Commission therefore set aside the impugned order and remitted the matter back to the State Commission with the direction that they should hear both the parties and give clear cut findings on the issues involved. Revision Petition was allowed on these lines.

vii) Citation:

2014(1) CPR 622.

29. M/S. Shree Ostwal Builders Ltd. & 5 Ors. Vs. Subhash G. Master & Anr.

i) Case in Brief:

Complainants/Respondents filed complaint before the State Commission. Notices were issued to OP/Petitioner for filing written statement and the case was fixed for 06.05.2013. As none appeared for OP and no written statement was filed on that date, the State Commission directed the Complainant to file evidence and adjourned the matter to 03.07.2013. On 03.07.2013, OP submitted an application requesting for extension of time to file written statement and reply to interim application. The State Commission vide order dated 10.10.2013 dismissed the application on the ground that the Commission had no power to recall or review its order. Aggrieved by the order of the State Commission the present Revision Petition had been filed. Revision Petition allowed. OP/Petitioner was allowed to file written statement before the State Commission subject to payment of cost.

ii) Order appealed against:

From the order dated 10.10.2013 in Appeal No.99/2013 of the Maharashtra State Consumer Disputes Redressal Commission.

iii) Parties:

M/S. Shree Ostwal Builders Ltd. & 5 Ors.	- Petitioners
Vs.	
Subhash G. Master & Anr.	- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.4532 of 2013 with IA/7407/2013 and IA/7408/2013 & Date of Judgement: 03.03.2014.

v) Acts and Sections referred:

Sections 12, 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 State Commission did not pass any order on 06.05.2013 and therefore there was no question of recalling ex-parte order as observed by the State Commission in its impugned order and that the State Commission should have disposed of the application on merits. It was further observed that the application for extension of time was filed on 03.07.2013, the date on which the case was adjourned for Complainants' evidence with submissions that third party right had already been created in the disputed flat. Looking to the facts and circumstances of the case, the Commission held that OP/Petitioner should be allowed to file written statement. Consequently the Revision Petition was allowed, the order dated 10.10.2013 passed by the State Commission was set aside and order dated 06.05.2013 was modified and application filed by OP for extension of time for filing written statement allowed subject to payment of cost of Rs.50,000/- to be paid by OP to the Complainant.

vii) Citation:

2014(1)CPR 591.

30. Union of India through Chairman, Railway Board & Anr. Vs. Niva Agrawal

i) Case in Brief:

Complainant/Respondent was travelling with his family members from Samastipur to Mumbai by train in 3rd AC Coach and their berths were 20, 21 & 22. On 22.9.06, at about 6 a.m. in the morning near Satna Railway Station suddenly berth No. 18 fell on her causing injury and she became unconscious. On regaining consciousness, she felt severe headache and giddiness. Alleging deficiency on the part of OP/petitioner, complainant filed complaint before District Forum which

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directed OP to pay Rs.5,00,000/- as compensation and Rs.25,000/- towards treatment and cost. Appeal filed by the OP was dismissed by learned State Commission vide impugned order against which, this revision petition had been filed. Revision Petition allowed.

ii) Order appealed against:

Against the Order dated 28.09.2012 in Appeal No.154/2008 of the State Commission Bihar.

iii) Parties:

Union of India through Chairman,
Railway Board & Anr. - Petitioners

Vs.

Niva Agrawal - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.85 of 2013 with IA/153/2013, IA/154/2013, IA/5452/2013 & Date of Judgement: 04.03.2014.

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 District Forum had jurisdiction or not as occurrence took place before arrival at Satna Railway Station which was not within the jurisdiction of East Central Railway and place of injury was falling under different zone of railway.
- b) The National Commission held that the District Forum should have decided question of jurisdiction and only after that complaint should have been allowed. The Commission further held that the State Commission also has not dealt the question of jurisdiction properly.
- c) Therefore, in view of the above, the Commission allowed the revision petition and remanded the matter back to the District Forum to decide it afresh on the question of jurisdiction as well as compensation after giving an opportunity of being heard to both the parties.

vii) Citation:

2014(1) CPR 583.

31. M/s. Mohit Properties & Constructions Vs. Meera Singh

i) Case in Brief:

Complainant/Respondent, Meera Singh purchased plots by paying a sum of Rs.60,000/- with the OP/M/s. Mohit Properties & Constructions. The OP assured to handover the possession of the said plots, but refused to execute the sale-deeds in her favour and also refused to refund amount of Rs.60,000/- received by them. Being aggrieved, she filed complaint before the District Forum. It was claimed that the summons notice was served upon the OP as per the finding of the District Forum. The District Forum directed the OP to pay a sum of Rs.60,000/- along with interest @ 8% p.a. from the date of deposit and Rs.250/- as litigation expenses. Against the order of the District Forum, appeal was filed before the State Commission which dismissed the same. During the proceedings before the State Commission, it was alleged by the OP that summons notice was not served upon them for the proceedings before the District Forum. Against the dismissal of the appeal by the State Commission, the present revision petition had been filed. Revision Petition allowed.

ii) Order appealed against:

Against the Order dated 02.07.2010 in Appeal No.1434/2004 of the State Commission Uttar Pradesh.

iii) Parties:

M/s. Mohit Properties & Constructions - Petitioner

Vs.

Meera Singh - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3283 of 2010 & 04.03.2014.

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 involved in this case was whether the summons notice had been served upon the petitioners during the hearing of the consumer complaint by the District Forum.

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- b) The National Commission after perusal of the records found that the order of the District Forum was based on the contention that the registered notice to the petitioner/OP was returned by the Postal Department with remarks 'not claimed'. It was held that the District Forum took erroneous view that the notice had been properly served upon the petitioner/OP. Had the petitioner refused to accept the service of the notice, the District Forum was well within their powers to order ex-parte proceedings before them. The order of the District Forum was, therefore, perverse in the eyes of law as the same had been passed without effecting due service of notice upon the petitioner. In the grounds of appeal before the State Commission, the petitioners/OP had taken the plea that they never received any notice during proceedings before the District Forum. However, the State Commission still dismissed their appeal.
- c) Therefore, in view of the above, the Commission allowed the revision petition and set aside the order of the District Forum and the State Commission and remanded the case back to the District Forum with a direction that they should hear the parties again and pass a fresh order.

vii) Citation:

2014(1) CPR 569.

32. M/s. Adhiraj Construction (P) Ltd. & Anr. Vs. Mr. Suresh K.V.

i) Case in Brief:

Complainant/Respondent filed complaint before the District Forum which allowed the complaint and directed OP/Petitioner to give legal possession of the flat on receipt of balance amount and further directed to pay Rs.25,000/- for mental agony and Rs.10,000/- as litigation cost. OP filed appeal along with application for condonation of delay and the State Commission vide impugned order dismissed application for condonation of delay on the ground that it was more than 1000 days and consequently appeal was not entertained. Challenging the said order the present Revision Petition had been filed. Revision Petition was allowed and the matter remanded back to the State Commission to decide fresh application for condonation of delay treating delay as 115/155 days in filing appeal.

ii) Order appealed against:

From the order dated 29.06.2011 in Appeal No.A/10/1087 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai.

iii) Parties:

M/s. Adhiraj Construction (P) Ltd. & Anr. - Petitioners/OPs

Vs.

Mr. Suresh K.V. - Respondent/Complainant

iv) Case No and Date of Judgement:

Revision Petition No.3666 of 2011 & Date of Judgement: 11.03.2014.

v) Acts and Sections referred:

Sections 13, 14, 15, 17, 18, 19, 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The National Commission observed that the State Commission had calculated the delay as more than 1000 days on the basis of original certified copy bearing date of issue as 04.01.2008 which was filed in second set of the Member. The Commission did not find certified copy issued on 04.01.2008 in State Commission's record, which was called for. It was therefore held that the Petitioners' contention that there was delay of 115/155 days had to be treated as correct and the National Commission therefore decided to remit the matter back to the State Commission to decide application for condonation of delay afresh in the light of the observation made above after giving opportunity of being heard to both parties.

vii) Citation:

2014(2) CPR 235.

33. Abhey Singh Vs. Magma Leasing Ltd. & Ors.

i) Case in Brief:

Complainant purchased Truck from Libra Automobile Ltd. for a sum of Rs.11,17,136/- out of which, Rs.10,00,000/- was financed by OP/petitioner and amount was to be repaid in 45 installments of Rs.30,536/- each. It was alleged that the vehicle was purchased on

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15.02.2007, but OP wrongly started interest on installments from 29.01.2007 instead of 15.3.2007. Complainant paid insurance amount of Rs.38,050/-, but OP wrongly debited this amount in the account of the complainant. OP also debited Rs.16,797/- in the account of complainant on the basis of other charges, though, no such charges were payable. Alleging deficiency on the part of OPs, Complainant filed complaint before District Forum. During the pendency of complaint, Complainant moved an application for amendment in the complaint, which was allowed by District Forum. Appeal filed by the OP was allowed by the State Commission against which the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

Against the Order dated 01.07.2013 in Appeal No.30/2013 of the State Commission Haryana.

iii) Parties:

Abhey Singh

- Petitioner

Vs.

Magma Leasing Ltd. & Ors.

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2777 of 2013 with IA/4759/2013, IA/5505/2013 & Date of Judgement: 11.03.2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 12, 13, 15, 17, 18, 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 took objection to the Complainant's attempt to move an amendment to the complaint to the effect that the purchase of truck was for the purpose of earning his livelihood and not for commercial purposes. OP also took objection to the fact that the application for amendment was moved on 25.10.2012, after more than a year and that too after closing of evidence by both the parties and after adjournment for final arguments. Thus, it became clear that complainant did not move for amendment at the earliest and State Commission rightly came to the conclusion

that application for amendment of complaint at the time of arguments was not entertainable.

- b) In view of above, the Commission did not find any illegality, irregularity or jurisdictional error in the impugned order of the State Commission and therefore, the revision petition was dismissed.

vii) Citation:

II (2014) CPJ 180; 2014(2) CPR 228.

34. M/s. Emaar MGF Land Ltd. & Anr. Vs. Rupinder Kaur & Ors.

i) Case in Brief:

Respondents/Complainants had filed consumer complaint against OP/ Developer alleging that the Petitioner/OP had been deficient in service and negligent in not carrying out development in Sector 109 SAS Nagar, Mohali as per promises made in their letter dated 08.06.2007, not allowing the Complainants to make their choices for preferential location and in not handing over possession. The District Forum passed an order without giving a chance of hearing to the OP. The appeal against the order was dismissed by the State Commission on the ground that there was a delay of 210 days in filing the appeal. It is against this order that the present Revision Petition had been filed. Revision Petition allowed and the matter remanded back to the District Forum for fresh hearing.

ii) Order appealed against:

From the order dated 25.01.2013 in Appeal No.731/2012 of the Punjab State Consumer Disputes Redressal Commission.

iii) Parties:

M/s. Emaar MGF Land Ltd. & Anr.	- Petitioners
Vs.	
Rupinder Kaur & Ors.	- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2018 of 2013 with IA/3332/2013, IA/4378/2013 & Date of Judgement: 14.03.2014.

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v) Acts and Sections referred:

Sections 13, 14, 15, 17, 18, 19, 21(b) and 22 of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Commission based on the record held that the District Forum had decided the case without providing any chance to the Petitioners to lead their arguments or to give any evidence in rebuttal. Although the letter issued by the District Forum said that the copy of the order dated 04.10.2011 was dispatched by registered post to both the parties on 10.10.2011, there was nothing on record to show whether the Petitioner received that copy or not. The Commission held that it would be worthwhile to provide the Petitioners an opportunity to plead their case on merits before the consumer fora below. The Petition was therefore allowed, the orders of the District Forum and the State Commission were set aside and the case was remanded to the District Forum with a direction that they should provide an opportunity to the Petitioners/ OPs to plead their case before them by leading evidence and the District Forum should decide the case afresh.

vii) Citation:

2014(2) CPR 122.

35. ICICI Prudential Life Insurance Co. Ltd. Vs. Devki Nandan Ojha

i) Case in Brief:

Petitioner preferred an appeal before the State Commission against the District Forum's order. The said appeal was dismissed. Alleging that the State Commission had not considered the pleas taken by the appellant and had passed a non-speaking order, the present Revision Petition had been filed by the Petitioner. Revision Petition was allowed and the matter was remanded back to the State Commission with the direction to hear the parties and dispose of the appeal by a reasoned order.

ii) Order appealed against:

From the order dated 23.08.2013 in Appeal No.1053/2012 of the Rajasthan State Consumer Disputes Redressal Commission.

iii) Parties:

ICICI Prudential Life Insurance Co. Ltd. - Petitioner

Vs.

Devki Nandan Ojha - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3763 of 2013 with IA/6674/2013 &

Date of Judgement: 25.03.2014.

v) Acts and Sections referred:

Sections 12, 13, 14, 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The National 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:

II (2014) CPJ 227; 2014(2) CPR 168.

36. Shivaji Tukaram Dongale & Anr. Vs. Arun Dattatraya Wadekar (Bhaat) & Ors.

i) Case in Brief:

Petitioner No.2 is the owner of property. This property was taken for development by Petitioner No.1 where he was constructing Dongale Apartments. Respondents/Complainants had purchased shops on the lower ground floor bearing Nos.1 to 3 and basement bearing Nos.B-1, B-2 and B-3 in this apartment from Petitioner No.1/builder/developer along with the hospital area about 400 sq. ft. Entire construction of

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Dongale Apartment was completed on 30.04.2001. However, Petitioner No.1 did not execute the deed of declaration as well as did not complete the work of plastering, doors, windows, flooring, colour painting, light fitting, water fitting, and water connections as per specification. Therefore, Respondents could not start their hospital at the said place and in turn suffered loss in hospital business. Aggrieved by the act of OPs, they filed complaint before the District Forum which directed OPs/Petitioners to execute the sale deeds and to hand over the possession of the property. Aggrieved by the order of District Forum, Respondents filed appeal before the State Commission which set aside the order of the District Forum and remitted the matter back to the District Forum, for fresh hearing. Being aggrieved, the Petitioners have filed the present revision petition. Revision Petition dismissed.

ii) Order appealed against:

Against the Order dated 02.06.2009 in Appeal No.1320/2008 of the State Commission Maharashtra.

iii) Parties:

Shivaji Tukaram Dongale & Anr. - Petitioners

Vs.

Arun Dattatraya Wadekar (Bhaat) & Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.4146 of 2009 & Date of Judgement: 01.04.2014.

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 and upheld the order of the State Commission remitting the case back to the District Forum for fresh hearing on merits for the following reasons:

- a) The District Forum did not consider the fact that Petitioner No.2 is not the Builder. As per development agreement, OP.2 had received certain property as the original owner of the property and thereafter, he sold it to the Complainants and therefore, the question as to whether these transactions could be covered under the consumer complaint since, complainants were not consumers as far as these transactions are concerned ought to have been addressed and answered.

- b) Secondly, Respondents and OPs are different legal entities. OP.1 sold the property being the developer while OP.2 effected resale of the properties being the owner. These transactions could not be clubbed together since they represent different causes of action; there is misjoinder of parties and causes of action.
- c) Forum below ought to have asked complainants to select as to which consumer complaint should be entertained and proceeded further. The appreciation of evidence based on the evidence led in the proceedings was not properly done and the Forum below did not address itself in a legal and objective manner to these aspects. All this resulted in miscarriage of justice.

vii) Citation:

2014(2) CPR 349.

37. Pardeep Kumar Mehta Vs. K.C. Mahajan & Anr.

i) Case in Brief:

Petitioner had filed an application before the District Forum for producing additional evidence which was dismissed by the forum vide order dated 17.10.2011. Petitioner filed Revision Petition before the State Commission challenging the order of the District Forum. The State Commission vide impugned order partly allowed the Revision Petition filed by the Petitioner. Not satisfied with the said order the present Revision Petition had been filed. Revision Petition dismissed with cost of Rs.5,000/- to be paid to the Respondent.

ii) Order appealed against:

From the order dated 26.04.2012 in Appeal No.66/2011 of the Punjab State Consumer Disputes Redressal Commission.

iii) Parties:

Pardeep Kumar Mehta

- Petitioner

Vs.

K.C. Mahajan & Anr.

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2302 of 2012 & Date of Judgement: 15.04.2014.

v) Acts and Sections referred:

Sections 12, 13, 14, 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Commission noted that the State Commission had observed in its order that there was no relevancy of FIRs which the Petitioner wanted to produce by way of additional evidence in the case and that however he was at liberty to produce the affidavits which he wanted to produce along with the copy of the application filed by Surjit Singh against Sh.K.C.Mahajan in the Bar Council of India. The National Commission observed that the State Commission had thus acceded to the request of the Petitioner regarding the affidavits. Since there was no prayer in the application for filing of the copies of the AIR, the State Commission had rightly disallowed the same.
- b) The National Commission further observed that the only motive of the Petitioner in filing of the Revision Petition was to harass the Respondents in the case.
- c) It was further observed there was no jurisdictional or legal error to call for interference under Section 21(b) of the Act.
- d) Revision Petition was accordingly dismissed with cost of Rs.5,000/- to be paid to the Respondent No.1 within four weeks failing which interest was payable @ 9% p.a.

vii) Citation:

2014(2) CPR 579.

38. Kesoram Industries Ltd. Vs. Allahabad Bank & Ors.

i) Case in Brief:

Complainant/Appellant had filed separate complaints before the State Commission for seeking compensation of Rs.30 lakhs towards loss/damage suffered by the Complainant on account of adoption of unfair practice by the OPs/Respondents in making certain debit entries in the credit account of the Complainant and also alleged deficiency in service in not supplying relevant documents/statements/unpaid overdue bills in respect of which debit entries were made by the OPs. OPs denied any deficiency or unfair practice and submitted that the complaints were time barred and not maintainable. On dismissal of the complaints by the State Commission appeals were filed before the National

Commission. The National Commission allowed the appeals and remanded the matter back to the State Commission for deciding the case afresh. The State Commission again dismissed the complaints vide impugned order against which the present appeals have been filed along with application for condonation of delay. Delay condoned subject to cost of Rs.10,000/-. The appeals were allowed, the impugned orders were set aside and the matters remanded back to the State Commission to consider the question of limitation and maintainability of the complaints.

ii) Order appealed against:

First Appeal No.605 of 2012

From the order dated 18.05.2012 in Complaint No.4/2005 of the West Bengal State Consumer Disputes Redressal Commission.

First Appeal No.606 of 2012

From the order dated 18.05.2012 in Complaint No.5/2005 of the West Bengal State Consumer Disputes Redressal Commission.

iii) Parties:

First Appeal No.605 of 2012

Kesoram Industries Ltd.

- Appellants

Vs.

Allahabad Bank & Ors.

- Respondents

First Appeal No.606 of 2012

Kesoram Industries Ltd.

- Appellants

Vs.

Allahabad Bank & Ors.

- Respondents

iv) Case No and Date of Judgement:

First Appeal Nos.605 of 2012 and 606 of 2012 with IA/7144/2013 & Date of Judgement: 22.04.2014.

v) Acts and Sections referred:

Sections 12, 13, 15, 17, 18, 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The National Commission after perusing the impugned order observed that the State Commission had not fully adverted to the pleadings of the parties and had not considered objections of Respondents regarding

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limitation and maintainability of the complaints and had simply referred to the judgements submitted by the Respondents. Consequently the orders passed by the State Commission were set aside and the matters remanded back to the State Commission in the light of the observation made by the National Commission in their earlier order dated 10.11.2010 and with a direction to also consider the question of limitation and maintainability.

vii) Citation:

2014(2) CPR 537.

39. Dr. Tilak Gupta Vs. Kamlesh & Anr.

i) Case in Brief:

Complainant/Respondent No.1 filed complaint before District Forum alleging medical negligence on the part of OPs. District Forum allowed complaint and directed OPs to pay Rs.1,50,000/- along with interest and further awarded Rs.1,00,000/- on account of mental agony and Rs.10,000/- on account of litigation expenses against which, petitioner/ OP No.2 filed appeal before State Commission along with application for condonation of delay. State Commission vide impugned order dismissed application for condonation of delay and also dismissed appeal on merits, against which, the present revision petition has been filed. Revision Petition allowed and delay condoned.

ii) Order appealed against:

Against the Order dated 20.09.2012 in Appeal No.1103/2008 of the State Commission Haryana.

iii) Parties:

Dr. Tilak Gupta

- Petitioner

Vs.

Kamlesh & Anr.

- Respondent(s)

iv) Case No and Date of Judgement:

Revision Petition No.247 of 2013 & Date of Judgement: 29.04.2014.

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 found that in the complaint address of the petitioner had been given as Diamond Hospital, but as per application he had left job of Diamond hospital even before institution of complaint. In the affidavit filed before the District Forum he had given his address of B-6, Joshi Colony, Mandawali Fazalpur, Delhi and same address has been given by him in Memo of Appeal as well as in the application for condonation of delay. Thus, it was made it clear that on account of not receiving certified copy of the order sent by District forum, delay occurred in filing appeal and in such circumstances; State Commission ought to have condoned delay in filing appeal. Further, State Commission had observed that there was deficiency on the part of OP and dismissed appeal on merits also. The Commission held that the State Commission ought not to have considered merits when appeal was to be dismissed as barred by limitation and in such circumstances, impugned order was set aside and the matter was remanded back to the State Commission to decide the appeal afresh on merits. Thus revision petition allowed and delay of 823 days was condoned.

vii) Citation:

2014(2) CPR 440.

40. Raja Beti Vs. Life Insurance Corporation of India

i) Case in Brief:

Mahendra Singh, husband of Petitioner/Complainant got insurance policy for a sum assured of Rs.5,00,000/- through an agent and paid Rs.2,238/- premium on 28.06.2005 as first six-monthly instalment. Before issuing the policy LIC conducted medical examination of the insured through their panel doctor. Mahendra Singh died on 30.07.2005 but the claim submitted by the Complainant was repudiated by the Respondent on the ground that the policy had been obtained by committing fraud and that another person had been produced for medical examination. District Forum, before whom a complaint was filed, dismissed the complaint and advised the Complainant to seek remedy before a Civil Court of competent jurisdiction. The appeal filed by the Complainant before the State Commission was dismissed vide

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impugned order against which the present Revision Petition had been filed. Revision Petition allowed and the case was remanded to the District Forum for a fresh hearing after getting the opinion of an independent handwriting expert.

ii) Order appealed against:

From the order dated 08.08.2012 in Appeal No.1062/2010 of the Madhya Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

Raja Beti - Petitioner

Vs.

Life Insurance Corporation of India - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4269 of 2012 & Date of Judgement: 30.04.2014.

v) Acts and Sections referred:

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

vi) Issues raised and decided:

- a) The National Commission observed that there were two important points involved in the case i) whether the insured was suffering from a pre-existing disease which he did not disclose at the time of taking policy and ii) whether there was impersonation on his part at the time of medical examination.
- b) On the first point, it was held that there was no material on record to believe that the insured was suffering from the pre-existing disease. It was held that the District Forum and State Commission should have examined this aspect thoroughly before coming to their conclusion.
- c) On the second point, the Commission noted that the State Commission had simply quoted the reports of two handwriting experts and stated that the appeal was being dismissed. The Commission observed that the agent of LIC had stated that he himself produced the insured before the doctors for medical examination and it was he who signed the papers. It was the duty of the State Commission to have analysed the facts and

circumstances of the case and then passed the order based on sound reasoning which they failed to do.

- d) Relying on the judgement of the Hon'ble Apex Court in *Dr. J.J. Merchant & Ors. Vs. Shrinath Chaturvedi* [(2002) 6 SCC 635], the Commission held that when the reports of two handwriting experts had come on record it was inappropriate to have asked the parties to go to a Civil Court.
- e) Consequently the Revision Petition was allowed, the orders of the lower fora were set aside and the case remanded to the District Forum with direction to appoint an independent handwriting expert, obtain his opinion and carry out an analysis of the entire matrix of the case. The forum was also directed to examine the question whether there was non-disclosure of any pre-existing disease by the insured while filing the proposal form.

vii) Citation:

2014(2) CPR 418.

41. Usha Lakshman & Ors. Vs. Dr.N. Chandrasekharan & Anr.

i) Case in Brief:

Complainants/Appellants filed complaint before State Commission for compensation due to negligence in conducting second surgery of deceased S.Lakshmana Swamy. Both parties led evidence before the State Commission and after hearing both the parties, complaint was dismissed against which, appellant filed this appeal and also filed application under Order 41 Rule 27 CPC for seeking permission to lead additional evidence. Appeal dismissed.

ii) Order appealed against:

From the order dated 05.11.2008 in Consumer Complaint No.64 of 2005 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore.

iii) Parties:

Usha Lakshman and others	- Appellants/Complainants
Vs.	
Dr. N.Chandrasekharan & Anr.	- Respondents/OPs

iv) Case No and Date of Judgement:

First Appeal No.115 of 2009 & Date of Judgement: 27.05.2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(a)(ii) of the Consumer Protection Act,1986, Order 41 Rule 27 Civil Procedure Code.

vi) Issues raised and decided:

- a) In the present case, perusal of order sheets clearly revealed that sufficient opportunity was granted to the complainant to lead evidence and he chose not to examine Dr. Swarup Gopal, Neuro Surgeon and Dr.Venkatesh Krishnamurthy and in memo of appeal, it had been mentioned that due to bonafide mistake of the Counsel for the appellant, doctors could not be examined. Order 41 Rule 27 CPC could not be invoked for fulfilling lacuna and additional evidence can be led only if either it was not in the knowledge of the parties or even after exercising of due diligence the witnesses could not be produced before the Trial Court. In the case in hand the complainant had full knowledge of evidence of both the aforesaid witnesses and had filed their medical opinion and intentionally not produced them before State Commission and in such circumstances, now he cannot be permitted to fill up lacuna and application under Order 41 Rule 27 CPC is liable to be dismissed.
- b) In view of the above, application for additional evidence under Order 41 Rule 27 CPC filed by the Appellants was dismissed and the case was posted for final arguments on 30.9.2014.

vii) Citation:

2014(2) CPR 289.

42. Jai Chand Supplier Vs. M/s. Krishana Automobiles & 3 Ors.

i) Case in Brief:

Complainant/Petitioner purchased one JCB machine from the OPs/ Respondents in July 2008 for work to earn livelihood for himself. The machine was under warranty and guarantee of one year from the date of its purchase or up to 2000 working hours whichever occurred earlier. In the month of June 2009 the machine became out of order and its

engine seized and so the Complainant took it to the premises of OP No.1, told about the defects and left it there for repairs. He claimed that he made several visits to OP No.1 but it was of no use. He sent a legal notice on 07.07.2009 which was not replied to. Alleging deficiency in service he filed complaint before the District Forum which allowed the complaint and directed OPs 3 and 4 (JCB India and M/s. Vishal Power system, authorized dealers of Kirloskar Oil Engines Ltd.) to replace engine of JCB as early as possible and further directed to pay Rs.1,000/- per day from 02.07.2009 till replacement of the engine. Appeal filed by OP No.3 was allowed by the State Commission vide impugned order against which the present Revision Petition had been filed. Revision Petition allowed and the matter remanded back to the State Commission for fresh hearing on merits.

ii) Order appealed against:

From the order dated 08.06.2012 in Appeal No.419/2010 of the Haryana State Consumer Disputes Redressal Commission.

iii) Parties:

Jai Chand Supplier

- Petitioner

Vs.

M/s. Krishana Automobiles & 3 Ors.

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.4142 of 2012 & Date of Judgement: 12.05.2014.

v) Acts and Sections referred:

Sections 12, 13, 14, 15, 17(a)(ii), 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Petitioner had submitted that in spite of averments in the complaint regarding purchase of JCB machine for earning livelihood for himself and his family members, the State Commission had committed error in allowing appeal on the ground that Complainant did not fall within the purview of the term "consumer". On going through the complaint the National Commission found that the Complainant had indeed made such an averment and that the State Commission had not examined the same. The National Commission therefore held that it would be appropriate to remand the matter back to the State Commission to

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decide the appeal fresh after considering the averments in the complaint and on merits regarding direction to replace engine and grant compensation. The Revision Petition was allowed accordingly. The State Commission was directed to proceed with the appeal even in the absence of OP No.1 and 2 as no relief had been granted by the District Forum against OP No.1 and 2 and Complainant had not challenged the order of the State Commission.

vii) Citation:

2014(2) CPR 818.

43. Shri Bigy Varughese Abraham Vs. Syed Nizam Ali, Managing Director Mysore Home Developers Pvt. Ltd.

i) Case in Brief:

The Petitioner had filed complaint against two OPs, Mysore Home Developers Pvt. Ltd. through its MD, Shri Syed Nizam Ali (OP No.1) and Shri Imran Ahmed, Proprietor North Line Homes (OP No.2) before the District Forum which allowed the complaint. Before the State Commission only OP No.1 filed first appeal and OP No.2 was not made a party before the State Commission. The State Commission directed the OPs to refund the amount of Rs.6,00,000/- jointly and severally within a period of two months from the date of receipt of the order failing which the amount shall carry interest at 18% p.a. from the date 17.09.2007 till realization. The National Commission, observing that the State Commission had passed the order jointly and severally against the two OPs in the absence of one of them, remanded the matter for fresh hearing after impleading both the OPs.

ii) Order appealed against:

From the order dated 15.12.2011 in Appeal No.2046/2010 of the Karnataka State Consumer Disputes Redressal Commission.

iii) Parties:

Shri Bigy Varughese Abraham

- Petitioner

Vs.

Syed Nizam Ali,

Managing Director Mysore Home Developers Pvt. Ltd. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2248 of 2012 & Date of Judgement: 13.05.2014.

v) Acts and Sections referred:

Sections 12, 13, 14, 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Counsel for the Petitioner submitted that no compensation or interest was granted from 17.09.2007 till the filing of the complaint. The National Commission noted that OP No.2 was not a party before the State Commission but the latter had passed orders directing both OP 1 and 2 jointly and severally to refund the advance amount of Rs.6,00,000/- within a period of two months from the date of receipt of the order failing which the amount will carry interest at 18% p.a. from 17.09.2007 till realization. The National Commission held that, in the absence of one of the parties, the order was erroneous and remanded the matter back to the State Commission with the direction that the State Commission should direct that Shri Imran Ahmed, OP No.2 should also join as one of the Appellants or should join as one of the Respondents. The State Commission was further directed to consider as to how much interest the Petitioner was entitled from 17.09.2007 till further orders. The Revision Petition was disposed of accordingly.

vii) Citation:

Not reported in CPJ and CPR.

XVI. POWER OF REVIEW / RECALL / RESTORATION

1. M/s. Mahindra and Mahindra Financial Services Ltd. Vs. Chetram Prajapati & Anr.

i) Case in Brief:

Complainant/Respondent No.1 purchased a tractor after obtaining finance from the Petitioner (OP No.2). The tractor was insured with National Insurance company/Respondent No.2. During the validity of the policy, the tractor was stolen. The theft was reported to the police and the insurance company was also informed. However, Complainant's claim was not settled. A consumer complaint was filed impleading Respondent No.1 as well as the Appellant (financer) as OPs. The District Forum allowed the complaint against OP No.1 directing the insurer to settle the claim of the Complainant within one month and to pay Rs.5,000/- as compensation towards mental agony and Rs.1,000/- towards cost. The complaint against OP No.2 (the Petitioner) was rejected. The order of the District Forum became final since the insurance company complied with the order. Subsequently the Petitioner moved the District Forum claiming lien over the insurance claim for the reason that he is the financer. The District Forum allowed the application and directed that the relief amount would be paid to the Petitioner to adjust against the loan obtained by the Complainant for purchase of the tractor. Aggrieved by the said order, Complainant filed an appeal before the State Commission which allowed the same and held that the District Forum's order amounted to review of its earlier order dated 28.02.2011 which was not permissible as per law. The present Revision Petition had been filed by the Petitioner challenging the impugned order. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 24.04.2012 in First Appeal No.891/2011 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

iii) Parties:

M/s. Mahindra and Mahindra Financial Services Ltd. - Petitioner

Vs.

Chetram Prajapati & Anr.

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3034 of 2012 & Date of Judgement: 15.01.2014.

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 record, noted that in the written statement filed before the consumer fora, the Petitioner did not set up the plea of having any lien over the insurance claim and instead prayed for dismissal of the complaint preferred by Respondent No.1. Since the Petitioner was a party to the complaint before the District Forum, he should have filed an appeal against the Forum's order if he felt aggrieved by the order. Since he did not file any appeal, the District Forum's order became final. The Commission therefore held that the State Commission was right in concluding that the subsequent application moved by the Petitioner seeking to exercise the right of lien over the amount deposited by the insurance company was in the nature of review of the order dated 28.02.2011 which was not appealed against. Relying on the judgment of the Hon'ble Apex Court in *Rajeev Hitendra Pathak Vs. Achyut Kashinath Karekar* 2011 (8) SCJ 308, the Commission held that the State Commission's order did not suffer from any infirmity and upheld the same. The Revision Petition was dismissed.

vii) Citation:

I (2014) CPJ 447; 2014(1) CPR 412.

2. M/s. S.S. Builder & Contractors Vs. Mukund M. Sarang & Ors.

i) Case in Brief:

Complainants/Respondents filed complaints before State Commission with a prayer to refund money paid for purchase of flats along with interest and damages. State Commission vide order dated 20.9.2010 allowed complaints and decided in favour of the Complainants. Later on, by impugned order dated 5.3.2011, corrections were made in the order dated 20.9.2010 and interest part was added in the order against which, these appeals have been filed. Appeals allowed.

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ii) Order appealed against:

First Appeal No.202 of 2011

Against the Order dated 05.03.2011 in Complaint No.345/2000 of the State Commission Maharashtra.

First Appeal No.203 of 2011

Against the Order dated 05.03.2011 in Complaint No.346/2000 of the State Commission Maharashtra.

First Appeal No.204 of 2011

Against the Order dated 05.03.2011 in Complaint No.347/2000 of the State Commission Maharashtra.

First Appeal No.205 of 2011

Against the Order dated 05.03.2011 in Complaint No.227/2001 of the State Commission Maharashtra.

First Appeal No.206 of 2011

Against the Order dated 05.03.2011 in Complaint No.228/2001 of the State Commission Maharashtra.

First Appeal No.207 of 2011

Against the Order dated 05.03.2011 in Complaint No.229/2001 of the State Commission Maharashtra.

iii) Parties:

First Appeal No.202 of 2011

M/s. S.S. Builder & Contractors - Appellant

Vs.

Mukund M. Sarang & Ors - Respondents

First Appeal No.203 of 2011

M/S. S.S. Builder & Contractor - Appellant

Vs.

Rohini P. Mether & Ors - Respondent(s)

First Appeal No.204 of 2011

M/S. S.S. Builder & Contractor - Appellant(s)

Vs.

Deepa R. Malandhar & Ors - Respondent(s)

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First Appeal No.205 of 2011

M/S. S.S. Builder & Contractors - Appellant(s)

Vs.

P.Y. Shahastrabudhe & Ors - Respondent(s)

First Appeal No.206 of 2011

M/S. S.S. Builder & Contractor - Appellant(s)

Vs.

S.S. Baing & Ors - Respondent(s)

First Appeal No.207 of 2011

M/S. S.S. Builder & Contractors - Appellant(s)

Vs.

P.D. Modak & Ors - Respondent(s)

iv) Case No and Date of Judgement:

First Appeal No.202-207 of 2011 with IA/7098/2013 & Date of Judgement: 29.04.2014.

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 impugned order amounts to review of the order or not.
- b) The National Commission held that even if it is presumed that impugned order was consent order, the said order was liable to be set aside as State Commission had no power to review its order and merely by consent an authority could not pass any order which that authority did not have power to pass as jurisdiction to review its order had not been conferred on State Commission.
- c) Therefore, the appeals filed by the appellants were allowed and impugned order dated 5.3.2011 passed by the State Commission was set aside with liberty to Complainants/Respondents to challenge the order dated 20.09.2010 in which interest has not been allowed.

vii) Citation:

II (2014) CPJ 683; 2014(2) CPR 433.

3. Meerut Development Authority Vs. Manju Gupta

i) Case in Brief:

The Respondent/Applicant had sought review of the order passed by the Commission in RP/2779/2012 dated 09.05.2014. After going through the record, the Commission did not find any error apparent on the face of it which called for review. Accordingly the application was dismissed.

ii) Order appealed against:

From the order dated 09.05.2014 in RP/2779/2012 of the National Consumer Disputes Redressal Commission.

iii) Parties:

Meerut Development Authority - Appellant

Vs.

Manju Gupta - Respondent

iv) Case No and Date of Judgement:

Review Application No.118 of 2014 in RP/2779/2012
& Date of Judgement: 29.05.2014

v) Acts and Sections referred:

Sections 22(2) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Nil.

vii) Citation:

II (2014) CPJ 705; 2014(3) CPR 76.

4. Ganesh Madhavrao Maslekar Vs. Assistant General Manager, State Bank of India

i) Case in Brief:

This is a Review Petition seeking review of the orders of the Commission in RP/3520/2013. The Commission observed that there was no error apparent on the face of record and dismissed the Review Petition.

ii) Order appealed against:

Nil

iii) Parties:

Ganesh Madhavrao Maslekar - Appellant(s)

Vs.

Assistant General Manager, State Bank of India - Respondent(s)

iv) Case No and Date of Judgement:

Review Application No.169/2014 in RP/2520/2013 &

Date of Judgement : 16.05.2014.

v) Acts and Sections referred:

Sections 21 and 22(2) of the Consumer Protection Act, 1986.

vii) Citation:

III (2014) CPJ 401.

XVII. RES JUDICATA

1. Ramesh Chand Rathore & Anr. Vs. Manager, State Bank of India & Anr.

i) Case in Brief:

Petitioners/Complainants had filed complaint No.152/2008 before the District Forum against the Respondent/OP for its refusal to sanction a housing loan. The complaint was dismissed on 21.05.2009. The appeal against the dismissal filed by the Complainants was also dismissed by the State Commission on 03.11.2009. Subsequently the Complainants chose to file another complaint No.180/2011 before the District Forum, Khandwa with the prayer to direct OP to refund the amount of Rs.80,000/- paid by the Complainants and forfeited by the prospective buyer, pay interest on the margin money of Rs.1,50,000/- together with compensation of Rs.5,00,000/-. The complaint was dismissed by the Forum on the ground of the principle of *res judicata*. The appeal filed by the Complainants before the State Commission was also dismissed on the same ground. 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 05.07.2012 in Appeal No.1163/2012 of the Madhya Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

Ramesh Chand Rathore & Anr. - Petitioners

Vs.

Manager, State Bank of India & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3094 of 2012 & Date of Judgement: 09.01.2014.

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:

- a) The Commission noted that no mention was made in the Revision Petition of the earlier complaint. The Commission after calling for

certified/true copies of the record found that the two complaints before the District Forum both arose from refusal of the Bank/OP to sanction a housing loan sought by the applicant in 2004. In both the prayer was the same. The Commission observed that clearly the second complaint was filed on the same cause of action, arising from the same set of facts, in a dispute between the same parties, which had already been decided by the District Forum and the State Commission in the earlier complaint.

- b) The Commission observed that the three essential elements of *res judicata* are i) an earlier decision on the issue ii) a final judgment on the merits and iii) involvement of the same parties or parties in privity with the original parties. The principle bars the same parties from litigating a second law suit on the same claim or any other claim arising from the same transaction or series of transactions and that could have been – but was not – raised in the first suit. The Commission held that all the elements of *res judicata* are present in the present complaint.
- c) In view of the above, the Commission held that there was no infirmity in the decision of the State Commission and confirmed the same. The Revision Petition was dismissed as devoid of merits.

vii) Citation:

I (2014) CPJ 294.

Time to File Written Statement

XVIII. TIME TO FILE WRITTEN STATEMENT

1. TATA AIG General Insurance Co. Ltd. Vs. Kanan Knitwear

i) Case in Brief:

The case was admitted by the State Commission on 26.06.2013. The opposite party was served on 24.07.2013. It could not file written statement within 45 days. The statement was not filed even on 15.10.2013 when the Counsel for the Petitioner appeared and filed his Vakalatnama. The State Commission, vide impugned order, forfeited the right of OP since it was not filed within the stipulated time. Challenging the said order the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 15.10.2013 in Complaint Case No.CC/13/233 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai.

iii) Parties:

TATA AIG General Insurance Co. Ltd. - Petitioner

Vs.

Kanan Knitwear - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4799 of 2013 with IA/7989/2013 & IA/7990/2013 (Stay and Condonation of delay) & Date of Judgement: 06.01.2014.

v) Acts and Sections referred:

Sections 13, 14, 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986; Order VIII, Rule 1 of the Civil Procedure Code.

vi) Issues raised and decided:

The Commission observed that there were two divergent orders passed by the Hon'ble Supreme Court on the issue. In *Dr. J.J. Merchant Vs. Srinath Chaturvedi*, III 2002 CPJ 8 (SC), it was held that the time limit cannot be extended. In *Kailash Vs. Nanhku and Ors.*, 2005 (4) SCC 480, it was held that ordinarily the time schedule contained in Order VIII, Rule 1 of the CPC is to be followed as a rule and departure therefrom would be by way of exception, for reasons to be assigned by the

defendant and also be placed on record in writing, howsoever briefly by the Court on its being satisfied. The Commission observed that the authority of Dr. J.J. Merchant (supra) is a direct judgment under the Consumer Protection Act, 1986 and the authority in Kailash (supra) is a judgment under Order VIII, Rule 1 CPC. The Commission held that in the present case no reason has been cited by the Petitioner. The Consumer Protection Act, 1986 envisages a summary procedure. Section 13, Clause 3(A) mandates that every complaint shall be heard as expeditiously as possible and endeavor shall be made to decide a complaint within a period of 3 months. It also says that no adjournment shall be ordinarily granted unless sufficient cause is shown and reasons for grant of adjournment have been recorded in writing by the Forum. In the present case 3 months after receipt of notice had already expired. Consequently it was held that the order passed by the State Commission cannot be faulted. The Revision Petition was accordingly dismissed as devoid of merits.

vii) Citation:

2014(1) CPR 207.

XIX. UNFAIR TRADE PRACTICE

1. Classic Kudumbam Retirement Community Vs. Mr. S.P. Sundaram & Anr.

i) Case in Brief:

Complainants/Respondents, an old couple aged 82 years and 72 years respectively, entered into an agreement (Deed of licence) on 04.06.2005 for booking an apartment with Petitioners/OPs, by paying Rs.7 lakhs. Complainant No.1 had grievance about the functioning and management of OP and expressed his dissent in his letters dated 18.08.2005 and 23.08.2005. OPs terminated the contract and the Complainants vacated the premises, under protest on 28.02.2006. Complainant No.1 wrote to OPs on 14.04.2006 for refund of the deposited amount but OP declined to pay. Alleging deficiency in service Complainants approached the District Forum which allowed the complaint and directed OPs to refund Rs.6,50,000/- along with compensation in the sum of Rs.20,000/-. OPs' appeal before the State Commission having been dismissed vide impugned order the present Revision Petition had been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 05.09.2013 in First Appeal No.74/2006 of the Tamil Nadu State Consumer Disputes Redressal Commission, Chennai.

iii) Parties:

Classic Kudumbam Retirement Community - Petitioners

Vs.

Mr. S.P. Sundaram & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.4695 of 2013 & Date of Judgement: 10.01.2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), (r), 19 and 21(b) of the Consumer Protection Act, 1986; Sections 16(3) and 23 of the Contract Act.

vi) Issues raised and decided:

- a) The Petitioners contended that, as per the deed, the deposited money was "non-refundable". The Commission observed that if OP

wanted to cancel the licence, OP should have done it only in accordance with Clauses 4, 5 and 17 of the Deed of Licence and that in contravention of Clause 17, OP had given only 30 days notice as against 90 days notice stipulated in the agreement.

- b) The Commission observed that though OP had alleged that Complainant misbehaved with them, no material or cogent evidence to substantiate the same was produced by OP. On the other hand, the letters written by Complainant No.1 to OP showed that he did not use any abusive language. The Commission observed that the Complainant was a whistle blower in this case since he was fighting for the rights of himself as well as of the residents of Classic Kudumbam.
- c) The Commission observed that the Complainants stayed only for 8 months in the premises and not for a life time. OP should have followed the terms and conditions in the strict sense and allowed the Complainant to stay for life time, after receiving a deposit of Rs.6,50,000/-.
- d) The Commission held that OPs' behavior was arbitrary with the intention to grab the hard earned money of helpless Senior Citizens. The Commission also observed that it was a harsh and unconscionable contract. In *Central Inland Water Transport Corporation Limited Vs. Brojo Nath Ganguly*, the Hon'ble Supreme Court had held that an unfair or unreasonable contract entered between the parties of unequal bargaining power was 'void' as unconscionable under Section 23 of the Contract Act.
- e) In view of the above the Commission held that the OP was deficient in service and was liable for unfair trade practices. The Commission observed that the fora below should have awarded interest to the Complainant. The OPs were directed to pay Rs.6,50,000/- along with interest at 9% p.a. from 04.06.2005, the date of licence deed, till realization. The OPs were also directed to pay Rs.20,000/- as costs.

vii) Citation:

I (2014) CPJ 402.
