

# JAMMU & KASHMIR CONSUMER PROTECTION ACT, 1987

[ACT NO. XVI OF 1987]

[29th August, 1987]

An Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils, and other authorities for the settlement of consumers' disputes and for matters connected therewith.

## COMMENTS

The Statement of Objects and Reasons of the J&K Consumer Protection Act, 1987 indicates that it has been enacted to promote and protect the rights and interests of consumers and to provide them speedy and simple redressal of their grievances. Hence, quasi judicial machinery has been set up for the purpose, at different levels. These quasi judicial bodies have to observe the principles of natural justice as per clause (4) of the Statement of Objects and Reasons. Thus the intention to provide a time frame to file reply, is really meant to expedite the hearing of such matters and to avoid unnecessary adjournments to linger on the proceedings on the pretext of filing reply.—*Topline Shoes Ltd. v. Corporation Bank* JT 2002 (5) SC 111: 2002 (5) SCALE 35: 2002 (4) SLT 235: (2002) 6 SCC 33: 2002 (4) Supreme 480: 2002 (3) SRJ 226: AIR 2002 SC 2487

Be it enacted by the Jammu and Kashmir State Legislature in the Thirty-eighth Year of the Republic of India as follows:-

## CHAPTER 1 PRELIMINARY

### 1 Short title, extent, commencement and application

(1) This Act may be called the Jammu and Kashmir Consumer Protection Act, 1987.

(2) It extends to the whole of the State of Jammu and Kashmir.

<sup>1</sup>(3) It shall come into force on such date as the Government may, by Notification in the Government Gazette, appoint and different dates may be appointed for different provisions of this Act.

(4) Save as otherwise expressly provided by the Government by Notification, in the Government Gazette, this Act shall apply to all goods and services.

## 2. Definitions

In this Act, unless the context otherwise requires,-

(a) "appropriate laboratory" means a laboratory or organisation recognised by the Government and includes any such laboratory or organisation established by or under any law for the time being in force, which is maintained, financed or aided by the Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect;

<sup>2</sup>(aa) "branch office" means-

(i) any establishment described as a branch by the opposite party; or

(ii) any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the establishment;]

(b) "complainant" means -

(i) a consumer; or

(ii) any voluntary consumer association registered under the Companies Act, 1956 or under any other law for the time being in force; or

(iii) the Government, who makes a complaint;

<sup>3</sup>(iv) one or more consumers, where there are numerous consumers having the same interests;]

1 Enforced vide SRO-379 dated 14.12.1988 w.e.f. 15.12.1988.

2 Inserted by Act XIX of 1997.

3 Clause (iv) inserted ibid.

(c) "complaint" means any allegation in writing made by a complainant that-

<sup>1</sup>{(i) an unfair trade practice or a restrictive trade practice has been adopted by any trader;}

<sup>1</sup>{(ii) the goods bought by him or agreed to be bought by him suffer from one or more defects;

<sup>1</sup>{(iii) the services hired or availed of or agreed to be hired or availed of by him] suffer from deficiency in any respect;

(iv) a trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods.

<sup>2</sup>{(v) goods which will be hazardous to life and safety when used, are being offered for sale to the public in contravention of the provisions of any law for the time being in force requiring traders to display information in regard to the contents, manner and effect of use of such goods;}

with a view to obtaining any relief provided by or under this Act;

(d) "consumer" means any person who,-

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised partly paid or partly promised or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) <sup>1</sup>[hires or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the

person who <sup>1</sup>[hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person;

<sup>2</sup>[Explanation. — For the purposes of sub-clause (i), "commercial purpose" does not include use by a consumer of goods bought and used by him exclusively for the purposes of earning his livelihood, by means of self-employment];

- (e) "consumer disputes" means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint;
- (f) "defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standards which is required to be maintained by or under any law for the time being in force <sup>2</sup>[under any contract, express or implied, order or] as is claimed by the trader in any manner whatsoever in relation to any goods;
- (g) "deficiency" means any fault, imperfection or shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any services.
- (h) "Divisional Forum" means a Consumer Disputes Redressal Forum established under clause (a) of section 7;
- (i) "goods" means goods as defined in the Jammu and Kashmir Sale of Goods Act, Samvat 1996;
- (j) "government" means the Government of Jammu and Kashmir;
- (k) "manufacturer" means a person who
  - (i) makes or manufactures any goods or parts thereof; or

<sup>1</sup> Substituted by Act XIX of 1997, s. 2.

<sup>2</sup> Inserted *ibid*.

- (ii) does not make or manufacture any goods but assembles parts thereof made or manufactured by others and claims the end product to the goods manufactured by himself; or
- (iii) puts or causes to be put his own mark on any goods made or manufactured by any other manufacturer and claims such goods to be goods made or manufactured by himself.

*Explanation.* — Where a manufacturer despatches any goods or part thereof to any branch office maintained by him, such branch office shall not be deemed to be the manufacturer even though the parts so despatched to it are assembled at such branch office and are sold or distributed from branch office;

<sup>1</sup>{(kk) "member" includes the President and a member of the State Commission or a Divisional Forum as the Case may be };

(l) "notification" means a notification published in the Government Gazette;

(m) "person" includes.-

(i) a firm whether registered or not;

(ii) a Hindu undivided family;

(iii) a co-operative society;

(iv) every other association of persons whether registered under the Jammu and Kashmir Societies Registration Act, Samvat 1998 or not;

(n) "prescribed" means prescribed by rules made by the Government under this Act;

<sup>2</sup>{(nn) "restrictive trade practice" means any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as a condition precedent for buying, hiring or availing of other goods or services};

(o) "service" means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance,

<sup>1</sup> Inserted by Act XIX of 1997, s.2.

<sup>2</sup> Inserted *ibid.*

transport, processing, supply of electrical or other energy, boarding or lodging or both, <sup>1</sup>[housing construction,] entertainment, amusement or the purveying a news or other information, under a contract of personal service;

(p) "State Commission" means a Consumer Disputes Redressal Commission established in the State under clause (b) of section 7;

(q) "trader" in relation to any goods means a person who sells or distributes any goods for sale and includes the manufacturer thereof, and where such goods are sold or distributed in package form, includes the packer thereof;

(r) "unfair trade practices" means a trade practice which for the purpose of promoting the sale, use or supply of any goods or for the provision of any services <sup>2</sup>[adopts any unfair method or unfair or deceptive practice including any of the following practices], namely:-

(1) the practices of making any statement, whether orally or in writing or by visible representation, which,-

- (i) falsely represents that the goods are of a particular standard, quality, grade, composition, style or model;
- (ii) falsely represents that the services are of a particular standard, quality or grade;
- (iii) falsely represents any rebuilt, second hand, renovated, reconditioned or old goods as new goods;
- (iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;
- (v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;
- (vi) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;

1 Inserted by Act XIX of 1997, s. 2.

2 Substituted *ibid*.

- (vii) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test there:

Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test; the burden of proof of such defence shall lie on the person raising such defence;

- (viii) makes to the public representation in a form that purports to be -

(i) a warranty or guarantee of a product or of any goods or services; or

(ii) a promise to replace, maintain or repair an article or any part thereof or to repeal or continue a service until it has achieved a specified result;

if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;

- (ix) materially misleads the public concerning the price at which a product or like products or goods or services, have been, or are ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been, provided by the person by whom or on whose behalf the representation is made;

- (x) gives false or misleading facts disparaging the goods, services or trade of another person.

*Explanation.* — For the purposes of clause (1), a statement that is-

- (a) expressed on an article offered or displayed for sale, or its wrapper or container; or
- (b) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for displaying or sale; or

- (c) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public;

shall be deemed to be statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;

(2) permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in, which the business is carried on, the nature and size of business and the nature of the advertisement.

*Explanation.* — For the purpose of clause (2), “bargain price” means—

- (a) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise, or
- (b) a price that a person who reads, hears, or sees the advertisement, would reasonably understand to be a bargain price having regard to the practices at which the product advertised or like products are ordinarily sold;

(3) permits—

- (a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating the impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole;
- (b) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest;

(4) permits the sale or supply of goods intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, furnishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;



(5) permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale, or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise the cost of those or other similar goods or services.

#### COMMENTS

Bursting of cooker causing fracture of right hand. Company however informed about the incident after one year, immediate information not given the principle of *res ipsa loquitur*, in such circumstances, will not apply. 1999(6) Scale 571.

Purpose of the Act was to provide better protection of interest of consumer. Reference to the consumer movement and the international obligation for protection of rights of consumer, the provisions have been made to interpret the relevant law in this regard. AIR 1999 SC 2453.

Expression "Personal Service" has a well known legal connotation and has been considered in the context of right to seek enforcement of contract. AIR 2000 SC 331.

Failure of tubectomy operation due to negligence of doctor, as a result, child conceived again. Held, the State Government will be liable vicariously for the negligence of the Doctor of Government Hospital, since it would create extra economic burden on the complainant who had chosen for sterilization. AIR 2000 SC 1888.

### 3. Act not in derogation of any other law

The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

#### COMMENTS

Complaint inspite of arbitration clause is maintainable. In the absence of any provision in the Act itself authorising the consumer to refer to pending proceedings, before it, on receipt of a complaint, for being settled through a consensus adjudication, the conclusion is that commission under the Act cannot refer the dispute to arbitration. AIR 2000 SC 2008.

## CHAPTER II

### CONSUMER PROTECTION COUNCILS

#### 4. The State Consumer Protection Council

(1) The Government may, by notification in the Government Gazette establish with effect from such date as it may specify in such notification a Council to be known as the State Consumer Protection Council (hereinafter referred to as the 'State Council').

(2) The State Council shall consist of the following members, namely:-

- (a) the Minister incharge of the Department of Food and Civil Supplies in the Government, who shall be its Chairman; and
- (b) such number of other official or non-official members representing such interests as may be prescribed.

**5. Procedure for meeting of the State Council**

(1) ~~The State Council shall meet as and when necessary, but not less than three meetings of the Council shall be held every year.~~

(2) The State council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed.

**6. Objects of the State Council**

The objects of the State Council shall be to promote and protect the rights of the consumers such as,-

- (a) the right to be protected against the marketing of goods <sup>1</sup>[and services] which are hazardous to life and property;
- (b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods <sup>1</sup>[or services as the case may be] so as to protect the consumer against unfair trade practices;
- (c) the right to be assured, wherever possible, access to a variety of goods <sup>1</sup>[and services] at competitive prices;
- (d) the right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums;
- (e) the right to seek redressal against unfair trade practices or <sup>1</sup>[restrictive trade practices] or unscrupulous exploitation of consumers;
- (f) right to consumer education.

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<sup>1</sup> Inserted by Act XIX of 1997, s.3.

<sup>1</sup>[6-A. **Composition of District Consumer Protection Council**

(1) The Government may, by notification in the Government Gazette establish with effect from such date as it may specify in such notification, a Council to be known as the District Consumer Protection Council, which hereinafter shall be referred to as District Council.

(2) The District Council shall consist of the following members, namely:-

- (a) Deputy Commissioner of the District, who shall be its Chairman; and
- (b) such number of other official or non-official members representing such interests as may be prescribed.

(3) The District Council shall meet as and when necessary, but not less than four meetings of the Council shall be held every year.

(4) The objects of the District Council shall be the same as that of State Council.]

**CHAPTER III****CONSUMER DISPUTES REDRESSAL AGENCIES****7. Establishment of Consumer Disputes Redressal Agencies**

There shall be established for the purposes of this Act, the following agencies, namely:-

- (a) a Consumer Disputes Redressal Forum to be known as the "Divisional Forum" established by the Government in each division of the State;
- (b) a Consumer Disputes Redressal Commission to be known as the "State Commission" established by the Government.

**COMMENTS**

State Commission must remain bound by its own decision on pure question of law.—*SDO, AEE City Division, Hissar v. M/s Hotel Palki, Hissar 1993 (2) CLT 249*

Redressal Forum under the Act being quasi-Judicial agency, its functions are Judicial functions.—*Sub Divisional Officer, Telephones, Churu v. Hukmi Chand Lohiya 1993 (1) CPR 513: 1993 (1) CPJ 564 (Raj.)*

<sup>1</sup> Inserted by Act XIX of 1997.

(12)

**8. Composition of the Divisional Forum**

(1) Each Divisional Forum shall consist of:-

(a) a person who is or has been or is qualified to be a District Judge to be nominated by the Government to be its President.

<sup>1</sup>[(b) two members who are persons of ability, integrity and standing and have adequate knowledge or experience of dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom to be preferably a lady;]

<sup>2</sup>[(c) Omitted.]

<sup>3</sup>[(1-A) Every appointment under sub-section (1) shall be made by the Government on the recommendation of a Selection Committee consisting of the following, namely:-

- (i) The President of the State Commission .... Chairman
- (ii) The Secretary to Govt., Law Department .... Member
- (iii) The Secretary to Govt., Food, Supplies and Transport Department (Incharge Consumer Affairs) .... Member.]

(2) Every member of the Divisional Forum shall hold office for a term of five years or up to the age of <sup>4</sup>[65 years] whichever is earlier and shall not be eligible for re-appointment:

Provided that a member may resign his office in writing under his hand addressed to the Government. On such resignation being accepted, his office shall become vacant and may be filled by the appointment of a person possessing any of the qualification mentioned in sub-section (1) in relation to the category of the member who has resigned.

~~(3) The salary or honorarium and other allowance payable to, and the other terms and conditions of service~~ <sup>5</sup>[including tenure of office]

1 Substituted by Act XIX of 1997.

2 Clause (c) omitted ibid.

3 Inserted ibid.

4 The figure & word "65 years" substituted by Act XV of 1989, S. 2.

5 Inserted by Act XIX of 1997, S. 5.

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of the members of the Divisional Forum shall be such as may be prescribed by the Government.

#### 9. Jurisdiction of the Divisional Forum

(1) Subject to the other provisions of this Act, the Divisional Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation if any, claimed <sup>1</sup>[does not exceed rupees five lakhs.]

(2) A complaint shall be instituted in a Divisional Forum within the local limits of whose jurisdiction,-

- (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or <sup>2</sup>[carries on business, directly or through a branch office] or personally works for gain, or
- (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or <sup>2</sup>[carry on business directly or through a branch office] or personally works for gain, provided that in such case either the permission of the Divisional Forum is given or the opposite parties who do not reside, or <sup>2</sup>[carry on business directly or through a branch office] or personally work for gain, as the case may be, acquiesce in such institution, or
- (c) the cause of action, wholly or in part, arises.

#### <sup>1</sup>[10. Manner in which complaint shall be made

Complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a Divisional Forum by,-

- (a) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;

<sup>1</sup> Substituted Act XIX of 1997.

<sup>2</sup> Inserted by Act XIX of 1997.

(4)

- (b) any recognised consumer association whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or services provided or agreed to be provided is a member of such association or not;
- (c) one or more consumers where there are numerous consumers having the same interest, with the permission of the Divisional Forum on behalf of or for the benefit of all consumers so interested;
- (d) the Government.

*Explanation.* — For the purposes of the section “recognised consumer association” means any voluntary association registered under the Companies Act, 1956 or any other law for the time being in force.]

#### COMMENTS

Where claim raised for deficiency in service alleging non-realisation of export value of foreign currency as well as deficient service against the bank. The plea however, raised ten years after the claim was made under insurance Policy. Such plea cannot be allowed to be raised and, therefore, rejected. AIR 2000 SC 761.

Dismissal of the complaint in default. Fresh complaint against the same party on the same facts, not maintainable unless it explains the reasons for not pursuing earlier complaint. If application is dismissed in default, the Consumer Court can invoke the provisions of CPC for permitting restoration of the complaint. AIR 2000 SC 941.

Where the treatment charges for the deceased paid by father of the deceased then the complaint made by the mother, minor son or daughter of the deceased was not maintainable against the opposite party for negligence in treatment. Only the father is consumer as he paid the charges and any complaint made by father is maintainable.—*Aparna Doriasamy v. Dr. Anandan*. 1999 (2) CPR 5 (TN)

Even if the complainant died the cause of action still survives and the legal heir of complainant can be substituted. There is no limitation period prescribed for such substitution.—*Ram Dev v. Dr. D.N. Pandey* 2000 (2) CPJ 550 (U.P.)

Where the complainant not coming to the Redressal Agency with clean hands and concealed material facts in the complaint, then on this ground alone complaint is liable to be dismissed.—*Bimal Prasad Jain v. Chairman, Haryana State Electricity Board*. 1993 (2) CPJ 711; 1993 (3) CPR 39.

Where four complainants purchased different quantities of seeds at different costs to sow in different fields, then it can't be said that the complainants had 'same interest' but they may be having 'similar interest' and hence joint complaint by all of them not competent.—*Basappa @ Mudakapa & Ors. v. Mrutunjay Seeds & Ors.* 2000 (2) CLT 694; 2000 (2) CPJ 123; 2000 (2) CPR 220 (Kar.)

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**11. Procedure on receipt of complaint**

(1) The Divisional Forum shall on receipt of a complaint, if it relates to any goods,-

- (a) refer a copy of the complaint to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the Divisional Forum;
- (b) where the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the Divisional Forum, the Divisional Forum shall proceed to settle the consumer dispute in the manner specified in clauses (c) to (g);
- (c) where the complaint alleges a defect in the goods, which cannot be determined without proper analysis or test of the goods, the Divisional Forum shall obtain a sample of the goods from the complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or suffer from any other defect and to report its findings thereon to the Divisional Forum within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by the Divisional Forum;
- (d) before any sample of the goods is referred to any appropriate laboratory under clause (c), the Divisional Forum may require the complainant to deposit to the credit of the Forum such fees as may be specified, for payment to the appropriate laboratory, for carrying out the necessary analysis or test in relation to the goods in question;
- (e) the Divisional Forum shall remit the amount deposited to its credit under clause (d) to the appropriate laboratory, to

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enable it to carry out the analysis or test mentioned in clause (c) and on receipt of the report from the appropriate laboratory, the Divisional Forum shall forward a copy of the report along with such remarks as the Divisional Forum may feel appropriate to the opposite party;

(f) if any of the parties disputes the correctness of the findings of the appropriate laboratory, or disputes the correctness of the methods of analysis or test adopted by the appropriate laboratory, the Divisional Forum shall require the opposite party or the complainant to submit in writing his objections in regard to the report made by the appropriate laboratory;

(g) the Divisional Forum shall thereafter give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also as to the objection made in relation thereto under clause (f) and issue an appropriate order under section 12.

(2) The Divisional Forum shall, if the complaint received by it under section 10 relates to goods in respect of which the procedure specified in sub-section (1) cannot be followed, or if the complaint relates to any services-

(a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the Divisional Forum;

(b) where the opposite party on receipt of a copy of the complaint, referred to him under clause (a) denies or disputes the allegations contained in the complaint or omits or fails to take any action to represent his case within the time given by the Divisional Forum, the Divisional Forum shall proceed to settle the consumer disputes,-

(i) on the basis of evidence brought to its notice by the complainant and the opposite party, where the opposite party denies or disputes the allegations contained in the complaint, or



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(ii) on the basis of evidence brought to its notice by the complainant where the opposite party omits or fails to take any action to represent his case within the time given by the Forum.

(3) No proceedings complying with the procedure laid down in sub-sections (1) and (2) shall be called in question in any court on the ground that the principles of natural justice have not been complied with.

(4) For the purposes of this section, the Divisional Forum shall have the same powers as are vested in a civil court under the Code of Civil Procedure, Samvat 1977 while trying a suit in respect of the following matters, namely:-

- (i) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;
- (ii) the discovery and production of any document or other material object producible as evidence;
- (iii) the reception of evidence on affidavits;
- (iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;
- (v) issuing of any commission for the examination of any witness; and
- (vi) any other matter which may be prescribed.

(5) Every proceeding before the Divisional Forum shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Ranbir Penal Code, and the Divisional Forum shall be deemed to be a civil court for the purposes of section 195 and Chapter XVII of the Code of Criminal Procedure, Samvat 1989.

<sup>1</sup>[(6) where the complainant is a consumer referred in sub-clause (iv) of clause (b) of section 2, the provisions of rule 8 of Order 1 of the First Schedule to the Code of Civil Procedure, Samvat 1977 shall apply subject to the modification that every reference therein to a suit

1 Inserted by Act XIX of 1997, S.8.

or decree shall be construed as a reference to a complaint or the order of the Divisional Forum thereon.]

#### COMMENTS

One of the main objects of the Act is to provide speedy and simple redressal to consumer disputes and for that a quasi-judicial machinery is sought to be set up at the district, and State Level. These quasi-judicial bodies are required to observe the principles of natural justice and have been empowered to give relief of a specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non-compliance of the orders given by the quasi-judicial bodies have also been provided. The object and purpose of enacting the Act is to render simple, inexpensive and speedy remedy to the consumers with complaints against defective goods and deficient services and the benevolent piece of legislation intended to protect a large body of consumers from exploitation would be defeated if there is inordinate delay in disposal of complaint and the complainant is directed to approach a Civil Court. Prior to the Act, consumers were required to approach the Civil Court for securing justice for the wrong done to them and it is known fact that decision in suit takes years. Under the Act, consumers are provided with an alternative, efficacious and speedy remedy. As such, the Consumer forum is an alternative forum established under the Act to discharge the functions of a Civil Court. Therefore, delay in disposal of the complaint would not be a ground for rejecting the complaint and directing the complainant to approach the Civil Court.

#### 12. Finding of the Divisional Forum

(1) If, after the proceeding conducted under section 11, the Divisional Forum is satisfied that the goods complained against suffer from any of the defect specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to <sup>1</sup>[do] one or more of the following things, namely:-

- (a) to remove the defect pointed out by the appropriate laboratory from the goods in question;
- (b) to replace the goods with new goods of similar description which shall be free from any defect;
- (c) to return to the complainant the price, or as the case may be, the charges paid by the complainant;

<sup>1</sup> Substituted by Act XIX of 1997, S.9.

- (d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party;
- <sup>1</sup>[(e) to remove the defects or deficiencies in the services in question;
- (f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them;
- (g) not to offer the hazardous goods for sale;
- (h) to withdraw the hazardous goods from being offered for sale;
- (i) to provide for the adequate costs to parties.]

<sup>2</sup>[(2) Every order made by the Divisional Forum under sub-section (1) shall be signed by the majority of members constituting it and it shall be deemed to be the order of the Divisional Consumer Forum:

Provided that where the proceeding is conducted by the President and one member and they differ on any points, they shall state the point or points on which they differ and refer the same to other member for hearing on such point or points and the opinion of the majority shall be the order of the Divisional Forum.]

(3) Subject to the foregoing provisions, the procedure relating to the conduct of the meetings of the Divisional Forum, its sitting and other matters shall be such as may be prescribed by the Government.

### 13. Appeal

Any person aggrieved by an order made by the Divisional Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed:

Provided that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period:

<sup>1</sup>[Provided further that no appeal shall lie unless the memorandum of appeal is accompanied by a certificate issued by the President

1 Inserted by Act XIX of 1997.

2 Substituted *ibid*, S.10.

Divisional Forum to the effect that appellant has deposited with him 25% of the amounts payable under the order.]

#### COMMENTS

Appeal filed by the Branch Manager of the Insurance Company in his own name is maintainable as he is the principal officer of the Insurance company.—*R.K. Pardhan v. Denzong Automobiles Pvt. Ltd.* 1997 (2) CPJ 61 (Gangtok)

Appeal against the interlocutory order is not maintainable, however the appeal can be treated and decided as revision.—*Jaipur Stock Exchange Limited v. C.P. Mehta, Organiser, small Investors Protection front, Jaipur*, 1991 (2) CPJ 51: 1991 (1) CPR 26.

#### 14. Composition of the State Commission

(1) Each State Commission shall consist of-

- (a) a person who is or has been a Judge of a High Court, appointed by the Government, who shall be its President;
- <sup>1</sup>(b) two or more members who shall be persons of ability, integrity and having adequate knowledge of law and experience in law and consumer affairs:

Provided that every appointment made under this section shall be made by the Government on the recommendation of the Selection Committee consisting of the following, namely:-

- (i) Chief Secretary ..... Chairman.
- (ii) Secretary to Government, Law Department ..... Member
- (iii) Secretary to Government, Food and Supplies Department  
(Incharge Consumer Affairs) ..... Member.]

(2) The salary or honorarium and other allowances payable to, and the other terms and conditions of service (including tenure of office) of, the members of the State Commission shall be such as may be prescribed by the Government.

#### 15. Jurisdiction of the State Commission

Subject to the other provisions of this Act, the State Commission shall have jurisdiction-

- (a) to entertain-

<sup>1</sup> Substituted by Act XIX of 1997.

- (i) complaints where the value of the goods or services and compensation, if any, claimed exceeds <sup>1</sup>[rupees five lakhs]; and
- (ii) appeals against the orders of Divisional Forum within the State; and
- (b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any Divisional Forum within the State, where it appears to the State Commission that such Divisional Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

#### 16. Procedure applicable to State Commission

The procedure specified in sections 10, 11 and 12 and under the rules made thereunder for the disposal of complaints by the Divisional Forum shall, with such modifications as may be necessary, be applicable to the disposal of disputes by the State Commission.

#### <sup>2</sup>[16-A. Validity of orders

Notwithstanding anything contained in section 16 no order passed by the State Commission and Divisional Forum shall be called in question simply on the ground that it has not been signed by all the members of the Divisional Forum or the State Commission, as the case may be, and all such orders shall be and shall always be deemed to have been validly passed if signed by the majority of the members.]

#### 17. Appeals

Any person aggrieved by any order by the State Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 15 may prefer an appeal against such order to the High Court within a period of thirty days from the date of the order in such form and manner as may be prescribed:

1 Substituted by Act XIX of 1997, s.12.

2 Inserted by Act XIX of 1997, s.13.

<sup>1</sup>[Provided that such appeal shall be heard by not less than two Judges of the High Court:

Provided further that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period:

Provided also that no appeal shall lie unless the memorandum of appeal is accompanied by a certificate issued by the Chairman, State Commission to the effect that the appellant has deposited 25% of the amount payable under the order.]

#### **18. Finality of orders**

Every order of a Divisional Forum, or the State Commission shall if no appeal has been preferred against such order under the provisions of this Act, be final.

#### <sup>2</sup>[18-A. Limitation period

(1) The Divisional Forum or the State Commission may not admit a complaint unless it is filed within two years from the date on which the cause of action arises.

(2) Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1) if the complainant satisfies the Divisional Forum or the State Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period:

Provided that no such complaint shall be entertained unless the Divisional Forum or the State Commission, as the case may be, records its reason for condoning such delay.]

#### **19. Enforcement of order by the Forum or the State Commission**

Every order made by the Divisional Forum, or the State Commission may be enforced by the Divisional Forum, or the State Commission as the case may be in the same manner as if it were a decree or order made by a court in a suit pending therein and it shall be lawful

1 Substituted by Act XIX of 1997.

2 Inserted by Act XIX of 1997.

for the Divisional Forum or the State Commission to send in the event of its inability to execute it, such order to the Court within the local limits of whose jurisdiction-

- (a) in the case of an order against a company, the registered office of the company is situated, or
- (b) in the case of an order against any other person, the place where the person concerned voluntarily resides or carries on business or personally works for gain, is situated,

and thereupon, the court to which the order is so sent, shall execute the order as if it were a decree or order sent to it for execution.

<sup>1</sup>[20. **Dismissal of frivolous or vexatious complaints**

Where a complaint instituted before the Divisional Forum or the State Commission, as the case may be, is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, dismiss the complaint and make an order that the complainant shall pay to the opposite party such cost, not exceeding ten thousand rupees, as may be specified in the order.]

**21. Penalties**

Where a trader or person against whom a complaint is made <sup>1</sup>[or the complainant] fails or omits to comply with any order made by the Divisional Forum or the State Commission, as the case may be, such trader or person shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees, or with both :

Provided that the Divisional Forum, or the State Commission, as the case may be, may if it is satisfied that the circumstances of any case so require, impose a sentence of imprisonment or fine, or both, for a term lesser than the minimum term and amount lesser than the minimum amount specified in this section.

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<sup>1</sup> Substituted by Act XIX of 1997.