Consumer Dialogue

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SC Rules Provident Fund Subscriber is 'Consumer'

"Nor is this a case of rendering of free service or rendering of service under a contract of personal services as to bring the relationship between the appellant and the respondent (subscriber) within the concept of master and servant."

Hon'ble Supreme Court of India has held that services rendered by the office of Regional Provident Fund Commissioner of the Employees' Provident Fund Organisation will fall within the ambit of 'service' under the provisions of Consumer Protection Act (COPRA), 1986 and the subscriber under the Provident Fund Scheme is a 'consumer' under this Act.

A Bench comprising Justices Altamas Kabir and V S Sirpurkar rejected the contention of the Regional Provident Fund (RPF) Commissioner (appellant) that the services rendered to the subscribers under the Provident Fund Scheme was not a service under the COPRA and such subscribers could not seek remedy under the Act.

The appellant submitted that the service amounted to 'personal service', which was of a free nature and would not attract the provisions of Act.

Giving the judgment, Justice Kabir said "a perusal of the scheme, clearly and unambiguously indicates that it is a 'service' within the meaning of Section 2 (1)(o) and the member a 'consumer' within the meaning of Section 2 (1) (d) of the Act."

The Bench said: "The RPF Commissioner responsible for the working of the 1995 Pension Scheme must be held to be a 'service giver' under the COPRA. Nor is this a case of rendering of free service or rendering of service under a contract of personal services as to bring the relationship between the appellant and the respondent (subscriber) within the concept of master and servant."

In the instant case, respondent Bhavani was a worker in a cashew factory in Naduvathoor that was owned and managed by the Kerala State Cashew Development Corporation Ltd, Kollam. She retired from service on December 31, 1995, on attaining 60 years of age.

Bhavani was a member of the Employees' Provident Fund and Family Pension Scheme (1971), and was making contribution to the scheme through out her service period. Though she was eligible for pension, the same was not ordered by the RPF Commissioner.

Aggrieved, she moved to the Consumer Disputes Redressal Forum, Kollam, which directed the appellant to release her pensioner benefits. The State Commission and the National Consumer Disputes Redressal Commission (NCDRC) later confirmed this on subsequent appeals in these forums.

The Supreme Court Bench upheld the orders passed by the National Commission and dismissed the appeal.

http://taxguru.in/general-info/sc-rules-provident-fund

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CUTS CART

An Increasing Trend Observed in the Level of Consumer Awareness in Students

There was a time – in fact, only 30 or 40 years ago – when children were not spoken of as spenders or customers but as savers and future consumers. Sure, they bought penny candy and an occasional soft drink, but retailers did not think of them as customers *per se*. They were more often perceived as "Mrs Bohuslov's kids" who just happened to buy something while they were in the store. Children had money, but it was for saving, not spending. They were always saving up for something, according to them, but they never actually seemed to buy very much. They would, for example, save up for a football or bicycle, or even a college education, but usually these items and almost anything else they saved up for were bought by their parents or perhaps their grandparents.

Children received allowances then perhaps as frequently as they do today. Their allowances were relatively smaller, however, and parents usually dictated the amount or percent that could be spent - and this also was often small. Parents would justify this strict guidance with such sayings as, 'a penny saved is a penny earned', and 'save for a rainy day'.

The youngest population segment that was of concern to retailers was the teens. Accounting for teens' expenditures by marketers did not begin to take place seriously until the late 1950s. In general, teens were viewed as tomorrow's consumers, whereas younger children were characterised only as future consumers.

Today's typical young consumers have several sources of funds, can spend their money on objects of their choice and are encouraged by their parents to become economically responsible as soon as possible. Most parents regard the notion of their children as consumers as a natural role to be assumed.

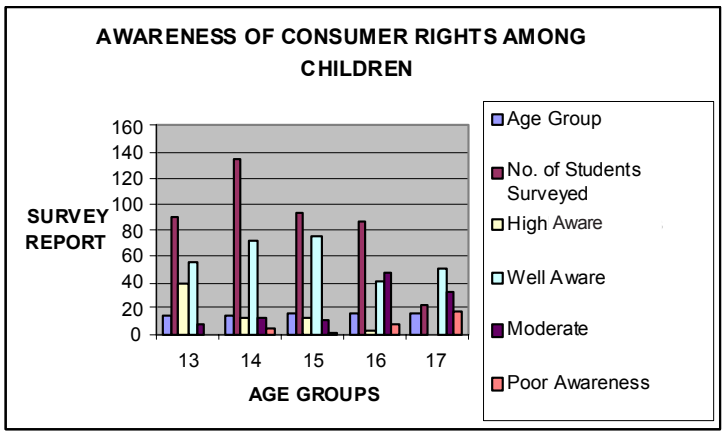
Considering the above facts, CUTS Centre for Consumer Action, Research & Training (CUTS CART) conducted a study among the school going children of different age groups in order to gauge the level of consumer awareness among them. The study was conducted through a survey questionnaire comprising several consumer-related issues and rights. The survey was done in the Jaipur district in various schools. Total sample strength of 429 children were between the age group of 13-17 years.

The results are as under:

Age Group	No. of Students Surveyed	Poor Awareness	Moderate	Well Aware	Highly Aware
13 years	91	0	6	50	35
14 years	136	5	16	99	16
15 years	94	1	10	72	11
16 years	86	7	41	35	3
17 years	22	4	7	11	0
	429	17	80	267	65

- 17 students out of 429 have poor awareness on consumer issues, i.e. 3.96 percent.
- 80 students out of 429 have moderate awareness on consumer issues, i.e. 18.65 percent.
- 267 students out of 429 are well aware about consumer issues, i.e. 62.24 percent.
- 65 students out of 429 have high-level awareness on consumer issues, i.e. 15.15 percent.

This is shown graphically also. As seen, the awareness level in students of age group between 13-14 years is high among all the surveyed students and in the age group of 17 years of students not a single student is falling under the category of being highly aware.



Bank Bows Out

HDFC Bank Limited vs Surinder Kumar Goyal, NCDRC, March 11, 2011

HDFC Bank introduced a scheme under which an applicant was required to deposit certain amount of margin money, whereupon the Bank was to advance nine times the value of the margin money as loan and procure the required policies as security on behalf of the applicant and keep them in its custody till maturity. The said policies were to give a return in the form of interest, which was to be higher than the percentage of interest to be charged by the bank on the loan amount.

Respondent loan applicant deposited a cheque of ₹10 lakh on September 07, 2005 to the petitioner for the purchase of policies and an agreement was signed between the parties with regard to the said loan on September 10, 2005. Subsequently, respondent noticed that bank had been charging interest at the rate of eight percent per annum, so filed complaint before the District Forum submitting that in the 'customer approval sheet' it was clearly stated that the rate of interest would be seven percent. The Forum allowed the said complaint. Later, an appeal was made by the bank, where the State Commission upheld the order of the District Forum.

The bank later applied for revision petition in NCDRC, which said that the said loan was sanctioned with the condition to charge seven percent rate of interest which had been enhanced to eight percent on April 24, 2006. It could not be varied without the prior consent of the respondent, even if it was to be held that the bank had the right to vary the rate of interest.

Hence, the District Forum rightly allowed the complaint filed by the respondent. Thus, revision petition was dismissed in favour of loan applicant consumer who acted as respondent and the bank was asked to redress the consumer after reducing the rate of interest as agreed.

Consumer's Victory over Resort Company

Dinakar Rao vs (1) Green Fields (India) Private Limited (2) Five Star Holidays Private Limited and (3) Five Star Holidays Private Limited [NCDRC, February 22, 2011]

The complainant got a prize on the entry ticket of ICE Exhibition purchased by him in January 1996. In terms of the prize, the complainant entered into an agreement with the opposite parties (respondents) for time share of one week every year at the place of opposite party one, i.e. Green Fields (India) Private Limited, Pune. As per the agreement, the complainant paid a sum of ₹62,500 to opposite party one and ₹4500 towards registration fee of the membership of opposite party one. In clause 5 of the purchase agreement, it was mentioned that opposite parties, Green Fields (India) Private Limited, Pune and Five Star Holidays Private Limited, New Delhi were affiliated to RCI *(the world's largest and most experienced vacation exchange company)*. The complainant renewed the membership for three years by paying ₹4,510. Thus, the complainant paid in all an amount of ₹71,510.

On January 12, 2005, the complainant addressed a letter to the opposite party one for reserving rooms at the resort. However, when the complainant visited the resort with his family, he was shocked to find the pathetic condition of the premises of the resort. On his return from the resort, the complainant issued legal notices demanding refund of the membership fee and compensation of ₹5 lakh.

Having failed to get a favourable response to his legal notices, the complainant lodged a complaint before the District Forum. On appraisal of issues and the evidence adduced by the complainant and opposite party one, the District Forum held that the complainant though was not entitled to claim refund of membership fee and other fees stated by him, however, the Forum allowed the complaint against opposite party one and dismissed the complaint against opposite parties two and three, i.e. Five Star Holidays Private Limited, New Delhi and Five Star Holidays Private Limited, Karnataka. While providing relief to the complainant, the District Forum directed opposite party one to pay compensation of ₹30,000 together with cost of ₹1,000.

On appeal, the State Commission upheld the order of the District Forum. Hence, the instant appeal in NCDRC. NCDRC held that the fora have adequately awarded the damages and the cost to the complainant in the matter based on their concurrent findings and no fault could be found with the impugned orders of the fora. Thus, the petition was dismissed in favour of the consumer.

INFORMATIVE

Companies Cannot Pay Damages in Installments

Till fairly recently, parties held guilty in consumer forums delayed shelling out compensation by paying only a part or by seeking adjournments. Not anymore. The State Consumer Commission has, among other measures, precluded payment of compensation in installments to speed up the course of justice. Previously, the consumer courts, under Section 25 of COPRA, 1986 used to allow the trader time in the adjudication proceeding. Also, the parties were allowed the liberty to pay the compensation money in installments.

Apart from this, an application under Section 27 of the COPRA was allowed simultaneously. Back then, advocates used to delay the matter by raising technical issues. Since joining as the Maharashtra State Commission's President, Justice S B Mhase has passed a number of judgments that give clear-cut guidelines on the procedures to be followed by the District Forum and the Commission while adjudicating matters under sections 25 and 27.

These judgments make it clear that consumer forums and the Commission do not have the right to allow payment of compensation in parts. Instead, their duty is to verify whether the entire amount has been paid, and, if not, whether a "certificate of decreetal has been issued. As per Section 27, the judgment debtor (trader) can face up to three years' imprisonment for contempt of consumer court if he or she does not cough up the awarded compensation within a specified period.

Both sections 25 and 27 are similar to Section 138 of the Negotiable Instruments Act, which gives the complainant the right to file a criminal complaint.

If the complainant moves an application under Section 27 before the Commission or the Forum, the judgment debtor, who has not paid the compensation, can expect some hard time. He would be issued summons and have to apply for bail by appearing in person before the Commission. The Commission or the Forum can then rule about his conviction or acquittal.

http://taxguru.in/general-info/companies-cannot-pay-damages-in-installments-state-consumer-commission.htm

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