

# Consumer Dialogue

Volume II, Issue 2, March-April 2011

Bi-monthly GRANIRCA E-newsletter

## Action Needed on Consumer Protection *Open letter to the G20 finance ministers*

In an open letter released on April 15, 2011, the heads of consumer organisations in 18 G20 countries called on their finance ministers to ensure that the intense international attention being focussed on financial consumer protection calls for 'a comprehensive solution and tangible benefits for consumers.'

Prior to a meeting scheduled with G20 finance ministers in Washington in April 2010, the letter calls for G20 finance ministers to use their influence to ensure that the opportunity presented by so much international attention is not squandered. The letter notes that in just six months, the issue



has been forced on to the agenda for G20 leaders and finance ministers. At the same time, the World Bank is consulting on a new set of guidelines on the issue, and more than 50 government financial consumer protection agencies are meeting in May 2011 to discuss strengthening future collaboration.

Consumers International (CI); Consumers Union of the US; Choice of Australia; and CUTS of India are few of the total 18 consumer organisations that signed the letter. All of them are members of CI, and have collectively developed a set of recommendations for global action on financial services.

Among others, recommendations stress on safe, fair and competitive markets in financial services; options to enhance consumer protection in financial services; the structure and functions of national financial consumer protection agencies; redress systems; promotion of competition in the sector and the safety of consumers' deposits and investments. The recommendations also call for an international organisation to be established to support national bodies and review implementation.

([www.consumersinternational.org](http://www.consumersinternational.org), 15.04.11)

## Integrated Grievance Management System

Insurance Regulatory and Development Authority (IRDA) introduced the **Integrated Grievance Management System (IGMS)** to facilitate online registration of insurance policyholders' complaints. First, consumer should approach the insurer's Grievance Redressal Mechanism and if the complaint is not fully attended to by the Insurer within 15 days of lodging it, he/she may use the IGMS for escalating the complaint to IRDA. For more details please visit the weblink at : <http://www.igms.irda.gov.in/>

25 years  
1983 2008  
CUTS  
International

Ministry of  
Consumer Affairs,  
Food & Public  
Distribution  
Government of India  
सत्यमेव जयते



CUTS CART



## India-Morocco to Share Expertise

India may provide expertise and best practices for effective implementation of consumer protection measures to Morocco for its recently enacted Act. This was conveyed by Minister of Food Prof. K.V.Thomas to Moroccan Minister for Foreign Trade Abdellatif Maazous during a visit of an official delegation of Morocco.

Recalling traditional relations with Morocco, Prof. Thomas said both countries can further strengthen their relations in various fields and exchange experts to train officials in the area of standardisation of products, packaging and managing the food distribution system.

Talking about the latest developments in the field of retail marketing, consumer protection and standardisation of goods in Morocco, the Moroccan Minister said that his country can provide edible oil and pulses to India. He said that both countries can share technology and expertise in related fields.

([www.indiasnews.com](http://www.indiasnews.com), 28.04.11)

## GRANIRCA Project Update

- **Partner's Orientation cum WCRD Celebration**

The event was held with all the 12 project district partners, RBI officials, local civil society organisations (CSOs), representatives from financial service providers and media at Jaipur, on March 16-17, 2011. This was followed by an orientation of project partners on forthcoming activities particularly the research survey and its methodology. Earlier, the overall performance of each partner activity wise was also discussed and elaborated at length.

On the occasion of World Consumers Rights Day (WCRD), district partners of GRANIRCA project also organised functions at their respective districts on March 15, 2011. Local authorities, elected panchayat representatives, voluntary organisations, insurance and non-banking financial representatives and common people, attended the events. As per the international agenda, theme of the meetings was "Consumers for Fair Financial Services". The celebration was widely covered by media. Complete report & media clippings can be viewed at:

[www.cuts-international.org/cart/granirca/Public\\_Event-Observe\\_World\\_Consumer\\_Rights\\_Day\\_2011.htm](http://www.cuts-international.org/cart/granirca/Public_Event-Observe_World_Consumer_Rights_Day_2011.htm)

- **Research Survey:** The draft questionnaires were field tested with the assistance of partners and the feedback incorporated and finalised. Thereafter, 200 questionnaires were printed and distributed to each district partner, along with the methodology. The survey which commenced on March 21, 2011 has been concluded and the compilation has started. In between, GRANIRCA team carried out monitoring visits for the survey work in all the 12 districts.
- **Public Interface Meetings (PIMs):** This year PIMs started in the second half of April in all the 12 districts and were attended by the GRANIRCA team. The second round of PIMs is scheduled in the last week of May before the synthesis report of all is prepared.
- **Presentation before Department of Food, Civil Supplies and Consumer Affairs:** GRANIRCA team made a power point presentation before the State Department on March 01, 2011 to showcase the past, present and future of CUTS in the area of consumer protection and was attended by senior officials of the Department including the Principal Secretary, J C Mohanty.





## Mercedes Benz penalised

**P**remier luxury car manufacturer Mercedes Benz and one of its Chennai-based dealers have been ordered by the National Consumer Commission to pay ₹2 lakh as damages to a customer for selling him a used demo car.

“Selling of used demo car without the knowledge of the customer tantamounts to an unfair trade practice within the Consumer Protection Act,” the National Consumer Disputes Redressal Commission (NCDRC) said.

“Any false representation of rebuilt, second-hand, renovated, reconditioned or old goods as new goods, for the purposes of promoting sale thereof, amounts to an unfair trade practice and the victim deserves to be compensated,” the NCDRC bench of Justice RK Batta and Member Vinay Kumar said while ordering compensation.

The NCDRC gave its ruling on a complaint by an executive of a private firm, Mukund Reddy, who purchased a Mercedes Benz car (E 250 D model) from its dealer Trans Cars India Ltd, Chennai in 1998. Shortly after purchase of the car, the buyer noticed bubbles all over the body of the vehicle and discolouration on the doors and the rear from where the paint began peeling off. The car’s music system also began to malfunction.

The buyer later learnt that it was a used car, which had met with an accident necessitating complete repairs and painting. The complainant asked the dealer and the company office in Pune, Maharashtra, to replace the car with a new one since it was a case of deficiency in service.

The Commission, however, held that “complaints in relation to the paint of the car and the music system have been appropriately attended to through repainting and replacement of the music system, without any cost to the complainant,” and so it was not a case of deficiency in service. However, the apex forum refused to order replacement of old car with a new one, observing, “It is not a case of a vehicle suffering from such manufacturing defects as would make it unusable. Admittedly, the vehicle has already been used for over 1.85 lakh kms.”

It also refused to accept the contention that since the car was sold to Reddy’s commercial firm, Techno Mukund Constructions, and has been used for commercial purpose, it did not fall under the definition of ‘consumer’ under the Consumer Protection Act (COPRA), 1986.

The bench held that the car was actually being used by the firm’s managing partner for coming and going to the workplace and not for any activity directly connected with commercial purpose of earning profit.

Holding it as a case of complainant being a victim of unfair trade practice, the apex consumer forum directed Mercedes Benz India and its dealer to pay up ₹2 lakh as compensation.

*(The Economic Times, 06.02.11)*

## Hotel punished for charging above MRP

**T**he apex consumer forum has imposed an exemplary cost of ₹1.56 lakh on a Gujarat based hotel for charging customers ₹5.5 above the Maximum Retail Price (MRP) of a soft drink.

The NCDRC imposed the cost reiterating earlier judicial rulings barring hotels and eateries from charging above the MRP. The ruling came on a petition filed by a Bharuch-based hotel *Nyay Mandir*, which challenged the Gujarat State Commission’s order to pay ₹6,000 as compensation to complainant Ishwar Lal Jinabhai Desai, who had approached the forum for having been charged ₹18 for beverage ‘Miranda’, despite its MRP being only ₹12.50.

Asking the hotel to pay ₹6,000 to the complainant, the forum ordered the hotel to pay an additional ₹1.50 lakh to the consumer welfare fund.

The hotel opposed Desai’s plea contending that it took the additional amount as service charges for various facilities accorded to its customers.

Not impressed by the hotel’s contentions, the NCDRC refused to set aside the State Commission’s award and directed it to comply with the same within two months.

“The petitioner is directed to comply with the State Commission’s order within two months from the date of receipt of the order. The revision petition is accordingly dismissed,” the Commission bench of members BNP Singh and SK Naik said.

*(The Economic Times, 27.12.10)*



## Provision of Electricity

### – Whether sale of goods or supply of service?

**Karnataka Power Transmission Corporation vs. Ashok Iron Works Pvt Ltd.  
NCDRC, February 09, 2009**

M/s Ashok Iron Works Private Limited is engaged in the manufacture of iron products. The company applied for the supply of electrical energy (2500 KVA) to the Karnataka Electricity Board (now Karnataka Power Transmission Corporation and hereinafter referred to as 'KPTC'). The application made by the company was cleared by the Single Window Agency and supply of electric energy 1500 KVA was sanctioned. The company is said to have deposited an amount of ₹8,40,000 on February 01, 1991 as per demand. KPTC did not commence supply of electricity as agreed upon and that necessitated the company to approach Karnataka High Court for a direction to KPTC to supply the sanctioned energy. On April 16, 1992, the High Court directed KPTC to supply electrical energy as per sanction forthwith and subsequently time for supply of electricity was extended by the High Court up to July 21, 1992. KPTC raised an additional demand of ₹8,38,000 from the company and a further demand in the sum of ₹1,34,000. The company is said to have deposited the said amount. However, the actual supply of the power commenced in November, 1992.



The company accordingly filed a complaint under the COPRA, 1986 before the Consumer Disputes Redressal Forum, Belgaum claiming damages of ₹99,900 for delay in supply of electricity. The complaint was contested by KPTC, and, *inter alia*, a preliminary objection was raised that complaint was not maintainable as the complainant was engaged in commercial activity and "electricity being goods"; sale of goods to a commercial consumer for a commercial purpose was outside the scope of the Act, 1986.

As there were several complaints wherein identical objection pertaining to the maintainability of such complaints was involved, all these complaints were taken up and disposed together by the District Forum by a common order dated September 10, 1993. The District Forum was persuaded by the objection raised by the KPTC and it held that the complaints were not maintainable.

The company then challenged the order of the District Forum in an appeal before Karnataka State Consumer Disputes Redressal Commission. The State Commission vide its order dated June 15, 1995 set aside the order of the District Forum and held that complaints were maintainable being covered by the definition of "Consumer" under the provisions of the Act, 1986.

KPTC challenged the order of the State Commission by filing a revision petition before the NCDRC. After hearing both parties, the Commission made the following pertinent observations: "It may be that electricity has been considered to be 'goods' but the same has to be considered having regard to the definition of 'goods' contained in clause (12) of the Article 366 of the Constitution of India".

On the other side, Section 49 of the Electricity (Supply) Act, 1948 lays down that 'Provision for the 'sale' of electricity by the board to persons other than licensees subject to the provisions of this Act and of regulations, if any made in this behalf, the board may 'supply' electricity to any person not being a licensee upon such terms and conditions as the board thinks fit and may for the purposes of such supply frame uniform tariffs. Now, whether the supply of electricity by KPTC to a consumer is sale and purchase of goods within the meaning of Section 2(1)(d)(i) of the Act, 1986?

Referring to section 49 of the Electricity Act, which speaks of supply of electricity to any person not being a licensee upon said terms and conditions as the board thinks fit and for the purpose of such supply free uniform tariffs and Commission's previous orders in this regard in Southern Petrochemical Industries case, National Commission held that supply does not mean sale. Supply of electricity by the board or for that matter KPTC to a consumer would be covered under Section 2(1)(o) of COPRA being 'service' and if the supply of electrical energy to a consumer is not provided in time as is agreed upon, then under Section (2)(1)(g), there may be a case for deficiency in service.

