

ACCOUNTABILITY OF SERVICE PROVIDERS: CONTRIBUTIONS OF CONSUMER PROTECTION LAW

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The need of accountability stems from the ideal that the institutions of public governance are the repositories of public power and public power in turn is the trust or faith of the people. Therefore, public purpose requires, public interest needs and public good demands that exercise of public power must be subjected to the benefit of the society as a whole. There is yet another dominant reason for enhancing accountability in public domain that power without liability of accountability is tyranny. It may also be added that public power is always linked with responsibility. Power without responsibility is against the norms of democracy and the rule of law ideals.

ACCOUNTABILITY IS one of the dominant requirements of the good governance movement in modern times internationally as well as nationally. Accountability means holding individuals and organisations responsible for performance measured as objectively as possible.¹ It is an obligation of the persons in power to explain publically, how they are fulfilling the responsibilities vested in them, which affect the public in their day-to-day life. The actions of these wielders of power are required to be citizen-friendly, just, fair, responsive, effective, ethical, reasonable and for progress of the society. The concept of public accountability applies equally to all levels of government, its systems and sub-systems. To make these bodies publically accountable is an important aspect of public governance in modern times. Accountability requires the authority to explain intention, performance standards and results of action taken i.e. the output and the outcome.

At national level the government is responsible for its policies, programmes and actions. However, at the local level, the focus of

¹Samuel Paul, "Strengthening Public Accountability : New Approaches and Mechanisms," Public Affairs Centre, Bangalore, 1995.

accountability shifts to specific public services and their delivery to the people. The enlarging horizon of kinds of services and its increasing complexity has overloaded the government which has made the task of ensuring accountability much more difficult. The increasing pressure and weakening accountability has given rise to downsizing of the government or what we call as the right sizing or reinventing government. Now there is entry of many private players into the service sector but still many public services and regulatory functions remain the function of the government. In relation to these public services there is need to maintain quality, standard, pricing, efficiency, effectiveness to ensure deficiency free services to consumers. In addition, to ensure public accountability of these services is one of the primary tasks to be achieved. The citizens should have right to demand better services and prevent the officials associated with these services to act in arbitrary, unreasonable and monopolistic manner. Attention has always been to hold the government as a whole accountable for its action. Much less attention has been given to the accountability of public service providers. Accountability thus is a duty both legal and moral. This duty may be enforced by internal enforcement within the system when the administrator himself or some official alongside or above him sees that he performs it duly. External enforcement may be through legislature or parliamentary control, executive control, judicial control, control by Lokpal or CVC or other such organisations or through popular control methods like criticism through press, public protests, *gheraos*, etc.²

So far as accountability through legislations is concerned, there are very few such laws, which have provisions to fix the accountability of these public service providers to their customers, clients or consumers. The accountability will improve if there are provisions providing for the review of the major programmes and policies of these agencies by high-level panels or independent commissions having persons from outside the government and their reports are widely published. These reviews should pay attention to the important aspects of service providers, like quality, performance, customer satisfaction, maintenance of standards etc. Such kind of reviews will definitely improve the standard of public service providers as these agencies will then know that they are subject to an independent and open assessment of their working and the report of assessment will be known to the customers. Besides, the law should also require the service providers to inform the people, the norms, standards

² Ved Marwah "Administration should be accountable to the voiceless majority" Lectures on Transparency and Accountability in Public Governance, IC Centre for Governance, 2005.

and conditions on which the services will be delivered which will enable the public to demand better performance and greater accountability. Merely to have such legislation won't be sufficient, the information about such laws should be disseminated amongst the people through systematic efforts and campaigns through media, newspapers and other means, which will educate and create awareness amongst the general public on these matters. The main purpose of this article is to discuss with the help of decided cases the contributions made by the Consumer Protection law and the adjudicatory authorities created there under in enhancing the requirement of public accountability of service providers be that housing, insurance, electricity, banking, transport etc.

II

Consumer Protection Act and Accountability

On April 9, 1985 the General Assembly of the United Nations passed a Resolution³ adopting a set of guidelines for consumer protection and authorised Secretary General United Nations to persuade the member countries especially the developing ones to adopt policies and laws for better protection of the interests of the consumers. India being one of the signatory to the Resolution enacted the Consumer Protection Act, (CPA), 1986 to fulfill its obligation. The Parliament enacted the legislation in December 1986, which came into force on April 15, 1987. The main objectives of the Act are to provide for better protection of the interests of the consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes. The CPA 1986 is a benevolent piece of social welfare legislation providing for simple, speedy and less expensive remedy for the redressal of consumer grievances in relation to defective goods and deficient services. Consumer Protection Act is a weapon in the hands of consumers to fight against exploitation by traders, manufacturers and sellers on one hand and providers of services on the other.

The Act provides effective, people oriented, broad based and efficient remedy to consumers against unfair dealings and exploitation. The Act applies to all goods and services whether by private, public or co-operative body unless it is especially exempted by the Central Government by a notification in the Official Gazette⁴. The Consumer Protection Act is an improvement over the other existing laws for consumer protection as it is

³ General Assembly Resolution 39/ 85

⁴ CPA Section 1(4)

compensatory in nature, where as remedies under other laws are basically punitive or preventive in nature and are designed to provide relief only in specific situations. The CPA extends to whole of India except the State of J&K, which has its own Consumer Protection Act. The remedy under CPA is in addition to and not in derogation of provisions of any other law for the time being in force.⁵ The Act gives statutory recognition to six consumer rights, which are right to safety, right to information, right to choose, right to be heard, right to seek redressal and right to consumer education. The Act postulates establishment of advisory and adjudicatory bodies to safeguard the interests of consumers. The Advisory structure is in the form of Consumer Protection Councils at Centre, State and District levels. The composition of these consumer councils is very broad. Central Council is headed by Minister in charge of Consumer Affairs at Centre, State Council by Minister in charge of Consumer Affairs at State and District Council by the Collector of the District. Besides this there are other official and non-official members of these bodies. These Councils are constituted on public-private partnership basis. The purpose of these bodies is to review the consumer related policies of the government and suggest measures for further improvements.

The Act also provides for quasi-judicial adjudicatory machinery at three levels i.e., District, State and National levels called District Forum, State Consumer Disputes Redressal Commission and National Consumer Disputes Redressal Commission. At present there are 589 District Fora, 35 State Commissions and apex body the National Commission. The District Forum is presided by a person who is or qualified to be District Judge. Besides President there are two other members, one member is woman. The State Commission is presided over by a sitting or retired High Court Judge and the National Commission by a sitting or retired Supreme Court Judge. The pecuniary jurisdiction for these bodies has been prescribed under the Act. The District Forum can adjudicate on matters, where the value of claim is upto rupees 20 lakh, the State Commission where value of claim is more than 20 lakh but upto rupee one crore and the National Commission where the claim is over one crore. These adjudicatory bodies are quasi-judicial bodies and are regulated according to the principles of natural justice. They are required to decide complaint within a period of three months from the date of notice where no testing is required and within a period of five months where testing is required.

The term 'consumer' is the basic foundation of the Act. It simply implies one who consumes. As the Act deals with twin concepts of defect in

⁵ *Ibid* Section 3

goods and deficiency in services, it provides for a comprehensive definition of consumer in Section 2(1)(d) in relation to goods and services. Thus, the consumer is a person who buys any goods or hires or avails of any services for consideration. Further user of such goods, with the approval of the buyer and any beneficiary of such services with the approval of the hirer have also been included within the ambit of the concept of consumer, enlarging its scope to a great extent. The consideration for goods or services can either be paid or promised or partly paid or partly promised or covered under any system of deferred payment. However, a person, who, in case of goods obtains such goods for resale or for any commercial purpose or who, in case of service(s), avails of such services, for any commercial purpose is excluded from the definition of consumer. The explanation attached to the section states, that the expression commercial purpose does not include use by buyer of such goods or hirer of service(s), exclusively for the purpose of earning his livelihood by means of self-employment.

III

Service Under the Consumer Protection Act

The expression service has been defined in the Act.⁶ Service means service of any description which is made available to potential user and includes but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service. The definition of service, as stated above, may be divided in three parts: (i) inclusive (ii) illustrative and (iii) exclusionary. The deficiency in service is one of the grounds for filing complaint under the Act and at present majority of complaints before these adjudicatory bodies relate to the deficiency in service of various service providers. The term 'deficiency' has also been defined in Section 2(1)(g) of the Act. It means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under 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 service.

What follows next is the narration of instances of deficiencies in the light of judicial pronouncements from different services *viz*; banking, transport, education and housing as an illustration. Even the cases discussed

⁶ *Ibid* Section 2(1)(o)

in respect of these services are only illustrative to highlight the problems of consumers of these services on one hand and the need of accountability for better services on the other hand. Be it as it may.

Before giving illustrations from different service sectors, it would be appropriate to highlight the observation of the apex court in *Lucknow Development Authority v. M. K. Gupta*⁷ regarding inclusion of statutory authorities for any deficiency in respect of services provided by them under the Consumer Protection Act. The Supreme Court in the instant case observed, "In absence of any indication, express or implied, there is no reason to hold that the authorities created by the statute are beyond the purview of the Act. When banks advance loan or accept deposit or provide facility of locker they undoubtedly render service. A State bank or nationalised bank renders as much service as private bank. No distinction can be drawn in private and public transport or insurance company. Even the supply of electricity or gas, which throughout the country is being made, mainly, by statutory authorities is included in it."

It was further stated, "A government or semi-government body or a local authority is as much amenable to the Act as any other private body rendering similar service." In addition it was underlined, "It would be a service to the society if such bodies instead of claiming exclusion subject themselves to the Act and let their acts and omissions be scrutinised as public accountability is necessary for healthy growth of the society." It would be instructive to mention that the Supreme Court while discussing accountability of public authorities for their arbitrary and even *ultra vires* actions has taken note of emerging aspects of public accountability as a concept. It has been emphasised that the state is liable to compensate for loss or injury suffered by a citizen due to arbitrary actions of its employees. It should be remembered that the law has always maintained the public authorities who are entrusted with the statutory functions can not act negligently. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour. These observations are approved with appreciation in *Ghaziabad Development Authority v. Balbir Singh*⁸.

BANKING SERVICES

Deficiency in banking service may arise when there is a case of defective draft, failure to honour its guarantee, refusal to honour draft, cancellation

⁷ (1994) 1 SCC 243

⁸ 2004 AIR SCW 2362

of credit card and similar situations as discussed below:

(i) **Defective Bank draft:** The Bank prepared a bank draft on commission from the complainant. However, the draft was dishonoured on the ground 'authorised signatory's signature required'. Though later the invalid draft was corrected and reissued but the complainant suffered huge loss as the foreign company cancelled further orders to the complainant. The National Commission held that the bank was negligent and there was deficiency in service on the part of the bank and directed it to pay rupee two lakh as compensation at 12 per cent interest to the respondent.⁹

(ii) **Bank Guarantee:** An order was placed with the complainant for supply of the machinery and accessories. To secure the payment of machinery and accessories the company had provided an irrevocable bank guarantee in favour of the complainant by the opposite party- the bank. However, the bank failed to honour the guarantee when the contracting company failed to pay the instalments on the pretext that permission of RBI had to be received before releasing bank guarantee. The National Commission held that failure to honour bank guarantee as soon as demand was made was deficiency in service.¹⁰

(iii) **Refusal to honour bank guarantee:** The bank guarantee was duly executed by the bank Manager. Refusal of the bank to honour the bank guarantee on the plea that the Manager who had executed the bank guarantee, had played fraud on the bank was held to be deficiency in service on the part of the bank by the National Commission as the acts done by the Manager in due course of his employment would bind the bank.¹¹

(iv) **Cancellation of Credit Card:** Cancellation of Credit Card without notice causing loss of reputation to the complainant was held to be deficiency in service by the National Commission.¹²

(v) **Delay in honouring the bank draft:** Where the bank had taken unduly long time to honour the draft for two reasons that signatures were not in record and signature did not tally, the National Commission held the bank guilty of negligence for taking unduly long time to honour the drafts and the bank was directed to pay compensation.¹³

⁹ *Standard Chartered Grindlay Bank Ltd. v. H.B. Impex Private Ltd.*, F.A. No. 63 of 2001 dated 13.2.2001.

¹⁰ *Z. Babelloni Singapore Pvt. Ltd. v. Central Bank of India*, O.P. No. 164 of 1998 decided 25.10.2004

¹¹ *Andhra Bank v. Viswapriya Financial Services and Securities Ltd.* III (2002) CPJ 21(NC)

¹² *Bob Card Ltd. v. Surjit Singh Sood IV* (2003) CPJ 135 (NC)

¹³ *Tata Nagar Cold Storage Co. Pvt. Ltd. v. UCO Bank II* (2004) CPJ 13 (NC)

(vi) Failure to issue duplicate drafts: In course of business complainant received two demand drafts payable in favour of the complainant. They were crossed and endorsed account payee. The drafts were lost while the representative of the company was travelling by train. The bank was informed about the loss and requested to issue duplicate drafts. However, the bank unreasonably insisted on complainant to deposit 25 per cent of the amount of drafts as marginal money in the form of fixed deposit. The National Commission allowed the complaint holding that bank had unreasonably delayed the issuance of demand drafts by imposing unreasonable condition, as bank was not entitled under its rules to ask for deposit of 25 per cent of the amount as fixed deposit. As during the course of proceedings duplicate drafts were issued, the National Commission directed the Bank to pay Rs. 50,000 as compensation, 15 per cent being the interest on the amounts of drafts for the period for delay.¹⁴

(vii) Cheque dishonoured: When the cheque was dishonoured despite sufficient funds in the account of the complainant on the plea “exceeds arrangement” and the complainant was told that his account had become irregular, as the stock statement was not received for the month of October. The complainant alleged deficiency in service on the part of the bank, as his cheque was dishonoured inspite of sufficient funds in his account. The District Forum allowed complaint and the State Commission upheld the order of the District Forum. The National Commission also upheld the order of lower fora.¹⁵

(viii) Sale of the pledged article without Notice: The complainant had pledged fixed deposited receipts against the loan by the Bank. Following default, the bank proceeded to sell the pledged goods without giving any notice to the complainant and adjusted it against the dues of the complainant. The National Commission holding the bank responsible for deficiency in service held that before putting the pledged goods to sale the bank should have given reasonable notice to the debtor/pledgee and failure to do so was breach of mandatory provision of Section 178 to Indian Contract Act, 1872.¹⁶

(ix) Permitting unauthorised third party to operate accounts: The National Commission held the bank deficient in services in permitting third party to withdraw amount from account of complainant when no written authorisation was given to bank by complainant to allow the third party to operate the account. The Commission also held that mere possession of some power of attorney by the third party was not sufficient when the

¹⁴ *Soya Udyog Limited v. State Bank of India*, 1995 (1) CPR 336 (NC)

¹⁵ *Punjab National Bank v. Goyal Traders II* (2003) CPJ 119 (NC)

¹⁶ *Manager, Karnataka Bank Ltd. v. Puttamade Gowda* 2002 (3) CPR 36(NC)

chequebooks issued in respect of the account were in possession of the complainant.¹⁷

(x) **Deficiency in locker services:** Complainant hired a safe deposit vault No.A-31 in the Bank of India in 1966. He paid the annual rent regularly and in time. But he very infrequently used the locker. On June 6, 2001 when he went to his locker with bank officials there was a sticker on the door of the locker "A-31 deceased". He enquired from the bank as to how that sticker announcing his death was placed on the door. But there was no satisfactory explanation by the bank. On this he insisted to see the entries in Locker Access Register, which was denied by the Bank on the ground that the register was a confidential document. Aggrieved, he filed a complaint in the District Forum, which allowed the complaint holding bank guilty of negligence and awarded compensation of Rs. 25,000 with cost of Rs. 2,500. But the State Commission in appeal held as there was no tampering with the locker hence no deficiency in service. However, the National Commission in revision reversing the order of the State Commission allowed the complaint and held that the complainant should be permitted to examine the register as far as his locker was concerned. The bank was guilty of deficiency in service and should pay Rs. 5,000 as compensation.¹⁸

TRANSPORT SERVICES

(i) **Death due to negligence of airport staff:** Complainant's 7½ year old child was trapped in the escalator at the airport premises and was crushed to death. The high-level enquiry committee appointed by the Airport Authority also held the Airport Authority guilty of deficiency in maintaining and supervising the escalator. The National Commission held that it was duty of the Airport Authorities to maintain the escalator in proper conditions and failure of the opposite party to direct and train staff at the escalator to switch off the escalator in case of calamity was deficiency in service on the part of authority. Awarding the damages under the Carriage by Air Act, the National Commission directed the opposite party to pay 2.50 lakh French Franks or its equivalent in rupees with interest @ 10 per cent p.a. from January 2000 till date of payment.¹⁹

(ii) **Tickets through travel agent:** The complainant booked air tickets through Continental Travel Service (Delhi) Pvt. Ltd., an agent of Indian Airlines. The travel agent issued confirmed tickets from Lucknow to Delhi

¹⁷ *State Bank of India v. Frennie Fitter III* (1994) CPJ 117 (NC)

¹⁸ *A.S. Arunachalam v. Chief Manager, State Bank of India*, 2004 (3) CPR 128 (NC)

¹⁹ *Geeta Jethani & Ors. v. Airport Authority of India & Ors.* 2004 (3) CPR 61(NC)

to the complainant for the day when there was no flight. In the appeal by the Indian Airlines the airlines took the plea that they were not responsible for the act of the agent. The National Commission holding the airlines responsible held that no statutory provision had been shown under which Indian Airlines could be absolved of its responsibility for the acts of its agents while acting within its authority. The National Commission held the Airlines liable as the principal for services rendered by the agent. It was a clear case of deficiency in service.²⁰

(iii) Boarding denied on confirmed ticket: The complainant had a confirmed ticket still he was denied boarding. As a result he had to miss an important meeting. Because of this the complainant's business was adversely affected and he also suffered monetary loss. For all this the complainant claimed a compensation of Rs. 60 lakh. The National Commission held the airlines responsible for deficiency in service and on the basis of the letter produced by the complainant to prove the loss of contract directed the Air India to pay Rs. 15,000 with interest @ 12 per cent p.a. till payment to complainant with cost assessed at Rs.5000.²¹

(iv) Cancellation of flight without notice: The complainant had to board flight scheduled to leave New Delhi for Kulu at 13:15 hrs. But he could not do so as it left earlier at 12.00 hrs. The return flight from Kulu was also cancelled without notice of cancellation. The National Commission held that cancellation of flight without notice to the complainant and refusal of the airlines to return the ticket's amount was deficiency in service on the part of Airlines. The Commission upheld the order of lower forums awarding compensation of Rs. 20,000 with costs of Rs. 2000 to the complainant for the deficiency on the part of Airlines.²²

(v) Loss of Consignment: The complainant entrusted Air India a consignment packed in 12 cartons for transportation to Mauritius. Eight out of 12 packages were found missing. The complainant filed a complaint before the National Commission alleging deficiency in service for the loss of packages. The National Commission held that it was a clear case of negligence and deficiency in service in failure to protect the consignment in the custody of the airlines.²³

RAILWAY SERVICES

The railway is the biggest service provider for transporting people and

²⁰ *Indian Airlines, Delhi & Ors. v. S.N. Seth & ors* decided on 17.9.1997

²¹ *Rajinder Pal Jaura (NRI) v. Secretary, Union of India* 2003(1) CPR 24

²² *Express Travels v. M.R.Shah III* (2002) CPJ 39 (NC)

²³ *Shobha Global v. Air India II* (1995) CPJ 158(NC)

goods. It is one of the sectors in which the government has complete monopoly. The services provided by the railways in case of deficiencies are also agitated before consumer forums. Some of the deficiencies, which give rise to complaints, are provided as illustrations below.

(i) **Loss of Valuables:** Failure to block entry of unauthorised person and offer assistance in case of emergencies has been held to be deficiency in service on the part of the railways. The complainant was travelling by first class from Nagpur, carrying valuables worth Rs. 1,11,756 in a briefcase which included gold, diamond, silver and pearl jewellery. During her journey some unauthorised passengers entered the compartment, assaulted her and took away the valuables forcibly. She filed a complaint for compensation. The State Commission allowed the complaint, which was reversed by the National Commission. The Supreme Court however set aside the order of the National Commission and held the railways responsible for negligence, as there was breach of common law duty of reasonable care, which lies on all carriers including railways. The railway was directed to pay sum of Rs.1, 41,756 along with the costs of Rs.5, 000.²⁴

In *General Manager, Southern Railway v. Mrs. A Shameem*²⁵ there was loss of luggage from the reserved compartment of the train. The complainant had also informed the TTE about ticketless passengers barging into their compartment, which was ignored and no action was taken. The National Commission in revision upholding the order of lower fora held that the railways was responsible to take care for and to protect passengers in reserved compartments and TTE ignoring the ticketless passengers barging into the reserved compartments was clear case of negligence and deficiency in service. Similarly, where the suitcase was stolen from reserved compartment and the train could not be stopped as the alarm chain was not working, the railways was held to be guilty of deficiency in service and the National Commission upheld the compensation of Rs. 12, 400 granted by the State Commission.²⁶

(ii) **Cancelled train:** The railways issued the confirmed ticket on August 21, 1999 from Rajapura junction to Lucknow for the complainant and his pregnant wife when the trains were cancelled with effect from 4.7.1999. The National Commission held that to issue confirmed tickets when the

²⁴*Sumathi Devi M. Dhanwaty v. Union of India* II (2004) CPJ 27(SC)

²⁵ I (2004) CPJ 40(NC)

²⁶*General Manager Northern Railways & Anr. v. Amarnath Agarwal* II (2003) CPJ 54- where the gold chain was snatched from the complainant while travelling in reserved compartment. *G.M. South Central Railway v. Dr. R.V. Kumar*, R.P. No.2154 of 2004, decided on 4.1.2005- Loss of Suitcases of the complainants while travelling by Madras – Hyderabad Express in reserved compartment.

trains were already cancelled was clear case of deficiency in service. It further held that it was duty of Railways to publish information with regard to the cancelled trains. The National Commission also observed that *public utility services like Railways having complete monopoly, passengers at large should not be taken for granted and the authorities should not expect them to run helter-skelter for getting information.*²⁷

(iii) Failure of Railways to provide basic amenities in the compartments: Non-availability of water in the toilets of the reserved compartments due to broken pipes and nothing was done to rectify the broken pipes inspite of repeated complaints. It was held to be negligence and deficiency in service on the part of railways.²⁸ Similarly, where a retired judge of Patna High Court travelling along with his wife in First Class compartment on Hatia Patna Express had to suffer inconvenience as the fans in the compartment were not working and no action was taken to repair the fans though complaints were made. The iron shutters of windows were not functioning; the glass shutters could not be used as the glasses were missing. Besides this rexin of the upper berth was badly torn and two rusty nails were exposed which caused injury to the second complainant for which she had to undergo treatment. For these deficiencies in service due to which the complainant had to suffer inconvenience and injury, compensation was granted by the National Commission.²⁹

(iv) Failure to provide berth: The complainants were travelling on reserved tickets, but their berths were occupied by unauthorised persons, the railways was held responsible for deficiency in service and compensation was awarded.³⁰

ELECTRICITY SERVICES

Privatisation of electricity services has been introduced but it is the State Electricity Boards (SEBs), which are mainly responsible for the generation, transmission, supply and distribution of power. The quasi-judicial bodies under the CPA have come to the rescue of the harassed electricity consumers, provided relief to them in complaints relating to delay in giving power connection, defective meters, wrong billing, damage due to electrocution, short circuiting, voltage fluctuation etc. Both urban and rural consumers have been benefited by the provisions of the CPA. The SEBs

²⁷ *Railway Board & others v. Amrit Pal Singh R.P.No. 1700 of 2002* – decided on 13.4.2004

²⁸ *South Eastern Railway v. Yeshwant Tiwari* 2003 (2) CPR 12 (NC)

²⁹ *General Manager, South Eastern Railways v. Anand Prasad Sinha*, I (1991) CPJ 10 (NC)

³⁰ *Union of India v. K.K. Shukla III* (2002) CPJ 191(NC)

have been taken to task and to a great extent public accountability has been established amongst the officials of these bodies through the provisions of the CPA.

It has been seen that power connection is granted, the required amount is deposited still the consumer is not provided with the connection. He is made to run from pillar to post, from one desk to another approaching officials at every level to get the connection. Rectification of defects is another grey area. The lines are not properly maintained which results in defects. Then these defects are not rectified and connections are not restored as a result consumers are to go without power, in some cases the breakdowns are for days together. The plea in defence by the electricity departments is "undetectable and invisible technical fault". Meter, the instrument meant to show the consumption has also caused a lot of inconvenience to the consumers. It is the duty of SEBs to prepare bill as per the billing period but inflated bills with arrears are raised after years. Many complaints relating to these problems have been brought before Forums/Commissions under CPA and reliefs have been given to the consumers. Some instances of deficiency in services are provided below.

(i) **Delay in giving electricity connection:** The complainant applied for electricity connection for agricultural purposes and deposited the required amount but the connection was not given even after expiry of three to five years. The National Commission directed the PSEB to grant the connection as per the seniority list maintained and also granted interest @ 12 per cent p.a. on amount deposited and compensation of Rs. 10,000 for loss and harassment suffered.³¹ Similarly in *Assistant Engineer, Jaipur Vidyut Vitran Nigam v. Bodan Ram*,³² the National Commission upheld the order of the District Forum holding the opposite parties deficient in providing services when there was delay in giving electric connection applied by the complainant inspite of depositing the requisite amount and that the opposite parties should pay by way of compensation Rs.100 per day in case of default in compliance and Rs. 500 as costs.

(ii) **Loss due to electricity:** There have been cases though few where there has been loss due to current fluctuation leading to fire and damage to household goods, cattle, crop, to the items in shops or losses due to electrocution for which reliefs have been granted.

In *Haryana State Electricity Board v. Anand Medicos*³³ fire broke out in the complainant's chemist shop due to short circuit caused by huge

³¹ *Punjab State Electricity Board v. Zora Singh III* (2003) CPJ 169(NC)

³² IV (2003) CPJ 101(NC)

³³ III (2003) CPJ 175 (NC)

fluctuation of electric current. The State Commission holding it a case of deficiency in service, directed HSEB to pay the loss with interest @ 12 per cent p.a. from the date of fire which was upheld by the National Commission. In *Karnataka Electricity Board v. Smt. Sharavva*³⁴ there was death of husband of the complainant on coming in contact with the wire snapped from electric pole supplying electricity to the pump set of the deceased. Lower fora awarded compensation holding it a clear case of deficiency in service on part of the Board, which was upheld by the National Commission.

(iii) Rectification of defect: The three-phase electricity connection was required to run the complainant's unit. There was a power breakdown, which was restored the next day, but only in two phases inadequate to run the unit. It took a long period of 52 days to restore the power supply in the third phase. It was held to be a case of deficiency in service. The defence of 'undetectable and invisible technical difficulty' was rejected and department was directed to pay compensation of Rs. 4, 71,500 along with interest @ 10 per cent p.a. from the date of filing complaint along with cost of Rs. 20, 000.³⁵ The supply to agricultural fields of the complainant was disrupted due to fall of electric pole due to which the complainant suffered losses. The lower fora holding the opposite party responsible for maintenance and repairs allowed the complaint of deficiency in service and granted compensation, which was upheld by the National Commission.³⁶

In *Uttaranchal Power Corporation Ltd. v. Heera Ballabh Pant*³⁷ the complainant had got electric connection to his shop disconnected earlier. He applied for restoration of the same and deposited the requisite fee. He applied for 4HP in all-3HP for running factory and 1 HP for light and fan. He installed the machinery by taking bank loan but connection was not restored. As a result, the complainant suffered a loss of rupees one lakh. The National Commission observed that the board was deficient in rendering services and the compensation awarded by the lower fora was upheld as just and reasonable.

(iv) Defective Meter: The complainant informed the opposite party about the defective meter but no action was taken. Instead in the meanwhile excessive bill for 26 months was raised for excessive consumption by the complainant. The National Commission in the case reaffirmed the orders of lower fora which finding the bills excessive, directed the electricity board to make fresh calculation on the basis of six month average reading of the

³⁴ III (2002) CPJ 269 (NC)

³⁵ *Shree Kumar Textile Pvt. Ltd. v. Tamil Nadu Electricity Board*, III (2004) CPJ 23 (NC)

³⁶ *Kamla Prasad Tiwari v. Junior Engineer IV* (2003) CPJ 108 (NC)

³⁷ III (2004) CPJ 73 (NC)

new meter installed.³⁸ A new meter was installed at complainant's premises by the electricity board. But the board failed to check the meter at the time of installation as required by the rules. Later on arbitrary and inflated bills were sent. The High Court in writ petition stayed the recovery and directed the Electrical Inspector to adjudicate upon the dispute. But the directions of the High Court were not complied with. The defective meter was later burnt and the board disconnected the electric supply. In the instant case the National Commission, directed the board to install new meter and revise the inflated bills and issue fresh bills on the basis of the average meter readings prior to change of the meter.³⁹

(v) **Arbitrary Disconnection:** Complainant's factory was having three electricity connections. One of the meters went out of order and the Board did not replace it. The complainant diverted the electric supply to that meter through other meter. On this the Board imposed penalty for resale of electricity and disconnected supply. Directions were issued by appellate authority of the board to club connections and imposed clubbing charges retrospectively. The National Commission observed that it was clear that the imposition of clubbing charges retrospectively was bad and the disconnection was also not in line with the instruction issued by the Board and, therefore, the finding of the State Commission on these points were upheld. The National Commission upheld the order of the State Commission, which held the disconnection and imposition of clubbing charges retrospectively to be bad and awarded Rs. 40, 000 as compensation for the loss and Rs. 5, 000 as costs.⁴⁰

(vi) **Failure to convert Tariff Charges:** Complainant had a domestic connection under tariff plan-I. He rented his premises. The tenant wanted to use the premises for commercial purposes. The complainant got the tariff plan changed from tariff I to tariff IX. But he inadvertently missed to pay the required development charges for conversion. Later when tenant left he wanted to reconvert to tariff I, which was denied by the board, as he had not paid the development charges earlier at the time of conversion. The National Commission held that though the complainant was bound to pay development charges for earlier conversion from domestic to commercial but that could not be a ground to deny conversion on his request from commercial to domestic and tariff plan from tariff IX – tariff I. The refusal to change tariff from IX-I was deficiency in service on the part of the Board.⁴¹

³⁸ *Secretary, Kerala State Electricity Board v. Hotel Maria I* (2003) CPJ 101(NC)

³⁹ *Kailash Narain Khanna v. U.P. State Electricity Board* 1996(3) CPR 47(NC)

⁴⁰ *Haryana State Electricity Board v. Jai Forging and Stampings Ltd., II* (1996) CPJ 148(NC)

⁴¹ *S. Kulandairajan v. Junior Engineer, Rural/North, Tamil Nadu Electricity Board & Anr.* III (2002) CPJ 51 (NC)

EDUCATIONAL SERVICES

With mushrooming of educational institutions, education is no more a social service. It has now become a business and yet another source of profit earning and unauthorised enrichment. In *Bhupesh Khurana v. Vishwa Buddha Parishad*,⁴² it has been held by the National Commission that education falls within definition of service. Though the teaching standards of the teaching fraternity still can not be challenged in consumer courts but there are certain aspects of education like misrepresentation regarding affiliation, inadequate facilities at the educational institutions, unfair trade practice by the educational institutions, delay in publication of results etc. which fall within the purview of the CPA. Thus the determination of education as service depends on marketability of service – educational field for the public interest is excluded, only the services for benefit of individuals for consideration are within the CPA.

(i) **Misrepresentation:** In the advertisements of the college and its prospectus it was mentioned that the dental college was affiliated to the Magadh University and was recognised by the Dental Council of India. On the basis of these representations the student took admission in the college, but these were found to be false. The complainant asked for refund of fee and compensation. The National Commission held that education falls within definition of service and misrepresentation by the college would amount to unfair trade practice. There was deficiency on the part of the college for which the complainant was entitled to compensation.⁴³

(ii) **Non-issue of provisional degree:** The complainant studied three year LL.B course and successfully passed all the three year examinations conducted by the university. But when university was requested to issue certificate for LL.B degree, the University informed him that he did not possess the recognised qualifying degree for LL.B Course. The National Commission held that imparting education by the educational institution for fee was service for consideration and was within ambit of service under CPA and non-issuance of provisional degree was deficiency in service on the part of the university.⁴⁴

(iii) **Non-supply of Roll Number:** In *Controller of Examination, H. P. University v. Sanjay Kumar*⁴⁵ non supply of Roll Number to the

⁴² II (2001) CPJ 74(NC)

⁴³ *Bhupesh Khurana v. Vishwa Buddha Parishad II* (2001) CPJ 74 (NC)

⁴⁴ *Sreedharan Nair N. v. Registrar, University of Kerala* 2001(3) CPR 27(NC)

⁴⁵ 2003 CTJ 773 (NC)

complainant to enable him to write the paper was held to be a case of deficiency in service.

HOUSING SERVICES

In view of the growing urbanisation, housing sector is the root cause of many problems posing challenges to the urban planners and city managers. Even after entry of the private builders in the housing industry the Housing Boards and Development Authorities still remain to be the biggest land developers. As far as their services are concerned there can be deficiencies at various stages. These may relate to delay in delivery of possession of plot or flat, cancellation of allotment, allotment of non-existent site, allotment of alternative plot, plots sold without layout plan, cancellation of scheme, lack of infrastructure facilities, defects in construction etc.

(i) Delay in delivery of possession: A plot was allotted to the complainant by the Development Authority. In pursuance the complainant paid substantial amounts but the possession was not given to the complainant. A complaint for deficiency in service was filed before the District Forum, which was allowed and authority was directed to pay interest @15 per cent p.a. on the deposited amount from the date of allotment till the offer of possession. This order of District Forum was upheld upto the level of the Supreme Court.⁴⁶

(ii) Cancellation of allotment: Similarly, where the plot was encroached and therefore, the complainant did not pay the balance amount. The allotment was cancelled by the Development Authority. The District Forum held that as the plot was encroached upon, it was not free from defects, so the cancellation should not have been effected. The Supreme Court in the matter directed the authority to pay interest @15 per cent from the date of deposit till the date of repayment as compensation and also imposed a cost of Rs. 15,000 for dragging the complainant from the District Forum to the Supreme Court.⁴⁷

(iii) Allotment of alternative plot: The complainant applied for a plot in 1983, made full payment but the plot was not allotted to him. He filed a complaint before the State Commission, which was allowed. In appeal the National Commission agreeing to the offer to allot alternative site made by the Development Authority directed it to allot and also to pay interest @ 18 per cent p.a. on the deposited amount from 1.7.1986.⁴⁸

⁴⁶ *Haryana Urban Development Authority v. Shanthi Devi I* (2005) CPJ 6(SC)

⁴⁷ *Haryana Urban Development Authority v. A.K. Pampal III* (2004) CPJ 4(SC)

⁴⁸ *Vishnu Kumar Bhargava v. The Chairman, LDA* 2002(3) CPR 59(NC)

(iv) Demand for higher price on allotment of alternative site: The complainant was allotted a plot, however, there was enormous delay in handing over the possession of the plot by the Development Authority. Then the authority agreed to allot alternative plot but demanded higher price. In this the National Commission, held that when without any fault of the allottee, he was allotted some other plot in the same or any other sector he cannot be asked to pay any additional price over and above the original price.⁴⁹

(v) Incomplete project: The Development Authority launched a housing project through media. The complainant applied for a house by depositing Rs.3,000 in 1989. The authority was unable to complete the project and had to refund the money in 1996. The National Commission confirming the order of lower fora, upheld the payment of interest @ 18 per cent on the amount deposited after two years of deposit till payment against the claim of compensation by the complainant.⁵⁰ Recently in *Chandigarh Housing Board v. Surinder Pal*,⁵¹ the National Commission has held that where there is cancellation of plots because of cancellation of scheme, the allottee would be entitled to interest on the amount at the time of refund of the said amount by the Development Authority.

(vi) Defects in construction: Complainant purchased a flat on full payment, which remained vacant for three years. On occupancy several defects were noticed in the flat like cracks in the walls and the mosaic floor had sunk from ½” to 3 ½”. Opposite party’s Engineer inspected the flat and on meeting with office bearers of the association a resolution was passed that the defects would be rectified. But no steps were taken by the Board to rectify those defects. The complaint was dismissed by the District Forum and the State Commission in appeal upheld the order of the District Forum. The National Commission in revision reversing the order of lower fora held that the Board being a legal person acts through its officials and was bound by the decisions of its officials. The National Commission directed the Board to pay Rs. 25,000 to the complainant within a period of three months from the receipt of the order.⁵²

(vii) Failure to provide basic amenities: It is the duty of the developer to provide basic amenities like water, sewage, electricity, roads in the colony developed by it. Lack of any of these infrastructure facilities is a deficiency

⁴⁹ *Haryana Urban Development Authority through executive officer HUDA Gurgaon v. R.P. Chawla*, 2001(3) CPR 151(NC)

⁵⁰ *Punjab Urban Development Authority v. Shri Inder Pal Singh*, II (2002) CPJ 113(NC)

⁵¹ IV (2004) CPJ 47 (NC)

⁵² *Prof. R. Shanmugasundaram v. Tamil Nadu Housing Board* 1997(2) CPR 299 (NC); I(1998)CPJ 96(NC)

in service.⁵³ Merely putting a clause in the brochure that the plot would have to be accepted on “as is where is basis” would not absolve the duty of the developer to provide infrastructure facilities and cannot be construed as wiping out the assurance given in prospectus of developed residential plot with basic amenities.⁵⁴

CONCLUDING REMARKS

Foregoing discussion on the contributions of the Consumer Protection Law and its operations in relation to the accountability of service providers to their consumers reveal that through efficient and effective implementation of the consumer law the quality of services affecting the consumers’ rights and interests may be improved to a considerable extent. In this way, the concern of the good governance movement in enhancing the accountability of public service providers can be guaranteed. It is true that the improvements in service delivery sector will no doubt have direct impact on the quality of better life. This may in turn result in emergence of the better society for tomorrow. A society which is responsible, caring and accountable will certainly be considered a better place to live in. Therefore, the need of accountability of service providers, be they in public sector, private sector or co-operative sector, should not be overemphasised. One may like to add finally that the accountability, *inter-alia*, is the soul of good governance and the absence of it is the sign of bad governance. What is therefore, recommended here as the outcome of the above exercise on the first place is that the *Lucknow Development Authority*⁵⁵ judgment of the Supreme Court must be made a compulsory reading to all service providers as one of the measures to enhance public accountability with a view to infuse excellence in public service delivery system in the interest of value for money and better protection of consumers’ rights and interests.

⁵³ *Leelawati v. Dr. Sukhmal Jain* III (2003) CPJ 90 (NC), *Dr. P.V. Asha Bai v. K.N.W. Builders I* (1997) CPJ 630(NC)

⁵⁴*Lt. Col. Yogesh (Retd.) v. Hyderabad Urban Development Authority II* (1995) CPJ 202(NC)

⁵⁵ *Supra* n. 7 at p. 6