

Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

"An aware consumer is an asset to the nation"

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Queries & Answers through the Web

(www.advantageconsumer.com) is the website of Consumer Protection Council, Rourkela. One of the major attractions of the website is that a visitor can ask queries on issues relating to consumer protection. Answers to these queries are made free of cost, by the Chief Mentor of the Council, Sri B. Vaidyanathan.)

Continued from October 2025 issue.....

There is nothing unconstitutional about Sec. 34, 47 and 58 of the Consumer Protection Act, 2019, which have qualitatively changed the pecuniary jurisdiction of the Consumer Courts.

IN THE SUPREME COURT OF INDIA

WRIT PETITION (CIVIL) NO. 282 OF 2021

RUTU MIHIR PANCHAL & ORS. ...PETITIONER(S)

VERSUS

UNION OF INDIA & ORS. ...RESPONDENT(S)

WITH

CIVIL APPEAL NO. OF 2025

ARISING OUT OF SLP (C) No. 1738 OF 2022

J U D G M E N T

PAMIDIGHANTAM SRI NARASIMHA, J.

In conclusion, while we hold that there is no unrestricted claim for compensation and that it is subject to the determination of the court, we hold that classification of claims based on value of goods and services paid as consideration has a direct nexus to the object of creating a hierarchical structure of judicial remedies through tribunals.

12. Re: Performance Audit of the Statute: In the written submissions, Ltd. Counsel for the petitioner has brought to our notice a decision of the national commission in the case of *M/s Pyaridevi Chabiraj Steel Pvt. Ltd. v. National Insurance Company Ltd. & Ors.*

6. ...He further submitted that a liberal view should be taken as if "the word value of consideration paid" is taken to be the amount paid for the purchase of goods or services by a Consumer then even though Insurance Policy taken by the Consumer be above 10,00,00,000/-(Rupees Ten crore), factually there will be no instance of making payment by any Consumer premium of more than 10,00,00,000/-(Rupees Ten crore) and if such a strict view is taken then the claims regarding Insurance will have to be necessarily filed either before the District Consumer Disputes Redressal Commission or before the State Consumer Disputes Redressal Commission and not before the National Consumer Disputes Redressal Commission, which will create great hardship to such Consumers."

(emphasis supplied)

12.1 Apart from the observation made by the national commission, the Ld. Counsel for the petitioners has submitted that wherever value of goods and services paid as consideration is upto Rs. One Crore, a consumer has to necessarily approach a district commission. Taking the example of insurance claims, it is submitted that only in rare cases the insurance premium would exceed Rs. One Crore and as such the entirety of claims based on deficiency of service by insurance company will be restricted to district commission. The scheme under 2019 Act, it is submitted, has become lopsided and has impaired the original jurisdiction of the state and national commissions.

12.2 This argument is not based on any illegality, much less on legislative incompetency or ultra vires to Constitution. The soundness of this submission will depend on the working of the statute and the data that may be available for assessing its impact. Its implementation and consequences have to be closely examined, analysed and impact assessed.

12.3 A proper appreciation of this issue would depend on performance audit of the 2019 Act. The need for performance audit of a statute was considered by this Court in the case *Yash Developers v. Harihar Krupa Co-operative Housing Society Ltd. & Ors.* wherein it was held that assessing the working of the statute to realise if its purpose and objective are being achieved or not is the implied duty of the executive government. Reviewing and assessing the implementation of a statute is an integral part of Rule of Law. It is in recognition of this obligation of the executive government that the constitutional courts have directed governments to carry performance audit of statutes.

12.4 Four aspects for achieving justice are well founded and articulated as, i) distribution of advantages and disadvantages of society, ii) curbing the abuse of power and liberty, iii) deciding disputes and, iv) adapting to change. Adapting to change is important for achieving justice, as failure to adapt produces injustice and is, in a sense, an abuse of power. Thus, failure to use power to adapt to change is in its own way an abuse of power. In fact, the issue is not one of change or not to change, but of the direction and the speed of change and such a change may come in various ways, and most effectively through legislation. Legal reform through legislative correction improves the legal system and it would require assessment of the working of the law, its accessibility, utility and abuse as well. The Executive branch has a constitutional duty to ensure that the purpose and object of a statute is accomplished while implementing it. It has the additional duty to closely monitor the working of a statute and must have a continuous and a real time assessment of the impact that the statute is having. As stated above, reviewing and assessing the implementation of a statute is an integral part of Rule of Law. The purpose of such review is to ensure that a law is working out in practice as it was intended. If not, to understand the reason and address it quickly. It is in this perspective that this Court has, in a number of cases, directed the Executive to carry a performance/assessment audit of a statute or has suggested amendments to the provisions of a particular enactment so as to remove perceived infirmities in its working.

12.5 A peculiar feature of how our legislative system works is that an overwhelming majority of legislations are introduced and carried through by the Government, with very few private member bills being introduced and debated. In such circumstances, the judicial role does encompass, in this Court's understanding, the power, nay the duty to direct the executive branch to review the working of statutes and audit the statutory impact. It is not possible to exhaustively enlist the circumstances and standards that will trigger such a judicial direction. One can only state that this direction must be predicated on a finding that the statute has, through demonstrable judicial data or other cogent material, failed to ameliorate the conditions of the beneficiaries. The courts will also do well, to at the very least, arrive at a *prima facie* finding that much statutory schemes and procedures are gridlocked in bureaucratic or judicial quagmires that impede or delay statutory objectives. This facilitative role of the judiciary compels audit of the legislation, promotes debate and discussion but does not and cannot compel legislative reforms.

12.6 It is in the above referred context of conducting performance audit of a statute that we recognise the constitution and establishment of two statutory bodies, the Central Consumer Protection Council under section 3 and Central Consumer Protection Authority under section 10 of the 2019 Act.

12.7 The Central Consumer Protection Council is constituted under section 3;

"3. Central Consumer Protection Council.

(1) The Central Government shall, by notification, establish with effect from such date as it may specify in that notification, the Central Consumer Protection Council to be known as the Central Council.

(2) The Central Council shall be an advisory council and consist of the following members, namely:—

(a) the Minister-in-charge of the Department of Consumer Affairs in the Central Government, who shall be the Chairperson; and

(b) such number of other official or non-official members representing such interests as may be prescribed."

12.8 To ensure that the advise is well considered and takes within its sweep plurality of thought and ideas, the Council comprises officials and non-officials, apart from Ministers-in-charge of Consumer Affairs. In exercise of powers under section 101 of the 2019 Act, the Ministry of Consumer Affairs issued the Consumer Protection (Central Consumer Protection Council) Rules, 2020 where under the composition of Consumer Council is given. It is prescribed that it shall comprise Minister in-charge of Consumer Affairs of Union as the Chairperson, Minister of State or Deputy Minister in charge of Consumer Affairs in the Central Government who shall be the Vice-Chairperson, an administrator from UTs, two Members of Parliament, representatives of Departments of the Central Government, autonomous organisations or regulators concerned with consumer interests, Chief Commissioner of Authority, Registrar of the national commission, representatives from consumer organisations and experts

in consumer affairs along with Secretaries-in-charge of Consumer Affairs in the Centre and States. The purpose and object of the Council is provided in section 5 of the 2019 Act in the following terms;

“5. Objects of Central Council: The objects of the Central Council shall be to render advice on promotion and protection of the consumers' rights under this Act.”

12.9 On the other hand, the 2019 Act also establishes another important body, the Central Consumer Protection Authority under section 10 of the Act;

“10. Establishment of Central Consumer Protection Authority

(1) The Central Government shall, by notification, establish with effect from such date as it may specify in that notification, a Central Consumer Protection Authority to be known as the Central Authority to regulate matters relating to violation of rights of consumers, unfair trade practices and false or misleading advertisements which are prejudicial to the interests of public and consumers and to promote, protect and enforce the rights of consumers as a class.

(2) The Central Authority shall consist of a Chief Commissioner and such number of other Commissioners as may be prescribed, to be appointed by the Central Government to exercise the powers and discharge the functions under this Act.”

12.10 The powers and functions of the Authority are provided under section 18 of the Act and it empowers the Authority *inter alia* to (a) protect, promote and enforce the rights of consumers as a class, and prevent violation of consumers rights [Section 18(1)(a)]; (b) recommend adoption of international covenants and best international practices on consumer rights to ensure effective enforcement of consumer rights [Section 18(2)(e)]; (c) undertake and promote research in the field of consumer rights [Section 18(2)(f)]; (d) advise the Ministries and Departments of the Central and State Governments on consumer welfare measures [Section 18(2)(k)].

12.11 Apart from the above, the Authority exercise vast powers under sections 19 to 22. In exercise of powers under section 101, the Ministry of Consumer Affairs has framed rules and regulations such as, ‘The CCPA (Allocation and Transaction of Business) Regulations, 2020’, ‘The CCPA (Procedure for Engagement of Experts and Professionals) Regulations, 2021’, ‘The CCPA (Submission of Inquiry or Investigation by the Investigation Wing) Regulations, 2021’, ‘The CCPA (Form of annual statement of accounts and records) Rules, 2021’.

12.12 Purpose and object of constituting these authorities is clearly reflected in the preamble of the 2019 Act, the terms of which are;

“An Act to provide for protection of the interests of consumers and for the said purpose, to establish authorities for timely and effective administration and settlement of consumers' disputes and for matters connected therewith or incidental thereto.”

12.13 It is interesting to note that in the statement of objects and reasons of the 2019 Act there is a reference to, “an institutional void in the regulatory regime” of consumer protection. To obviate this institutional void, the Parliament has under section 10 of the 2019 Act established the Authority and vested in it various powers and functions. The relevant portion of the statement of objects and reasons is quoted here for ready reference;

“4. The proposed Bill provides for the establishment of an executive agency to be known as the Central Consumer Protection Authority (CCPA) to promote, protect and enforce the rights of the consumers; make interventions when necessary to prevent consumer detriment arising from unfair trade practices and to initiate class action including enforcing recall, refund and return of products, etc. This fills an institutional void in the regulatory regime extant. Currently, the task of prevention of or acting against unfair trade practices is not vested in any authority. This has been provided for in a manner that the role envisaged for the CCPA complements that of the sector regulators and duplication, overlap or potential conflict is avoided.”

12.14 The purpose and object behind referring to the constitution and functioning of the Council and the Authority is only to ensure that the regulatory regime for consumer protection is clearly identified, coordinated – if not centralised and declared to be duty bearers for effective functioning of the consumer protection regime. In a recent decision, this Court held that that the significance of creation and establishment of these statutory and administrative bodies is not difficult to conceive. If these institutions and bodies work effectively and efficiently, it is but natural that the purpose and object of the legislation will be achieved in a substantial measure. It is, therefore, necessary to ensure that in the functioning of these bodies, there is efficiency in administration, expertise through composition, integrity through human resources, transparency and accountability, and responsiveness through regular review, audits and assessments.

12.15 We are also exercising jurisdiction under Article 32 of the Constitution, as the petitioner expressed concern over the ineffective working of the institutions intended to exercise jurisdiction and power for consumer protection. While exercising judicial review of administrative action in the context of Statutes, laws, rules or policies establishing statutory or administrative bodies to implement the provisions of the Act or its policy, the first duty of constitutional courts is to ensure that these bodies are in a position to effectively and efficiently perform their obligations. This approach towards judicial review has multiple advantages. In the first place, while continually operating in the field with domain experts, these bodies acquire domain expertise, the consequence of which would also be informed decision-making and consistency. Further, the critical mass of institutional memory acquired by these bodies will have a direct bearing on the systematic development of the sector and this will also help handling polycentric issues. Thirdly, while continuously being on the field, and having acquired the capability of making real-time assessments about the working of the policies, these bodies will be in a position to visualize course correction for future policy making.

12.16 Shifting the focus of judicial review to functional capability of these bodies is not to be understood as an argument for alternative remedy, much less as a suggestion for judicial restraint. In fact, this shift is in recognition of an important feature of judicial review, which performs the vital role of institutionalizing authorities and bodies impressed with statutory duties, ensuring they function effectively and efficiently. The power of judicial review in

matters concerning implementation of policy objectives should transcend the standard power of judicial review to issue writs to perform statutory duty and proceed to examine whether the duty bearers, the authorities and bodies are constituted properly and also whether they are functioning effectively and efficiently. By ensuring institutional integrity, we achieve our institutional objectives. Further, effective and efficient performance of the institutions can reduce unnecessary litigation.

12.17 In conclusion we hold that the Council and Authority being statutory authorities having clear purpose and objects and vested with powers and functions must act effectively and in complete coordination to achieve the preamble object of the statute to protect the interest of consumers. As they are impressed with statutory duty, their functioning will be subject to judicial review. Vibrant functioning of the Council and the Authority will subvert the purpose and object of the Parliament enacting the 2019 legislation.

13. *Conclusions:* For the reasons stated above; (a) we dismiss the constitutional challenge to section 34, 47 and 58 of the 2019 Act and declare that the said provisions are constitutional and are neither violative of Article 14 nor manifestly arbitrary; (b) Central Consumer Protection Council and the Central Consumer Protection Authority shall in exercise of their statutory duties under sections 3, 5, 10, 18 to 22 take such measures as may be necessary for survey, review and advise the government about such measures as may be necessary for effective and efficient redressal and working of the statute. With the above directions, the Writ Petition and Civil Appeal are disposed of.

14. Pending applications, if any, are also disposed of accordingly.

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.
[MANOJ MISRA]

NEW DELHI;

APRIL 29, 2025

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Consumer Protection Council, Rourkela is a registered voluntary organization, espousing the cause of the consumer. To a great extent, for its sustenance it depends on the good will of its donors like you. We solicit your support for sustaining the multifarious activities of the council. Donation to the council is eligible for tax exemption under Section : 80-G(5) (iv) of the IT Act. Donation may please be contributed through cash or crossed cheque / DD, drawn in favour of “ **Consumer Protection Council, Rourkela**”.

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