

Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

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VOLUME – XXXVII

OCTOBER 2025

ADVANTAGE - X

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.)

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.

1. Constitutionality of Sections 34(1), 47(1)(a)(i) and 58(1)(a)(i) of the Consumer Protection Act, 2019 prescribing pecuniary jurisdictions of the district, state and national commissions on the basis of value of goods and services paid as consideration, instead of compensation claimed are challenged in the writ petition under Article 32 of the Constitution and the civil appeal against the order of the National Consumer Disputes Redressal Commission.

2. *Facts in the Writ Petition:* The short facts, to the extent that they are relevant for disposal of the writ petition are that the petitioner's husband purchased a sedan –Ford Endeavour Titanium car from S.P. Vehicles Pvt. Ltd., authorised dealer of Ford India for an amount of Rs. 31.19 Lakhs. Tragically, the vehicle caught fire on 20.11.2018 while being driven leading to death of petitioner's husband. Though criminal proceedings were initiated, the present proceedings are concerned with the statutory proceedings initiated under the 2019 Act by way of consumer complaint before the District Consumer Commission, Vadodara for compensation of Rs. 51.49 crores with interest thereon. Pending disposal of the consumer complaint, the appellant approached this Court by way of the present writ petition under Article 32 of the Constitution alleging that she was compelled to approach the district commission because of the statutory regime under the 2019 Act, whereas under the repealed Consumer Protection Act, 1986, she could have directly approached the national commission based on compensation claimed. The relevant portion of the prayer made in the writ petition is as follows:

“a) Be pleased to issue appropriate guidelines, Writ in the nature of Mandamus or such other Writ or declaration or directions to declare that newly added Proviso of Section 34(1), Proviso to Section 47(1) and Proviso to Section 58(1)(a)(i) of the Consumer Protection Act, 2019 directing that for Pecuniary Jurisdiction instead of "Compensation Claimed", the "consideration paid at the time of purchase of Services" will be applicable as quoted in Para 2.1, 2.2, 2.3, as violation of Article 14 of the Constitution of India on the ground of Arbitrariness and contrary for the purpose of hierarchy of Judicial System in India.

b).....”

3. **Facts in the Civil Appeal:** In the civil appeal, the appellant’s husband, a District governor of the Lions Club of Jhansi, passed away due to COVID-19 on 25.07.2020. When her claim on the basis of insurance policy offered by Lions International Club, up to two million dollars as compensation to families of deceased members was denied, she approached the national commission seeking Rs. 14.94 crore. However, the national commission rejected her petition on the ground that the consideration for the insurance policy does not exceed Rs.10 crores. The relevant portion of the order passed by the national commission is reproduced here in below for ready reference;

“...The Pecuniary Jurisdiction has been specified in the Consumer Protection Act, 2019, where the consideration paid, if exceeds Rupees Ten Crores, will give power to the National Consumer Disputes Redressal Commission to entertain any Complaint. It has nothing to do with the amount of Compensation to be claimed by any of the Complainant. ”

4. **Statutory Provisions:** Before we consider the legal submissions of the petitioner/appellant and the respondent, a comparative chart of the jurisdictions exercised by the district, state and national commission under the repealed 1986 Act and the present 2019 Act is as follows:

FORUM	1986 ACT	2019 ACT
District Commission	Section 11.(1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints <u>where the value of the goods or services and the compensation, if any, claimed does not exceed rupees twenty lakhs...</u>	Section 34.(1) Subject to the other provisions of this Act, the District Commission shall have jurisdiction to entertain complaints <u>where value of the goods or services paid as consideration does not exceed one crore rupees...</u>
State Commission	Section 17. Subject to the other provisions of this Act, the State Commission shall have jurisdiction— (a) to entertain — (i) complaints <u>where the value of the goods or services and compensation, if any, claimed exceeds rupees twenty lakhs but does not exceed rupees one crore...</u>	Section 47. (1) Subject to the other provisions of this Act, the State Commission shall have jurisdiction — (a) to entertain — (i) complaints <u>where the value of the goods or services paid as consideration, exceeds rupees one crore, but does not exceed rupees ten crore...</u>
National Commission	Section 21. Subject to the other provisions of this Act, the National Commission shall have jurisdiction — (a) to entertain— (i) complaints <u>where the value of the goods or services and compensation, if any, claimed exceeds rupees one crore...</u>	Section 58. (1) Subject to the other provisions of this Act, the National Commission shall have jurisdiction — (a) to entertain — (i) complaints <u>where the value of the goods or services paid as consideration exceeds rupees ten crore...</u>

4.1 A plain and simple reading of the provisions makes it clear that the 2019 Act shifts the basis of the pecuniary jurisdiction of the district, state as well as national commission from value of **compensation** claimed under the repealed 1986 Act to value of the **consideration** paid for the goods and services. The petitioners and the appellants claim that this legislative shift must have the effect of annulling sections 34, 47 and 58 of the Act as unconstitutional.

5. *Submissions*: Mr. Shreeyash Lalit and Mr. Abhimanyu Bhandari, Ld. Sr. Counsel represented the petitioner and the appellant respectively. Mr. Vikramjit Banerjee assisted by Mr. Nachiketa Joshi represented the respondents.

6. Mr. Shreeyash Lalit would submit that under the new legal regime, an anomaly has arisen regarding pecuniary jurisdiction and hierarchy of judicial system. The argument is that the impugned provisions gives rise to an anomalous situation wherein, for instance, a person claiming compensation of Rs. 50 Cr, for a defect or deficiency in goods purchased or services availed, for consideration lesser than Rs. One Crore will have to go before the district commission and at the same time one can approach the national commission even if the compensation is less than Rs. One Crore.

6.1 Ld. Counsel argues that the new criterion for determining the pecuniary jurisdiction is discriminatory as consumers who claim identical compensation, but have paid different considerations at the time of purchase of goods or services are treated differently. To buttress their argument, they referred to Section 2(7) of the 2019 Act which defines “consumer” and includes within its ambit any person who buys goods/services for a consideration which is (i) fully paid or promised, (ii) partly paid or promised, (iii) under a system of deferred payment, and also includes (iv) a user of such goods or services. Thus, when the definition of “consumer” itself does not discriminate on the basis of the consideration paid and includes every consumer in the wide spectrum, restricting access to judicial remedies on the basis of consideration paid is illegal and arbitrary.

6.2 As a logical extension of the same argument, it is submitted that there is no rationale for introducing the new criterion for determining the pecuniary jurisdiction. It is argued that even if the object sought to be achieved is to curb instituting exaggerated claims, the same could have been done by way of increasing the pecuniary limits of the forums.

7. Mr. Vikramjit Banerjee, Ld. ASG appearing on behalf of the Union opposed the writ petition and supported his argument on the basis of written submission.

7.1 The first limb of his submission is that Parliament has the legislative competence to determine the jurisdiction and also pecuniary limits of courts and tribunals. To exemplify his submission, he referred to some parliamentary enactments.

7.2 To counter the allegations of arbitrariness, Ld. ASG submitted that the impugned provisions are based on a reasonable classification. He would submit that classification created on the basis of value of goods and services paid as consideration not only creates an intelligible differentia, but also has a rational nexus with the object sought to be achieved, which is “timely and effective administration and settlement of consumer disputes”. Further, it is argued, the impugned provisions are not manifestly arbitrary and that they were brought in to prevent exaggerated and inflated claims.

8. *Analysis*: The submissions made by the Ld. Counsels for the petitioner/appellant and respondent can be considered in the context of (i) power to determine pecuniary jurisdiction, (ii) reasonable classification under Article 14, (iii) manifest arbitrariness, and (iv) loss of remedy. We will consider each of these submissions independently.

9. *Re: Power to determine pecuniary jurisdiction*: There is no doubt about the fact that the Parliament has the legislative competence to enact the Consumer Protection Act, 2019. Under Entry 95 of List I read with Entries 11-A and 46 of List III and in exercise of power under Article 246, the Parliament has enacted the Consumer Protection Act, 2019. The legislative competence to prescribe jurisdiction and powers of a court, coupled with the power to constitute and organize courts for administration of justice, takes within its sweep the power to prescribe pecuniary

limits of jurisdiction of the courts or tribunals. In *State of Bombay v. Narottamdas Jethabhai*, Justice Patanjali Sastri concurring with the majority held as under:

“88. It had long been the practice in this country to constitute and organise courts with general jurisdiction over all persons and matters subject only to certain pecuniary and territorial limitations, and to confer special jurisdiction limited to certain specified cases or matters either on the ordinary courts in addition to their general jurisdiction or on tribunals set up to deal with such matters exclusively. The various Provincial Civil Court Acts as well as the provisions of the Civil and Criminal Procedure Codes invest the courts, both civil and criminal, with general jurisdiction, that is to say, power to adjudicate in respect of all persons and all matters except those that are specifically excluded or brought within the cognizance of tribunals with special or limited jurisdiction extending only to those matters. The grading of the court too in their hierarchy has reference to the pecuniary and territorial limits rather than to the nature and kind of the subject-matter which they are empowered to deal with.”

9.1 Parliament has the legislative competence to prescribe jurisdiction and powers of courts. This power extends to prescribing different monetary values as the basis for exercising jurisdiction. For example, under the Recovery of Debts and Bankruptcy Act, 1993, it is prescribed under Section 1(4) that the provisions of the Act shall not apply where the amount of debt is less than 10 lakh rupees. Section 4 of Insolvency and Bankruptcy Code, 2016 provides that Part II of the Code, relating to insolvency resolution and liquidation for corporate persons is made applicable to matters relating to insolvency and liquidation of corporate debtors where the minimum amount of default is Rs. One Crore. Similarly, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 also provides under Section 31(h) that the Act shall not apply for securing repayment of any financial asset not exceeding Rs. 1 lakh. Further, the Legal Services Authority Act, 1987 under Section 22(c)(1) provides that the permanent Lok Adalat shall not have jurisdiction in matters where the value of the property in dispute exceeds 10 lakh rupees. In *Narottamdas Jethabhai (supra)*, Justice Mahajan has observed as under:

“27. It seems to me that the legislative power conferred on the Provincial Legislature by Item 1 of List II has been conferred by use of language which is of the widest amplitude (administration of justice and constitution and organisation of all courts). It was not denied that the phrase employed would include within its ambit legislative power in respect to jurisdiction and power of courts established for the purpose of administration of justice. Moreover, the words appear to be sufficient to confer upon the Provincial Legislature the right to regulate and provide for the whole machinery connected with the administration of justice in the province. Legislation on the subject of administration of justice and constitution of courts of justice would be ineffective and incomplete unless and until the courts established under it were clothed with the jurisdiction and power to hear and decide cases. It is difficult to visualise a statute dealing with administration of justice and the subject of constitution and organisation of courts without a definition of the jurisdiction and powers of those courts, as without such definition such a statute would be like a body without a soul. To enact it would be an idle formality. By its own force it would not have power to clothe a court with any power or jurisdiction whatsoever. It would have to look to an outside authority and to another statute to become effective. Such an enactment is, so far as I know, unknown to legislative practice and history. Parliament by making administration of justice a provincial subject could not be considered to have conferred power of legislation on the Provincial Legislature of an ineffective and useless nature.”

(emphasis supplied)

9.2 In view of the above discussion, there can be no doubt about the legislative competence and also the power of the Parliament to prescribe limits of pecuniary jurisdiction of courts and tribunals and in our case, the district, state or the national commission.

10. *Re: Submissions that the provisions are discriminatory and violation of Article 14:* Sections 34, 47 and 58 vest jurisdictions in the district, state and national commission on the basis of value of goods or services paid as consideration. The precise question for our consideration is whether empowering the district, state and national commissions to exercise jurisdiction on the basis of value of the goods or services paid as consideration is violation of Article 14.

10.1 If there is one test for determining whether a provision of 'law' is violation of the equality norm, which has been articulated with precision and clarity, it is the independent and interconnecting twin test, as explained in *State of West Bengal v. Anwar Ali Sarkar* as;

"85. ... In order to pass the test, two conditions must be fulfilled, namely (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act."

10.2 Classification based on value of goods or services on the basis of the amount paid as consideration is valid. "Consideration" is an integral part of forming any contract. It is also an integral part of the definition of a 'consumer'.

10.3 *An agreement enforceable by law is a **contract**. In turn, every promise and every set of promises forming part of the consideration for each other, is an **agreement**. And then, when, at the desire of the promisor, the promisee ... has done...something, such act is called **consideration**. A proposal, when accepted, becomes a **promise**. Finally, when a person signifies to another his willingness to do anything... with a view to obtaining his assent it is a **proposal**.* While this is the involution of formation of a contract, evolution in its making is evident when a *proposal*, as defined, becomes a promise and when such a promise is espoused by *consideration* it becomes an *agreement* and if that agreement is enforceable in law, it becomes a *contract*. Between evolution and involution, lies the essential core, the consideration, without which there is no agreement, and if there is no agreement, there is no contract.

10.4 It is in recognition of the first principles of formation of a contract that section 2(7) of the 2019 Act defines a consumer as any person who buys any goods or hires or avails any service for a consideration. The consideration could be in the present or future, in whole, part, or by deferred payment. Whichever be the mode, there must be a consideration. That is essential to be a *consumer*.

10.5 Therefore, vesting jurisdiction in the district, state or national commission on the basis of value of goods or services paid as 'consideration', is neither illegal nor discriminatory. For this very reason, the submission made by Mr. Shreyash Lalit that the width of the expression 'consumer' under Section 2(7) of the Act is arbitrarily restricted by Sections 34, 47 and 58 pales into insignificance. The myriad ways in which a consideration could be inferred would not derogate from the essentiality of consideration in every transaction leading to formation of a contract. As we are not dealing with gratuitous agreements, value of consideration is and can be a valid basis for classifying claims for determining pecuniary jurisdiction. We therefore reject the submission that sections 34, 47 and 58 are discriminatory and violation of Article 14.

11. This classification also has a direct nexus to the object sought to be achieved. It is thus not a suspect classification. Value of consideration paid for good or service purchased is closer and more easily relatable to compensation than the self-assessed claim for damages of a consumer. It is clear that the determination of jurisdiction of the district, state or national commissions on the basis of value of consideration paid for purchase of goods and services has rational nexus to the object of provisioning hierarchy of judicial remedies. Mr. Vikramjit Banerjee has brought to our notice the circumstances that have led to the introduction of Sections 34, 47 and 58 under the 2019 Act. In this context, reference is made to a "Study on impact of Consumer Protection Act, 2019" wherein it is explained that,

"...The earlier standard of the manner of determining the pecuniary jurisdiction i.e. 'the value of the goods or services and the compensation, if any, claimed often resulted in a disproportionately larger amount of cases falling under the pecuniary jurisdiction of the NCDRC, as it took into account the value of the final good bought or service availed and secondly upon the amount of compensation that has been prayed for in the complaint. Thus the modifications to the pecuniary jurisdiction were meant to alleviate the disproportionate burden of cases which fell upon the National Consumer Disputes Redressal Commission (NCDRC) by apportioning a larger share to the District and State Consumer Disputes Redressal Commissions. It also made the procedure simpler

and easier for consumers as now the consumers can get justice at the District level for monetary level upto Rs one crore, which covers most of the matters relating to goods and services which a common consumer uses/ avails. The legislative intent behind omitting the "compensation" claimed by a consumer in assessing the jurisdiction is of streamlining the method of determining the pecuniary jurisdiction by ousting individual whims of a consumer. As there does not exist any guidance by which a consumer may reasonably determine claims for compensation. Naturally, this resulted in a situation wherein consumers often claimed astronomical amounts of compensation despite the actual consideration being relatively less and as a consequence the District and State Commissions would be ousted of jurisdiction."

11.1 There is also a misconception that there is some kind of a loss of judicial remedy. No such event has occurred because of Sections 34, 47 and 58 of the 2019 Act. The relief or compensation that a consumer could claim remained unrestricted and at the same time, access to the state or the national commission is also not taken away. It is well settled that there is no right or a privilege of a consumer to raise an unlimited claim of compensation and thereby chose a forum of his choice for instituting a complaint. In *Nandita Bose v. Ratanlal Nahta*, this Court has held that a court or a tribunal will always have the jurisdiction to assess or reassess an overvalued or grossly undervalued claim in a petition in the following terms:

"4. ...The principles which regulate the pecuniary jurisdiction of civil courts are well settled. Ordinarily, the valuation of a suit depends upon the reliefs claimed therein and the plaintiffs' valuation in his plaint determines the court in which it can be presented. It is also true that the plaintiff cannot invoke the jurisdiction of a court by either grossly over-valuing or grossly under-valuing a suit. The court always has the jurisdiction to prevent the abuse of the process of law. Under Rule 10 of Order 7 of the Code the plaint can be returned at any stage of the suit for presentation to the court in which the suit should have been instituted..."

(emphasis supplied)

To be concluded in the next issue.....

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Remittance for subscription may be sent to the Secretary,
Consumer Protection Council, B/90, Sector-7, Rourkela-769003,
through crossed D.D/M.O or Cheque (local only), payable in
favour of

'CONSUMER PROTECTION COUNCIL, ROURKELA'.

For tariff and other details regarding advertisement, contact
Editor.

Printed & Published by Sri B Pradhan, Consumer Protection Council,
Rourkela at B/90, Sector-7, Rourkela – 769003
E.mail : bpradhan.cpcrkl@gmail.com
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ADVANTAGE CONSUMER
ENGLISH MONTHLY

OCTOBER 2025

To

If undelivered, please return to :
Consumer Protection Council, Rourkela
B/90, Sector-7, Rourkela -769003. Odisha