CONCEPT OF CONSUMER PROTECTION THROUGH THE CASE OF KARNATAKA POWER TRANSMISSION CORPORATION V ASHOK IRON WORKS PRIVATE LIMITED [III (2009) CPJ 5 SC]

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CHAPTER I
Introduction

There was a time in India when consumers were told to beware and follow the principle “Caveat Emptor” which sometimes forced the consumers to even endure harsh as well as negligent treatment from the sellers or the ones who offered services. This paper will justify the transformation of the consumer protection from “Caveat Emptor” to “Caveat Venditor” with the help of several cases and articles. In addition to this we will also discuss an appealing case Karnataka Power Transmission Corporation v Ashok Iron Works Private Limited which argued and provided certain major clarifications when it comes to using government’s electricity for commercial purpose and whether a private limited company falls under the definition of person as per the Consumer Protection Act 1986.

Despite certain endeavours by the State as well as the Union Government, the value of the consumer movement is considerably less and has been safely ignored by the observers. While it is known that consumerism provides emphasis on the Bill of Rights of the consumers, this only occurs when goods consumed or utilization of services. When this happens, a business makes profit and Business is entirely dependent on the services it uses to engage in various services. Till what extent and what resources are considered as services is crucial to understand this topic which is why this paper was written.

However, section 2 of the Consumer Protection Act 1986 has always been a chaotic definition. Though the definition embodies the concept of “all goods and services”, certain sectors have always proved to have considerable jerks while such issues shed into light. This gave rise key judgements which have been used as precedents again and again which makes us question whether judicial case precedents have become more valuable and important than the actual law that was sanctioned in 1986. Certain cases like Lucknow Development Authority V. M K Gupta and Indian Medical Association v. V.P. Santha led to ensuring the clarity with respect to the definition of service. This case held that a wider perspective of the term service needs to be considered which further put the courts into dilemma and led them to not execute the decision properly. The M K Gupta case was very crucially used in the case being discussed as well because of certain key statements which include “even if

3 Lucknow Development Authority V. M K Gupta 1 SCC 243 (1994)
4 Indian Medical Association v. V.P. Santha 6 SCC 651 (1995)
a statutory corporation provides a deficient service, it can be made liable under the Act. Though there are several other services which are not particularly included within the definition clause, but it does not mean that they can't be held liable.” This will be elaborately understood in the course of this paper.

This paper will also go on to explain certain other perspectives of the term service. When it comes to this case of Ashok Works Pvt. Ltd, it was needed to clarify whether the service that was promised to be provided was a contract of personal service or not which will be broadly discussed in the due course of the paper.

Despite the several problems that exist within the CPA 1986, it also has changed the way people look at resources before acting as a consumer and has provided a sense of legal individuality with the arousal of consumer courts, scope of the redressal seeking provisions and many more. This paper will discuss the nature of electricity as services within india and as well as explore similar services from places like the European Union and Brazil.

Research Objectives

- Understanding to what extent did this case shape the interpretation of the expression ‘service’ according to CPA 1986.
- In order to establish a superiority between ‘questionability of judicial precedents’ with the ‘forum of law’ devised by statutes in the Consumer Protection Act 1986.
- Develop a framework which will reduce the complexities that exist within the term of “services” in the Consumer Protection Act 1986.

Research Questions

- Does electricity and some other resources from the government fall under the purview of service as per the Consumer Protection Act 1986?
- How many areas of the law is this case relevant with respect to the present scenario?
- What is the best way through which this case can be analysed and be utilized?

Chapterization

This paper is mainly subjected to the case analysis and how this case has contributed to our society and the law as a whole and an essence of the same provided in the first chapter with the introduction and the reviewed pieces of literature. The Second chapter titled The Relevance Of Judicial Themes Subject To The Case will focus on the various subjects that this case has had an effect upon which such as interpreting expressions like ‘service’ and ‘a person’ when it comes to consumers availing services and various other factors related to this case and similar cases to simplify and integrate them better. The third Chapter Dissecting The Consumer Protection Act,1986 goes on to analyse and develop a model of the act, compare and contrast with the consumer protection in other countries and as well as look into the act’s relevance in the current system of governance. The last chapter A Deduced Overview shall provide a better

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framework with respect to the case as well as the themes discussed while commenting and categorizing certain concepts thereby making it a fruitful research.

**Literature Review**

Contextual research has been done with respect to these subject and various pieces of literature studied and reviewed.

“Consumer Protection on the Fields of Electricity Service”\(^6\) is a paper that goes on to elucidate the concept of consumer protection especially in the electricity sector which is one of the main focus with respect to the case analysed as well. It has been referred to by in this paper and has helped with the kind of situations that come across in this sector especially as consumers.

“Historical Evolution of Consumer Protection and Law in India”\(^7\) was reviewed to understand the jurisprudence in the area of consumer protection better with the history of the same. “Product Literacy and the Economics of Consumer Protection Policy”\(^8\) engaged in understanding the overall concept of consumer protection since it is the basics always play a prominent role to gain literacy of the specified area.

In addition to this, several papers that analysed the Consumer Protection Act, 1986 were referred upon such as “Consumer Protection Act 1986 And Legal Profession In India: Some New Developments”\(^9\) and “Consumer Protection Act, 1986: Structural Loopholes In Consumer Courts' Constitution — A Brief Analysis”\(^10\). These works were looked into and the author of this paper aimed to analyse certain grey areas that these papers did not discover.

Some other articles titled “Competition, Consumer Protection, And The Right [Approach] To Privacy”\(^11\) and “Relations Between Regulation, Competition Policy And Consumer Protection In Telecommunications, Electricity And Water Supply”\(^12\) deal with the consumer protection laws overseas like Brazil and other countries and help us understand the concept used contrasted with the law relating to Consumer Protection in India.

**CHAPTER II**

**THE RELEVANCE OF JUDICIAL THEMES SUBJECT TO THE CASE**

The case of Ashok Private Works reveals relevance to a lot topics and scope to be interpreted. It mainly focuses on the concept of a company availing for deficiency of services as a consumer and seek redressal. The jurisprudence of consumer law is fairly new with an age of 31 years when compared

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\(^6\) Supra. Id. 5


\(^9\) Gurjeet Singh, Consumer Protection Act 1986 And Legal Profession In India: Some New Developments, 41 J. Ind.L. Inst 1, 56-65 (Jan-Mar 1999)

\(^10\) Supra. Id. 3


\(^12\) Genser de Oliveira & Sergio Goldbaum, Relations between Regulation, Competition Policy and Consumer Protection in Telecommunications, Electricity and Water Supply, 27 BROOK. J. INT'L L. 65 (2001)
to the comprehensive competition policy and consumer laws as the USA which dates back to the 19th century and has been growing since then. All things set aside, this legislation has proven to be liberal and ongoing.

CPA was enacted in India for the protection of the consumers in 1986. In order to instigate regarding the act, it is essential to focus on the perception of the expression ‘service’ especially in the specific fields of services concerned. Previously, the concept of services was not so very liberal as of now and could be availed only by a certain group of professions for instance legal services, banking, insurance, electricity, housing, medical services and many others as specified in the purview of the definition of service. Another aspect that could be taken into consideration is the part where even companies have been provided the title of a ‘consumer’ and can avail services as well as file complaints for deficiency. The case of Ashok Private Works played a prominent role with respect to this provision specifically and gave confidence to hundreds of other companies to come forward as well.

When we understand the concept of service, there exist mainly two types of service i.e., “contract of service” and “contract for service”. It is also essential to note that a service must not be part of “contract of personal service” since it does not fall under the purview of the Consumer Protection Act of 1986.

In the case of “contract of service”13, the person who seeks service can in fact tell the provider on what and how the services need to be done and performed whereas in the case of “contract for service” is allowed to tell only what is to be done. It becomes the wish of the service provider to choose the method to do so and provide the service and the end result being just giving the consumer what they wish. this “contract for service” comes and is defined under section 2(1)(o) of the Consumer Protection Act of 1986. The above case is the perfect inference that can be drawn for the aspect of contract for service. the Ashok works Company just wanted to avail the service of electricity within the time of the contract signed and when there came too many delays regarding that which in turn caused harm to the business as a result of the delay in contract. This itself is a ground to seek redressal against the electricity board.

“Consumer Organization Cost” plays a prominent role with the relationship between the consumers and services with respect to the field of Electricity, Telecommunications and Water supply as well. And the criteria that is to be relied upon for the Consumer Organization Cost tends to the assembling of the distinct judicial costs and the disseminated interests from the variety of organisations under the radar. It is essential to note that, the interests scattered geographically and the individual consumer’s sovereignty for exerting their rights are indirectly proportional that provides for a statistic to measure the Consumer Organization Cost.

However, one such problem that is faced in theory of this concept of Consumer Organization Cost is that when this cost is higher than those individuals that seek redressals with the process of litigation. This

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13 Avinash Kumar, Wider Interpretation of the Definition of Service under Consumer Protection Act: Contemporary Analysis, 11 NUALS L.J. 175 (2017)
led to those individuals to wait for the others to undertake legal remedies than doing so themselves which thereby leads to taking advantage of other person’s share of remedies.

As we discussed above that the consumer organization cost could be substituted with the dispersal of the service provider in the geographical sense. An illustration for the same could be the case of deficiency in the quality of service provided in the electricity or telecommunications. These services are mainly categorized based on the geographic area and usage especially in the case of wireless communication.

However, if the public and the private consumers facing deficiency in service come together and go for the litigation process, the cost would be minimized as well as benefit the consumers and help the society rather than one or two fighting separately at the cost of their existence and management of the business on which the service is relied upon.

Finally, the criteria for categorization of services in the point of the sovereign to sue by the consumers could be taken as the market competition involved in the respective sectors. Here, it becomes prominent to understand a framework where competition policy and law go hand in hand with consumer protection since competitive markets enable much more standards as well as choice for comparison thereby facilitating for the theory of concept of Consumer Opportunity Cost.

CHAPTER III

DISSECTING THE CONSUMER PROTECTION ACT ,1986

When we talk about the relevancy of a consumer in the current developments in our country, many unethical and unfair practices and cheating with respect to every meagre detail happen with at least one transaction that a consumer engages in a day. This was the case even before the pandemic that stroked in 2020. With current pandemic resulting in the loss of jobs and people desperate to feed their loved ones are resorting to various unethical means.

however, much before the Consumer Protection Act came into force, it was the responsibility of the consumer to protect themselves and be aware but this seemed to be a major setback and upon which in 1986 the consumers were provided protection by the law if the goods and services they availed failed to meet the standards thereby causing loss to the consumers. Despite all these, consumer protection seems to be the least of concerned all over the world even in the 21st century.

The consumer Protection Act gains its momentum with the inclusion of goods as well as services within its scope of ambit. We are pretty much aware that a consumer can always choose to avail legal remedies for deficiency of services as well as products as discussed in the previous section. The Consumer Protection Act can be questioned even by the government as well as private companies as per the definition of a person under section 2 (1)(m) of the CPA, 1986 in case of any deficiency or problem in services.

When we come to understand the relativity of the Consumer Protection Act, 1986 with respect to the Electric sector, it is also necessary to look into the other acts relevant with respect to this sector. So, the electricity Act is relevant to all states and the CPA pacts with consumer protection and deficiency with respect to electricity within the country. The Electricity Act deals with the distribution
of electricity without bias and the Consumer Protection Act of 1986 with respect to preserving and upholding the consumer’s interest. This however, leads the courts and consumer forums in dilemma as to which act to take into consideration upon a problem. But the problem relates to the part of application of the laws within the same as well as governing the electricity distribution. So, it is required to make sure the application of one Act does not comprise the other in anyway upon providing the redressal that is sought.

Now let us move on to the history with respect to the concept of service with an illustration of a case law. It was held in one of the case i.e., Sri Anand Ice. Factory v The Assistant Divisional Engineer Elec Operation 14 by the State Commission Of Andhra Pradesh which did not allow the electric supply for the usage for the purpose of commercial need. And in such a case, a consumer dispute would not be held maintainable with the Redressal Forum and not even permitted to seek redressal under the consumer Protection Act, 1986.

Nevertheless, this judgement did not hold for a long time as a precedent and in the case of Jharkhand State Electricity Board v Anwar Ali Sarkar 15 it was said that the consumers in the case of deficiency of services had the right to propose their grievances to the consumer forum and not excluded by the provisions of the Electricity Act as well be it companies or individuals.

This clarified the issue of the problem of choosing between the Electricity Act and the CPA Act which was covered in the previous section. Companies, Hindu Undivided Family, cooperative societies or firms carrying out commercial needs were categorized to fall under the ambit of person as per section 2(1)(m) of the Consumer Protection Act, 1986.

- **Consumer Protection with Respect To The Overseas**

After reviewing the Consumer Protection Act, 1986 from its genesis to the recent amendments and important sections we gain an understanding that the scope provided is in fact broader and more descriptive.

Upon gaining perspective regarding the consumer protection system in Brazil and recognize the fact that the only reason it was set up was due to the pressure put in by the society through movements and when there was a rise of activism in the courts after gaining freedom and settling of a democracy. After this and a series of ever-changing growth, Brazil went on to become a series of respectable set of Consumer Protection laws. Some of the terms which became quite prominent include

- Exclusions to the low-income consumers from paying stamp duties and the fees to the court.
- Consumers who sought compensations for civil associations were given incentives.
- The cases which involved diffuse interests and collective issues were given the scope for judicial review and this was a part of the government’s duty.

What we can in fact learn from the Consumer Protection laws of Brazil is if the government takes an initiative to welcome consumers to step forward with the injustice and problems, they are facing but fear all the pressure with

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14 II CPR 412 (2) (1993)

15 II CPJ 284 (NC) (2008)
income etc. might just take the opportunity to seek redressal.

Upon reviewing the aspect of Consumer Protection in Hungary with respect to the supply of electricity and service, the Electric Energy Act there we find that it involves a rigorous and stringent legislation when compared to the civil code present in Hungary. In case of defective or a deficiency in providing services, the burden of proof lies on the network operator or service provider to express that all the precautions and measures be taken to provide the consumers a reliable mechanism of quality and the right time.¹⁶

This provision is similar and present in India as well to establish reasonable care before providing the service to any consumer be it a company or an individual. And this needs to be proven as well when a consumer seeks legal redressal through litigation.

CHAPTER IV

A DEDUCED OVERVIEW

Until now, it is important to note that Business Organizations are expected to follow and meet the certain level of standards with respect to quality to fall under the purview of consumer promotion and protection policies. Consumers who play an active role in advocating their rights and responsibilities as a consumer as well as respect to the mechanisms of institutions will aim and facilitate in reducing the need and requirement of further and strenuous intervention of a series of regulations and mainly Red tapism.

We understood that it becomes essential to note that especially in the case of electricity that the main aspect to be considered is distinguishing between those consumers who rely on enjoying the benefits of competition with the precise amount and the ones who are captive and don’t really have the choice to take a choice. So thus, when there exists a larger area of competition with respect to the power of the consumers to bargain in a much relevant market, the consumer sovereignty will continue to be high.

And if there continues to be a lesser degree of sovereignty among the consumers, it would require the necessity for high number of regulators and a more centralized way of protection with respect to consumer protection law.

When understood the concept of services we saw the jurisprudence of the three types of services stipulated for the public as well as private authorities by the supreme court. This was seen in the case of Indian Medical Association which played a rather prominent role and resolved the concern regarding deficiency of services specifically. Although it was mainly for the medical sector, the other sectors took it as a precedent to comply with the same and were equitably distinct.

The expression service justifies all the terms as per Section 2(1)(o) of the CPA by making the terms broad minded by the judiciary as well in a number of cases following the amended of the CPA in 2002 by providing opportunities for more or less all the services aside from those engaged without consideration.

However, the part in section 2(1)(o) which excludes certain surfeit activities related to the welfare of the society as well the services provided for free of charge. Therefore, it

¹⁶ Subsection 2 of Section 58 of the EE Act
would be better if services offered by the state be considered within the definition of the term “service” than limiting it to a certain level of services by the stipulated by the private sectors.

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References

Cases:

Articles and Papers: