CHAPTER - 4

PROCEDURAL ASPECTS OF THE ACT

4.1 INTRODUCTION

The fourth chapter of this thesis deals with the complaints and the procedural aspects of the Consumer Protection Act. Discussion is focused on how a complaint is lodged and how it is redressed.

Quasi-judicial machinery has been set-up under the Act at the district, state and central levels. These quasi-judicial bodies have been empowered to give reliefs of a specific nature and to award compensation to consumers. There is a comprehensive procedure laid down under the Act, which the Forum has to follow on receipt of complaint.
4.2 PROCEDURE FOLLOWED BY THE FORUM ON RECEIPT OF COMPLAINT

The District Forum shall, on receipt of a complaint, if it relates to any goods,

- refer a copy of the complaint to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;

- where the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute in the manner specified in clauses (c) to (g);

- where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the District Forum shall obtain a sample of the goods from the complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory make an analysis or test whichever may be necessary, with a view to finding out whether such goods
suffer from any defect alleged in the complaint or suffer from any other defect and to report its findings thereon to the District Forum within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by the District Forum;

- before any sample of the goods is referred to any appropriate laboratory under clause (c), the District Forum may require the complainant to deposit to the credit of the forum such fees as may be specified, for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question;

- the District Forum shall remit the amount deposited to its credit under clause (d) to the appropriate laboratory to enable it to carry out the analysis or test mentioned in clause (c) and on receipt of the report from the appropriate laboratory, the District Forum shall forward a copy of the report along with such remarks as the District Forum may feel appropriate to the opposite party;

- if any of the parties disputes the correctness of the findings of the appropriate laboratory, or disputes the correctness of the methods of analysis or test adopted by the appropriate laboratory, the District Forum shall require the opposite party or the complainant to submit in writing his objections in regard to the report made by the appropriate laboratory;
• the District Forum shall thereafter give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also as to the objection made in relation thereto under clause (f) and issue an appropriate order under Section 14.

The District Forum shall, if the complaint received by it under Section 12 relates to goods in respect of which the procedure specified in sub-section (1) cannot be followed, or if the complaint relates to any services,-

• refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;

• where the opposite party, on receipt of a copy of the complaint, referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute,-

i. on the basis of evidence brought to its notice by the complainant and the opposite party, where the
opposite party denies or disputes the allegations contained in the complaint, or

ii. on the basis of evidence brought to its notice by the complainant where the opposite party omits or fails to take any action to represent his case within the time given by the forum.

No proceedings complying with the procedure laid down in sub-sections (1) and (2) shall be called in question in any court on the ground that the principles of natural justice have not been complied with.

For purposes of this section, the District Forum shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:

- the summoning and enforcing attendance of any defendant or witness and examining the witness on oath;

- the discovery and production of any document or other material object producible as evidence;

- the reception of evidence on affidavits;

- the requisitioning of the report of the analysis or test concerned from the appropriate laboratory or from any other relevant
source;

- issuing of any Commission for the examination of any witness;

and

- any other matter which may be prescribed.

Every proceeding before the District Forum shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860), and the District Forum shall be deemed to be a civil court for the purposes of Section 195, and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

Where the complainant is a consumer referred to in sub-clause (iv) of clause (b) of sub-section (1) of Section 2, the provisions of Rule 8 of Order I of the First Schedule to the Code of Civil procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Forum thereon.

The District Forum has to observe the procedure as detailed in Section 13. The first step on receiving a complaint is to refer a copy of the complaint to the opposite party directing him to give his version of the case within a period of 30 days. The forum may extend the time for fifteen days but not beyond.¹

¹ Where more time was allowed than thus permitted, the person in whose favour the order was passed was not allowed to complain that this was a defect in procedure. The violation was not of such a nature as to vitiate the proceedings, Raj
When the opposite party denies or disputes the allegations contained in the complaint or omits or fails to take any action to represent his case within 30 days or extended period of 15 days, a dispute arises. That is why a "consumer dispute" is defined in Section 2(1)(e) as a dispute where the person against whom a complaint has been made denies or disputes the allegations contained in the complaint.

After these preliminary steps the forum has to follow the procedure prescribed in reference to goods in clauses (c) to (g) of Section 13(1) and in reference to services, the procedure prescribed by Section 13(2).

In reference to goods the complaint may refer to some defect. The expression "defect" as explained in Section 2(f) means any fault, imperfection or shortcoming in the quality, quantity, purity or standard which is required to be maintained by any law for the time being in force or which the trader claimed that his goods possessed.

S. 2(f) "defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied, or as is claimed by the trader in any manner whatsoever in relation to any goods.

---

Rahul v. Lalit Kumar, (1994) 1 CPJ 73 NC.
4.3 RELIEFS GRANTED BY THE FORUM AGAINST COMPLAINT

There are vast numbers of reliefs granted by the District Forum to the complainant so that his interest is safeguarded and protected. These are known as the findings of the forum.

If, after the proceeding conducted under Section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things, namely :-

✓ to remove the defect pointed out by the appropriate laboratory from the goods in question;

✓ to replace the goods with new goods of similar description which shall be free from any defect;

✓ to return to be complainant the price, or, as the case may be, the charges paid by the complainant;

✓ to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party;

✓ to remove the defects or deficiencies in the services in question;
✓ to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them;

✓ not to offer the hazardous goods for sale;

✓ to withdraw the hazardous goods from being offered for sale;

✓ to provide for adequate costs to parties.

Every proceeding referred to in sub-section (1) shall be conducted by the President of the District Forum and at least one member thereof sitting together:

Provided that where the member, for any reason, is unable to conduct the proceeding till it is completed, the President and the other member shall conduct such proceeding de novo.

Every order made by the District Forum under sub-section (1) shall be signed by its President and the member or members who conducted the proceedings:

Provided that where the proceeding is conducted by the President and one member and they differ on any point or points, they shall state the point or points on which they differ and refer the same to the other member for hearing on such point or points and the opinion of the majority shall be the order of the District Forum.
Subject to the foregoing provisions, the procedure relating to the conduct of the members of the District Forum, its sittings and other matters shall be such as may be prescribed by the State Government.

*Types of relief*

If the forum is convinced that the goods were really defective or that the complaint about the service is proved, the forum shall have to order any of the following things to be done by the opposite party:

a) to remove the defect which has been pointed out by the laboratory;

b) to replace the goods with new goods of similar description which should be free from any defect;\(^2\)

c) to return to the complainant the price of the goods or the charges for the services;

d) to pay to the complainant a sum of money by way of compensation for any loss or injury suffered by the consumer due

\(^2\) A car which was damaged and was subsequently repaired and supplied as a new car was ordered to be replaced and some compensation for inconvenience was also allowed. Isaac Mathew v. Maruti Udyog Ltd. [1991] II CPJ 75 Ker.

A defective television was ordered to be replaced along with compensation. About the amount of compensation, the National Commission said that the forum itself is competent to measure it even if the party has supplied no particulars. Kailash Kumari v. Narendra Electronics, [1991] II CPJ 276 NC; 1991 CPR 107.
to the negligence of the opposite party.

e) to remove the defects or deficiencies in the services in question;

f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them;

g) not to offer the hazardous goods for sale;

h) to withdraw the hazardous goods from being offered for sale;

i) to provide for adequate costs to parties.

Some examples of types of relief

Relief was allowed under the section to a purchaser of Dyanora Colour TV when it was discovered after three years of use that the original Philips picture tubes, which the set was supposed to contain, had been replaced by old Korean picture tubes. The producer was ordered to fit new picture tubes and also to pay Rs. 2000 by way of compensation for inconvenience.³

An insurance company's refusal to pay the claim to the nominee and asking her to produce succession certificate in the absence of any rival claimants has been held to be wrong. The insurer was ordered to pay with 12% penalty interest.

Where a bank was authorised to receive applications for allotment of plots on behalf of a development authority and the application was not sent by the bank to the authority with the result that the complainant missed the allotment, it was held that an application received by an authorised agent was as good as that received by the organisation. The application being valid, the complainant was entitled to an allotment.\(^4\)

The death of a lady caused by a bursting gas cylinder when it was being connected was held to be due to deficient service. The delivery boy did not provide the second check at the time of delivery because the family members told him not to remove the seal. But this being his statutory duty, the supplying organisation was held liable to pay Rs 1,00,000 for loss of expectation of life and Rs 50,000 for loss of consortium.\(^5\)

Relief was allowed against a badly managed bus stand. However, the complainants were allowed only their costs of Rs 1200 and an undertaking was taken from the station superintendent to remove the deficiencies alleged in the complaints.\(^6\)


\(^5\) Indian Oil Corp. Ltd. v. V Venkataraman, 1993 CCJ 396 NC

Difference of opinion and inadequacy in forum:

Where the proceeding is conducted by the President and one member and they differ, they should state the difference and refer the same to the other member for hearing the matter on the point of difference and then the opinion of the majority would be regarded as the order of the forum. An order passed when the forum was presided over by one member only has been held to be invalid.

Where a matter was heard by the President and the forum and a member but order was passed only by the President and subsequently the two other members passed a separate order admitting the claim whereas the President had rejected it, the order of the two members was held to be not proper, because one of them was not a party to the hearing. The pronouncing of two different judgments on two different occasions was held to be not proper.

Types of relief not allowed under the Act

The authorities under the Act have to confine themselves to the types of relief provided in the section. No relief can be allowed outside the scope of the section.  

Thus where a contractor failed to erect and Commission the equipment in terms of his contract, it was held that a breach of contract of this kind was not remediable under the Act. It could hardly be

---

described as a deficiency in service. The matter should go under the law of contract to an ordinary civil court.\textsuperscript{8}

Failure on the part of an educational institution, like Indian Institute of Technology, to bring about a promised improvement in the strength and design of helmets, is not in the manner of a commercial service and would, therefore, be outside the Act.\textsuperscript{9}

Approval of building map plans by the Municipality of the area is not a service of commercial nature and, hence no consumer action lies on the part of the applicant whose building plan was not approved. He was required to pay Rs. 3000 towards the costs of the Municipality.

An order of the State Commission at the instance of and insurer, who engaged a surveyor and then doubted his integrity, that the insurer should conduct an investigation of his conduct in the matter and take action against him, was set aside as being beyond jurisdiction, it being not known whether the insurer had a right to take such disciplinary action.

4.4 APPEALS TO BE MADE TO THE APPELLATE AUTHORITIES

Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission. The period of 30 days from the date of the order is allowed for the purpose. The

\textsuperscript{8} Jaipur Metals and Electrical v. Laxmi Industries, [1991] II CPJ 602 NC.
\textsuperscript{9} N.K. Goyle v. Registrar, IIT, [1991] II CPJ 614 Maha
form and manner of appeal have been provided in the rules made under the Act\textsuperscript{10}.

The State Commission has been empowered to entertain an appeal even after the expiry of 30 days if it is satisfied that there was a sufficient cause for not being able to file an appeal within the prescribed period.

The provision is as follows:

15. \textbf{Appeal}- Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed:

Provided that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing if within that period.

\textbf{Condonation of delay}

In dealing with the question of condoning the delay under 8.5 of the Limitation Act the party seeking relief has to satisfy the Court that it had sufficient cause for not preferring the appeal or making the

application within the prescribed time. This has always been taken to 
mean that the explanation should cover the whole period of delay.

It is not possible to lay down precisely as to what facts or matters 
would constitute sufficient cause under the section but those words 
should be liberally construed so as to advance substantial justice where 
no negligence or any inaction or want of bona fides is imputable to the 
party.

The delay in filing the appeal should not have been for reasons 
which indicated the party's negligence in not taking necessary steps 
which he would have or should have taken. Discretion is that of the 
forum before which an application for condoning the delay is made.

If the forum after keeping in view relevant principles exercises its 
discretion granting relief, unless it be shown to be manifestly unjust or 
perverse, the Supreme Court would be loathe to interfere with it.

The delay in filing an appeal should not have been for reasons 
which indicate the party's negligence in not taking necessary steps, 
which he could have or should have taken. What would be such 
necessary steps will depend upon the circumstances of a particular case 
and each case will have to be decided by the courts on the facts and 
circumstances of the case.

Any observation of an illustrative circumstance of fact will only 
tend to be a curb on the free exercise of the judicial mind by the court in 
determining whether the facts and circumstances of a particular case
amount to sufficient cause or not. It is for the court to exercise its judicial discretion soundly in the interest of justice.

The expression 'sufficient cause' cannot be construed too liberally, merely because the party in default is the Government. It cannot also be gainsaid that the same consideration that will be shown by courts to a private party when he claims the protection of S. 5 of the Limitation Act should also be available to the State. The words 'sufficient cause' should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party.  

The words "sufficient cause" and "satisfied" used in the proviso to Section 15 of this Act are in pari materia with the words used in Section 5 of Limitation Act.

The appellant is required to explain delay beyond the terminus line of the prescribed period of limitation and further that he has acted diligently for the purpose of filing the appeal. Anything done with due care and attention cannot be said to have not been done diligently.

Some of the principles relating to condonation were collected by MP Thakkar J of the Supreme Court in Collector, Land Acquisition,

---

Anantnag v. Katiji.* The facts and the principles laid down appear from the following short judgment which is being reproduced in whole:

"To condone, or not to condone, is not the only question. Whether or not to apply the same standard in applying the "sufficient cause" test to all the litigants regardless of their personality in the said context is another.

An appeal preferred by the State of Jammu & Kashmir arising out of a decision enhancing compensation in respect of acquisition of lands for a public purpose to the extent of nearly 14 lakh rupees by making an upward revision of the order of 800 per cent (from Rs. 1000 per kanal to Rs. 8000 per kanal) which also raised important questions as regards principles of valuation was dismissed as time barred being 4 days beyond time by rejecting an application for condonation of delay. Hence this appeal by special leave.

The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of

---


13 Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed bed period if the appellant of the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.
matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice—that being the life-purpose for the existence of the institution of courts.

It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

- Ordinarily a litigant does not stand to benefit by lodging an appeal late.

- Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

- "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

- When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be
preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

- There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

- It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the State, which was seeking condonation and not a private party, was altogether irrelevant.

The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner.

There is no warrant for according a step motherly treatment when the State is the applicant praying for condonation of delay.

In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing,
and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State, which represents the collective cause of the community, does not deserve a litigant-non-grata status.

The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay.

The order of the High Court dismissing the appeal before it as time-barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

4.5 PENALTIES AND PUNISHMENTS UNDER THE ACT

Where a trader or a person against whom a complaint is made or the complainant fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person or complainant shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees, or with both:
Provided that the District Forum, the State Commission or the National Commission, as the case may be, may, if it is satisfied that the circumstances of any case so require, impose a sentence of imprisonment or fine, or both, for a term lesser than the minimum term and the amount lesser than the minimum amount, specified in this section.

A trader or a person against whom a complaint is made or the complainant is supposed to carry out the orders of the District Forums, State Commissions or the National Commission. Any failure in this respect would entail the penalties of this section.

The penalties are imprisonment for a minimum period of one month while the maximum can go up to three years. In the alternative, a fine ranging from a minimum of Rs. 2000 to a maximum of Rs. 10,000. 80th the penalties can also be inflicted. All the above authorities have also been empowered to impose less than the minimum prescribed both in respect of fine or imprisonment provided that the deciding authority is convinced that the circumstances of the case so require.

Where the order of District Forum to replace the defective tyre or to refund its price was not obeyed by the trader and a three months' imprisonment was imposed upon him, it was held that no appeal would lie against such order and, therefore, the trader's appeal was treated as an application for revision.

The Commission observed that proceedings under the section are not in the nature of criminal proceedings and finding that three months'
imprisonment was excessive, set it aside and substituted it with a fine of Rs. 2000 only.\textsuperscript{14}

An order cannot carry an inbuilt imposition of penalty in anticipation that the order is likely not to be obeyed. The National Commission accordingly struck down an order of a District Forum by which the General Manager of Southern Railway was directed to provide drinking-water in polythene bags with meals and with an inbuilt order of imprisonment if he failed to do so. The National Commission said that if an action is to be taken under S.27, natural justice requires that the person sought to be proceeded against should be heard.\textsuperscript{15}

Where a District Forum directed the secretary of an educational institution to produce the English answer book of the complaint and on his failure to do so imposed a fine on him without giving him any opportunity to explain his position, the order was set aside. Since non-obedience caused mental suffering to the candidate it was considered just and proper to allow costs to him.\textsuperscript{16}

\textsuperscript{14} Agarwal Sales Corpn. v. JP Vyas, (1991) 1 CPR 70 Raj.
\textsuperscript{15} Union of India v. Madras Provincial Consumers' Assn., 1993 CCJ 12 NC; Union of India v. K Thiruvengadam, (1993) 2 CPR 65 NC. See also LIC v. Aysha Beevi, (1993) 1 CPR 68 Ker, failure to make payment in compliance with the order of the forum, held, punishable.