
AN ANALYSIS OF THE CONSUMER PROTECTION ACT, 2019, SECTION 2(D)

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ABSTRACT

The Consumer Protection Act, 1986 was enacted in order to provide speedy and inexpensive adjudication to consumers. Under this Act, consumer include a person who buys goods or services for his personal use and not for the purpose of commercial use or resale. This act seeks to uplift and safeguard the interest of consumers against deficiencies and defects in goods or services. It also secures the rights of a consumer against unfair or restrictive trade practices done by the sellers. Though legislature found that a class of people consuming goods for commercial purpose are also considered as a consumer under The Consumer Protection Act, 2019 and an exception was made for the people using goods or services for commercial purpose to earn their livelihood.

In India there are many small and marginalised farmers who buys products from the market for growing crops and then selling it in the market for making livelihood. Farmers purchase seeds, pesticides, weedicides, fertilizers etc along with engaging in various services like cold storage, warehouse, transportation etc. The engagement of services and buying products from market is done for the purpose of earning money which can be classified as commercial purpose but at the same time their livelihood is dependent of this. Therefore, it creates a situation where it becomes necessary to identify whether a farmer is a consumer or not and whether he can initiate complaint and can claim relief/compensation under The Consumer Protection Act, 2019.

In this paper we explore that whether a farmer can be called a consumer or not under The Consumer Protection Act, 2019. Further we enquire that when can a farmer be considered as a consumer and when can he be eligible of protection under this act.

Introduction

As per section 2(d) of the act 'Consumer' has been defines as a person who;

(i) "buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or"

(ii) "hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose."

Explanation. --For the purposes of this clause, --

(a) the expression "commercial purpose " does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment

(b) the expressions "buys any goods " and "hires or avails any services " includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing;

For example, there are four brothers who owns a land and use the same for farming, one of them buys seeds for all. If one of the brothers faces problem with seeds then he can file a complaint as a consumer under The Consumer Protection Act because he was using the seeds which were brought by his brother exclusively for the purpose of earning livelihood by means of self-employment.

But if a farmer who buys seeds and then hire some other person to do the farming on his land using those seeds and if the seeds get defective then he will not be called as a consumer and he

cannot file a complaint under Consumer Protection Act because he was not using the seeds exclusively for the purpose of earning livelihood by means of self-employment.

Thus, we can conclude that only a consumer can file complaint under the consumer protection act for the injury caused to him by the seller/manufacturer/trader but for this he must not use the goods/services for commercial purpose.

Most Indian farmers own only small landholdings, which require extensive care like irrigation, electricity, seeds, fertilizers, pesticides etc. but do not generate sufficient outcomes to cover the expenses of the same. Through the sway of seed companies' agriculturist with such small land holdings get into agreement with these companies to grow crops on terms dictated by the companies, in the hope of earning some profit to cover the offset expenses of their inputs and generate some income for the household. Farmers find themselves trapped in contracts when they buy expensive seeds which turns out be defective, resulting financial hardships, indebtedness which often manifests in the tragedy of suicide.

1. Relevant Case Laws

A person who uses goods/services for his own personal use will be called as a Consumer but a person who uses goods/services for the purpose of resale or earning profit on a large scale will be called as a Commercial Purpose. In certain situations, purchase of goods for 'Commercial Purpose' would not take the purchaser out of the definition of 'Consumer'. If the commercial use of goods/services is by the purchaser himself for the purpose of earning livelihood by self-employment, such purchaser of goods is still a 'Consumer' under the Consumer Protection act, 2019.

Use of goods/services for commercial purpose cannot be termed to be a Consumer

The Hon'ble Supreme Court dealt with the definition of the word "Consumer", "Livelihood", "Self-Employment", and "Commercial Purpose" in the landmark case of *Laxmi Engineering Works Vs P.S.G. Industrial Institute*¹. The fact of the issue before the Hon'ble Supreme Court were that the Complainant placed an order for supply of PSG 450 CNC Universal Turning Central Machine with the Respondent. The Opposite party supplied the machinery, but the delivery of the same was delayed by six months beyond the date which was decided for

¹ *Laxmi Engg. Works vs P.S.G. Industrial Institute*, (1995) 3 SCC 583

delivery, and when the machine was installed, several defects were found in various aspects which were brought to the notice of the respondent. The matter was brought before the Consumer Commission, wherein the Opposite Party raised the contention that since the machinery was purchased for the purposes of production, and therefore was bought for the commercial purposes, therefore the Complainant was outside the ambit of Consumer. Whereas on the other hand the Complainant argued that though the machine was purchased for the commercial purpose but it was strictly for the purposes of earning livelihood out of it by means of self-employment. Therefore, the question of law before the Hon'ble Supreme Court was that, what is the meaning and ambit of the expression "*for any commercial purpose*" as used in section 2(1)(d) of the Consumer Protection Act, 1986.

The Hon'ble Supreme Court held that a person who purchases goods for their own use is a consumer even if they earn a livelihood through it or by means of self-employment. Further, self-employed consumers are entitled to claim damages from the sellers/traders of faulty machinery that has been delivered or sold to them. The Hon'ble Supreme Court appreciated the fact that the Complainant was carrying on business of manufacturing of machine parts on a large scale for earning huge profit which will be called as commercial purpose. On the basis of above-mentioned act, after observing the nature and character of the machine bought by the appellant, it was concluded that this does not fall under goods/services which the complainant purchased to use by himself, exclusively for the purpose of earning his livelihood by means of self-employment. Hence complainant cannot be regarded as a consumer and the petition was dismissed.

Farmer held to be consumer

That the Hon'ble Supreme Court in the case of *Nandan Biomatrix Ltd vs S. Ambika Devi*², Respondent was a small landholder who entered in a Tripartite Agreement with the Appellant and lodged a complaint for negligence and breach of contract claiming that the company failed to buy back her produce which was promised to do. This led to destruction of the crop of musli on a large scale as the Appellant did not buy back her produce. The Opposite party contended that according to Section 2(1)(d) of The Consumer Protection Act, 1986, the Respondent was not a "Consumer". The tripartite agreement anticipated buyback of musli which amounted to resale by the appellant, which is excluded under this act. It was also contended that the

² *Nandan Biomatrix Ltd vs S. Ambika Devi*, (2020) 13 SCC 130

cultivation and sale of musli by the Respondent was for a commercial purpose and not for the purpose of earning livelihood. Whereas on the other hand the Respondent argued that she only helped the landholder by growing the crops by utilizing foundation seeds in order to earn money for her livelihood. Therefore, the question of law before the Hon'ble Supreme Court was that whether the Respondent was excluded from the purview of the definition of "Consumer" under section 2(1)(d) of the Consumer Protection Act, 1986.

The Hon'ble Supreme Court observed that the Respondent was not reselling any product but was growing her own product by utilizing the foundation seeds and sustaining herself by selling her product. This cannot be termed as resale or activity in furtherance of a "Commercial Purpose", rather it is purely for the purpose of earning livelihood by means of self-employment. On the basis of above-mentioned facts, The Hon'ble Supreme Court held that a person buying goods and using them exclusively for the purpose of earning a livelihood by means of self-employment will fall under the definition of "Consumer" within the Consumer Protection Act, 1986, even if such use is commercial use. Thus, the Hon'ble Supreme Court imposed a cost on the Appellant of Rs. 25,000/- payable to the Respondent.

In the case of *Chandel Cold Storage vs State Consumer Disputes Redressal Commission*³ the Respondent stored his potatoes in the cold storage of the Petitioner and availed the facilities. Due to some mechanical fault in the generator the power supply in the cold storage was not continuous. The petitioner informed for the same and he also circulated a general notice in the local newspaper but the Respondent did not show up to reclaim the potatoes stored by him. The matter was brought before the Consumer Commission where the Petitioner raised the contention that the Respondent kept his potatoes in the cold storage and availed the facilities which is Commercial in nature and would not fall within the definition of "Consumer" under section 2(1)(d) of The Consumer Protection Act, 1986.

The High Court of Allahabad relied on the judgement of the Supreme Court in the case of *National Seeds Corporation Limited Vs M. Madhusudan Reddy*⁴, where the question of law before the Hon'ble Supreme Court was that whether the growers of seeds, who entered into the agreement will fall under the ambit of section 2(1)(d) of the Consumer Protection Act, 1986. The Hon'ble Supreme Court had held that when the farmers/growers agreed to produce seeds on the behalf of seed seller for the purpose of earning livelihood by self-employment by using

³ *Chandel Cold Storage vs State Consumer Disputes Redressal Commission*, (2019) SCC Online All 5624

⁴ *National Seeds Corporation Limited Vs M. Madhusudan Reddy*, (2012) 2 SCC 506

his skills and labor, such purpose cannot be said to be commercial purpose and there is no reason to deny them the remedies available to a consumer of goods and services.

With the view of the above-mentioned facts the High Court of Allahabad referred to the explanation given under the section 2(1)(d) of The Consumer Protection Act, 1986, wherein there was an exclusion from the definition of ‘Consumer’ who produce goods exclusively for the purpose of earning livelihood by means of self-employment. The court also observed that the farmer, who stored his agricultural produce in the Cold Storage, has to be taken out at a later point of time, for getting higher return and held that the farmer would fall within the definition of Section 2(1)(d) of The Consumer Protection Act, 1986 as the use of goods produced by him would be exclusively for the purpose of earning livelihood by means of self-employment.

Conclusion

In this paper we observed that a consumer who is consuming goods for his own personal use and a consumer who is consuming goods for the purpose of making livelihood by self-employment can be considered as a consumer under the act but at the same time the legislature had also made some exceptions like, for a farmer who is selling goods by availing facilities like cold storage, transportation etc. will also be considered as a consumer even though it is called as commercial purpose because in the end selling those goods will help him making a livelihood. This helped the farmers a lot and reduced the probabilities of them going into financial hardships and indebtedness reducing the number of suicides done by them. Whereas if a consumer is using goods for large scale commercial purpose for making profit, then he will not be considered as a consumer under The Consumer Protection Act, 2019. Thus, we can say that a person who falls within the definition of “Consumer” under Section 2(d) of The Consumer Protection Act, 2019, will be given all the rights and remedies available to a consumer even if the consumer uses goods/services for Commercial purpose but it should be exclusively for the purpose of earning livelihood by means of self-employment.