

KARNATAKA HIGH COURT RULING DILUTES CPA

In a judgement of far reaching consequences which could almost dilute the Consumer Protection Act (CPA) the high court of Karnataka has declared that the provisions made under Section 27 of the CPA is violative of the fundamental rights as enshrined under the Constitution of India.

Disposing of a writ petition filed by Mr Permjit Singh the court has said that a perusal of Section 27 shows that it creates an offence without prescribing any procedure for the forum or the commissions under the Act to impose imprisonment provided under this Section. Besides, it has said that no person can be convicted except for violation of law in force at the time of commission of the act charged as an offence.

On behalf of the petitioners it was argued that since there is no procedure prescribed for trial under Section 27 it contains personal liberty of the citizens as enshrined under Article 21 of the Constitution and so it is unconstitutional.

This is not the first time that efforts have been made to weaken the CPA. Traders, businessmen and defaulting companies have questioned the very foundations of CPA. Knowing very well that this piece of legislation has some inherent deficiencies, they have tried to scuttle the process of speedy delivery of justice to consumers.

The high court's judgement has thrown up several issues which need to be addressed at the earliest so that the consumer courts will be able to work effectively and achieve their objective as contained in the preamble of the CPA.

The first point is whether Section 27 of the CPA is unconstitutional and whether it in anyway violates the personal liberty of the individual as contained in Article 21 of the Constitution. Secondly, whether the procedures as contemplated in the Criminal Procedure Code (CPC) is to be followed for invoking Section 27 of the CPA. Finally whether high courts should interfere in the affairs of the consumer fora and commissions.

The CPA was enacted to provide for the better protection of the interests of the consumers and to make provisions for establishment of consumer councils and for matters connected therewith. Knowing very well that unless the offenders are punished these objectives can not be achieved, two sections namely Section 25 and 27 were incorporated into the CPA.

Under Section 25 every order made by the District Forum or the Commission may be enforced in a same manner as if it were a decree made by a court in a suit pending therein. In case the forum or commissions are unable to execute the order the same may be sent to the local court which shall execute the order as if it were a decree or order sent to it for execution.

It is clear that if Section 25 is to be invoked all the procedures prescribed under the CPC like hearing, issue of warrants, detention, arrest etc is to be followed. The

makers of CPA were clear about its objectives. To avoid the cumbersome, time consuming process involved in following the CPC which could defeat the very concept of 'speedy justice' an alternative remedy in the form of Section 27 was incorporated.

As per Section 27 where a trader or a person against whom a complaint is made fails or omits to comply with any order made by the forum or commissions, such a person or trader shall be punishable with imprisonment for a term not less than one month which may extend to three years or with a fine which may be from Rs 2,000 to Rs 10,000 or with both.

Therefore the differences between the two sections are obvious. While under Section 25 the procedures of the CPC is to be followed in case of Section 27 no such provision is made. Despite this main difference, the high court has felt that the provisions of Section 27 are not distinct than Section 25 of the Act'.

The point whether Section 27 of the CPA is unconstitutional and violates Article 21 of the Constitution has been answered by the Kerala high court in the case of Babu Joseph vs. Consumer Disputes Redressal Forum (II/1997/CPJ/377). In this case the high court said that the 'parliament in its wisdom thought that if the order of the consumer courts can be enforced only as decree in the long delaying process therein, with the hierarchy of appeals and revisions of CPC, the entire object of the CPA will be defeated'.

Further it has said that since Section 27 gives ample power for the consumer courts to enforce its order by imprisonment or fine or both, principal of natural justice should be complied with before enforcing punishment and the offenders should be heard. But it does not say that the procedures of CPC are to be followed. In another case (1997/3/CPR/408) the Kerala State Commission has specifically stated that the provisions of the CPC are not applicable if the proceedings are taken under Section 27 of CPA.

In another judgement (1/1997/CPJ/271/DB) the Delhi court has decided that Section 27 of the CPA has created a statutory offence-the non-compliance of an order of a duly constituted Tribunal under the CPA, and has made the said non-compliance an offence punishable with simple imprisonment and fine. It has added that a statute can create a tribunal and might say that non-compliance with the orders of the Tribunal is an offence and punishable.

The Delhi high court has further stated that under Section 25 no statutory offence is created while under Section 27 a separate offence is created if order under Section 25 is not implemented. We are therefore, the Court said, unable to hold that the order of punishment of simple imprisonment passed against the petitioner is violative of Article 21 of the Constitution. The Kerala high court judgement deferred, above has observed that the intention of the parliament in enacting the CPA will be defeated if these are questioned before the high court under Article 226 of the Constitution. The message is clear.