

CONSUMER INFO



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CBSE HELD GUILTY OF DEFICIENCY IN SERVICE

Ever since the Consumer Protection Act (CPA) came into force the controversy whether education is a service as contemplated in the CPA has been widely debated. In the initial stages consumer forums did entertain complaints against educational institutes, colleges and universities. Issues like mistakes in admission tickets, wrong evaluation of answer scripts, delay in conducting examinations and announcement of results etc. were taken up by the forums. But there was no finality.

The National Commission did pronounce some

significant judgments on education. But here again the confusion continued. While certain functions of universities and colleges were considered as service as per the CPA, some were not. Even today this confusion continues thereby giving educational institutes a chance to defend their lapses.

In a case decided in September 2006 the Bihar State Consumer Disputes Redressal Commission has held that issuing marks sheets and evaluation of answer scripts constitute service as per CPA and institutions can be held guilty of deficiency in service if there is any lapse. In this case the daughter of Dr. Gautam Singh was declared failed in an examination conducted by CBSE, When the marks sheet was issued it was found that she had scored 16 marks in Social Science subject. An application was made for re-totalling and it was found that she had actually scored 68 marks. By the time she obtained the new marks sheet she had lost the opportunity of



entering into premier institutions for higher studies,

A complaint was filed in the District Forum on grounds of deficiency. A sum of Rs.4 lakhs was claimed as compensation. However the district forum directed CBSE to pay Rs,20000 as compensation. Both the parties challenged this decision in the State Commission. CBSE argued that the National Commission has decided that conducting examination does not constitute hiring of service. Further the Bye Laws of the institution provided for re-

examination of answer papers thereby there may be errors. This excludes the CBSE from any responsibility for payment of damages.

But the State Commission took a different view. It said that the National Commission has passed several orders after the one quoted by the institution. It said that mistakes/lapses on the part of the Examination Board are the administrative aspects and publishing results are definitely consumer disputes. Further the

byelaws of the CBSE cannot come to the rescue of CBSE. The fact that there was mistake in the marks sheet issued to the student clearly indicates that there was deficiency in service. But the State Commission did not agree to enhance the amount of compensation given by the District Forum.

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Responsible Business for Consumer Satisfaction

The Federation of Indian Chamber of Commerce and Industry (FICCI) and the Department of Consumer Affairs, Government of India, has come together to enhance consumer culture within the business organizations. Under the scheme the FICCI Alliance for Consumer Care (FACC) will be established to facilitate the efforts of businesses in India to leverage its brand image. The objectives of the FACC are as follows:

- Create a community of trustworthy and responsive consumer-friendly business
 - Create a code of conduct for business based on voluntary self-regulation
 - Reward and recognize market place role models for enhancing brand viability of Indian business
- Facilitate create an institutional mechanism for effective interface between business and consumers for redressal of complaints.



Consumer Law to cover DoP

Soon, the Department of Posts (DoP) will be made accountable to the consumers as it will come under the ambit of the Consumer



Protection Act (CPA). Under the proposal, an aggrieved consumer can approach the Consumer Forum as a matter of right, in case of unsatisfactory and poor service like loss of article, money and delayed services. At present DoP services are exempt from the CPA. An individual consumer's complaint against the services of the DoP and a registered service provider would be addressed through the CPA.

The Telecom Disputes Settlement Appellate Tribunal (TDSAT) currently looks into the telecom and broadcasting disputes. On the proposed amendment, the Cabinet note prepared by the Department says, ' The Draft Bill envisages bringing the postal services provided by DoP except the services which would be falling under the Universal Service Obligation under the ambit of the CPA. Therefore, the interests of the consumers are adequately considered and protected by the Government, the note said.

(Business Standard, 19.4.2007)

Pepsi Foods asked to pay compensation

Mr.A.K.Kapoor a practicing doctor got the shock of his life when a bottle of soda exploded when he opened it, injuring his left



hand, chest and abdomen. He dragged the soda company namely Pepsi Foods Ltd, to the State Consumer Disputes Redressal Commission which ordered the company to pay Rs.25000 to the doctor. The Commission observed that the bottle could explode only due to defective concentrates.

(The Hindustan Times, 9.5.2007)

ESI hospitals can be sued for negligence

For the first time the Employees State Insurance (ESI) hospitals have been brought within the ambit of the Consumer Protection Act (CPA) by the Supreme Court in a judgment that would empower employees covered under the ESI Scheme to sue hospitals in case of medical negligence.

The apex court had earlier ruled that government hospitals, where a patient has to pay for health care, could come under the consumer law. However, this ruling means that persons getting medical attention from a hospital, being a member of the ESI health insurance scheme, would qualify as a 'consumer' to sue for damages for negligence. The Employees State Insurance Corporation (ESIC) is under law required to maintain and establish hospitals and dispensaries to provide medical and surgical services to insured employees and their families. One Kishori Lal, who regularly contributed to ESI, got his wife treated in an ESI hospital in Sonapur and later found that she had been wrongly diagnosed. He sued the ESI but consumer forums, up to the National level dismissed his plea on the ground that the services rendered by ESI hospitals were gratuitous in nature and hence would not be covered under the CPA.

(The Times of India, 21.5.2007)

Insurance firm asked to pay compensation

An insurance company has been fined Rs.2 lakhs by the Consumer Forum for rejecting the mediclaim of a patient. The company rejected the claim on the ground that the disease for which she was insured and admitted in the hospital was a result of pre-existing ailment. The pre-existing ailment, according to the insurance agency, New India Insurance Company, was in the list of diseases where the insured person is not liable for reimbursement.

Meena Aggarwal, a resident of Delhi lodged a case against the company for not reimbursing her claim for hospital expenses for treatment of End Stage Renal Disease. According to the company, this disease was a result of Wegner's Granulomatosis from which she was suffering for a long time and which was not in the list of diseases for which reimbursement can be claimed.

According to the court, if the disease for which a person is being treated does not fall in the list, reimbursement has to be given irrespective of the fact that it was caused by a pre-existing disease. The exclusion clause is strictly applicable only to those diseases which are declared in the said clause and not for any other disease, even if the disease for which the treatment is obtained is a result of complication arising from the pre-existing diseases, said Justice J.D.Kapoor, President of the Delhi State Consumer Disputes Redressal Commission.

(The Indian Express, 22.6.2007)

Firm fined for poor quality cement

The Delhi State Consumer Disputes Redressal Commission has asked a cement manufacturer to pay Rs.80000 as compensation and litigation cost to a consumer for supplying sub-standard cement five years ago. Disposing off the complaint in the case of Udaipur Udyog Limited, the Commission had held the company guilty of unfair trade practice and has directed Mr.K.K.Bhamri for having supplied 50 bags of defective cement.

Dismissing the contention of the company that the cement could not be declared sub-standard in the absence of any appropriate laboratory test, the Commission said that various other factors had established that the product was defective in quality. It further relied on the 'hammer test' and noted that where ordinary cement set in within 3-4 days, the sample of substandard cement failed to set in even after 28 days of laying of the lintel.

(The Times of India, 6.4.2007)

WHICH TUBELIGHT LAST LONGER

Every time electricity tariff is increased you decide to bring down power consumption in order to save money. Seldom you think of buying an electrical item or gadget which consumes less power but gives more benefit. Take for instance tubular fluorescent lamps, commonly called tubelights. They are ideal for domestic and commercial use because of good light output and long life. But how to decide on a tubelight, which is long lasting but at the same time consuming



less power? For every manufacturer claims his product to be an energy saver. It is here that independent tests conducted by consumer organizations like Consumer Education and Research Society (CERS) that is helpful. Recently the CERS tested 11 brands of 40W tubelights. The focus was on the life of the bulb. The brands tested include Wipro, Surya-HBT, New Cema Super, ECE Amarjyoti, GE Standard, New Philips Champion AR, New Crompton, Osram, Bajaj, Anchor Classic

and Bengal Lamps. Though it is not mentioned on the tubelights or their packing, the rated life of tubelights is 5000 hours. A clause in the standards of the Bureau of Indian Standards suggests that to assess the rate life of the tubelights they could be tested up to 70 per cent of their rated or declared life. Hence CERS tested tubelights up to 3500 hours and also up to 5000 hours in the interest of the consumers.

Out of 11 brands, all 10 samples each of nine brands worked satisfactorily up to 3500 hours. These were Philips, ECE, Wipro, Surya, Bajaj, Anchor, Osram, Bengal Lamps and GE. One sample of Crompton and two of Cema

stopped working before 3500 hours. It is not enough that the samples continue working they should also provide adequate light. Lumen (light output) maintenance is a measure of the amount of initial light output maintained by a tubelight during its life. The lumen maintenance at 3500 hours was found to be highest in Osram at 92.78 per cent followed by ECE at 91.14 per cent and Ge at 90.61. The lowest was for Bengal Lamps at 83.28

Ten samples of each of the nine

brands, nine samples of Crompton and eight of Cema were tested for extended life up to 5000 hours. All 10 samples each of six brands i.e Philips, Osram, GE, ECE, Bajaj and Anchor worked satisfactorily with light output more than 80 per cent. The average lumen maintenance of only one brand Bengal lamps, was found to be 78.37 per cent and that of Osram was the highest at 90.27 per cent followed by ECE at 90.16 per cent.

Blackening of ends indicates that the tubelights life may gradually come to an end. Besides, blackening of ends of a tubelight is not visually appealing. Black spots were observed on tubelights of Bengal Lamps at the end of 3500 hours itself. By 5000 hours all 10 samples of that brand showed blackening. Only Philips, ECE, Osram and GE showed no blackening at the end of this period. None of the 10 samples of Philips, GE and Osram showed blackening of ends even at 5000 hours. Philips provided an anode ring to prevent the blackening of ends.

Based on the above results the CERS has suggested the BIS that efficacy of tubelights should be included as a parameter in the Standards. The BIS has agreed to take up the matter in the next meeting.

Labelling of medicine in Hindi and English

In response to a decision of the Union Ministry of Chemicals and Fertilisers, drug manufacturers will now show all product names on the labels in Hindi, in addition to English to avoid possible errors in dispensing and usage in rural areas. Many manufacturers already follow this practice, says the *Indian Drug Manufacturers Association* bulletin.

Earlier the decision was scheduled to be effected on 1 April 2006. But on the request from various pharmaceuticals companies it was postponed to 2nd October 2006. However the decision is yet to be implemented in toto.

Inventing diseases

Drug companies are allegedly inventing diseases to sell more their products. Researchers examining the issue at Newcastle University, UK have labeled the hype as 'disease-mongering' and accused the companies of medicalising problems like high cholesterol or the symptoms of menopause to increase profits. The industry is exaggerating conditions, turning healthy people into patients, says the Public Library of Science Medicine journal, quoting the researchers. They even accuse drug companies of funding disease-awareness campaigns through the media, more for selling drugs than educating the public.

Drug companies have hit back: 'We utterly refute any allegations' says Glaxo Smith Kline, 'that we would in any way hype or overplay the very real needs of patients' Pfizer, which makes Viagra has also refuted the accusations.

(Adapted: *Insight/10/2006*)

Tobacco: The killer weed

Before you light up the next cigar or beedi or any tobacco related product have a look at the following facts and figures:

Estimates by the World Health Organization (WHO) currently show that about 5 million people die prematurely every year in the world



due to use of tobacco

The cost of the tobacco attributable - cancer, heart disease and lung disease was estimated to as Rs.308.33 billion in the year 2002-03.

Cigarettes kill one in two smokers prematurely, half of these deaths occurring during middle age (35-69 years)

India is the second largest producer of tobacco in the world

About 6 million Indian farmers are engaged in growing tobacco. Another 20 million people work on tobacco farms, and a large percentage of the population is employed in the retail trade

The industry also generates substantial revenues for the government nearly 5 per cent of the budget revenue

In 2004, the Indian Tobacco industry is a Rs.350000 million industry

Cleaning the Cleaner

It sits innocuously on your bathroom shelf and is vital for your dental health. But it could also kill you slowly. Your toothbrush.

According to a recent book by US biochemist James Song, *Why Your Toothbrush May Be Killing You Slowly*, unhygienic toothbrushes harbour millions of bacteria and may cause ailments from the common cold and flu to heart disease, arthritis, stroke, diabetes and chronic infections. Song's theory is that the bacteria on a toothbrush travel straight into the blood stream via minute lacerations in the gum.

A moist toothbrush is a perfect culture base for bacteria. Viruses responsible for hepatitis A, B and C have all been found on toothbrushes.

What you should do?

Change your toothbrush every three months

Change it after a serious infection

Never share

Take care with hard bristles as they are more likely to cause lacerations

Keep your toothbrush in a closed container in your bathroom

(Adapted: *Insight/10/2006*)

Contaminated water



Iron is the biggest pollutant. It has contaminated water in more than 1 lakh habitations in the country. Here are the details.

| Pollutants | Habitations affected |
|--------------|----------------------|
| Iron | 118088 |
| Fluoride | 31306 |
| Salinity | 23495 |
| Nitrate | 13958 |
| Arsenic | 5029 |
| Others | 25092 |
| Total | 216968 |

CONSUMER SAFETY

Safety tips while using elevators

- Be sure to stand clear of the elevator door as it is closing. Remember that the door sensors aren't always completely reliable.
- Always enter and exit the elevator at designated floor alignments. Attempting to exit when the elevator is improperly aligned is inadvisable because it exposes the open elevator shaft
- Do not use your hands to stop the doors from shutting
- In case of a fire, use the stairs
- Keep clothes away from door openings
- Hold children and pets firmly while entering and exiting an elevator
- If you should come upon an exposed elevator shaft, notify the proper elevator safety officials immediately. Do not go near the open shaft or attempt to climb through it If the elevator stops,

alarm button and wait for help. Do not accept help from anyone other than an elevator technician.

- If the elevator is between floors, do not try to open the doors
- Alcohol can severely impair your ability to operate elevators. Proper elevator riding requires a clear head. If you plan on riding the elevator, avoid heavy drinking
- Before you board the elevator, make sure that none of its passenger who is boarding the elevator exit the elevator immediately
- If you notice that a person in the elevator has not pushed a floor indicator button, do not get off at your floor. Either get off with the other passengers leaving the elevator or try to go back to the lobby and report the suspicious activity to someone there.
- Stand near the elevator's control buttons. If threatened or attacked, sound the alarm and push as many floor buttons as possible

ESCLATORS

- Be careful while stepping ad off
- Do not use escalators for carrying shopping carts
- Always hold the handrail firmly, but do not lean on it
- Check for untied shoelaces and any loose clothing before getting on to the escalator
- Take special care of kids, do not allow them to play on the escalator
- Do not move up and down the steps
- Keep away from the edges of the steps
- Stand facing forward while riding an escalator

A guide to Income Tax Ombudsman Scheme



If there is any delay in tax refund beyond reasonable time limit or if your letters to the Income Tax Department go unacknowledged, you can have your grievance redressed by the Income Tax Ombudsman.

The Income Tax Ombudsman Guidelines 2006 have created an Income Tax Ombudsman, whereby an officer of the Indian Revenue Service (IT) will be appointed to solve people's income tax-related problems.

The Ombudsman is going to be independent from the jurisdiction of the IT department and once designated as Ombudsman, will leave the services of the Government of India.

What will the Ombudsman do?

The powers of the Ombudsman will be:

- Receive complaints from tax payers on any matters specified in Clause 9
- Consider the complaints received and facilitate their settlement by agreement, through conciliation and mediation between the ITD and the aggrieved parties, or by passing an 'award' in accordance with the Guidelines
- Require the Income Tax Authority complained against to provide any information or furnish certified copies of any document relating to the complaint
- Suggest remedial measures for redress of grievances
- Report findings to the Secretary, Department of Revenue, Government of India and the Chairman, Central Board of Direct Taxes (CBDT) for appropriate action against erring officials

Grounds for filing complaints

A taxpayer can file a complaint if she/he feels aggrieved on any of the following points:



- Delay in issue of refunds beyond time limits prescribed by law
- Sending of envelopes without refund vouchers in case of refund
- Non-adherence to the principle of 'First come First Served' in sending refunds
- Non-acknowledgment of letters or documents sent to the department
- Not updating of demand and other registers leading to harassment of assesses
- Lack of transparency in identifying cases for scrutiny and non-communication of reasons for selecting the case of scrutiny
- Delay in disposing cases of interest waiver
- Delay in disposing of rectification applications
- Delay in giving effect to the new appellate orders
- Delay in release of seized books of accounts and assets after the proceedings under the IT Act in respect of the year for which the books of account or other documents are relevant are completed
- Delay in allotment of PAN
- Non-credit of tax paid, including TDS
- Non-adherence to prescribed working hours by IT officials
- Unwarranted rude behavior of IT officials with assesses
- Any other matter relating to violation of the administrative instructions and circulars issued by the CBDT.

How to file a complaint?



A complaint can be made either by the assessee or through an authorized representative.

The complaint should have details like the name and address of the complainant, the name of the office and official of the IT Department against whom the complaint is made and facts giving rise to the grievance

A complaint made through email is also accepted. However, a printout of the same must be signed by the complainant at the earliest

Settlement of complaints

If a complaint is not settled by agreement within a month from the date of receipt of the complaint or such further period as the Ombudsman may consider necessary, the Ombudsman may pass an award after giving each party due opportunity to present its case. A token compensation of Rs.1000 at the most for any loss suffered by the complainant can also be given

Where are the IT Ombudsman Offices located?

At present the IT Ombudsman are located at New Delhi,



Mumbai, Chennai, Kolkata, Bangalore, Hyderabad, Ahmedabad, Pune, Kanpur, Chandigarh, Bhopal and Kochi.

(Source: *The Chartered Accountant Practice Journal*, January 2007)

Tobacco advertisements under check

The Government of India has constituted a steering committee consisting of 15 members to ensure that tobacco companies do not mislead people by advertising their products and the media as well as advertisers abide by the anti-tobacco legislation. The committee will be headed by the Union health secretary. It also has officials from the ministries of information and broadcasting, law and justice and consumer affairs. The other members include the Directorate of Audio Visual Publicity, Press Information Bureau, Advertisements Standards Council of India, and Press Council of India. It also include representatives from civil society organizations like Institute of Public Health, Voluntary Health Association of India etc.

The committee would monitor if tobacco

companies are adhering to Section 5 of the Cigarettes and Other Tobacco Products (Prohibition of Advertisements and Regulation of Trade and Commerce, Production, Supply and Distribution) Act 2003 that bans advertisements of tobacco products.

A report on tobacco control says that there are an estimated 240 million tobacco users aged 15 years and above consisting of 195 million males and 45 million female users. Smoking causes seven lakh deaths every year in the country. Among the tobacco consuming population in India, 45 per cent smoked beedis while 40 per cent chew tobacco and the rest smoke branded cigarettes.

(Source: *Deccan Herald*)



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