

STATE OF KARNATAKA
v.
VISHWABHARATHI HOUSE BUILDING COOPERATIVE SOCIETY
AND ORS.

JANUARY 17, 2003

[V.N. KHARE, CJ, K.G. BALAKRISHNAN AND S.B. SINHA, JJ.]

Constitution of India, 1950—Articles 246, 323A, 323B—Seventh Schedule—List I, entries 77, 78, 79, 95 and List III, entries 11A and 46—Legislative competence of Parliament to enact Consumer Protection Act—Held, Parliament is empowered to enact the Act and has competence to create parallel civil courts—Consumer Protection Act, 1986.

Consumer Protection Act, 1986:

Constitutionality of—Held, constitutionally valid—Absence of provision for transfer of case from one forum to other or provision to grant injunction does not render it ultra vires the Constitution or unworkable.

Section 25—Interpretation of—Held, the forum or commission is entitled to execute its order—However, in the event of its inability to execute the same it may send it to the Civil Court for its execution—Further, it cannot be concluded that Consumer Court cannot execute its own order and by compulsion it has to send all its orders for execution to the Civil Court.

Interpretation of statutes—Principle of—Plain meaning used in Section must be given its ordinary meaning.

In writ petitions before it, the High Court upheld the vires of Consumer Protection Act, 1986 and while interpreting Section 25 held that in each and every case the order passed by the District Forum/State Commission/National Commission is required to be sent to the civil courts for execution thereof. Hence the present appeals and writ petitions. Appellant-petitioners contended that the Parliament is not empowered to establish hierarchy of Courts like the District Fora, State Commission and National Commission parallel to the hierarchy of Courts established under the Constitution in the absence of a suitable amendment made in the Constitution; that such hierarchy of consumer courts established under the Consumer Protection Act would result in conflict of decisions with the

- A** hierarchy of courts established under the Constitution dealing with similar matters; that the Parliament having regard to the provisions of Articles 323A and 323B of the Constitution could not enact the Act by establishing forums which are substitutes of the Civil Courts including the High Court; that the provisions of the Act strike at the independence of the judiciary; that as the Act does not contain any provision to transfer a case from one
- B** consumer court to another and furthermore the forum and the Commissions having no power to pass interim orders, the functioning thereof is unworkable; and that the Parliament can only establish courts which may deal with special subjects specified therefor but not a court which will run parallel to civil courts.

C Disposing of the matters, the Court

- HELD:** 1. The legislative competence of Parliament to provide for creation of special courts and tribunals is covered by List I, entries 77, 78, 79, 95 and List III, entries 11A, 46 of the Constitution of India. Administration of justice; constitution and organization of all courts,
- D** except Supreme Court and High Courts is squarely covered by entry 11A of List III of the Constitution of India. Furthermore by virtue of Clause 2 of Article 246 of the Constitution, the Parliament has the requisite power to make laws with respect of constitution of organization of all courts except the Supreme Court and the High Court. Thus, in view of the
- E** constitutional scheme relating to legislative competence of Parliament and State Legislature there cannot be any doubt or dispute that the Parliament has the requisite legislative competence to enact the Consumer Protection Act and the submission that the relevant provisions of the Constitution required amendments cannot be accepted. Further, the submission that
- F** Parliament did not have the competence to create parallel civil courts is fallacious inasmuch as the provisions of the Consumer Protection Act are in addition to the provisions of any other law for the time being in force and not in derogation thereof as is evident from Section 3 of the Act.

[412-C-D; 414-B; 405-F-H; 406-A, B, E]

- G** *Union of India and Anr. v. Delhi High Court Bar Association and Ors.*, [2002] 4 SCC 275 and *L. Chandra Kumar v. Union of India & Ors.*, [1997] 3 SCC 261, relied on.

In Re: the Special Courts Bill, 1978, [1979] 1 SCC 380, referred to.

- H** 2.1. The provisions of the Consumer Protection Act, 1986 demonstrate that it was enacted keeping in view the long felt necessity of protecting the common man from wrongs wherefor the ordinary law for

all intent and purport had become illusory. In terms of the Act, a consumer is entitled to participate in the proceedings directly as a result whereof his helplessness against a powerful business house may be taken care of. Quasi-judicial authorities have been created at the District, State and Central levels so as to enable a consumer to ventilate the grievances before a forum where justice can be done without any procedural wrangles and hyper-technicalities. [406-F-H]

2.2. The rights of the parties have been adequately safeguarded by provisions of the Consumer Protection Act inasmuch as although it provides for an alternative system of consumer jurisdiction on summary trial, they are required to arrive at a conclusion based on reasons. Even when quantifying damages, they are required to make an attempt to serve the ends of justice aiming not only at recompensing the individual but also to bring about qualitative change in the attitude of the service provider. Assignment of reasons excludes or at any rate minimizes the chances of arbitrariness and the higher forums created under the Act can test the correctness thereof. [414-F, G]

2.3. District Forum, State Commission and National Commission are not manned by lay persons. A person having judicial background would be the President and other members are required to have the expertise in the subjects such as economics, law, commerce, accountancy, industry, public affairs, administration etc. In a case of difference of opinion between two members, the matter has to be referred to a third member and in rare cases, the majority opinion of the members may prevail over the President. But, such eventuality alone is insufficient for striking down the Act as unconstitutional particularly, when provisions have been made therein for appeal there against to a higher forum. Furthermore, the power of judicial review of High Court has not been nor could be taken away by the provisions of the Act. [414-H; 415-A-C]

Laxmi Engineering Works v. P.S.G. Industrial Institute, [1995] 3 SCC 583; *Charan Singh v. Healing Touch Hospital and Ors.*, [2000] 7 SCC 668; *Lucknow Development Authority v. M.K. Gupta*, [1994] 1 SCC 243; *Indian Medical Assn. v. V.P. Shantha*, [1996] 5 SCC 651 and *Common Cause, A Registered Society v. Union of India*, [1997] 10 SCC 729, referred to.

3.1. The provisions of the Act are required to be interpreted as broadly as possible. Section 3 states that remedies provided thereunder are not in derogation of those provided under other laws. The Act supplements and not supplants the jurisdiction of the civil courts or other

A statutory authorities. It provides for a further safeguard to the effect that in the event a complaint involves complicated issues requiring recording of evidence of experts, complainant would be at liberty to approach civil court for appropriate relief. It also has jurisdiction to entertain a complaint despite the fact that other forums/courts would also have jurisdiction to adjudicate upon the lis. The right of the consumer to approach the civil court for necessary relief has been provided under the Act itself. It may be true that there does not exist any provision for transfer of case from one forum to the other or there does not exist any provision to grant injunction. Absence of such provision would not render the statute ultra vires the Constitution or unworkable. [417-H; 418-A, C, F, G]

C *Fair Air Engineers v. N.K. Modi*, [1996] 6 SCC 385 and *Satpal Mohindra v. Surindra Timber Stores*, [1999] 5 SCC 696, referred to.

D 3.2. The very fact that in a given case a party under the Act may approach upto this Court and/or may otherwise take recourse to the remedy of judicial review, the interests of the parties must be held to have been sufficiently safeguarded. The provisions relating to power to approach appellate court by a party aggrieved by a decision of the forums/ State Commissions as also the power of High Court and this Court under Article 226/227 of the Constitution of India and Article 32 of this Court apart from Section 23 of the Act provide for adequate safeguards.

E Furthermore, primarily the jurisdiction of the forum/commissions is to grant damages. In the event, a complainant feels that he will have a better and effective remedy in a civil court as he may have to seek for an order of injunction, he indisputably may file a suit in an appropriate civil court or may take recourse to some other remedies as provided for in other statutes. [418-H; 419-A-C]

F 4.1. Perusal of Section 25 of the Act shows that a legal fiction has been created to the effect that an order made by District Forum/State Commission or National Commission will be deemed to be a decree or order made by a civil court in a suit which is for the purpose of execution of the order passed by Forum or Commission. Only when it is unable to execute its order, the same may be sent to the civil court for its execution. Therefore, High Court erred in holding that in each and every case the order passed by the Forum or Commission are required to be sent to the civil courts for execution thereof. [419-G, H; 420-A]

H 4.2. It is now well settled principle of interpretation of statute that

plain language employed in a Section must be given its ordinary meaning. A
 The terminology used in Section 25 of the Act to the effect "in the event
 of its inability to execute it" is of great significance. Section 25 on a plain
 reading shows that the provision contained therein presuppose that the
 Forum or the Commission would be entitled to execute its order. However,
 it may send the matter for its execution to a court only in the event it is
 unable to do so. Such a contingency may arise only in a given situation, B
 the same does not lead to the conclusion that Consumer Courts cannot
 execute its own order and by compulsion it has to send all its orders for
 execution to civil courts. Such construction of Section 25 would violate the
 plain language used and would be untenable. [421-F-H]

4.3. Section 27 confers an additional power upon Forum and
 Commission to execute its order, hence, Section 25 should be read in
 conjunction with Section 27. [420-B] C

4.4. It is well settled cardinal principle of interpretation of statute
 that courts or tribunals must be held to possess power to execute their
 own order. A Parliamentary statute indisputably can create a tribunal and
 might say that non-compliance of its order would be punishable. A
 statutory Tribunal which has been conferred with the power to adjudicate
 a dispute and pass necessary order has also the power to implement its
 order. Further the Consumer Protection Act is a self-contained Code, even
 if it has not been specifically spelt out, must be deemed to have conferred
 upon the Tribunal all powers in order to make its order effective. [420-B-D] D
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Savitri v. Gobind Singh Rawat, AIR (1986) SC 984 and *Arabind Das*
v. State of Assam and Ors., AIR (1981) Gauhati 18, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9927 of
 1996. F

From the Judgment and Order dated 19.4.95 of the High Court of
 Karnataka in W.P.No. 23455/94.

W.P. (C) No. 417/96, C.A. No. 4613/99, C.A. No. 4614/99 and W.P.
 (C) No. 12/2000. G

P.P. Malhotra, H.W. Dhabe, Sanjay R. Hegde, Satya Mitra, NDR
 Ramachandra Rao, RS Hegde for Mr. PP Singh, S.K. Kulkarni, Ms. Sangeeta
 Kumar, Hemant Sharma, Ms. Anil Katiyar, B.V. Balram Das, Anil Kumar H

A Jha (NP), Ms. Hemantika Wahi (NP), S.S. Shinde, V.N. Raghupathy, Manoj Swarup (NP), Sushil Kumar Jain (NP), B.B. Singh (NP) and K.S. Bhati (NP) for the appearing parties.

The Judgment of the Court was delivered by

B **S.B. SINHA, J.** The primal question involved in this batch of appeals and the Writ Petitions is the constitutionality of the Consumer Protection Act, 1986 (hereinafter called "the Act").

C Civil Appeals No. 4613 and 4614 of 1999 filed by Vishwabharathi House Building Cooperative Society arise out of a judgment and order dated 18.12.1998 passed by a division bench of the High Court of Karnataka upholding the vires of the Consumer Protection Act, 1986 (the Act). State of Karnataka has filed the Appeal being C.A. No. 9927 of 1996 against the judgment and order of the Karnataka High Court questioning certain observations made therein as regards interpretation of Section 25 of the Act.

D Dr R.D. Prabhu and Shri B. Krishna Bhat and others filed the Writ Petitions under Article 32 of the Constitution of India questioning the constitutionality of the said Act.

The contentions raised on behalf of Appellants Petitioners are as under:

E (1) (a) The Parliament is not empowered to establish hierarchy of Courts like the District Fora, State Commission and the National Commission parallel to the hierarchy of Courts established under the Constitution, namely, District Courts, High Courts and Supreme Court in the absence of a suitable amendment made in the Constitution of India in terms of Article 368 thereof.

F (b) Such hierarchy of consumer courts established under the Act would result in conflict of decisions with the hierarchy of courts established under the Constitution dealing with similar matters.

G (2) The Parliament having regard to the provisions of Article 323-A & 323-B of the Constitution of India could not enact the Act by establishing forums which are substitutes of the Civil Courts including the High Court.

H (3) The provisions of the said Act strike at the independence of the

judiciary.

A

- (4) As the Act does not contain any provision to transfer a case from one consumer court to another and furthermore the forum and the Commissions having no power to pass interim orders, the functioning thereof is unworkable.
- (5) The Parliament can only establish courts which may deal with special subjects specified therefor but not a court which will run parallel to civil courts.

B

Before advertng to the question as regard the competence of the Parliament to enact the said Act, we may notice the history of legislation leading to enactment of the said Act.

C

The Secretary General, United Nations submitted draft guidelines for consumer protection to the Economic and Social Council (UNESCO) in 1983. The General Assembly of the United Nations upon extensive discussions and negotiations among governments on this scope and content thereof adopted the guidelines which *inter alia* provide for the following:

D

“Taking into account the interests and needs of consumers in all countries, particularly those in developing countries, recognizing that consumers often face imbalances in economic terms, educational level, and bargaining power, and bearing in mind that consumer should have the right of access to non-hazardous products, as well as the importance of promoting just, equitable and sustainable economic and social development, these guidelines for consumer protection have the following objectives:

E

- (a) To assist countries in achieving or maintaining adequate protection for their population as consumers;
- (b) To facilitate production and distribution patterns responsive to the needs and desires of consumers;
- (c) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;
- (d) To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers;

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- A** (e) To facilitate the development of independent consumer groups;
- (f) To further international cooperation in the field of consumer protection;
- (g) To encourage the development of market conditions which provide consumers with greater choice at lower prices.”

B

The framework for the Consumer Act was provided by a Resolution, dated 9-4-1985 of the General Assembly of the United Nations Organisation. This is known as ‘Consumer Protection Resolution No. 39/248.’ India is a signatory to the said Resolution.

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The said Act was enacted having regard to aforementioned resolution.

It seeks to provide for better protection of the interests of consumers and for the said purpose, to make provision for the establishment of Consumer councils and other authorities for the settlement of consumer disputes and for matters connected therewith, as would appear from the Statement of Objects and Reasons of the Act.

D

It further seeks *inter alia* to promote and protect the rights of consumers such as-

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(a) the right to be protected against marketing of goods which are hazardous to life and property;

(b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices:

F

(c) the right to be assured, wherever possible, access to an authority of goods at competitive prices;

(d) the right to be heard and to be assured that consumers interests will receive the consideration at appropriate forums;

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(e) the right to seek, redressal against unfair trade practices or unscrupulous exploitation of consumers; and

(f) right to consumer education.

H

The legislative competence of the Parliament and the State Legislatures respectively to provide for creation of courts and tribunals as envisaged in different lists contained in the VIIth Schedule of the Constitution of India are

as under:

A

Item 77 of List I of the Seventh Schedule:

Constitution, organization, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practise before the Supreme Court.

B

Item 78 of List I of the Seventh Schedule.

Constitution and organization (including vacations) of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practise before the High Courts.

C

Item 79 of List I of the Seventh Schedule:

Extension of the jurisdiction of a High Court to, and exclusion of the jurisdiction of a High Court from, any Union Territory.

Item 95 of List I of the Seventh Schedule:

Jurisdiction and powers of all courts except the Supreme Court, with respect to any of the matters in the List: admiralty jurisdiction.

D

Item 11A of List III of the Seventh Schedule:

Administration of justice: constitution and organisation of all courts, except the Supreme Court and the High Courts.

E

Item 46 of List III of the Seventh Schedule:

Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.

F

A bare perusal of the aforementioned provisions does not leave any manner of doubt as regard the legislative competence of Parliament to provide for creation of special courts and tribunals. Administration of justice; constitution and organization of all courts, except the Supreme Court and the High Courts is squarely covered by entry 11A of List III of the Constitution of India. The said entry was originally a part of Entry 3 of List II. By reason of Constitution (Forty-second Amendment) Act, 1976 and by Section 57(a)(vi) thereof it was inserted into List III as item 11A.

G

By virtue of Clause 2 of Article 246 of the Constitution, the Parliament has the requisite power to make laws with respect of constitution of

H

A organization of all courts except the Supreme Court and the High Court.

The learned counsel appearing on behalf of the Petitioners could not seriously dispute the plenary power of the Parliament to make a law as regard constitution of courts but as noticed, supra, merely urged that it did not have the competence to create parallel civil courts.

B

The said submission has been made purported to be relying on or on the basis of the following observations made by Shinghal, J. while delivering a partially dissenting judgment in *In Re: the Special Courts Bill 1978* reported in [1979] 1 SCC 380 at page 455;

C

“The Constitution has thus made ample and effective provision for the establishment of a strong, independent and impartial judicial administration in the country, with the necessary complement of civil and criminal courts. It is not permissible for Parliament or a State Legislature to ignore or bypass that Scheme of the Constitution by providing for the establishment of a civil or criminal court parallel to a High Court in a State, or by way of an additional or extra or a second High Court, or a court other than a court subordinate to the High Court. Any such attempt would be unconstitutional and will strike at the independence of the judiciary which has so nobly been enshrined in the Constitution and so carefully nursed over the years.”

D**E**

The argument of the learned counsel is fallacious inasmuch as the provisions of the said Act are in addition to the provisions of any other law for the time being in force and not in derogation thereof as is evident from Section 3 thereof.

F

The provisions of the said Act clearly demonstrate that it was enacted keeping in view the long felt necessity of protecting the common man from wrongs wherefore the ordinary law for all intent and purport had become illusory. In terms of the said Act, a consumer is entitled to participate in the proceedings directly as a result whereof his helplessness against a powerful business house may be taken care of.

G

This Court in a large number of decisions considered the purport and object of the said Act. By reason of the said statute quasi-judicial authorities have been created at the District, State and Central levels so as to enable a consumer to ventilate his grievances before a forum where justice can be done without any procedural wrangles and hyper-technicalities.

H

One of the objects of the said Act is to provide momentum to the consumer movement. Central Consumer Protection Council is also to be constituted in terms of Section 4 of the Act to promote and protect the rights of the consumers as noticed hereinbefore. A

Before proceeding further to advert to the questions raised herein, it is necessary to consider some of the provisions of the said Act. B

Section 2 is the interpretation clause. Some of the provisions contained therein defining the meaning of words relevant for this case are as under:

(b) "Complainant" means,- C

(i) a consumer, or

(ii) any voluntary consumer association registered under The Companies Act, 1956 or under any other law for the time being in force; or

(iii) the Central Government or any State Government, who or which makes a complaint; D

(iv) one or more consumers where there are numerous consumers having the same interest.

(c) "complaint" means any allegation in writing made by a complainant that,- E

(i) an unfair trade practice or a restrictive trade practice has been adopted by any trader;

(ii) the goods bought by him or agreed to be bought by him suffer from one or more defects; F

(iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;

(iv) a trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods; G

(v) goods which will be hazardous to life and safety when used, are being offered for sale to the public in contravention of the provisions of any law for the time being in force requiring traders to display information in regard to the contents, manner and H

- A** effect of use of such goods;
- with a view to obtaining any relief provided by or under this Act;
- (d) “consumer” means any person who-
- B** (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 persons but does not include a person who obtains such goods for resale or for any commercial purpose; or
- C**
- (ii) hires or avails of any services 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 services 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;
- D**
- E** Explanation:- For the purposes of sub-clause (i) “commercial purpose” does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning, his livelihood, by means of self-employment”;
- F** (e) “consumer dispute” means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint;
- (g) “deficiency” means any fault, imperfection, short coming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;
- G**
- (r) “unfair trade practice” means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provisions of any service, adopts any unfair method or unfair
- H**

or deceptive practice including any of the following practices, A
namely;

(1).....

(2).....

Section 7 of the said Act provides for constitution of State Consumer B
Protection Councils to promote and protect within the State the rights of the
consumers with the objects ad quoted supra.

Section 9 provides for establishment of Consumer Disputes Redressal C
Agencies. A Consumer Disputes Redressal Forum to be known as "District
Forum" will be established by the State Government in each district. A
Consumer Disputes Redressal Commission to be known as "State Commission"
will be established by the State Government in the State and a National
Consumer Disputes Redressal Commission by the Central Council.

In terms of Section 10, the President of a District Forum shall be a D
person who is or has been, or is qualified to be a District Judge and the forum
shall also consist of two other members who are required to be persons of
ability, integrity and standing and have adequate knowledge or experience of,
or have shown capacity in dealing with, problems relating to economics, law,
commerce, accountancy, industry, public affairs or administration and one of E
them shall be a woman. The tenure of the members of the District Forum is
fixed.

Section 13 of the said Act lays down a detailed procedure as regards F
the mode and manner in which the complaints received by the District Forum
are required to be dealt with. Section 14 provides for the directions which
can be issued by the District forum on arriving at a satisfaction 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 deficiencies
in services have been proved.

Section 15 provides for an appeal from the order made by the District G
Forum to the State Commission.

Section 16 provides for composition of the State Commission which
reads thus:

(1) Each State Commission shall consist of- H

- A** (a) a person who is or has been a Judge of High Court, appointed by the State Government who shall be its President:

Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of the High Court.

- B** (b) two other members, who shall be persons of ability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman;

- C** Provided that every appointment under this clause shall be made by the State Government on the recommendation of a Selection Committee consisting of the following namely

(i) President of the State Commission: Chairman

(ii) Secretary of the Law Department of the State: Member

- D** (iii) Secretary in charge of the Department dealing with consumer affairs in the State: Member

(2) The salary or honorarium and other allowances payable to and the other terms and conditions of service of the members of the State Commission shall be such as may be prescribed by the State Government;

- E** (3) Every member of the State Commission shall hold office for a term of five years or up to age of sixty-seven years, whichever is earlier and shall not be eligible for reappointment.

- F** (4) Notwithstanding anything contained in sub-section (3), a person appointed as a President or as a member before the commencement of the Consumer Protection (Amendment) Act, 1993, shall continue to hold such office as President or member, as the case may be, till the completion of his term.

- G** The members of the State Commission are to be selected by a Selection Committee, the Chairman whereof would be the President of the State Commission.

Section 19 provides for an appeal from a decision of the State Commission to the National Commission. Section 20 deals with the composition of National Commission, the President whereof would be a person

- H**

who is or has been a Judge of the Supreme Court and such appointment shall be made only upon consultation with the Chief Justice of India. So far as the members of the National Commission are concerned, the same are also to be made on the recommendation of the Selection Committee, the Chairman whereof would be a person who is a Judge of the Supreme Court to be nominated by the Chief Justice of India. The tenure of the Office of the National Commission is also fixed by reason of sub-section (3) of Section 20.

By reason of the provisions of the said Act, therefore, independent authorities have been created.

Sections 15, 19 and 23 provide for the hierarchy of appeals. By reason of sub-sections (4), (5) and (6) of Section 13 the District Forum shall have the same powers as are vested in the civil Courts for the purposes mentioned therein. Sub-sections (2) and (2-A) of Section 14 mandate that the proceedings shall be conducted by the President of the District Forum and at least one member thereof sitting together. Only in the event of any difference between them on any point or points, the same is to be referred to the other member for hearing thereon and the opinion of the majority shall be the order of the District Forum. By reason of Section 18, the provisions of Section 12, 13 and 14 and rules made thereunder would *mutatis mutandis* be applicable to the disposal of disputes by the State Commission.

Section 23 provides for a limited appeal to the Supreme Court from an order made by the National Commission i.e., when the same is made in exercise of its original power as conferred by sub-clause (i) of clause (a) of Section 21.

Section 25 provides for the enforcement of the orders by the District Forum, State Commission or the National Commission which is in the following terms:

Enforcement of orders by the District Forum, the State Commission or the National Commission: Every order made by the District Forum, the State Commission or the National Commission may be enforced by the District Forum, the State Commission or the National Commission, as the case may be, in the same manner as if it were a decree or order made by a Court in a suit pending therein and it shall be lawful for the District Forum, the State Commission or the National Commission to send, in the event of its inability to execute it, such order to the Court within the local limits of whose jurisdiction,

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....

and thereupon, the Court to which the order is so sent, shall execute the order as if it were a decree or order sent to it for execution.

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Section 26 empowers the District Forum, the State Commission or as the case may be the National Commission to dismiss the complaint and make an order that the complainant shall pay to the opposite party such costs not exceeding Rs. 10,000 in the event it is found that the complaint was frivolous or vexatious one.

Section 27 provides for penalties.

C

In view of the constitutional scheme relating to legislative competence of the Parliament and State Legislature there cannot be any doubt or dispute that the Parliament has the requisite legislative competence to enact the said Act.

D

The question as regard legislative competence of the Parliament to create such special tribunals as also the effect of Article 323-A and 323-B of the Constitution is no longer *res integra* having regard to the recent decision of this Court in *Union of India and Another v. Delhi High Court Bar Association and Ors.*, [2002] 4 SCC 275, wherein it was held:

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“9. We will first deal with the question as to whether Parliament has the competence to enact a law for establishing such Banking Tribunals. In order to examine the question of the competence of Parliament to enact such a law, it is pertinent to bear in mind the observations of this Court in *Navinchandra Mafatlal v. CIT*, SCR [1955] 1 SCR 829 at p. 836 which are as follows:

F

As pointed out by Gwyer, C.J. In *United Provinces v. Atiqa Begum*, FCR [1940] FCR 110 at p. 134 none of the items in the Lists is to be read in a narrow or restricted sense and that *each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it*. It is, therefore, clear and it is acknowledged by Chief Justice Chagla—that *in construing an entry in a list conferring legislative powers the widest possible construction according to their ordinary meaning must be put upon the words used therein.....* The cardinal rule of interpretation, however, is that words should be read in their ordinary,

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natural and grammatical meaning subject to this rider that in construing words in a constitutional enactment conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude. A

(emphasis added)

10. Again in *Union of India v. Harbhajan Singh Dhillon*, SCR [1972] 2 SCR 33. at p. 51 it was observed as follows: SCC pp. 791-92 para 21. B

21. It seems to us that the function of Article 246(1), read with Entries 1-96 List I, is to give positive power to Parliament to legislate in respect of these entries. Object is not to debar Parliament from legislating on a matter, even if other provisions of the Constitution enable it to do so. C

11. In *Dhillon decision* it was held that what one has to ask is whether the matter sought to be legislated is included in List II or in List III and no question has to be asked about List I. If the answer is in the negative, then it follows that Parliament has power to make laws with respect to that matter or text. D

12. It has thus been clearly enunciated that the power of Parliament to enact a law, which is not covered by an entry in List II and List III, is absolute. While Article 323-A and 323-B specifically enable the legislatures to enact laws for the establishment of tribunals in relation to the matters specified therein, the power of Parliament to enact a law constituting a Tribunal, like the Banking Tribunal, which is not covered by any of the matters specified in Article 323-A or 323-B, is not taken away. With regard to any of the entries specified in List I, the exclusive jurisdiction to make laws with respect to any of the matters enumerated in List I is with Parliament. The power conferred by Article 246(1) can be exercised notwithstanding the existence of Article 323-A or 323-B of the Constitution. E F

13. Articles 323-A and 323-B are enabling provisions which specifically enable the setting up of tribunals contemplated by the said articles. These articles, however, cannot be interpreted to mean that they prohibit the legislature from establishing tribunals not covered by these articles, as long as there is legislative competence under an appropriate entry in the Seventh Schedule. Articles 323-A and 323-B do not take away that legislative competence. The contrary view G H

A expressed by the Karnataka High Court in *D.K. Abdul Khader* case does not lay down the correct law and we expressly disapprove of the same.”

B Once it is held that the Parliament had the legislative competence to enact the said Act, the submissions of the learned counsel that the relevant provisions of the Constitution required amendments must be neglected.

The scope and object of the said legislation came up for consideration before this Court in *Common Cause, A Registered Society v. Union of India* reported in [1997] 10 SCC 729. It was held:

C “The object of the legislation, as the Preamble of the Act proclaims, is “for better protection of the interests of consumers”. During the last few years preceding the enactment there was in this country a marked awareness among the consumers of goods that they were not getting their money’s worth and were being exploited by both traders and manufacturers of consumer goods. The need for consumer redressal fora was, therefore, increasingly felt. Undrestandably, therefore, legislation was introduced and enacted with considerable enthusiasm and fanfare as a path-breaking benevolent legislation intended to protect the consumer from exploitation by unscrupulous manufacturers and traders of consumer goods. A three-tier fora comprising the District Forum, the State Commission and the National Commission came to be envisaged under the Act for redressal of grievances of consumers”.

F The rights of the parties have adequately been safeguarded by reason of the provisions of the said Act inasmuch as although it provides for an alternative system of consumer jurisdiction on summary trial, they are required to arrive at a conclusion based on reasons. Even when quantifying damages, they are required to make an attempt to serve the ends of justice aiming not only at recompensing the individual but also to bring about a qualitative change in the attitude of the service provider. Assignment of reasons excludes or at any rate minimizes the chances of arbitrariness and the higher forums created under the Act can test the correctness thereof.

H The District Forum, the State Commission and the National Commission are not manned by lay persons. The President would be a person having judicial background and other members are required to have the expertise in the subjects such as economics, law, commerce, accountancy, industry, public

affairs, administration etc. It may be true that by reason of sub-section (2-A) of Section 14 of the Act, in a case of difference of opinion between two members, the matter has to be referred to a third member and, in rare cases, the majority opinion of the members may prevail over the President. But, such eventuality alone is insufficient for striking down the Act as unconstitutional, particularly, when provisions have been made therein for appeal there against to a higher forum.

By reason of the provisions of the said Act, the power of judicial review of the High Court, which is a basic feature of the Constitution, has not been nor could be taken away.

We may in this connection also notice that in *Laxmi Engineering Works v. P.S.G. Industrial Institute*, [1995] 3 SCC 583, this Court held:

“A review of the provisions of the Act discloses that the quasi-judicial bodies/authorities/ agencies created by the Act known as District Forums, State Commissions and the National Commission are not Courts though invested with some of the powers of a Civil Court. They are quasi-judicial Tribunals brought into existence to render inexpensive and speedy remedies to consumers. It is equally clear that these Forums/Commissions were not supposed to supplant but supplement the existing judicial system. The idea was to provide an additional Forum providing inexpensive and speedy resolution of disputes arising between consumers and suppliers of goods and services. The Forum so created is uninhibited by the requirement of Court fee or the formal procedures of a Court. Any consumer can go and file a complaint. Complaint need not necessarily be filed by the complainant himself; any recognized consumers’ association can espouse his cause. Where a large number of consumers have a similar complaint, one or more can file a complaint on behalf of all. Even the Central Government and State Governments can act on his/their behalf. The idea was to help the consumers get justice and fair treatment in the matter of goods and services purchased and availed by them in a market dominated by large trading and manufacturing bodies. Indeed, the entire Act revolves round the consumer and is designed to protect his interest. The Act provides for “business-to-consumer” disputes and not for “business-to-business” disputes. This scheme of the Act, in our opinion, is relevant to and helps in interpreting the words that fall for consideration in this appeal”.

A In *Charan Singh v. Healing Touch Hospital and Ors.*, [2000] 7 SCC 668 this Court observed:

B “11. The Consumer Protection Act is one of the benevolent pieces of legislation intended to protect a large body of consumers from exploitation. The Act provides for an alternative system of consumer justice by summary trial. The authorities under the Act exercise quasi-judicial powers for redressal of consumer disputes and it is one of the postulates of such a body that it should arrive at a conclusion based on reason. The necessity to provide reasons, howsoever, brief in support of its conclusion by such a forum, is too obvious to be reiterated and needs no emphasizing. Obligation to give reasons not only introduces clarity but it also excludes, or at any rate minimizes, the chances of arbitrariness and the higher forum can test the correctness of those reasons. Unfortunately we have not been able to find from the impugned order any reasons in support of the conclusion that the claim of the appellant is “unrealistic” or “exaggerated” or “excessive”. Loss of salary is not the sole factor which was required to be taken into consideration.

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12. While quantifying damages, Consumer Forums are required to make an attempt to serve the ends of justice so that compensation is awarded, in an established case, which not only serves the purpose of recompensing the individual but which also at the same time, aims to bring about a qualitative change in the attitude of the service provider. Indeed, calculation of damages depends on the facts and circumstances of each case. No hard and fast rule can be laid down for universal application. While awarding compensation, a Consumer Forum has to take into account all relevant factors and assess compensation on the basis of accepted legal principles, on moderation. It is for the consumer forum to grant compensation to the extent it finds it reasonable, fair and proper in the facts and circumstances of a given case according to the established judicial standards where the claimant is able to establish his charge.”

In *Lucknow Development Authority v. M.K. Gupta*, [1994] 1 SCC 243 this Court held:

H “The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces

against powerful business, described as, 'a network of rackets' or a society in which, 'producers have secured power' to 'rob the rest' and the might of public bodies which are degenerating into store house of inaction where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked."

It has further been held:

"The Act thus aims to protect the economic interest of a consumer as understood in commercial sense as a purchaser of goods and in the larger sense of user of services. It is a milestone in history of socio-economic legislation and is directed towards achieving public benefit."

Yet again in *Indian Medical Asson. v. V.P. Shantha*, [1996] 5 SCC 651 this Court held:

".....It is no doubt true that the decisions of the District Forum as well as the State Commission and the National Commission have to be taken by majority and it may be possible in some cases that the President may be in minority. But the presence of a person well versed in law as the President will have a bearing on the deliberations of these Agencies and their decisions. As regards the absence of requirement about a member having adequate knowledge or experience in dealing with the problems relating to medicine it may be stated that the persons to be chosen as members are required to have knowledge and experience in dealing with problems relating to various fields connected with the object and purpose of the Act, viz., protection and interest of the consumers. The said knowledge and experience would enable them to handle the consumer disputes coming up before them for settlement in consonance with the requirement of the Act. To say that the members must have adequate knowledge or experience in the field to which the goods or services, in respect of which the complaint is made, are related would lead to impossible situations."

See also *Dr. J.J. Merchant and Ors. v. Shrinath Chaturvedi*, reported in JT (2002) 6 SC 1 and *Synco Industires v. State Bank of Bikaner & Jaipur and Ors.*, reported in [2002] 2 SCC 1.

By reason of the provisions of Section 3 of the Act, it is evident that remedies provided thereunder are not in derogation of those provided under

A other laws. The said Act supplements and not supplants the jurisdiction of the civil courts or other statutory authorities.

B The said Act provides for a further safeguard to the effect that in the event a complaint involves complicated issues requiring recording of evidence of experts, the complainant would be at liberty approach the civil court for appropriate relief. The right of the consumer to approach the civil court for necessary relief has, therefore, been provided under the Act itself.

C The provisions of the said Act are required to be interpreted as broadly as possible. It has jurisdiction to entertain a complaint despite the fact that other forums/courts would also have jurisdiction to adjudicate upon the lis. See *Fait Air Engineers v. N.K. Modi*, reported in [1996] 6 SCC 385 and *Satapal Mohindra v. Surindra Timber Stores* reported in [1999] 5 SCC 696.

D The question as regards the applicability or otherwise of Articles 323-A and 323-B of the Constitution in the matter of constitution of such Tribunals came up for consideration before this Court in *L. Chandra Kumar v. Union of India & Ors.*, reported in [1997] 3 SCC 261. This Court therein clearly held that the constitutional provisions vest Parliament and the State Legislatures, as the case may be, with powers to divest the traditional courts of a considerable portion of their judicial work. It was observed that the Parliament and the State Legislature possess legislative competence to effect changes in the original jurisdiction of the Supreme Court and High Court apart from the authorization that flows Articles 323-A and 323-B in terms of Entries 77, 78, 79 and 95 of List I so far as the Parliament is concerned and in terms of Entry 65 of List II and Entry 46 of List III so far as the State Legislatures are concerned. It was further held that power of judicial review being the basic structure of the Constitution cannot be taken away.

E We, therefore, are clearly of the opinion that the said Act cannot be said to be unconstitutional.

F It may be true that there does not exist any provision for transfer of case from one forum to the other or there does not exist any provision to grant injunction. Absence of such provisions in our opinion would not render the statute *ultra vires* the Constitution or unworkable.

G The very fact that in a given case a party under the said Act may approach upto this Court and/or may otherwise take recourse to the remedy

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of judicial review, the interests of the parties must be held to have been sufficiently safeguarded. A

The provisions relating to power to approach appellate court by a party aggrieved by a decision of the forums/State Commissions as also the power of High Court and this Court under Article 226/227 of the Constitution of India and Article 32 of this Court apart from Section 23 of the Act provide for adequate safeguards. Furthermore, primarily the jurisdiction of the forum/commissions is to grant damages. In the event, a complainant feels that he will have a better and effective remedy in a civil court as he may have to seek for an order of injunction, he indisputably may file a suit in an appropriate civil court or may take recourse to some other remedies as provided for in other statutes. B C

We, therefore, agree with the judgment of the Karnataka High Court.

However, we are not in a position to agree with the observations of the High Court as regard the interpretation of Section 25 of the Act. D

The High Court interpreting the said provision has made the following observations, which is impugned herein in Civil Appeal No. 9927 of 1996:

"On reading Section 25 of the Act, in our view, it does not empower the District Forum to pass such an order. If at all the Forum wants to enforce the order, it has to send the order to the concerned Court which has jurisdiction over the area, which is not done here. So, without entering into the other points raised in this, in our view, it suffices to set aside the impugned order as Annexure 'D' accordingly." E F

A bare perusal of the Section 25 of the Act clearly shows that thereby a legal fiction has been created to the effect that an order made by District Forum/State Commission or National Commission will be deemed to be a decree or order made by a civil court in a suit. Legal fiction so created has a specific purpose, i.e., for the purpose of execution of the order passed by the Forum or Commission. Only in the event the Forum/State Commission or the National Commission is unable to execute its order, the same may be sent to the civil court for its execution. The High Court, therefore was not correct to hold that in each and every case the order passed by the Districts Forum/State Commission National Commission are required to be sent to the civil H

A courts for execution thereof.

B Furthermore, Section 27 of the Act also confers an additional power upon the Forum and the Commission to execute its order. The said provision is akin to Order 39 Rule 2-A of the Code of Civil Procedure or the provisions of the Contempt of Courts, Act or Section 51 read with Order 21 Rule 37 of the Code of Civil Procedure. Section 25 should be read in conjunction with Section 27. A Parliamentary statute indisputably can create a tribunal and might say that non-compliance of its order would be punishable by way of imprisonment or fine, which can be in addition to any other mode or recovery.

C It is well settled that the cardinal principle of interpretation of statute is that courts or tribunals must be held to possess power to execute their own order.

D It is also well settled that a statutory Tribunal which has been conferred with the power to adjudicate a dispute and pass necessary order has also the power to implement its order. Further, the Act which is a self-contained Code, even if it has not been specifically spelt out, must be deemed to have conferred upon the Tribunal all powers in order to make its order effective.

E In *Savitri v. Gobind Singh Rawal*, AIR (1986) SC 984, it has been held as follows:-

F “Every court must be deemed to possess by necessary intendment all such powers as are necessary to make its order effective. This principle is embodied in the maxim ‘*ubi aliquid conceditur in sine quo res ipsa esse non potest*’ (where anything is conceded, there is conceded also anything without which the thing itself cannot exist) (Vide Earl Jowitt’s Dictionary of English law, 1959 Edn., P. 1797). Whenever anything is required to be done by law and it is found impossible to do that thing unless something not authorised in express terms be also done then something else will be supplied by necessary intendment. Such a construction though it may not always be admissible in the present case however would advance the object of the legislation under consideration. A contrary view is likely to result in grave hardship to the applicant who may have no means to subsist until the final order is passed. There is no room for the apprehension

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H that the recognition of such implied power would lead to the passing

of interim orders in a large number of cases where the liability to pay maintenance may not exist. It is quite possible that such contingency may arise in a few cases but the prejudice caused thereby to the person against whom it is made is minimal as it can be set right quickly after hearing both the parties.....”

In *Arabind Das v. State of Assam and Ors.*, AIR (1981) Gauhati 18 F.B., it has been held as follows:-

“We are of firm opinion that where a statute gives a power, such power implies that all legitimate steps may be taken to exercise that power even though these steps may not be clearly spelt in the statute. Where the rule making authority gives power to certain authority to do anything of public character, such authority should get the power to take intermediate steps in order to give effect to the exercise of the power in its final step, otherwise the ultimate power would become illusory, ridiculous and inoperative which could not be the intention of the rule making authority.

In determining whether a power claimed by the statutory authority can be held to be incidental or ancillary to the powers expressly conferred by the statute, the court must not only see whether the power may be derived by reasonable implication from the provisions of the statute, but also whether such powers are necessary for carrying out the purpose of the provisions of the statute which confers power on the authority in its exercise of such power.”

The terminology used in Section 25 of the Act to the effect “in the event of its inability to execute it” is of great significance. Section 25, on a plain reading, goes to show that the provision contained therein presuppose that the Forum or the Commission would be entitled to execute its order. It however, may send the matter for its execution to a court only in the event it is unable to do so. Such a contingency may arise only in a given situation but in our considered opinion the same does not lead to the conclusion that the Consumer Courts cannot execute its own order and by compulsion it has to send all its orders for execution to the civil courts. Such construction of Section 25 in our opinion would violate the plain language used therein and, thus, must be held to be untenable.

It is now well settled principle of interpretation of statute that plain language employed in a Section must be given its ordinary meaning.

A For the reasons aforesaid in Writ Petition 417 of 1996, Writ Petition 12 of 2002, Civil Appeal 4613 and Civil Appeal 4614 of 1999 are dismissed and Civil Appeal 9927 of 1996 is allowed. In the facts and circumstances of this case, however, there shall be no order as to costs.

B N.J.

Matters disposed of.