

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.399 of 2014**

Rajesh Kumar Agrawal, son of Shri Gaurishankar Agrawal, aged about 34 years, resident of Annapurna Super Market, Plot No.22, SADA Colony, Jamnipali, Police Station – Jamnipali, Korba (Chhattisgarh).

---**Petitioner**

Versus

1. Tulsi Electronic, Opposite Police Station Main Road, Korba, Tata Docomo Dealer, Korba (Chhattisgarh).
2. Tata Docomo Apartment Authority, Plot No. 1, 2, 3 Kwalitiy Globus Parmali Walesh Compound, Opposite R.B.I. Hoshangabad Road, Bhopal (M.P.).
3. Union of India, through Department of Tele Communication Sanchar Bhawan, New Delhi.
4. Gaurishankar Agrawal, son of Shri Deepchand Agrawal, resident of Annapurna Super Market, Plot No.22, SADA Colony, Jamnipali, Korba (Chhattisgarh).

---**Respondents**

For petitioner	:	Mr. Sunil Otvani, Advocate.
For respondent No.1	:	Mr. Rahul Birthare, Advocate.
For respondent No.3	:	Mr. Bhupendra Singh, A.S.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

09/12/2016

1. The petitioner is consumer of respondent No.2 within the meaning of Section 2(o) of the Consumer Protection Act, 1986 (hereinafter called as "Act of 1986) and respondent No.2 is licensee of respondent No.3/Telecom Authorities. The petitioner raised a consumer dispute within the meaning of Section 2(e) of the Act of

1986 before the District Consumer Dispute Redressal Forum (hereinafter called as “District Forum”), Korba constituted under Section 9 of Act of 1986 stating *inter alia* that respondent No. 2 has adopted unfair trade practice in providing telecom services though the petitioner has paid for data service and while using the data services, balance lying in call account was deducted unauthorizedly which amounts to unfair trade practice and as such appropriate relief by granted to the petitioner.

2. The District Forum, Korba rejected the complaint filed by petitioner by order dated 27.02.2013 holding that complaint is barred under Section 7-B of the Indian Telegraph Act, 1885 (hereinafter called as “Act of 1885”) as statutory alternative remedy of arbitration is available to the petitioner.

3. Being aggrieved against the order of the District Forum, Korba, the petitioner preferred an appeal under Section 15 of the Act of 1986 before the State Consumer Dispute Redressal Forum, Raipur (hereinafter called as “State Commission”). The State Commission by the impugned order dated 15.01.2014 affirmed the order passed by the District Forum relying upon the judgment of the Supreme Court in the matter of General Manager, Telecom v. M. Krishnan and another¹, holding that the petitioner has a special remedy of arbitration provided under Section 7-B of the Act of 1885 in respect of the dispute so raised and dismissed the appeal preferred by the

1 (2009) 8 SCC 481

petitioner.

4. Feeling aggrieved and dissatisfied with the order of the State Commission affirming the order of the District Forum, the present writ petition under Article 227 of the Constitution of India has been filed before this Court stating *inter alia* that Section 3 of the Act 1986 provides that the provision of the Act of 1986 shall be in addition to and not in derogation of the provision of any other law for the time being in force, therefore, the consumer dispute raised by the petitioner before the District Forum was maintainable and prayer was made for setting aside the order of the District Forum as well as the State Commission as they are contrary to the express provision contained in Section 3 of Act of 1986. The averment made in the writ petition has been controverted by the respondents by filing counter affidavit.

5. Mr. Sunil Otwani, learned counsel appearing for the petitioner, would submit that the writ petition is maintainable as the orders passed by the District form as well as the State Commission are without jurisdiction and without authority of law and the dispute is triable by the Consumer Court constituted under Section 9 of the Act of 1986 by virtue of provisions contained in Section 3 of the Act of 1986 which is in addition to and not in derogation of the provision of any other law for the time being in force. He would further submit that respondent No.2 is not Telecom Authority within the meaning of Section 7-B of the Act of 1885 and therefore, District Forum and the

State Commission both have committed legal error in rejecting the complaint filed by the petitioner, therefore, the order impugned deserves to be set aside.

6. Mr. Rahul Birthare, learned counsel appearing for respondent No.1, would submit that order impugned is revisable before the National Consumer Dispute Redressal Forum (hereinafter called as “National Commission”) under Section 12 of Act of 1986, therefore, the writ petition is not maintainable. He would support the order of the District Forum as affirmed by the State Commission is strictly in accordance with law and no interference is warranted in exercise of jurisdiction under Article 227 of the Constitution of India.

7. I have heard leaned counsel appearing for the parties. Considered their rival submissions made herein and also gone through the documents appended with the petition with utmost circumspection.

8. First objection taken by respondent No.1 is with regard to the maintainability of the writ petition. The consumer dispute raised by the petitioner has been rejected by the District Forum and upheld by the State Commission. The dispute is only with regard to ₹ 319/- and complaint has been rejected on the ground of availability of statutory alternative remedy provided under Section 7-B of the Act of 1885 by way of arbitration to the petitioner. Considering the nature of dispute raised by the petitioner, considering the amount involved

in dispute and since this petition is pending since 2014, I do not consider it is a fit case for throwing the writ petition on the ground of availability of statutory alternative remedy.

9. This brings me to the next question as to whether the District Forum as well as the State Commission is justified in rejecting the complaint filed by the petitioner on the ground of availability of statutory alternative remedy under Section 7-B of the Act of 1885.

10. The Consumer Protection Act, 1986 is an Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith. The objects and reasons appended to the Act to promote and protect the rights of the consumers such as right to be protected against marketing of the goods which are hazardous to the life and property, the right to be informed about the quality, quantity, potency, purity, standard and the price of the goods to protect the consumer against the unfair trade practice, the right to be heard and to be assured that consumer's interest will receive due consideration at appropriate Forums and to achieve these objects and to provide speedy and simple redressal to the consumer dispute, quasi-judicial machinery is sought to be set up at District, State and Central level. The further object is that the consumer forum so constituted will observe the principles of natural justice and have been empowered to give relief of a specific nature and to

award, wherever appropriate, compensation to consumers. Penalties for non-compliance of the orders given by the consumer forum (s) have also been provided.

11. Delineating the very object of the Act of 1986, very recently, the Supreme Court in the matter of **General Motors (India) Private Limited v. Ashok Ramnik Lal Tolat and another**² has held that the Consumer Protection Act, 1986 is a piece of social legislation to provide a Forum to the consumers who are taken for a ride by suppliers of goods and services. The redress is provided to consumers against any deficiency in service as well as against any loss or injury arising out of “*unfair trade practice*”. It has further been held as under:-

“We are conscious that having regard to the laudable object of social legislation to protect the interest of consumers, liberal and purposive interpretation has to be placed on the scheme of the CP Act avoiding hypertechnical approach.”

12. Keeping in mind the scheme of the Act which is a piece of social legislation it would be appropriate to notice Sections 3 & 11 of the Act of 1986 which states as under:-

“3. Act not in derogation of any other law.- The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

11. Jurisdiction of the District Forum.- (1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any,

² (2015) 1 SCC 429

claimed [does not exceed rupees twenty lakhs].

(2) A complainant shall be instituted in a District Forum within the local limits of whose jurisdiction,-

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or [carries on business or has a branch office or] personally works for gain, or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or [carries on business or has a branch office], or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or [carry on business or have a branch office], or personally work for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.”

Section 3 of the Act of 1986 clearly mandates that the provisions of the Act of 1986 shall be in addition to and not in derogation of the provision of any other law for the time being in force. So, the question would be whether the existence of alternative statutory remedy by way of arbitration under Section 7-B of the Act of 1885 would preclude an aggrieved consumer (petitioner) from seeking redressal before the Forums constituted under the Act of 1986 which is a special statute enacted by Parliament for the specific purpose of providing a speedy, cheap and efficacious remedy to consumers before the special Forums created for that purpose. The point so raised is no longer *res integra*, and stand authoritatively settled by the judgments of the Supreme Court as their Lordships of the Supreme Court have occasion to consider

Section 3 of the Act of 1986 and it has clearly been held that the Consumer Protection Act, 1986 shall be in addition to and not in derogation of the provision of any other law for the time being in force.

13. The Supreme Court in the matter of **Jabalpur Tractors v. Sedmal Jainarain**³ has held as under:-

“2.....the Consumer Protection Act is not in derogation of any other law.”

14. Further, Their Lordships of the Supreme Court in the matter of **Fair Air Engineers (P) Ltd. v. N. K. Modi**⁴ have held as under:-

“15. Accordingly, it must be held that the provisions of the Act are to be construed widely to give effect to the object and purpose of the Act. It is seen that Section 3 envisages that the provisions of the Act are in addition to and are not in derogation of any other law in force. It is true, as rightly contended by Shri Suri, that the words ‘in derogation of the provisions of any other law for the time being in force’ would be given proper meaning and effect and if the complaint is not stayed and the parties are not relegated to the arbitration, the Act purports to operate in derogation of the provisions of the Arbitration Act. Prima facie, the contention appears to be plausible but on construction and conspectus of the provisions of the Act we think that the contention is not well founded. Parliament is aware of the provisions of the Arbitration Act and the Contract Act, 1872 and the consequential remedy available under Section 9 of the Code of Civil Procedure i.e. to avail of right of civil action in a competent court of civil jurisdiction. Nonetheless, the Act provides the additional remedy.”

15. In the matter of **State of Karnataka v. Vishwabharathi House Building Coop. Society**⁵ Their Lordships of Supreme Court

3 1995 Supp (4) SCC 107

4 (1996) 6 SCC 385

5 (2003) 2 SCC 412

observed as under:-

“16.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.”

16. The Supreme Court in the matter of Secretary, Thirumurgan Co-operative Agricultural Credit Society v. M. Lalitha (Dead) through LRs and others⁶ has held as under:-

“12. As per Section 3 of the Act, as already stated above, the provisions of the Act shall be in addition to and not in derogation of any other provisions of any other law for the time being in force. Having due regard to the scheme of the Act and purpose sought to be achieved to protect the interest of the consumers better, the provisions are to be interpreted broadly, positively and purposefully in the context of the present case to give meaning to additional/extended jurisdiction, particularly when Section 3 seeks to provide remedy under the Act in addition to other remedies provided under other Acts unless there is a clear bar.

14. In *Fair Air Engineers (P) Ltd.* (supra) the Supreme Court, after referring to *Lucknow Development Authority case*⁷, held that the provisions of the Act are to be construed widely to give effect to the object and purpose of the Act. It went on to say that:

“It is seen that Section 3 envisages that the provisions of the Act are in addition to and are not in derogation of any other law in force. It is true, as rightly contended by Shri Suri, that the words “in derogation of the provisions of any other law for the time being in force” would be given proper meaning and effect and if the complaint is not stayed and the parties are not relegated to the arbitration, the Act purports to operate in derogation of the provisions of the Arbitration Act. *Prima facie*, the contention appears to be plausible but on construction and conspectus of the provisions of the Act we think that the contention is not well founded. Parliament is aware of the provisions of the Arbitration Act and the contract Act, 1872 and the consequential remedy

6 (2004) 1 SCC 305

7 (1994) 1 SCC 243

available under Section 9 of the Code of Civil Procedure, *i.e.*, to avail of right of civil action in a competent court of civil jurisdiction. Nonetheless, the Act provides the additional remedy.”

Further dealing with the jurisdiction of the forums under the 1986 Act in para 16 the Supreme Court has stated thus:

“16. It would, therefore, be clear that the legislature intended to provide a remedy in addition to the consentient arbitration which could be enforced under the Arbitration Act or the civil action in a suit under the provisions of the Code of Civil Procedure. Thereby, as seen, Section 34 of the Act does not confer an automatic right nor create an automatic embargo on the exercise of the power by the judicial authority under the Act. It is a matter of discretion. Considered from this perspective, we hold that though the District Forum, State Commission and National Commission are judicial authorities, for the purpose of Section 34 of the Arbitration Act, in view of the object of the Act and by operation of Section 3 thereof, we are of the considered view that it would be appropriate that these forums created under the Act are at liberty to proceed with the matters in accordance with the provisions of the Act rather than relegating the parties to an arbitration proceeding pursuant to a contract entered into between the parties. The reason is that the Act intends to relieve the consumers of the cumbersome arbitration proceedings or civil action unless the forums on their own and on the peculiar facts and circumstances of a particular case, come to the conclusion that the appropriate forum for adjudication of the disputes would be otherwise than those given in the Act.”

Their Lordships finally held as under:-

“20. Thus, having regard to all aspects, we are of the view that the National Commission was right in holding that the view taken by the State Commission that the provisions under the Act relating to reference of disputes to arbitration shall prevail over the provisions of the 1986 Act is incorrect and untenable.”

17. The Supreme Court in the matter of Kishore Lal v. Chairman,

Employees' State Insurance Corporation⁸ took the view as under:-

“7. The definition of ‘consumer’ in the CP Act is apparently wide enough and encompasses within its fold not only the goods but also the services, bought or hired, for consideration. Such consideration may be paid or promised or partly paid or partly promised under any system of deferred payment and includes any beneficiary of such person other than the person who hires the service for consideration. The Act being a beneficial legislation, aims to protect the interests of a consumer as understood in the business parlance. The important characteristics of goods and services under the Act are that they are supplied at a price to cover the costs and generate profit or income for the seller of goods or provider of services. The comprehensive definition aims at covering every man who pays money as the price or cost of goods and services. However, by virtue of the definition, the person who obtains goods for resale or for any commercial purpose is excluded, but the services hired for consideration even for commercial purposes are not excluded. The term ‘service’ unambiguously indicates in the definition that the definition is not restrictive and includes within its ambit such services as well which are specified therein. However, a service hired or availed, which does not cost anything or can be said free of charge, or under a contract of personal service, is not included within the meaning of ‘service’ for the purposes of the CP Act.”

18. In the matter of **Skypak Couriers Ltd. v. Tata Chemicals Ltd.**⁹

Their Lordships of the Supreme Court observed as under:-

“2. With the industrial revolution and development in the international trade and commerce, there has been a substantial increase of business and trade, which resulted in a variety of consumer goods appearing in the market to cater to the needs of the consumers. The modern methods of advertisement in media, influence the mind of the consumers and notwithstanding the manufacturing defect or imperfection in the quality, a consumer is tempted to purchase the goods. There has

⁸ (2007) 4 SCC 579

⁹ (2000) 5 SCC 294

been possibility of deficiency in the services rendered. For the welfare of such consumer and to protect the consumers from the exploitation to provide protection of the interest of the consumers, Parliament enacted the Consumer Protection Act, and the Act itself makes provision for the establishment of Commissions for settlement of the consumer disputes and matters connected therewith. The Commissions, under the Act, are quasi-judicial bodies and they are supposed to provide speedy and simple redressal to consumer disputes and for that purpose, they have been empowered to give relief of a specified nature and in an appropriate way, to award compensation.”

19. The Supreme Court in the matter of Trans Mediterranean Airways v. Universal Exports and another¹⁰ has considered the all earlier decision with approval on Section 3 of CP Act and held that the Section 3 of the CP Act gives an additional remedy for the deficiency of service and remedy is not in derogation of any other remedy under any other law and held as under:-

“33. The framework for the CP Act was provided by a Resolution dated 9-4-1985 of the General Assembly of the United Nations Organisation, which is commonly known as Consumer Protection Resolution No. 39/248. India is a signatory to the said Resolution. The Act was enacted in view of the aforementioned resolution of the General Assembly of the United Nations. The Preamble to the Act suggests that it is to provide better protection for the consumers and their interests. By this Act, the legislature has constituted quasi-judicial tribunals/Commissions as an alternative system of adjudicating consumer disputes. Section 3 of the CP Act gives an additional remedy for deficiency of service and that remedy is not in derogation of any other remedy under any other law.

41. In our view, the protection provided under the CP Act to consumers is in addition to the remedies available under any other statute. It does not extinguish the remedies under another statute but provides an additional or alternative remedy.”

¹⁰ (2011) 10 SCC 316

20. Yet another judgment, the Supreme Court in the matter of **National Seeds Corporation Limited v. M. Madhusudhan Reddy and another**¹¹ reiterated the law laid down by Their Lordships in **Transmediterranean Airways limited** (supra) and held as under:-

“66. The remedy of arbitration is not the only remedy available to a grower. Rather, it is an optional remedy. He can either seek reference to an arbitrator or file a complaint under the Consumer Protection Act. If the grower opts for the remedy of arbitration, then it may be possible to say that he cannot, subsequently, file complaint under the Consumer Protection Act. However, if he chooses to file a complaint in the first instance before the competent Consumer Forum, then he cannot be denied relief by invoking Section 8 of the Arbitration and Conciliation Act, 1996. Moreover, the plain language of Section 3 of the Consumer Protection Act makes it clear that the remedy available in that Act is in addition to and not in derogation of the provisions of any other law for the time being in force.”

21. Similarly, in the matter of **Virender Jain v. Alaknanda Cooperative Group Housing Society Limited and others**¹², the Supreme Court while considering the jurisdiction and power of the Consumer Forum qua the availability of alternative remedy under another statute namely Haryana Co-operative Societies Act, 1984 has held unmistakably that remedy available under the CP Act, 1986 is in addition to the remedies available under the other statute and the availability of alternative remedies is not a bar to the entertaining of a complaint filed under CP Act, 1986 and held as under:-

“14. In our view, there is no merit in the submission of the learned Senior Counsel. In the complaints filed by them, the appellants had primarily challenged the action of Respondent 1 to refund the amounts deposited by

11 (2012) 2 SCC 506

12 (2013) 9 SCC 383

them and thereby extinguished their entitlement to get the flats. Therefore, the mere fact that the action taken by Respondent 1 was approved by the Assistant Registrar, Cooperative Societies and higher authorities, cannot deprive the appellants of their legitimate right to seek remedy under the Act, which is in addition to the other remedies available to them under the Cooperative Societies Act. Law on this issue must be treated as settled by the judgments of this Court in *Thirumurugan Coop. Agricultural Credit Society v. M. Lalitha*(supra), *Kishore Lal v. ESI Corpn.*(supra) and *National Seeds Corpn. Ltd. v. M. Madhusudhan Reddy*(supra).

15. In the last mentioned judgment, National Seeds Corpn. case⁸, this Court referred to the earlier judgments in *Fair Air Engineers (P) Ltd. v. N.K. Modi*(supra), *Thirumurugan Coop. Agricultural Credit Society v. M. Lalitha*(supra), *Skypak Couriers Ltd. v. Tata Chemicals Ltd.*(supra) and *Trans Mediterranean Airways v. Universal Exports*(supra) and held that the remedy available under the Act is in addition to the remedies available under other statutes and the availability of alternative remedies is not a bar to the entertaining of a complaint filed under the Act.”

22. Thus, in the light of provisions contained in Section 3 of the Act of 1986 and the judgments (supra) rendered by Their Lordships of the Supreme Court, it is evidently clear that the remedy available to the consumer under the Act of 1986 is an additional remedy and other statutory remedy available to the consumer under the other statutory law would not bar the consumer to avail the remedy available under the provision of the Act of 1986 and as such the District Forum committed an illegality in rejecting the complaint filed by the petitioner on the ground of availability of alternative remedy under Section 7-B of the Telegraph Act. The State Commission also committed grave illegality in affirming the order passed by the

District forum ignoring the mandate of Section 3 of the Act of 1986.

23. Accordingly, the order impugned and the order of the District Forum, Korba on the ground of availability of alternative remedy under Section 7-B of the Telegraph Act are hereby set aside and it is held that the petitioner's consumer dispute is maintainable before the District Forum, Korba. The District Forum, Korba is directed to entertain and consider the said claim on its own merits within the period of two months from the date of receipt of copy of this order.

24. The Registrar (Judicial) is directed to send a copy of this order to the Registrar, State Commission for its onwards circulation to the Presiding Officer of all the District Forum of State for information and needful action.

25. The writ petition is allowed to the extent indicated hereinabove.

No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.399 of 2014****PETITIONER**

Rajesh Kumar Agrawal

Versus

RESPONDENTS

Tulsi Electronic & others

Head Note
(English)

The remedy available under the Consumer Protection Act, 1986 is an additional remedy for consumers and not in derogation of remedy available under Section 8-B of the Indian Telegraph Act, 1885.

(हिन्दी)

उपभोक्ता संरक्षण अधिनियम, 1986 के अंतर्गत उपलब्ध उपचार उपभोक्ताओं के लिए एक अतिरिक्त उपचार है और ना कि भारतीय तार अधिनियम, 1885 की धारा 8-बी के अंतर्गत उपलब्ध उपचार के अल्पीकरण में उपलब्ध उपचार है।