

COMMON CAUSE

VOICE OF "COMMON CAUSE"

CITIZENS' ROLE

Citizens are increasingly becoming conscious to protect and assert their rights. They refuse to be buffeted about by the vagaries, whimsicalities and inefficiencies of the functionaries who wield power either in the governmental apparatus or in the local bodies, etc. They will no longer be disregarded.

Among the citizens the evidence of this awakening is particularly noticeable among the pensioners and the consumers in urban areas, with whom COMMON CAUSE has been maintaining close contact. Increasingly these classes of citizens have recognised the necessity and benefits of forming themselves into organisations for collectively dealing with their problems. This healthy development, which has taken strides during the past few years, continues progressing very satisfactorily. There are now about 350 organisations of pensioners and over 200 organisations of consumers which are on our records and with which we have the privilege of maintaining direct touch. We recognise that some of these organisations have yet to equip themselves with strength of adequate membership and to get themselves registered as viable bodies, but the fact remains that public-spirited persons have taken the initiative of setting up these organisations. Their self-less dedication to the causes will determine the effectiveness and success of the functioning of these organisations. Besides these are of course numerous other organisations in the shape of citizens welfare associations, ratepayers associations etc., which have emerged on the scene and which in their respective spheres are shouldering responsibilities of tackling the problems affecting their constituents.

In this context we would like to mention that COMMON CAUSE has been receiving from a number of places suggestions and demands that local chapters of COMMON CAUSE should be opened at these places. Demand for the services of COMMON CAUSE through local chapters is very welcome indeed, but we have throughout felt that it may not be necessary nor desirable to set up our own local chapters when the work at the local level can be handled and dealt with by the public-spirited citizens through these various organisations which have already developed and which continue expanding.

In the interest of future permanence and expansion of the activities of COMMON CAUSE we are desirous that office premises for this organisation should be constructed. The Government of India has already been approached for allotting a small plot. We look to the generosity and help of the

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For Consumers
Electricity Wirt Petition

House Tax
For Pensioners

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This publication is not monthly. It presently issues once a quarter. There is no subscription. It goes free to members of COMMON CAUSE.

CONSUMER COMES INTO POWER

The new Consumer Protection Act brings fresh hope to the beleaguered Indian consumer. For the first time we have a law which directly pertains to the market place; which provides the consumer effective protection against unfair trade practices, unsatisfactory services and defective goods; and which creates special forums to deal specifically with consumer complaints and issues. JOYEETA GUPTA explains, in this article, reproduced from INDIAN EXPRESS Supplement, how the provisions of the Act arm the consumer with new weapons to fight his everyday battles.

□ Mr and Mrs Anand, who live in a small district in Punjab, went to a fair price shop to purchase kerosene. They were told that it was not available. A little later, their neighbour, an influential man, sent his servant for a similar purchase, and was fortunate enough to receive kerosene. Mrs Anand was furious. To whom could she complain? Earlier, nobody. Now, with the passing of the Consumer Protection Act, 1986 she is entitled to legal redressal from the District Forum established under the Act.

□ Rakesh went to buy a refill for his ballpen. Within a few hours of use, it began to leak. He bought a couple more. They leaked too. He complained to shopkeeper, but the shopkeeper simply shrugged his shoulders. Who could he approach? With the establishment of the Forum, he has quick, cheap and easy recourse to the law.

□ Jai Singh, a farmer, saw an advertisement on a billboard proclaiming the locust eliminating qualities of a certain pesticide. Much impressed, he bought the pesticide and used it. However, the locusts did not die as promised. He wanted to complain about this misleading advertisement. He could have approached the Monopolies and Restrictive Trade Practices Commission (MRTPC), but the Commission only has a bench in Delhi. The District Forum is now the viable solution.

□ Mr Pandit underwent a vasectomy under the family planning scheme of the government. Yet, his wife conceived. Whom could he approach for compensation? He could institute a civil suit against the doctor for negligence, but the case could drag on for

over 15 years and negligence on the part of the doctor might be extremely difficult to prove. The Forum whose goal is consumer protection, would be inclined to relax the technicalities, and the case should not drag on at the preliminary stage.

□ Mr Krishna Dhar went to purchase some glucose biscuits. But he had severe stomach problems after eating them. When he complained to the biscuit manufacturers, he was informed that they were spurious glucose biscuits, having their name. He then complained to shopkeeper. But the shopkeeper said that he could not do anything. Mr Dhar's lawyer advised him not to institute a suit in the civil court as there was no clarity as to who should be the respondent — the retailer, the trader, the manufacturer of spurious biscuits or the manufacturer of genuine biscuits. But now, with the establishment of the Forum, the shopkeeper who sells spurious, defective goods will be directly liable.

□ Mrs Dave bought some cloth incorrectly stamped as 90 per cent polyester and 10 per cent acrylic. She complained to the manufacturers but they disclaimed liability for incorrect stamping on the ground that the yarn purchased by them from another producer was spurious. Now Mrs Dave can approach this Forum, where such evasion of liability will not be admissible.

□ Mrs Joshi bought a doll for her baby daughter. The baby swallowed the eye of the toy by mistake. She wanted to sue for damages as she felt that the eyes were not properly embedded in the doll. There

are no standards for such dolls in India, but it is possible for her to approach the Forum for a favourable judgement, as the object of the Act is to protect consumers.

In a market flooded by unsafe, spurious and adulterated products juxtaposed against a background of inadequate basic amenities like food, water, essential drugs and transport, we have a curious combination of shortage and excess. This is the market in which more than 780 million consumers are shopping. And only now do we have a law which directly pertains to the marketplace, and seeks to redress complaints arising from it.

Over the last 20 years, the individual consumer has begun to rebel against exploitation and cheating by traders. Today there are 237 odd consumer organisations and many more international bodies all working towards consumer protection. In fact, the 20-point programme now covers consumer protection as well. The Consumer Advisory Council was established by the Planning Commission, and various consumer protection cells have been set up by agencies including state governments, the textile committee and the department of science and technology. We have around 50 laws which can be interpreted in favour of the consumer and judicial activism is increasingly focussing on consumer interests. The media is giving coverage to the subject and AIR and Doordarshan have been organising programmes like Lok Samasya in Sansad and Janvaani. It is against this background that the Consumer Protection Act has been formulated.

The Consumer Protection Act, 1986 has punch. It is the most powerful piece of legislation the consumer has had to date. It has incorporated suggestions made by voluntary consumer groups when the Bill was thrown open to the public. Coming in the wake of the Environment (Protection) Act, 1986, it is a concrete indication of the new trend towards consumer legislation which was ushered in by the Monopolies and Restrictive Trade Practices (Amendment) Act, 1984. This means that consumer interest litiga-

tion, as an extended arm of public interest litigation, is here to stay.

During the last session of Parliament, individual consumers and their representative bodies gained recognition as a litigatory force in connection with at least eight different enactments. This statutory recognition will go a long way towards ensuring consumer protection.

Breaking away from the tradition followed by the MRTP Act, this legislation has brought services, public utilities, nationalised undertakings and corporations under its purview. The consumer, until recently, went through frustrating and bitter experiences when complaining against corporations and national undertakings. But the provisions of the new legislation have nearly doubled the coverage of the draft Bill, besides making up for the deficiency in the MRTP Act — at least with respect to unfair trade practices. The simplistic formula for damages—that the upper limit was to be 20 times the price of the defective product irrespective of the loss or damage caused — has also been done away with. The present definition is flexible, making allowances for changing circumstances.

UMBRELLA LEGISLATION

In concrete terms, this umbrella legislation covers all complaints with respect to goods, services and unfair trade practices subject to certain limitations. Apparently, it takes aid from other enactments and at the same time provides for an alternative forum, simplified procedures, limited technicalities, minimal expenditure and quick disposal. It is expected to be a far more convenient law for consumers.

This Act envisages the establishment of Consumer Protection Councils at the state and the central level for the promotion and protection of consumer rights. The Consumer Dispute Redressal Forums are to be established at the district, state and central levels for the resolution of consumer disputes. A consumer with a grievance can make a written complaint to the appropriate Forum, and the Forum will refer the matter to the complaine and give him 30 days to give his

version. If the allegation is disputed, the Forum goes ahead to settle the dispute. If laboratory tests are necessary, then after such tests, the report shall be sent to both parties for their comments, before the dispute is settled.

UNFAIR TRADE PRACTICES

A Consumer who has suffered loss or damage as a result of an unfair trade practice resorted to by a trader can approach the Forum for redressal. Unlike the MRTP Act, the consumer can now also complain of unfair trade practices with respect to services.

The rule of per se should be adopted and strictly applied. This rule will ensure that any act or practice which prima facie appears to be unfair shall be regarded unfair per se and against consumer interest pending the justifications made by the complaine. This rule means that all complaints made by an aggrieved consumer will be looked into. This rule of per se has been successfully adopted by the Federal Trade Commission Act USA, and the Complaints Investigation Act, Canada. The Act stipulates that only if the complainant has suffered loss or damage as a result of the unfair trade practice can he seek redressal. This is in keeping with the preamble of the Act which offers to settle consumer disputes, but not in keeping with that part of the preamble that offers consumer protection. But it is upto the courts to interpret this clause liberally and to expand the definition.

As a consumer you can complain to the Forum about any practice adopted which falsely represents to consumers that the goods or services are of a particular standard, quality, type, model, grade, usefulness, and has sponsorship approval or affiliation, or give any warranty or guarantee about the life of the product, or materially misleads the public about the prices of the goods or gives misleading information about competitive goods/services available in the market.

GOODS

(A) part from unfair trade practices, the consumer can also complain about goods purchased for non-

commercial use if they are defective. Thus if your fridge has a faulty regulator, the plug you purchase is not of standard size, the masala you buy is not pure, there is one cube less in the packet of cheese cubes you get, you can move the Forum. By intelligent use of the existing laws like the Prevention of Food Adulteration, the Drugs and Cosmetics Act, the Indian Standards Act, the Essential Commodities Act, and Agmark, consumers can help in establishing precedents which will widen the scope of the Act. Any claim made by the trader, whether oral or written as in advertisements, packaging and labelling, can be questioned as an unfair practice if they are unsubstantiated, and logically the goods would then be defective.

The shopkeeper who buys goods for commercial purposes cannot seek redressal under this law. There is scope to interpret the definition of defective goods to include deficiency in product services sold along with the goods, like post purchase installation, after sales service, warranty service etc. It seems logical that when you purchase a gas cylinder you expect that it will also be satisfactorily installed in your house, and if the installation is not done there is the Forum.

In finding whether goods are defective i.e. faulty, imperfect or have shortcomings in the quality, quantity, purity, potency or standard, it may be necessary to have laboratory tests done. Such tests can be conducted only in those laboratories or organisations which are recognised by the central Government or which are maintained, financed or aided by the Government. This implies that the existing labs in the country maintained by the Food and Civil Supplies ministry, Weights and Measures department, Health ministry, can be made use of

But what about other kinds of goods? Where are the Government laboratories for testing cloth, essential commodities, toilet items, cosmetics, house hold goods, electrical appliances, etc.? Would it not be in keeping with the ideals of the Consumer Protection Act to establish laboratories at state levels to deal with such items? Perhaps it is also possible for the

Government to take over or recognise existing laboratories of repute so as to ensure that consumer complaints are not left unresolved merely for lack of information.

The consumer is expected to pay a fee for the testing facilities. The object of this is presumably to discourage frivolous litigation. But this causes an unnecessary burden on the consumer. Not only does he get defective goods in the market, not only does he have to approach the Forum for redressal, he even has to pay for the testing. Ironically, it would appear that this provision is punitive. The testing charges are paid by the Forum if the complaint is valid

NEED FOR SIMPLE RULES

It is anticipated that the rules to be framed for this Act would be simple and informal thus enabling a consumer to draft his own complaint himself and to argue the matter in person. A degree of simplicity is necessary to ensure that the consumer does not lose his case on a technicality. It should be sufficient if the consumer, the complainee and the laboratory provide the factual situation and the judge provides the legal information.

FORUM FOR FAIRNESS

In fact the composition of the Forum is such that it includes not only a representative of the judiciary but also experts—people of eminence in education, trade and commerce. Thus it ensures that the Forum will be in a position to ascertain the legal and factual position. The technical point would be taken care of by the laboratory tests, if necessary.

The inclusion of a woman social worker in the Forum is also a welcome provision. Since housewives are the major shoppers in the market place, especially for non-durables, it is expected that their problems will now be adequately represented.

The Forum can pass orders for the removal of a defect in the goods, replacement with new goods, return of purchase price and compensation for loss

or injury suffered due to negligence. It is often difficult for a consumer to prove the negligence of the manufacturer. One feels that the legislators should have shifted the onus of proof on to the manufacturers. It should be the responsibility of the manufacturer to prove that the loss or injury is not caused due to his negligence. Anyway, the remedies will benefit the individual consumer.

But, if his complaint is representative of a section of society, these remedies will have only a minimal deterrent effect. It is therefore necessary to ensure that educative literature, corrective advertisements, the power of seizure and recall should also be included. Thus if a consumer complains of severe food poisoning from a tinned product, it is possible that the entire batch of tinned products was unsafe for consumption. What kind of orders can the Forum give in such a situation? Would the National Commission inform the consumers throughout the country that the company has produced unsafe tinned food?

SERVICES

A consumer can also complain about deficiency of any services hired. Deficiency has been defined as fault, imperfection, shortcoming and inadequacy in the quality, nature or 'manner of performance' which is required to be maintained by law. This term 'manner of performance' can be interpreted liberally. According to authoritative opinion, under the existing law, public utility services are to be performed efficiently, economically and on sound business principles. Thus if a consumer has a complaint against the Electricity Board, the Road Transport Corporation, Indian Railways or the Life Insurance Corporation, he can complain under this Act by alleging that the performance is not up to the standards prescribed by law. As this definition is fairly flexible it allows tremendous scope for intelligent interpretation and argument on behalf of the consumer. If precedents with respect to public utility services are to be expected from this Forum, consumer groups will have to represent their case at both state and national levels.

Services included are banking, financing, insurance, transport, processing, supply of electrical or other types of energy, board or lodging, entertainment, amusement and information. Thus if food is served in an unhygienic manner in a restaurant, you can complain. However, any service supplied free of charge is not included. Thus the supply of free air, checking of air gauges at petrol pumps is something you cannot complain about. But if the petrol you purchase spills over onto your vehicle and the ground you have a valid complaint since the manner of service is in violation of the safety rules and regulations of a service station.

Personal services are excluded. Those services rendered by a servant in a master-servant relation are thus outside the Act's purview. If a consumer wishes to complain about such contracts of personal service he will have to move the courts under the Indian Contract Act, 1872.

A consumer can also complain if the trader charges a price which exceeds that fixed by law or displayed on the packet. Thus, the 1985 amendment to the Weights and Measure (Packaged Commodities) Rules, which makes the display of the amount of local taxes mandatory on packaged goods, will play a major part in helping the enforcement of this provision. But there has to be some efficient and effective method of informing the public so that the individual consumer has the means of knowing what the actual price of the product should be.

To make this Act flexible, informal and amenable to easy and quick disposal, the rules will have to be well-framed. The central government and the state governments have powers to frame the rules and the rules may not be uniform from state to states. Voluntary groups will have to ensure that the rules framed by each state are easy to follow. If the government is slow to establish Forums in every district, consumer groups will have to play a role in seeing to the establishment of district Forums.

APPEAL

Provisions for appeal at every stage have been made but appeals from the National Commission can

be referred to the Supreme Court directly. How far this Act will lessen the burden of litigation at the district and High Court level depends on consumers and their groups. It is argued that the provisions for the three stages of appeal as a matter of right would result in inconvenience for the consumer. The Act specifies that an appeal from the district Forum, can be made to the state Forum, then to the National Commission and finally to the Supreme Court. There are no restrictions as to the grounds on which these appeals can be made, thereby making appeal a matter of right. A consumer who wishes to complain about a defective torch, for example, may have to bear the inconvenience of actually going upto the Supreme Court.

Under the Act, apart from the Consumer Dispute Forums, Consumer Protection Councils are to be set up with the object of promoting consumer rights. It is not, however, clear whether the Council will have a research and education department feeding it with inputs. It is not clear whether the Council will use the judgement of the Forum as the starting point of its educative efforts. It is not clear as to how the Council will attempt promotion and protection of consumer rights. Will the Council have the power to improve the enforcement of other legislation which helps the consumer? Will the Council have the power to improve the administration of laboratories, research institutions and other bodies set up by law for consumer protection? Will the Council have the power to recall dangerous goods and services from the market? Will the Council be able to influence policy makers into banning unsafe drugs? Chapter II of the Act merely lays down the objectives of the Council but not how these objectives are to be met. Therefore, there is scope for unlimited promotional and protectionist activity.

The consumer did not so far have an enactment to help in interactions with producers in the market place. The Consumer Protection Act, 1986, deals directly with disputes arising in the market place. Now, when a consumer goes shopping, he knows that he is backed by Forums and authorities. The unequal bargaining power of the consumer in the

market place is expected to be balanced if the implementation of the provisions of the Consumer Protection Act is carried through responsibly.

The Act allows scope for interpretation. Therein lies its strength. It gives consumers and consumer groups a new status. Therein lies its potential. It

gives the government a chance to complain. Therein lies its diplomacy. If consumer groups, individual consumers and the government make ingenious, innovative and intelligent use of this law, combined with other legislations, this law can form the turning point of the Indian consumer protection movement.

BUYERS HAVE RIGHTS

We reproduce below an informative article which has appeared in the "Surya" magazine. It is by Kanwar Jalees/Sanchetna. It contains information about the type of problems consumers encounter at the hands of unscrupulous manufacturers and traders, which they will increasingly have to take up for redressal through the machinery proposed to be set up under the Consumers Protection Act.

"I was promised a gas cylinder yesterday and tomorrow we have our wedding anniversary," says Raj Kumari, whose husband is a police official. This when many police officials can pull strings to get domestic jobs done in a hurry. Ratna Dhingra, an employee in the Canara Bank, has a different experience to narrate: "I bought a lipstick and it smells strange. Name an item which is not adulterated."

Spurious country liquor leaves a trail of death and blindness in Rehgarpura, the poor man's locality in Delhi. Beef tallow mixed in vanaspati causes an uproar in Parliament. Argemone oil in mustard oil claims many lives and incapacitates hundreds. Any edible commodity that sells fast and true in the market is adulterated, sometimes with a rare degree of finesse—like brick powder in lal mirchi—and sometimes with casual and visible impunity—like white stones in rice. Adulteration is the shopkeepers' version of the national chalta hai culture.

Consumer resistance, or at least a Ralph Nader-like messianic consumer protector, shows no signs in India. The Indian consumer spends Rs. 75,000 crore in the domestic market, and it is anybody's guess as to how much of this goes into adulterated foodstuff. Such routine matters have ceased to attract attention, except when there are some inci-

dental and bothersome deaths. According to a report, about 25 per cent of the food sold in the capital is adulterated. In the report of the Food and Drug Administration (FDA), the percentage is still higher.

Tests made in certain parts of the country show that spices and condiments are adulterated to the extent of 32 per cent with harmful substances: grass seed is mixed with cumin seeds, stems of small plants are mixed with tea leaves; heeng, made of wheat flour and scent, fetches profits that are sometimes quintupled.

Surveys made by various organisations show that groundnut oil sold in retail shops contains cottonseed oil, rapeseed oil, palmolive oil and even castor oil. Thirty per cent of all oils, 25 per cent of vanaspati and 20 per cent of ghee are adulterated, the last with animal fats. According to the Institute of Communicable Diseases, the adulteration of oil poses grave health hazards, and in fact claimed a number of lives in Delhi two years ago.

Even though they are not permitted, additives, colouring agents and artificial sweeteners are added to edibles: toffee contains wax and lollipops, the delight of children, chemical ash; saccharine is added to soft drinks and a glucose bottle left too long to age

may contain deadly fungus. Regulations routinely state that labels should not be misdirecting but manufacturers are notorious for not following regulations. There are, however, some simple tests that can be carried out in any kitchen to detect adulteration.

- Dissolve baby food in water. Add a few drops of iodine. If it contains starch, it will turn blackish blue.
- Burn a spoonful of chilli powder. If it contains artificially-coloured sawdust brick powder or talcum powder, it will leave a substantial amount of ash.
- Pure asafoetida dissolves in water and forms a milky solution. It also burns with a bright flame.
- Iron filings in semoline can be detected by means of a magnet.
- Metanil yellow in sweetmeats can be detected by adding a few drops of strong hydrochloric acid, which produces a violet colour.

It is difficult, if not plain impossible, to detect defects in appliances which fail to meet the specifications laid down by the Indian Standards Institution (ISI). Tests carried out in Bombay on electric irons of different makes showed only two of them passing all the ISI tests. Similar tests on immersion water heaters passed the same number. Out of 22 brand makes of stoves, only seven passed the pressure safety tests and only 12 passed the thermal efficiency tests.

The vast Delhi market is flooded with substandard and spurious electric plugs, sockets and switches. According to a survey by the Directorate of Industries, Delhi Administration, only 25 in a sample of 90 met the prescribed standards. Of the 16 bulb manufacturers in the country, only two meet ISI specifications.

Another major kitchen complaint is about Liquefied Petroleum Gas (LPG) cylinders. Nearly 25 per cent of the cylinders circulated in the capital are

diverted to unauthorised connections, forcing abnormal delays to regular customers. On paper, there is no waiting time for gas cylinders.

During the past three years, the country has seen 360 gas cylinder accidents which killed 225 people and injured 445. According to a Senior LPG manager of the Indian Oil Corporation (IOC), 15 per cent of the accidents can be directly blamed on delivery boys who remain underpaid and therefore looking out for kickbacks. He admits that for small bribes, delivery boys reroute cylinders to unauthorised consumers or refill empty cylinders using crude and dangerous methods.

There is, of course, a chronic circulation of underweight cylinder. In December 1985, 10 out of 12 cylinders at the filling plant of the Indian Oil Corporation were found to be low-weighted by 400 gm to 900 gm. Taking an average low-weight of 500 gm, the consumers in Delhi are losing out on Rs. 60 lakh per annum.

Every batch of 400 cylinders is followed by 10 complaints of leakage or defects, which include jammed pins, low weight, faulty caps and malfunctioning seals. To add some insult to injury the oil companies have introduced the "cash and carry" scheme in direct and provocative contravention of safety rules.

More frightening by half is the scenario in the rural areas. Unscrupulous traders use labels just a letter different from established brand names. In Uttar Pradesh and Bihar, Lightbuoy and Zin are sold as Lifebuoy and Rin. Markings like "Mercurised" and "Sansorised" create an impression that products are mercurised and sanforised.

What goes into the production of foodstuff is also adulterated; a consumer protection group really wouldn't know where to begin. Fertilisers and pesticides are adulterated; in the past five years, of 130,000 samples of fertilisers, over 12,000 were either adulterated or substandard.

PROBLEMS REGARDING CONSUMERS PROTECTION ACT

It is necessary that consumers' organisations and consumers should become aware of the pros and cons of the Consumer Protection Law which has now been enacted for safeguarding their interests against exploitation by manufacturers, distributors and retailers of goods and providers of services. As the law starts coming into practice after the Rules are promulgated by the Government, and as more details relating to it are studied, certain problems, such as of jurisdiction for complaints before the redressal forum and of the appeals etc, will get highlighted, and solutions to these problems will have to be found.

The following article of Mr. T. K. Bhaumick which appeared in the Financial Express will be of interest in this connection. It spells out some of the problems which can be envisaged to arise and which the consumers and the organisations should be aware of.

The problems of consumers in our country are many and varied. They have, however, always remained neglected. Thanks to the growth of consumer movement, the Government has at last responded to the consumers' grievances by deciding to give legal protection to their interest.

The Consumer Protection Act has been recently passed by both the Houses of Parliament.

As the Act becomes effective, there will be a Consumer Protection Council at the national level, to be called National Commission, under the Chairmanship of the Union Minister in charge of the Department of Food and Civil Supplies. With the prior approval of the Centre, state governments will establish state-level commissions and district forums.

For the purpose of lodging complaints against defective products, charging of higher prices, deficient service, etc., a forum will be the primary body. It will enjoy the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a complaint.

It will have the power to (a) summon and enforce attendance of any defendant, (b) the discovery and production of any document or other material object producible as evidence, (c) the reception of evidence on affidavits, (d) the requisitioning of the report of

test from the appropriate laboratory, (e) issuing of any commission for the examination of any witness, (f) any other matter.

These forums will thus have wide ranging powers. It is almost a parallel judicial arrangement towards protection of consumers' interest.

However, the forums will deal with complaints relating to goods and services where the value of the same and the compensation, if any, claimed, does not exceed Rs. 1 lakh. When the amount exceeds Rs. 1 lakh but does not exceed Rs. 10 lakhs, the complaint will be dealt with by the state commissions. If the value exceeds Rs. 10 lakhs, complaints will be entertained by the National Commission.

The Act provides for a detailed evaluation of the complaint in a democratic manner. While it gives the consumer an opportunity to lodge a complaint and seek redressal of his grievance, it does give every opportunity to the opposite party to explain his case. The findings of the forum may either go against the opposite party or the complaint, but the matter does not end there. The aggrieved party may, in the case, appeal to the state commission and Supreme Court is the last court of appeal. Thus both the parties get full opportunity to justice,

The Act has several other positive aspects. For instance, it includes services as well under its coverage. Service has been defined as one of any description which is made available to potential users and includes provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, entertainment, amusement or the purveying of a news or other information. It does not include, however, any service that is free of charge or under a contract of personal service.

Following enactment of the Act, consumers are expected to get a better deal in many vital areas of service like banking, insurance, transport, electric supply, etc. It, however, excludes a very important area of service—health and hospital services. Similarly, it is not clear whether people can seek justice against neglect of municipal services which are apparently provided free of charge though people pay taxes on them.

So far as goods are concerned, it covers all sorts of defects and deficiencies — manufacturing, packaging, trading practices, advertising, pricing, and all sorts of unfair trade practices as explained in Section 36A of the MRTP Act, 1969. For the purpose of the Act, the term goods includes 'every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.'

This is as per the explanation given in the Sale of Goods Act, 1930. Thus stock and shares also do not escape the rigours of the Bill. But it keeps immovable properties outside its scope, which means that land and buildings are not included. This is indeed a serious omission, and should be included within the meaning of 'goods'.

The Act confers upon consumers "the right to education". This means that, on demand from the consumers, the manufacturers would be under compulsion to provide necessary information about the

product. This may also mean that necessary information about the product has to be provided along with the product. This would be, however, more effective when consumers are mostly educated, which is not usually the case in our country.

In order to successfully exercise such rights, moreover the consumers have to be economically well-off. It is going to be easier for the rich consumers to exercise such rights.

Therefore some complicated aspects of the Act, too. One serious problem will arise with regard to jurisdiction. Clause 11(2) of the Bill needs simplification as well as clarification. The Clause reads as follows :

"A complaint 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, act the time of the institution of the complaint, actually and voluntarily resides or carries on business, 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 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 personally work for gain, as the case may be acquiesce in such institution; or

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

What happens if the opposite party does not actually and voluntarily reside or carry on business, etc., in the local limits of the forum relevant to the complaint? The answer probably is that the complaint should be instituted in a forum in whose jurisdiction the opposite party is residing. But, then, it is doubtful whether the complaint can co-ordinate with a far-off district forum. The problem will be all the more complicated if the district forum, in whose local limit the opposite party resides, belongs to a different state.

In this situation there should be a provision for co-ordination between the district forum in whose local limit the complainant belongs and the district forum in whose jurisdiction the opposite party resides. There may be a situation where the opposite party, at the time of institution of a complaint to a district forum, was residing or carrying on business in its local limits but, thereafter, shifted out of the local limit.

In this case, the question is whether the earlier district forum will continue with the complaint lodged with it? If yes, will it be effective enough? It is apprehended that in such cases the effectiveness of the district forum would be greatly affected. In such cases it would be better to transfer the case to the district forum in whose local limits the opposite party has shifted.

The position of the complainant, in that case would, however, be weakened. To obviate any such problem, a clause should be provided to the effect that once a complaint has been instituted the opposite party should not be allowed to move out of the local limits of the district forum without obtaining prior approval of the forum.

There may be many other exceptional circumstances. For instance, when a person has to undertake frequent travels, he may be affected by the quality of some product and suffer damage in a place outside his normal residence. In such cases, should he lodge complaint with the district forum within whose local limits he suffered the damage or with the forum within whose local limits he permanently resides.

If he has to lodge a complaint with the district forum within whose local limits he temporarily stayed and suffered damage, it will become difficult for him to follow up his complaint. On the other hand, if he lodges a complaint with the district forum in whose local limits he permanently resides, that forum will have little control over the opposite party.

The Act lays down a detailed procedure to be followed by the forum while looking into a complaint,

the procedure is quite rigorous and ensures justice. But it is too lengthy and detailed to encourage consumers.

As per the procedure laid down in the Act, the district forum, on receipt of a complaint, would refer copy of the complaint to the opposite party directing him to give his version of the case. He is supposed to reply within a period of 30 days or within such extended period not exceeding 15 days or as may be granted. The opposite party may deny the charge or may fail to take any action. In that case, the forum shall obtain a sample of the goods from the complainant and refer the sample to the appropriate laboratory. The laboratory shall report within a period of 45 days or within such extended period as may be granted by the forum. Already, 75 days plus more are lost!

After receiving the report from the laboratory, the forum shall forward a copy of the report to the opposite party asking him to submit his objection in regard to the report prepared by the laboratory. The forum shall, thereafter, give a reasonable opportunity to the complainant or the opposite party of being heard as to the correctness of the report. Only then the forum shall issue orders.

The aggrieved party may, however, make appeal against any order passed by the forum to the state commission within a period of 30 days from the date of the order. The state commission will, in turn, follow the same procedure. The aggrieved party may make further appeal against the order of the state commission to the National Commission within a period of 30 days from the receipt of the order and also against the decision of the national commission to the Supreme Court, probably again within a period of 30 days.

Thus, taking into account the time allowed to the opposite party and considering the time to be taken by the state and national commission, and Supreme Court in coming to a decision, it is almost an unending process, which the average consumer will have very little capacity to go through with. He will also be required to bear the necessary expenses which will

not be small in any case. In most cases, the items would be items like TV, refrigerator, and such like consumer durables. Similarly, there may be items like soaps and detergents, pharmaceuticals and medicines and similar items or food articles. It is doubtful whether any consumer, or even consumer forums, will enter into a litigation which will prove costly and time-consuming.

Let us take simple example where a consumer has purchased a TV set or a piece of refrigerator and found it defective. If he decides to lodge a complaint with the district forum, he will have to leave his set with the laboratory and pay for the testing expenses. Having done that he has to indefinitely wait till the matter is settled. In the meantime he is without the product, and deprived of its utility.

Consumers will not prefer complaints for small-value items, and even for most of the durable consumer goods. As the average consumer is concerned with small-value items and his requirements are limited, the Act will be of little relevance to him. A manufacturer, on his part, may have the capacity to have the case dragged on, once a complaint has been lodged against him, but a consumer cannot afford to continue for a long time.

In the entire process the scope for mutual reconciliation will be minimised. A complaint or grievance should be, as far as possible, settled between the consumer and the opposite party on the basis of mutual understanding and respect, so that we do not become a highly litigating society.

It is also apprehended that, following enactment of the Act, manufacturers may be frequently harassed and subjected to many inspections. There is a lot of substance in this apprehension. The number of consumer forums is increasing which apart, state and the Union Government can also assume the role of a complainant. The Act thus seeks to exercise further authority and control over business operations in an indirect manner.

But more than the manufacturers, it is mostly the traders, primarily retailers and dealers, who will have to bear the brunt, as the consumers are directly in touch with them. No helping clause has been provided for such businessmen, even when they cannot be responsible for the quality, content, potency, etc., of the goods.

Although they may be aware of the deficiency or defect in a product, they cannot lodge a complaint simply because of commercial considerations. It will be tough going for them.

It has to be recognised that traders can actually be of great help in controlling the incidence of bad quality at the manufacturing stage. They can also successfully control the growth of manufacturers of spurious products by refusing to sell such products. The Act could encourage the traders to play this role by giving them the right to lodge complaints. But it denies them this opportunity, and by doing so it is making their jobs not only difficult but also more troublesome.

A long-term implication of the Act could also be that ancillarisation and the relationship between small and large-scale units could suffer a setback. The larger units would not like to place much orders with ancillary and small-scale units, because such feeder units will not, in any way, be responsible nor can held responsible for defects in the composite and final products.

Finally, it is felt that the Act will not be of any relevance for the poorer consumers for the simple reason that, as such, they do not have the capacity to buy their essential items in necessary quantities and, therefore, cannot be expected to bear the expenses and rigors of the complaint procedure. Further, they are totally unorganised and the consumer forums of the metropolitan type are still a long way from feeling interested in problems of the poor consumers. If the Act can, at all, protect the interests, it is that of the neo-rich section of consumers and their forums.

OUR WRIT PETITION ON ELECTRICITY BILLS

On quite a few occasions citizens have asked for our help in informing them about the legal position relating to bills received by them for alleged electricity consumption for periods of previous years. Often these bills are stated to be for periods more than three years ago, and are stated to have arisen on account of some meter having stopped at that time and the omission to demand the dues having now been detected due to some audit objection or otherwise. Quite often the demands communicated in these bills are of heavy amounts, running into thousands of rupees, putting the consumers to great harassment and anxiety because the non-payment of the demands is threatened with disconnection of electricity.

This matter was taken by us to the Delhi High Court in the shape of two writ petitions, one arising from a heavy bill received by the Director himself and the other relating to similar heavy bills received by five other consumers. Both these writ petitions were admitted by the Court and orders were issued to Delhi Electricity Supply Undertaking directing them not to disconnect the electricity connection of these consumers pending decision. In the writ petition relating to the five consumers we have presented the various legal issues and we have therefore considered it desirable to reproduce its basic essentials so that the members become aware of these legal ramifications.

At the time of going to press these two writ petitions are in the process of being decided. Detailed arguments have been presented before Mr Justice B. N. Kirpal of the Delhi High Court by Mr D. R. Thadani, Advocate on behalf COMMON CAUSE and Mr V. P. Singh, Advocate for DESU. It is expected that decision will soon be announced. If the judgement becomes available before the printing of this issue of the periodical we will incorporate the information in it. Otherwise, those persons who may want to know about the decision on these two writ petitions are welcome to write to us asking for it. We feel that this decision of the court will be of far-reaching importance to consumers of electricity. (See end. Judgements announced. Substance given.)

Meanwhile, the text of the writ petition which we are reproducing below will be of obvious educative value in the matter of presenting such types of common problems before the High Courts and Supreme Court. (Respondent is DESU and Petitioners are COMMON CAUSE and some electricity consumers.)

The Petitioners challenge the illegal action, capriciousness, arbitrariness and malafides of the Respondent in having issued notices to consumers of electricity demanding payment of amounts which are not legally due, and illegally threatening them with disconnection of electric supply in the event of non-payment of the demands.

That the following important questions of Constitution and law, inter alia, arise in this petition :

(a) Whether it is the duty of the respondents to see that, wherever meters are provided for

calculating the amount of electric energy used, to maintain those meters in proper running order to show correct reading of the same.

(b) What consequences do the respondents face on their failure to maintain the said meters in proper running order as contemplated under the Indian Electricity Act and as licences for generating electricity under the said Act.

(c) What is the effect of Section 26 of the Indian

Electricity Act, 1910, and Section 455 of the Delhi Municipal Corporation Act, 1957?

- (d) Whether the demands made by the Respondent from the Petitioners are in violation of Articles 14, 19, 21 and 300-A of the Constitution of India and illegal in view of the provisions of the Sections as mentioned in (c) hereinabove.

The facts leading to the present petition are as under :

That Petitioner No. 1 is a Society registered under the Societies Registration Act. It has been established by some public spirited citizens and has a wide membership in various parts of the country. It has been taking up various common problems and grievances of the people for securing redress, through executive intervention, by approaching the legislatures and by taking resort to the Courts where necessary. The locus standi of Petitioner No. 1 has been recognised by the Hon'ble Supreme Court in relation to certain Writ Petitions submitted there. This Society is vitally interested in the outcome of this Petition as the main question is of great public importance, for the betterment of the conditions for which Petitioner No. 1 is working. Other Petitioners are the consumers of electricity purchasing the same from the respondents as registered consumers of Respondent.

That under Section 277 of the Delhi Municipal Corporation Act, 1957, subject to the provisions of the said Act, the Corporation shall in respect of the Union Territory of Delhi, have all the powers and obligations of a licensee under the Indian Electricity Act, 1910, and this Chapter (Chapter 13 of the said Act) shall be deemed to be a licensee for the purposes of that Act (i.e. Indian Electricity Act, 1910). In other words the Respondent No. 1 is a licensee under the Indian Electricity Act, 1910.

(In paragraphs 6 to 10 particulars of five consumers have been given in the petition, furnishing information about their electricity meter numbers and

the bills received by them, periods of the bills, as well as the representations made and correspondence have been annexed to the writ petition).

That under Section 24 read with Section 26 of the Indian Electricity Act, 1910, one of the methods for measuring the supply of electricity is to instal a meter where the electricity is to be supplied, for the proper recording of the electric energy so supplied. The meter may either be purchased by the consumer himself and given to the respondent DESU to be installed at the premises for the registration of the electric energy consumed, or the same may be installed by the respondent DESU i.e. the Licensee for the said purpose, and, in which case, the Licensee is entitled to ask the consumer to give security deposit to the extent of the cost of the said meter. In the case of the Petitioners the meters have been installed by Respondent DESU and proper security has been deposited for the said meters and rent for the meters, alongwith the energy charges, is also being paid by the said Petitioners to the Respondent regularly.

The said Section 24 and relevant sub-section (1) (2) and (6) of Section 26 of the Indian Electricity Act read as under :

- 24.(1) Where any person neglects to pay any charge for energy or any (sum, other than a charge for energy,) due from him to a licensee in respect of the supply to him, the licensee may, after giving not less than seven days notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works, being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and re-connecting the supply, are paid.

(2) Where any difference or dispute (which by or under this Act is required to be determined by an Electrical Inspector, has been referred to the Inspector) before notice as aforesaid has been given by the licensee, the licensee shall not exercise the powers conferred by this section until the Inspector has given his decision :

(Provided that the prohibition contained in this sub-section shall not apply in any case in which the licensee has made a request in writing to the consumer for a deposit with the (Electrical Inspector) of the amount of the licensee's charges or other sums in dispute or for the deposit of the licensee's further charges for energy as they accrue, and the consumer has failed to comply with such request.)

26.(1) In the absence of an agreement to the contrary, the amount of energy supplied to a consumer or the electrical quantity contained in the supply shall be ascertained by means of a correct meter, and the licensee shall, if required by the consumer, cause the consumer to be supplied with such a meter :

Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter.

26.(2) Where the consumer so enters into an agreement for the hire of a meter, the licensee shall keep the meter correct, and, in default of his doing so, the consumer shall, for so long as the default continues, cause to be liable to pay for the hire of the meter.

(6) Where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector; and where the

meter has, in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct; but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity :

Provided that before either a licensee or a consumer applies to the Electrical Inspector under this sub-section, he shall give to the other party not less than seven days' notice of his intention so to do.

From the above it is clear that :

- (a) The amount of energy supplied to the Petitioners by the Respondent was to be ascertained by means of a correct meter, and
- (b) It is the duty and responsibility of the Respondent to maintain the meters in correct working order

That rules have been framed under Section 36 of the Indian Electricity Act, 1913, and under Rule 27 of the said Rules, "Conditions of Supply" have been prescribed by the Respondent. Paragraph 22(d) of the said "Conditions of Supply" reads as under :

- (d) If at any time the meter belonging to the Undertaking and installed at the consumer's premises is found defective, the same shall be replaced by Undertaking. For the period during which the meter remained defective, the consumption shall be determined as follows :
 - (i) Average recorded for the previous three Season months for all consumers including perennial factories except those as brought out under item (ii) below.

- (ii) For seasonal factories and licenses either average of previous three months as in (i) above or last year's consumption for a similar period whichever is considered suitable by the Undertaking.

It is respectfully submitted that the above "Conditions of Supply", as framed by the Respondent is controlled by and is subject to the provisions of Section 26 of the Indian Electricity Act, 1910, and Section 455 of the Delhi Municipal Corporation Act, 1957, because the period referred to in the said conditions of supply cannot be more than the period as given in the above two sections. Otherwise the conditions of supply will be ultra vires of the said two sections.

That Section 455 of the Delhi Municipal Corporation Act, 1957, reads as under :

455. In any case not expressly provided for in this Act or any bye-law made thereunder any sum due to the Corporation on account of any charge, costs, expenses, fees, rates or rent or on any other account under this Act or any such bye-law may be recoverable from any person from whom such sum is due as an arrear of tax under this Act :

Provided that no proceedings for the recovery of any sum under this section shall be commenced after the expiry of three years from the date on which such sum becomes due

That from the aforesaid provisions of law, the position emerges as follows :

- (i) As and when consumer so requires, the Respondent has to instal a correct meter at the premises of the consumer for recording of the energy consumed at the said premises.
- (ii) It is the responsibility of the Respondent to ensure that the meter installed by it at

the premises of the consumer and for which hire charges are being paid by the consumer, is maintained in correct working order, and this can be checked by the Meter Reader whose duty it would be to report the defective meter if he finds the same in not proper running order.

- (iii) That the Respondent cannot charge for supply of energy in any other manner except on the basis of the readings recorded by a correct meter installed at the premises of a consumer. Any demand which is based on the reading of an incorrect meter would be unlawful and any enforcement of such demand by invoking provisions of Section 24(2) of the Indian Electricity Act, 1910 or any other action would consequently be unlawful and would amount to coercion and loss of personal liberty.
- (iv) Where a dispute arises about the correctness or otherwise of a meter, on the dispute being referred to the Electrical Inspector, the order for recovery of arrears can at most be for a period of six months and no more.
- (v) In terms of the provisions of Section 24(1) and Section 26(1) of the Indian Electricity Act the Licenses is authorised to cause disconnection of electricity on failure to pay the charges only where the demand is "due" and is based on readings of a correct meter and not an incorrect meter, and the issue of any notice for causing disconnection of electricity, for non-payment of a demand based on an incorrect meter, would be unlawful.
- (vi) In view of the provisions of Section 455 of the Delhi Municipal Corporation Act, 1957, the Respondent is barred from recovering any sum relating to a period beyond three years from the due date. The provisions of S. 24(1) of the Indian Electricity Act cannot be invoked for compelling recovery of such a demand.

That in the face of these specific provisions of law, the Petitioners are confronted by the following illegal acts of the Respondent, which the licensee has continued to resort to :

- (a) Demands of big amounts are raised through the normal form of recurring bills often without any detailed explanation, purported to relate to energy supplied over long periods and not having been measured due to defective meter. Often, the period for which demand is made is for periods exceeding six months, and in quite a few cases the demand relates to period more than three years old. There is normally no specification of the grounds, details of the demand, method of calculation of demand, etc, in the bills thus transmitted
- (b) The demand is generally based on the contention that a particular meter stopped operating, at some period of time in the past (in some cases the period specified is years ago), and average has been taken of the electricity consumed over a period of some months before or after replacement of the defective meter, disregarding any contention whether any change has come about in the pattern of consumption during the relevant period or not.
- (c) The handle of incorporating such demand in the recurring bills is utilised for forcing the consumer to make the full payment under the threat of causing disconnection in the event of non-payment. Part payment of the bill, excluding the disputed amount, is normally not allowed to the consumer, in order to compel him to make the payment of the whole of disputed amount.
- (d) Notices, generally of one week, for disconnection of electricity supply are sent to the consumers where the claimed arrears are not paid, leaving them no alternative but to

succumb to the pressure tactics of Respondent. Representations repeatedly made by the consumers in regard to their disputes are not given any heed.

That the Respondent has the monopoly of supply of electricity in the Union Territory of Delhi, and there is no option left to any person but to take the electric supply from the Respondent or go without it. It is an undisputed fact that electricity is not a luxury, but an absolute necessity for the consumers, and, in the case of consumers of industrial and commercial power, it is a means of earning livelihood for the consumers and their families. Denial of supply of electricity or its disconnection is bound to cause serious consequences to the concerned consumer. Besides being a licensee of the supply of electricity, the Respondents are civic bodies and are duty-bound to act within the provisions of law and to provide all reasonable facilities to the citizens, and not to do anything which may cause inconvenience or harassment to the consumers. By supplying electricity or maintaining electric supply, it is not as if the Respondent is extending a patronage, it is only performing its duty to extend the facility. Supply of electric connection cannot, therefore, be taken to be at the sweet will and be the preserve of the Respondent. It is not even sufficient if the consumer, as required by Section 24 of the Indian Electricity Act, is informed by issue of a notice in writing that this facility would be taken away. The Respondent may raise a demand as an act of vendetta, or on report by the employees who are misinformed, or on material not relevant, or on an approach which may be irrelevant. Whatever decision is taken by the Respondent, there must be an occasion for the consumer to know what he has to answer, to know full details of what is against him, and to submit what he has to say by way of answer. If there is any demand for arrears or for some other sum which he is alleged to have omitted to pay, he should be furnished with full details of it. The details should show inter alia why the arrears or demand have been raised, how these have been worked out, to which period they relate,

whether the recovery is barred by law of limitation, whether any claim of the consumer for refund or for some other account has been pending and if so why the demand could not be adjusted against that claim, and such other information which the consumer may ask for. On receipt of this information it is possible that the consumer may find the demand to be genuine, correct and reasonable, and may have nothing to represent by way of objection. On the other hand, it may be a case of error on the part of Respondent and they may consequently drop the demand. In any case, it is the duty of Respondent to consider the answers very carefully and take a decision in the light of the material available. The decision has to be objective. It is obvious that the disconnection of electricity, which is an absolute necessity, and to which a person is entitled, and denial whereof is bound to materially affect his work and business, can cause extreme disturbance to his everyday life and may cause disastrous consequences to business and industry. In view of these facts, the Respondent cannot be permitted to apply its own standards for disconnecting electricity, and due regard has to be given to the constitutional and legal rights. In other words, the Respondent cannot initiate any action arbitrarily, unilaterally, and at sweet will, for disconnecting electric supply for effecting recovery. If the demand is barred by limitation, the question of its recovery by disconnecting electric supply or by filing a civil suit does not arise, and no action for disconnecting the supply, in terms of Section 24(1) of the Indian Electricity Act can obviously be initiated.

Against the background of the above-mentioned provisions of the law, and the arm-twisting stratagems which are normally being adopted by the Respondent, for recovering the amounts contended to be due, the Petitioners have submitted the specific cases in which the Respondent has palpably acted in a manner contrary to law.

That the activities of Respondent in the above cases are illustrative of the illegalities which

are being committed by it. These actions are unlawful, arbitrary, capricious and malafide, and violative of Articles 14, 19(i)(g), 21 & 300-A of the Constitution of India in-as-much as the action of the Respondent is arbitrary, and not only contrary to established law, but also to all the canons of justice, fair-play and equity, and the Petitioners are legitimately entitled to exercise their fundamental right not to make payment of the same. The Petitioners plead that the demands made by the Respondent based on the readings of defective meters and embodying average charges, for periods of more than six months, and relating to a periods of more than three years old, should be declared to be arbitrary and unlawful, and, in particular, the above-mentioned demands communicated to the Petitioners be declared unlawful. The demands are also violative of Article 21 of the Constitution of India in-as-much as the consumers, and especially the Petitioners are thereby deprived of their life and personal liberty, contrary to the procedure established by law. As and when the electricity is cut off, their movements are restricted and harassment is caused to them in their daily life apart from the running after the officials to get the electric energy restored.

That, in the face of these explicit provisions of the law, the Respondent has been, and is continuing to levy demands from consumers which are in contravention of these provisions of the law. Resort is made by it to the stratagem of arm-twisting by threatening disconnection of electric supply. Electricity is not a luxury but, in the context of present day living, an absolute necessity. Disconnection of electricity can cause extreme harassment, deprivation of personal liberty and danger to a consumer, and disruption of an enterprise dependent on electricity for its operation. Such action on the part of the Respondent is arbitrary, unlawful, capricious, malafide where any demands are made which relate to a period of more than six months, on the basis of a meter which is stated to have been defective, and/or where they relate to a period which is more than three years old, the same are liable to be declared

unlawful and should be struck down as being violative of Articles 14, 19(i)(g), 21 and 300-A of the Constitution of India. In particular, the demands communicated to the Petitioners which are contrary to these provisions of the law, are liable to be declared unlawful, and are liable to be quashed.

That the said demands and the threat of the Respondent are illegal and ultra vires of the provisions of the law and the Constitution as mentioned hereinabove and the demands made by the Respondent from the Petitioners are liable to be quashed and the Respondent is liable to be restrained from making any further demands of similar nature and/or cutting off the electricity for non-payment of such illegal demands including the premises mentioned.

LATE NEWS

Mr. Justice B. N. Kirpal, judge of Delhi High Court has delivered judgements. He has disposed of the writ petition filed by COMMON CAUSE and some consumers of electricity, and also the separate writ

petition filed by the Director. He has upheld our contention that the demands communicated by DESU in the respective bills, which are based on the claim that some electricity meter had stopped or become defective are illegal. He has held that under S-26(6) of the Indian Electricity Act (i) it is the responsibility of DESU to correctly maintain the electricity meters, (ii) DESU cannot determine whether any meter had become defective and this can be done only by the Electrical Inspector appointed by the Government under the Indian Electricity Act, (iii) the Electrical Inspector alone can determine as to how much amount has become due on account of any defective meter, (iv) the computation of amount due can be done only on the basis of three months' consumption of the period prior to noticing of the defective meter, for the corresponding previous season, and (v) in any case the demand, based on any such computation, cannot exceed the consumption for period of more than six months. On the basis of these decisions the Hon'ble Court has quashed the bills which were issued by DESU in contravention of this law and has directed that DESU should refund the amounts where they have been paid by the consumers along with interest.

ON NOISE POLLUTION

Everybody would surely be aware of the nuisance of loudspeakers fixed atop the places of worship, be they mandirs, mosques or gurdwaras. In the recent past this nuisance has very greatly increased and each community is vying with the other in stepping up the noise from these loudspeakers. Most often these loudspeakers start operating in the very early hours before dawn and in the case of "Jaagrans" by the Hindus they blare forth throughout the night. The neighbourhoods, even upto long distances, are greatly disturbed. The noises emanating from these loudspeakers can seriously affect the health, proving in fact dangerous for the ailing persons; they disable the persons of other religions of the neighbourhood from pursuing their own prayers and meditation; they greatly upset students in their studies.

These loudspeakers, which operate from the places of worship and in the case of "Jaagrans", constitute serious public nuisance. In the present-day atmosphere when differences of religions are being exploited as a source of fanning communal passions we strongly feel that the government must be persuaded to evolve a reasonable but effective policy to curb this public nuisance, because the problems arising from it can lead to communal disturbances.

In this connection it will be relevant to bring to notice specifically the provisions of S. 268 of the Indian Penal Code which defines "public nuisance" (the nuisance of loudspeakers of this nature is definitely a "public nuisance" under this definition), and also the provisions of Section 290 and 291 of I. P. C. which, read with the provisions under the Police Act, make it obligatory on the police to take action where such public nuisance continues being created after the offenders are warned to desist.

We are keen that members in their localities and towns should launch crusades to curb this multiplying nuisance. On the basis of information given above they should write to the seniormost police authorities of their areas, giving specific instances of the polluting loudspeakers, and request them to take action. Copies of the letters addressed to the Police authorities should also be sent to the Home Secretary of the State Government. Copies may also be sent to COMMON CAUSE.

PRESENT POSITION RE. HOUSE TAX

Problems regarding House Tax assessment by the Delhi Municipal Corporation have to certain extent been resolved after the Supreme Court judgement of December 1984 (cited as *Dr. Balbir Singh & Others Vs Delhi Municipal Corporation - ALR1985 S. C. 339*), but unfortunately there are quite a few points on which the assesseees still feel aggrieved and harassed. We have considered it necessary to explain the position in relation to the main points which are causing concern to the assesseees.

It is necessary to clarify that the problem at present pending for adjudication before the Supreme Court in the application submitted by COMMON CAUSE relates only to the limited question of assessment where premises (say the ground floor or on a part of the plot) was built earlier and another part (say, the upper floor or on the adjacent area of the plot) was built after some years. MCD has been basing the assessment regarding the subsequent construction, on the proportionate area of the plot evaluated as subsequent higher price. This, according to our contention, is contrary to the clear and definite pronouncement in the above-mentioned Supreme Court judgement wherein it is laid down that the price of land "cannot be added twice over". On this ground we had filed an application in the Supreme Court to seek clarification. It is unfortunate that this application, which

was submitted over two years ago, soon after the Supreme Court judgement of December 1984, has been pending since then. It has come up on the "board" for hearing a number of times; in fact, in November '86 the arguments were heard on it in detail on three different dates, but unfortunately the decision could not be announced before the date of retirement of Mr. Justice P.N. Bhagwati, the former Chief Justice, who was the presiding judge of the Bench which heard the arguments. Since then this application has again, on our request, twice come up for hearing, but each time it has come up before new Bench. The position is that out of three Hon'ble Judge who pronounced the original judgement of December 1984 two, including the previous Chief Justice, have since retired, and the only remaining judge is Mr. Justice R. S. Pathak who is the present Chief Justice. To of the two Benches before which this application has recently come up for hearing we have, therefore, expressed that it should be heard by a Bench in which the Chief Justice is present. It stands now referred to the Hon'ble Chief Justice who will fix the date of hearing. (Late News. We have now withdrawn the application in view of what is stated in the following paragraphs, keeping the option open for again making submission to Supreme Court if it is rendered necessary.)

Meanwhile, the assesseees should be aware that in certain cases, which have been decided in appeal by the respective Additional District Judges of Delhi, e. g. (a House Tax Appeal No. 271/85 of 1985 decided by Mr. B. S. Chaudhry, Additional District Judge, Delhi and House Tax Appeal No. 260 of 1986, decided by Mr. H. R. Malhotra, Additional District Judge, Delhi) the position has been re-iterated on the basis of Supreme Court judgement that the price of land in cases, where the construction has taken place in stages, "cannot be added twice over", thereby upholding the contention we have submitted before the Supreme Court and rejecting the assessments made by MCD in manner contrary to this position. Another important development in this connection is the recent decision by Hon'ble Mr. Justice B. N. Kirpal of Delhi High Court in another case (Civil Writ no : 1150 of 1986) which was pronounced on 22.1987. In the judgement the Hon'ble Judge has given certain very important pronouncements which the assesseees should be acquainted with. We accordingly give below the substance of these pronouncements :

- (i) When a building is constructed, and its completion certificate for any reason is refused to be issued by the MCD, the building cannot be let from year to year and there cannot be any annual rent of such building for the purposes of assessment of property tax under section 116 of MCD Act. The rateable value of such building will be nil, and even through the building may have become liable to property tax under the provisions of S. 129 of MCD Act, there cannot be any levy of the property tax because its rateable value will be nil. The actual fact will, therefore, be that no tax will be payable in respect of such building till the position of refusal of completion certificate remains.
- (ii) The Supreme Court has held that where the construction has taken place in stages the price of land "cannot be added twice over". It has been held in the High Court judgement that this interpretation is "in consonance with the object of Rent Act which is to protect the tenant. The amount of standard rent fixed has to have a nexus with the amount spent by the landlord on the date of initial commencement of

the construction. If the subsequent increase in the land value, before the commencement of the second part of the construction, is permitted to be added, then the landlord would be entitled to charge a standard rent which is absolutely disproportionate to his investment".

The assesseees should bear these observations of the High Court judgement in mind. This judgement re-emphasizes the pronouncement made on this matter by the Supreme Court judgement of December 1984, and in the area of jurisdiction of Delhi High Court, therefore, this constitutes the law till, and if at all, it is modified or altered. The MCD is bound to follow this law; of course, they are entitled to appeal against this judgement of the High Court, but till it is upset this judgement lays down the law, re-iterating what has been stated on this point by the Supreme Court. Our advice to the assesseees would be to submit this position to MCD in their objections where the matter of assessment in cases of construction-in-stages is in dispute. If these objections are rejected they should take up this issue in appeal as prescribed under the law. If any official of MCD states that he is not bound to follow the Delhi High Court judgement because any matter is pending before the Supreme Court or the judgement has been appealed against, the assessee should write to the concerned official and ask him to give this in writing. Thereafter, legal opinion should be secured for launching contempt proceedings. Incidentally, it is necessary to point out that mere submission of objection every year is not enough and the silence on the part of MCD in relation to the individual objections cannot be argued in favour of the assesseees. Every year the MCD, after receiving objections, issues a public notice saying that they have disposed of the objections. After the issue of such public notice it is not necessary on the part of MCD to send replies to individual objections, and the appropriate remedy prescribed under the law is to file individual appeals against the assessments, within the prescribed period of 30 days and after taking the certified copy of the assessment order. If this procedure is not followed, the mere

submission of objections remains totally ineffective.

SELF-OCCUPIED PREMISES

There is a general feeling that with the enormous escalation of prices of land, which have come about in the recent years, a very serious problem has arisen in respect of the property tax assessment of those premises which are newly constructed for self-occupation. For instance, if a person purchased a plot of, say, 500 sq. yds in a colony like Vasant Vihar in 1970 (when the price of land was only about Rs 35 per sq. yd) and could not build on it at that time, and has built on it only in 1986, the existing law would make things impossible for him if he uses the premises for self-occupation. For the purposes of assessment of the property tax the price of land would be taken as the 1986 price which may be Rs 3000/- per sq. yd; the price of 500 sq. yds would be Rs 15 lakhs, the cost of construction would be Rs 5 lakhs; and the rateable value would be $8\frac{1}{4}\%$ of Rs 20 lakhs, i.e. about Rs 1.6 lakhs. The self-occupant would never be able to afford the tax determined on this rateable value. If the premises on the adjacent plot of equal

size was constructed in 1970 the self-occupant of the previous plot would be at a serious disadvantage while his neighbour would even be earning a hefty rental. Same would be the position if a person were to buy a plot now in any of these colonies, paying the escalated price and to construct the house for self-occupation; his tax will be determined on the basis of this price.

These instances involve a serious lacuna and discrimination which exists because of the unfortunate wording of the law. When the law was enacted it was never contemplated that the price of land would escalate so vastly.

On this matter we would like to examine the possibility of filing a writ petition before the High Court/Supreme Court and would like to have information about some properties at Delhi, in any of the housing colonies, recently constructed or flats recently acquired, which are self-occupied. We would be grateful for any specific information which can be supplied in this respect. The information in detail should be sent to COMMON CAUSE very early.

FOR PENSIONERS

RESTORATION OF COMMUTATION

We have now crossed all the hurdles. The government has issued the orders. The Banks will be able to soon start restoring the full pension of the pensioners who had commuted a part of it. The branches of Banks will naturally await direction from their headquarters; the headquarters of Banks have been supplied copies of orders by the government. It is good that the intermediacy of Accounts Officers has been obviated; they would have caused further delay in implementation.

Pensioners would be aware of the problems we have encountered in pushing this matter through. It took more than three years to get the matter decided in the Supreme Court. The government offered at one stage to restore the commuted value of pension only

in the case of those whose pension was less than Rs 500. This brain-wave of some officer was thrown out by the Supreme Court as unacceptable because it would have involved serious, meaningless discrimination. Then they came forth with the formula that pension would be restored after 15 years, or on attainment of 70 years, whichever was later. We resisted this because it involved serious inequity to those who retired early, as in the case of lower ranks of defence personnel. For one year it could not be possible to come out of this obnoxious dispensation. We made suggestions, giving details of how the period should be related to the commutation factor in different age-groups so that full pension could be restored generally after two years of the period comprising the commutation factor. Eventually, the Supreme Court gave its verdict. This was

on 9th December 1936. The judgement embodied the direction that the full pension should be restored after 15 years of retirement; that this will apply to civil as well as defence pensioners; and that the order should be implemented within at most 90 days.

Now began another period of frustrating delay. We had repeatedly written to the government (to the Minister as well as the Secretariat), since the formula of 15 years was offered by them a year ago, that they should at least issue the orders of restoration in the case of those who were in their 80's and 90's and who had crossed the age of 73 years because in all such cases the period of 15 years was in any case over. We wrote again and again. A large number of old pensioners, including Generals, Lt. Generals, Air Marshals, Vice Air Marshals, Admirals, Vice Admirals etc, wrote to the government. All this remained unavailing. In the last three months the secretariat started thinking of linking the restoration to 15 years from the date of commutation; this would have led to further frustrating delays, by trying to trace the dates of commutation in individual cases. We wrote to the Minister, to the Secretariat; but again, to no avail. There was left no alternative except to make it known that we would be compelled to institute proceedings for contempt of court on the 9th March '87 if by then the orders were not issued.

This was the position when on the evening of Saturday the 7th March '87, the government announced restoration of the pension after 15 years of retirement, without any pre-conditions. It was the culmination of our efforts and we were spared the need of launching contempt proceedings, which would have been very distasteful. But, naturally everybody felt that the government could have done this with grace if they had agreed to restore the commutation long ago when we were pleading with them to do this. This would have avoided alienation of the pensioners which has been unnecessarily caused by this dilly-dallying, and given cause to the people to complain that if the matter had related to the payment of pensions or enhancement of pensions to the politicians, either as legislators or otherwise, there would

have been no delay at all and orders would have issued within a week. This matter related to poor old pensioners who have given the best years of their lives to the service of the government and the country; they do not have political clout and their claims could go unheeded.

PRE-1973 PENSIONERS

Similar excruciating dilly-dallying has been evident on the part of the government in relation to the demand of pre-1.1.1973 pensioners who have remained deprived of the pension liberalisation which was given to post 1.1.1973 pensioners. This matter was taken before the Central Administrative Tribunal which has given verdict in favour of the pensioners. Instead of accepting this verdict with grace the government has thought it fit to challenge this verdict in appeal before the Supreme Court. Everybody naturally is asking as to why the government went to the length of setting up the Central Administrative Tribunals if their verdicts too were going to be challenged. We understand that the Tribunal had given 90 days to the government for implementing this judgement. The period of 90 days was to be over on 24th January '87. On that day, the last one of 90 days, the government has filed the appeal before the Supreme Court, without giving any details and stating that full details of the appeal would be submitted later. This game of hide and seek only damages the image of the government and it is a great pity that in this matter too the government has thought fit not to adopt the graceful way of giving to the pensioners what has been adjudged to be their due.

IVth PAY COMMISSION

Government decisions on the recommendations of IVth Pay Commission have been announced. There are quite a few decisions which are welcome to the pensioners. The major victory for the pensioners has been that they as a class can now have the satisfaction that against the background of the specific cases won by them through the Supreme Court the government can no longer disregard them; they also count in the fabric of Indian society. The IVth Pay Commission did not recommend, and the government has

not decided, in favour of equal pension for equal rank; the anomaly and discrimination that has come about between the recently retired pensioners and previously retired pensioners does rankle; this may constitute matter for being agitated before the courts or Central Administrative Tribunal. Meanwhile, consideration has been paid to the problem of increasing the family pension which was miserably inadequate, the need of substantial neutralisation of increase in the cost of living index has been recognised, and certain measures are expected to be adopted to obviate the difficulties due to the previous excruciating procedures of sanction and payment of pensions.

RAILWAY PENSIONERS

The special problem of railway employees who retired on CPF scheme had been brought out by us in the memorandum submitted to the IVth Pay Commission. This matter was comprehensively represented to the Commission from various quarters including the persevering efforts made by Mr. R. N. Mubayi,

retired Director of Railway Board and President of the All India Retired Railwaymen Association. The Pay Commission made certain recommendations. It is stated that the government has accepted the recommendations.

It is also gathered that as a result of writ petition filed by certain retired railway officers direction has been issued to the government from the court to give pensions to the retirees. If these efforts materialise over a lakh retirees of the railway CPF scheme would stand to benefit.

PRE-1972 DEFENCE PENSIONERS

Enquiries continue to be made from us about the present position relating to the writ petitions which have been filed in the Supreme Court in relation to the demand of pre-1972 defence pensioners to bring them at par with the pensioners who retired subsequently. No information is at present available as to when these writ petitions are likely to come up for final hearing.

(Continuation from Page 1)

members to collect donations for the building fund, so that on the allotment of the plot of land, which we expect to come about in the near future, we should be able to construct a small office space on it. We appeal to all members to take up this matter on personal basis and to approach their friends for securing maximum possible donations for the building fund. We have already stated that the donations given to COMMON CAUSE are eligible for tax exemption available under Section 80G of the Income Tax Act. We earnestly hope that all those who have benefited from the activities of COMMON CAUSE, and those who are appreciative of our services, will persuade themselves to donate the maximum they can.

Meanwhile, some requests. Where any persons have not renewed their subscriptions they should kindly extend their support through such renewal, or alternatively, change to Life Membership by remitting us the amount of Rs 150. Where membership is taken for one year it will remain operative from the date of receipt of subscription and not on financial year basis which was previously communicated. The subscriptions should preferably be sent through demand draft/postal order/money order, to avoid disproportionate wastage on encashment of cheques. We have been sending reminder cards; where the subscription has already been renewed, the reminder card can be ignored. Where any members are receiving more than one copy of our periodical kindly let us know, by sending us the address slips if possible, for enabling rectification of the mistake. And, one final request; kindly write only when you must, because we are over-whelmed by the correspondance, and when writing quote your membership number for facilitating reference.