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COMMON CAUSE

VOICE OF "COMMON CAUSE"

YOU TOO CAN DO IT

Repeatedly people from various walk of life and from different parts of the country, often tell us that COMMON CAUSE has demonstrated that hurdles can be removed and events moulded if the effort is strenuous enough and the will strong. We keep receiving encomiums, blessings and praise for whatever we have been able to achieve for the people.

Most important and welcome development amidst the present day circumstances is the emergence of collective and consolidated effort of the people for taking up their grievances and seeking redressal. A large number of welfare associations, resident's societies, consumers organisations, houseowners organisations etc. have come into existence and they dot the cities and and towns all over the country. Almost every type of issue, which affects the people is being taken up through such collective effort. COMMON CAUSE provides to them the feeling of confidence that they too can achieve.

In the present issue of this periodical we provide specimens of some more efforts which are examples of collective action. These constitute continuation of some efforts, which we have previously initiated in exploring the new avenue of the establishment of National Commission for Consumers Disputes Redressal, created under the Consumers' Protection Act, for securing redressal of problems of the people. Before the National Commission we have taken the issues of aberrations and distortions of house tax imposition of Delhi, the matter of compensation for victims of air crashes, and problems of proliferation of the marketing of ordinary salt under the garb of iodised salt. We have previously reported in the periodical the issue of inefficiency of operations of Delhi Eleetricity Supply Undertaking and of inefficiency of functioning of the Indian Airlines. Replies have been submitted by them to the notices sent to them by the National Commission. Replies have also been submitted by Hindustan Salts Ltd. regarding the complaint on the matter of iodised salt, and by the Delhi Municipal Corporation regarding the distortions in house tax. We will further pursue these matters when the hearing of these cases comes up before the National Commission.

Meanwhile, an instance of another achievement of the effort can be quoted of a judgment delivered in favour of COMMON CAUSE on a complaint made to the Delhi Consumers' Forum. We have been advocating strict compliance with the price printing on packages, which is a mandatory requirement under the existing law. It is essential that there should be price printing on all packages of products whether they are indigenously produced or imported. We deliberately selected an imported product of large-scale consumption, namely, kodak Film. These imported films are marketed without any sale price printed on them. Complaint was lodged before the Delhi Consumers' Forum. Judgment has been delivered by the Forum, directing the Company to ensure that the film packs carry price printing on them. This is obviously a decision of significant importance all over the Country.

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

HOUSE TAX ABERRATIONS

House Tax problems of Delhi have continued to be accentuated despite the pronouncement of the highest ourt of the land. The Supreme Court initially clarified the issues in 1979 in the well known judgement ofDiwan Daulat Rai Kapoor & others VS NDMC. Thereafter, on the comprehensive writ petition of COMMON CAUSE the issues where further clarified beyond doubt in the equally well known case cited as Dr. Balbir Singh & others VS MCD. Many specific guidelines were laid down in these pronouncements. These broadly comprised : Property Tax cannot be based on rental; the reteable value cannot exceed the standrad rent determinable under the rent control law; in cases of recently constructed self-occupied properties the Property Tax cannot exceed the standard rent determinable for previously constructed similar premises in the same locality; the price of land for calculation of standard rent cannot be taken twice over and for the calculation the price of land at the time of first construction alone can be considered, etc.

The municipal authorities, particularly the MCD, have continued flouting these judicial pronouncements and have been playing hide and seek with the houseowners. These have resulted in about ten thousand cases presently pending in the various courts, which itself is a very sad reflection on the administration of the relevant provisions of the law.

In the recent weeks the MCD and NDMC have thrown all rationalities to the wind and have snddenly launched upon depredations which could only be termed as sheer madness. Houseowners have started receiving unimagionably fantastic notices. In the area of NDMC some houseowners of Malcha Marg have received notices increasing their house tax 50 times and more. In one case of self-occupied house the house tax has been increased from Rs. 600 to Rs. 58,493/-, i.e. he has to pay nearly Rs. 5,000 a month as house tax for living in his own house. In another case, of Sardar Patel Marg, the house tax has been increased from 4,000 to Rs. 1,35,999. In Vasant Vihar a houseowner has received notice for increase of the house tax from Rs. 2,800 to Rs. 44,200.

In the context of these absurdities and taking account of certain instructions issued by the MCD to its field staff for revising the assessments of house tax COMMON CAUSE filed a Petition before the National Commission for Consumer Disputes Redressal established under the presidentship of Mr. Justice V.B. Eradi, former judge of the Supreme Court, in terms of the provisions of Consumers Protection Act, for seeking another new avenue to secure redressal for the houseowners. We reproduce below the petition which has been submitted before the Eradi Commission. It is self-explanatory. Notice was issued by the Commission to the Commissioner and Assessor & Collector of MCD. Reply has been submitted by the MCD. We reproduce also this reply. We will now follow-up this matter when it comes up for hearing.

The purpose in our reproducing the petition and the reply of MCD is to acquaint the people with what can be done in approaching the Eradi Commission under this new provision of the law and also to inform them about the position that MCD has taken. When this petition was filed before the Eradi Commission the absurdities of the nature of issue of notices by NDMC had not yet taken place; we will take appropriate action in following upon these notices of NDMC.

Common Cause VS the Commissioner and Assessor & Collector of MCD

Complaint Regarding Property Tax Assessment by the Delhi Municipal Corporation.

1. That the Complainant COMMON CAUSE is a Society registered under the Societies Registration Act, operating as a public interest organisation, which has taken up a number of problems of the people for securing redressal through executive intervention or legislative action and eventually by resorting to courts. The Complainant's locus standi already stands established by the acceptance of various writ petitions in the Supreme Court and High Courts. The organisation is a Member of the National Consumers Protection Council as well as the Delhi Consumers Protection Council, and its concern for the interests of consumers is also evidenced by this fact.

2. That the Delhi Municipal Corporation (hereinafter referred to as MCD) is providing certain services to the residents living in the area served by it, namely, the services of sewarage, drainage, roads, horticulture and maintenance of public parks, street lighting, water supply, registration of births and deaths, public health measures, hospitals and dispensaries, regulation of construction of buildings, provision of primary education, fire services, etc. Certain services have been made the mandatory responsibility of the MCD, and certain additional services have been made the charge of MCD at its discretion. These various services have been defined in Section 42 and Section 43 of the MCD Act.

3. That for the provision of these various services the Municipal Fund exists as provided for under the authority of Section 99 of the MCD Act which inter alia lays down that all money raised by any tax, rate or cess levied for the purposes of this Act, shall be part of this Fund. The Municipal Fund is according to Section 99(2) of the MCD Act, to be held by the Corporation in trust in three separate accounts, namely, the accounts of Delhi Electric Supply Undertaking and Delhi Water Supply & Sewage Disposal Undertaking and General Account for the purposes other than of the two mentioned accounts.

4. That for the purposes of supply of various services and discharging its duties and responsibilities the MCD is authorised, under Section 113 of the MCD Act, to raise certain levies. The levies mentioned under this provision include inter alia the tax designated as "property Taxes". It will be observed from the construction of Sub-section 2 of Section 113 that the word "Taxes" in this context includes also the words "cesses", "rates" and "duties". In fact, the word "taxes" is used in such manner that it constitutes a levy and cannot obviously be taken to connote the same concept as of Income Tax, Wealth Tax, etc. Section 114 of the MCD Act describes the Property Taxes which are levied on lands and buildings. These include water tax, scavanging tax, fire tax and general tax. In addition, the MCD has included in the Property Taxes the "education cess", which has been provided for in Sub-section 2 of Section 112 of the MCD Act.

5. That it will be observed from the construction of Section 115 of the MCD Act that Scavanging Tax, Water Tax and Fire Tax are leviable in relation to specific services of, respectively, scavanging, water supply and fire prevention. General Tax is levied on all lands and buildings except those specified in the Act.

6. That Section 116 of the MCD Act provides for the assessment of rateable value which forms the basis of determination of Property Taxes. The MCD is at present levying Property Taxes on the following scale in relation to the rateable value of the respective properties :

Rateable Value (Rs.)	Percentage rate of GeneralTax	
	Residential properties	Non-residential properties
1,000	Nil	Nil
1,000—10,000	10	15
10,000—20,000	20	25
Above Rs 20,000	30	30

In addition to the General Tax the levies payable are : scavanging tax 2%, fire tax 1% and education case 1% for residential properties and 5%, 2% and 1%, respectively, on commercial properties.

7. That the MCD needs to raise resources for provision of the above services. It is through the above mentioned levies including the General Tax, Fire Tax, Scavanging Tax and Education Cess etc that the resources are raised by the MCD for the provision of these services. It is primarily the Property Taxes on which the MCD relies as the major source of its revenues. During 1986-87 the contribution from Property Taxes was as much as over Rs. 100 crores to the total Budget of the Corporation comprising about Rs. 207 crores. The yield from Property Taxes has grown very steeply over the years. In 1978-79 the yield from Property Taxes was only about Rs. 18 crores. It is now of the order of over Rs. 100 crores.

8. That it will be observed from the above schedules that the Property Taxes have been levied on the values of property, the rate being higher for properties of higher rateable value, which obviously is in accordance with the general principle of taxation that those who have greater capacity should pay more than those who have lesser capa-d city. For the weaker sections it has been ordainee by the MCD that no Property Taxes should b levied on those properties the rateable value of which is less than Rs. 1,000. The total numbe of properties in Delhi is 4.64 lakhs. Of theser nearly 4 lakhs are residential and 64,000 are commercial. Out of 4,00,000 residential premises nearly 2,00,000 are such where rateable value is less than Rs. 1,000 and therefore they have been made exempt from the payment of Property Taxes. This total enumeration of the properties is exclusive of the jhuggies and jhonparies in which almost 25 lakhs people at present live. In the case of colonies of jhuggies and jhonparies there is obviously no question of payment of any Property Taxes. They are not assessed at all.

9. That a very important feature to which attention may be drawn at this stage is that whereas in the area of MCD the schedules operative for assessment and collection of Property Taxes are the graded levies as stated above, in the contiguous area of New Delhi Municipal Committee, which in fact is an island within the over-all area of MCD, the levy of Property Taxes is on the basis of a flat rate of 12½ percent of the rateable value, and there is no separate education cess or scavenging tax or a general levy of fire tax. This feature has obvious importance inasmuch as in certain localities of Delhi, where a mere road divides the area of MCD and New Delhi Municipal Committee, the levy of Property Taxes on a building may be as much as 34 percent of the rateable value (including fire tax, education cess and scavenging tax) and on the other side of the road, in the area of NDMC, exactly similar building will attract the levy of only 12⅝ percent of the rateable value, the basis of calculation of the rateable value being the same in both cases. This anomaly will be dealt with later in the present Petition.

10. That whereas the differential in rates of levy of Property Taxes may have a rational basis i.e. those with higher capacity should pay more, and whereas the discrimination evident in the levies in the areas of MCD and NDMC has a separate basis, there cannot be any justification for discriminations caused in the matter of levy of Property Taxes in the area of MCD in the same locality between two properties of same standard, size and volume, which may be in the immediate neighbourhood and in all respects similar excepting that one may have been constructed earlier than the other. This matter may not have been of serious consequence if the differential in levies of two similar properties in same neighbourhood had been minor, but this matter has now assumed serious proportion because of the rateable value being based on the cost of construction and the price of land. The services provided by the MCD to such similar neighbourhood properties being the same, there cannot be

any justification for charging widely varying price for the provision of these services. In essence, Property Taxes payable by the owners of properties constitute the price which they are paying for the services provided by the MCD, and where the quantum of services provided is the same the price for the provision of these services cannot be widely different.

10. That, in this context, the Complainant places before the Hon'ble Commission a copy of the instructions (Annexure A) which have been issued by the Assessor & Collector of the MCD to his staff for undertaking re-assessment of the rateable values of the properties. For facilitating consideration of the problem by the Hon'ble Commission the Complainant herewith appends an analysis of the situation which is expected to arise with the implementation of these instructions (Annexure B). This analysis has been presented only in relation to the residential premises for highlighting the problem which the houseowners of Delhi now face. These implications of implementation of these instructions present frightening prospects for the houseowners, inasmuch as it will make it impossible for any person of modest means to be able to live in his house in Delhi and it will be total and sheer impossibility for any person to be able to pay the Property Taxes which are leviable if a house of any reasonable size is now constructed amidst the escalated cost of construction and skyrocketed price of land.

11. That following anomalies, distortions, aberrations and irrationalities will be inevitable on the implementation of the above-mentioned instructions issued by the Assessor & Collector of MCD :

(i) Where the rateable value of a house, which has been on rent for many years, has been long ago determined on the cost basis in accordance with the law as enunciated in the two well-known judgements of the Supreme Court, namely, Diwan Daulat Rai Kapoor & others Vs NDMC (AIR-1982-SC-541) and Dr. Balbir Singh & others Vs MCD (AIR-1985-SC-339), its rateable value will now be revised, on the basis of above mentioned instructions of the Assessor & Collector of MCD, on the actual rent at present charged where the rent is more than Rs. 3500 per mensem. This change arises on the contention that since the amendment of Delhi Rent Control Act from 1.12.1988, premises fetching more than Rs. 3500 rent are exempt from the Rent Control law and the concept of standard rent is no longer applicable to them, under Section 116 of the MCD Act they can be assessed on the basis of existing rent. If the rateable value of the house over the last few years had, thus, been determined at say Rs. 20,000, on cost basis, and the Property Tax on it was of the order of Rs. 4,000, it can now be assessed to Property Tax of as much as Rs. 50,000 per year if the rent of house is Rs. 15,000. Instances of this nature are plenty in the new colonies of Delhi. Where there are two similar houses in the same locality, both of the same year of construction, on the same area of land with same built area, the house fetching Rs. 15,000 rent will be required to pay Property Tax of Rs. 50,000 whereas the other house, which may be self-occupied, will continue to pay the Property Tax of only Rs. 4,000.

(ii) Where the construction cost and land price of a self-occupied house has been more than Rs. 4,20,000, according to the above-mentioned instructions of the Assessor & Collector of MCD, its hypothetical tenancy can be assumed to be of more than Rs. 3500 rental, and as such it will be assumed to be exempt from the operation of Rent Control law. As a consequence, even if the house has throughout been self-occupied since its construction many years ago, and in the previous years its rateable value was determined on cost basis (say at Rs. 33,000 for the total cost of Rs. 4,50,000 with Property Tax of Rs. 8,000), under the new instructions its rateable value can be based on the prevalent rent in the locality

which may be Rs. 5 per sq ft, and for the 6,000 sq ft of its accommodation the prevailing rent can be determined at Rs. 30,000 p.m.. and its rateable value will be over Rs. three lakhs, rendering it liable to pay Property Tax of as much as over Rs. one lakh, 20 times the present liability. Where, on the same size of plot in the neighbourhood was constructed some years earlier, its rateable value would have been assessed on cost basis which may have been say Rs. three lakhs. As such, this other house will not be considered to have become exempt from the operation of Rent Control law, and its rateable value and the Property Tax will remain the same, say, Rs. 25,000 rateable value and Property Tax of Rs. 5,500. One house will thus continue to pay Property Tax of Rs. 5,500 and the other which till recently was paying Property Tax of Rs. 8,000 will now have to pay an amount more than Rs. one lakh per annum towards Property Tax alone.

(iii) Let us now take the case of a house of which a portion, say, 1/3rd, is on rent and is fetching a rent of Rs. 4,000. Under the above-mentioned instructions of the MCD, the rateable value of the whole house can now be based on the assumed rental of Rs. 12,000, making it liable to pay Property Tax of the order of Rs. 45,000. The total rent yield from the house will be of the order of Rs. 60,000, and the Property Tax demand will be about Rs. 45,000. If the owner terminates the tenancy and is no longer getting any rent, even then the house can continue to be assessable to the same Property Tax of Rs. 45,000. Another similar house in the same neighbourhood, on the same sized plot and of same construction, which continues to be self-occupied, may have been assessed to the rateable value of Rs. 20,000 and Property Tax of Rs. 5,000, and as it has not been given on rent at any stage. it will continue to enjoy the same rateable value and Property Tax levy.

(iv) Where a house may have been self-occupied till now, since its construction many years ago, and its rateable value and Property Tax have been assessed at Rs. 20,000 and Rs. 5,000, respectively, if it is now given on rent of Rs. 5,000 its rateable value and Property Tax will jump up to the figures of Rs. 54,000 and Rs. 16,500, respectively, but if due to family circumstances it has again to be self-occupied, according the above-mentioned instructions of MCD, the house will be saddled with the Property Tax liability of Rs. 16,500. Another house in the same neighbourhood, which throughout has remained self-occupied, will continue to have the same rateable value and Property Tax of Rs. 20,000 and Rs. 5,000 respectively.

(v) Where the total construction cost, including the price of land, was less than Rs. 4,20,000, say, Rs. 4 lakhs, even there, if a portion of the house, say, 1/4th, is given on rent of Rs. 1,000, it will, according to the above-mentioned instructions, be assumable that the total rental value of the house is Rs. 4,000, it becomes exempt from the Rent Control law, and the rateable value and Property Tax of the whole house can be assessed on the basis of rental, yielding the figures, respectively, of Rs. 43,000 and Rs. 12,500. The accrual of rent will be Rs. 12,000 and the burden of Property Tax on it will be of the order of Rs. 12,500. Another similar house, costing total of Rs. two lakhs, in the same locality, which continues to be self-occupied, may have the rateable value and Property Tax, respectively, of Rs. 15,000 and Rs. 2,500.

(vi) For further facilitating consideration of these anomalies, discriminations and distortions, the Complainant attaches herewith a statement showing how the Property Tax over the years has increased its burden on the houseowners and how the burden has involved aberrations which have no rational basis whatsover (Annexure B).

12. That the illustrations given above are based on facts and the calculations are based on the enunciation of the law as it is embodied in the MCD Act and the two above-mentioned Supreme Court judgements. The Complainant feels that the Other Party cannot controvert these facts. If, however, it may be desired by the Hon'ble Commission, specific examples can be provided. There are a large number of matters relating to the assessments of rateable value and Property Tax by the MCD which are causing deep concern and harassment to the houseowners, but in the present Petition we would like to illustrate the presentation of the above-mentioned instructions of the Assessor & Collector of MCD, particularly from the view-point of discriminations that are inevitably involved in the types of cases illustrated above.

13. That the submission of the Complainant is that whereas the services provided by MCD, as stated earlier, will be the same for two similar houses in the same neighbourhood, the price charged for these services will be totally different, one being vastly higher than the other. Even at present anomalies and discriminations of this nature are greatly in evidence, particularly where the calculation of rateable value and Property Tax is based on the cost of construction and price of land because of the highly escalated construction cost and particularly of the price of land, as well as in cases which involve serious discriminations due to the years of construction even though they are of the same size and located in the same neighbourhood. The rental basis, adopted in the relevant Section 116 of the MCD Act, is to all intents and purposes a determinant of the rateable value; it cannot be adopted as the actual measure of this assessment because the rent actually received or receivable constitute income which is subject to the Income Tax. In fact, income cannot be the basis of any levy of tax by a local authority or even a State Government. There cannot be any justification for the MCD to charge the price differently from two houses to which it is giving the same quantum and quality of services. Therefore, the appropriate measure for assessing the liability of payment of Property Tax will be the land area/built area of the premises and not the rent it actually fetches.

14. That, in any case, the MCD has unjustifiably and wrongly linked the matter of amendment of Delhi Rent Control Act to the matter of assessment of rateable value for the purposes of determination of Property Tax. The amendment of Rent Control Act was being sought over the last many years from various view-points of the houseowners and tenants, particularly of the small houseowners who felt greatly aggrieved due to the inability to cause eviction of the tenants, even for the requirements of self-occupation, or to increase the rent in spite of increased cost of living. The purpose of amendment of the Rent Control Act being, thus, quite different it is a matter of serious concern that the amendments carried out in this Act are sought to be exploited by the MCD for the purpose of raising its revenues through increasing the burden of Property Tax on the houseowners.

15. That while the Hon'ble Commission pays attention to these various problems of anomalies, discriminations, aberrations and distortions arising from the advantage that is sought to be taken by the MCD of the amendments of the Rent Control law, the Petitioner desires to draw its attention to the other fact which was stated earlier, namely, the discrimination involved in the assessment of Property Tax in the area of MCD and NDMC. It has been stated above that whereas the Property Tax in the area of NDMC is being assessed at the flat rate of 12½ percent of the rateable value, the charge by the MCD for the Property Tax goes upto 30 percent of the rateable value, with additional charges aggregating to 4 percent, including the fire tax, education cess and scavanging tax, totalling to 34 percent of the rateable value above Rs. 20,000. It has been mentioned above that in certain places, where a road divides the MCD area from the NDMC area, the houses on one side of the road pay 12½ percent of the rateable value in the area of NDMC whereas the houses on the other side of the road have to

pay upto even three times the Property Tax. Citizens of MCD area complain that in the area of NDMC the services provided are in fact distinctly better than in the area of MCD, and despite this the price payable for these services is so much higher charged by MCD.

16. That the Assessor & Collector of MCD, in issuing the above-mentioned instructions (Annexure A), which can be presumed to have been in fact issued by the MCD, has brought about a situation where a large number of houseowners whose houses will be re-assessed on the basis of these instructions, will be subjected to serious discriminations inasmuch as they will be required to pay a price much higher than that charged from the houseowners of similar houses on same sized plots in the same locality whereas both will receive the services of MCD of the same quantum and quality. As consumers of the services of MCD the houseowners who thus face discriminatory treatment, and those who already have been discriminated in the assessments previously made. on account of the mere fact of the construction having taken place in the recent past as compared to similar houses constructed in comparatively distant past, have obvious cause for seeking redressal of their grievances of being charged higher price for the same services merely because they came on the scene later and built the houses in the recent years when prices of land and construction cost have highly escalated for reasons beyond their control.

17. That the amount collected by MCD from the houseowners by way of Property Tax, as stated above, is presently over **Rs.** 100 crores. This constitutes a major portion of the revenues of the Corporation and is the price the MCD charges for the provision of the services to the citizens.

PRAYERS

18. On these various grounds the Petitioner humbly prays that :

(i) MCD be directed to withdraw the above-mentioned instructions (Annexure A) issued by the Assessor & Collector of the MCD;

(ii) MCD be asked to rationalise the Property Tax in such manner that anomalies, distortions, aberrations and discriminations of the nature mentioned above, particularly arising due to the factum of escalation of the cost of construction and the price of land, and also the discrimination between the areas of MCD and NDMC, be obviated;

(iii) MCD be directed to rationalise the basis of assessment of the rateable value and Property Tax taking into account all the relevant factors, and that in the process of effecting rationalisation they should associate representatives of the Petitioner Society and organisations of houseowners who are the consumers of the services provided by the MCD; and

(iv) any other relief which the Hon'ble Commission may deem proper in the circumstances of the case.

(H.D. SHOURIE)
DIRECTOR, COMMON CAUSE

Reply on Behalf of the Municipal Corporation of Delhi.

1. That the complaint is totally misconceived and is liable to be dismissed by this Hon'ble Commission.

2. As per Section 3 of the Delhi Municipal Corporation Act, the Municipal Corporation of Delhi is charged with the Municipal Government of Delhi. The obligatory functions of the Corporation are detailed in Section 42 of the Act. These are not "services" but obligatory functions which the Corporation is, in any case, performing. These functions are performed not for hire or reward and have to be performed regardless of any "payment" received from the citizens of Delhi. It is the admitted case of the complainant that these functions are being performed by the Corporation.

3. What the complainant is apparently seeking to do is to invite this Hon'ble Commission to decide upon the constitutional validity of certain provisions of the Act. With respect, it is submitted that this Hon'ble Commission does not have this jurisdiction.

4. The reliefts sought for by the Complainant are in effect for overriding the provisions of the Act. The Corporation, being a creature of the Act, has to act in accordance with the provisions of the Act and it cannot be asked to go beyond the law. In this context, it is interesting to note that the complainant has filed writ petition Nos. 7702-06/82 (filed in 1982) in the Supreme Court praying for the following reliefs :-

   1. "Declare section 114 (1) (d) of the DCM Act 1957 as illegal, ultravires, unconstitutional and void to the extent it authorises levy of general tax in excess of 12½% of the rateable value.

   2. Declare that the levy of General Tax u/s 114 (1) (d) of the DMC Act for assessment years 1981-82 and 1982-83 by virtue of public notice dated 1.4.1981 and 1.4.1982 issued by Commissioner of MCD in excess of 12½% of the rateable value is illegal, unconstitutional, ultra vires and void.

   3. To quash by issuing a writ or direction or order or set aside the amount of general tax of petitioners 2, 3, 4 and 5 on the aforementioned properties for the assessment years 1981-82 and 1982-83.

   4. To prohibit respondents from making and finalising the assessment of general tax for the assessment year 1983-84 at rates in excess of 12½ % of the reteable value.

   5. Any other relief as this Hon'ble Court may deem fit and desireable in the fact and circumstances of the case."

As such, the whole question is already pending before a court of competent jurisdiction and I submit that I am advised that in view of this fact, this Hon'ble Commission will not now interfere in the present case.

5. Assessment of property tax is a judicial function. The correctness or otherwise; of a judicial order can be tested only in the appellate forum as provided in the Act. This Hon'ble Commission does not have any such power or any supervisory power. It may be mentioned here that in C.W. 2001/88 (Common Cause vs. Assessor and collector), the Delhi High Court passed the following order on 30.9.1988 :-

"We are of the view that judicial and quesi judicial matters cannot be challenged by way of public interest litigation in a writ petition.

Dismissed."

Hence, even the present complaint is not maintainable as a public interest litigation.

6. The Complainant is not a "consumer" within the meaning of Section 2 (d) of the Consumer Protection Act, 1986 (hereinafter referred to as the C.P. Act). Section 2 (d) (i) of the C.P.Act is ex-facie not applicable because the Complainant does not claim to be a buyer of goods from the Corporation. Similarly, Section 2 (d) (ii) of the C.P.Act is also in applicable because there is no question of hiring of any services from the Corporation. The Corporation is in any case, not rendering any "service" as defined by Section 2 (o) of the C.P.Act. As such, it is obvious that the complaint is misconceived.

7. This Hon 'ble Commission does not have the jurisdiction to entertain the complainant by virtue of Section 21 of the Act. Even assuming, without admitting, that the services rendered by the Corporation fall within the meaning of Section 2 (o) of the C.P.Act and the Complainant falls within the meaning of consumer as defined in Section 2(d) (ii) of the C.P.Act, it is clear that the "service" rendered do not exceed a sum of Rs.10 lakhs if at all they can be quantified. As such Section 21 (a) is not attracted. The complainant is not an appeal against the order of any State Commission As

such, Section 21(d) of the Act is also not attracted to the facts and the circumstances of the case. Consequently, it is submitted that the complaint of the Complainant is misconceived and deserves to be dismissed with costs.

8. The validity of levy of the rate of tax by the Corporation has been upheld by a Full Bench of Delhi High Court in the case of Y.L.Taneja vs. M.C.D. ILR (1975) 1 Delhi 457 wherein Delhi High Court held as follows:-

> "The other part of the contention that the tax imposed by a local body has to be commensurate with the services rendered cannot be accepted in view of the decision of their Lordships of the Supreme Court in the Commissioner, Hindu Religious Endowments, Madras vs. Shri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt. AIR 1954 S.C. 292 (13), wherin the difinition of tax given by Latham C.J. of the High Court of Australia in Mathews vs. Chicory Marketing Board 60 CLR 263 (14), being "a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered" was approved".

As such. the Complainant cannot reopen this issue before this Hon'ble Commission.

9. It is a well settled principle of law that there is *quid pro quo* in the matter of taxation of levy of taxes. This principle has been reiterated by the Division Bench of the Delhi High Court in the Refugees Cooperative Housing Society Ltd.,*versus* M.C.D. and Anr. ILR (1972)1 Delhi 725 where the Delhi High Court "the distinction betwee an tax and a fee has been pointed out by the Supreme Court in a number of decisions.. The relevant provisions of the Corporation Act have to be examined now in the light of the principles laid down in the decisions referred to above.....

In view of ihe clear provision in Section 99(1) that all the amounts levied and collected as taxes shall form one Fund, and the provision in Section 105 that the monies from the Fund shall be applied in payment of all sums, charges and costs necessary for carrying out the provisions of the Act, rules regulations and bye-laws, the amount cannot be regarded as fees and can only be regarded as taxes, Consequently, there can be no element of any *quid pro quo* attached to the said amounts. Therefore, the argument of Shri Sarju Prasad that the amounts levied and cellected as taxes from the Petitioners are in the nature of fees, and that the provision of civic amenities and conveniences under the Act is the *quid pro quo* for the levy of the said fees, cannot be accepted".

As such, the claim by the Complinant cannot be granted to him in view of this well settled legal principle.

10. I submit that in view of the above submissions, this Hon'ble Commission has no jurisdiction to entertain the present complaint and as such, the averments made by the Complainant have not been traversed. It is prayed that this Hon'ble Commission may be pleased to first decide upon the maintainability of the Complaint and in the event this Hon'ble Commission comes to the conclusion that the complaint is maintainable, the Corporation may be granted leave to file a detailed parawise reply.

FOR DELHI MUNICIPAL CORPORATION

COMPENSATION FOR AIR DISASTERS

COMMON CAUSE has previously filed a petition before the Eradi Commission about the general inefficiency of operations of the Indian Airlines. In our previous issue of this periodical we had reproduced that petition. We have since received the reply submitted by the Indian Airlines before the Eradi Commission. We reproduce it hereinbelow. We will now pursue this matter when the hearing of the petition comes up before the National Commission.

Meanwhile, we have submmitted another petition before the Eradi Commission which will be of general interest. This petition relates to the problems of quantum of compensation to the families of victims of the air crashes. Under the international agreements, to which the Government of India is a signatory, a certain quantum of compensation is specified in the event of death and serious bodily injury etc. Government of India has, through notifications, fixed the quantum of compensation at much lower figures and has not modified it over the past eight years despite the distinct fall in the value of the rupee during the period. We have raised this matter in the Petition before the National Commission and placed before it all the relevant facts of the international agreements and Government notifications. The Petition has been submitted against the Ministry of Civil Aviation and the domestic airlines, namely, Indian Airlines, Vayudoot and Pawan Hans. Notices have been issued to these Parties by the National Commission to submit their replies in 30 days. We now await their replies.

Considering the general importance of this matter we reproduce below the substance of the Petition. Thereafter will follow the reply submitted by the Indian Airlines to our previous Petition alleging general inefficiency of operations.

Common Cause Versus Government of India (Ministry of Civil Aviation), Indian Airlines, Vayudoot and Pawan Hans

Petition Regarding Compensation to family memders of Victims killed in Air crashes of the Indian Airlines and Vayudoot on 19th October 1988

1. That the Complainant COMMON CAUSE is a Society registered under the Societies Registration Act, operating as a public interest organisation, which has taken up a number of problems for securing redressal through executive intervention or legislative action and eventually by resorting to Courts. The Complainant's locus standi already stands established by the acceptance of various writ petitions in the Supreme Court and High Courts. The organisation is a Member of the National Consumers Protection Council as well as Delhi Consumers Protection Council and its concern for the interests of consumers is also evidenced by this fact.

2. That on the 19th October 1988 there were two serious air crashes in India, one of the aircraft of Indian Airlines near Ahmedabad and the other of the aircraft of Vayudoot near Guwahati. As a result of these respective air crashes 164 persons were killed.

3. That while the tragedies were of very serious nature in themselves these are further compounded by the fact that the families of victims of these respective crashes have, to our knowledge, not yet been paid compensation which is the liability of the concerned Airlines.

4. This Petition seeks to raise the general question of compensation which is payable to victims of air crashes in accordance with the provisions of the Carriage By Air Act 1972 (Act no : 69 of 1972). Following submissions are made in this connection :

(i) The Carriage By Air Act 1972 (Act no : 69 of 1972) (hereinafter termed as the Act) was

enacted to give effect to the International Convention known as the Warsaw Convention (of 12.10.29) as modified by The Hague Protocol (of 28th September 1955) which regulated matters relating to the international carriage by air, and to make the provisions of these international agreements applicable to non-international carriage by air and for matters connected therewith. The Schedules annexed to the Act comprised provisions which were matters of non-international carriage by air in India. The provisions of this Act and of the Second Schedule are applicable to the non-international Airlines operating in India which cover the Indian Airlines, Vayudoot and Pawan Hans.

(ii) The carrier, i.e. the concerned Airline has been made liable for damages in respect of death of or bodily injury to any person caused "on board the aircraft" or in the course of any of the operations of "embarking and disembarking" as defined in Rule 17 of the Second Schedule. Rule 22 lays down the quantum of liability. Rule 23 states that any measure towards lowering the defined limits of liability will be deemed to be null and void.

(iii) According to Rule 22 the quantum of liability in the original Schedule adopted from the international agreements was of the order of 2,50,000 francs in the event of death (the amount mentioned in francs referring to the currency unit comprising of 65½ milligram of gold of milliesimal fineness 900). This sum was equal to about Rs. 5 lakhs in 1973 and would be equal to ten times this amount now. This limit appears to have been adopted from the provisions of above-mentioned Warsaw Convension. Subsequently, the limit of compensation was increased to 1,500,000 francs, of same unit of currency, in the Guetamala Convension of 8th September 1971. Whereas India is stated to have been signatory to the Warsaw Convension and The Hague Protocol it appears that the provisions of Guetamala Convention have possibly not been endorsed by India.

(iv) Government of India issued the Notification no : SO 186-E (on 30.3.1973) whereby it prescribed the limit of liability of the carrier in cases where the carriage is not international, where the operations are within the country as in the case of Indian Airlines, Vayudoot and Pawan Hans. This Notification was modified by subsequent Notification no : SO 1885 of 5th July 1980. (Annexure A) In this latter Notification, which is currently applicable, the limit of liability has been defined to be Rs. 200,000 if the passenger is 12 or more years of age and Rs. one lakh where the passenger is below 12 years of age on the date of accident.

(v) Since the prescription of the limits of liability by virtue of the above-mentioned Notification no : S.O. 1885 of 5.7.1980 there has been no further revision of the limit though there are reports that for quite a few years the limits laid down in 1980 have been under consideration for further increase in view of the fall in the rupee value. Comparisons are off and on made with the liability limits prescribed for the international carriers which are far higher, and it is complained that the limits fixed by the Government of India for carriage other than international, i.e. by internal Airlines, is abysmally low, particularly in the context of the present value of the rupee.

(vi) These limits are operative obviously where the death is caused by an accident which cannot be ascribed due to any fault on the part of the carrier and where the death is caused by pure accident. Where the death is caused by negligence and fault of the Airlines or a Pilot, the liability can be fixed at any higher limit by a Court.

5. That against the background of the above facts relating to the liability limits fixed for the carriers operating in international carriage, and the Notifications that have been made by the Government of India in respect of liability limits for carriage other than international. i.e. the above mentioned Notifications no : S.O. 186E of 30.3.1973 and S.O. 1885 of 5.7.1980, following anomalies and discriminations inevitably arise ;

(i) On the death of an adult Indian in an accident of the carrier of domestic Airlines, within India, the liability limit will be Rs. 200,000. If that person had been travelling by an international carrier, within India, the liability of the carrier would be, in accordance with the relevant international agreements, of the order of 2,50,000 francs for the signatories of Warsaw Convention and as much as six times this amount for the signatories of Guetamala Convention, being thus many times the liability of the domestic Airlines. Where the passenger travelling on the domestic Airlines is an international passenger the liability of the Airlines correspondingly multiplies. Contrarywise, if the international carrier of the country, Air India, was carrying an internal flight passenger, who is not on international flight, the liability in such a case would be much less than the liability relating to other passengers who may be travelling on the international flight.

(ii) Life of an Indian passenger, flying on domestic Airlines, is thus distinguishable as very cheap as compared to the liability that accrues if the same passenger was travelling by an international flight.

(iii) Whereas even according to the Government of India Notification of 1980 the liability was fixed at Rs. 2 lakhs in 1980; the limit of liability has remained unchanged even though in 1988 the value of rupee was less than half of what it was in 1980. Cost of Living index is stated to have been 364.5 in 1980 and was 757.33 in 1988.

6. That according to the information of the Complainant a large number of "members of families" who were entitled to receive compansation from the Indian Airlines and Vayudoot, respectively, in relation to the deaths caused by the two aforementioned accidents of 19th October 1988, have declined to accept the quantum of compensation offered to them on the basis of Government of India Notification no : S.O. 1885 of 5.7.1980. It is reported that only about 20 percent of the "members of families" have agreed to accept this compensation. The Complainant has received representation from the father of a promising young man who was killed in the accident near Ahmedabad. This aggrieved father has declined to accept the quantum of compensation offered to him at the level of Rs. 2 lakhs.

7. That the Petitioner wrote a letter to the lawyers of Indian Airlines, M/s Bhasin & Co. Annexure B (address : 10, Hailey Road, New Delhi-1) on 17th January 1989, requesting them to secure from Indian Airlines and urgently send to us the list of next-of-kin of the victims of the crash which took place on the 19th October 1988 near Ahmedabad. No reply has been received from M/s Bhasin & Co, nor has the letter been acknowledged.

8. That it is a matter of great concern that the Government of India and the domestic Airlines, namely, Indian Airlines, Vayudoot and Pawan Hans, maintained, as long ago as 1973, by virtue of the above-mentioned Notification no : S.O. 186-E of 30.3 1973, a liability which was significantly low as compared to the liability accepted under the Warsaw International Agreement signed by the Government of India, that it remained at similar correspondingly low figure when the limit was revised by the Government of India Notification no : S.O. 1885 of 5.7.1980, and that now when the rupee value has greatly shrunk in comparison to the rupee value of 1973 and 1980, the limit fixed in 1980 has continued to be operative. It is the magnitude of the tragedy of 19th October 1988, wherein the two aircrafts, one of the Indian Airlines and other of Vayudoot suffered crash, leading to the death of 164 persons, that this matter af compensation has assumed serious shape.

9. That the petitioner understands that the Enquiry Committee constituted for enquiring into the crash of Indian Aiarlines aircraft near Ahmedabad on the 19th October 1988 has already submitted its report. The petitioner is not aware of the contents of the report and requests the Hon'ble National Commission to ask for its copy for determining the causes wkich led to the disaster. Irrespective of the causes, which will eventually determine whether or not the matter for a higher compensation would need to be taken to the Court, the Petitioner urges the Hon'ble National Commission to examine the question of the quantum of Compensation at present payable by the respective Airlines to the members of families of the victims of the two unfortunate crashes.

10. That keeping in view the seriousness of the tragedy, which has snatched away 164 persons from their families by the two crashes, it is necessary that the Government of India and the concerned Airlines should revise the liability limits and that these revised limits should be given retrospective effact from 1st October 1988 so that the members of the families of victims of these two accidents, and any others which may suffered the same fate, should become entitled to the benefit of this compensation which would constitute at least some feeling of recompense to the bereaved families.

11. That the matter being laid before the Hon'ble Commission through this Petition relates to compensation for the members of families of all the victims of the two aforementioned air accidents, the one near Ahmedabad and the other near Guwahati, which, computed at any appropriate figure, would aggregate to an amount which would lie in the jurisdiction of this Hon'ble Commission.

PRAYERS

12. Against the background of above facts the Petitioner submits following prayers to the Hon'ble Commission ;

(i) The Indian Airlines and Vayudoot be asked to supply to the Petitiioner lists of names and addresses of next-of-kin ("members of the families") of the victims of their respective accidents which took place on the 19th October 1988 near Ahmedabad and near Guwahati.

(ii) The Indian Airlines, Vayudoot and Government of India be asked to supply to the Petitioner copies of the Reports of enquiry conducted into the two disasters.

(iii) The Government of India, and the Indian Airlines, Vayudoot and Pawan Hans be asked to urgently examine the matter of compensation for death, bodily injury and allied matters, in relation to the Government of India notification no : SO 1588 of 5th July 1980, bring it in accord with the requirements of the circumstances of the rise of cost of living index from 1980 to 1988, and give retrospective affect to the enhancement from 1st October 1988 with a view specifically to cover the question of compensation relating to the victims of the two above-mentioned air accidents of 19th October 1988.

(iv) The Indian Airlines and Vayudoot be asked to pay the compensation at such enhanced rates to the "members of families". This compensation be paid with the clear stipulation that they will be eutitled to lay any further claim against the concerned airlines arising from the findings of the enquiries relating to the accidents.

(v) Accord any other relief which may be due to the members of families of the victims of these two air accidents.

REPLY OF INDIAN AIRLINES TO PERVIOUS PETITION

Common Cause Versus Indian Airlines

Indsan Airlines Version :

Preliminary Objections :

1. The complaint under reply is vague and unspecific besides being too wide in its scope. The complaint is also not maintainable in view of the fact that no

specific relief has been asked for. This Hon'ble Commission cannot be expected to go into a roving and fishing enquiry without any basis. The Hon'ble Commission can only look into a specific complaint against a specific department. In any event no relief, as prayed for in the complaint, can be granted to the complainant under the provisions of Consumers Protection Act, 1986. The relief sought is wholly vague, imprecise and incapable of being granted.

2. The complaint has relied heavily on newspapers and magazine reports. However, this Hon'ble Commission cannot rely on the same as it is now a well-settled law that newspaper reports cannot be relied upon since a report in newspaper is only hearsay evidence (Laxmi Raj Shetty &Anr. VS. State of Tamil Nadu JT 1988 (2) SC 180). However, without prejudice to the aforesaid contentions the main areas of complaint are dealt with as under:-

3. (A) **Flight Delays:**

Flights are delayed due to unavoidable reasans which are beyond the control of Indian Airlines such as:-

(a) Technical snags in the aircaft,

(b) Exceptional weather conditions,

(c) Operational-airfield related reasons,

(d) Bomb threat-Special security alerts,

(e) Arrival delays affecting subsequent departure of the same aircraft,

(f) Diversion/extra stop/over-flying of stations en-route,

(g) Civil disturbances,industrial unrest, etc.

The airlines maintains strict vigil and control over all avoidable sources of delay such as delays due to maintenance, delayed loading, etc. However, in the event of an initial delay having occurred the chain of consequential delays cannot be controlled in view of the availability of limited number of aircrafts. Keeping in view the over-all economy of the nation and the availability of the limited resources at the disposal of the national exchequer, the Planning Commission has, from time to time, stipulated rates of growth for Indian Airlines. The growth of Indian Airlines cannot be segregated from the over-all national economy viewpoint. Considering the priorities of various sectors the Planning Commission has planned a certain outlay for the expansion and growth of Indian Airlines though. the Airlines left to itself, keeping in view a consistent and substantial increase in the traffic, would like to induct a substantial number of new aircrafts, but for resource constraints stipulated by the Planning Commission.

Indian Airlines have received three Boeing-737 aircrafts on lease and these are in operations from 17th January, 1989. It is expected that Indian Airlines would be able to acquire one more B-737 aircraft on lease from February, 1989. In addition to these, A-310 aircraft from Air India, BAe-146 from Druk Air and TU-154 aircraft from Ariana Afghan are also used for limited operations. Indian Airlines also plans to take one IL-62 aircraft and one TU-154 aircraft from Aeroflot on lease for operation from mid February, 1989.

Thus, it is not totally in the hands of the Airline to reduce the capacity shortage of Aircrafts.Airline recognizes the fact that it operates on many sectors where alternate mode of transport is either very slow or difficult and is, therfore, reluctant to cancel the flight preferring instead to operate delayed flights within available constraints. The airlines resort to flight cancellation only in the situation of non-availability of navigational aids such as lack of night landing facilities at certain stations, limitations of watch hours maintained by air traffic control tower or hazardous weather. Although consumers might complain of the lack of sufficient notice of flight changes, the airline plans much in advance for major schedule changes, however short notice changes in schedule have to be resorted to due to the following reasons :

(a) Sudden shortage of an aircraft caused due to aircraft grounding, may be a birdhit.

(b) Sudden closure of a particular airfield may be for urgent repairs to runway. Often the airport controlling authorities such as NAA,

IAAI are also unable to give sufficient notice before closing an airfield even for major works such as runway extension,

(c) Re-scheduling necessitated by an aircraft having no night stop at an unscheduled spot either due to bad weather or due to an engineering problem.

Inadequacy of Supply of Information Regarding Flight Delays:

This is one problem which is predominant in the minds of the airline management and in the recent past major steps have been taken to ensure an uptodate information dissemination system. Co-ordination cells have been set up at all stations. From the present trend of complaints, it is identified that one of the causes is lack of timely flight information being made available to passengers especially at outstations.

Having identified the cause, the Airline has streamlined the information Flow System by forming the Coordination cells at Base Airports. Their core functions are to gather, collage, analyse and disseminate the flight information to all concerned. The coordination cells have been located next to the flight despatch section and have the communication facilities like SSB, CRTS, TTYS, Telex besides STD. There is continuous interaction with operating departments like Commercial, Operations and Engineering. Instant flight information is also available now. (Annexure)

Coordination Cells are Responsible for :

(a) Coordination with all agencies involved in flight handling,

(b) Monitoring the weather report as received from MET Office,

(c) Liaison with station which may have an aircraft diverred due to bad weather at one of these major airports.

(d) Studying the impact of initial delay to the aircraft from the base which will have a consequential effect on subsequent flights to be operated with the same aircraft.

(e) Omitting a sector/over flying a station or cancelling a flight due to operational reasons like non-availability of night landing facility, etc.

(f) Deciding revised departure timing for all affected flights in coordination with all operating departments.

(g) Combining flights/sectors on the same route or postponing departures to the following day or fixing additional flights to clear the backlog of traffic, etc.

(h) Ensuring crew availability for all affected flights considering duty time limitations, finalising crew sets for subsequent flights, extra fiights, postponed flights etc.

(i) Advising the revised departure times to passengers handling unit, cargo, mail, catering unit, ground support unit, aircraft departure (engineering unit), movement control etc.

(j) Communicate revised departure to all on-line stations including final destination as well as other Regional Coordination Cells affected by that delay.

Today at all major base airports uptodate flight information is available on computer. All stations which are linked to the on-line computer system send and receive uptodate flight arrival and departure and delay information. The other stations which are linked only by teleprinter, use the teleprinter lines. The management of the Airlines has issued circulars to all Station Managers regarding the setting up of coordination cells. However, inspite of the best effort and intentions, communication channels are not fully reliable for reasons beyond Indian Airlines' control. There are occasions when the data-circuits, the teleprinter lines and even telephone lines are out of order. It is at such times that the airlines counter staff are unable to disseminate correct information. Also in the event of certain progressive delays such as when an engineering snag is being repaired or when a flight is held-up at another station because of bad weather it is just not

possible to estimate the correct extent of delay at any one point of time. In the case of an engineering snag, which is detected very late, the Airlines cannot risk operating a flight and has to announce a delay for reasons totally unavoidable and beyond Indian Airlines' control.

Delay in Baggage Clearance :

While baggage delivery is strictly monitored by the officers at the airport and efforts are made to deliver the baggage in time, delays may arise due to :

(a) inadequacy of conveyor belts,

(b) inadequate baggage handling areas—often at some airports baggage delivery has to be done in the open leading to customers' dissatisfaction. Non-scheduled bunching of flights while handling arrangements are made for scheduled bunching of flights at times specially late at night when there are multiple simultaneous arrivals, this causes delayed delivery of baggage.

Inadequacy of airport facilities in this regard can in no manner be attributed to the Airlines. The International Airports i.e. Delhi, Calcutta Bombay, Madras have been made and developed by the International Airport Authority of India while other airports in the country have been made or are under the exclusive control of either the National Airport Authority or the Air Force.

Indian Airlines, on its part, has provided tractors at all major base airports to ensure speedy carriage of baggage from the aircrafts to the terminal building. As soon as the aircraft lands, the first trolley of baggage is sent immediately, it is off-loaded without waiting for the entire baggage to be off-loaded.

Inflight Catering :

Indian Airlines has employed a professionally trained Catering Manager who alongwith his staff designs and plans meals on the basis of the Schedule. Food is uplifted from the best available caterer and at points of uplift, quality and quantity control checks are maintained. However, passenger complaints may arise due to the following reasons :

(i) Indian Airlines is often forced to uplift food from smaller stations where even the best caterer available cannot match up to the standards of the five-star flight kitchens available at base stations. Passengers naturally tend to compare the two varying levels of uplift.

(ii) On certain flights of short duration due to inadequacy of serving time the airline is forced to serve cold snacks. If passengers compare it to hot meals served on longer sector flights naturally the cold snacks are found wanting. Cold snacks are also served on certain aircrafts such as Turbo-prop which do not have heating arrangements.

(iii) While the airlines tries to cater to all sections of travelling public, since food choices especially in India are very diverse, it is inevitable that a certain meal would not be found palatable by some or the other section of the travelling public. Food habits are very personal and people have strong likes and dislikes. What may be good for one may not be acceptable to the other. Therefore, there are bound to be complaints.

The Airlines tries to assess the choice of the travelling public through administration of catering surveys. Menus are often changed. Also any poor quality food served by caterers results in punitive action and disqualification of the caterers to ensure healthy competition.

Indian Airlines have arrangements with airport restaurants for providing refreshments, breakfasts and snacks and, for lunch and dinner, the passengers of delayed/disrupted flights are also taken to the city or the meals are brought in boxes to serve to passengers of such delayed/disrupted flights. Hotel accommodations with meals and transportation is provided to cancelled/postponed flight passengers at all stations.

Flight Safety/Bird Hits :

Bird strike to aircraft is a well-known problem all over the world which defies a simple solution. Although it is primarily the resposibility of Airport Authorities to ensure that no garbage-dumps etc. come up within a certain limit of the airport to check bird hit menace, however, the Airlines, on its own, is also very much concerned about this problem and is constantly endeavouring to reduce, if not eliminate this problem. Following specific steps have been taken by Indian Airlines to reduce this problem :

(i) Painting of scary eyes on spinners of Airbus Engines has been introduced in Indian Airlines as per the design provided by the representatives of General Electric (the manufacturers of Airbus Engine).

(ii) It has been found that most of the bird strikes occur during take-off and approach and landing phases, that is to say, at comparatively low altitudes and in the vicinity of the airports. Hence, Indian Airlines has issued instructions to its pilots to restrict the climb and descent speed to 250 Kts, between the ground level and 10,000 in order to reduce the force of impact in case of bird strike.

(iii) Pilots have been instructed to switch on aircraft landing lights/strobes lights during take-off and landing to scare away the birds from the flights path.

(iv) Pilots have also been instructed to look out for birds and delay take-offs when there is known bird hazard on the runway or the airport area until airport authorities have cleared the birds.

(v) Pigeon-proofing of hangers is in progress and expected to be completed soon.

(vi) Edible wastes from the aircraft which can become a source of attraction to the birds at the Airport are disposed off in closed plastic bags and deposited at designated places from which they are collected by the airport authorities.

(vii) Whenever possible, bird remains are sent to Bombay Natural History Society, who identify the bird and suggest measure for their control.

All the agencies concerned with the aviation are aware of this problem and concerted efforts are being made to tackle this problem. A High Level Bird Strike Commission has been formed under the Chairmanship of Secretary, Ministry of Civil Aviation which includes Airlines, the Airport Authorities, the DGCA, the Air Force and Municipal authorities as its members. Representatives of the Bombay Natural History Society are also associated. This Committee has proposed a number of steps for eradication of bird population at the major airports in India, to be taken up generally by the various agencies. Some of these steps are as follows :

(a) Patrolling of area within 10 kms redius of the airport to check illegal de-skinning of animals which is a source of attraction to vultures and other carrion birds. Mobile patrols have been formed in Delhi which does regular patrolling of the area in the vicinity of the airport to check illegal de-skinning of animals.

(b) Covering up of garbage dumps in the approach path and around the airport.

(c) Eliminating tall grass from the airport which provides nesting place and also food in the form of insects to the birds.

(d) Pigeon proofing of the buildings in the airport area.

(e) Establishment of modern abatoirs and carcass processing plants.

f) Establishment of incinerators near the airports to burn garbage which could be a source of attraction for the birds.

(g) Airport authorities employ sharp-shooters and also regularly use crakers, etc., to scare away the birds.

As a result of the aforesaid measures. there has been a consistent and considerable decrease in the birds strikes as would be evident from the data given below :

Year	Bird strikes/1000 take offs
1982	1.48
1983	1.36
1984	1.28
1985	1.22
1986	1.32
1987	1.19

The complainant has drawn the attention of this Hon'ble Commission to the recent aircrash. However, it is submitted that since a judicial enquiry has already gone into the matter to investigate into the causes of the accident and which has submitted its report recently the Indian Airlines is refraining from commenting thereon.

The Indian Airlines submits that from the statements and comments made hereinabove it is evident that there is no justification or basis for the complaint and there is no warrant for this Hon'ble Commission to pass any orders thereon. While re-iterating that the root cause of whatever little problems have been faced by the Consumers lately is the shortage of aircrafts which factor, as submitted above, is not within the control of the Indian Airlines. it is submitted that the Indian Airlines has taken every possible step to minimise any inconvenience caused to the travelling public so far as such steps are within the exclusive control and domain of the Indian Airlines. The complaint, therefore, does not make out any case whatsoever for interference by this Hon'ble Commission in exercise of the powers conferred on it under the Consumers Protection Act, 1986.

This is without prejudice to the contention of the Indian Airlines that in the fact and circumstances disclosed above and in view of the vagueness of the complaint no relief can be granted to the complainent.

Save as what has been expressly admitted hereinabove the opposite party denies and disputes the correctness of each and every part of the complaint and reserves its right to file any additional version/affidavit/statement in order to place on record the correct facts in order to assist this Hon'ble Commission.

PETITION RE: IODISED SALT

There has for long been prevalence of goitre in various parts of the country, and particularly in submountain regions of the Himalyas. Places where water suffers pollution and where there is less consumption of protien and other calorie-rich foods, the incidence of goitre is endemic. This problem is accentuated by the deficiency of iodine. Iodine deficiency causes a wide spectrum of disorders ranging from goitre to syndrome of cretinism. In pregnancy and infancy it results in brain damage of the children, hearing defects and growth retardation. As such, where environmental iodine is lacking, iodine needs to be supplemented in diet. Supplementation can be done in the shape of iodine tablets, consumption of iodised bread, iodised salt and provision of iodised water.

Taking account of these problem the Government of India has during the last few years laid emphasis on the steps to persuade people to change over to iodised salt from ordinary salt. In the areas of iodine deficiency, and particularly in certain districts of Uttar Pradesh the sale of iodised salts has been made mandatory. A "standard" has been prescribed by the Bureau of Indian Standards regarding the iodisation content of salt. Our information has been that a number of salt manufacturing units are not manufacturing to the prescribed standard

of iodisation, and often claims are made on the packages sold in the market about iodisation, or its standard, which are not correct and the iodisation content is lower than the prescribed standard. There have been reports that even the public sector undertaking, Hindustan Salts Ltd. at Jaipur, is possibly not manufacturing the salt upto the prescribed iodisation standard.

Considering the enormous importance of this problem, and that salt is the ingredient of food all over the country, COMMON CAUSE felt that this matter needs to be taken up and highlighted for waking up the authorities and the people to the prepetration of the unscrupulous manufacturers and the trade. Accordingly, a Petition has been submitted by COMMON CAUSE to the National Commission on Consumers Disputes Redressal. We reproduce below the substance of the petition.

We have impleaded in the Petition the Ministry of Health of the Government of India, the Salt Comissioner, the Hindustan Salt Ltd., and the Government of Uttar Pradesh. Notices were issued to them by the National Commission to submit their replies within 30 days. In issuing the notices the National Commission had stated that in the default of appearence by the parties the decision will be taken ex-parte. The National Commission will now fix the date of hearing of our petition during the coming weeks.

Common Cause Versus Government of India (Ministry of Health) Salt Commissioner, Hindustan Salts Ltd., and Uttar Pradesh Government.

COMPLAINT REGARDING IODISED SALT

1. That the Complainant is the public interest organisation COMMON CAUSE, a Society registered under the Societies Registration Act, which has taken up a number of problems of the people for redressal either through the executive or the legislature and eventually by resort to Courts. The Complainant's locus standi already stands established by the acceptance of various writ petitions in the Supreme Court and High Courts. The organisation is a member of the National Consumers Protection Council, and its concern for the interests of consumers is also evidenced by this fact.

2. Taking into account the facts that drinking water in many parts of the country, particularly in various sectors of Northern India, is deficient in Iodine which causes diseases like goitre, birth of mentally retarded deaf and dumb children and metabolism imbalances, and that the most effective way to make up for Iodine deficiency in drinking water is through intake of Iodised salt in place of ordinary common salt, the Government of India has during the last few years laid emphasis on the steps to persuade people to change over to Iodised salt from ordinary salt, and to encourage and stimulate greater production of Iodised salt. In the areas of Iodine deficiency of Northern Indin, and in particular the districts of Uttar Pradesh, the use and sale of Iodised salt has been made mandatory. The Salt Commissioner of the Government of India is empowered to issue licences to the parties who are authorised to manufacture Iodised salt. A "Standard" of the Iodised salt has been prescribed by the Indian Standerds Institution, now Bureau of Indian Standards. This Standard is IS-7224-1985. It was adopted on 16th December 1985. Thereafter the Notification no :P.15014/6/86 -PH(F&N)PFA was issued on 10.11.1987 by the Government of India prescribing certain Rules amending the Prevention of Food Adulteration Rules of 1955. Copy of the Notification is placed at Annexure A. These Rules were brought into effect from the date of notification. The term "Iodised Salt", in relation to it in A.15.02 of Appendix B of the Prevention of food Adulteration Rules 1955, was defined in said Rules and the basic essentials of its Stendard were notified. These include : moisture, Sodium Chloride, matter

soluable in water, matter insoluble in water, and Indine content (a) manufacturer's level and (b) distribution channel including retail level. It will be seen on reference to the Annexure that it has been prescribed in the Rules that the Iodine content should not be less then 30 parts per million (ppm) on dry weight basis at the manufacturer's level and not less than 25 parts per million on dry weight basis at the retail level. The said Notification was sent to all concerned associations of salt manufacturers for giving wide publicity to it. Copy of the circular no : 11(I)/D/86/CDITRE/36009-41 dated 7.12.1987 issued by the Salt Commissonar, Respondent no : 2, is placed at Annexure B. It will be noticed from this circular that it has been communicated in it that "Iodised Salt shall contain not less than 30 ppm of Iodine at the manufacturer's level and not less than 15 ppm of Iodine at the consumers' end. *This means that from the said date Iodised salt at the manufacturer's end shall contain not less than 50 ppm of Potassium Iodate and that at the consumers' end not less than 25 ppm of Potassium Iodate.*" (emphasis supplied) It is also worth notice tnat iodisation deteriorates with time,and accordingly the dates of packing and expiry are very material in this context.

3. That we produce before the Hon'ble Commission following samples of the salt purchased in the open market from Delhi :-

(a) Tata Salt (Vacuum evaporated), manufactured by Tata Chemicals Limited, Bombay House, Bombay-400001. It will be seen from its package that whereas the salt content in it is claimed to be iodised it is printed on it that it contains Potassium Iodate of "15 ppm Min.". No date of expiry has been printed on this package.

(b) Sambhar Salt, manufactured by Hindustan Salts Limited(Government of India Enterprise) Jaipur. The package containing the salt claims that it is Iodised but it does not contain any indication whether its ppm content is in accordance with the prescribed Rules. In fact, the information given to our orgauisation is that it does not contain the Iodisation to the extent prescribed.

(c) Rani Salt, "markated" by Rani Salt works (address: Sector no. 10-B, plot no. 18, Gandhi Dham, Kutch). It is printed on its package that it has Potassium Iodate content of 35-50 ppm. No date of nanufacture or expiry is printed on it.

(d) Vikas Salt, "marketed', by Vikas Salt Company (addaess : House no. 56. Shera Mohalla, New Delhi). The salt is claimed to be Iodised but there is no indication whatsosver on it about its ppm content, nor there is any information available about the date of its packing and expiry. It is also not clear whether the address of the manufacturer printed on the package is complete.

(e) Avon Salt, "repacked" by Arun Salt Company New Delhi (no address given). This salt is also claimed to be Iodised but there is no indication on it about its ppm content or about its date of packing and expiry.

(f) Salt&Salt, of Gagan Salt Company, New Delhi (no address given). Although the salt is claimed to be Iodised there is no indication on the package about the ppm content or the date of its packing and expiry.

(g) Shri Salt, manufactured by Laxmi Stores, Gandhi Dham, Kutch. The package contains ISI Certification mark and it is also printed on the package that its Iodine content is 50 ppm.

4. That on examination of the above samples of salt it will be observed that some of the specimens of salt are merely packed or "repacked" or "marketed" by the concerned companies. The addresses of some of these companies are not printed on the packages. which is obviously a contravention of the Packaged Commodities Rules. The ppm content of the salt, where it is claimed to be Iodised, is

not of the prescribed standard excepting obviously one manufactured by M/s Laxmi Stores of Gandhi Dham the packing of which claims the Iodine content to be 50 ppm.

5. That in the above-mentioned Rules (Appendix A) it is also laid down in the first provision that table iodised salt may contain aluminium Silicate as an anti-caking agent to a maximum of 2 percent by weight; it is not clear from the packing of any of the above specimens whether they conform to this prescribed standard in regard to anti-caking agent. Our information is that most of these samples do not.

6. That it would be appropriate to send samples of these salts for laboratory tests (to the appropriate laboratory, in consultation with the Bureau of Indian Standards) to determine whether they comform to the above-mentioned Iodisation standard. It will be observed that where the speciman does not contain the prescibed minimum standard of Iodisation and anti-caking agent its sale as Iodised salt is violative of the law and also constitutes a fraud perpetrated on the consumers whereby they are charged the retail price of Rs. 2 for material which as common salt may be of much less value.

7. That even though the fundamental importance of supply of Iodised salt was recognised by the Government of India and the above-mentioned steps were taken to safeguard the interests of consumers for the maintenance of health, the Government of India and Salt Commissioner have not maintained the vigilance required and have in fact failed to provide the necessary safeguards for ensuring that the consumers get the salt of the notified standard of Iodisation. The absence of any mention of the standard of Iodisation on the package containing Sambhar Salt, manufactured by the public sector enterprise Hindustan Salts Limited is itself a very unfortunate factor, and it is probable that the salt manufactured by this enterprise is not upto the standard of Iodisation prescribed by Government of India.

8. That where the salt sold in the market is below the standards of Iodisation prescribed by sain Notification we feel that the manufacturers as well as the wholeselers and retailers of these products are committing an offence and the consumers are being deluded into paying a higher price for Iodisation which does not exist in the salts sold by them. The manufacturers of these salts in particular are guilty of violation the law and manufacturing are packing products which are below the prescribed standards. We have preferred herein to lodge present complaint against only the manufacturers of those products which may be found to be below the prescribed standard of Iodisation.

9. That our information is that the salts sold in the markets of Uttar Pradesh comprise inter alia certain salts specimens of which are submitted with this Complaint. The diseases caused by the deficiency of iodine are extensively in existence in certain areas of Uttar Pradesh and it is on this account that the sale of iodised salt has been made mandatory in the districts of Uttarr Padesh. The Hon'ble Commission would be in a position to ascertain from Respondent no: 4 as to what steps are being taken by the State Government to ensure full observance of this mandatory requirement.

10. The salt manufactured and packed by such manufacturers, whose product does not fulfil the requirement of prescribed Iodisation standard, would thus be taken to have a positive defect in relation to the quality prescribed for it. The word "defect" is defined in clause (f) of Section 2(1) of the Consumers Protection Act. The salt manufactured and marketed by such manufacturers, whose Iodina content does not come up to the prescribed standard, is obviously of the order of many crores of rupees, and therefore the action of such manufacturers and the inaction on the part of the Government of India and Salt Commissioner, would obviously fall within the jurisdiction of this Hon'ble Commission. The words "Complainant" and "Complaint" are defined in clauses (b) and (c) of Section 2 of the Act. As stated above, COMMON

CAUSE is obviously interested, as an organisation interested in the problems of consumers, to lodge the present Complaint before this Hon'ble Commission.

11. The Complainant prays that the Hon'ble Commission may take note of the practices adopted by such manufatcurers whose "Iodised salt" does not come up to the standard prescribed by the Government of India under the relevant Rules of the prevention of Food Adulteration Act, and of the comissions of the Government of India and the Salt Commissioner in not effectively preventing these undertakings, including the public sector enterprises Hindustan Salts Limited, from manufacturing salt of standard below the prescribed standard of Iodisation. The Hon'ble Commission is also requested to direct such manufacturers, and all other manufacturing and marketing units of Iodised salt, to ensure that they forthwith stop manufacturing and marketing "Iodised Salt" which is not of the prescribed standard and to manufacture and sell only such "Iodised Salt" which fulfils the above-mentioned mandatory requirements. The manufacturers can be given a period of not more than three months to effect the change-over and to report to the Hon'ble Commission the factum of the change effected by them alongwith laboratory analysis of their salts manufactured and marketed by them after the expiry of such period of three months.

H.D. SHOURIE
Director
Common Cause

FOR PENSIONERS

Pre-1973 Pensioners. The case relating to pre-1973 pensioners has had quite a few ups and downs. It was decided in favour of the pensioners by the Central Administrative Tribunal, decreeing that they were entitled to the benefits of enhanced pension as well as the gratuity. Government submitted appeal to the Supreme Court. As pensioners are well aware, the matter was settled outside the court, that the pensioners will not insist upon the enhancement of gratuity in recognition of the fact that this would create other problems for the Government, and the Government will agree to give the benefit of pensions. This was only a verbal agreement; and the pity is that it was not got recorded in the court order. The court, while deciding the appeal recorded that gratuity enhancement was not admissible and the matter of pension was not raised before the court during the appeal. The Government subsequently went back on this agreement and filed a Review Petition; meanwhile, the pensioners applied to the Tribunal for launching contempt of court proceedings against the concerned government officers for not implementing its decision. The Tribunal passed an interim order that the non-implementation of its judgement amounted to contempt of court. The Review Petition was disposed of by the Supreme Court with the remark that the matter of pension was not argued before it and was thus "left open". The Government has been insisting that the words "left open" implied that the appeal relating to pensions part has yet to be decided by the Supreme Court. Eventually,the matter of pensions has been referred to a bench of the Supreme Court for decision of the appeal. The hearing is fixed for 4th April. When the decision is reached we will report it to the pensioners. Meanwhile, due to this act of the Government the suspense of the pensioners in this matter continues.

Ex-Services League Petition :

The Petition claiming same pension for same rank, and two other petitions raising the question of contempt against the Government for non-implementation of the spirit of the 1982 decision of the full bench, are still pending in the Supreme Court. One cannot say as to when they will come up for final hearing though hopes continue being kindled from time to time that they will be head in the near future. When decision is eventually taken on these Petitions it will get known to the pensioners, and it is consequently no use writing to anybody asking as to what is the present stage of these petitions.

"COMMON CAUSE"

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COMMON CAUSE
Regd. Office : C-381, Defence Colony, N. Delhi-24
Ph. : 615064

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