

COMMON CAUSE

VOICE OF "COMMON CAUSE"

TASKS BEFORE NEW GOVERNMENT

There are formidable tasks for the new government. The list is breath-taking. Political, economic and social issues are aplenty. Our problems too, of the middle class, of consumers, of pensioners, of citizens encountering onslaughts of urban living add to their tasks.

From COMMON CAUSE we have, in the first weeks of its taking charge, referred some important problems to the new government. One is of prices. The lacunae in Packaged Commodities Rules which enable manipulation of prices and lead to enormous leakage of revenue, have been highlighted. We have written to the Prime Minister and to the members of Cabinet Committee constituted on prices.

We have written about the inadequate implementation of the Consumers Protection Act. On our writ petition the Supreme Court has already issued direction to all the States and Union Territories, to forthwith set up the District Forums and State Commissions. We have urged effective functioning of these instruments of the quasi-judicial machinery so that consumers can get their grievances redressed.

We have written to the new government about foul deeds committed by two public sector undertakings. Interests of consumers must not be allowed to be jeopardised ; in fact the public sector enterprises operate as examples of morality and rectitude.

Members will find all these matters and various others in this issue of the periodical. We want particularly to draw attention of the members to the Notice (page 19) for the Annual General Meeting which will be held on Saturday, the 20th January'90 in the Constitution Club, Rafi Marg, New Delhi, and to the Annual Report and Statement of Accounts. Brig.R.I.N Luthra is the Secretary of COMMON CAUSE. Members are welcome to communicate their views and suggestions to him at the address given above.

ANNUAL REPORT.

PETITION AGAINST LOHIA MACHINES LTD.

MATTERS FOR NEW GOVERNMENT.

MRTP COMMISSION'S WORK.

IMPORTANT DECISIONS FOR CONSUMERS.

All are Welcome to reproduce any material from this Publication.
This publication is not monthly. It presently issues once a quarter.
There is no subscription. It goes free to members of COMMON CAUSE.

SOME IMPORTANT DECISIONS FOR CONSUMERS

Certain important decisions have been taken by the National Commission for Consumers Disputes Redressal which we consider necessary to bring to the notice of the people. These constitute guidelines for helping consumers to seek redress under the Consumers Protection Act. We furnish hereunder information about these decisions.

I It was contended by the Telephone Department that the telephone does not constitute a service which can be taken up for complaints under the Consumers Protection Act and that officers of Telephone Department can refuse to appear before the District Forums etc established under this Act. This matter has been settled by the National Commission by the following verdict embodied in the Appeal No : 2 of 1988 (With Miscellaneous Petition No: 19/89 for Intervention) in which COMMON CAUSE had intervened:

"We have, already, held in Union of India Vs Nilesh Agarwal that "in providing the telephone facility to subscriber on payment of installation charges, rental charges and call charges, the Telecommunication Department is rendering a service as defined in the Consumer Protection Act and that subscribers to telephones are consumers as defined in the Act." We are not impressed with the contention taken on behalf of the appellant (Telecom Department) by the learned counsel Mr Sanghi that by reason of Section 7(b) of the Indian Telegraphs Act which provides for arbitration, the remedy under the Consumer Protection Act cannot be invoked by the consumers. The existence of a remedy by way of arbitration, even assuming for purposes of discussion that Sec. 7(b) covers this case which, in our view, is extremely doubtful, does not preclude an aggrieved consumer from seeking redressal before the forums constituted

under Consumer Protection Act which is a special statute enacted by Parliament for the specific purpose of providing a speedy, cheap and efficacious remedy to consumers before the special forums created for that purpose. We have, already, indicated this view, though not finally, in our judgement passed by us in the aforementioned case. We hereby affirm that view as our considered opinion in respect of this matter. That ground of objection will, therefore, stand overruled."

II In a previous issue of this periodical we had provided information about the petition filed by COMMON CAUSE before the National Commission for Consumers Disputes Redressal against the Delhi Electric Supply Undertaking in relation to their defaults and shortcomings in respect of various aspects of their functioning, inter alia, the delays in billings, wrong billing, meters, voltage fluctuations, load shedding, failure of street lighting etc. The case was heard by the Commission on certain dates and eventually the DESU came forth with positive assurances on the various issues raised. The National Commission has passed the final order which deals with our grievances and the assurances of DESU. This order is reproduced below for wider dissemination of information so that the consumers' organisations should consider initiating action where necessary, before their State Commissions or District Forums for redressal of similar grievances.

ORIGINAL PETITION No: 5 of 1988

COMMON CAUSE Vs D.E.S.U.

ORDER

We are happy to record our appreciation of the good response that has come from the Delhi Electric Supply Undertaking to the suggestions made by this Commission for the purpose of setting right the grievances of the consumers voiced before us by Mr. H.D.

Shourie on behalf of the Complainant. The statements dated 29th August 1989 and 19th October 1989 filed before us by the Delhi Electric Supply Undertaking set out in detail the steps taken by it in implementation of the suggestions made by this Commission and we are satis-

fied that those steps adequately go to redress the grievances that the consumers had on various counts which are set out in the Petition before us.

In regard to the complaint of delayed billing, the Respondent Undertaking has assured this Commission that steps have been taken to ensure that there will be no avoidable delay, henceforth, in issuing bills to the consumers and that with the adoption of computerisation, it is expected that it will be possible for the Undertaking to serve the bills on consumers regularly on a bimonthly basis.

As regards the complaint of wrong billings, the statements filed before us disclose that adequate steps have been taken by the DESU to ensure that there will be no wrong billing to the extent to which it is humanly possible to avoid it. We have also been assured that in case any instance of wrong billing is brought to the notice of the DESU, steps will be promptly taken to verify the correctness of the complaint made by the consumer and to rectify the bill and until such rectification is effected, no disconnection will be made.

The Undertaking has also mentioned in the two statements filed by it that it has also decided to issue orders in implementation of the suggestions made by the Commission that in all cases where there has been a delay in the issuance of bills on the part of the Undertaking or where there has been wrong billing, the consumer will be allowed to pay the amount of the bill in six equal instalments and that the electric supply will not be disconnected from the premises of the consumer unless and until there has been a default in paying not less than two consecutive instalments.

Dealing with the complaint of the consumer regarding the meter reading system in vogue, the Undertaking has told this Commission in the statements filed before us that they have already set up a committee to review the work norms of the meter-readers and that steps will be taken in the light of the recommendations of the committee to ensure that the revised work norms fixed for the meter-readers are reasonable and will be such as to allow the meter-readers sufficient time in the premises of each of the consumers concerned to take a correct reading of the meter.

Regarding the grievance put forward by the Com-

plainant that the meters fixed by the Undertaking in the premises of the consumers do not at all bear the ISI marking, the Respondent has stated that the specifications fixed by the DESU for the meters procured by them are much higher than the specifications fixed by the ISI. On a notice issued by the Commission to the Director General of the Bureau of Indian Standards, a representative of that Institution appeared before us and told this Commission that the Bureau will have no objection to certify the meters of the DESU provided that they satisfy the standards fixed by the ISI and the fact that they are of superior standard will not stand in the way of the grant of such marking. In view of this, the learned counsel appearing on behalf of the DESU has assured that henceforth, as far as possible, while purchasing new meters, they will purchase only the meters bearing the ISI mark. There should be no difficulty in this regard because the representative of the Bureau of Indian Standards has already told this Commission that they will certify meters which may be of higher specifications so long as they conform to the specifications fixed by the ISI.

We also find from the statement filed by the DESU that adequate steps, both preventive and punitive, have been taken by them to deal with cases of theft of electricity. Another important step taken by the DESU in response to our suggestions is that they have already taken action to constitute committees in every district for dealing with the grievances of the consumers. In addition, the DESU has decided to constitute two central advisory committees - one general and the other technical - in both of which there will be two representatives of consumers to be nominated by the Consumer Affairs Directorate of the Delhi Administration. Responding to the suggestion of Mr H.D. Shourie made during his submissions before us today, counsel for the DESU very fairly agreed that DESU will nominate its Public Relations Officer in the central office as the person to whom complaints/petitions may be addressed and that he will see that the complaints are properly processed and dealt with expeditiously in the concerned Department of the DESU.

We are satisfied that proper steps are being taken by DESU to maintain proper voltage and avoid fluctuations beyond the permissible limits. DESU has also stated in their written submissions that they are taking steps to improve the supply situation by augmenting their generation capacity. In the light of this, we do not feel that any direction in regard to this matter is called for.

This petition is disposed of in the light of aforesaid observations made by us.

III. A very important decision has been taken by the National Commission, which can have far reaching implications, on the point whether the provision of service of houses and plots by an agency established by the government such as the city development authority, comes within the purview of the Consumers Protection Act. The National Commission has held that it does. Where, for instance, an organisation such as Delhi Development Authority, which deals with various aspects of housing programmes etc, defaults in providing satisfactory service in the allotment of built houses or unbuilt plots or the quality of construction is poor, redressal can be sought under the Consumers Protection Act. For spreading the information about this important decision we reproduce below relevant portion of the order dated 27.7.89 that has been given by the National Commission on First Appeal No: 5 of 1989 filed by the Uttar Pradesh Housing & Development Board against a decision of the U.P. State Commission on a complaint of Garima Shukla & others.

"This is an appeal against the order of the U.P. State Commission, Lucknow of the 20th of March, 1989 on the preliminary objections challenging the jurisdiction of the State Commission to entertain and hear the complaint and the judgment of the same Commission of 13th April, 1989 on the merits of the reliefs including the compensation granted to the Respondent.

The learned counsel for the Appellant submitted that the Appellant was (i) a Statutory body which did not undertake the activity of sale of goods or rendering service for a consideration, (ii) that it was engaged in the transfer of immovable property either in the shape of plots or in the form of built up houses and these activities were not within the purview of the Consumer Protection Act, (iii) that the Consumer Protection Act having been processed by the Ministry of Food and Civil Supplies did not extend to the Appellant inasmuch as its activities were not within

the purview of the Ministry of Food and Civil Supplies and (iv) the services rendered by the Appellant did not fall under the definition of 'service' given in Section 2(o) of the Consumer Protection Act.

We have gone through the grounds of appeal carefully and also considered the objections taken on the question of jurisdiction by the learned counsel. The State Commission has examined elaborately and ably all the preliminary objections taken by the Appellant herein and Opposite party before the State Commission. The mere fact that Housing and Development Board is a statutory body does not mean that it is outside the purview of the Consumer Protection Act. The Housing and Development Board is engaged in serving the public in the matter of providing housing by acquisition of land, development of sites, construction of houses thereon and allotment of plots houses to the public. The Board is clearly engaged in rendering service for consideration to the public and therefore those who are allotted plots/houses from the Board are clearly consumers falling within the definition in Section 2d(ii) of the Act. Again under Section 2(o) of the Act the definition of the term "service" is very comprehensive: it means "service of any description" including banking, financing, insurance, transport, processing, supply of electrical or other energy, entertainment etc. This leaves no room for doubt that the type of service which the Board renders to the public for a consideration is clearly covered by Section 2(o).

It is also evident from Section 2(o) that even though the Act has been processed by the Ministry of Food and Civil Supplies of the Government of India, the Parliament has enacted it and there is no provision in the Act limiting it to subjects under the control of the Civil Supplies Ministry.

We, therefore, find no merit in the Arguments advanced by appellant's counsel on the point of jurisdiction of the State Commission and we confirm the finding of the Commission."

HOPE FOR HARRIED CONSUMERS

During the last few years the MRTP Commission (Monopolies and Restrictive Trade Practices Commission) has made distinctive contribution to meeting certain grievances of consumers. Since the amendment of MRTP Act in 1981 whereby certain provisions relating to unfair trade practices were incorporated in it, the MRTP Commission has done commendable work in probing and effectively dealing with the complaints and grievances of the consumers despite the fact that the statute yet disables it from taking up complaints against the public sector enterprises which, of course, can now be arraigned under the Consumers Protection Act.

We reproduce below the article of Rajeev Narayan on these aspects of the work of MRTP Commission which appeared in the SUNDAY EXPRESS of 25th November 1989. This article furnishes information about how the aggrieved consumers can seek redressal also under the provisions of MRTP Act.

"Dr. K. T. Thomas was in a quandary. His entire life's savings seemed to be going down the drain. What should he do ?

The problem dated back to 1983. Dr. Thomas had been practising Dental Surgery for many years and had been, for long, thinking of converting his cherished dream of owning his own house-cum-clinic in a clean and peaceful locality, into reality. So when DLF Universal Limited offered allotment of plots in Qutub Enclave to its debenture holders, he jumped at the offer. On payment of a total combined sum of over Rs. 5 lakhs. Thomas was allotted a plot in Phase II (preferential Location). Construction was to begin soon and Thomas sat back and waited for the day when he could gain possession and move into his new, much larger house.

His dream was shattered in September this year when DLF socked him a cruel, below-the-belt punch. In a letter from them, he was informed that instead of his old plot in Phase II measuring 855 mts., he had been allotted a plot in Phase III (Ordinary Location). Apart from being smaller in size, the plot was in a locality which abounded in noise and dust; hence Thomas couldn't even contemplate pursuing his practice from there. Indignant and furious, Thomas argued with DLF officials but got nowhere. His plot had been allotted to someone else, he was told. He tried everything possible to regain his old plot but to no avail.

He had all but given up when fate intervened in the shape of a friend who advised him to file a complaint with

the Consumer Protection Cell at the Monopolies and Restrictive Trade Practices Commission. Having nothing to lose and the world to gain, Thomas complied. On the 21st of September, he related his tale of woe to MRTPC officials and lodged a formal complaint against DLF Universal Limited.

MRTPC investigated the matter and found out that Thomas had indeed been misled. They issued a directive to DLF ordering them to sort out the matter soon, failing which a suit would be filed against them. This ruling of the Commission fetched immediate results, Dr. Thomas was contacted a week later by DLF officials and reallocated his old plot.

This is just one of the innumerable instances where the Consumer Protection Cell has intervened and provided redressal to aggrieved parties. The MRTP Act was formulated in 1969. Initially, this Cell received 2-3 cases a day but now that more and more people are learning about its existence and efficiency, it gets an average of 125 to 150 consumer complaints daily.

In the beginning, the Cell was taken lightly by offenders, but over the years, they have found out, at a price, that they cannot afford to fool around with the Commission. It has been vested with powers enough to get a stay order issued against the erring party or pass any judgement that a civil court can. Any proceeding of the Cell may be deemed to be a judicial proceeding, according to the relevant sections of the Indian Penal Code. The MRTPC can, at the bequest of the cell, file a suit against the offender at the Commission itself. The MRTPC is hence much feared by companies and manufacturers. Realizing the extent of the Cell's powers, some big companies like Maruti Udyog Limited, Bajaj Auto Limited, Kelvinator India Limited and many others have put up complaint boxes at the Cell's premises itself. Under this Voluntary self-redressal system, the complaints re-

ceived against these companies are noted down by the registrar of the MRTPC and then put in the complaint boxes. The companies collect the complaints from time to time and follow up on the grievances themselves. The Cell maintains a strict vigil to make sure that the concerned company is actually carrying out the redressals. In all, there are 35 companies that have put up complaint boxes at the office of the Commission.

One advantage of the cell is the psychological impact it has on any manufacturer or company, and more so if they have been taking any consumer for a ride. Just the knowledge that the Commission has come into the scene evaporates an offender's lethargy. For instance, a complaint was received from a company in Ludhiana that the Voltas Airconditioner that they had bought recently wasn't working properly. Many visits and complaints to the retailer and to Voltas themselves had yielded no positive response. Bewildered and angry, the company had turned to MRTPC for help. They wrote two letters; one to the Cell explaining their predicament and the other to Voltas informing them that they had complained to the Commission. Within a couple of days of writing these letters, the company was visited, by Voltas personnel who replaced their air-conditioner with a brand new one and rendered them an apology to boot! The Cell meanwhile, hadn't even got their letter!

Another classic case of the Cell succeeding where few others have is that of Lohia Machines Limited. It is common knowledge now that getting one's initial deposit refunded by LML is well nigh impossible. The same happened with Rakesh Suri. He wanted his booking cancelled and deposit refunded but even after several requests and reminders, he was where he had started. At this juncture, he sought the help of the Cell. Within 20 days of writing to them and filing the complaint, he got back the deposit that he had failed to get otherwise. And Suri is just one among the 200-odd people who have had this sort of grievance solved by the Cell.

And it is not just the big grievances that the Cell resolves. There are many instances of persons complaining on very minor issues and getting them resolved. Take the case of Uttam prakash Tiwari. While getting his scooter tank topped up at the Irwin Road Service Station, he was over-charged and the attendant misbehaved with him. Not one to take this lying down, Tiwari lodged a complaint with the Cell. The Cell ordered the Service

Station to render an explanation. As soon as they received the Cell's directive, the Service Station authorities sent back a letter admitting that their attendant had indeed misbehaved with Tiwari and they rendered an unconditional apology to him for the misdemeanour. Furthermore, they offered to return the money charged in excess from Tiwari. Suitable action was being taken against the errant attendant, they added.

Similarly petty was the grievance of a complaint from Hyderabad. He hadn't been given the free gift along with a pair of shoes he had bought from Metro Footwears, Hyderabad, he complained. Within 3 days of the Cell sending a feeler to the retailer, the complaint was made the proud owner of a shoe-horn!

Mr. S.B. Mathur, Joint Director General of the Consumer Protection Cell, says, "The magnitude of the problem doesn't influence our action. As far as we are concerned, a person has been wronged and we endeavour to put that right. The only problem that we face is that the complainants don't always provide us with adequate details, they don't indicate or attach a receipt or guarantee papers etc, and finding out wastes valuable time. Copies of all relevant documents should be enclosed with the complaint and the exact nature of the defect or offence should be quoted. Only then can we act against the erring party and seek redressal."

The MRTPC has jurisdiction over the whole of India and any consumer with a grievance can file a complaint with them. The Cell then sends a feeler to the offender and if redressal doesn't take place within the stipulated period of time, it (the Cell) uses its power to institute legal action against the offender. An example of this type of a case is that of Lt. Col. Bhatia against Bigston T V Company. The company wasn't putting right the Colonel's TV even after several requests. Bhatia complained to the Cell, which directed the company to carry out the necessary repairs immediately. Bigston didn't comply even after a second directive. A case was then filed at the Commission against Bigston and eventually, the company was ordered to pay Rs. 8850 to Bhatia as compensation.

Even though the achievements of the Cell are many, there is one big drawback, this being that the cell has no jurisdiction over government sector establishments such as the DDA, Steel Authority of India

Limited, Gujarat Narmada Auto Limited etc. These companies hence generally get away scot free after putting their customers to trouble and harassment. All that the Cell can do in cases of complaints against these establishments is that they can send a letter to the company saying that even though they don't fall under their jurisdiction, it would be good of them to resolve the problems of their consumers. This sort of approach works in some cases but not always. But it did work in one case of non-payment of the matured amount in fixed deposits by the Steel Authority of India Limited. The Cell sent a request to SAIL who were graceful enough to comply. They returned the mature amount at once to the depositor.

And it is not just those in the metropolitan cities and bigger towns who can and do utilize the facilities offered by the Cell. Even farmers and tribals from remote rural areas seek redressal through the Commission. Mr. Mathur cites the case of Pithamber Pradhan, a farmer from balsora District in Orissa, as an example. Apparently, Pithamber was having problems with the TAFE tractor he had bought recently. The Tractor and Farm Equipments company had incidentally just started their sales in the area. The dealer through whom Pithamber had acquired the vehicle, paid no attention his complaints. Frustrated, Pithamber wrote directly to TAFE asking them to resolve the issue at once. TAFE was remarkably efficient in solving Pithamber's grievance. They put right Pithamber's tractor and ceased all business deals with the errant dealer, making alternative arrangements for the sale of their products.

Even though the Cell is effective and its achievements diverse, there still are companies that try to out do both the Commission and its own customers by taking refuge in legal quibbling. Modi Industries Limited is, by far, the most prominent among them all. This company hasn't

being paying up the money due on mature fixed deposits to its depositors. In response to the Commission's queries, they have replied that as fixed deposits don't involve sale of any goods and there is no provision in the Act about them, the Cell has no jurisdiction over them. This point has got Mr. Mathur really worked up. He says, "In plain words, they are telling us to go to hell. We can't let them get away with this. More than 50 persons have complained to me about this and we will seek justice for them. What the Modi Industries people have failed to notice is that under section 58(A) of the Act, non-payment on matured fixed deposits is a penal offence. I have appealed to the Commission to get a stay order issued against the company. They should be confronted and taken to task."

As the Cell's reputation spreads many more people are learning about its existence and rushing to it with their problems. The basic weak point of the Cell, that of being pitifully understaffed, is hence being exposed. Hopefully, the concerned authorities will soon put this right. In a country where the advertising is more slick than the product, and manufacturers are inclined to take consumers for a ride, the cell is likely to see a boom in consumer complaints.

Any person with a grievance can lodge a complaint with the Director, Consumer Protection Cell either in person or by post.

Delhi : Travancore House, Kasturba Gandhi Marg.

Calcutta : Registrar, Company Law Board, Central Govt. Offices Complex, 11 Nizam Palace.

Bombay : Registrar, Company Law Board, 100, Marine Lines, Everest.

Madras : Registrar, Company Law Board, 35, Haddows Road, Shastri Bhawan.

OUR PETITION AGAINST LOHIA MACHINES LTD.

We have filed a petition against Lohia Machines Ltd. of Kanpur. This company, seven years ago, invited applications for allotment of scooters that they started manufacturing. It appears that it received about five lakh applications. Each applicant was required to deposit Rs. 500, and it was stipulated that if any person decided subsequently to cancel the allotment his deposit with 7 percent interest would be refunded. Our information is that over four lakh applicants, for various reasons, subsequently cancelled the allotments and asked for refund of the deposits. Despite repeated reminders the company has failed to fulfil the undertaking. Some applicants have approached their District Consumers Forums and through them have secured orders for refund of the deposits. Over four lakh depositors are reported to yet be waiting for refund of their deposits which aggregate to over Rs. 20 crores. We have

filed the Petition before the National Commission for Consumers Disputes Redressal. Notice has been issued by the National Commission to Lohia Machines Ltd.

We reproduce below the Petition which will be of general interest to the consumers about action that can be initiated on matters of this nature.

COMMON CAUSE PETITION SEEKING DIRECTION TO THE RESPONDENT COMPANY TO REFUND WITHOUT FURTHER DELAY DEPOSITS MADE BY LARGE NUMBER OF PERSONS WHO HAVE ASKED FOR REFUND OF DEPOSITS MADE BY THEM TOWARDS BOOKING OF VESPA SCOOTERS.

1. That COMMON CAUSE is a registered Society which has been taking up various public causes for seeking redressal. It has inter alia taken up various causes on behalf of the consumers and is a Member of Delhi Consumers Protection Council as well as the Central Consumers Protection Council established under the Consumers Protection Act. Its locus standi in relation to the present petition is clear from the fact of it having submitted certain petitions before this Hon'ble National Commission on which action has been initiated.

2. That the Respondent Company invited applications about seven years ago for the allotment of scooters proposed to be manufactured by them. The applicants were requested to deposit the amount of Rs. 500 towards allotment of each scooter. A photocopy of the Application Form prescribed for the purpose is at Annexure A. On the reverse of the Application Form "Conditions/Instructions" were printed. Annexure B is the copy of these "Conditions/Instructions". Reproduced hereunder is the condition/instruction no: 10:

"(10) In the event of cancellation of booking the advance of Rs. 500/- shall be refunded by the Company alongwith simple interest @ 7% per annum calculated on full calender month basis, commencing from the first day of the following month of receipt of advance and upto the last day of preceding month in which the intimation for cancellation has been received. However, in case of cancellation of booking within the first six months from the date of close of booking, no interest shall be payable. In either case, the refund shall be made by a demand draft to be posted to

the applicant directly by the Company within 60 days from the date of receipt of cancellation."

3. That it will be clear from the above cited para of the Conditions/Instructions of the prescribed Application Form that in the event of cancellation of the booking of the scooter the advance of Rs. 500 would be refunded by the Respondent company along with simple interest of 7% per annum and the refund would be made by demand draft within 60 days of the receipt of the cancellation.

The commitment to make refund of the deposits is also evident from a printed letter dated 19.12.1987 (Annexure C) which the Company obviously sent to some persons who asked for refund of the deposits.

4. That according to information stated to have been given in August 1989 in reply to a question in the Parliament there were as many as 4,04,569 requests pending with the company for refund of the advance made by the applicants. Numerous letters regarding the non-payment of refund appear from time to time in the newspapers. Attached herewith at Annexure D is a photocopy containing sample of the letters which appear in the newspapers. We understand that complaints by such depositors are continuously being made before the District Consumers Disputes Redressal Forum at Delhi and that by now about 300 complaints have been decided wherein the Respondent company has been directed to forthwith refund the amounts of the depositors. It is obvious that similar complaints regarding refund of deposits may have been received by certain other District Forums where they have been established.

5. That this matter is of obvious importance from the viewpoint of a very large number of consumers all over the country who made deposits of Rs. 500/- each with the Respondent company on the clear understanding that the amount would be refunded within 60 days of receipt of cancellation of the allotment of scooters and the company is not making the refunds to them. The total amount involved, in relation to the pending applications of about four lakhs, is about Rs. 20 crores.

6. That this matter is clearly within the jurisdiction of this Hon'ble Commission because it comprises the non-fulfilment of a clear understanding given to the customers

of scooters in that their deposits would be refunded with interest of 7% within 60 days of receipt of cancellation of the allotment, and the aggregate amount required to be refunded is estimated to be of the order of Rs. 20 crores.

7. That the Complainant organisation feels greatly concerned about the frustration experienced by the customers of the scooters of the Respondent company who,

despite the requests for refund, have hitherto continued to be deprived of their amounts and the interest thereon, and prays to the Hon'ble Commission to issue direction to the Respondent company to forthwith arrange to refund the amounts due to the customers and to place before the Hon'ble Commission a time-bound commitment in regard to the completion of the payment of refund along with the stipulated interest.

EXAMPLARY PERSISTENCE OF A CONSUMER

We have received from Mr A. Prasada Rao (address: Block no. 9, Flat no. 5, Police Quarters, Checkpost, Yousufguda, Hyderabad-500045) an account of how he successfully fought tooth and nail to secure redressal of a grievance as a consumer against the Electronic Corporation of India Ltd, Hyderabad, in regard to a wrong demand of service charges of Rs. 400 for a Television set sold to him by the company. This account is an example for everybody to note, for enforcement of the rights which accrue to the consumers. We are reproducing below, in the words of Mr A. Prasada Rao, the history of the case and how he fought against the wrong and ultimately won.

"I purchased one colour ECTV - Spectra super on 13-8-1985 from the ECIL company show-room, Sagarview Building, Domalguda, Hyderabad-500 029, Andhra Pradesh. The ECIL company gave me a warranty card in writing promising to undertake service of TV free of cost for one year from the date of purchase of ECTV (13-8-1985). However, in violation of this Warranty, the ECIL collected Rs. 400/- (Rupees four hundred only) towards service charges on the date of purchase of TV (13-8-1985). I brought this matter to the higher authorities concerned of ECIL company and requested them to refund service charges which were collected from me illegally and in violation of warranty. The ECIL authorities concerned refused to refund service charges.

Consumer complaint against ECIL filed in District Forum

The Government of Andhra Pradesh had constituted District Forums in the State of Andhra Pradesh under the Consumer Protection Act, 1986. Mr. M. Ranga Reddy, Chief Judge, City Civil Courts, Hyderabad was appointed as Chairman of District Forum, Hyderabad.

I filed a complaint before the District Forum, Hyderabad against ECIL company for the collection of service charges during warranty period in the month of September, 1988 and it was numbered as Consumer Dispute No. 1 of 1988. The District Forum sent several notices to ECIL company. But ECIL did not choose to appear before the District Forum. Therefore,

the District Forum, in its order dated 1st April, 1989 held that ECIL company had indulged in Unfair Trade Practice and directed it to refund service charges of Rs. 400/- with interest @ 12% per annum from the date of purchase of TV (13-8-1985) till the date of actual payment to me. The District Forum allowed one month time to ECIL to refund service charges to me. After the expiry of one month, I had filed an application under Section 15 of Consumer Protection Act, 1986 for the enforcement of its order.

Appeal by ECIL in State Commission - Landmark judgement

Aggrieved by the Order of the District Forum, the ECIL company engaged two advocates and filed an appeal in the State Commission which was numbered as C.D. Appeal 4 of 1989. The Government of Andhra Pradesh had appointed Justice Mr. A. Laxmana Rao, Judge, High Court of Andhra Pradesh as the President of State Commission.

The State Commission after hearing arguments from both sides pronounced an order on 24-6-1989 holding that ECIL company had indulged in an Unfair Trade Practice by collecting service charges during warranty period. Therefore, the State Commission had directed the ECIL company to refund service charges of Rs. 400/- along with interest 12% per annum from the date of purchase of TV (13-8-1985) till the date of actual payment to me along with costs of Rs.200/- The State Commission observed in its 23 page order - "The Corporation is not

entitled to retain the money which it had unlawfully collected from the purchasers. In the interest of Justice, the Corporation must be directed to refund the excess amount collected by it, to the other purchasers as well, as in the case of the respondent herein". This direction of the State Commission is the landmark in the history of consumer movement in India.

Attachment of Property of ECIL company ordered.

After the order of the State Commission, I waited for one month and when I did not receive service charges, I had filed an application on 28-7-1989 under Section 25 of Consumer Protection Act, 1986 before the District Forum for the enforcement of the order of District Forum and requested to attach one TV set from the ECIL company show-room situated at Domalguda, Hyderabad-29.

The District Forum considered my application in its sitting dated 28-7-1989 and issued an order of Warrant on 4-8-1989 for the attachment of one TV set from the ECIL company show-room directing the Bailiff of the Court to return the warrant by 16-8-1989 after its execution. The Bailiff of the Court returned the warrant to the District Forum without executing it with a report "the Decree holder (myself) had not accompanied me (Bailiff) to attach the property". The District Forum, in its sitting dated 19-8-1989 considered the report of the Bailiff.

Considering the practical problem for the attachment of TV set, such as its transportation from Company's show-room, to the district forum office, its safe custody, its auction etc. I had put in an another application under Section 25 of Consumer Protection Act, 1986 to the District Forum Dated 21/26-8-1989 praying to issue fresh warrant of attachment of cash equal to the amount specified in Warrant order from the cash counter of ECIL company's show-room.

Writ petition filed by ECIL in the High Court of A.P. against the Orders of State Commission - Stay Ordered

Probably, on coming to know, that I have been taking necessary action by filing applications for the enforcement of orders of District Forum/State Commission, the ECIL company had filed a Writ Petition in the High Court of Andhra Pradesh at Hyderabad on 28-7-1989,

questioning the provisions of C.P. Act, 1986, under Article 226 of the Constitution, its jurisdiction and my claim against ECIL, by misrepresenting the facts and suppressing the truth.

The ECIL company had engaged the services of 3 eminent Advocates viz., Sarvasri P. Ramachandra Reddy, former Advocate General of Andhra Pradesh, C. Trivikrama Rao and Chakradhara Rao while filed Writ petition on behalf of Petitioner company (ECIL). This Writ Petition was numbered as W.P.No.10412 of 1989.

The Writ Petition came up for admission before Justice Mr. Venkatrama Reddy, Judge, High Court of Andhra Pradesh, Hyderabad on 28th July, 1989. The Judge passed stay orders vide W.P.M.P.No. 13806 of 1989 in this Writ Petition. The operative portion of stay order is as follows :

"ORDER : There shall be stay of operation of order in regard to getting a notice published atleast in one newspaper each in Telugu and Urdu having wide circulation in the State that the amount collected from the purchasers of ECTV towards the servicing charges during the period of warranty would be refunded to them "

I am Respondent No.1 in this Writ Petition and the copy of stay order was communicated to me on 7th August, 1989 through Registered post by the High Court of Andhra Pradesh.

Misrepresentation of Facts - Suppression of Truth by ECIL in its Writ Petition (Affidavit)

In its affidavit that was filed in the High Court of Andhra Pradesh, the ECIL company stated as follows :

"Page 5 para 9 of Affidavit

Against the said impugned order of the Hon'ble Mr. Justice Laxamana Rao dt. 24-6-1989 purported to be in exercise of the powers of the State Commission within the meaning of Sec.16 of Consumer Protection Act, 1986, there is no further right of appeal provided under the Consumer Protection Act, 1986. Under the scheme of the Act, there is only a single first appeal provided and there is no provision for a 2nd appeal against the original orders passed by the authorities constituted under the said Act,

1086. The petitioner has therefore no alternative and efficacious remedy except to approach this Hon'ble Court under Art.226 of the Constitution of India....."

A plain reading of above para in the affidavit of ECIL company misleads anybody that there is no provision in the Consumer Protection Act, 1986 for an appeal against the order of State Commission. In fact, Section 20 of Consumer Protection Act, 1986 provides for constitution of National Consumer Disputes Redressal Commission and Section 21 provides for jurisdiction of National Commission which can entertain appeals against the order of the State Commission. However, the ECIL company suppressed the above truth and misrepresented the facts.

Request for refund of service charges

As I thought that the stay order granted by the High Court of Andhra Pradesh is not applicable to me, I wrote a letter on 22-8-1989 to ECIL company Domalguda, Hyderabad requesting to refund service charges as per the orders of State Commission. The ECIL did not care to give a reply to this application for refund of service charges.

Submission of application u/s 27 of C.P. Act, 1986

On 26-8-1989 I had filed an application Under Section 27 of Consumer Protection Act, 1986 before the State Commission praying to take action against the authorities of ECIL for flouting the orders of State Commission (punishment under this section is imprisonment and levy of fine). The State Commission ordered posting of my application for hearing on 16-9-1989 and issued notice to ECIL authorities.

Matter sub-judice - ECIL says in a notice

Probably as a reply to my application for refund of service charges, the ECIL had issued a notice to the general public which was published in News Time and Deccan Chronicle on 26th August, 1989 stating that the matter pertaining to refund of service charges by ECIL is pending in various courts and thus became sub-judice.

Petition for vacation of Stay order

On 31-3-1989, I made a mention before the

Admission Court of High Court of Andhra Pradesh to permit me to move a Lung Motion for the vacation of stay order. The Hon'ble Judge directed to post my stay vacation petition on 1-9-1989. Accordingly, my stay vacation petition (WVMP No. 1557 of 1989) came up for hearing on 1-9-1989 before Justice Mr. Sardar Ali Khan, Judge, High Court of A.P., for hearing. The opposite party (ECIL Advocate) requested for one week adjournment. After hearing me, Hon'ble Judge directed to post the stay vacation petition on 5-9-1989 for further hearing. I have also filed detailed counter affidavit in the main W.P.No.10412 of 1989 in the High Court of Andhra Pradesh along with stay vacation petition.

Accordingly, the Stay vacation petition of mine was listed for hearing before justice Mr. Venkatrama Reddy, Judge, High Court of Andhra Pradesh on 5-9-1989. I appeared party-in-person. Mr.P. Ramachandra Reddy, Advocate for ECIL appeared in the Court. After hearing both sides, Justice Venkatrami Reddy ordered as follows :

"So far as the party-in-person Sri A. Prasada Rao is concerned, there is no interim order of stay. The respondent corporation is directed to pay the amount due to him".

The chronological order of Writ Petitions in this case are as follows :

WVMP No. 1557 of 1989
in
WPMP No. 13806 of 1989
in
W.P. No. 10412 of 1989.

Affidavit filed in National Commission

On seeing the notice of ECIL published in newspapers, I came to know that the ECIL had filed Revision Petition in National Commission, New Delhi and was numbered as RP 5 of 1989. Therefore, I had filed a counter affidavit suomoto praying the National Commission to dismiss the RP of ECIL. The National Commission, in its sitting dated 14th September, 1989 dismissed the RP of ECIL company. The text of the order of National Commission is as follows:

"Order; This revision petition cannot be entertained by us at this stage since the identical matter is

admittedly sub-judice before the High Court of A.P. in Writ Petition No. 10412 of 1989. The Revision Petition will stand dismissed on this preliminary ground leaving it open to the petitioner to approach this Commission afresh, at a later stage, if so advised and if the Law permits the petitioner so to do."

Dt. September 14, 1989. Sd./-V. Balakrishna Erady, President.

Refund of Service Charges by ECIL

The petition filed by me i/s 27 of Consumer Protection Act, 1989 came up for hearing before justice A.Laxmana Rao, president, State Commission on 23-9-1989. I had appeared before the Commission. The Advocate for ECIL filed an application before the State Commission stating that ECIL had deposited an amount of Rs. 796/- in the District Forum, Hyderabad (Chief Judge, City Civil Courts, Hyderabad) (Service Charges Rs. 400/-, interest Rs. 196 and costs Rs. 200/-). The State Commission disposed of my application and directed me to take my money from the District Forum.

Accordingly, I filed an application along with ad-

vanced stamped receipt before the District Forum for the refund of the amount. The Chairman, District Forum Hyderabad handed over a cheque No. 364447 Dt. 28-9-1989 for Rs. 796/- on 30-9-1989.

Thus, the case came to an end with a happy note on 30-9-1989 as far as I am concerned.

However, the direction of the State Commission to refund service charges to other purchasers of ECTV could not be implemented due to stay order of High Court. Therefore, I contacted the Chairman, Consumer Guidance Society of India, Hyderabad Branch to file a public interest stay vacation petition in the High Court of A.P., to vacate the stay order on behalf of other consumer of ECTV and he had assured me to do the needful in the matter. I had handed over all relevant papers to him. I hope all consumers will hear good news in the matter shortly.

Conclusion

I fought against ECIL for 4 years 2 months and lastly won the case.

OUR COMPLAINT AGAINST INDIAN AIRLINES

It would be remembered that COMMON CAUSE had filed a Complaint before the National Commission established under the Consumers Protection Act against the Indian Airlines highlighting various problems encountered by the users including flight delays, flight cancellations, difficulties encountered in securing supply of information about flights, standard of inflight catering, delays in baggage clearance, and also bringing out various factors involving the problem of safety of the passengers including the serious problem of bird hits. During the course of hearing of this petition, on the request of COMMON CAUSE, the National Commission also impleaded in it the other concerned authorities, namely, National Airport Authority, International Airport Authority of India, Directorate General of Civil Aviation, and certain important municipalities in relation to the specific issue of the menace of birds in the vicinity of airports.

The case has now been finally decided. The con-

cerned organisations and authorities have filed their comprehensive statements before the National Commission wherein they have held out specific assurances about action being taken by them in all the various spheres of passenger safety as well as passenger convenience. The statements submitted by these authorities run into hundreds of pages. They seek to indicate the action which the respective authorities have taken and continue to take for meeting these various requirements. The Indian Airlines has taken steps to expand the fleet and to ensure better facilities for effecting reservations and avoidance of cancellation thereof. The National Airport Authority and the Indian Airlines have taken various steps for installation of electronic and other systems for securing prompt information about the flights and for supplying the information to the people. Measures continue to be taken to introduce systems to expand the areas of mechanisation for expeditious handling of baggage so that its clearance is not delayed. The position

relating to the problems encountered by passengers about inflight catering has been explained. The measures taken by the National Airport Authority about the installation of various systems, including the night landing systems, have been explained. It has also been explained as to how the Indian Airlines have already set up advisory bodies in various regions for taking into consideration various aspects relating to convenience and safety of passengers. There is now a proposal of setting up consultative committees on regional basis at each airport, including therein representatives of some consumers organisations or chambers of commerce and such other representatives, including consumers organisations.

The Directorate General of Civil Aviation has submitted comprehensive information about action being taken for minimising the dangers of bird hits. A high-level Bird Strike Committee has been set up under the Chairmanship of the Secretary to the Government of India, Department of Civil Aviation. Air Field Environment Management Committees and Airport Bird Strike Committees are stated to have been constituted in all the airports. Involvement of the municipal authorities dealing with this important problem has been ensured.

From the statements submitted by these various authorities it does inevitably appear that there is yet considerable scope for effecting greater coordination

between them for achieving the objectives of ensuring greater convenience to the passengers and guaranteeing safety to them. For instance, it is evident from these statements that the Indian Airlines has been expanding its services to certain places, necessitating thereby the establishment of the entire paraphernalia of the establishment of airport and all the facilities connected therewith, even though the traffic demand to such places did not justify the extension of such services. These are matters which will continue to necessitate close coordination between these authorities and organisations with a view to ensuring that within the constraints of available funds utilisation is effected to the maximum extent possible in the interest of passenger convenience and passenger safety.

Taking into account the statements made by the respective authorities and the assurances held out therein, on behalf of COMMON CAUSE we expressed before the National Commission a general satisfaction about the constructive and positive attitude displayed by these authorities. We have also made statement before the National Commission about the initiatives which it has been pleased to take for achieving these results which are of satisfactory nature. The National Commission, with the observations on the above lines, has finally disposed of our petition on 6th December 1989.

FOR CONSIDERATION OF NEW GOVERNMENT

COMMON CAUSE has written letters to the Prime Minister and certain Cabinet Ministers drawing attention to some of the important problems which we have been pursuing. For the interest of members we reproduce hereunder the substance of these letters.

One major problem referred to the new government has reference to the matter of prices on which it has laid emphasis in its immediate priorities. On the matter of prices we have specifically drawn attention to the problem relating to the price printing on packages which obviously constitutes a very major source of leakage of revenue and causation of price increases, considering that practically 90 percent of the products presently sold in the country are in packaged form and the manufacturers continue to manipulate the prices through the strategem available under the relevant rules. This problem has been highlighted in the letter addressed to the Prime Minister on 3rd December 1989 and in an article of the Director published

in the Hindustan Times, New Delhi, of 12th December 1989. The letter is reproduced hereunder.

Dear Prime Minister,

Your very first emphasis, on assuming office, has been inter alia on tackling the problem of price rise. This is very welcome indeed. In this context I submit a matter which deserves your immediate consideration. I have been raising this matter for quite some time but the lobby of manufacturers, in collusion with certain elements in the government, has thwarted its solution.

The matter relates to **price printing on packages**. Almost 90 percent of products are now sold in the country in packaged form. The statute, embodied in the Packaged Commodities Rules prescribed under the Standards of Weights & Measures Act, lays down inter alia that price must be printed on the packages. This is an obligatory requirement.

But, there is a serious lacuna in the Rules which is being exploited by the manufacturers and the trade to the detriment of interests of the buyers as well as the exchequer. The lacuna arises from the use of one word, "MAXIMUM", in relation to the sale price, and the words "LOCAL TAXES EXTRA", which have to be printed on the packages. The problem will be exemplified, for instance, by quoting example of say one-litre tin of acrylic white paint. Price printed on it (the "Maximum Price") presently is Rs. 111.50, but the shop will normally sell it at Rs. 85; radiator waterbody of car will be actually sold at Rs. 60 whereas the "maximum price" printed on it will be Rs 75. This big margin is a manipulation between the manufacturer and the seller, to enable charging of any price that the buyer could be made to pay. With the use of the word MAXIMUM the real price remains concealed.

In the Packaged Commodities Rules the sale price has been defined in sub-clause (r) and (s) of Rule 2. Option is given to the manufacturer through these sub-clauses, and this option is the cause of whole mischief. These sub-clauses are reproduced hereunder :

- (r) Retail Sale Price' means the maximum price at which the commodity in packaged form may be sold to the ultimate consumer inclusive of all taxes, transport charges and other dues;
- 5) 'Sale Price', in relation to any commodity in packaged form means any one of the following prices namely
- (i) Price inclusive of freight but exclusive of local taxes, and where such price is mentioned on the package, there shall be printed on the package the words "Max. Price....local taxes extra".
- (ii) retail sale price, and where such price is mentioned on the package, there shall be printed on the package the words "Max. retail price ...".

The additional words "LOCAL TAXES EXTRA" are

the source of enormous leakage of revenue to the exchequer. It is estimated that loss is of the order of Rs. 2000 crores annually. The buyer is charged the local taxes (which comprise sales tax and octroi); normally hardly anybody asks for receipt (believing that he is thereby avoiding sales tax); the seller pockets the sales tax and the exchequer loses.

We have been urging that out of the two above-mentioned options (originally there were four options which sometime ago were reduced to these two) of sub-clauses (r) and (s) of Rule 2 of the Packaged Commodities Rules, the first option of "Maximum Price Sales Taxes Extra" should be deleted and the manufacturers should mark only "Retail Sale Price ...Inclusive of all taxes". This small change can greatly alter the market and the prices.

Two significant points would be involved in the suggested alteration. One is the determination of "Retail Sale Price". There is no reason why a manufacturer should not, at the point of manufacture of any batch of the product, be able to calculate the retail sale price. Broad outlines, if necessary, can be laid out by the government for the margins chargeable between the manufacturer and wholesaler and between wholesaler and retailer. Second point, which is trotted out as an excuse, is that of the existing differential in sales tax levied by state governments. We hope that some day the state governments will be persuaded in the national interest to have a uniform sales tax levy and that the sales tax will be charged at the first point as has started being done in quite a few areas and in relation to a number of products. But, in the meanwhile, the manufacturer can either calculate the retail price on averaging out the sales tax levy in relation to his sales in the states or he can group the States in two or three groups and print the retail sale price for the respective groups. Some manufacturers of all-India sales have, arising from our campaign, started adopting these measures, and this is greatly welcomed by everybody. There is no reason why this cannot be done by all manufacturers. On our persuasion the Delhi Consumers Protection Council, established under the Consumers protection Act, has passed resolution to this effect but it has not yet been implemented by Delhi Administration.

This small change in the Rule 2 of packaged Commodities Rules will mean a sea-change in the country on the price front. Everybody recognises this but nobody has

hitherto taken the courage to make this alteration. This alteration in the Rules will need to be done only by a government notification; it does not necessitate any change in the statute. I earnestly hope that you will kindly take up this matter at your personal level and not relegate it to the Ministry or Department (Department of Civil Supplies in the Ministry of Food & Civil Supplies) which has been sitting on it for many months. Photocopy of the

relevant extract of Packaged Commodities Rules is enclosed for facility of reference.

Kind regards,

Yours sincerely,
(H.D. SHOURIE)
Director

Another letter addressed to the new Prime Minister aims at bringing to his personal notice the problems being experienced in relation to the unsatisfactory implementation of the Consumers Protection Act and the problems encountered in relation to the functioning of the quasi-judicial machinery comprising of District Forums, State Commissions and National Commission. The letter is reproduced below. It is self-explanatory.

Dear Prime Minister,

Consumers Protection Act is a very important legislation passed by the parliament in December 1987. This was hailed by people all over the country as a charter for protecting the interests of consumers.

There have been lapses in the actual implementation of this Act. We filed a Writ Petition before the Supreme Court about its non-implementation, particularly about the excruciating delay in the establishment of quasi-judicial machinery in the Districts and the States, which constitutes the main plank of this legislation. The Supreme Court, in September last, directed all the States and Union Territories to set up the contemplated District Redressal Forums and State Commissions within a period of six weeks. As the orders had not been satisfactorily complied with the Supreme Court directed on the 15th November '89 that this must be done within another six weeks.

Consumers attach very great importance to the establishment of these District Forums and State Commissions for redressal of their grievances. The National Commission at the apex has already been set up and is operating. There are certain matters relating to the functioning of these bodies, and certain defects and omissions in the legislation which are now coming to light. We will take up these matters separately.

But, we write this to bring to your notice one matter which is of immediate importance for rectification. The quasi-judicial machinery contemplated for establishment under the Act consists of the following, as specified in Section 9 of the Act:

(a) a Consumer Disputes Redressal Forum to be

known as the "District Forum" established by the State Government with the prior approval of the Central Government in each district of the State by notification;

(b) a Consumer Disputes Redressal Commission to be known as the "State Commission" established by the State Government with the prior approval of the Central Government in the State by notification; and

(c) a National Consumer Disputes Redressal Commission established by the Central Government by notification."

We feel that it is an unnecessary hurdle and a pernicious principle incorporated in the above provisions wherein the State Governments are required to seek prior approval of the Central Government for the establishment of District Forums and State Commissions. This requirement of "prior approval" obviously cuts at the root of the basic necessity of decentralisation, and also subtly introduces the requirement of approval by the political party in power at the Centre before the State Governments can constitute the District Forums and State Commissions. Ostensibly, the personnel to comprise the District Forums and State Commissions have, under the present provisions, to secure the approval of the Central Government.

The factum of "prior approval" has caused excruciating delays in the establishment of the District Forums and the State Commissions as has become evident to us from the replies which are being submitted by the State Governments to the Supreme Court in relation to our above mentioned Writ Petition. We feel that the State

Governments should have the authority to set up the District Forums and the State Commissions, and determine their composition, without the need of securing "prior approval" of the Central Government. While the statute may need to be modified for this purpose we suggest that the Government of India should issue general instructions to the State Governments and Union Territories that they need not resort to the requirement of "prior approval" before setting up this quasi-judicial machinery which is obviously the basic essence of this legislation.

Another very important matter relating to the functioning of this quasi-judicial machinery is that it has been experienced that quite often the three members of District Forum and the three members of State Commission, wherever established, do not always have the time to operate together, with the result that the District Forums and State Commissions are reported to have been functioning on many occasions with only one or two members. It needs to be notified, in the Rules and also later incorporated in the Act, that the District Forums and State Commissions can exercise the authority of functioning even if two members are present and that any orders passed by them will not be deemed illegal merely on account of the fact that all the three members could not be present.

The matter of presence of all the members of these quasi judicial bodies, during the hearing of any particular case, assumes importance also in relation to the functioning of the National Commission which, under the Act, consists of five members. We feel that on account of the requirement of the presence of five members the regular sittings of the National Commission would inevitably remain handicapped, particularly when larger number of appeals emanate against the decisions of State Commissions as well as the expansion of the number of original petitions comes about. We consider, therefore, that similar provision needs to be made in regard to the functioning of National Commission, that any order passed by the National Commission by not less than three members including the President will not be considered illegal merely on the ground of all the five members not being present.

We understand that the present term of National Commission is operative only till 26th December 1989. Proposal for extension of the term of existing members

appears to have already been submitted to the Government of India long ago but decision does not appear to have been so far communicated to the National Commission. This is a matter of great concern to the consumers from the viewpoint of the petitions and appeals which are before the National Commission and would be coming to it in the course of next few weeks. We also understand that the appointment of members of the National Commission has, according to existing rules, to be approved by the Appointments Committee of the Cabinet. If this is correct, such centralisation does not appear to be necessary and the procedure requires to be modified. There is no reason why the concerned Ministry/Department should not be able to take final decision about extension of the term of members of the National Commission unless there is anything specific which necessitates approval of a central authority.

We earnestly hope that the above matters relating to this important legislation of Consumers Protection Act will receive your urgent consideration. I am separately sending a copy of this letter to the new Minister of Food & Civil Supplies under whose jurisdiction the Consumers Protection Act operates.

Kind regards,

Yours sincerely,
(H.D. SHOURIE)
Director

Through the other letter, addressed to the new Industry Minister, we have brought to his personal notice the unfortunate stratagems adopted by two public sector undertakings, namely, Maruti Udyog Ltd and Hindustan Photo Film Manufacturing Co. Ltd. The notes on these subjects, as forwarded to the Minister, are self-explanatory. These are reproduced below

MARUTI UDYOG LTD.

Recent invitation of applications by Maruti Udyog Ltd. for their advertised new model car Maruti 1000, from the viewpoint of general public, constitutes almost a serious scandal. Public sector enterprises are expected to function with such moral rectitude that they set example for the others. Following facts relating to the invitation of

applications by this public sector enterprise speak for themselves :

- (i) Public announcement was made inviting the applications from 15th November 1989. It was announced that the last date was 28th November 1989. It was also announced that the application forms for the purpose were available through the agents appointed all over the country. Our information is that the total number of agents is about 60.
- (ii) Copy of the application form is attached. From its "Terms and Conditions" it will be noticed that it was explicitly announced that the Company will exercise the right to close the receipt of applications any time before 28th November after receipt of above 25,000 applications. Indication given through the press has been that the total number of cars of the new model Maruti 1000, which will be made available, is expected to be of the order of 25,000. It has not explicitly been stated as to when the 25,000 cars will become available, but general indication given to the Press is that these 25,000 cars will become available in three years period.
- (iii) Applicants were asked to make advance deposits of Rs. 25,000 each along with the applications. Advance deposit, thus, was asked for in relation to a product about which the people have not yet been informed as to what the ultimate price would be, nor have they been informed what its specifications will be. This by itself tantamount to an unfair trade practice.
- (iv) The reports appearing in the Press show that the company printed as many as 4.5 lakh applications in the first instance and ordered the printing of another 2.5 lakh applications. Ostensibly these application forms were distributed to the agents all over the country.
- (v) The company was positively aware that there would be an enormous demand for this new modal car, based on the experience of the previous models, and that there is great likelihood of people seeking allotments for re-selling on premium. General reports are that the agents of the company had received a very large number of applications, much more than the stipulated 25,000, even before 28th November. Despite this, the company has extended the date for receipt of applications till 14th December.
- (vi) It has generally been said that through this strategy the company has secured applications running into a few lakhs and has secured deposits amounting to hundreds of crores. We do not have any positive information about the number of applications so far received by the company. Our information is that some agents in Delhi have received as many as 10,000 applications each. If the total number of applications received by the company is of the order, say, of 200,000, the company will have by now collected Rs 500 crores in the shape of these deposits.
- (vii) In the printed instructions it will also be noticed that it is stipulated that the company will give seven percent interest on the deposits of those 25,000 applicants whose applications eventually succeed, through the computerisation process of allotment which is proposed to be adopted. The deposits of all the remaining applicants will be refunded, without interest, and the refund will take place after three months from the closing date. This implies that the amount of almost about Rs. 500 crores comprising deposits of the people, will remain with the company for a period of at least four months or even more, taking into account the period of invitation of applications. This in itself is also tantamount to serious perpetration of unfair trade practice.
- (viii) Within the availability of 25,000 cars the company will remain under obligation to meet the requirements of certain categories of persons as adjudged by a previous Supreme Court decision and recorded in the application form. The company has also reserved its rights to make allotments of the cars upto 15 percent of production to defence organisations, government departments, public sector organisations, fleet customers for use as taxis, etc. To this extent the availability even of the total number of 25,000 cars will be reduced.

HINDUSTAN PHOTO FILM MANUFACTURING COMPANY LTD.

(Uchagamandalam-643005)

NOTE CONTAINING INFORMATION REGARDING RECEPTION EXERCISED BY THE PUBLIC SECTOR ENTERPRISE "HINDUSTAN PHOTO FILM MFG CO LTD" AGAINST CONSUMERS OF THE FILMS MARKETED BY IT

Hindustan Photo Film Manufacturing Co. Ltd is marketing photographic films and photographic printing paper. This note particularly deals with certain unfair trade practices being utilised by this public sector enterprise in the marketing of photographic films. In particular, reference is made to the photograpic films of the variety of 35 mm and 120 mm, which are sold all over the country through the photographic dealers and others.

The company is causing a serious violation of the statutory provisions of Packaged Commodities Rules promulgated under the Standards of Weights & Measures Act. These Rules inter alia provide that the manufacturers are under obligation to print on the packages of their products specific information containing the name and address of the manufacturer, description and quantity of contents, month/year of manufacture, etc. In particular, the Rules provide that the price of the product contained in the package must be printed thereon. Two options of the price printing have been given in the Rules. One option is to print : "Maximum price Local Taxes Extra". The other option is to print : "Retail Sale Price Inclusive of all taxes". This is an obligatory requirement and there cannot be any escape from it.

This public sector company is not printing the price on the film packages. This will be evident from the enclosed package.

COMMON CAUSE referred this matter to the company. An interim reply was sent by the company stating that the matter was being considered. Instead of complying with the statutory requirement of printing the price the company has resorted to a subterfuge which is indicative of the blatant violation of the statutory requirements.

In the Packaged Commodities Rules there is a provision that where a product is for use as raw material by an industry the package containing it need not bear the price marking on it. It will be observed from the enclosed film package of this company that they have gone to the extent of printing on it that the film is "specially packed for the exclusive use by the photographic industry as a raw material". The film is being sold to anybody who wants it for use in his camera, irrespective of whether he is a amateur or professional. It is positively not for use by the "photographic industry" and is certainly not used as "raw material". By using this strategem, thus, the company is blatantly violating the statutory requirements of printing the price.

It is singularly unfortunate that a public sector undertaking has resorted to this subterfuge. COMMON CAUSE has already taken up the matter relating to the non-printing of price on the imported film packages, such as, of KODAK and KONICA. We have noted with satisfaction that another company in India which is now marketing the film SUPER-PLUS is marking the price on it. A sample of the package of SUPER-PLUS film is also enclosed herewith. While the agents and companies importing the films of KODAK and KONICA are violating the law, for which we have already initiated action under the Consumers Protection Act, it is a matter of great concern that the public sector undertaking Hindustan Photo Film Manufacturing Co. Ltd. has resorted to the above mentioned strategem and subterfuge to meet the statutory requirement of price printing.

TO : ALL MEMBERS OF COMMON CAUSE

NOTICE TO MEMBERS

The Annual General Meeting of COMMON CAUSE Society will be held on Saturday the 20th January 1990 in the Constitution Club, Rafi Marg, New Delhi at 10.30 a.m. Members are welcome to the meeting. Agenda will be as follows:-

- (i) Consideration of the Annual Report and adoption of the Annual Accounts along with Auditors' Report for the year 1988-89.
- (ii) Appointment of Auditors for the year 1989-90.
- (iii) Activities and Programmes.
- (iv) Elections

It may kindly be noted that in accordance with Rule 15 of the Rules & Regulations of the Society if within half an hour of the beginning of the meeting the quorum is not present, the meeting shall stand adjourned for the same day and will be held after another half an hour, and the members present in the adjourned meeting shall form the quorum of the meeting.

H.D. SHOURIE
Director, COMMON CAUSE

AUDITORS REPORT

We have audited the attached Balance Sheet of COMMON CAUSE as at 31st March 1989 and the annexed Income and Expenditure Account of the Society for the year ended on that date which are in agreement with the books of account maintained by the Society.

In our opinion and to the best of our information and according to the explanation given to us, the said accounts read with the notes thereon give a true and fair view :

- (i) in case of the Balance Sheet, of the state of affairs of the Society as at 31st March 1989 and
- (ii) in case of Income and Expenditure Account of the excess of Income over Expenditure for the year ended on that date.

for RAO & RAVINDRANATH
Chartered Accountant

Sd/-

Place : New Delhi A.S.R. GOPAL RAO

Partner

ANNUAL REPORT FOR 1988-89

COMMON CAUSE has maintained its tempo of picking up common problems of the people for securing redress through highlighting them or taking them to the concerned organisations and government departments, or eventually taking them to courts. It continues to have the privilege of support from all quarters including the people and the press.

Membership of the organisation continues to be satisfactory. A number of members who had previously been taking the membership on annual basis have of late been converting to life membership, to avoid the hassle of having to secure renewal every year and also to provide greater direct support to the organisation.

The problem of allotment of a piece of land to the organisation for building a small office continues to hang fire. The concerned government departments continue to show sympathy to the requirement but beyond that the matter

has not progressed. The previous Minister of Information & Broadcasting who was closely acquainted with the work of the organisation in relation to its contribution also to the cause of consumerism, with which he was previously concerned as the Minister incharge of Food & Civil Supplies, wrote to the Lt Governor; the Chief Executive Councillor had also shown his interest; but the fact remains that the organisation has not yet been able to get the plot allotted to it.

One important handicap which the organisation continues to encounter is the absence of actual help of experienced and knowledgeable people who can on voluntary basis take up individual problems for detailed study and for preparation of the material for enabling action to be initiated either by taking up the problem with the concerned government department or to the courts. We of course receive promises of help from many persons; they are indeed greatly inclined and motivated to help; but when it comes to actually undertaking the study of individual problems, for determining the pros and cons in detail, for also assessing the legal position relating to the issue, the resolve unfortunately dries up. They continue to give all the support, but the actual voluntary input remains unfulfilled. This hampers expansion of the effort and imposes severe strain on our limited available resources.

PROGRAMMES & ACTIVITIES

Despite the above-mentioned handicaps the organisation has continued space with its various activities and programmes. Problems of consumerism continue gathering more momentum, with greater awakening being engendered among the consumers about their rights and the opportunities becoming available to them to seek redress in the matter of perpetration of unfair trade practices and supply of sub-standard and faulty goods as well as the provision of deficient services. The infra-structure envisaged under the Consumers Protection Act has not yet taken adequate shape all over the country. District Forums are to be set up in all the states and union territories. Unfortunately, even till now, only about 60 Forums have been established and the State Commissions have yet to be established in large number of the States. Only the advisory bodies in the shape of Consumers Protection Councils, as envisaged under the Consumers Protection Act, have been set up in the states and union territories. These advisory bodies can at most discuss the problems and pass resolutions. They do not have the authority to effect implementation of their decisions. The establishment of District Forums and the State Commissions constitute the primary plank of effectiveness of the Consumers Protection Act. The National Commission has started operating. Taking into account the enormous delays which have been coming about in the establishment of District Forums and State Commissions, COMMON CAUSE took the initiative of filing a Writ Petition in the Supreme Court highlighting the omissions and delays in the implementation of this important statute. When the case eventually came up for hearing in September 1989 the Supreme Court issued direction to all State Governments that they must establish the District Forums and State Commissions within a period of six weeks and report the fact to the court. The case again came up before the Supreme Court on the 15th November 1989. By that time some State Governments had taken more steps but the position was still not very satisfactory. Thereupon the Supreme Court has again issued a direction to the State Governments and given them another six weeks for completion of the establishment of these quasi-judicial authorities contemplated under the Consumers Protection Act. The case is now scheduled to come up before the Supreme Court on 17th January 1990. The initiative taken by COMMON CAUSE has brought pressures on the State Governments to expedite the implementation of the Act which, otherwise, may have continued to languish for long.

Meanwhile, certain important matters have been filed by COMMON CAUSE before the National Commission established under this Act. A petition was filed against the Indian Airlines highlighting the various problems encountered by the passengers including flight delays, flight cancellations, inadequate standard of inflight catering, delays in baggage clearance, inadequacy of supply of information about flights, and certain important aspects of safety of the flights. A petition was filed against Delhi Electric Supply Undertaking highlighting various problems encountered by the consumers, including billing delays, billing defects, voltage fluctuations, load shedding, theft of electricity etc. Another complaint filed before the National Commission dealt with the problem of inadequacy of the effort on the part

of the Government of India and State Governments in the supply of iodised salt in accordance with the standards prescribed for it under the Prevention of Food Adulteration Act. Another important petition filed by COMMON CAUSE relates to the serious danger involved in inadequate quality control of the Intra-Venous Fluids which are extensively used in hospitals for administration to the patients intra-venously into the blood stream. All Drug Controllers of the country as well as the Drug Controller of the Government of India have been impleaded in this case.

Recently we have also filed before the National Commission a petition relating to the outstanding deposits of a very large number of persons which have not hitherto been refunded by Lohia Machines Limited of Kanpur. This company had invited applications for the booking of scooters about seven years ago, with the indication that those who may later decide to cancel the allotments would be entitled to refund of their deposit of Rs. 500 along with interest at 7%. It is gathered that even till now over 400,000 applicants have not received the refund of their deposits. On the submission of our petition the National Commission has issued notice to the company.

COMMON CAUSE has also been taking initiatives in filing certain important matters before the Delhi Consumer Disputes Redressal Forum with a view to highlighting specific issues of general importance. For instance, a particular consumer product, namely, imported films used for photography for ordinary cameras were brought to the notice of the Delhi Forum in relation to the non-printing of price thereon, which is a statutory obligation under the packaged Commodities Rules promulgated under the Standard of Weights & Measures Act. This case was specifically picked up in relation to the widely used KODAK films.

The Delhi Forum passed an order directing the company to start printing the price on the film packs and gave them a period of one month for doing so. On the non-implementation of this direction by the company the matter was again reported to the Delhi Forum which has initiated further action for imposing penalty on the company, but the matter has since been taken up by the company in appeal before the State Commission. In relation to the films action has also been initiated by COMMON CAUSE about the other imported films in the country and will be further pursued in regard to the films manufactured in the country by the public sector organisation Hindustan Photo Film Manufacturing Company Limited.

HOUSE TAX

An important development relating to house tax in Delhi, during the year of report, was the emergence of sudden notices by the Delhi Municipal Corporation and New Delhi Municipal Committee issued to some houseowners enhancing the Rateable Value many times the previously determined RV. This caused considerable hue and cry. Delhi Administration thereupon decided to constitute a high-level committee for going into the entire problem of assessment of house tax. It was envisaged that the committee would submit its report before the end of September 1989. The report has till now not been submitted.

PENSIONS

The case relating to pre-1973 pensioners is still languishing and has not yet come up for final decision in the Supreme Court. It has often been appearing in the 'Cause' list of the court but the final hearing has not come about. We earnestly hope that in the coming few weeks the final decision will be taken.

OTHER MATTERS

Numerous other problems, of individual interest as well as collective interest, continue coming up before COMMON CAUSE from various parts of the country. We are deeply indebted to the people for reposing confidence in COMMON CAUSE for being able to deal with these various problems. Within our limited resources we continue to deal with them to the best of our capability.

We convey our grateful thanks to all members and to all others who have throughout been extending to COMMON CAUSE their support and help.

BALANCE SHEET AS AT 31ST MARCH, 1989

LIABILITIES	AMOUNT Rs.	ASSETS	AMOUNT Rs.
CAPITAL FUND ACCOUNT		CASH IN HAND	150.00
LIFE MEMBERSHIP SUBSCRIPTION		CASH AT BANK	18,023.00
Opening Balance 1.4.88	2,46,976.00	STAMPS IN HAND	946.75
ADD : Subscription received		FIXED DEPOSITS	
during the year	<u>38,550.00</u>	with Indian Bank, Shanti Niketan	3,45,000.00
CORPUS FUND		with Steel Authority of India Ltd.	1,35,000.00
Opening Balance 1.4.88	2,67,534.90	INTEREST ACCRUED	
ADD : Donation received		Opening Balance	43,828.27
during the year	<u>13,873.00</u>	ADD : On Reinvestment Fixed Deposits	
RESERVE ACCOUNT		with Indian Bank, Shanti Niketan,	
Opening Balance	12,000.00	New Delhi	<u>17,720.31</u>
Expenses Payable	2,356.87		61,548.68
		LESS : Interest received	
		on maturity	14,410.00
			47,138.68
		On Fixed deposit with	
		SAIL, Opening Balance	5,805.00
		ADD : On reinvestment	
		Fixed Deposit with	
		Steel Authority of	
		India Ltd.	14,928.70
			67,872.38
		FURNITURE	
		Opening Balance	3,879.00
		ADD : Additions	<u>3,497.00</u>
			7,376.00
		Less : Depreciation	737.60
			6,638.40
		OFFICE EQUIPMENT	
		Opening Balance	516.80
		LESS : Depreciation	<u>77.50</u>
			439.30
		DEFICIT ACCOUNT	
		Opening Balance	7,447.91
		LESS : Excess of Income	
		over Expenditure	<u>227.66</u>
			7,220.25
	5,81,290.77		5,81,290.77

NOTE : Subscriptions from members have been accounted on cash basis.

AS PER OUR REPORT OF EVEN DATE

INCOME AND EXPENDITURE ACCOUNT FOR THE YEAR ENDED 31ST MARCH, 1989

EXPENDITURE	AMOUNT Rs.	INCOME	AMOUNT Rs.
Rinting & Stationery (Including printing of periodicals)	30,222.40	SUBSCRIPTION FROM MEMBERS Ordinary	14,258.00
Duplicating Expenses	4,228.50	Associate	6,400.00
Postage, Telegram & Telephone Expenses	12,084.80	INTEREST RECEIVED From SB A/C	2,233.24
Part time Staff	22,000.00	From Fixed Deposit with bank	27,499.96
Other establishment Expenses	2,400	INTEREST ACCRUED On Reinvestment Fixed Deposit with bank	17,720.31
Conveyance Expenses	6,100.00	On Fixed Deposit with SAIL	14,928.70
Legal Expenses	2,728.00	Miscellaneous Incomes	80.50
HONRARIUM TO AUDITORS - Honrarium	500.00		
Books & Periodicals	788.60		
Repairs & Maintenance	48.00		
Bank Charges	141.00		
Staff Welfare Expenses	111.15		
Miscellaneous Expenses	725.00		
Depreciation on Assets	815.10		
Excess of Income over Expenditures	227.66		
TOTAL :	83,120.71	TOTAL :	83,120.71

AS PER OUR REPORT OF EVEN DATE

For RAO & RAVINDRANATH
CHARTERED ACCOUNTANTS

S. RANGANATHAN
PRESIDENT

H.D. SHOURIE
DIRECTOR

(A.V. RAVINDRANATH)
PARTNER

BRIG. R.I.N. LUTHRA
SECRETARY

U.C. DUBEY
TREASURER

Place : New Delhi
Date :

"COMMON CAUSE"

Society for ventilating common problems of the people

JOIN COMMON CAUSE AND TELL OTHERS TO JOIN

COMMON CAUSE is registered society. It has membership spread all over the country.

You can become & member. For membership subscription, see below. Periodical "COMMON CAUSE" containing invaluable material goes free to members.

Governing Council of COMMON CAUSE includes persons of eminence such as a former Auditor General of India, Governor, Chief Secretary, Member of Central Board of Revenue, Director General Indian Institute of Foreign Trade, Major General Area Commander, Brigadier, Senior Advocate etc.

Its achievements include Supreme Court verdicts regarding extension of pensionary liberalisation benefits to all pre-1979 pensioners family pension benefits to all pre-1964 pensioners and restoration of pension commutation to all pensioners, these various benefits reaching over two million pensioners; straightening out of the excruciating problems of property tax through supreme Court Judgement; developing conditions for abolition of estate duty; smoothing out the areas of income tax, wealth tax, gift tax through representations to the Finance Ministry; Delhi High Court verdict relating to excessive electricity charges based on defective and stopped meters; bringing about conditions which necessitated bifurcation of telephone department and postal department; initiating action in various areas of consumerism etc.

HELP "COMMON CAUSE" TO HELP YOU. THIS IS A NON-PROFIT, NON-POLITICAL & VOLUNTARY ORGANISATION AND IS AT THE SERVICE OF THE PEOPLE FOR VENTILATING AND TAKING UP THEIR PROBLEMS. ASK FOR A COPY OF ITS PERIODICAL.

FOR TAKING MEMBERSHIP OF COMMON CAUSE SIMPLY SEND US THE FOLLOWING PARTICULARS AND SUBSCRIPTION.

NAME.....

ADDRESS..... (IN CAPITAL LETTERS)
(including Telephone)

1. MEMBERSHIP FEE: Annual fee for the individual Membership Rs 25/-. For two years Rs. 50/- Life-Membership for individuals Rs. 150. Annual Fee for Association Membership for Societies and organisations Rs- 100/-.
2. Bank Draft/Postal Order/Crossed Cheque be sent to Secretary, COMMON CAUSE at address: C -381, Defence Conlny: New Delhi-110024. Kindly remit preferably by Draft/Postal Order/Money Order to avoid disproportionate bank commission and delay in case of outstation cheques.
3. Kindly give full address, also at bottom of Money Order if fee is forwarded through M.O. Quote Membership number while remitting renewal fee. Membership takes effect from the date of enrolment.

COMMON CAUSE
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Phone: 615064.

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