COMMON CAUSE

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WE ONLY SHOW THE WAY

We can claim only to show the way. We cannot solve all the problems. That is an impossible task.

People from all parts of the country have started referring to us their problems. Most of these are their individual problems; of course every individual problem too has common ramifications, but basically they are the problems being encountered by them individually; non-refund of deposit, non-issue of shares, contended wrong calculation of pension or wrong withholding of increment, wrong dismissal from service, inflated electricity bill, street light not functioning, drains not cleaned, telephone fault and numerous such like. We have repeatedly pleaded that it is not possible for us to deal with individual problems. We can at best attempt to take up collective and common problems.

There are numerous common problems too which are referred to us. We welcome them and initiate whatever action is possible. During the past few weeks such problems received include, for instance, delay in transmission of registered letters, defacement of public places and public transport as medium of advertisements by political parties and others, medical clinics run by unregistered practitioners, noise pollution by vehicles with defective silencers, deprivation of "standard deduction" to persons retired from private service, instances of cases which have lingered over 100 hearings and of one pending for 26 years, allotment of housing plots by a state government to its legislators, discriminations between residents and non-residents of a state in fees charged in engineering colleges of that state, and such problems which affect all.

1. Help to spread our membership, for strengthening the cause.
2. Life membership fee for individuals is only Rs.250; Rs.50 annual membership for individuals; Rs.200 annual fee for associations and organisations. Send crossed cheque/DD/M.O. No form is required; send your complete address, in capital letters.
3. Why waste money on sending registered letters to us? Why put many staples. Check up that gum penetrating the envelope flap does not spoil the letter. We notice these problems daily among the numerous letters we receive.

It will have been noticed that over the years we have taken up certain major common problems for redressal, either by the executive or failing that to the Supreme Court or High Court. Our attempt has throughout been to demonstrate that this can be done, by organisations and individuals. We had thereby tried to show the way, to provide guidance, to demonstrate that instead of merely complaining and depending on others initiatives should locally be taken for tackling the problems. It is a matter of gratification that increasingly citizens are weaving themselves into organisations and associations, for fighting the common causes, and numerous public interest cases are filed in courts. This is a very welcome and healthy development. To the extent that COMMON CAUSE has been instrumental in stimulating such effort we feel greatly recompensed. To that extent we have succeeded in showing the way.

Regn No. RNI 39331/82

LEASE-HOLD CONVERSION

Delhi Development Authority, with the ostensible approval of the Govt. of India and Delhi Administration, has entered upon the task of converting lease-hold plots into free-hold. Considerable effort appears to have gone into this exercise. Eventually DDA issued two attractively printed booklets containing detailed information about the stipulated conversions of building plots as well as the residential flats constructed on lease-hold land. Details were provided in these booklets about the costs that would be involved in effecting conversions; instructions were incorporated for submission of applications alongwith the requisite documents for securing the desired conversions.

The matter is of obvious importance to the residents of Delhi. Almost about 100,000 plots, on which houses or commercial premises have been constructed, and about 300,000 flats built on lease-hold land are involved in this exercise. It has been prescribed that the applications must be submitted alongwith the required payments before 31.3.1993, whereafter the charges will stand further enhanced in accordance with escalated land prices.

Whereas the people in general are obviously desirous of getting the lease-hold arrangement converted into free-hold, in order to secure a heritable and transferable title, there has been a general feeling that there were certain important lacunae in the prescribed requirements and procedures. A large number of allottees of plots, where the plot size was less than 150 square meter, felt that it was most unfortunate that they were being compelled to secure the conversion on the payment of amounts which were quite hefty from their viewpoint. Some underprivileged members of the Society and persons of the level of Class IV government servants, who had secured allotment of small plots of sizes between 50 square meter and 150 square meter felt that it was impossible for them to find the required amounts for securing the conversion. The conversion had been made compulsory for them in this scheme. They felt extremely perturbed. They had built houses on the plots from their meagre resources and had lived in them for 15/20 years. It would be most absurd to contemplate that they could now be thrown out of their houses for not securing conversion because of non-payment of the prescribed amounts. It was also felt by the people in general that the amounts prescribed by DDA were very high. These appear to have been motivated primarily for collecting the stated amount of Rs.2000 crores by DDA for this scheme. People thus felt that they were being put under severe financial pressures for securing the desired conversion. There was another element of the allottees. These were of the plots and tenements provided to them in these colonies were based on the properties left behind by them on migration to India at the time of partition. They felt very disturbed at the requirement of finding hefty amounts for securing the conversion whereas they had throughout been operating on the basis that the allotments had been made to them on "cost" basis with only a nominal ground rent.

Taking into consideration all these various factors we took the initiative of filing a Writ Petition in the High Court. It will be of interest to the members to acquaint themselves with the contents of the Writ Petition. Therefore, we have considered it appropriate to reproduce the Writ Petition in this issue of the periodical.

WRIT PETITION

IN THE HIGH COURT OF DELHI AT NEW DELHI

CIVIL WRIT PETITION

COMMON CAUSE Vs UNION OF INDIA
DELHI ADMINISTRATION
DELHI DEVELOPMENT AUTHORITY

PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A WRIT IN THE NATURE OF MANDAMUS OR SUCH OTHER APPROPRIATE WRIT, DIRECTION OR ORDER TO THE RESPONDENTS DIRECTING THEM NOT TO PUT INTO EFFECT THEIR PRESENT SCHEME FOR THE CONVERSION OF LEASE-HOLD PROPERTY INTO FREE-HOLD ON THE GROUND THAT THE SCHEME IN ITS PRESENT SHAPE IS ULTRA VIRES THE CONSTITUTION BEING VIOLATIVE OF ARTICLES 14 AND 21 THEREOF.

(For avoiding the burdening of this reproduction we have deleted certain opening paragraphs of the Writ Petition wherein the broad particulars of the conversion scheme have been incorporated. Essentials of the Writ Petition appear in the paragraphs that follow.)

"That there are nearly 200,000 DDA flats, over 100,000 plots in cooperative housing societies and rehabilitation colonies and 80,000 tenements in group housing societies, accounting for about 400,000 allottees. The total amount of money that the DDA thus hopes to collect by way of conversion charges is roughly Rs.2000 crores.

That certain features of the scheme are such that they are violative of the provisions of Articles of 14 and 21 of the Constitution inasmuch as they are blatantly arbitrary in nature and will impose burdens on the allottees of flats, tenements and plots to an extent which may cause them extreme hardship and which do not have correlation with the objective to be achieved, i.e. the extension of facility of ownership, on free-hold basis, in respect of the flats, tenements and plots of the aggregate number of 400,000 which have hitherto been operative on lease-hold basis. Following specific features of the scheme need to be considered in this regard.

(i) The scheme has made it compulsory for any person who may have purchased a flat (say of MIG/SFS-1 type) about 25 years ago at a price approximately Rs.20,000, to spend his life in it after retirement, or a person of class-IV category who purchased a flat of LIG variety on payment of approximate Rs.10,000 two decades ago, to pay, respectively, the amounts of Rs.21,250 and Rs.15,000 if the flats are located anywhere in the Central Zone defined in the scheme such as comprising areas of Punchkuin Road, Jhandewalan, Minto Road, Jain Mandir Road; and the amounts of Rs.17,000 and Rs.12,000 respectively if the flats purchased are located anywhere in the South Zone, which include areas such as Lajpat Nagar, Nizamuddin, Jangpura and Kalkaji etc. These persons may not want to get the premises converted into free-hold because they may have no intention of selling these flats. Moreover, no stipulation was made with them at any prior stage, and particularly when the lease deeds were executed a couple of decades ago, that these persons would have to compulsorily acquire free-hold rights and for that purpose they would have to pay conversion charges at the rates now detailed in the scheme.

(ii) That similar position arises in respect of the persons who acquired plots of size between 50 sq mtrs and 150 sq mtrs, say 25 years ago, and who built their houses on these plots by spending their life time savings. For a person who purchased a plot of say 125 sq mtrs in an area of Central Zone or South Zone, as mentioned in the foregoing sub-paragraph, the conversion charge compulsorily payable for the conversion will be of the order of Rs.45,000 for the Central Zone and Rs.28,000 for the South Zone. These persons may not have the means to defray this much expenditure and in any case they may not be interested in selling their houses and do not, therefore, desire any special benefit from the proposed conversion, which in any case was never stipulated at the time when they originally took these plots on lease.

(iii) That an important consideration in the case of those persons who acquired the flats or plots would be that if a person is indigent or a person of very small means who cannot in any case pay the

amount which is now being compulsorily demanded from him, the question arises whether DDA will evict such person from the flat that he has occupied for the last 20/25 years or plot on which he had built his house. The uncertainty caused by this conversion can be a very severe problem for such persons.

(iv) That another matter of consequence in the case of any persons who may have over the years converted a part of the residential to non-residential use (of the nature which is permissible) is additional burden which is being imposed on such allottees of flats and plots. In the scheme a schedule has been provided for the levy of additional charge in such cases, taking into account the percentage of the area of flat/plot which has been put to non-residential use. From the formula provided for the calculation of the conversion charge it follows that for a person in possession of a MIG/SFS-1 flat the additional payment, for non-residential use of say 30% of the area of plot, will be of the order of about Rs.40,000 and additional amount payable for similar use in the case of a flat will be of the order of Rs.60,000 where the plots/flats are in the Central or South Zone.

(v) That the quantum of conversion charge and the formulae evolved for the purpose of calculating the conversion charges for the respective types of conversion also need to be considered for determining whether these are based on any logical criteria or whether they are the result of sheer arbitrariness, determined merely for the reason of collecting funds from the scheme. In this context it is noteworthy that where the amounts of Rs.15,000 or Rs.30,000 are scheduled for being charged for the conversion, either for the flats or the plots, the ground rent being presently paid may not be more than Rs.100 or Rs.150 per annum. Taking account of this quantum of ground rent it is obvious that the conversion charge being levied would be equivalent to ground rent of 150 years to 200 years and that the interest accruing on the amount of Rs.15,000/Rs.30,000 may itself be much more than the ground rent which presently being charged. These facts are indicative of the unrealistic determination of the conversion charges and the arbitrariness of the base of the prescribed schedules.

(vi) That still another important matter relates to certain housing colonies which were established as rehabilitation colonies for rehabilitation of the person displaced from West Punjab at the time of partition of the country. The colonies such as certain portions of Lajpat Nagar, Patel Nagar, New Rajinder Nagar, are such colonies. The plots and tenements in these colonies were given to the displaced persons on special terms which are positively different from the terms on which the flats and plots have been given subsequently in many other housing colonies. Attached herewith are photocopies of the lease deeds executed in Lajpat Nagar area, in respect of tenements and flats, and it will be observed in these lease deeds that the word used is "cost", by scoring out the word "premium" in respect of the amount which was charged from the allottee. In these colonies, the ground rent has continued to be charged merely on the nominal basis of Rs.1 per 100 sq yds. In Patel Nagar, thus, the ground rent even presently paid is Rs.8 for 800 sq yds plots. The case of these rehabilitation colonies has therefore necessarily to be considered on a different basis. The plots and tenements were allotted at that time to the displaced persons under the Displaced Persons (Compensation & Rehabilitation) Act 1954 (Act 49 of 1954). These allotments were made taking into account the compensation that was payable to these displaced persons against the property left behind by them in Pakistan. Therefore, the amount paid by them was tantamount in fact to the payment of price which accounts for the word "cost" being used in place of "premium" in the deeds executed with them. The mere fact that the flats and tenements in these colonies continued to be treated as leased properties and the allottees continue to pay the nominal lease amount should not now be viewed against them for levying on them conversion charges of the same nature as payable by other lease holders. It is gathered that in respect of the allotments made to displaced persons in the rehabilitation colonies it was stated on the floor of the Parliament

on behalf of the Government that the allotments had been made on "no profit no loss basis". These points are obviously relevant for consideration of the case of rehabilitation colonies as distinct from other colonies.

(vii) It is provided in the scheme that no conversion charges will be recoverable where the plot is less than 50 sq. mtrs. This implies that if a person was allotted plot of 51 sq. mtrs. he will compulsorily have to pay prescribed conversion charges whereas a person with 50 sq. mtrs. will secure the conversion free of any such charge. Where the plot is more than 500 sq. mtrs. in size the conversion will not be allowed at all. No justification is given in this regard. Where a person had taken a plot of more than 500 sq. mtrs. and had built on it, and if he for his personal or family reasons does not wish to hold on to it and wishes to transfer its ownership, he is disabled from doing this.

(viii) In the scheme it has been prescribed that the conversion charges mentioned in it will be applicable only till 31.3.1992 implying that subsequent thereto the charges will be levied on the basis of the notified prices of land then applicable, which will inevitably put additional burden on him if he cannot find the conversion charges now and may choose to seek conversion later.

That it will thus be observed from the particulars furnished in sub-paragraphs (i) to (vii) of paragraph 5 that the scheme of conversion of lease-hold to free-hold, as declared in the above-mentioned booklets published by Delhi Development Authority, is replete with inequities what are indicative of its salient features being based on arbitrariness, illogicality and in utter disregard of the realities, with the objective only of unjust enrichment of the Respondents through raising funds from such conversion. The scheme is thus violative of the provisions of articles 14 and 21 of the Constitution on the following among other grounds :

GROUNDS :

That the Respondents are about to implement a scheme of conversion of lease-hold plots, tenaments and flats in Delhi to free-hold on the basis of the scheme notified through two booklets issued by Respondent No.3, relevant portions whereof are presented in Annexure A, and in respect of which various anomalies and problems have been submitted in sub-paragraphs (i) to (vii) of paragraph 5 above. These are :

That the grounds have been detailed in sub-paragraphs (i) to (vii) of foregoing paragraphs. These are :

(a) Scheme has been made compulsory in respect of all flats or tenements allotted by Delhi Development Authority, i.e. a person who may have spent the amount of Rs.20,000 for MIG/ SFS-1 flat, or Rs.10,000 for LIG flat, is now expected to pay conversion charge respectively of Rs.21,250 or Rs.15,000, where the flat is located in the Zones defined as Central Zone of the city; these amounts would be Rs. 17,000 and Rs.12,000 respectively if the flats are in South Zone. When the flats were allotted, say two decades ago, no indication was given that the allottees would have to compulsorily secure their conversion to free-hold and that for the purpose they would have to pay amounts of this size besides the charges of registration etc.

(b) Likewise, the scheme has been made compulsory for the allottees of plots of more than 50 sq mtrs and upto 150 sq mtrs; a person who secured allotment of a plot of say 125 sq mtrs 20 years ago and has built house on it from life-time savings, has now to pay the conversion charge of Rs.45,000 if the plot is in the Central Zone and Rs.28,000 if the plot is in South Zone.

(c) No stipulation was ever made at the time of allotments of the flats or plots that these would have

to be compulsorily converted into free-hold, and the mental agony can be imagined of those who may be totally unable to pay the amounts now demanded because they do not know what will be in store for them considering that the scheme for them has been made compulsory. A person who acquired a small plot of say 60 sq mtrs, and built a small house 20 years ago, would now in terms of the scheme face the uncertainty whether he will be allowed to live in the house or thrown out of it.

(d) Provision has been made in the scheme for payment of much higher conversion charge where a portion of the flat or plot may have been put to non-residential use (within the permissible limits). The additional payment can go upto Rs.60,000 in the case of a flat and Rs.40,000 for the plot where a portion, say 30 percent, of those has been put to non-residential use.

(e) The quantum of conversion charge is being compared by the people with the amount of ground rent presently paid by them. Where the ground rent may be say Rs.100 or Rs.150 per annum, and the conversion charge aggregates to Rs.15,000 or Rs.30,000 the charge is equivalent of 150 to 200 years of the ground rent, and the interest accruing on the conversion charge will itself be more than the annual ground rent. These facts are indicative of sheer arbitrariness involved in the determination of the conversion charge, calculation of which has ostensibly been based only on the consideration of the funds that will be collected from the conversion.

(f) Certain colonies were established in Delhi as rehabilitation colonies, for rehabilitating the displaced persons who had lost their properties in West Punjab at the time of partition of the country. These colonies include, for instance, Patel Nagar, New Rajinder Nagar, certain areas of Lajpat Nagar, etc. In the case of these colonies, the allotments of plots and tenements were made on altogether different basis, taking account of the compensation for the properties left in Pakistan. The price paid by the displaced persons was taken as "cost", as is evident from the specimens of deeds placed at Annexure B. The case of these colonies has necessarily to be treated totally differently from those of other colonies in the city; this requirement has disregarded in the scheme.

(g) In the scheme it is provided that the conversion will be allowed only of those plots which are less than 500 sq mtrs. No reason has been given why a person who may want to secure conversion of a plot more than 500 sq mtrs for any personal reasons either of effecting its sale or otherwise, is debarred from doing so. The scheme has been made compulsory, as stated above, for those who plots are of sizes upto 150 sq mtrs and it has been provided in it that where the plot is less than 50 sq mtrs the conversion will be effected without payment of any conversion charges. Whereas, thus, a person possessing plot of 51 sq mtrs will compulsorily be required to pay the conversion charges and acquire the free-hold rights which he may not necessarily require, the person in possession of 50 sq mtrs will not have to pay any conversion charges whatsoever and will acquire the free-hold rights; a person possessing a plot of 50 to 150 sq mtrs will have to compulsorily acquire the free-hold rights and he will have to make a hefty payment which he may not have the capacity to pay; a person possessing any plot size between 150 sq mtrs and 500 sq mtrs will be able to exercise the option to acquire the free-hold rights but the payment required from him will be a heavy amount (Rs.200,000 where the plot is of 300 sq mtrs, in a place in the Central Zone, and Rs.500,000 for a plot of 500 sq mtrs in the same Zone); in addition the payment of registration charges; if a portion of say 30 percent is in non-residential use an additional large payment will be required; if the plot or flat has been given on power of attorney basis additional payment of 1/3rd of the conversion charges will have to be made.

(h) Under the garb of this conversion scheme, the Respondents can be contended to impose a charge which is compulsory and therefore in the nature of a tax without the authority of Parliament. It is submitted that a tax or charge like the one in question, must be authorised by a statute and

can only be levied in strict conformity with such statute. Thus the levy of a conversion charge is clearly ultra vires the powers of the government and in violation of the Constitution.

(i) Under the scheme, in case of "any dispute" between the original lessee/sub-lessee/allottee and a power of attorney holder, the application for conversion is entertainable only after the dispute is "settled". It is submitted that such a stipulation is pregnant with strife and will result in severe hardship to power of attorney holders. The original lessees/sub-lessees/allottees will be tempted to raise disputes to injustly enrich themselves or to simply harass their power of attorney holders. Thus the scheme flies in the face of the tenet of public policy that litigation and hence social strife is not to be made inherent in governmental action.

(j) Though the scheme provides an instalment plan spread over five years for the payment of the conversion charge which entails an interest of 12% per annum on the balance of the conversion charge, it goes on to stipulate that the ground rent in respect of the property shall continue to be payable until the conversion charge or instalments in respect thereof are not fully paid-up. Thus even while a person is paying the conversion charge in instalments complete with interest on the balance, he is required to also pay the ground rent for the property. Thus the government will stand to receive double payment - one, the ground rent and two, interest on the due instalments of conversion charge. This provision, considered along with other referred to above, is indicative of the objective of unjust enrichment of the Respondents through the implementation of this scheme.

That from the above enumeration of some of the salient features of the scheme it will be evident that the primary consideration which has weighed with the framers of the scheme is that of raising funds, totally disregarding the logic of the charge, unrealistic nature of the demand, the discriminations and anomalies involved in it, the sheer arbitrariness in fixing the rates of charge which have no relationship to the ground rent but is based only on the escalated present price of land for which escalation the allottees are in no way responsible and in fact the policies pursued by the Government are responsible, and the anguish of those who may not be able to afford payment of the conversion amount and face total uncertainty about being able to continue in possession of the property which they have had for two decades and more. It is evident on the basis of these facts that the scheme of conversion is in these various respects violative of the provisions of Articles 14 and 21 of the Constitution.

That the Petitioner considers that a scheme of this nature should have been evolved in such manner that everybody is offered the option to get the lease-hold property converted into free-hold if he chooses to do so and considers it beneficial for him, and the charges for conversion should have been worked out in such manner that they have some relationship to the quantum of ground rent as also, if necessary, to the price of land prevailing in a cut off year, say 1971, when the price escalation started rising.

That the Petitioners has not submitted any other Writ Petition on the same subject in this Hon'ble Court or in the Supreme Court or any other High Court.

PRAYERS

It is, therefore, respectfully prayed that the Hon'ble Court may kindly be pleased to :

(a) issue a writ of mandamus or any other appropriate writ, order or direction, directing the Respondents not to give effect to the scheme in the shape as it is presented in the two booklets issued by the Delhi Development Authority as its various features described in this Writ Petition are violative of the provisions of Articles 14 and 21 of the Constitution;

(b) issue a writ of mandamus or any other appropriate writ, order or direction, directing the Respondents to prepare such a scheme for effecting conversion of lease-hold to free-hold, of the

tenements, flats and plots allotted in Delhi which would not have anomalies, discriminations and illogicalities of the nature evident in the scheme and which inter alia provides option to every allottee of lease-hold properties to get the lease-hold converted to free-hold, on payment of charges which may have some relationship to the ground rent being charges and be related to price of land operative in a cut-off year since when the land prices in Delhi have escalated, and which takes account of the special features on which tenements and plots were allotted in the rehabilitation colonies specially created for displaced persons who had come to India on partition of the country and who were given the allotments on the basis of compensation payable to them for the properties left by them before partition of the country; and

(c) pass such other and further order or orders or grant such further or other reliefs as the Hon'ble Court may deem fit and proper in the circumstances of the case."

Drawn and Filed by

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DISCRETIONARY QUOTAS

There have from time to time been complaints that the executive functionaries at the political level, including the Ministers and Members of Parliament, have been using certain "discretionary quotas" in the allotment of benefits and privileges which are much sought after. People feel that it is singularly unfortunate that the political functionaries are using such privileges which to all appearances are illegal and violative of the provisions of the Constitution.

We have filed a Writ Petition in the Supreme Court on this subject. In this Writ Petition we have taken up certain major privileges, namely, allotment of sales outlets of petrol and diesel, sales outlets of liquefied petroleum gas (LPG), allotment of telephone connections, and allotment of government-built housing accommodation.

It will be of interest to the members to know the contents of the Writ Petition. We have therefore considered it appropriate to reproduce it in this issue of the periodical. Direction has been issued by the Supreme Court that the Show Cause Notices be sent to the concerned Ministries of the Government of India.

WRIT PETITION

IN THE HIGH COURT OF DELHI AT NEW DELHI

CIVIL WRIT PETITION

COMMON CAUSE Vs UNION OF INDIA
(Concerned Ministries)
DELHI ADMINISTRATION
DELHI DEVELOPMENT AUTHORITY

PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA PRAYING FOR ISSUANCE OF A WRIT OF MANDAMUS OR OTHER SUCH APPROPRIATE WRIT, DIRECTION OR ORDER TO THE UNION OF INDIA IN THE MINISTRY OF COMMUNICATIONS (DEPARTMENT OF TELECOMMUNICATIONS), MINISTRY OF PETROLEUM & CHEMICALS (DEPARTMENT OF PETROLEUM & NATURAL GAS), AND MINISTRY OF URBAN DEVELOPMENT, TO ABSTAIN FROM UTILISATION OF ANY POWERS OF OUT-OF-TURN ALLOTMENTS OF ANY SPECIFIC PRIVILEGES AND BENEFITS ON THE BASIS OF ANY "DISCRETIONARY QUOTAS" AND TO ACCORD SUCH PRIVILEGES AND BENEFITS STRICTLY IN ACCORDANCE WITH THE PRESCRIBED NORMS AND PROCEDURES AS THE ALLOTMENT OF SUCH PRIVILEGES AND BENEFITS ON OUT-OF-TURN BASIS IS VIOLATIVE OF ARTICLE 14 OF THE CONSTITUTION OF INDIA.

(As in the case of other Writ Petitions reproduced in this issue of the periodical we have deleted the opening paragraphs of this Writ Petition. Its essentials appear in the paragraphs that follow.)

GROUNDS

That there have been recent reports of the misuse of some "Discretionary Quotas" at the level of political authority, and sometimes at the level of executive authority, in certain ministries of the Government of India as well as in the State Governments. Allotments are made from these Discretionary Quotas on out-of-turn basis, according benefits and privileges to certain persons without regard to the prescribed norms and procedures for the grant of such benefits and privileges, and disregarding the rightful claims of others who have submitted applications in accordance with the prescribed procedures. Such out-of-turn allotments are obviously the result of sheer arbitrariness and are violative of the provisions particularly of Article 14 of the Constitution of India. This Writ Petition seeks to involve the authority of this Hon'ble Court to direct that no Discretionary Quotas of such nature should be used for any out-of-turn allotments of benefits, privileges and permits which would be disregardful of the prescribed norms and procedures relating to such allotments.

This Writ Petition does not seek to aim at examination of the entire problem of the use of "Discretionary Quotas" in various ministries and departments of the central government or in the state governments; nor does it seek to deal with any particular orders passed by any particular minister or officer or with the fact whether any of these orders have since been altered or countermanded. The purpose of the Petitioner is to present as illustration certain instances of misuse of Discretionary Quotas in the undermentioned ministries of the Government of India, to demonstrate the serious defects of the prevailing system wherein such decisions of out-of-turn allotments, disregardful of the prescribed norms and procedures, are presently being taken. It is also pertinent to submit that the contentions made in this Writ Petition are in no way affected by the fact that any succeeding political or executive authority cancels the out-of-turn allotments made by the preceding authority. In the present Writ Petition the Petitioner submits the cases of out-of-turn allotments which are reported to have been made in the recent months in relation to (i) Telephone connections; (ii) Petrol Retail Outlets, Kerosene Oil Dealerships, Diesel Oil Dealerships, LPG Gas Agencies and (iii) the out-of-turn allotments which are reportedly used in the Ministry of Urban Development of the Government of India in the out-of-turn allotments of government residential accommodation to government officials. It will be for separate presentation, if necessary, by the Petitioner or some other person, to highlight the misuse of such Discretionary Quotas in any other ministries and departments of the central government and state

governments. The particulars of out-of-turn allotments by these particular ministries/departments are presented in the paragraphs that follow.

TELEPHONE CONNECTIONS

The Petitioner understands that there is presently a waiting list of as many as two million applicants awaiting sanction of telephone connections. This list is based on applications submitted by the applicants in accordance with the prescribed procedures along with the prescribed deposits. There are two broad categories of new telephone connections OYT (Own Your Telephone) and Non-OYT category. An application submitted under OYT category requires an initial deposit of Rs.8,000. The deposit required for the Non-OYT category is Rs.1000. In addition to these two broad categories there is a "Tatkal" category under which a telephone connection can be given immediately, within a period of two weeks after determining feasibility of the connection, on deposit of the amount of Rs.30,000. Besides these schemes for installation of telephones there are also certain schemes for sanction of temporary telephone connections, but for the purposes of the present Writ Petition the Petitioner would like to bring to notice specially the categories of OYT and Non-OYT and Tatkal.

That there have been reports in the Press that during the past few months out-of-turn sanctions had been given for telephone connections at the level of the political head of the Ministry of Communications of the Union of India, out of some discretionary quota which is stated to be utilisable by the Minister. These Press reports have been to the effect that as many as 25,000 telephone connections were sanctioned at the level of the Minister in five months period, averaging about 5,000 telephone connections per month. These Press reports have not been contradicted. In fact, there has been a report in the Press that the then Prime Minister went to the extent of appreciating the initiatives taken by the concerned Minister in ordering the out-of-turn sanctions of telephone connections. A copy of the News item which appeared in the Times of India, Delhi Edition, of 14.6.91, is placed at Annexure A.

That the Petitioner understands that these out-of-turn sanctions were given regardless of the fact whether these persons were in the existing lists of applicants or not. While thus, nearly two million applicants have been waiting for the sanction of telephone connections on the basis of applications submitted by them in accordance with the prescribed procedures, these 25,000 persona were accorded the special privilege of securing the telephone connections, in utter disregard of the prevailing procedures, and on the basis of sheer arbitrariness. It is not known to the Petitioner whether the persons who have been given these out-of-turn sanctions have made the deposits of Rs.1,000, Rs.8,000 or Rs.30,000 for the above-mentioned respective categories and telephone connections. This fact will be known only to the Telecom Department.

That the Petitioner understand that actually there is no "discretionary quota" available for such out-of-turn telephone connections. Even if there was any such "discretionary quota", the Petitioner believes that there is no legal sanction to it.

That in view of these facts the Petitioners submits to the Hon'ble Court that the following information needs to be ascertained from the Telecom Department in this connection :

(i) Whether there is any "discretionary quota" for the out-of-turn sanction of telephone connections, and whether the issue of any out-of-turn sanction of such nature involves application of mind by the concerned sanctioning authority;

(ii) Whether there is any legal authority on the basis of which any such out-of-turn sanctions of telephone connections are issued by the concerned sanctioning authority;

(iii) Whether any norms and procedures have been prescribed for entertainment of applications for

the issue of out-of-turn sanctions on the basis of any such discretionary quota;

(iv) Whether any deposits have been prescribed in relation to such out-of-turn sanctions, and at what stage are such deposits taken; and whether the procedure relating to such deposits for out-of-turn sanctions involve any loss of revenue to the government;

(v) Number of telephone connections sanctioned on out-of-turn basis during the period from 1st November 1990, till 21st June 1991, at what level were the orders issued in respect of these telephone connections, what procedures was prescribed in entertaining the applications for these sanctions, and whether these applications and sanction pass through any authorised officers;

(vi) What procedure follows the issue of out-of-turn sanctions and what priority is accorded to these sanctions in the matter of installation of telephone connections.

Against the background of the information based on the above-mentioned points it is submitted that the Hon'ble Court may kindly consider issue of specific directive that in no circumstances should any discretionary quotas be utilised at any level, either of a political level or of an official, in according sanction for provision of telephone connections, and that the telephone connections, in each of the respective prescribed categories should be sanctioned only strictly in accordance with the norms established in the Department about the disposal of each application by turn, except in a special explicitly defined category wherein decisions of special out-of-turn sanctions be determined on the basis of clearly defined criteria and requirements, adjudged by a committee comprising of at least two senior officers, who must record reasons justifying each out-of-turn allotment.

PETROL OUTLETS, KEROSENE OIL AND DIESEL OIL DEALERSHIPS, AND L.P.G. AGENCIES

That there have been reports in the Press, which have remained uncontradicted, that at the level of the Minister in-charge of the Department of Petroleum & Natural Gas, a large number of petrol pumps retail outlets, LPG Gas Agencies and Kerosene Oil Dealerships, have been allotted on out-of-turn basis without regard to any norms and prescribed procedures. It is generally being alleged that the allotments of these special out-of-turn benefits involved illegal payments of substantial amounts, which inevitably vitiate the entire system of functioning and government operations. These allotments on out-of-turn basis, in disregard of the prescribed procedures, is obviously a matter of sheer arbitrariness, which is violative of the provisions enshrined in Article 14 of the Constitution.

That following points are relevant in regard to the out-of-turn allotments within the purview of the Department of Petroleum & Natural Gas of the Ministry of Petroleum & Chemicals of the Government of India :

(i) Placed at Annexure B is the photocopy of a printed brochure issued by the Indian Oil Corporation, the public sector enterprise established under the Department of Petroleum & Natural Gas, which functions alongwith other public sector oil companies, namely, Hindustan Petroleum Corporation, Bharat Petroleum Corporation and IBP. This brochure prescribes certain norms and guidelines regarding the issue of special allotments of the named benefits, i.e. Petrol Retail Outlets, Kerosene Oil and Light Diesel Oil Dealerships, and LPG Gas Distributorships. These guidelines lay down inter alia that the special allotments can be made only to the following categories : (a) scheduled castes/scheduled tribes, (b) physically handicapped/disabled on duty/widows of government personnel, (c) Defence category including permanently and severely disabled, widows on motherless dependents of defence personnel and extremely deserving cases of ex-servicemen. Detailed procedures have been prescribed in these instructions about the determination of

eligibility criteria of the persons to whom these respective benefits can be allowed, the procedure for screening of the applicants and conducting their interviews, norms for evaluation of the candidates, field investigations which have to be conducted before the dealers and distributors relating to these items can be finalised. High Level Selection Boards, consisting of two members each, the Chairman being a retired High Court Judge and second member being a senior officer, were constituted for making the selection of eligible persons. Previously there were reportedly four Boards to look after the requirements of the regions; later two more Boards were added; a third member was also added to each Board. It is understood that these Boards were suddenly wound up some months ago; reasons for their winding up are not known to the Petitioner. Despite the fact that such elaborate procedures and norms had been prescribed for making selection of eligible persons within the specified categories, allotments are reported to have been made of these particular outlets, dealerships and agencies in the recent weeks, reportedly at the level of Minister in-charge of the Department of Petroleum & Natural Gas, without following the prescribed procedures and apparently on the basis of sheer arbitrariness. It is generally known that these dealerships and distributorships are lucrative ventures and a large number of aspirants had applied for these.

That following points relating to these allotments of lucrative dealerships and distributorships appear to be necessary for being ascertained from the Department of Petroleum & Natural Gas of the Government of India :

(i) The total number of applications which are normally received in the course of a year for the allotment of dealerships and distributorships in relation to Petrol Pumps, Retail Outlets, Kerosene Oil and Light Diesel Oil dealerships, and LPG Gas Agencies. Information available to the Petitioner is that on the average about 20,000 applications are received every year for the allotments of these dealerships and distributorships;

(ii) the number of applications for these respective requirements which were pending in November 1990;

(iii) the number of allotments made for these respective dealerships and distributorships on out-of-turn basis from November 1990 to the 21st of June 1991. Information available to the Petitioner is that nearly 120 out-of-turn allotments were made during this period in one region alone;

(iv) the level at which these out-of-turn allotments were made in the Department of Petroleum & Natural Gas of the Government of India;

(v) How many out of these allotments were of these persons who fall within the categories specified as eligible for such allotments and what procedures were adopted for ascertaining their eligibility in this regard;

(vi) How many out of these allottees were applicants whose applications had been previously received by the Department, and the serial numbers at which they stood among the total number of applicants waiting for the allotments.

(vii) Information on these points will show whether and to what extent these out-of-turn allotments have involved the misuse and arbitrariness on the part of the sanctioning authority.

ALLOTMENTS OF GOVERNMENT RESIDENTIAL ACCOMMODATION

In the Ministry of Urban Development, Government of India, there is a prevalent practice of utilisation of a Discretionary Quota at the level of the Minister for making out-of-turn allotments of government residential accommodation to particular officials. It is possible that this Discretionary

Quota is used for meeting special requirements of individual officials who, for certain urgent circumstances, need to be provided accommodation, but the fact remains that there could always be possibility of misuse of such Discretionary Quota. It is for consideration of this Hon'ble Court that information be sought from the Ministry of Urban Development as to whether any such Discretionary Quota exists for out-of-turn allotments of government residential accommodation and whether any specific norms and procedures have been prescribed to obviate the possibility of its misuse.

That the Petitioner has not submitted any other similar or such Petition before this Hon'ble Court or before any High Court. In the present Petition the Petitioner has attempted to highlight the prevailing practice of the use of certain "Discretionary Quotas" by the ministers and officers of three above-mentioned ministries/departments of the Government of India for seeking orders of this Hon'ble Court for discontinuance of the use of any such Discretionary Quotas because their use, in the circumstances stated above, is violative of the provisions of Article 14 of the Constitution of India.

PRAYERS

It is, therefore, respectfully prayed that the Hon'ble Court may kindly be pleased to :

(i) issue a writ of mandamus or any other appropriate writ, order or direction, directing the under-mentioned three Respondents to submit information to the Hon'ble Court regarding, respective,: (a) the Secretary to the Department of Telecommunications of the Government of India to report the number of telephone connections sanctioned on out-of-turn basis during the period from 1st November 1990 to 21st June 1991 and the information sought in connection with these sanctions as required in paragraph 10 of this Writ Petition; (b) the Secretary of the Department of Petroleum & Natural Gas to report the number of Petrol Pump Outlets, Kerosene Oil Dealerships, Diesel Oil Dealerships and LPG Gas Distributorships sanctioned during the period from 1st November 1990 to 21st June 1991 and the information sought in connection with these sanctions in paragraph 14 of this Writ Petition; and (c) the Secretary of the Ministry of Urban Development to report the number of out-of-turn sanctions effected in the matter of government residential accommodation, to officials of the government or otherwise, during the period from 1st November 1990 to 21st June 1991 indicating whether any norms and procedures had been adopted for making such out-of-turn allotments and whether these were strictly followed in making the out-of-turn allotments;

(ii) issue a writ of mandamus or any other appropriate writ, order or direction, directing the Union of India to ensure that no "Discretionary Quotas" should be allowed to be used at the levels either of minister or of any officer for making out-of-turn allotments of any benefits or privileges, and to ensure that strict guidelines are formulated and published for grant of any such benefits and privileges, and that such guidelines are invariably and strictly followed for making allotments of any such benefits and privileges;

(iii) to consider issuing of a writ of prohibition or appropriate order or direction to all State Governments through their Chief Secretaries for avoidance of similar violations of Article 14 of the Constitution of India in the matter of allotments of out-of-turn allotments of benefits and privileges, and for this purpose to secure the impleadment of the Chief Secretaries of all the States and Union Territories in this Writ Petition; and

(iv) pass such other and further order or orders or grant any such further or other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of this case.

Drawn and Filed by
(H.D. SHOURIE)

ANOTHER CASE AGAINST DELHI ELECTRIC SUPPLY UNDERTAKING

COMMON CAUSE filed a comprehensive complaint against DESU in 1989. In it we highlighted a number of deficiencies of the organisation, including wrong billing, delayed billing, problems of meter readers, voltage fluctuations etc. After comprehensive hearing of the complaint DESU had come forth with positive undertakings and assurances which were placed before the National Commission established under the Consumers Protection Act. These assurances were placed on record and the case was on that basis withdrawn.

Subsequently late in 1990 we found that the problem of wrong billing had continued unabated and that the assurance given by DESU had not apparently been strictly complied with. We therefore filed another comprehensive complaint before the National Commission, suggesting that DESU should be made to pay a specific token amount of Rs.100/- to each person who receives a wrong bill which has subsequently to be rectified by DESU. This matter has continued to be pursued over the last $1\frac{1}{2}$ years. It has had a number of hearings and has led to consideration of the entire matter by DESU for effecting improvements in the system of meter reading, preparation of electricity bills and transmission of the bills. The case is still pending.

In the meanwhile we have submitted another complaint before the National Commission against DESU. In this complaint we have dealt with two points, namely, the enhancement of meter charges and the non-crediting to the account of the individual subscribers the interest accruing on the deposits made by them at the time of securing electricity connections. These matters are of obvious importance and involve crores of rupees. The complaint has been entertained by the National Commission and notice has been issued to DESU. We have considered it appropriate to reproduce the contents of this complaint so that the consumers of electricity should be aware of the problems highlighted in the complaint and the demands that we have made.

BEFORE THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION, NEW DELHI

COMMON CAUSE Vs Delhi Electric Supply Undertaking

(Opening paragraphs of the complaint have been deleted as unnecessary for this reproduction).

METER RENT

Section 26 of the Indian Electricity Act lays down provisions relating to installation of meters for measurement of energy consumed. It is prescribed under sub-section 1 of Section 26 that the licensee (DESU in this case) is under obligation to supply the meter, if required by the consumer. This provision obviously requires that the consumer has the initial option to instal his own meter, and if he so desires, he can ask DESU to instal the meter. Where the meter is to be installed by DESU the consumer can be required to give security for the price of the meter and enter into agreement for the hire thereof. Where the meter is provided by DESU the responsibility for maintenance of the meter in correct form is that of DESU; where DESU may default in maintaining the meter in correct shape the consumer will cease to be liable to pay for the hire of the meter. Keeping in view these specific statutory provisions the Complainant is not aware whether in any case DESU has ever given the option to any consumer

of electricity to instal his own electricity meter. It is generally known that the meters are invariably installed by DESU at the premises of the consumers.

It will be observed from the provision of sub-section 1 of Section 26 of the Indian Electricity Act that where the meter is provided by DESU it can require the consumer to give it security for the price of the meter and "enter into an agreement for the hire thereof". Agreement for the hire of meter obviously requires that if any change has to be effected in the meter rent such change must necessarily be made by change of the agreement entered into between the consumer and DESU. Meter rent has continued to be increased over the last few years but in no case has DESU executed amendment of the original agreement for effecting the change of meter rent. It would, therefore, be evident that meter rent, or hire charges of the meter, have continued to be arbitrarily and unilaterally fixed by DESU, ostensibly without any rationale or relation to the cost and normal average life of the meter. On certain occasions DESU has enhanced the hire charges although the meter continues to be the same and DESU is not incurring any recurring expense on its maintenance, and its original cost has obviously been recovered manifold from the consumer through the hire charges.

The last instance of arbitrary enhancement of the meter hire charges has been the increase made in April 1990, with retrospective effect from 1.4.1989, from Rs.2 to Rs.6 per month, for domestic single-phase A.C. meter upto 10 Amp. rating. Similar increase has been made in hire charges of meters for commercial and industrial connections. DESU claimed the arrears based on the enhancement of hire charges for the previous one year i.e. from 1.4.1989 to 31.3.1990 during April 1990 and has since been claiming the increased charges with effect from 1.4.1990 in the subsequent bills under threat of disconnection if the amount claimed was not paid within the period indicated in the bills.

There are thus following matters in relation to the installation of electricity meters and hire charges levied by DESU thereon, which are ostensibly indicative of the deficiency of the services provided by DESU :

(i) The law provides that the first option of the installation of meter is that of the consumer who is entitled to instal the meter on his own. This is evident from the wording of Section 26(1) of the Indian Electricity Act. Of course, the law enjoins on the consumer, by virtue of the provisions under Section 26 of the Indian Electricity Act, that if a meter is installed by the consumer it is the responsibility of the consumer to ensure that the meter is maintained correct. The fact remains that at no stage has DESU, according to the information available with the Complaint, given any option to the consumers to instal their own meters. In practice it may not be easy for consumers, particularly of the averaged and non-privileged category, to instal their own meters, but the law explicitly provides that DESU has to instal the meter only where the consumer does not wish to instal his own meter. It is for DESU to see how they would meet this requirement of the law, but at present their non-provision of the option to the consumer obviously constitutes a deficiency of service.

(ii) DESU is under obligation, according to provisions of Section 21 to fix the hire charges on the basis of an agreement and is obviously not competent to modify the hire charges without modification of the agreement and DESU will need to show to the Hon'ble National Commission as to how the hire charges of the meters have continued to be increased without modification of any agreements which are supposed to have been executed with the consumers. The modifications of hire charges, in contravention of this statutory provision, is obviously a deficiency in the service provided by DESU.

(iii) It has been clearly provided in sub-section 2 of Section 26 of the Indian Electricity Act that if the licensee (DESU in the present case) fails to maintain the meter correct the consumer shall, for so long as the default continues, "cease to be liable to pay for the hire of the meter". It is generally known that out of 17 lakh consumers of electricity in Delhi there are at least 50,000

meters which are positively reported defective and another two or three lakhs meters which are not free from being defective. Under the above-mentioned provisions of the statute DESU is debarred from levying hire charges for the meters which are defective. The fact that they have continued to levy the hire charges even in the case of reported defective meters is obviously indicative of the deficiency of service provided by DESU.

(iv) Section 37 of the Indian Electricity Act provides for the powers for framing of Electricity Rules. Rule 27 of the rules made under this statutory provision provides, in sub-rule 2, that the licensee (in this case DESU) "should always keep in his office an adequate number of printed copies of the sanctioned Conditions of Supply and shall on demand sell such copies to any applicant at a price not exceeding 50 paise per copy". Under sub-rule 1 of Rule 27 it is laid down that the licensee has to prepare Conditions of Supply on the basis of model prescribed under the Rules with such variations as the circumstances may insist. The Hon'ble National Commission might enquiries from DESU as to when the Conditions of Supply were last printed by DESU, whether they have ever been made available for supply to the consumers during the last five years, and the number of copies thereof sold during the period of five years prior to the recent five years. To the extent that DESU has failed to comply with the provisions of the sub-rules of Rule 27 it would obviously imply deficiency of service.

(v) It needs to be ascertained from DESU as to what the cost of an electricity meter presently is and what it was during the past five years. It also needs to be ascertained as to how much rent DESU has secured from a consumer who may have got the meter installed, say, 15 years ago, and whether there is justification for the continuation of charging the rent and particularly of the escalation of rent when the total price of the meter may have already been possibly collected by DESU many times over.

INTEREST ON DEPOSITS

DESU has secured deposits from consumers before giving them connections. Quantum of deposits has relationship to the installation of meter and to the quantum of energy that is likely to be consumed by the consumer. Hon'ble National Commission may kindly ask DESU as to what is the scale at which the deposits are secured for installation of the meter and supply of energy, and how much is the total amount which has been secured from about 17 lakh consumers of electricity of Delhi. These deposits remain for indefinite period with DESU. A question was raised long time ago from COMMON CAUSE as well as certain other organisations as to why DESU was not giving any interest on the deposits. It was at that time explained by DESU that interest was being paid on these deposits. No consumer has ever been informed as to how much interest has accrued on his deposit. This is obviously a matter of considerable significance because the deposits are often of substantial amounts, and where the deposits have been with DESU for, say, 10/15 years, quite a substantial amount of interest has accrued on these deposits. There has been obviously a failure on the part of DESU in keeping the consumers informed about the interest accruing on their deposits, and to keep them informed about the rate of interest applicable. If the rate of interest decided upon by DESU has not been in conformity with the rate of interest generally prevalent in relation to deposits, during the relevant period, this would also be tantamount to failure on the part of DESU in the provision of service.

The total number of consumers of electricity in Delhi is, as stated above, about 17 lakhs. In the matter of meter rent, therefore, the total amount of meter rent charged every month from the consumers of electricity is itself over Rs.1 crore; the interest accruing on the deposits of 17 lakh per year. Therefore, the present complaint against DESU is clearly within the jurisdiction of the Hon'ble National Commission.

PRAYER

It is respectfully prayed, therefore, that the Hon'ble National Commission be pleased to direct DESU to :

(i) re-examine, and place before the Hon'ble National Commission, the entire facts and justifications for the increase of meter rent to show whether the increase has been effected in accordance with the statutory provisions;

(ii) comply with the provisions of sub-rule 2 of Rule 27 framed under Section 36 of the Indian Electricity Act, and make available the Conditions of Supply on demand of consumers of electricity at a specific price;

(iii) submit before the Hon'ble National Commission the entire position relating to the matter of crediting interest on deposits made by the consumers, including the quantum of deposits, rate of interest made applicable over the last 10 years, the quantum of interest, and whether the ledgers of all the consumers are being maintained for showing the quantum of interest earned on their deposits, and why information about such crediting is not communicated to the consumers; and

(iv) grant any other relief which the Hon'ble National Commission deems just and reasonable in the circumstances of the case including the costs of these proceedings.

Drawn and Filed by

(H.D. SHOURIE)

PATIENTS AND DOCTORS

Considerable controversy has arisen in the country on the problem of patients having the right to complain against the doctors before the Consumers Forums/Commissions. Under the Consumers Protection Act, 'services' has been broadly defined as service of any description which is performed for a "consideration". Certain illustrations have been provided in the definition; these include, for instance, banking, insurance, transport, etc. Provision of medical service is not specifically included in the illustrations of the definition but there cannot be any doubt that this service is also covered by the Act excepting, as at present in the definition, where the medical service is provided free, such as in cheritable or government hospitals where no payment has to be made for the treatment.

Medical practitioners and their organisation have in the recent months been raising loud voice that they should be excluded from the purview of Consumers Protection Act. Consumers have stoutly resisted this demand. National Commission established under the Consumers Protection Act has clearly held in a couple of cases that medical services provided by a doctor or in a nursing home or hospital, where payment is made, is distinctly within the purview of this Act.

In this context we reproduce hereunder an article which was published by the Director of COMMON CAUSE and which has appeared in some newspapers in the country. The views expressed in this article are presently obviously relevant. The consumers and their organisations will, of course, continue to strongly resist the demand of the medical profession to keep them out of the purview of this Act.

PATIENTS AND DOCTORS

A very important issue has come to the fore in the operation of the Consumers Protection Act which has of late caught the imagination of the people for seeking redress for their grievances. This issue is likely to have serious repercussions in the coming months. It will feature in the relations between doctors and their patients as well as between the hospitals and people who are treated there.

An important feature of this legislation, under which consumers courts have been established all over the country, is that aggrieved consumers can initiate proceedings in respect of the products as well as services. If a consumer is sold a product which is defective he can complain to the court and ask for its replacement and also compensation for the damage caused to him. By inclusion of "services" in this legislation the area of grievance redressal has been greatly enlarged. "Services" in this context have been defined in the statute such as of banking, insurance, transport, electric-supply, communication, information, boards & lodging, entertainment amusement etc. Most of these services are in the public sector.

It is for the first time that a statute in India has enabled the consumers of the services of a public sector enterprise, such as electricity supply or telephones, or banking, insurance, to be put in the dock for a "deficiency" in the service rendered. Previously there was no such enabling provision; even the Monopolies & Restrictive Trade Practices Act and excluded the public sector from its perview, though recently amendment has been effected in it to enable this to be done. People have widely started taking resort to the consumers courts for securing redressal of their grievances under its provisions. Nearly 50,000 cases have already been taken to these courts and it is heartening that over 80 percent of the cases have been decided in favour of the consumers. There had been some tardiness in the setting up of the consumers courts in all the districts by the State Governments, which had been made their mandatory responsibility under the statute. From the platform of COMMON CAUSE I had filed a writ petition in the Supreme Court, and as a result of a series of strong directives issued by the Supreme Court these courts have started operating in the districts though exclusively functioning consumers courts have yet to come up in a number of places.

DOCTORS' CONCERN

A problem has now arisen of the ramifications of this statute regarding the relations between the doctors and their patients, in their clinics or in nursing homes or in hospitals. Medical profession and their organised bodies have evinced their concern about the implications of the relevant statutory provisions and have raised the voice that the medical profession should be outside its scope. A minister of the central government has gone to the extent of declaring, as reported in the Press, that this Act does not cover the medical doctors. Through the Indian Medical Association this matter was vociferously raised in the recent meeting of the Central Consumers Protection Council which is a representative body of over 100 persons established under this Act. This demand of the doctors was equally vociferously shouted down by the representatives of the consumers. Now the subject has become a matter of acute debate and discussion and it is necessary that the people in general as well as the medical profession should be aware of the legal position, for determining, in the interest of the doctors as well as the people, that problems do not get aggravated or worsen.

LEGAL ISSUES

Let us examine the relevant provisions of the statute in relation particularly to this matter. "Service", as has been stated above, has been defined in the statute. The definition of this word is as under :

"Service means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, entertainment, amusement or the purveying of news or other information but does not include the rendering of any service free of charge or under a contract of personal service."

In this context the definition of another word "consumer" in this statute is also very relevant. This definition is to the effect that the goods secured by the complainant should be "for a consideration" i.e. on payment or promise of payment, and that in the case of service the complainant should have hired the service "for consideration".

There are certain aspects of these definitions which, in relation to the provision of service by a medical practitioner or by a hospital or nursing home become very important. One major consideration is : where the provision of medical service is "free", i.e. without any "consideration", as in a government hospital or a cheritable hospital, whether a patient can take recourse to the provisions of this Act for ventilating his grievances and seeking compensation for deficiency of service and whether for this purpose he is a "consumer" under this Act. On this point there have been rulings that where the medical service is "free" the case cannot be instituted under this Act though on behalf of the consumers it has been argued that government hospital is run on the strength of taxes collected from the people and it cannot be contended that they provide "free" service. As an instance, I had taken before the National Commission established under this Act the case of a person who suffered cardiac arrest while under operation in a government hospital in Trivandrum; his heart was revived but in the interval his brain had got damaged and he is lying like a vegetable for more than two years. It was held that damages could not be claimed in this case because the service in the hospital was free to him.

Anyhow, the present position is that in cases of free provision of medical service a patient, in the capacity of consumer, cannot proceed against the hospital or the doctor for a deficiency in service for claiming compensation. This lacunae in the law is now proposed to be removed. There are demands from the consumers, and there appears to be general acceptance of this demand, that free medical service, such as of municipal or government hospitals should be brought within the purview of the definition of service by effecting amendment of the statute. Many other matters are presently awaiting amendment in the statute and this suggestion is included in them.

DEFINITION OF SERVICE

Another consideration is whether, in term of the above-cited definition of "service", it can be contended by the medical practitioners that the service performed by him on the patient was "under a contract of personal service". There has been considerable debate on this point. It has been held by the National Commission, in a very recent decision in two cases known as Cosmopolitan Hospitals VS Vasantha Nair and of same hospital against V.P. Santha, decided on 21.4.92 that this contention of a medical practitioner being under contract of personal service is not tenable. Doctors provide sophisticated professional service; this type of professional service cannot be equated with "personal service" which has essential elements of master-servant relationship. Distinction has to be made between "contract of service" and "contract for service". The professional providing a service is not subject to direction or control of the client but exercises his professional and technical skill and uses his own knowledge and discretion. Even though the service by a doctor may loosely be described as personal it will be crude to call it "personal service" because master-servant relationship is totally different from doctor-patient relationship. The National Commission has also held that the coverage of Consumers Protection Act is not related also to commercial transactions as was argued before it on behalf of the medical profession. It covers the entire range of services of the nature described in it.

RECENT CASES

On these various grounds and considerations, including this latest pronouncement by the National Commission it should be abundantly clear that service by a medical practitioner or by a nursing home or by a hospital, where the service is "for consideration", is definitely covered by this statute and a person who has suffered on account of incompetence or negligence or imperfection, or the relative of a patient who may have expired on account of any such neglect or incompetence, can complain under this statute and claim compensation. There has, for instance, been a recent case reported in the Press where the healthy leg of a teen-aged polio victim girl was amputated by a doctor whereas he was to amputate the polio affected leg. Or, there have been cases where operation instruments or bandages have through sheer negligence left inside the patient after the operation had been performed. Such cases would obviously be categorisable as having been caused by deficiency in service and the affected parties would be legitimately entitled to claim compensation for the damage caused.

Of course, while this is urged on behalf of the consumers it is also most essential to ensure that this type of provision is not misused and medical practitioners are not made victims of frivolous complaints or personal vendetta. It is most essential that consumers organisations, while upholding the rights of consumers, should strongly condemn any frivolous and malicious complaints against the medical practitioners. This matter has been considered by the consumers representatives and recommendation has been made for incorporation of a provision in the Act for very strong action against the complainant where the complaint is found to be frivolous or malacious.

OTHER IMPORTANT MATTERS

RENT CONTROL LEGISLATION

The unfortunate results of the Rent Control Legislation are very widely known. It is singularly unfortunate that Rent Control Legislation, which was enacted during the war years almost 50 years ago has continued to be operative in various shapes all over the country. It has become a tool in the hands of politicians. The ill effects of this legislation have been many: tens of thousands of cases have been taken to courts; small house-owners have been very badly deprived of their houses; the system of "pugree" has prevailed; people no longer build any houses for rental; in fact, built houses/flats are kept lying vacant in almost all the cities to avoid their being jeopardised by renting out.

In the context of these ill effects of the existing Rent Control Legislation, the Government of India in the Ministry of Urban Development has taken the initiative of preparing a comprehensive Rent Control Legislation which has been placed before the Parliament. On being approved the State Governments are expected to modify their Rent Control laws in order to remedy the shortcomings and defects which have led to the adverse effect on housing.

From COMMON CAUSE we have suggested that a bold approach needs to be made in regard to the expansion of rental housing in all urban areas of the country. We have suggested that in each urban centre the concerned authorities should specifically earmark areas of land which can be developed for the purposes of rental housing. Builders and investors should thereafter be encouraged, on a competitive basis, to undertake the task of construction of rental housing on a large scale. These constructions must be only one room/two-room tenements for use by lower middle class and less privileged classes at rentals which will be reasonable and affordable. The important consideration in this context is that it should be declared by the Government that no questions will be asked about the

source of funds which are invested for the purposes of construction of rental housing. It should be clearly notified that at least for 20 years the Builders will not be subjected to any rent control measures. However, for avoidance of usurious rentals being charged by the Builders it can be prescribed that the rent should not exceed a certain percentage, say, 12 percent or 15 percent, of the expenditure incurred on the construction. These suggestions communicated by COMMON CAUSE are now before the Ministry of Urban Development and we were informed that these might be discussed in a meeting of the Chief Ministers in the near future.

THE IMPORTANCE OF ESSENTIAL COMMODITIES ACT

The importance of the Essential Commodities Act is self-evident. It has been on the Statute Book for some decades, Amendments have been effected in it from time to time empowering more effective utilisation of the powers vested by it. In 1981 certain important amendments were made in the Act whereby stringent measures were contemplated to be used against those unscrupulous elements of the trade who continue to contravene the important ingredients of the statute. These were made operative till 1986 and the period was again extended till 31 August 1992. Organisations of traders started raising voice a couple of months ago that these stringent provisions of the 1981 Amendment should not be allowed to be extended beyond this date and they should lapse. From COMMON CAUSE we effectively countered this propaganda. The matter was taken up with the Ministry of Civil Supplies & PDS, and organisations of consumers all over the country were requested to send telegrams and letters to the Prime Minister and the Minister Incharge. These countervoices have brought about useful result, namely, the Act has been further extended through the issue of an Ordinance and the essential stringent provisions have been not allowed to lapse.

EXPANSION OF REVENUE FROM SALES TAX

On the initiative of COMMON CAUSE a major change was effected in the price printing on packages all over the country. Whereas the price previously was being printed as "Maximum Retail Price..... Sales Tax Extra". We got it changed to "Maximum Retail Price..... All Taxes inclusive", by invoking the relevant Packaged Commodity Rules promulgated under the Weights & Measures Act. All over the country since December 1991-91 all packages containing every sort of material have to bear the printed price in this altered shape.

One major advantage which we sought by this change was the scope of expansion of revenues of the State Governments through Sales Tax collections. For this purpose it was obviously necessary that the State Governments should impose and recover the Sales Tax on "First Point" when the products leave the factory premises on being manufactured or they are received in a State from another State for being taken to the wholesale godowns/retail depots. Unfortunately, this transition has not come about substantially with the result that leakages of Sales Tax still continue to be reported extensively. It is of primary importance that the State Governments must be compelled to impose and recover the Sales Tax "at the First Point" in respect of all the commodities on which Sales Tax is levied. We have taken up this matter with the Ministry of Finance of the Government of India and also with the State Governments. Consumers organisations should also raise their voice on this important issue.

UNNECESSARY IMPOSITION ON CONSUMERS ORGANISATION

It has come to our notice that a certain Notification was issued by the Bureau of India Standards under the Bureau of Indian Standard Act, 1986 whereby consumers associations/organisations are expected to pay an amount of Rs.1000/- for seeking recognition. Recognition of consumers organisations

to all intents is obviously necessary for enabling them to be entitled to receive grants from the Govt. of India and also possibly from the State Governments. We consider that this is an unnecessary imposition on the consumers organisations. They do not have plenty of resources; it will obviously be hard on them to have to pay the amount of Rs.1000/- merely for securing recognition. We have taken up this matter with the Ministry of Civil Supplies & PDS and also with the Bureau of Indian Standards. Consumers organisations have been requested to communicate strongly on this issue to the Ministry of Civil Supplies.

CALIBRATION OF CLINICAL THERMOMETERS

A matter of considerable importance has been communicated to us by some persons as well as the organisation of manufacturers of clinical thermometers. The problem arises from the system of metric measurements which was introduced many years ago and which has been widely incorporated in all systems of weights and measures all over the country. This particular problem relates to an order issued by the Central Directorate of Weights & Measures whereunder the manufacturers of clinical thermometers have been directed to calibrate them only in Celcius degrees and not in Fahrenheit. As everybody knows people have for long decades been accustomed to measurement of body temperature in Fahrenheit; it would be very difficult for them to straightaway enter upon the measurement in Celcius degrees.

We have referred this matter to the Ministry of Civil Supplies & PDS which is the controlling authority of the Directorate of Weights & Measures. It would be desirable that the change-over to Celcius measurement in clinical thermometers should not be straightaway introduced; instead we have suggested that on each thermometer there should be "Dual" system indicating the measurements both in Celcius as well as in Fahrenheit degrees. Such a method has been adopted in Japan. Fahrenheit measurement is prevalent in various parts of the world. It would be appropriate, therefore, that the Govt. of India should heed the justification of this matter and issue appropriate instructions.

UNIT TRUST OF INDIA

The importance of various schemes floated by UTI, in the context of the requirements of savings and their benefits, is self-evident. A particular matter relating to UTI Scheme Unit - 64 has been brought to our notice. We have written to the Chairman of UTI on it. The points made in our communication are self-evident. These are reproduced below for general information of the members:

The matter relates to your UNIT 64 scheme. This scheme is stated to be operating on two following basis :-

(i) The yearly earning of dividend is paid to the holder of the Units directly in his bank account or sent to him by cheque. This implies that the yearly dividend is returned to the person and only the original amount of investment is retained with the UTI.

(ii) The yearly earning i.e. the dividend is calculated and invested in Units at rates declared by UTI at that time. This is named Reinvestment Scheme.

In the current year Unit Trust of India declared a concessional rate for Unit holders to purchase new Units. This was Rs. 11.20 per Unit. The persons who invested their money in the scheme mentioned at (i) above got their dividend amount and could directly purchase units @ Rs. 11.20. In the case of those who opted for the scheme mentioned at (ii) above i.e. Reinvestment Scheme, the dividend amount is stated to be converted to units @ Rs. 14.55 per unit which results in a loss of Rs. 3 35 per unit.

It is obvious that if the dividend had been taken by the holder he could have purchased the units at Rs. 11.20 per unit. If, for instance, a person has 1000 units of total face value of Rs. 10,000 this year UTI has paid 25% dividend. One would, therefore, get Rs. 2,500 dividend. Persons under scheme No. (i) can purchase 2,500 - 11.20 = 223.214 units, whereas the person who opted to keep the money with UTI would get 2,500 - 14.55 = 171.821 units, thereby losing 51.393 units, the value of which is approximately Rs.719.

Representations have been received by us that this amounts to unfair trade practice on the part of UTI which is also challengeable under the Consumers Protection Act.

We request you to kindly look into this matter urgently and inform us as to what is proposed to be done to rectify the problem which has also been created in this manner for the persons who have opted for the second part of the scheme. We will look forward to receive the reply in a fortnight.

MISPLACED INSISTENCE OF TAX AUTHORITIES

We have received complaints that the continued insistence of the Income Tax authorities on the submission of original receipts/certificates relating to payments made of premium to LIC, Property Tax paid to Municipal authorities etc. is causing serious difficulties to the assessees. The originals of LIC premiums are often required for the purposes of substantiation of the claim that the payment has been made before the prescribed date when this fact is disputed by the LIC in cases involving non-payment of the claim when such cases are taken to the Consumers "Courts". In the context of easy availability of photocopying equipment all over the country there is no reason why the tax authorities should not be prepared to accept the photocopies instead of insisting upon the submission of the original receipts and certificates. This insistence could be understood when photocopying facilities were not available in the country; now that these are freely available the tax authorities should reconsider this matter and issue appropriate notification to this effect. This matter has been referred by us to the Chairman of Central Board of Direct Taxes.

NATIONAL SAVINGS SCHEME (NSS)

Income Tax payers have been making deposits every year in the NSS on the consideration of the benefits available u/s 80 CCA of the Income Tax Act. These benefits have been withdrawn with effect from the current financial year. Representations have been received by us on certain points relating to the operation of this Scheme and we have made a comprehensive representation to the Ministry of Finance for rectification of the points involved. These are:

(i) The scheme offers interest rate of 11 percent which is far lower than the other postal schemes and also compares very unfavourable with the interest rates now applicable on deposits in the banks and companies.

(ii) Government has decided to cut the tax at source at the time of withdrawal from the NSS. We are informed that since October '91 tax is being deducted @ 22.4 percent at source. Generally this deduction is being imposed by the postal authorities. This is obviously very hard on those persons who may no longer be income tax assessees because it will be extremely difficult for them to secure refund of the deducted tax.

(iii) We have been informed that when the account-holders have approached the post offices for withdrawal of the savings in 1990, after the maturity period, they were informed that the interest would remain locked up for another three years. It needs to be examined whether any instructions to this effect have been communicated to the post offices.

These matters relating to the operation of National Savings Scheme are of obvious importance. It is necessary that the Govt of India should take an early decision on these matters and make appropriate announcements. We would be grateful for information about the action taken by the Government of India.

REPRESENTING CASES BEFORE CONSUMER FORUMS/COMMISSIONS

We have received letters wherein some persons have expressed desire to be allowed to represent the complaints in pursuing the complaint before the Forums/Commissions established under the Consumers Protection Act. The position is that presently the complainants themselves or their advocates alone can present the case, excepting that an organisation of consumers is also authorised to pursue a case on behalf of a complainant.

Under the Indian Advocates Act any person can represent a client before a Court provided the permission to this effect is accorded by the Court. In the case of a complaint before the Forums/ Commissions, likewise, it would obviously not be desirable that blanket permission should be available to non-Advocates to represent clients. Where required in specific cases the permission of the "Court" can be sought. We have expressed our inability to interfere in this matter.

REFORM OF THE CONSTITUTION

A very important National Seminar was recently organised at Delhi for considering various requirements of reform of the Constitution of India. This is obviously a matter of paramount importance. Dr. Subhash C. Kashyap, previous Secretary General of the Lok Sabha, was the operating spirit behind this National Seminar. It was inaugurated by Dr. Karan Singh who gave an invaluable presentation of his ideas. Eminent persons from among public men and professionals participated in the Seminar. The Director of COMMON CAUSE has communicated certain suggestions to Dr. Kashyap for initiating further action arising from the deliberations of the National Seminar. It would be appropriate to reproduce these suggestions for general information of the readers:

I feel that this Seminar should be construed as the beginning of the process which needs to be enlarged and carried on for generating the task of reform of the Constitution. Defects, shortcomings and failures of the Constitution are obvious, its historical perspective is known. There may be differences of views on these but basic facts are positive indication that things have gone wrong and need to be corrected. These do not, however, need to be dwelt on over much; important requirement is of looking to the future, and in this context I have following views to communicate.

A person of your knowledge, experience and background should take up the task of initially defining the basic problems relating to the Constitution, its basic essentials. These essentials will ostensibly include matters such as the following:

Nature of Democracy: participatory or representational.
Definition of concepts of sovereignty, socialism, secularism, national unity, integrity, social justice; liberty, equality, fraternity; individual liberty Fundamental Rights; Directive Principles Presidential Form, present shape, or any other alternative.
Central relations with States; Autonomy
Democratic Decentralisation;
Concept of grass-roots democracy; panchayats, zila parishads, municipalities, States, Centre.
Adult franchise: what form

Processes of Elections
Relationship of legislature executive and judiciary
Languages; Linguistic States
And such like other important issues.

It is necessary to my mind that brief, separate papers should be prepared on each of these basic issues, presenting the pros and cons on each issue, without the need of giving historical perspective or going into the details of what has gone wrong or philosophical concepts. Objective in the preparation of these papers should be only to present the totality of the picture of the matter, for purposes of facilitating a positive concensus emerging on the issue.

On the basis of these papers it would be desirable to organise a series of public debates, preferably in different parts of the country, by securing participation of selected outstanding individuals who should be able to express their views on these issues. On the basis of these public debates documents should eventually emerge which can claim to present objective concensus of the people. This ultimate documentation will be aimed at forcing the representatives, the government, the people in general, to re-frame the Constitution for the country. An atmosphere should get generated which would make the requisite changes inevitable and inescapable.

All this will necessitate a big organisational effort, a lot of expense. It will be for the organisers to give thought to this requirement. Resources of the business, industry and existing organisations etc will need to be tapped. This does not appear to be an impossible task.

These requirements and the procedure appear to be indispensable, for discharging the function which you have initiated and which persons of the stature and knowledge of Dr. Karan Singh have directly espoused. You are in the best position to undertake this broader task, after having initiated this Seminar, because I feel that this is the beginning which now needs to be taken to the logical end.

OUR IMPORTANT PENDING CASES IN COURTS

CONSUMER PROTECTION ACT

Comprehensive position relating to implementation of this act by the various State Governments was presented to the Supreme Court on the last hearing three months ago. The Court had from time to time issued various orders to the States for effective implementation of the provisions of the Act, particularly in the matter of establishment and proper functioning of the District Forums in all the Districts of the country. On presentation of the total position the Court has indicated that it would now issue final orders. We have been waiting for the issue of these orders. We expected that these would be issued shortly after the summer vacation but the matter is still pending for final orders.

Meanwhile, we continue receiving communications from various Districts informing us about the very unsatisfactory and inadequate performance of the Forums established there. It is singularly unfortunate that the matters regarding the effective functioning of the Forums in a number of Districts yet continues languishing; staff remains inadequate, accommodation is inappropriate, facilities required for the Members and the President of the Forum are not adequately available.

We will take an early opportunity to bring these defaults to the notice of the Court.

LAWYERS' STRIKES

The case relating to the Lawyers strikes continues to be listed. Listing of the cases sometimes causes them to considerably languish. This is very unfortunate. This is, however, in accordance with the normal procedure of the Supreme Court.

We will await the date of final hearing which we hope will not get further inordinately delayed.

PENSIONS TO MPS

Our important case challenging the pensions given to the Members of Parliament has unfortunately languished in the Supreme Court. Directions were issued by the Court to issue Show Cause Notice to the Respondents Ministries of the Govt. of India. This was almost eight months ago. Notices were issued. We expected that thereafter the case would be listed for hearing. Unfortunately, the concerned Registry office of the Court informed us that the Government had not yet appointed its Counsel for contesting the case. We continued pointing to the concerned Section that the submission of the case to the Court by the Office cannot be held up merely because of non-appointment of the Counsel by the Government. The case continues to languish. The Registry office has now issued final Notice to the Government of India that irrespective of whether or not they appoint the Counsel to contest the case the Writ Petition will be submitted for orders of the Court. We await the next stage.

APARTMENTS OWNERSHIP ACT

The Writ Petition highlighting the non-implementation of the Apartments Ownership Act by the Delhi Administration had been submitted to the High Court. Notice was issued to the Delhi Administration and the Govt. of India. Submissions were made by them to the Court that there were certain lacunae in the Act. Meanwhile, on the basis of the facts pointed out in our Writ Petition the Government appears to have decided to totally repeal the previous Act and to replace it with new legislation. Preliminary discussions have been held in the Ministry of Urban Development in regard to the contemplated new legislation. Director of COMMON CAUSE also participated in these discussions. Meanwhile, the case continues to be pursued in the High Court.

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