

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 567 OF 2022

(Against the Order dated 16/09/2021 in Appeal No. 31/2020 of the State Commission
Chandigarh)

1. DIRECTOR, GENERAL STATE TRANSPORT HARYANA
& ANR.Petitioner(s)

Versus

1. ASHOK KUMAR PRAJAPATRespondent(s)

REVISION PETITION NO. 1479 OF 2022

(Against the Order dated 16/09/2021 in Appeal No. 30/2020 of the State Commission
Chandigarh)

1. DIRECTOR GENERAL STATE TRANSPORT HARYANAPetitioner(s)

Versus

1. ASHOK KUMAR PRAJAPAT & ANR.Respondent(s)

REVISION PETITION NO. 1863 OF 2022

(Against the Order dated 16/09/2021 in Appeal No. 56/2020 of the State Commission
Chandigarh)

1. DIRECTOR GENERAL STATE TRANSPORTPetitioner(s)

Versus

1. ASHOK KUMAR PRAJAPAT & ANR.Respondent(s)

REVISION PETITION NO. 1864 OF 2022

(Against the Order dated 16/09/2021 in Appeal No. 57/2020 of the State Commission
Chandigarh)

1. DIRECTOR GENERAL STATE TRANSPORTPetitioner(s)

Versus

1. ASHOK KUMAR PRAJAPAT & ANR.Respondent(s)

REVISION PETITION NO. 1867 OF 2022

(Against the Order dated 16/09/2021 in Appeal No. 75/2020 of the State Commission
Chandigarh)

1. DIRECTOR GENERAL STATE TRANSPORT & ANR.Petitioner(s)

Versus

1. ASHOK KUMAR PRAJAPAT & ANR.Respondent(s)

REVISION PETITION NO. 1868 OF 2022

(Against the Order dated 16/09/2021 in Appeal No. 76/2020 of the State Commission
Chandigarh)

1. DIRECTOR GENERAL STATE TRANSPORTPetitioner(s)

Versus

1. ASHOK KUMAR PRAJAPAT & ANR.Respondent(s)

REVISION PETITION NO. 1869 OF 2022

(Against the Order dated 16/09/2022 in Appeal No. 77/2020 of the State Commission
Chandigarh)

1. DIRECTOR GENERAL STATE TRANSPORTPetitioner(s)
 Versus
 1. ASHOK KUMAR PRAJAPAT & ANR.Respondent(s)

BEFORE:**HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER**

FOR THE PETITIONER : MR. ALOK SANGWAN, SR. AAG, GOVT. OF HARYANA
 ALONG WITH MR. RAJAT SANGWAN, ADVOCATE AND
 MR. VAIBHAV YADAV, ADVOCATE

FOR THE RESPONDENT : FOR THE RESPONDENT-1 : IN PERSON
 FOR THE RESPONDENT-2 : MR. HEMANT GUPTA, MR.
 VINEET JAIN AND
 MR. SHIVANG JAIN, ADVOCATES

Dated : 04 October 2023**ORDER**

1. The present Revision Petitions (RPs) have been filed by the Petitioner against Respondents as detailed above, against the common order dated 16.09.2021 of the State Consumer Disputes Redressal Commission, Chandigarh, (hereinafter referred to as the 'State Commission'), in First Appeals FA/31/2020, FA/30/2020, FA/56/2020, FA/57/2020, FA/75/2020, FA/76/2020, FA/77/2020 in which order dated 09.12.2019 of District Consumer Disputes Redressal Commission, UT, Chandigarh (hereinafter referred to as District Commission) in Consumer Complaint (CC) no. CC/1086/2019, CC/1087/2019, CC/1128/2019, CC/1129/2019, CC/554/2019, CC/41/2019, CC/42/2019 was challenged, inter alia praying to set aside the State Commission's order.

2. As the above stated 7 RPs have been filed against the similar orders of the State Commission, parties involved are the same, and issues for consideration/determination are related, these are being taken up together under this order. However, for the sake of convenience, RP 567 of 2022 is treated as the lead case and facts enumerated herein under are taken from RP 567 of 2022.

3. While the Revision Petitioner (hereinafter also referred to as OP) was Respondent-1 and the Respondent-1 (hereinafter also referred to as complainant) was Appellant, the Respondent-2 (hereinafter also referred to as OP-2) was respondent-2 in the above mentioned FAs before the State Commission, the Revision Petitioner was OP-1, Respondent-2 was OP-2 and Respondent-1 was complainant before the District Commission in the above mentioned CCs.

4. Notice was issued to the Respondents on 03.08.2022. Petitioners filed Written Arguments/Synopsis on 10.08.2023, Respondents did not file any written arguments/synopsis.

5. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Commission and other case records are that:

The respondent-1/complainant initiated a series of consumer complaints before the District Commission, making several allegations against the petitioner/OP-1, who are the transport authorities. These complaints primarily focused on the OP-1's alleged failure to implement adequate measures to prevent smoking in public transport buses, particularly by their own employees, including bus drivers and conductors. In addition to the smoking issue, the complaints encompassed other concerns, such as being overcharged for bus fares and instances of "burning litter in public." The OP-1 contended that the complainant did not meet the legal definition of a "consumer" as outlined in the Consumer Protection Act, 1986. Consequently, they assert that these complaints should be categorized under the purview of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production Supply and Distribution) Act, 2003 (COTPA Act, 2003). The OP-1 also informed the District Commission that they had taken proactive steps, including issuing instructions to their employees, including drivers and conductors, to abstain from smoking. They had also appointed nodal officers responsible for conducting periodic inspections and ensuring compliance with these directives. The District Commission determined that smoking in public transport buses constituted an offense under COTPA 2003, and individuals caught smoking should be penalized under that Act and the consumer complaints were dismissed. Subsequently, the complainant lodged First Appeals before the State Commission. The OP-1 submitted that they had initiated proceedings under COTPA 2003 against the driver and conductor, which resulted in the driver being fined. As alleged by the OP-1, the State Commission treated the first appeals as a Public Interest Litigation (PIL)-Writ Petition and assumed a role akin to a writ court under the Indian Constitution. The Commission rendered a judgment and order that exceeded its jurisdiction under the Consumer Protection Act.

6. Vide Order dated 09.12.2019, in the CC no. 1086 of 2019 the District Commission has dismissed the complaint.

7. Aggrieved by the said Order dated 09.12.2019 of District Commission, Respondent No.1 appealed in State Commission and the State Commission vide common order dated 16.09.2021 in FA No FA/31/2020, FA/30/2020, FA/56/2020, FA/57/2020, FA/75/2020, FA/76/2020, FA/77/2020 has :

(i) partly accepted the appeals and directed OPs to pay Rs.5,000/- in each case as compensation and cost of litigation;

(ii) OPs were also directed to pay amount of Rs. 20,000/- to PGIMER, Chandigarh in each case.

8. Petitioner has challenged the said Order dated 16.09.2021 of the State Commission mainly on following grounds:

(i) That the State Commission should have considered the definitions of "goods" and "services" as outlined in the Consumer Protection Act, 1986. The present complaints do not fall under the Consumer Protection Act, 1986, and instead, they should be subject to the provisions of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production Supply and Distribution) Act, 2003 (COTPA Act, 2003). Additionally, it's important to emphasize that there was no deficiency in the services provided by the OP, and the complaints did not allege any such deficiency. Therefore, the complaints should not have been admitted in the first place.

(ii) Furthermore, the respondent does not qualify as a consumer under the law, and the complaints that were filed before the District Forum seeking remedies are typically within the jurisdiction of a court with writ jurisdiction. It is submitted that the petitioner has taken measures to prevent smoking in public places, including appointing a Nodal Officer who conducts unannounced inspections and imposes fines on offenders to deter smoking. The Proceedings under COTPA 2003 have already penalized the driver for smoking in the bus.

(iii) The complainant's complaints appear more as a campaign against public smoking than conventional consumer complaints. The Consumer Protection Act, 1986, and COTPA 2003 are distinct laws, with COTPA serving as the relevant special provision for public smoking offenses. The State Commission's overreach by treating the appeal as a writ petition and issuing a "Mandamus Writ" is erroneous. Precedent in the case of **Consumer Protection Council v. Thiruvalluvar Transport Corporation** (1995) 2 SCC 279 emphasizes the distinction between the Consumer Protection Act, 1986, and

COTPA 2003. The latter is a special law for motor vehicle-related accidents, which should prevail over the general provisions of the former. Therefore, the State Commission's order should be set aside due to its erroneous exercise of jurisdiction.

9. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.

(i) The counsel for the petitioner/OP argues that the respondent/complainant's initial complaint appears to be more in line with a public interest litigation than a genuine consumer-service provider dispute, thereby exceeding the boundaries of the Consumer Protection Act, 1986. The State Commission's common final order, issued on 16.09.2021, in First Appeals, exceeded its authority under the Consumer Protection Act. The order is characterized as treating the appeal as a Public Interest Litigation (PIL) and wielding powers akin to those of the Supreme Court under Article 142 and/or Writ jurisdiction under Article 226 of the Indian Constitution. That the PILs should be pursued through the proper legal channels rather than as a consumer dispute with inflated compensation claims.

(ii) It is further argued that the complainant is a chronic litigant who has consistently filed complaints against the OP, alleging smoking-related issues in public transport services. These complaints frequently seek substantial compensation without providing concrete evidence of harm. The District Commission correctly observed the lack of evidence supporting the complainant's claims, including the absence of medical reports and specific details regarding the alleged incidents. Consequently, the State Commission's order should be set aside, and costs should be imposed on the complainant for engaging in vexatious litigation, causing financial burdens on the exchequer.

(iii) The counsel for Petitioner further contends that any legal recourse regarding the issue of public smoking, as alleged by the complainant, should be pursued under the provisions of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA, 2003). It is emphasized that such matters fall outside the jurisdiction of the Consumer Protection Act, 1986 or the prevailing Act of 2019. It is noted that appropriate measures under COTPA have already been taken against the responsible officials, including the imposition and collection of fines and the initiation of

disciplinary proceedings against the conductor. This is substantiated by a letter dated 04.08.2020 issued by the General Manager, Haryana Roadways.

(iv) The counsel argues that the Commission and its subordinate bodies should limit their jurisdiction to consumer-service provider disputes arising from deficiencies in service, unfair trade practices, or restrictive trade practices. Any relief related to the present complaint, if applicable, should be sought through COTPA, 2003, as demonstrated by the actions taken by the OP against the erring officials. The complaint in question is not a consumer complaint under the Consumer Protection Act, 1986, but rather a disguised writ petition and the nature of the relief sought in the complaint falls within the jurisdiction of a court with writ jurisdiction. The Commission's order to pay Rs. 20,000 in each vexatious complaint filed by the complainant to PGIMER (Postgraduate Institute of Medical Education & Research) Chandigarh for the treatment of cancer patients is not in line with the purpose of consumer complaints.

(v) The actions undertaken by the OP include the appointment of a designated Nodal Officer responsible for conducting surprise inspections related to public smoking. Additionally, the OP consistently issues instructions to its staff members, directing them to refrain from engaging in public smoking. These measures align with the provisions out-lined in the COTPA, 2003.

10. We have carefully gone through the grounds for challenging the orders of the State Commission, other facts and circumstances of the case, relevant records and rival contentions of the parties. No doubt, there is some merit in the contention of the Petitioner that proceedings under Consumer Protection Act, 1986 (CPA) and COTPA 2003 are distinct, being under different laws and Consumer Commissions while dealing with the complaints under the Consumer Protection Act have to go by the provisions of this Act and to see whether the dispute in question constitutes a consumer dispute, whether complainant is a consumer under the CPA, whether there is any deficiency in service, if so, whether and how much and to whom to allow the compensation. The Consumer Commissions under the CPA cannot treat the complaints as public interest litigations. Hence, the main question which falls for consideration is hat whether the complainant in the present cases is consumer under the Consumer Protection Act, 1986 and whether there is a deficiency in service on the part of OP-1/Petitioner herein. In this case the complainant has availed the services of OP-1- State Transport Department, who runs public buses on charge basis and the complainant has purchased a ticket/paid for such journeys in the buses run by OP-1, hence, the complainant is a consumer qua OP-1 i.e. State Transport Department of Government of Haryana. However, in the present case, as the complainant has not availed any services from OP-2/Respondent -2 i.e. Health Department of Government of Haryana on payment basis, the complainant is not a consumer qua OP-2/Respondent-2. As the law prohibits smoking in public places, which covers buses run by the State Transport Department of Government of Haryana, when any

passenger, like the consumer in the present case, purchase a ticket for travel in such buses, it is a given assurance that he shall have smoke free environment in such bus(es). Hence, if any driver or contractor or for that matter any other co-passenger in such buses smokes, it amounts to deficiency in service on the part of the State Transport Department qua such passenger/complainant. In the present case, it is established that the bus(es) in which the journey(ies) in question were undertaken by the complainant, had the driver/conductor smoking. Hence, the complainant has got a deficient service for such journey(ies). Hence, he is entitled to compensation from OP-1/Petitioner herein. Section 39(1) of the Consumer Protection Act, 2019/Section 14(1) of Consumer Protection Act, 1986. empowers the Consumer Commissions to remove the deficiency in service if allegations contained in the complaint about the services are proved. As was held by the Hon'ble Supreme Court in **Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. vs DLF Southern Homes Pvt. Ltd. & Ors.** (2020) 16 SCC 512 “...*jurisdiction of the consumer forums to award just and fair compensation as an incident of its power to direct the removal of deficiency in service is not constrained by terms of a rate which is prescribed in an unfair bargain. “The word “Compensation” is of a very wide connotation. It may constitute actual loss or expected loss and may extend to compensation for physical, mental or even emotional suffering, insult or injury or loss. The provisions of Consumer Protection Act enable a consumer to claim and empower the commission to redress any injustice done”*. Hence, the consumer Fora have a power to award compensation for deficiency in service. However, such compensation can be awarded only to the complainant(s), who has got a deficient service and not to any third party. Hence, notwithstanding the good intentions of the State Commission, we tend to agree with the contentions of the petitioner herein that State Commission went wrong in directing to pay an amount of Rs.20,000/- to PGIMER, Chandigarh in each case, which shall be further deposited in the Poor Patient Welfare Fund maintained by PGIMER, Chandigarh for treatment of cancer patients.

11. As regards contention of the petitioner that complainant is a chronic litigant, who has consistently filed complaints against the OP, alleging smoking related issues in public places seeking compensation, we are of the view that if any passenger/complainant faces multiple instances of deficiency in service on the part of the a service provider like the Petitioner herein, there is nothing what stops the aggrieved complainant to file multiple complainants for redressal of his grievances and seek compensation for deficiency in service, if established. We have taken note of some of the earlier judgments of this Commission in this regard, which are briefly stated below:-

(i) RP/2948/2018 filed by Ashok Kumar Parjapat (complainant/Respondent-1 herein) decided on 16.04.2019.

In this case the Respondents were directed to pay Rs.5,000/- as compensation and cost of litigation to the complainant for similar issues relating to smoking in public buses run by the Petitioner herein.

(ii) RP/1100/2018 filed by Mr. Ashok Kumar Parjapat (complainant/OP-1 herein) decided on 27.02.2019.

In this case Respondents were directed to pay a cost of Rs.2,000/- to the complainant and issues pertain to smoking in public buses run by Petitioner herein.

(iii) Second Appeal Nos. 15/2023, 16/2023 and 17/2023 filed by Financial Commissioner, Health Department, Government of Haryana (Respondent-2 herein/OP-2) decided on 18.07.2023.

In these cases considering that there was no allegation that complainant was a consumer of the appellant, the direction of State Commission for the appellant holding it jointly and severally to pay compensation was set aside with a clear observation that judgment will have no affect upon the appeals filed by the Haryana State Transport Corporation against the same order.

The above shows that despite complainant's repeated complaints and this Commission's orders, OP-I/Respondent herein has not taken appropriate action to remove the deficiency in service i.e. to ensure smoking free environment/service in its buses, as mandated under the law. Hence, they are guilty for deficiency in service and liable to compensate the affected consumers. It is seen that normally many passengers suffer from such deficiency of service in view of smoking by drivers/conductors/co-passengers in the buses run by the State Transport Department, but due to the hassles of litigation, choose not to come forward to file complaint(s)/or claim compensation. If the present consumer has chosen to come forward to file complaints for such deficiency in service and is able to establish that he has received deficient service, he is entitled to appropriate compensation due to repetitive default on the part of OP-I/Petitioner herein, rather in such cases OP-1/Petitioner are liable to pay exemplary compensation to the complainant. Moreover, the OP-1/Petitioner herein is duty bound to remove the deficiency in service i.e. menace of smoking by drivers/conductors/co-passengers in buses run by it by taking all appropriate measures.

12. In view of the above, we are of the view that the State Commission's order needs modification. Accordingly, all the Revision Petitions covered under this order are disposed of with following directions:

(a) OP-1/Petitioner herein shall take all appropriate actions within two months of this order to ensure the removal of deficiency in service i.e. menace of smoking by drivers/conductors/co-passengers in buses run by it, failing which, it shall be liable for penal action(s) under the provisions of Consumer Protection Act.

(b) OP-1/Petitioner herein shall pay a compensation of Rs.10,000/- in each case i.e. a total of Rs.70,000/- along with cost of Rs.3,000/- in each case i.e. Rs.21,000/- in total for the seven Revision Petitions, within one month of this order.

(c) In case OP-1/Petitioner fails to pay the amount as per this order within one month, it shall carry interest @9% per annum.

13. All the seven Revision Petitions, RP/567/2022, RP/1479/2022, RP/1863/2022, RP/1864/2022, RP/1867/2022, RP/1868/2022 and RP/1869/2022 are disposed of accordingly.

14. The pending IAs in the case, if any, also stand disposed off.

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DR. INDER JIT SINGH
PRESIDING MEMBER