

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) No.18636 OF 2019

**ADMINISTRATOR SMT. TARA BAI DESAI
CHARITABLE OPHTHALMIC TRUST HOSPITAL, JODHPUR** **Petitioner**

VERSUS

**MANAGING DIRECTOR
SUPREME ELEVATORS INDIA PVT. LTD & ORS.** **Respondents**

O R D E R

Heard learned counsel for the parties.

The principal issue involved in the matter is whether a Charitable Trust could maintain an action under the provisions of the Consumer Protection Act, 1986 (for short "the Act") and claim compensation under the Act.

The District Consumer Disputes Redressal Forum, Jodhpur accepted the claim of the Complainant-Trust and directed the respondents to pay to the complainant a sum of Rs.5,90,000/- by way of compensation along with interest @ 9% per annum. However, the appeal arising therefrom was allowed by the State Consumer Disputes Redressal Commission at Jaipur on the ground that a Trust could not be a "consumer" within the meaning of the Act. The view taken by the State Commission was upheld by the National Consumer Disputes Redressal Commission, which order is presently under challenge.

The reliance was placed on a decision of this Court delivered in *Pratibha Pratisthan & Others v. Manager, Canara Bank & Others*, reported in (2017) 3 SCC 712, to hold that a "trust" would not be a "person" and consequently not a "consumer" within the meaning of the provisions of the Act. It was held by this Court:

"5. On a plain and simple reading of all the above provisions of the Act it is clear that a trust is not a person and therefore not a consumer. Consequently, it cannot be a complainant and cannot file a consumer dispute under the provisions of the Act."

It may be mentioned here that in *Kalpavruksha Charitable Trust vs. Toshniwal Brothers (Bombay) Pvt. Ltd¹*, the complainant was a registered Charitable Trust and the issue that arose was whether the machinery in question was installed for commercial purpose or not. The question whether the Trust could maintain an action did not squarely arise for consideration.

The expressions "complainant", "consumer", and "person" have respectively been defined in Sections 2(1)(b), 2(1)(d) and 2(1)(m) of the Act as under:

"Section 2(1)(b) "complainant" means—

- (i) a consumer; or
- (ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force; or
- (iii) the Central Government or any State Government; who or which makes a complaint; or
- (iv) one or more consumers, where there are numerous consumers having the same interest;
- (v) in case of death of a consumer, his legal heir or representative;"

Section 2(1)(d) "consumer" means any person who—

- (i) buys any goods for a consideration which has been paid or

¹ (2000)1 SCC 512

promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person; but does not include a person who avails of such services for any commercial purpose;

Explanation.—For the purposes of this clause, “commercial purpose” does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment;”

Section 2(1)(m) “person” includes—

- (i) a firm whether registered or not;
- (ii) a Hindu undivided family;
- (iii) a cooperative society;
- (iv) every other association of persons whether registered under the Societies Registration Act, 1860 (21 of 1860) or not;”

According to Section 2(1)(b), any voluntary consumer association and certain other authorities enumerated in other clauses of the provision would come within the definition of “complainant”. The idea is to have a broader spectrum.

According to Section 2(1)(d) “consumer”, *inter alia*, means any person who buys any goods for consideration or hires or avails any services for consideration.

The definition of “person” in the context of Gujarat Agricultural Lands Ceiling Act, 1960 came up for consideration in

Ramanlal Bhailal Patel v. State of Gujarat², and it was observed by this Court:-

"23. The word "person" is defined in the Act, but it is an inclusive definition, that is, "a person includes a joint family". Where the definition is an inclusive definition, the use of the word "includes" indicates an intention to enlarge the meaning of the word used in the statute. Consequently, the word must be construed as comprehending not only such things which they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. Thus, where a definition uses the word "includes", as contrasted from "means", the word defined not only bears its ordinary, popular and natural meaning, but in addition also bears the extended statutory meaning (see *S.K. Gupta v. K.P. Jain* following *Dilworth v. Commr. of Stamps* [1899 AC 99 : (1895-99) All ER Rep Ext 1576: 79 LT 473] and *Jobbins v. Middlesex Country Council* [(1949) 1 KB 142: (1948) 2 All ER 610 (CA)]).

24. The ordinary, popular and natural meaning of the word "person" is "a specific individual human being". But in law the word "person" has a slightly different connotation and refers to any entity that is recognised by law as having the rights and duties of a human being. Salmond defines "person" as "any being whom the law regards as capable of rights and duties" or as "a being, whether human or not, of which rights and duties are the attributes" (*Jurisprudence*, 12th Edn., p. 299). Thus the word "person", in law, unless otherwise intended, refers not only to a natural person (male or female human being), but also any legal person (that is an entity that is recognised by law as having or capable of having rights and duties). The General Clauses Act thus defines a "person" as including a corporation or an association of persons or a body of individuals whether incorporated or not. The said general legal definition is, however, either modified or restricted or expanded in different statutes with reference to the object of the enactment or the context in which it is used. ..."

The definition of "person" in terms of Section 2(1)(m) of the Act is also an inclusive definition. Under sub-clause (iv) to Section 2(1)(m), the expression "person" includes "every other association of persons whether registered under the Societies Registration Act, 1860 (21 of 1860) or not". In our view, the case of a "trust" may also come within the purview of the definition of "person" under the Act.

Moreover, the legislative intent appears to have a wider coverage and therefore the concerned provision includes number of categories under the definition of "person" so much so that even an unregistered firm which otherwise has certain disabilities in law, is also entitled to maintain an action.

In the circumstances, we find it difficult to accept that a "trust" would not come within the definition of a "consumer". In our view, the issue requires to be revisited and the matter requires re-consideration. We, therefore, request the Hon'ble Chief Justice of India to constitute a bench of such strength as the Hon'ble Chief Justice of India may consider proper.

We direct the Registry to place the matter before the Hon'ble Chief Justice of India.

.....J.
[UDAY UMESH LALIT]

.....J.
[ANIRUDDHA BOSE]

NEW DELHI;
OCTOBER 04, 2019.

