

PETITIONER:
REGIONAL PROVIDENT FUND COMMISSIONER

Vs.

RESPONDENT:
SHIV KUMAR JOSHI

DATE OF JUDGMENT: 14/12/1999

BENCH:
S. Saghir Ahmad, R.P.Sethi

JUDGMENT:

The short but an important question of law to be decided in this appeal is as to whether the provisions of Consumer Protection Act, 1986 (hereinafter referred to as 'the Act') can be invoked against the Provident Fund Commissioner by a member of the Employees Provident Fund Scheme? it has to be ascertained as to whether any such member is a 'consumer' and the duties performed by the Provident Fund Commissioner under the relevant scheme is a 'service' within the meaning of the Act. If it is held that such member is the 'Consumer and the facilities provided are 'services', it has to be further considered as to whether the delayed payment of the

provident fund to a member-employee amounts to deficiency of service under the Act.

The facts leading to the filing of the present appeal are that the respondent, who was a member of the Provident Fund Scheme, applied to the Regional Provident Fund Commissioner for the payment of his provident fund on 15th July, 1992. It was found that the application filed was not complete as required by Para 72(5)(d) of the Provident Fund Scheme applicable in the case. The appellant forwarded the application to the Respondent's employer for verification in terms of the said Para. The Inspector of the appellant is also stated to have visited the factory, where the respondent-employee was working, to impress upon the employer to expedite verification of the application. The appellant's Area Inspector is stated to have personally gone to the factory on 19th August, 1992

and obtained the verification application. The claim of the respondent was settled on 24th August, 1992. However, the respondent filed a complaint before the District Consumer Disputes Redressal Forum, Faridabad (hereinafter referred to as "the District

Forum") on 26th August, 1992 alleging deficiency in service of the appellant and claimed damages to the tune of Rs.65,000/- along with costs for the alleged delay in payment of his provident fund. The appellant raised a preliminary objection regarding the

jurisdiction of the District Forum on the ground that the respondent was not a 'consumer' and the facilities provided by the scheme were not a 'service'. The District

Forum vide its order dated 4.11.1992 directed the appellant to pay interest @ 18% on delayed payment and costs of Rs.1,000/-. Not satisfied with the order of the District

Forum, the appellant filed an appeal before the State Consumer Disputes Redressal Commission, Haryana at Chandigarh

(hereinafter referred to as "the State Commission") under Section 15 of the Act. The appeal was dismissed by the State Commission on 1.3.1994. The revision filed before the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as "the National Commission") was dismissed vide the order impugned in this appeal.

Taking us through the Employees Provident Fund Scheme, 1952, Shri N.N. Gowswamy, Senior Advocate appearing for the appellant submitted that the said scheme could not be held to be a 'service' within the meaning of Section 2(1)(o) and the respondent No.1 as 'consumer' within the meaning of Section 2(1)(d) of the Act. It was urged that as the Provident Fund Commissioner was the custodian of the funds passed to him and the contribution to the Scheme was not for consideration, the Act was not applicable.

Consumer under the Act has been defined as any person who;

"(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised or under any system of the deferred payment and includes 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

(i?) 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 any system of deferred payment, when such services are availed of with the approval of the first mentioned person.

and "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.

The definition of consumer is wide and covers in its ambit not only the goods but also services, bought or hired, for consideration.

Such consideration be paid or promised or partly paid or partly promised under any system of deferred payment and includes any beneficiary of such person other than the person who hires the service for consideration. The Act is

aimed to protect the interests of a consumer as understood in commercial sense of the term as 'purchaser of goods' and in larger sense 'user of services'. The important characteristic of goods and service under the Act is that such goods are supplied at a price to cover the costs which consequently result in profit or income to the seller of goods or provider of service. The definition excludes a person who obtains such goods for re-sale or for any commercial purposes. However, the services hired for consideration even for commercial purposes have not been excluded. A reference to the definition of 'service' unambiguously indicates that the definition is not restrictive and includes within its ambit such services as well which are specified therein. However, services hired or availed, which are free of charge, or under a contract of personal service, have specifically been excluded. This Court in Lucknow Development Authority vs. M.K. Gtipta 1(1994) 1 SCO 243 referred to the meanings of the word "consumer" in various dictionaries and found that the Act has opted for no less voider definition than those mentioned in dictionaries. Referring to the definition of the "consumer" the Court held:

"....It is in two parts. The first deals with goods and the other with services. Both parts first declare the meaning of goods and services by use of wide expressions. Their ambit is further enlarged by use of inclusive clause. For instance, it is not only purchaser of goods or hire, of services but even those who use the goods or who are beneficiaries of services with approval of the person who purchased the goods or who hired services are included in it. The legislature has taken precaution not only to define 'complaint', 'complainant', 'consumer' but even to mention in detail what would amount to unfair trade practice by giving an elaborate definition in clause (r) and even to define 'defect' and 'deficiency' by clauses (f) and (g) for which a consumer can approach the Commission. The Act thus aims to proisct the economic interest of a consumer as understood in commercial sense as a purchaser of goods and in the larger sense of user of services. The common characteristics of goods and services are that they are supplied ai a price to cover the costs and general profit or income for the seller of goods or provider of service. But the defect in one and the deficiency in other may havs to be removed and compensated differently. The former is. normally, capable of being replaced and repaired whereas the other may be required to be compensated by award of the just equivalent of the value or damages for loss. 'Goods' have been defined by clause (i) and have been assigned the same meaning as in the Sale of Goods Act, 1930 which reads as under:

" 'goods' means every kind of movable property other than actionable claims and money; and includes stocks and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale."

It was therefore urged that the applicability of the Act having been confined to movebale goods only a complaint filed for any defect in relation to immoveable goods such as a house or building or allotment of site

could not have been entertained by the Commission. The submission does not appear to be well founded. The respondents were aggrieved either by delay in delivery of possession of house or use of substandard material etc. and therefore they claimed deficiency in service rendered by the appellants. Whether they were justified in their complaint and if such act or omission could be held to be denial of service in the Act shall be examined presently but the jurisdiction of the Commission could not be ousted (sic merely) because even though it was service it related to immoveable property."

and while dealing with the meaning of the word "service" this Court held:

"The main clause itself is very wide. It applies to any service made available to potential users. The words 'any' and 'potential' are significant. Both are of wide amplitude. The word 'any' dictionaryally means 'one or some or all'. In Black's Law Dictionary it is explained thus. "word 'any' has a diversity of meaning and may be employed to indicate 'all' or 'every' as well as 'some' or 'one' and its meaning in a given statute depends upon the context and the subject matter of the statute". The use of the word 'an/ in the context it has been used in clause (o) indicates that it has been used in wider sense extending from one to all. The other word 'potential' is again very wide. In Oxford Dictionary it is defined as 'capable of coming into being, possibility'. In Black's Law Dictionary it is defined as "existing in possibility but not in act. Naturally and probably expected to come existence at some future time, though not existing; for example, the future product of gain or trees already planted, or the successive future instalments or payments on a contract or engagement already made." In other words service which is not only extended to actual users but those who are capable of using it are covered in the definition. The clause is thus very wide and extends to and or all actual or potential users."

In Morgan Stanley Mutual Fund v. Kartick Das [(1994) 4 SCC 225 the definition of "consumer" was explained as:

"The consumer as the term implies is one who consumes. As per the definition, consumer is the one who purchases goods for private use or consumption. The meaning of the word 'consumer' is broadly stated in the above definition so as to include anyone who consumes goods or services at the end of the chain of production. The comprehensive definition aims at covering every man who pays money as the price or cost of goods and services. The consumer deserves to get what he pays for in real quantity and true quality, in every society, consumer remains the centre of gravity of all business and industrial activity. He needs protection from the manufacturer, producer, supplier, wholesaler and retailer." i

This Court again in S.P. Goel vs. Collector of Stamps Delhi 1(1996) 1 SCC 573 considered, with approval, the meaning and scope of the words "consumer", "service" and "deficiency in service".

In State of Orissa vs. Divisional Manager. LIC & Another [(1996) 8 SCC 655 this Court held:

"The only question is: whether the appellant is

liable to pay compensation to Haribandhu Setha under the Act and whether the claim is maintainable. Section 2(1)(o) of the Act defines 'services' as under: "services" 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, housing construction, 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."

A reading of the definition would indicate that the services contemplated thereunder alone are the services within the meaning of the Act except excluded services mentioned thereunder. The excluded services are "service free of charge or under a contract of personal service". The concept of contract of personal service was considered in a recent Judgment of this Court in *Indian Medical Assn. vs. V.P. Shantha* (1995) 6 SCC 651. This Court had held therein that the expression "personal service" has a well-known legal connotation and has been construed in the context of the right to seek enforcement of such a contract under the Specific Relief Act, 1963. For that purpose, a contract of personal service has been held to cover a civil servant, the managing agents of a company and a professor in the University. There can be a contract of personal service if there is relationship of master and servant between a doctor and the availing of his services and in that event the services rendered by the doctor to his employer would be excluded from the purview of the expression under section 2(1)(o) of the Act by virtue of the exclusionary clause in the said definition. The other excluded service is service rendered free of charge."

The combined reading of the definitions of "consumer" and "service" under the Act and looking at the aims and object for which the Act was enacted, it is imperative that the words "consumer" and "service" as defined under the Act should be construed to comprehend consumer and services of commercial and trade oriented nature only. Thus any person who is found to have hired services for consideration shall be deemed to be a consumer

notwithstanding that the services were in connection with any goods or their user. Such services may be for any connected commercial activity and may also relate to the services as indicated in Section 2(1)(o) of the Act.

The Employees Provident Fund & Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Provident Fund Act") has been enacted to provide for the institution of provident fund, pension and deposit linked insurance funds for employees working in factories and other establishments. Section 2(h) defines "fund" to mean the provident fund established under the Scheme. "Scheme" means the Employees Provident Fund Scheme framed under Section 5 thereof which provides:

"5. Employees' Provident Fund Scheme.(1) The Central Government may, by notification in the Official Gazette, frame a scheme to be called the Employees' Provident Fund Scheme for the establishment of provident

funds under this Act for employees or for any class of employees and specify the establishments or class of establishments to which the said Scheme shall apply and there shall be established, as soon as may be after the framing of the scheme, a Fund in accordance with the provisions of this Act and the Scheme.

(IA) The Fund shall vest in, and be administered by, the Central Board constituted under section 5A.

(IB) Subject to the provisions of this Act, a scheme framed under sub-section (1) may provide for all or any of the matters specified in Schedule II.

(2) A scheme framed under sub-section (1) may provide that any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in this behalf in the Scheme."

Section 5(d) authorises the Central Government to appoint a Central Provident Fund Commissioner who is the Chief Executive Officer of the Central Board constituted under Section 5(a) or the Provident Fund Act. Section 6 provides that the contributions to the Scheme shall be made by the employer to the Fund at the rates specified therein from the wages of the employee along with his own equal contribution" exercise of the powers conferred by Section 5 of the Provident Fund Act, the Central Government framed Employees Provident Fund Scheme, 1952. Para 30 of the Scheme provided:

"30. Payment of contributions(1) The employer shall, in the first instance, pay both the contribution payable by himself (in this Scheme referred to as the employer's contribution) and also, on behalf of the member employed by him directly or by or through a contractor, The contribution payable by such member (in this Scheme referred to as the member's contribution).

(2) In respect of employees employed by or through a contractor, the contractor shall recover the contribution payable by such employee (in this Scheme referred to as the member's contribution) and shall pay to the principal employer the amount of member's contribution so deducted together with an equal amount of contribution (in this scheme referred to as the employer's contribution) and also administrative charges."

(3) It shall be the responsibility of the principal employer to pay both the contribution payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor and also administrative charges.

ExplanationFor the purposes of this paragraph the expression "administrative charges" means such percentage of the pay (basic wages, dearness allowance, retaining allowance, if any, and cash value of food concessions admissible thereon) for the time being payable to the employees other than an excluded employee, as the Central Government may in consultation with the Central Board and having regard to the resources of the Fund for meeting its normal administrative expenses fix.

Obviously, it appears that as the payment of

contribution includes the payment of administrative charges, the Scheme appears to be for consideration.

Mr.A.S. Nambiar, Senior Advocate, who later appeared for the appellant submitted that as no part of the administrative charges is payable by the employee, he (employee) cannot be held to be a 'consumer' within the meaning of Section 2(1)(d) of the Act. In support of such a submission an affidavit of Shri D.P. Sethi, Assistant Provident Fund Commissioner has been Tiled ^wherein after reproduction of para 55 of the scheme it is submitted:

'That under para 30 of Employees' Provident Fund Scheme 1952, employer is liable to pay both the contributions as well as administrative charges but under para 38 the employer is authorised to deduct the

employee's share of contribution from his wages, consequently leaving employer's share as well as administrative charges payable by employer himself.

That according to above scheme provisions it is the employer who is responsible to pay administrative charges and not the member. Following the above provisions of law the Central Board of Trustees is recovering administrative charges only from employer and not from members."

Such a submission which apparently appears to be attractive, when analysed in depth, is without substance and, if accepted, is likely to defeat the purpose and object of the Act as also the scheme framed under it. The word 'consideration' has not been defined either under the scheme or the Act. Black's Law Dictionary defines 'consideration' thus: Consideration is not to be confounded with motive, consideration means something which is of value in the eye of the law, moving from the plaintiff, either or benefit of the plaintiff or of detriment to the defendant. In volume 17 of Corpus Juris Secundum (pp.420-421 and 425) the import of 'consideration' has been described thus: Various definitions of consideration are to be found in the textbooks and judicial opinions. A sufficient one, as stated in Corpus Juris and which has been quoted and cited with approval is, 'a benefit to the party promising, or a loss or detriment to the party to whom the promise is made....". At common law every contract not under seal requires a consideration to support it, that is,

as shown in the definition above, some benefit to the promisor, or some loss or detriment to the promisee... There is a sufficient consideration for a promise if there is any benefit to the promisor or any detriment to the promisee. It may be laid down as a general rule. in accordance with the definition given above, that there is a sufficient consideration for a promise if there is any benefit to the promisor or any loss or detriment to the promisee. The gist of the term 'consideration' and its legal significance has been clearly summed up in Section 2(d) of the Contract Act which defines 'consideration' thus: When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promise to do or to abstain from doing, something such actor abstinence or promise is called a consideration for the promise. Webster's Third New International Dictionary (Unabridged) defines 'consideration' as: Something that is legally regarded as

the equivalent or return given or suffered by one for the act or promise of another.

In *Sonia Bhatia v. State of U.P. & Ors.* [1981 (2) SCC 585] it was held:

"From a conspectus, therefore, of the definitions contained in the dictionaries and the books regarding a gift or an adequate consideration, the inescapable conclusion that follows is that 'consideration' means a reasonable equivalent or other valuable benefit passed

on by the promisor to the promisee or by the transferor to the transferee."

A perusal of the scheme unambiguously shows that it is for consideration which is applicable to all those factories and establishments covered under the Act and the scheme who are required to become a member of the Fund under the scheme. Para 26 provides that every employee employed in connection with any work of the factory or other establishment to which the scheme applies other than an excluded employee, shall be entitled and required to become a member of the Fund from the date the said para comes into force in such factory or the establishment. The scheme provides for the Board of Trustees, the appointment, power of Commissioner and other staff of Board of Trustees, membership of the Fund, contribution, etc. Chapter V deals with contribution. The employer who is otherwise not a member of the scheme is obliged to contribute under the scheme at the rates specified therein of the basic wages, dearness allowance including cash value of any food concession and repairing allowances, if any., payable to each employee to whom the scheme applies. The contribution of the employee has to be equal to the contribution payable by the employer in respect of such employee. The words 'in respect of' are significant as they indicate the liability of the employer to pay his part

of the contribution in consideration of the employee working with him. But for the employment of the employee there is no obligation upon the employer to pay his part of the contribution to the scheme. The administrative charges, as required to be paid under para 30 of the scheme are also paid for consideration of the employee being the member of the scheme. It is immaterial as to whether such charges are deducted actually from the wages of the employee or paid by his employer in respect of the employee-member of the scheme working for such employer. The administrative charges are further required to be determined having regard to the basic wages, the dearness allowance, retaining allowance, if any, and cash value of food concessions admissible thereon for the time being payable to the employee. If the contention of the appellant is accepted that as no part of the administrative charges are deducted from the actual wages of the employee, he cannot be deemed to be hiring the services of scheme, the consequences of such an interpretation shall frustrate the object of the Act and the scheme as in that event no obligation can be cast upon the employer to pay contributions which are equal to the contribution payable by the employee along with the administrative charges. The scheme has to be given such an interpretation which serves the purpose intended to be achieved by it keeping in view the objects of the Act. The administrative

charges are in lieu of the membership of the employee and for the services rendered under the scheme. It cannot be held that even though the employee is the member of the scheme, yet the employer would only be deemed to be a 'consumer' for having made payments of the administrative charges. Admittedly, no service is rendered to the employer under the scheme which is framed for the benefit of the employee under Sections 5, 6 and 7 of the Act. Chapter VII provides for administration of the Fund. Accounts and Audit. A separate account called "Central Administration Account" for recording of administration expenses of the Fund is required to be kept under Para 49. Para 52 deals with the investment of monies belonging to employee's provident fund and provides that such monies be deposited in the Reserve Bank or the State Bank of India or in such other scheduled banks as may be approved by the Central Government from time to time or be invested subject to the directions as the Central Government may from time to time give in securities mentioned or referred to in Clauses (a) to (d) of Section 20 of the Indian Trust Act., 1882. All expenses incurred in respect of, and loss, if any, arising from, any investment shall be charged to the Fund. Para 53 provides that the Fund not including the administration account shall be except with the previous sanction of the Central Government be expended for any purpose other than the

payment of the sums standing to the credit of individual member of the Fund or to their nominees or heirs or legal representatives in accordance with the provisions of the scheme. All expenses relating to the administration of the Fund including those incurred on Regional Committee are to be made from the Fund in terms of para 54 of the scheme. Similarly all expenses of administration of Fund including the fees and allowances of the trustees of the Central Board and salaries, leave and joining time allowance, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident fund and other benefit fund instituted for the officers and employees of the Central Board, the cost of audit of the accounts, legal expenses and cost of all stationery and forms incurred in respect of the Central Board, cost and all expenses incurred in connection with the construction of office and staff quarters shall be met from the Administration Account of the Fund. The member of the scheme is entitled only to the interest determined as per para 60. Chapter VIII deals with nominations, payments and withdrawals from the Fund.

We cannot accept the argument that the Regional Provident Fund Commissioner, being Central Government, cannot be held to be rendering 'service' within the meaning and scheme of the Act. The Regional Provident Fund Commissioner, under the Act and the

scheme discharges statutory functions for running the scheme. It has not, in any way, been delegated with the sovereign powers of the State so as to hold it as a Central Government, being not the authority rendering the 'service' under the Act. The Commissioner is a separate and distinct entity, it cannot legally claim that the facilities provided by the 'scheme' were not "service" or that the benefits under the scheme being provided were free of charge. The definition of "consumer" under the Act includes not only the person who hires the 'services' for consideration but also

the beneficiary, for whose benefit such services are hired. Even if it is held that administrative charges are paid by the Central Government and no part of it is paid by the employee, the services of the Provident Fund Commissioner in running the scheme shall be deemed to have been availed of for consideration by the Central Government for the benefit of employees who would be treated as beneficiary within the meaning of that word used in the definition of consumer. This Court in *M/s. Spring Meadow Hospital & Anr. vs. Harjot Ahluwalia through K.S. Ahluwalia & Anr.* [JT 1998 (2) SC 620, to which one of us (Saghir Ahmad.J) was a party has already held that the "consumer" means a person who hires or avails of any services and includes any beneficiary of such service other than the person who hires or avails the services. The Act gives comprehensive definition of 'consumer'

who is the principal beneficiary of the legislation but at the same time in view of the comprehensive definition of the term "consumer" even a member of the family of such 'consumer' was held to be having the status of 'consumer'. In an action by any such member of the family of beneficiary of the service it will not be open for a trader to take a stand that there was no privity of contract. In this regard this Court specifically held:

"In the present case. we are concerned with clause (ii) of Section 2(1)(d). In the said clause a consumer would mean a person who hires or avails of any services and includes any beneficiary of such services other than the person who hires or avails of the services. When a young child is taken to a hospital by his parents and the child is treated by the doctor, the parents would come within the definition of consumer having hired the services and the young child would also become a consumer under the inclusive definition being a beneficiary of such services. The definition clause being wide enough to include not only the person who hires the services but also the beneficiary of such- services which beneficiary is other than the person who hires the services, the conclusion is irresistible that both the parents of the child as well as the child would be consumer within the meaning of Section 2(1)-(d)(ii) of the Act and as such can claim compensation under the Act"

A perusal of the scheme clearly and unambiguously indicate that it is a 'service' within the meaning of Section 2(1)(o) and the member a 'consumer' within the meaning of Section 2(1)(d) of the Act. It is.. therefore, without any substance to urge that the services

under the scheme are rendered free of charge and, therefore, the scheme is not a 'service' under the Act. Both the State as well as National Commission have dealt with this aspect in detail and rightly came to the conclusion that the Act was applicable in the case of the scheme on the ground that its member was a 'consumer' under Section 2(1)(d) and the scheme was a 'service' under Section (1)(o).

No ground is, therefore, made out for interference with the impugned order. The appeal is accordingly dismissed, as no one appeared on behalf of the respondent, without any order as to costs.

JUDIS