

Bill No. 127 of 2011

THE CONSUMER PROTECTION (AMENDMENT) BILL, 2011

A

BILL

further to amend the Consumer Protection Act, 1986.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Consumer Protection (Amendment) Act, 2011.

Short title and
com-
mencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

68 of 1986. 5

2. In section 2 of the Consumer Protection Act, 1986 (hereinafter referred to as the principal Act), in sub-section (1),—

Amendment
of section 2.

(i) in clause (aa), for the word “means”, the word “includes” shall be substituted;

(ii) in clause (c), after sub-clause (v), the following sub-clause shall be inserted, namely:—

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“(va) he has suffered a loss in pursuance of an unfair contract entered into by him;”;

(iii) in clause (f), for the word “means”, the word “includes” shall be substituted;

(iv) for clause (g), the following clause shall be substituted, namely:—

‘(g) “deficiency” include—

(i) any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

(ii) any act of omission or commission which causes any damage to the consumer on account of negligence or consciously withholding of relevant information to the consumer;’

(v) after clause (g), the following clause shall be inserted, namely:—

‘(ga) “political party” shall have the meaning assigned to it under clause (f) of sub-section (1) of section 2 of the Representation of the People Act, 1951;’

(vi) after clause (h), the following clause shall be inserted, namely:—

‘(ha) “electronic form” shall have the meaning assigned to it under clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000;’

(vii) in clause (r), after sub-clause (6), the following sub-clauses shall be inserted, namely:—

“(7) after selling such goods or rendering of such services, fails to issue bill or cash memo or receipt for the goods sold or service rendered;

(8) after selling such goods or rendering of such services, refuses to take back or withdraw the goods or withdraw or discontinue the service and refuses to refund the consideration thereof, if paid, within a period of thirty days after the receipt of goods or availing of services it is so requested by the consumer;

(9) discloses to any other person any personal information given in confidence by the consumer:

Provided that disclosure of personal information given with express or implied consent of the consumer or under provisions of any law in force or in public interest shall not be constructed as a deficiency of service’

(viii) after clause (r), the following clause shall be inserted, namely:—

‘(s) “unfair contract” means a contract which contains any one or more of the following clauses:—

(i) requires excessive security deposits to be given by a party to the contract for the performance of contractual obligations; or

(ii) impose any penalty on a party to the contract for the breach thereof which is wholly disproportionate to the loss occurred due to such breach to the other party to the contract; or

(iii) refuses to accept early repayment of debts on payment of applicable penalty;

(iv) entitles a party to the contract to terminate without reasonable cause the contract unilaterally.’

3. In section 9 of the principal Act, in clause (a), after the proviso, the following proviso shall be inserted, namely:— Amendment
of section 9.

5 “Provided further that in a district where no District Forum has been established or if established, there exists at any time vacancy in the office of the President or a member, in such case, the State Government may, by notification, direct that—

(a) a District Forum, as specified in the notification, shall exercise the jurisdiction in respect of such District Forum as may be specified in the notification; or

10 (b) the President or a member of a District Forum, as the case may be, shall exercise the power or discharge the functions of the President or the member, as the case may be, of any other District Forum as may be specified in the notification.”.

4. In section 10 of the principal Act,—

(i) in sub-section (I), in clause (b),— Amendment
of section 10.

15 (I) in the opening portion, for the words “two other members”, the words “not less than two and not more than such number of members, as may be prescribed, and at least” shall be substituted;

(II) in sub-clause (iii), after the words “public affairs”, the words “consumer affairs” shall be inserted;

20 (III) after sub-clause (iii), the following proviso and *Explanation* shall be inserted, namely:—

‘Provided that not more than fifty per cent. of the members shall be from amongst persons having a judicial background.

25 *Explanation.*—For the purpose of this clause, the expression “persons having judicial background” shall mean persons who have served as a presiding officer for at least one year in a judicial court:’;

(IV) in the proviso,—

30 (A) in the opening portion, for the words “Provided that a person shall be disqualified for appointment”, the words “Provided further that a person shall be disqualified for appointment or for continuation as such” shall be substituted;

(B) after clause (e), the following clause shall be inserted namely:—

35 “(ee) is or continues to be, after appointment, a member or office bearer of any political party; or”;

(ii) after sub-section (IA), the following sub-section shall be inserted, namely:—

40 “(IB) The State Governments may, if it is of the opinion that any person recommended by the Selection Committee under sub-section (IA) has not been found fit for such appointment, it may, within a period of two months from such recommendation and for reasons to be recorded in writing, refer the matter to the Selection Committee for fresh recommendation.”;

(iii) in sub-section (2),—

45 (a) after the first proviso, the following provisos shall be inserted, namely:—

“Provided further that a person appointed as a President of the District Forum shall also be eligible for re-appointment in the manner provided in sub-section (IA):

Provided also that the Selection Committee shall take into consideration the observations or performance appraisal report, if any, made by the President of the State Commission in respect of the President or member of the District Forum being considered for re-appointment as such:”;

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(b) in the second proviso, for the words “provided further”, the words “Provided also” shall be substituted;

(iv) after sub-section (3), the following sub-section shall be inserted at the end, namely:—

“(4) The President or member of the District Forum, on ceasing to hold office as such, shall not appear, act or plead before any District Forum in that State in which he had been as the President or member, as the case may be, of the District Forum.”.

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Insertion of new section 10A. Staff of District Forum.

5. After section 10 of the principal Act, the following section shall be inserted, namely:—

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“10A. (1) The State Government shall determine the nature and categories of the officers and other employees required to assist the District Forum in the discharge of its functions and provide the District Forum with such officers and other employees as it may think fit.

(2) The officers and other employees of the District Forum shall discharge their functions under the general superintendence of the President.

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(3) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the District Forum shall be such as may be prescribed by the State Government:

Provided that officers and other employees employed on or before the commencement of the Consumer Protection (Amendment) Act, 2011, in a District Forum, shall continue to be employed as such unless the nature and categories thereof has been determined by the State Government.”.

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Amendment of section 11.

6. In section 11 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

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“(3) (a) The jurisdiction, powers and authority of the District Forum may be exercised by benches thereof.

(b) A Bench may be constituted by the President with one or more members as the President may deem fit:

Provided that the single member bench shall exercise jurisdiction, power and authority in relation to such matters as may be prescribed by the State Government in consultation with the State Commission and it shall not, in any case, dispose of any case fixed for final hearing.”.

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Insertion of new section 11A. Circuit benches.

7. After section 11 of the principal Act, the following section shall be inserted, namely:—

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“11A. The District Forum shall ordinarily function in the district headquarters and perform its functions at such other place, as the State Government may, in consultation with the State Commission, notify in the Official Gazette from time to time.”.

Amendment of section 12.

8. In section 12 of the principal Act,—

(a) in sub-section (1), in the opening portion, after the words “agreed to be provided”, the words “or in respect of any restrictive trade practice or unfair trade practice adopted” shall be inserted;

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(b) in sub-section (2), after the words “in such manner”, the words and brackets “(including electronic form)” shall be inserted;

(c) in sub-section (3),—

5 (i) in the second proviso, for the words “twenty-one days”, the words “twenty-eight days” shall be substituted;

(ii) after the second proviso, the following proviso shall be inserted, namely:—

10 “Provided also that if the District Forum does not decide the issue of admissibility of the complaint within the period specified in the second proviso, it shall be deemed to have been admitted except in the case where the complainant has failed to appear before the District Forum on the day of hearing without any reasonable ground.”.

9. In section 14 of the principal Act,—

Amendment
of section 14.

(a) in sub-section (1),—

15 (i) in the opening portion, after the words “about the services”, the words “or restrictive trade practices or unfair trade practices” shall be inserted;

(ii) in clause (c), after the word “by the complainant”, the words “along with reasonable rate of interest on such price or charges as may be decided by the District Forum” shall be inserted;

20 (iii) in clauses (g), (h) and (ha), after the word “hazardous”, the words “or unsafe” shall respectively be inserted;

(iv) in clause (hb), in the first proviso, for the words “five per cent.”, the words “twenty-five per cent.” shall be substituted;

25 (b) in sub-section (2A), after the proviso, the following proviso shall be inserted, namely:—

“Provided further that the other member shall give his opinion on such point or points referred to him within a period of three months from the date of such reference.”.

30 10. In section 15 of the principal Act, in the second proviso, the words “or twenty-five thousand rupees, whichever is less” shall be omitted.

Amendment
of section 15.

11. In section 16 of the principal Act,—

Amendment
of section 16.

(i) in sub-section (1), in clause (b)—

(a) in the opening portion, for the words “and one of whom” the words “at least one of whom” shall be substituted;

35 (b) in sub-clause (i), for the words “thirty-five years”, the words “forty-five years” shall be substituted;

(c) in sub-clause (iii),—

(A) for the words “ten years”, the words “twenty years” shall be substituted;

40 (B) after the words “public affairs”, the words “consumer affairs” shall be inserted;

(C) in the first proviso, in the *Explanation*, for the words “ten years”, the words “twenty years” shall be substituted;

(D) in the second proviso,—

45 (I) after the word “appointment”, the words “or for continuation as such” shall be inserted;

(II) after clause (e), the following clause shall be inserted, namely:—

“(ee) is or continues to be, after appointment, a member or office bearer of any political party; or”;

(ii) in sub-section (IA), for the words, brackets and figure “under sub-section (I)”, the words, brackets, letter, and figure “under clause (b) of sub-section (I)” shall be substituted; 5

(iii) after sub-section (IA), the following sub-section shall be inserted, namely:—

“(IAA) The State Governments may, if it is of the opinion that any person recommended by the Selection Committee under sub-section (IA) has not been found fit for such appointment, it may, within a period of two months from such recommendation and for reasons to be recorded in writing, refer the matter to the Selection Committee for fresh recommendations.”; 10

(iv) in sub-section (IB), in clause (iii), the following proviso shall be inserted, namely:— 15

“Provided that the President or the members, as the case may be, shall give his or their opinion on the point or points referred to him or them within a period of three months from the date of such reference.”.

(v) in sub-section (3), after the second proviso, the following proviso shall be inserted, namely:— 20

“Provided also that the Selection Committee shall take into consideration the observations or performance appraisal report, if any, made by the President of the National Commission in respect of the member of the State Commission being considered for re-appointment.”;

(vi) after sub-section (4), the following sub-section shall be inserted at the end, namely:— 25

“(5) The President or member of the State Commission, on ceasing to hold office as such, shall not appear, act or plead before the State Commission or any District Forum in that State in which he had been as the President or member, as the case may be, of the State Commission.”. 30

Insertion of new section 16A.

Staff of State Commission.

12. After section 16 of the principal Act, the following section shall be inserted, namely:—

“16A. (1) The State Government shall determine the nature and categories of the officers and other employees required to assist the State Commission in the discharge of its functions and provide the Commission with such officers and other employees as it may think fit. 35

(2) The officers and other employees of the State Commission shall discharge their functions under the general superintendence of the President.

(3) The salaries and allowances payable to and the other terms and conditions of service of, the officers and other employees of the State Commission shall be such as may be prescribed by the State Government: 40

Provided that the officers and other employees employed on or before the commencement of the Consumer Protection (Amendment) Act, 2011, in a State Commission, shall continue to be employed as such unless the nature and categories thereof has been determined by the State Government.”. 45

Amendment of section 19.

13. In section 19 of the principal Act, in the second proviso, the words “or rupees thirty-five thousand, whichever is less” shall be omitted.

14. After section 19A of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 19B.

5 “19B. Without prejudice to the provisions contained in section 18, the State Commission shall have the power to review any order made by it, when there is an error apparent on the face of record.”

Power of Commission to review order.

15. In section 20 of the principal Act,—

Amendment of section 20.

(i) in sub-section (1), in clause (b)—

(a) in the opening portion, for the words “and one of whom” the words “at least one of whom” shall be substituted;

10 (b) in sub-clause (i), for the words “thirty-five years”, the words “fifty-five years” shall be substituted;

(c) in sub-clause (iii) ,—

(A) for the words “ten years”, the words “thirty years” shall be substituted;

15 (B) after the words “public affairs”, the words “,consumer affairs” shall be inserted;

(C) for the Explanation, the following *Explanation* shall be substituted, namely:—

20 ‘*Explanation.*— For the purposes of this clause, the expression “persons having judicial background” shall mean persons who are or have been a Judge of a High Court or Supreme Court.’;

(D) in the second proviso,—

(I) after the word “appointment”, the words “or for continuation as such” shall be inserted;

25 (II) after clause (e), the following clause shall be inserted, namely:—

“(e) is or continues to be, after appointment, a member or office bearer of any political party; or”;

30 (E) in the third proviso, after clause (a), the following clause shall be inserted, namely:—

“(aa) the President of the National Commission - Member;”;

(ii) after the third proviso, the following proviso shall be inserted, namely:—

35 “Provided also that the Central Government may, if it is of the opinion that any person recommended by the Selection Committee under this section has not been found fit for such appointment, it may, within a period of two months from such recommendation and for reasons to be recorded in writing, refer the matter to the Selection Committee for fresh recommendations.”;

(iii) in sub-section (1A), in clause (iii), the following proviso shall be inserted, namely:—

40 “Provided that the President or the members, as the case may be, shall give his or their opinion on the point or points referred to him or them within a period of three months from the date of such reference.”.

(iv) for sub-section (2), the following sub-section shall be substituted, namely:—

45 “(2) The conditions of service of the members of the National Commission shall be the same as are applicable to a Judge of a High Court:

Provided that the salary or honorarium and other allowances payable to the Members of the National Commission shall be such as may be prescribed by the Central Government”;

(v) after sub-section (4), the following sub-section shall be inserted, namely:—

“(5) A member of the National Commission, on ceasing to hold office as such, shall not appear, act or plead before the National Commission or any State Commission or District Forum.”.

Insertion of new section 22E.	16. After section 22D of the principal Act, the following section shall be inserted, namely:—	5
Power of Commission to seek assistance.	“22E. Where the National Commission or the State Commission, as the case may be, on application by a complainant or otherwise, is of the opinion that it involves the larger interest of consumers, it may direct any individual or organisation or expert to assist the National Commission or the State Commission, as the case may be.”.	10
Amendment of section 23.	17. In section 23 of the principal Act, in the second proviso, the words “or rupees fifty thousand, whichever is less” shall be omitted.	
Amendment of section 25.	18. For section 25 of the principal Act, the following section shall be substituted, namely:—	
Enforcement of orders of District Forum, State Commission or National Commission.	<p>“25. (1) Every order made by the District Forum, the State Commission or the National Commission shall be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the District Forum, the State Commission or the National Commission to send, in case of its inability to execute such order, to the court within the local limits of whose jurisdiction,—</p> <p style="padding-left: 40px;">(a) in the case of an order against a company, the registered office of the company is situated; or</p> <p style="padding-left: 40px;">(b) in the case of an order against any other person, place where the person concerned voluntarily resides or carries on business or personally works for gain, is situated.</p> <p>(2) Where any order made by the District Forum, State Commission or the National Commission, as the case may be, is not complied with, such person not complying with the order shall be required to pay not less than five hundred rupees or one-half per cent. of the value of the amount awarded, whichever is higher, for each day of delay of such non-compliance of the order till it is paid, in addition to the payment of the awarded amount.</p> <p>(3) Without prejudice to the provisions contained in sub-sections (1) and (2), where any order made under this Act is not complied with, the District Forum or the State Commission or the National Commission, as the case may be, may order the property of the person, not complying with such order to be attached.</p> <p>(4) No attachment made under sub-section (3) shall remain in force for more than three months at the end of which, if the non-compliance continues, the property attached may be sold and out of the proceeds thereof, the District Forum or the State Commission or the National Commission may award such damages, as it thinks fit, to the complainant and shall pay the balance, if any, to the party entitled thereto.</p> <p>(5) Where any amount is due from any person under any order made by a District Forum, State Commission or the National Commission, as the case may be, the person entitled to the amount may make an application to the District Forum, the State Commission or the National Commission, as the case may be, and such District Forum or the State Commission or the National Commission may issue a certificate for the said amount to the Collector of the district (by whatever name called) and the Collector shall proceed to recover the amount in the same manner as arrears of land revenue.</p> <p>(6) Notwithstanding the provisions contained in this section, it shall be the duty of the party against whom the order is passed by the District Forum or the State Commission or the National Commission, as the case may be, to report back to the District Forum or the State Commission or the National Commission, as the case may be, about the status of implementation of the order and the proceedings would be</p>	<p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p> <p>45</p> <p>50</p>

deemed to be continuing till the implementation of the order and it shall be the responsibility of the District Forum or the State Commission or the National Commission, as the case may be, to monitor the same till its implementation and to take appropriate penal action wherever necessary.”.

- 5 **19.** In section 27 of the principal Act, in sub-section (2), the words “on such conferment of powers” and the words “on whom the powers are so conferred” shall be omitted. Amendment of section 27.
- 20.** After section 28A of the principal Act, the following sections shall be inserted, namely:— Insertion of new sections 28B and 28C.
- 10 “28B. (1) The Central Government may, by a general or special order, call upon the National Commission to furnish, periodically or as and when required any information concerning the pendency of cases in such form as may be prescribed. Power to call for information.
- (2) The State Government may, by a general or special order, call upon the State Commission or any District Forum to furnish, periodically or as and when required any information concerning the pendency of cases in such form as may be prescribed by the State Government.
- 15 28C. (1) Every District Forum shall furnish to the State Commission at such time and in such form and manner as may be specified by regulations the returns and statements and particulars in regard to pendency of cases before the District Forum. Returns and reports.
- 20 (2) Every State Commission shall furnish to the National Commission and the State Government at such time and in such form and manner as may be specified by regulations the returns and statements and such particulars in regard to pendency of cases before the State Commission or the District Forum.
- (3) The National Commission shall furnish to the Central Government at such time and in such form and manner as may be specified by regulations the returns and statements and particulars in regard to pendency of cases before the National Commission, State Commission and the District Forum.
- 25 (4) The District Forum, the State Commission and the National Commission shall publish all data relating to pendency of cases (including the details of filing of a case or application and disposal thereof, daily cause list and orders passed on such date and other related information) on their respective website.
- 30 **21.** In section 30 of the principal Act,— Amendment of section 30.
- (a) in sub-section (1), for the words and figures “and section 23”, the words, figures, brackets and letter “section 23 and sub-section (1) of section 28B” shall be substituted;
- 35 (b) in sub-section (2),—
- (i) after the word and figures “section 10”, the words, brackets, figures and letter “sub-section (3) of section 10A” shall be inserted;
- (ii) for the words, brackets, letter and figures “and clause (b) of sub-section (1) and sub-section (2) of section 16 of this Act”, the words, brackets, letters and figures “clause (b) of sub-section (1) and sub-section (2) of section 16, sub-section (3) of section 16A and sub-section (2) of section 28B of this Act or any other matter which is to be, or may be, required to be prescribed” shall be substituted.
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STATEMENT OF OBJECTS AND REASONS

The Consumer Protection Act, 1986 (the said Act) was enacted by Parliament to provide for better protection of the interests of consumers and for that purpose to make provision for establishment of consumer councils and other authorities for the settlement of consumer disputes, and for matter connected therewith. The aforesaid Act has been amended in the years 1991, 1993 and 2002 to make the provisions of the Act more effective.

2. Although, the working of the consumer dispute redressal agencies has served the purpose under the said Act to a considerable extent, the disposal of cases has not been as quick due to the various constraints. Several shortcomings have been noticed while implementing various provisions of the Act. With a view to widening and amplifying the scope of some of the provisions of the said Act, to facilitate faster disposal of cases and to rationalize the qualifications and procedure of selection of the Presidents and Members of the National Commission, State Commission and District Forum, it has been felt necessary to amend the said Act. The Consumer Protection (Amendment) Bill, 2011, *inter alia*, makes the following provisions, namely:—

(a) define the expression ‘unfair contract’ and include the same within the scope of the Act;

(b) confer power upon the State Government to direct, by notification,—

(i) that a District Forum shall exercise the jurisdiction of any other District where no District Forum has been constituted; or

(ii) that the President or a member of a District Forum shall discharge the functions of President or members of any other District Forum in which there exist a vacancy of President or members, as the case may be;

(c) confer power upon the State Government to refer back the recommendation of the Selection Committee to it for making fresh recommendation, within a period of two months from such recommendation and for reasons to be recorded in writing, in case the State Government is of the opinion that any person recommended by the Selection Committee for appointment as President or member of a District Forum or a member of the State Commission, as the case may be, has not been found fit for appointment as such;

(d) make a provision that the Selection Committee shall take into consideration the observations or performance appraisal report, if any, made by the President of the State Commission or the President of the National Commission, as the case may be, in respect of any member of the District Forum or the State Commission, as the case may be, being considered for reappointment as such;

(e) make a provision to the effect that the President or member of the District Forum, on ceasing to hold office as such, shall not appear, act or plead before any District Forum in that State in which he had been working as the President or member, as the case may be, of the District Forum;

(f) make a provision to provide that the District Forum shall ordinarily function in the district headquarters and perform its functions at such other place, as the State Government may, in consultation with the State Commission, notify in the Official Gazette from time to time;

(g) make a provision for making of a complaint by electronic form also to the District Forum;

(h) make a provision for admissibility of the complaint to be decided twenty-eight days instead of twenty-one days from the date on which the complaint was received and in case the District Forum does not decide the issue of admissibility of the complaint within the said period it shall be deemed to have been admitted except in the case where the complainant has failed to appear before the District Forum on the day of hearing without any reasonable ground;

(i) confer power upon the District Forum to issue an order to the opposite party to pay reasonable rate of interest on such price or charges as may be decided by the District Forum in case the price of the goods or charges paid by the complainant have been ordered to be returned to the complainant;

(j) make provision for additional disqualification of a member of the District Forum or the State Commission or the National Commission if he is or continues to be, after appointment, a member or office bearer of any political party;

(k) make provision for increase of the minimum age for appointment as member in case of the State Commission from thirty-five years to forty-five years and in the case of the National Commission from thirty-five years to fifty-five years;

(l) make provision for increase of the period of experience for appointment as member in case of the State Commission from ten years to twenty years and in case of the National Commission from ten years to thirty years;

(m) make provision for substitution of the explanation relating to definition of the expression "person having judicial background" in case of the National Commission, as to include therein the persons who are or have been a Judge of a High Court or the Supreme Court;

(n) make provision that the President or member of the District Forum, the State Commission and the National Commission, on ceasing to hold office as such, shall not appear, act or plead before the District Forum or the State Commission or the National Commission, as the case may be;

(o) make provision that the conditions of service of the members of the National Commission shall be the same as are applicable to a Judge of a High Court;

(p) confer power upon the National Commission or the State Commission, as the case may be, to direct any individual or organisation or expert to assist the National Commission or the State Commission, as the case may be, on application by a complainant or otherwise, if the National Commission or the State Commission is of the opinion that it involves the larger interest of consumers;

(q) make a provision that an order of the District Forum, the State Commission or the National Commission may be enforced by it as if it were a decree of a civil court or it may send, in case of its inability to execute such order to the court having jurisdiction;

(r) make a provision for payment, by every person not complying with the order of the District Forum, State Commission or the National Commission, as the case may be, of an amount of not less than five hundred rupees or one-half per cent of the value of the amount awarded, whichever is higher, for each day of delay of such non-compliance of the order, till it is paid, in addition to the payment of the awarded amount;

(s) confer power upon the Central Government to call upon the National Commission to furnish, periodically or as and when required any information concerning the pendency of cases in the prescribed form; and confer power upon the State Government to call upon the State Commission or any District Forum to furnish, periodically or as and when required any information concerning the pendency of cases in the prescribed form;

(*t*) make provisions for furnishing of returns and statement and particulars in regard to pendency of cases, by—

(i) the District Forum to the State Commission,

(ii) the State Commission to the National Commission and the State Government,

(iii) the National Commission to Central Government.

3. The Bill seeks to achieve the aforesaid objectives.

NEW DELHI;

K. V. THOMAS.

The 2nd November, 2011.

FINANCIAL MEMORANDUM

Clause 4 of the Bill seeks to amend section 10 of the Act to enable the State Government to appoint in the District Forum such number of members as may be prescribed in place of two members.

2. Clause 5 of the Bill seeks to insert a new section 10A to enable the State Government to determine the nature and categories of officers and other employees required to assist the District Forum in the discharge of its functions and provide the District Forum with such officers and other employees as it may think fit. The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the District forum shall be such as may be prescribed by the State Government.

3. Clause 6 of the Bill seeks to insert a new sub-section (3) in section 11 so as to enable the President of the District Forum to constitute benches with one or more members.

4. Clause 7 of the Bill seeks to insert a new section 11A to enable the State Government to notify in consultation with the State Commission, the other place of sitting of the District Forum to perform its functions.

5. Clause 12 seeks to insert a new section 16A to enable the State Government to determine the nature and categories of the officers and other employees required to assist the State Commission in the discharge of its functions and provide the Commission with such officers and other employees as it may think fit. The salaries and allowances payable to and the other terms and conditions of service of, the officers and other employees of the State Commission shall be such as may be prescribed by the State Government.

6. It is not possible to indicate the exact expenditure involved in appointment of additional members and officers and employees of the District Forum and the State Commission as this would depend upon the actual number of such members or officers and other employees appointed. However, the expenditure on this account would be incurred by the State Governments.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 4 of the Bill seeks to amend section 10 of the Act which empowers the State Government to prescribe the number of members of District Forum for appointment.

2. Clause 5 of the Bill seeks to insert new section 10A which empowers the State Government to prescribe the salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the District Forum.

3. Clause 12 of the Bill seeks to insert new section 16A which empowers the State Government to prescribe the salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the State Commission.

4. Clause 20 of the Bill seeks to insert new sections 28B and 28C. Sub-section (1) of section 28B provides to prescribe the form in which any information concerning the pendency of cases shall be furnished by the National Commission to the Central Government. Sub-section (2) of said section provides to prescribe the form in which any information concerning the pendency of cases shall be furnished by the State Commission to the State Government. Sub-section (1) of section 28C empowers the National Commission to specify by regulations the time, and the form and manner in which returns and statements and such particulars in regard to pendency of cases before the District Forum shall be furnished by the District Forum to the State Commission and, by the State Commission to the National Commission.

5. The rules made by the Central Government and the regulations made by the National Commission shall be laid, as soon as they are made, before both the Houses of Parliament under sub-section (1) of section 31 and the rules made by the State Government shall be laid, as soon as may be after it is made, before the State Legislature under sub-section (2) of that section. The matters in respect of which rules and regulations may be made are matter of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative powers, therefore, is of normal character.

ANNEXURE

EXTRACTS FROM THE CONSUMER PROTECTION ACT, 1986

(68 OF 1986)

* * * * *
2. (1) In this Act, unless the context otherwise requires,— Definitions.

* * * * *

(aa) “branch office” means—

* * * * *

(f) “defect” means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied, or as is claimed by the trader in any manner whatsoever in relation to any goods;

(g) “deficiency” means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

* * * * *

(r) “unfair trade practice” means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:—

(1)* * * * *

CHAPTER III

CONSUMER DISPUTES REDRESSAL AGENCIES

9. There shall be established for the purposes of this Act, the following agencies, Establishment of Consumer Disputes Redressal Agencies.

(a) a Consumer Disputes Redressal Forum to be known as the “District Forum” established by the State Government in each district of the State by notification:

Provided that the State Government may, if it deems fit, establish more than one District Forum in a district;

* * * * *

10. (1) Each District Forum shall consist of,— Composition of the District Forum.

* * * * *

(b) two other members, one of whom shall be a women, who shall have the following qualifications, namely:—

* * * * *

(iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years, in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

Provided that a persons shall be disqualified for appointment as a member, if he—

* * * * *

(2) Every member of the District Forum shall hold office for a term of five years or up to the age of sixty-five years, whichever is earlier:

* * * * *

Provided further that a member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who is required to be appointed under the provisions of sub-section (1A) in place of the person who has resigned:

* * * * *

Manner in which complaint shall be made.

12. (1) A Complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Forum by—

* * * * *

(2) Every complaint filed under sub-section (1) shall be accompanied with such amount of fee and payable in such manner as may be prescribed.

(3) On receipt of a complaint made under sub-section (1), the District Forum may, by order, allow the complaint to be proceeded with or rejected:

* * * * *

Provided further that the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was received.

* * * * *

Finding of the District Forum.

14. (1) If, after the proceeding conducted under section 13, the District Forum is satisfied that the goods complained against suffer from any other defects specified in the complaint or that any or the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things, namely:—

* * * * *

(c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;

* * * * *

(g) not to offer the hazardous goods for sale;

(h) to withdraw the hazardous goods from being offered for sale;

(ha) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;

(hb) to pay such sum as may be determined by it, if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently:

Provided that the minimum amount of sum so payable shall not be less than five per cent. of the value of such defective goods sold or services provided, as the case may be, to such consumers:

* * * * *

(2A) Every order made by the District Forum under sub-section (1) shall be signed by its President and the member or members who conducted the proceeding:

Provided that where the proceeding is conducted by the President and one member and they differ on any point or points, they shall state the point or points on which they

differ and refer the same to the other member for hearing on such point or points and the opinion of the majority shall be the order of the District Forum.

* * * * *

15. Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed: Appeal.

* * * * *

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the District Forum, shall be entertained by the State Commission unless the appellant has deposited in the prescribed manner fifty per cent. of that amount or twenty-five thousand rupees, whichever is less.

16. (1) Each State Commission shall consist of—

* * * * *

Composition
of the State
Commission.

(b) Not less than two, and not more than such number of members, as may be prescribed, and one of whom shall be a woman, who shall have the following qualifications, namely:—

(i) be not less than thirty-five years of age;

* * * * *

(iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

Provided that not more than fifty per cent. of the members shall be from amongst the persons having a judicial background.

Explanation.—For the purposes of this clause, the expression "persons having a judicial background" shall mean persons having knowledge and experience for at least a period of ten years as a presiding officer at the district level court or any tribunal at equivalent level:

Provided further that a person shall be disqualified for appointment as a member, if he—

* * * * *

(1A) Every appointment under sub-section (1) shall be made by the State Government on the recommendation of a Selection Committee consisting of the following members, namely:—

* * * * *

(1B) (i) If the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it.

* * * * *

(3) Every member of the State Commission shall hold office for a term of five years or up to the age of sixty-seven years, whichever is earlier:

* * * * *

Provided further that a person appointed as a President of the State Commission shall also be eligible for re-appointment in the manner provided in clause (a) of sub-section (1) of this section:

* * * * *

Appeals.

19. Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 17 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed:

* * * * *

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has deposited in the prescribed manner fifty per cent. of the amount or rupees thirty-five thousand, whichever is less:

* * * * *

Composition of the National Commission.

20. (1) The National Commission shall consist of—

* * * * *

(b) not less than four, and not more than such number of members, as may be prescribed, and one of whom shall be a woman, who shall have the following qualifications, namely:—

(i) be not less than thirty-five years of age;

* * * * *

(iii) be persons of ability, integrity and standing and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy industry, public affairs or administration:

* * * * *

Explanation.—For the purposes of this clause, the expression “persons having judicial background” shall mean persons having knowledge and experience for at least a period of ten years as a presiding officer at the district level court or any tribunal at equivalent level:

Provided further that a person shall be disqualified for appointment, if he—

* * * * *

Provided also that every appointment under this clause shall be made by the Central Government on the recommendation of a Selection Committee consisting of the following, namely:—

(a) a person who is a Judge of the Supreme Court, to be nominated by the Chief Justice of India —Chairman;

* * * * *

(1A)(i) * * * * *

(iii) If the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it.

(2) The salary or honorarium and other allowances payable to and the other terms and conditions of service of the members of the National Commission shall be such as may be prescribed by the Central Government.

* * * * *

23. Any person, aggrieved by an order made by the National Commission in exercise of its power conferred by sub-clause (i) of clause (a) of section 21, may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order:

* * * * *

Provided further that no appeal by a person who is required to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless that person has deposited in the prescribed manner fifty per cent. of that amount or rupees fifty thousand, whichever is less.

* * * * *

25. (1) Where an interim order made under this Act is not complied with, the District Forum or the State Commission or the National Commission, as the case may be, may order the property of the person, not complying with such order to be attached.

Enforcement of orders of the District Forum, the State Commission or the National Commission.

(2) No attachment made under sub-section (1) shall remain in force for more than three months at the end of which, if the non-compliance continues, the property attached may be sold and out of the proceeds thereof, the District Forum or the State Commission or the National Commission may award such damages as it thinks fit to the complainant and shall pay the balance, if any, to the party entitled thereto.

(3) Where any amount is due from any person under an order made by a District Forum, State Commission or the National Commission, as the case may be, the person entitled to the amount may make an application to the District Forum, the State Commission or the National Commission, as the case may be, and such District Forum or the State Commission or the National Commission may issue a certificate for the said amount to the Collector of the district (by whatever name called) and the Collector shall proceed to recover the amount in the same manner as arrears of land revenue.

* * * * *

27.(1)* * * * * *

Penalties.

2 of 1974.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 the District Forum or the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of the first class for the trial of offences under this Act, and on such conferment of powers, the District Forum or the State Commission or the National Commission, as the case may be, on whom the powers are so conferred, shall be deemed to be a Judicial Magistrate of the first class for the purpose of the Code of Criminal Procedure, 1973.

* * * * *

30. (1) The Central Government may, by notification, make rules for carrying out the provisions contained in clause (a) of sub-section (1) of section 2, clause (b) of sub-section (2) of section 4, sub-section (2) of section 5, sub-section (2) of section 12, clause (vi) of sub-section (4) of section 13, clause (hb) of sub-section (1) of section 14, section 19, clause (b) of sub-section (1) and sub-section (2) of section 20, section 22 and section 23 of this Act.

Power to make rules.

(2) The State Government may, by notification, make rules for carrying out the provisions contained in clause (b) of sub-section (2) and sub-section (4) of section 7, clause (b) of sub-section (2) and sub-section (4) of section 8A, clause (b) of sub-section (1) and sub-section (3) of section 10, clause (c) of sub-section (1) of section 13, clause (hb) of sub-section (1) and sub-section (3) of section 14, section 15 and clause (b) of sub-section (1) and sub-section (2) of section 16 of this Act.

* * * * *

LOK SABHA

A

BILL

further to amend the Consumer Protection Act, 1986.

(Shri K.V. Thomas, Minister for Consumer Affairs, Food and Public Distribution)