DR. J.J. MERCHANT AND ORS. A

v.

SHRINATH CHATURVEDI

AUGUST 12, 2002

[M.B. SHAH, BISHESHWAR PRASAD SINGH AND H.K. SEMA, JJ.] B

Consumer Protection Act, 1986/Consumer Protection Rules, 1986—Section 13/Rule 14—Complaint before National Commission—Plea to transfer to Civil Court on ground of delay in disposal of the case and since case involved disputed question of law and facts where summary procedure was not adequate—Held, cannot be transferred—Commission competent to decide complicated questions of Law—Delay in disposal of the case cannot be a ground to direct the complainant to approach civil court—Delay can be avoided in view of Order VII Rule 14 and Order VIII Rule 1 and 1A and the proposed amendment in the Act—Direction issued to Commission—Code of Civil Procedure, 1908—Order VIII, Rules 1 and 1A, Order VII, Rule 14, Order XVII, Rule 4—Consumer Protection (Amendment) Bill, 2002. C D

Complainant-respondent filed complaint in National Consumer Disputes Redressal Commission (NCDRC) against appellant-doctors alleging medical negligence. Before filing complaint he also filed criminal case which was pending before trial Court. Appellant-doctors filed miscellaneous petition before NCDRC praying that complaint be either dismissed (as complicated questions of law and facts arise which can best be decided by Civil Court) or proceeding be stayed during the pendency of criminal prosecution. This was rejected by Commission holding that there is no universal rule of law that during pendency of criminal proceedings, civil proceedings should be stayed. E F

In appeal to this Court appellants contended that complainant should be directed to approach Civil Court since there was inordinate delay of nine years in disposal of the case as matter was repeatedly adjourned on one or the other ground without calling in the procedure prescribed under Section 13 of Consumer Protection Act, 1986 and Rule 14 of Consumer Protection Rules, 1986, and since complicated questions of law and facts were involved in the case for which experts including doctors would be required to be examined and their cross-examination might be necessary for which summary procedure was not a proper remedy. G H

A Disposing of the appeal, the Court

HELD: 1. Delay in disposal of the complaint would not be a ground for rejecting the complaint and directing the complainant to approach the Civil Court. If complainant is directed to approach Civil Court due to delay in disposal of cases by Consumer Commission, it would be unjust and the whole B purpose and object of enacting the Consumer Protection Act, 1986 would be frustrated. The object and purpose of enacting the Act is to render simple, inexpensive and speedy remedy to the consumers with complaints against defective goods and deficient services and the benevolent piece of legislation intended to protect a large body of consumers from exploitation would be C defeated. [475-A; 476-F, G]

Charan Singh v. *Healing Touch Hospital and Ors.*, [2000] 7 SCC 668, relied on.

2.1. It would not be proper to hold that in cases where negligence of D experts is alleged, consumers should be directed to approach the Civil Court. Under the Act, National Commission is required to be headed by a retired judge of this Court and the State Commission is required to be headed by a retired High Court Judge. They are competent to decide complicated issues of law or facts. [477-B]

E *Indian Medical Association* v. *V.P. Shantha and Ors.*, [1995] 6 SCC 37, referred to.

2.1. It would be totally wrong assumption that because summary trial is provided justice cannot be done when some questions of facts are required to be dealt with or decided. It cannot be said that complicated questions of facts F cannot be decided in summary proceedings because under the Act, for summary or speedy trial, exhaustive procedure in conformity with the principle of natural justice is provided. Merely because it is mentioned that Commission or Forum is required to have summary trial would hardly be a ground for directing the consumer to approach the Civil Court. For trial to be just and reasonable long drawn delayed procedure, giving ample opportunity to the G litigant to harass the aggrieved other side, is not necessary. Legislature has provided alternative, efficacious, simple, inexpensive and speedy remedy to the consumers and that should not be curtailed on such ground. [477-C, D]

2.3. In view of Section 13 of the Act and Order VIII Rule 1 CPC, the H Commission can certainly refer to Order VII Rule 14 CPC which provides

that where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in the Court when the plaint is presented by him and shall at the same time deliver the document and a copy thereof, to be filed with the plaint. The mandatory requirement is not followed and thereafter, there is complaint of delay in disposal. Similarly, in case of written statement under Order VIII Rule 1-A defendant is required to produce the documents relied upon by him when written submission is presented. The Commission can always insist on production of all documents relied upon by the parties along with the complaint and the defence version. [480-A, B] A B

2.4. In the present case, the complainant's case is based upon the negligence of the doctors in giving treatment to the deceased. Whether there was negligence or not on the part of the concerned doctors would depend upon facts alleged to and in such a case there is no question of complicated question of law involved. It is true that it is the discretion of the Commission to examine the experts, if required in appropriate matter. It is equally true that in cases where it is deemed fit to examine experts, recording of evidence before a Commission may consume time. The Act specifically empowers the Consumer Forums to follow the procedure which may not require more time or delay the proceedings. Only caution required is to follow the said procedure strictly. Hence, there is no scope of delay in examination or cross-examination of the witnesses. The affidavits of the experts including the doctors can be taken as evidence. Thereafter, if cross-examination is sought for by the other side and the Commission finds it proper, it can easily evolve a procedure permitting the party who intends to cross-examine by putting certain questions in writing and those questions also could be replied by such experts including doctors and they can be taken as evidence on affidavit. In case where stakes are very high and still party intends to cross-examine such doctors or experts, there can be video conferences or asking questions by arranging telephone conference and at the initial stage this cost should be borne by the person who claims such video conference. Further, cross-examination can be taken by the Commissioner appointed by it at the working place of such experts at a fixed time. [480-E, F, H; 481-A, B] C D E F G

3.1. The proposed amendment in the Act mandates the District Forum or the Commission to decide the admissibility of the complaint within 21 days from the date on which the complaint was received by it. This procedure is required to be adhered so that after lapse of some time, objection with regard to maintainability of the complaint is not required to be decided. [486-A] H

A **3.2. From the proposed amendment in the Act, by Consumer Protection (Amendment) Bill, 2002, it is apparent that Parliament is alive to the problems faced by the consumers and the consumer forums and, therefore, further directions are not required to be given. However, apart from the contemplated legislative action, it is expected that the Government would also take**
B **appropriate steps in providing proper infrastructure so that the Act is properly implemented and the legislative purpose of providing alternative efficacious, speedy, inexpensive remedy to the consumers is not defeated or frustrated.**

[486-D, E]

[The Court directed that for avoiding delay in disposal of complaint
C **within prescribed period, National Commission is required to take appropriate steps viz.(a) competent persons are appointed as Members on all levels so that there may not be any delay in composition of the Forum or the Commission for want of Members; (b) it would oversee that time limit prescribed for filing defence version and disposal of complaints is strictly adhered to; (c) it would see that complaint as**
D **well as defence version are accompanied by documents and affidavits upon which parties intend to rely; (d) In cases where cross-examination of the persons who have filed affidavits is necessary, suggested questions of cross-examination be given to the persons who have tendered their affidavits and reply may be also on affidavits; (e) In**
E **cases where Commission deems it fit to cross-examine the witnesses in person, video conference or telephonic conference at the cost of person who so applies could be arranged or cross-examination could be through a Commission. This procedure would be helpful in cross-examination of experts such as doctors]. [486-F, G, H; 487-A, B]**

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7975 of 2001.

From the Judgment and Order dated 21.5.2001 of the National Consumer Disputes Redressal Commission, New Delhi in M.P. No. 53/2000 in O.P. No. 252 of 1993.

G R.F. Nariman, P. Venugopal, P.S. Sudheer, Ms. Surekha Raman for M/s. K.J. John & Co. Uday Umesh Lalit, (A.C.), Anoop Bose, Ms. Nandini Gore, Ms. Megha Mishra, Raja Chatterjee, G.S. Chatterjee, Ms. S. Shaoli Lata, for the appearing parties.

The Judgment of the Court was delivered by

H **SHAH, J.** Miscellaneous Petition No.53 of 2000 was filed before the

National Consumer Disputes Redressal Commission (hereinafter referred to as "National Commission"), New Delhi in Original Petition No.252 of 1993 by the appellants - doctors praying that complaint filed for alleged medical negligence be either dismissed as according to them complicated questions of law and facts arise which can best be decided by the Civil Court or in the alternative the proceeding be stayed during the pendency of criminal prosecution pending against them in criminal court at Mumbai. That application was rejected by the Commission. Hence, this appeal.

In the present case, complainant respondent filed Original Petition before the National Commission on 26.8.1993 alleging that his son aged 21 years was admitted to the Breach Candy Hospital, Mumbai on 4.8.1992 for operation of slip disc as he was suffering from backache. It was stated that before that, he had returned from USA in the month of June, 1992 after obtaining degree in Business Management. He died on 29th August, 1992 in the hospital itself. For this, he attributed medical negligence.

Before filing complaint before the National Commission, the complainant had also filed criminal complaint before the Metropolitan Magistrate, Mumbai for the offences punishable under Sections 304-A/201 and 203 of Indian Penal Code. That prosecution is also pending. The Commission rejected the application by holding that there is no universal rule of law that during the pendency of criminal proceedings, civil proceedings must invariably be stayed. The Commission also observed that there was unexplained delay in moving such application at this stage and, therefore, case requires to be decided at the earliest.

In this appeal, the Court issued notice on 7th December, 2001 and thereafter on 28th January, 2002 passed the following order:

> "It is contended by Mr. Ashok Desai, learned senior counsel appearing for the appellants and Mr. R.F. Nariman, the learned senior counsel appearing for the intervenors that some guidelines will have to be laid down which are more precise in nature with regard to the type of cases which the Consumer Forum will not entertain, keeping in mind the decision of this Court in *Indian Medical Association* v. *V.P. Shanta,* [1995] 6 SCC 651 in paragraph 37. List after six weeks on a non-miscellaneous day before a Bench of Three Judges. In the meantime, there will be no stay of proceedings."

Learned senior counsel Mr. Nariman first submitted that considering -

A (a) the inordinate delay in disposal of the complaint, (b) complicated question of law and facts involved in this case depending upon medical experts opinion summary procedure is not proper remedy for deciding such issues, hence complainant should be directed to approach the Civil Court.

Reasons for delay as submitted by the Learned Counsel for the parties:

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(a) Delay in making appointment of the Chairman and Members of the Forum or Commission including National Commission;

(b) Not providing adequate infrastructure;

C (c) Delay because of heavy workload and there is only one Bench of the National Commission or the State Commissions for deciding complaints;

(d) Delay in procedure;

D Before dealing with reasons for delay, the first question which requires consideration is whether delay in disposal of cases by the Consumer Forum or Commission would be a ground for directing the complainant to approach Civil Court?

In the present case, there is inordinate delay of about nine years in E disposal of complaint. However, if this contention raised by the learned counsel for the appellants is accepted, apart from the fact that it would be unjust, the whole purpose and object of enacting the Consumer Protection Act, 1986 (hereinafter referred to as the 'Act') would be frustrated. One of the main objects of the Act is to provide speedy and simple redressal to consumer disputes and for that a quasi-judicial machinery is sought to be set up at the F district, State and Central level. These quasi-judicial bodies are required to observe the principles of natural justice and have been empowered to give relief of a specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non-compliance of the orders given by the quasi-judicial bodies have also been provided. The object and purpose of enacting the Act is to render simple, inexpensive and speedy remedy to the consumers G with complaints against defective goods and deficient services and the benevolent piece of legislation intended to protect a large body of consumers from exploitation would be defeated. Prior to the Act, consumers were required to approach the Civil Court for securing justice for the wrong done to them and it is known fact that decision in suit takes years. Under the Act, consumers H are provided with an alternative, efficacious and speedy remedy. As such, the

Consumer forum is an alternative forum established under the Act to discharge the functions of a Civil Court. Therefore, delay in disposal of the complaint would not be a ground for rejecting the complaint and directing the complainant to approach the Civil Court.

Further, while rejecting the similar contention where the complainant was directed to approach State Commission or District Forum, this Court in *Charan Singh* v. *Healing Touch Hospital and Ors.*, [2000] 7 SCC 668 observed that appellant ought not to have been condemned unheard after waiting for six long years; the legislative intent, for enacting the legislation, of a speedy summary trial, to settle the claim of the complainant (consumers) has been respected in breach. The spirit of the benevolent legislation has been overlooked and its object frustrated by non-suiting the appellant in the manner in which it has been done by the National Consumer Forum. It was further observed that "the Consumer Forums must take expeditious steps to deal with the complaints filed before them and not keep them pending for years. It would defeat the object of the Act, if summary trials are not disposed of expeditiously by the forums at the District, State or National levels. Steps in this direction are required to be taken in the right earnest".

Learned counsel for the appellant next contended that the present case involves complicated question of facts for which experts including doctors would be required to be examined and their cross-examination may be necessary, therefore also, the National Commission ought to have directed the complainant to approach the Civil Court. For this purpose, the reliance is placed upon the decision of this Court in *Indian Medical Association* v. *V.P. Shantha and Ors.*, [1995] 6 SCC 651 para 37 and it is submitted that in the present case complicated question of fact involving negligence of doctors is to be decided and, therefore, complainant should be directed to approach the Civil Court. In the aforesaid case, the Court rejected the said contention and observed thus:

> "....It has been urged that proceedings involving negligence in the matter of rendering services by a medical practitioner would raise complicated questions requiring evidence of experts to be recorded and that the procedure which is followed for determination of consumer disputes under the Act is summary in nature involving trial on the basis of affidavits and is not suitable for determination of complicated questions. *It is no doubt true that sometimes complicated questions requiring recording of evidence of experts may arise in a complaint*

A *about deficiency in service based on the ground of negligence in rendering medical services by a medical practitioner;* but this would not be so in all complaints about deficiency in rendering services by a medical practitioner. There may be cases which do not raise such complicated questions and the deficiency in service may be due to obvious faults which can be easily established such as removal of the wrong limb or the performance of an operation on the wrong patient or giving injection of a drug to which the patient is allergic without looking into the out-patient card containing the warning as in *Chin Keow* v. *Govt. of Malaysia,* (1967) 1 WLR 813 PC or use of wrong gas during the course of an anaesthetic or leaving inside the patient swabs or other items of operating equipment after surgery. One often reads about such incidents in the newspapers. *The issues arising in the complaints in such cases can be speedily disposed of by the procedure that is being followed by the Consumer Disputes Redressal Agencies and there is no reason why complaints regarding deficiency in service in such cases should not be adjudicated by the Agencies under the Act.* In complaints involving complicated issues requiring recording of evidence of experts, the complainant can be asked to approach the civil court for appropriate relief. Section 3 of the Act which prescribes that the provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force, preserves the right of the consumer to approach the civil court for necessary relief. We are, therefore, unable to hold that on the ground of composition of the Consumer Disputes Redressal Agencies or on the ground of the procedure which is followed by the said Agencies for determining the issues arising before them, the service rendered by the medical practitioners are not intended to be included in the expression 'service' as defined in Section 2(1)(o) of the Act....."

In the aforesaid case, the Court was dealing with a contention that services rendered by the medical practitioners are not intended to be included in the expression "service" as defined in Section 2(1)(o) of the Act. That contention was negatived by the Court. Further from this decision, it is apparent that it is within the discretion of the Commission to ask the complainant to approach the civil court for appropriate relief in case complaint involves complicated issues requiring recording of evidence of experts, which may delay the proceeding. But the court has specifically held that issues arising in the complaints in such cases can be speedily disposed of by the

procedure that is being followed by the Consumer Disputes Redressal Agencies.

Further, under the Act the National Commission is required to be headed by a retired Judge of this Court and the State Commission is required to be headed by a retired High Court Judge. They are competent to decide complicated issues of law or facts. Hence, it would not be proper to hold that in cases where negligence of experts is alleged, consumers should be directed to approach the Civil Court.

It was next contended that such complicated questions of facts cannot be decided in summary proceedings. In our view, this submission also requires to be rejected because under the Act, for summary or speedy trial, exhaustive procedure in conformity with the principles of natural justice is provided. Therefore, merely because it is mentioned that Commission or Forum is required to have summary trial would hardly be a ground for directing the consumer to approach the Civil Court. For trial to be just and reasonable long drawn delayed procedure, giving ample opportunity to the litigant to harass the aggrieved other side, is not necessary. It should be kept in mind that legislature has provided alternative, efficacious, simple, inexpensive and speedy remedy to the consumers and that should not be curtailed on such ground. It would also be totally wrong assumption that because summary trial is provided, justice cannot be done when some questions of facts are required to be dealt with or decided. The Act provides sufficient safeguards. For this purpose, we would refer to the procedure prescribed under the Act for disposal of the complaint.

> "*13. Procedure on receipt of complaint*—(1) The District Forum shall, on receipt of a complaint, if it relates to any goods—
>
> (a) refer a copy of the complaint to the opposite party mentioned in the complaint directing him *to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;*
>
> (b) where the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute in the manner specified in clauses (c) to (g);

A (c) to (g).....

(2) the District Forum shall, if the complaint received by it under section 12 relates to goods in respect of which the procedure specified in sub-section (1) cannot be followed, or if the complaint relates to any services,

B

(a) refer a copy of such complaint to the opposite party directing him to give his version of the *case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;*

C (b) where the opposite party, on receipt of a copy of the complaint, referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District forum, the District Forum shall proceed to settle the consumer dispute,

D (i) on the basis of evidence brought to its notice by the complainant and the opposite party, where the opposite party denies or disputes the allegations contained in the complaint, or

(ii) on the basis of evidence brought to its notice by the complainant where the opposite party omits or fails to take any action to represent his case within the time given by the Forum.

E

(3) No proceedings complying with the procedure laid down in sub-sections (1) and (2) shall be called in question in any court on the ground that principles of natural justice have not been complied with.

(4) For the purposes of this section, the *District Forum shall have* F *the same powers as are vested in a civil court under Code of Civil Procedure,* 1908 while trying a suit in respect of the following matters, namely:

(i) the summoning and enforcing the attendance of any defendant or *witness and examining the witness on oath.*

G (ii) *the discovery and production of any document* or other material object producible as evidence;

(iii) the reception of *evidence on affidavits;*

(iv) the requisitioning of the report of the concerned analysis or test H from the appropriate laboratory or from any other relevant source;

(v) issuing of any commission for the examination of any witness; and A

(vi) any other matter which may be prescribed."

The National Commission or the State Commission is empowered to follow the said procedure. From the aforesaid Section it is apparent that on B receipt of the complaint, the opposite party is required to be given notice directing him to give his version of the case within a period of 30-days or such extended period not exceeding 15 days as may be granted by the District Forum or the Commission. For having speedy trial, this legislative mandate of not giving more than 45 days in submitting the written statement or the C version of the case is required to be adhered. If this is not adhered, the legislative mandate of disposing of the cases within three or five months would be defeated.

For this purpose, even the Parliament has amended Order VIII Rule 1 of Code of Civil Procedure, which reads thus: D

> *"Rule-1: Written statement.*—The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence :
>
> Provided that where the defendant fails to file the written statement E within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, *but which shall not be later than ninety days from the date of service of summons."*

Under this Rule also, there is a legislative mandate that written statement F of defence is to be filed within 30 days. However, if there is a failure to file such written statement within stipulated time, the court can at the most extend further period of 60 days and no more. Under the Act, the legislative intent is not to give 90 days of time but only maximum 45 days for filing the version by the opposite party. Therefore, the aforesaid mandate is required to be G strictly adhered to.

Further, under Section 13(4) of the Act, the Commission or the Forum is empowered to exercise the powers vested in Civil Court for discovery and production of any document, the reception of evidence on affidavit and of issuing of any commission qua examination of any witness. H

A In view of the aforesaid provisions, the Commission can certainly refer to Order VII Rule 14 which provides that where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in the Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint. It appears that B this mandatory requirement is not followed and thereafter, there is complaint of delay in disposal. Similarly, in case of written statement under Order VIII Rule I-A, defendant is required to produce the documents relied upon by him when written submission is presented. The Commission can always insist on production of all documents relied upon by the parties along with the complaint C and the defence version.

Further, in the present case, the complainant's case is based upon the negligence of the Doctors in giving treatment to the deceased. Whether there was negligence or not on the part of the concerned Doctors would depend upon facts alleged to and in such a case there is no question of complicated D question of law involved. However, it has been pointed out by the learned senior counsel that recording of evidence of experts including doctors relied upon by the complainant would consume much time and therefore also complainant should approach the Civil Court. As against this, learned counsel for the complainant submitted that under the Act, Commission is required to E follow summary procedure. It may or may not examine the doctors or experts. It may only rely upon the statements given by such doctors or experts.

It is true that it is the discretion of the Commission to examine the experts if required in appropriate matter. It is equally true that in cases where it is deemed fit to examine experts, recording of evidence before a Commission F may consume time. The Act specifically empowers the Consumer Forums to follow the procedure which may not require more time or delay the proceedings. Only caution required is to follow the said procedure strictly. Under the Act, while trying a complaint, evidence could be taken on affidavits [under Section 13(4)(iii)]. It also empowers such Forums to issue any Commission for examination of any witness [under Section 13(4)(v)]. It is also to be stated that G Rule 4 in Order XVIII of C.P.C. is substituted which inter alia provides that in every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence. It also provides that witnesses could be examined by the Court or the Commissioner appointed by it. As stated above, the Commission H is also empowered to follow the said procedure. Hence, we do not think that

there is any scope of delay in examination or cross-examination of the witnesses. The affidavits of the experts including the doctors can be taken as evidence. Thereafter, if cross-examination is sought for by the other side and the Commission finds it proper, it can easily evolve a procedure permitting the party who intends to cross-examine by putting certain questions in writing and those questions also could be replied by such experts including doctors on affidavits. In case where stakes are very high and still party intends to cross-examine such doctors or experts, there can be video conferences or asking questions by arranging telephone conference and at the initial stage this cost should be borne by the person who claims such video conference. Further, cross-examination can be taken by the Commissioner appointed by it at the working place of such experts at a fixed time.

In any case, for avoiding the delay the District Forum or Commissions can evolve a procedure of levying heavy cost where adjournment is sought by a party on one or the other ground. This would have its own impact on disposing the complaints, appeals or revisions within the stipulated or reasonable time. For avoiding delay in disposal of cases, the procedure and the time limit prescribed under the Act and the Rules is required to be strictly adhered to and followed. If there is proper mind set to do so on the part of all concerned, delay in disposal to a large extent could be avoided.

Learned senior counsel Mr. Nariman and Mr. Chatterjee and Mr. Lalit (Amicus Curiae) submitted that despite various directions given by this Court including the decision given in Charan Singh's case (Supra), the District Forums, State Commissions and National Commission remain flooded with number of complaints, appeals and revisions and arrears is mounting. For delay, they unanimously submitted that after enactment of the Act, appropriate steps are not taken by the Government for ensuring that the National Commission as well as State Forums can function properly. It is submitted that even if one Member is appointed, other members of the Forum are not appointed. It is also pointed out that on occasions there is no simultaneous appointment of the Members of the Forum or the President so as to make it functional. In most of the cases, it is their submission that even after appointment of the members, the forum is not provided with necessary building and infrastructure.

It is also pointed out that before the National Commission, as on 1st April 2002, 7582 matters were pending, which consisted of 1495 original petitions, 2330 first appeals and 3757 revision petitions. It is true that for

A disposal of these many matters in a stipulated time limit as prescribed under the Act or the Rules, one Bench may not be in a position to cope up with the work.

For reducing the arrears and for seeing that complaints, appeals and revisions are decided speedily and within stipulated time, we hope that
B President of National Commission would draw the attention of the Government for taking appropriate actions within stipulated time and see that object and purpose of the Act is not frustrated.

Further, National Commission has administrative control over the State
C Commissions and District Forums as provided under Section 24-B, which reads thus:

> *"24B. Administrative Control.* (1) The National Commission shall have administrative control over all the State Commissions in the following matters, namely—
>
> D (i) calling for periodical return regarding the institution, disposal pendency of cases;
>
> (ii) issuance of instructions regarding adoption of uniform procedure in the hearing of matters, prior service of copies of documents produced by one party to the opposite parties, furnishing of
> E English translation of judgments written in any language, speedy grant of copies of documents;
>
> (iii) generally overseeing the functioning of the State Commissions or the District Fora to ensure that the objects and purposes of the Act are best served without in any way interfering with their
> F quasi-judicial freedom.
>
> (2) The State Commission shall have administrative control over all the District Fora within its jurisdiction in all matters referred to in sub-section (1)."

It can be hoped that the National Commission would ensure its best
G to see that District Forums, State Commissions and National Commission can discharge its functions as efficiently and speedily as contemplated by the provisions of the Act. The National Commission has administrative control over all the State Commissions inter alia for issuing of instructions regarding adoption of uniform procedure in hearing of the matters etc. It would have also administrative control in overseeing that the functions of the State
H Commissions or District Forums are discharged in furtherance of objects and

purposes of the Act in the best manner. A

It is to be stated that the grievances of the learned counsel for the parties is sought to be taken care by the proposed amendment in the Legislation. For this, we would refer to the Consumer Protection (Amendment) Bill, 2002, which was introduced in Rajya Sabha and was passed on 11th March, 2002. The statement of objects and reasons of the said Bill reads B thus: -

> "The enactment of the Consumer Protection Act, 1986 was an important milestone in the history of the consumer movement in the country. The Act was made to provide for the better protection and C promotion of consumer rights through the establishment of Consumer Councils and quasi-judicial machinery. Under the Act, consumer disputes redressal agencies have been set up throughout the country with the District Forum at the district level, State Commission at the State level and National Commission at the National level to provide simple, inexpensive and speedy justice to the consumers with D complaints against defective goods, deficient services and unfair and restrictive trade practices. The Act was also amended in the years 1991 and 1993 to make it more effective and purposeful.
>
> 2. Although the consumer disputes redressal agencies have to a considerable extent, served the purpose for which they were created, E the disposal of cases has not been fast enough. Several bottlenecks and shortcomings have also come to light in the implementation of various provisions of the Act. With a view to achieving quicker disposal of consumer complaints by the consumer disputes redressal agencies securing effective implementation of their orders, widening F the scope of some of the provisions of the Act to make it more effective, removing various lacunae in the Act and streamlining the procedures, amendments are proposed in the Act, which inter alia, include the following, namely:
>
> (i) exclusion of the jurisdiction of the consumer disputes redressal G Agencies in respect of claims for which corresponding provisions in the special laws exist for the protection of interests of consumers;
>
> (ii) provisions for creation of Benches of the National Commission and State Commissions as well as holding of circuit benches of H

A these Commissions;

(iii) prescribing the period within which complaints are to be admitted, notices are to be issued to opposite party and the complaints are to be decided. Similar provisions have been proposed also in respect of appeals;

B (iv) no adjournment to be ordinarily allowed and allowed where, a speaking order giving reasons would be made.

(v) .....(xvii)....."

Further proposed amendments inter alia provides that after sub-section C (1) of Section 20, sub-section (1A)(i) and (ii) shall be inserted, which reads thus:

"**(1A)(i)** The jurisdiction, powers and authority of the National Commission may be exercised by Benches thereof.

D (ii) A Bench may be constituted by the President with one or more members as the President may deem fit."

Similar provision is introduced for the State Commission by inserting sub-section (1B)(i) and (ii) after sub-section (1) of Section 16, which reads thus:-

E "**(1B) (i)** The jurisdiction, powers and authority of the State Commission may be exercised by Benches thereof.

(ii) A Bench may be constituted by the President with one or more members as the President may deem fit."

F Therefore, the President of the National Commission or the State Commission would have power to form the Benches for disposal of the pending cases. It would certainly depend upon the workload and the time frame contemplated under the Act for disposal of such cases.

G Proposed Bill also envisages insertion of Sub-section 3A in Section 13 of the Act, which reads as under:

"(3A) Every complaint shall be heard as expeditiously as possible and *endeavour shall be made to decide the complaint within a period of three* months from the date of receipt of notice by opposite party H where the complaint does not require analysis or testing of commodities

and within five months if it requires analysis or testing of commodities: A

Provided that *no adjournment shall be ordinarily granted by the District Forum* unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Forum:

Provided further that the District Forum shall make *such orders as to the costs occasioned by the adjournment* as may be provided in the regulations made under this Act." B

From the wording of the aforesaid Section, it is apparent that there is legislative mandate to the District Forum or the Commissions to dispose of the complaints as far as possible within prescribed time of three months by C adhering strictly to the procedure prescribed under the Act. The opposite party has to submit its version within 30 days from the date of the receipt of the complaint by him and Commission can give at the most further 15 days for some unavoidable reasons to file its version.

D

Learned counsel for the parties submitted that in the present case, there is a delay of more than nine years in disposal of the complaint. For that purpose, they made a grievance that matters are repeatedly adjourned on one or other ground without following the procedure prescribed under Section 13 of the Act and Rule 14 of the Consumer Protection Rules. The proposed amendment also requires that no adjournment shall ordinarily be granted and E in any case if adjournment is required to be granted, reasons for the same are required to be recorded. Further, to discourage granting of repeated adjournments, if National Commission frames necessary regulations heavy cost could be awarded. There is also proposal to add Section 12(3), which reads thus

F

"**12(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 that a complaint shall not be rejected under this sub-section unless an opportunity of being heard has been given to the G complainant:

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.*"

H

A It is apparent that the aforesaid proposed amendment in the Act mandates the District Forum or the Commission to decide the admissibility of the complaint within 21 days from the date on which the complaint was received by it. This procedure is required to be adhered to so that after lapse of some time, objection with regard to maintainability of the complaint is not required to be decided.
B

Other proposed amendments, such as, Sections 22C and 22D, which deal with Circuit Benches and filling up of vacancies in the office of President of District Forum, State Commission or of the National Commission, as the case may be, is not required to be referred to. However, we would mention
C that Section 30A, which is proposed to be inserted, empowers the Commission to frame regulations with the approval of the Central Government and sub-section (2) empowers the Commission to frame regulations for making provisions for the cost of adjournment of any proceeding before the District Forum, the State Commission or the National Commission.

D From the proposed amendment in the Act, it is apparent that Parliament is alive to the problems faced by the consumers and the consumer forums and, therefore, further directions are not required to be given.

However, apart from the contemplated legislative action, it is expected that the Government would also take appropriate steps in providing proper
E infrastructure so that the Act is properly implemented and the legislative purpose of providing alternative, efficacious, speedy, inexpensive remedy to the consumers is not defeated or frustrated.

Similar action is also expected from the National Commission as well as State Commissions. Hence, for avoiding delay in disposal of complaints within
F prescribed period, National Commission is required to take appropriate steps including:

(a) By exercise of Administrative control, it can be seen that competent persons are appointed as Members on all levels so that there may not be any delay in composition of the Forum or
G the Commission for want of Members;

(b) It would oversee that time limit prescribed for filing defence version and disposal of complaints is strictly adhered to;

(c) It would see that complaint as well as defence version should be
H accompanied by documents and affidavits upon which parties

intend to rely; A

(d) In cases where cross-examination of the persons who have filed affidavits is necessary, suggested questions of cross-examination be given to the persons who have tendered their affidavits and reply may be also on affidavits;

(e) In cases where Commission deems it fit to cross-examine the witnesses in person, video conference or telephonic conference at the cost of person who so applies could be arranged or cross-examination could be through a Commission. This procedure would be helpful in cross-examination of experts, such as, Doctors. B

In the result, with the aforesaid directions, the appeal stands disposed of. There shall be no order as to costs. IA Nos.1 to 4 do not require any further consideration and stand disposed of accordingly. C

Before parting with the judgment, we would appreciate the assistance rendered by the learned counsel for the parties and Amicus Curiae. D

K.K.T. Appeal disposed of.