(2011) 01 OHC CK 0025

In the Orissa High Court

Case No : Writ Petition (C) No. 6359 of 2004

Orissa Consumers Association and Another — APPELLANT

Vs

Union of India (UOI) and Another — RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

Constitution of India, 1950 — Article 14
Consumer Protection Act, 1986 — Section 12, 12(1), 12(2), 13(4), 14(1)
Consumer Protection Rules, 1987 — Rule 9A, 9A(1)
General Clauses Act, 1897 — Section 23

Citation : AIR 2011 Ori 118 : (2011) 112 CLT 2 : (2011) 1 OLR 741 : (2011) 6 RCR(Civil) 1985

Hon'ble Judges : V. Gopala Gowda, C.J;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.N. Mahapatra, J.—This Writ Petition has been filed with a prayer to strike down Sub-section (2) of Section 12 of the Consumer Protection Act, 1986 (for short, ''Act, 1986'') as well as Rule 9A of the Consumer Protection Rules, 1987 (for short, ''Rules, 1987''), as inserted/amended by the Consumer Protection (Amendment) Rules, 2004; and the Consumer Protection (Second Amendment) Rules, 2005 (Annexure-3), on the ground that the same are un-constitutional, invalid and illegal; and pass any other orders as deemed just and proper.

2. This petition is in the nature of a Public Interest Litigation seeking protection of rights and interest of the consumers of the society. Petitioner No. 1 is a registered voluntary consumer organization and has been working since 1983 for protecting the rights and welfare of the consumers of the country seeking remedy and justice for them. It is also working for growth of consumer movement in the country to build up a healthy civil society. Petitioner No. 2 is a conscious consumer working for the welfare, betterment of the citizens of the country and advancing for growth of consumers'' increment.

3. Mr. K.N. Jena, learned Senior Advocate appearing for the Petitioner submitted that the Act, 1986 was enacted with the object and purpose to provide better protection and promotion of consumers'' interest and rights in the society. It is a social welfare legislation and was an important milestone in the history of consumer movement in the country to save the millions of illiterate, ignorant, unorganized, poor and helpless consumers which constitute 90% of the total population of the country from exploitation, cheating, unfair and restricted trade practice adopted by manufacturers, traders and service providers. Further, the object of the Act, 1986 is to provide and secure inexpensive and speedy justice to the consumers by setting up three tier redressal agencies, i.e., District Forums, Commissions at State and National levels adopting simplified procedure. Unfortunately, without making the Act, 1986 more effective and beneficial for the common men who are economically backward, some amendments in the said Act and Rules have been brought to deprive and deny justice to the consumers. Section 12 of the Act, 1986 has been substituted by the Amendment Act of 2002 (Act of 62 of 2002) inserting therein that every complaint shall be accompanied with such amount of fees payable in such manner as may be prescribed. Charging of fees for filing the complaint and amendment of Section 12 to that extent is contrary to the basic structure as well as the object and the purpose of the Act. With a view to provide justice to poor and economically backward class of the people of different castes and tribes and women, the State Government as well as the Central Government has enacted laws to exempt them from paying the Court fee, whereas a person who is purchasing one Kg. of rice or atta or a match box or a dot pen/ pack of bread/ tooth brush/ plain paper, pencil etc. or any other goods and services worth of a meager amount or less than a rupee is required to pay minimum fee of Rs. 100/- and also to pay registered postal charge of Rs. 25/-. The poor consumer is also required to pay for service of notice to each one of the opposite parties as State Government is not providing funds for service of notice to opposite parties on the plea of financial crunch. Thus, payment of fees on complaint petition is discriminatory, arbitrary and unreasonable. The Petitioners strongly believe that unscrupulous traders and influential businessmen, manufacturers, service providers are manipulating and managing the helm of affairs for bringing out such amendment. Because of charging of the fees for filing complaint petition before the Consumer Forums, the poor people will not be able to file complaints for claiming damages though they are being cheated and exploited by the manufacturers, sellers of goods and service providers, as a result of which the number of cases is reducing day-by-day and thereby the retired persons, who are rehabilitated and appointed as Members of Forums and Commissions, are being maintained and paid without any work.

4. It is further submitted that after Section 12(2) of the Act, 1986 came into force with effect from 15.03.2003, the O.P. No. 1-Central Government in exercise of its statutory power u/s 30 of the Act, 1986 amended the Rules, 1987 by C.P. (Amendment) Rules, 2004, which came into force with effect from 05.03.2004

inserting Rule 9A. Rule 9A was further amended by Consumer Protection (Amendment) Rules, 2005 with effect from 10.02.2005. Rule 9A provides a slab which varies from Rs. 100/- to Rs. 500/- on the basis of value of goods or services and the compensation claimed. Payment of fees as per Section 12(2) read with Rule 9A is grossly discriminatory, unjustified and violative of Article 14 of the Constitution of India as well as the directive principles of the Constitution and as such liable to be struck down. Rule 9A further provides that the draft and postal orders are to be drawn in favour of the Registrar of the State Commission payable at the place where the State Commission is situated. A poor farmer of remote village in order to claim protection under the Act has to undergo harassment, sufferings and incur expenses by running to the town covering the distance to obtain crossed postal orders and bank draft and to pay commission thereon. Before filing a complaint/ petition, he has to take the help and knowledge of some literate persons. Most of the State Commissions of the country including the State of Orissa do not have any Registrar. Thus, because of this amendment, a difficult/peculiar situation has arisen in filing complaint before the District Consumer Forums in the State of Orissa. Narrating all these defects, the Petitioner-Association had written letters to O.P. No. 1 on 09.04.2004 and 18.04.2004 with a request to repeal the same, but till today no reply has been received from them nor the opposite parties have taken any step to withdraw such amendment. It is vehemently argued that the said Rules have not been framed in accordance with law and therefore, it is liable to be declared as illegal. The impugned amendment has been made in violation of Section 31 of the Act, 1986 and procedure and provisions of Section 23 of the General Clauses Act, 1897. O.P. No. 1 issued a public notice which was published in "The New India Express", a daily English newspaper on 02.01.2005 inviting the voluntary consumer organizations, other bodies and public of the country to offer their views/ suggestions/comments for amendment of the existing provisions in the C.P. Rules within thirty days of such publication for the benefit the consumers. In response to such notice, the Petitioner-Association submitted suggestions and comments by letter dated 27.01.2005 (Annexure-5) and also by mail. Without considering the suggestions and comments of the public and voluntary consumers'' organizations including the Petitioner Association the impugned Rule has been enacted and enforced. Section 31 of the Act, 1986 mandatorily requires that every rule and regulation made under the said Act shall be laid before the Houses of the Parliament. Rule 9A provides that complainants, who are below the poverty line and holding Antodoya Anna Yojana (for short, ''AAY'') cards, are exempted from paying any fees for filing complaint, and no other complainants of the same category are exempted from paying Court fees which is violative of Article 14 of the Constitution of India.

5. Concluding his argument, Mr. Jena, learned Senior Advocate prayed for striking down Sub-section (2) of Section 12 of the Act, 1986 and Rule 9A of the Rules, 1987 as inserted/amended by the C.P. Amendment Rules, 2004 and further amended by the C.P. (Second Amendment) Rules, 2005 (Annexure-3).

6. Per contra, Mr. S.D. Das, learned Asst. Solicitor General appearing on behalf of the opposite parties submitted that the power given to the Central Government to make rules under the provisions of Section 30 of the Act, 1986 is not subject to condition of the Rules or byelaws being made after previous publication. Therefore, the condition of publishing the draft of the proposed Rules or byelaws for the information of persons likely to be affected thereby does not apply. It is further submitted that Section 31(1) of the Act, 1986 provides that the Rules made under the provisions of the Act, 1986 have to be laid before the Parliament and accordingly the Department of Consumer Affairs, Government of India had taken necessary action in the matter and after due authentication by the then Minister of State for Consumer Affairs, Food and Public Distribution, requisite copies of the Notification in English and Hindi were sent on 09.06.2004 requesting Lok Sabha and Rajya Sabha for laying the papers on the table of Lok Sabha and Rajya Sabha. As per bulletins of Lok Sabha dated 09.05.2005 and Rajya Sabha dtd. 06.05.2005 the C.P. (Second Amendment) Rules, 2005 published in Notification No. GSR64(E) in the Gazette of India on 10.02.2005 was laid on the tables of Lok Sabha and Rajya Sabha in terms of Section 31 of the Act, 1986. In order to check frivolous and bogus applications, the provisions of Section 12(2) were enacted by the Parliament in their own competency. It is further submitted that an Act cannot be labeled unconstitutional as charging of fees for filing of complaint is common practice which is followed. In fact, conscious view was taken for charging fees for filing complaint in Consumer Forums. Further, a graded structure of fees has been kept with the lowest amount of fees of Rs. 100/- for filing complaints in District Forum in respect of total value of goods and services/compensation claimed up to Rs. 1.0 lakh. Moreover, below the poverty line complainants, who are holders of AAY cards are exempted from paying fees for filing complaint in District Forums in respect of total value of goods/service and compensation claimed up to Rs. 1.0 lakh. It would be clear from Annexure-4 that a general notice was issued calling for views, suggestions/comments on the Act, 1986 and Rules, 1987 as amended in 2003. This is a general notification for comment and not for any particular Section of the Act or any particular Rules. The letter of Government of Orissa giving suggestions regarding amendment in the Rules, 1987 under AnnexureB/2 was sent in response to a letter of this Department which did not call for any suggestion but was only addressed to all States and Consumer Forums enclosing copy of the Gazette Notification regarding Rules, 2004 dated 5th March, 2004 for information and necessary action.

7. On the above rival contentions, the questions that fall for consideration by this Court are as follows:

(i) Whether the provisions contained in Section 12(2) of the Act, and Rule 9A of the Rules, 1987 as inserted/amended by the C.P. (Amendment) Rules, 1994 and the Consumer Protection (Second Amendment Rules, 2005) (Annexure-3) defeat the aims and objects of the Act, 1986, and therefore, are liable to be struck down?

(ii) Whether the provisions contained in Rule 9A of the Rules, as inserted/ amended by the C.P.(Amendment) Rules, 1994 and the Consumer Protection (Second Amendment) Rules, 2005 are arbitrary and discriminatory in nature?

(iii) Whether Rule 9A of the Rules, 1987 as amended by Consumer Protection (Second Amendment) Rules, 2005 has been notified without following the statutory provisions and thereby that provision is not valid?

8. To deal with the first question, it is necessary to know the aims and objects behind enacting the Act, 1986 and Rules, 1987. The statement of objects and reasons of the Act, 1986 indicates that it has been enacted to promote and protect the rights and interests of the Consumers and to provide them speedy and inexpensive redressal of their grievance.

The apex Court in Lucknow Development Authority Vs. M.K. Gupta, , while ascertaining the purpose of the Act, 1986, and the objective it seeks to achieve and nature of social purpose it seeks to promote, held as follows:

To begin with the preamble of the Act, which can afford useful assistance to ascertain the legislative intention, it was enacted, ''to provide for the protection of the interest of consumers''. Use of the word ''protection'' furnishes key to the minds of makers of the Act. Various definitions and provisions which elaborately attempt to achieve this objective have to be construed in this light without departing from the settled view that a preamble cannot control otherwise plain meaning of a provision. In fact the law meets long felt necessity of protecting the common man from such wrongs for which the remedy under ordinary law for various reasons has become illusory. Various legislations and regulations permitting the State to intervene and protect interest of the consumers have become a haven for unscrupulous ones as the enforcement machinery either does not move or it moves ineffectively, inefficiently and for reasons which are not necessary to be stated. The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces against powerful business, described as, ''a network of rackets'' or a society in which, ''producers have secured power'' to ''rob the rest'' and the might of public bodies which are degenerating into store house of inaction where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked. The malady is becoming so rampant, widespread and deep that the society instead of bothering, complaining and fighting for it, is accepting it as part of life. The enactment in these unbelievable yet harsh realities appears to be a silver lining, which may in course of time succeed in checking the rot.

9. The apex Court in Common Cause, A Registered Society With Consumer Education and Research Society Vs. Union of India and others, held as follows:

The object of the legislation, as the Preamble of the Act proclaims, is ''for better protection of the interests of consumers''. During the last few years preceding the enactment there was in this country a marked awareness among the consumers of goods that they were not getting their money''s worth and were being exploited by both traders and manufacturers of consumers goods. The need for consumer redressal fora was, therefore, increasingly felt. Understandably, therefore, legislation was introduced and enacted with considerable enthusiasm and fanfare as a path breaking benevolent legislation intended to protect the consumer from exploitation by unscrupulous manufacturers and traders of consumer goods. A three-tier fora comprising the District Forum, the State Commission and the National Commission came to be envisaged under the Act for redressal of grievances of consumers.

The apex Court in State of Karnataka Vs. Vishwabarathi House Building Coop. Society and Others, held that the provisions of the Consumer Protection Act clearly demonstrate that it was enacted keeping in view the long felt necessity of protecting the common man from wrongs where for the ordinary law for all intent and purport had become illusory. In terms of the said Act, a consumer is entitled to participate in the proceedings directly as a result whereof his helplessness against a powerful business house may be taken care of.

10. Needless to say that the Act, 1986 is a social piece of legislation and the legislative intention is to protect a consumer against the services rendered. The objective of such social welfare measures no doubt is to provide better, efficient and cheaper justice to the people. The primary duty of the Court while interpreting the provisions of such an Act is to adopt a constructive approach to achieve the purpose of the Act. Any other interpretation that would defeat the very purpose of the Act is not permissible in law.

11. In the above backdrop of the case, we have to examine whether Section 12(2) of the Act, 1986 and Rule 9A of the Rules, 1987 as inserted/amended by C.P. (Amendment) Rules, 1994 and Consumer Protection (Second Amendment) Rules, 2005 are contrary to the aims and objects for which the Act, 1986 is enacted?

12. At this juncture, it is necessary for us to know what is contemplated in Section 12(2) of the Act, 1986 and Rule 9A of the Rules, 1987 which are under challenge. These provisions are reproduced below:

Section "12. Manner in which complaint shall be made

xxxx

(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.

Rule "9A. Fee for making complaints before District Forum-

(1) Every complaint filed under Sub-section (1) of Section 12, Sub-section (1) of Section 17 and Clause (a) in Sub-clause (i) of Section 21 of the Act shall be accompanied by a fee as specified in the table given below in the form of crossed

Demand Draft drawn on a nationalised bank or through a crossed Indian Postal Order drawn in favour of the President of the District Forum, Registrar of the State Commission or the Registrar of the National Commission as the case may be, and payable at the respective place where the District Forum, State Commission or the National Commission is situated.

(2) The concerned authority referred to in Sub-rule (1) shall credit the amount of fee received by it into the Consumer Welfare Fund of the respective State and where such fund is not established into the Receipt Account of the State Government and in the case of the National Commission, to the Consumer Welfare Fund of the Central Government.

Sl. No. Total Value of goods or services and the compensation claimed Amount of fee payable

(1) (2) (3)

District Forum

(1) Upto one lakh rupees - For complainants who are under the Below Poverty Line holding Antyodaya Anna Yojana Cards Nil

(2) Upto one lakh rupees - For complainants other than Antyodaya Anna Yojana card holders. Rs.100

(3) Above one lakh and upto five lakh rupees Rs.200

(4) Above five lakh and upto ten lakh rupees Rs.400

(5) Above ten lakh and upto twenty lakh rupees Rs.500

State Commission

(6) Above twenty lakh and upto fifty lakh rupees Rs.2000

(7) Above fifty lakh and upto one crore rupees Rs.4000

National Commission

(8) Above one crore rupees Rs.5000

(3) The complainants who are under the Below Poverty Line shall be entitled for the exemption of payment of fee only on production of an attested copy of the Antyodaya Anna Yojana cards.

(underlined for emphasis)

13. Even though the Act was enacted in the year 1986, Section 12(2) quoted above has been brought into the statute by Consumer Protection (Amendment) Act, 2002 [Act No. 62 of 2002] dated 17.12.2002. Thereafter, the Central Government in exercise of its statutory powers u/s 30 of the Act, 1986 has amended the C.P. Rules, 1987 by C.P. Amendment Rules, 2004, which came into force on 05.03.2004 inserting Rule 9A. The said Rule 9A was further substituted

by Consumer Protection (Second Amendment) Rules, 2005 which came into force from 10th February, 2005. The fee structure for filing complaint before the Consumer Forum was provided for the first time in the said Rule 9A.

14. As stated above, the Consumer Protection Act, 1986 is a social and economic piece of legislation, which is directed to protect the interest of the consumers in the country. Its objective is to provide better, efficient and cheaper justice to the people. It goes without saying that in our country a major portion of the population is living below poverty line. It will be certainly difficult for a consumer who is everyday struggling for his livelihood or managing his family with limited income, to pay Rs. 100/- for filing a complaint before the statutory forum under the Act, 1986 for value of the goods and compensation. Therefore, initially when the Act, 1986 and Rules 1987 were enacted, no provision was made for payment of any fees by the consumers for filing any complaint for value of the goods and compensation in case of deficiency in service. This position remained unchanged till 2003, when Section 12(2) was inserted in the Act, 1986 and Rule 9A was inserted/ amended in the year 2004 and 2005 providing for payment of fees for filing a complaint before the Consumer Forums for value of the goods and compensation in case of deficiency in service.

15. Now the question that has arisen is as to whether the insertion/amendment made in Section 12(2) and Rule 9A is justified?

It is well settled legal position that right of appeal is a creature of statute and while granting such right, the legislature is competent to impose conditions, which are reasonable and does not defeat the very purpose of giving such right. The Constitution Bench of the apex Court in the case of Seth Nand Lal and Another Vs. State of Haryana and Others, , held as under:

The right of appeal is a creature of a statute and there is no reason why the legislature while granting the right cannot impose conditions for the exercise of such right so long as the conditions are not so onerous as to amount to unreasonable restrictions rendering the right almost illusory.

In the instant case, the specific stand of opp. parties is that in order to check frivolous and bogus applications, a conscious view was taken and the provisions of Section 12(2) were enacted by the Parliament in their own competency.

16. Section 12(2) provides that every complaint filed under Sub-section (1) shall be accompanied with such amount of fee and payable in such manner as may be prescribed and Rule 9A provides for payment of fees of Rs. 100/- to Rs. 500/- before the Consumer Forum though granting exemption to the complainants, who are holders of AAY cards. The provisions have to be read harmoniously. Though it appears at first flush that the application has to be accompanied by such amount as prescribed, it has to be read along with the exemption provisions. The requirement is for payment of fees which is subject to exemption.

The apex Court in Sultana Begum Vs. Prem Chand Jain, , held as follows:

10. The rule of interpretation requires that while interpreting two inconsistent, or, obviously repugnant provisions of an Act, the Courts should make an effort to so interpret the provisions as to harmonize them so that the purpose of the Act may be given effect to and both the provisions may be allowed to operate without rendering either of them otiose.

(Also see Election Commission of India v. Telangana Rastra Samithi and Anr. (2010(8) SC 649)

Therefore, provisions of Section 12(2) of the Act, 1986 and Rule 9A of the Rules, 1987 do not defeat the object of the Act.

17. The second question is as to whether the provisions contained in Rule 9A of the Rules, 1987 are arbitrary and discriminatory in nature? The said rule provides for payment of fees ranging from Rs. 100/- to Rs. 500/- for filing a complaint before the District Consumer Forum. No doubt, under the said provision complainants, who are AAY card holders, are not required to pay any fee along with their complaints/petitions. Thus, the object of the statutory provision is to exempt persons below poverty line. But the provisions prescribing a particular mode for establishing it, i.e., holding AAY Cards has to be treated as one of the modes to avail the exemption. Needless to say that a major chunk of the population, whose financial condition is similar to or worse than the people holding AAY cards do not possess the AAY cards. They may have to pay fees for the reason that they will not be possessing AAY cards though they are similarly situated. We have therefore to read down the said Rules to make them valid. Such reading down of a statute is permissible, since it is well settled that the Court should make all efforts to sustain the validity of a statute, even if that involves reading its language down (vide G.P. Sing''s Principles of Statutory Interpretation, 9th Edn., 2004, pp.496-503.)

The Doctrine of reading down or of recasting the statute can be applied in limited situations. It is essentially used, firstly, for saving a statute from being struck down on account of its unconstitutionality. The Courts, though, have no power to amend the law by process of interpretation, but do have power to mend it so as to be in conformity with the intendment of the legislature. Doctrine of reading down is one of the principles of interpretation of statute in that process. A statute can be declared to be valid where any term has been used which per se seems to be without jurisdiction, but can be read down in order to make it constitutionally valid by separating and excluding the part which is invalid or by interpreting the word in such a fashion in order to make it constitutionally valid and within jurisdiction of the legislature which passed the said enactment, by reading down the provisions of the Act. (See Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others,).

The apex Court in M. Pentiah and Others Vs. Muddala Veeramallappa and Others, held as follows:

Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence....Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman''s unskilfulness or ignorance of the law, except in a case of necessity or the absolute intractability of the language used. Nevertheless, the Courts are very reluctant to substitute words in a Statute, or to add words to it, and it has been said that they will only do so where there is a repugnancy to good sense." See Maxwell on Statutes (10th ed.) p.229.

In Seaford Court Estates Ltd. v. Asher 1949 2 All ER 155 ; Denning L.J. said,

when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament...and then he must supplement the written word so as to give "force and life" to the intention of the legislature.... A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases.

Thus, the object of reading down is to keep the operation of the statute within the purpose of the Act and constitutionally valid. Doctrine of reading down is, therefore, an internal aid to construe the word or phrase in a statute to give reasonable meaning.

Therefore, if the complainant produces attested copy of any other documentary evidence e.g. certificate or card like APL/BPL or any other similar card issued by any Government functionary authorized to issue such document then the exemption shall be available. The provisions have to be read down in the aforesaid manner.

18. Now the third question is as to whether before making amendment of Rule 9A of the Rules, 1987 by Consumer Protection (Second Amendment) Rules, 2005, vide Notification dated 10th February, 2005, the procedures provided under the Statute have been followed or not. According to the Petitioner, such amendments have been brought in violation of Section 23 of the General Clauses Act which provides for previous publication. The further case of the Petitioner is that the said amendments have been made in contravention of mandatory provisions of Section 31 of the Act, 1986 which requires that the said amendment should be laid before both the Houses of the Parliament for a total period of thirty days prior to bringing those rules into force. On the other hand, according to learned Counsel for the opposite parties, Rule 9A has been brought into force in exercise of the power under Sub-section (1) of Section 30 of the Act, 1986 without violating the procedures provided in the statute.

19. At this juncture, it is necessary to know what is contemplated in Sections

30(1) and 31(1) of the Act, 1986 and relevant provisions Section 23 of the General Clauses Act. The same are reproduced below:

Consumer Protection Act, 1986:

Section 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 the Act.

Section 31(1) Every Rule and every Regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the succession sessions aforesaid, both Houses agree in making any modification in the Rule or Regulation or both Houses agree that the Rule or Regulation should not be made, the Rule or Regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Rule or Regulation.

General Clauses Act.1897:

Section 23. Provisions applicable to making of rules or bye-laws after previous publication.-- Where, by any (Central Act) or Regulation, a power to make rules or bye-laws is expressed to be given subject to the conditions of the rules or bye-laws being made after previous publications, then the following provisions shall apply, namely:

(1) The authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of person likely to be affected thereby....

(Underlined for emphasis)

Section 30 of the said Act empowers the Central Government to make Rules by notification for carrying out certain provisions of the Act including Sub-section (2) of Section 12 of the Act, 1986. Thus, the Central Government is empowered to make Rules by notification.

20. Section 31 of the said Act provides that every Rule and Regulation made under the Act, 1986 shall be laid, as soon as may be after it is made, before each House of the Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in

the Rule or Regulation or both Houses agree that the Rule or Regulation should not be made, the Rule or Regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Rule or Regulation. Thus, as per Section 31(1), the Parliament has every power to modify or annul the Rules made by the Central Government in exercise of the power u/s 31 of the Act, 1986.

21. In the present case, it is contended by the opposite parties that the Department of Consumer Affairs, Government of India had taken necessary action in the matter and after authentication by the then Minister of the State for Consumer Affairs, Food and Public Distribution, requisite copies of the Notification in English and Hindi were sent on 09.06.2004 requesting the Lok Sabha and Rajya Sabha Secretariat for laying the papers on the table of Lok Sabha and Rajya Sabha. The opposite parties further submitted that as per bulletins of Lok Sabha dated 09.05.2005 and Rajya Sabha dated 06.05.2005, the C.P. (Second Amendment) Rules, 2005 was laid on the tables of both the Houses of the Parliament.

Since it has been laid before both houses of the Parliament in terms of Section 31 of the Act, 1986 and no modification has been made or no opinion was expressed that it should not be given effect to, the Rule has become operative.

22. The previous publication of draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby as provided in Section 23 of the General Clauses Act, 1897 has no application to the present case as the Consumer Protection Act does not provide any such condition.

23. In the result, the writ petition is allowed to the extent indicated in paragraph-17 above. No order as to costs.

