

COMPETITION APPELLATE TRIBUNAL

UTPE No. 182/2007

CORAM

**Hon'ble Dr. Justice Arijit Pasayat
Chairman**

**Hon'ble Mr. Rahul Sarin,
Member**

**Hon'ble Ms. Pravin Tripathi
Member**

IN THE MATTER OF

D.G. [I & R]

...Complainant

Versus

Rama Krishna Jewelers

...Respondent

Appearances: Mr. C. Shanmugam, DDG for the D.G. [I & R]

ORAL ORDER

04-08-2010

Six weeks time is granted to the D.G. [I & R] to file the Preliminary Investigation Report.

List the matter on 27th October, 2010.

**[Dr. Arijit Pasayat]
Chairman**

**[Rahul Sarin]
Member**

**[Pravin Tripathi]
Member**

COMPETITION APPELLATE TRIBUNAL

UTPE No. 184/2007

CORAM

**Hon'ble Dr. Justice Arijit Pasayat
Chairman**

**Hon'ble Mr. Rahul Sarin,
Member**

**Hon'ble Ms. Pravin Tripathi
Member**

IN THE MATTER OF

D.G. [I & R]

...Complainant

Versus

M/s. Reliance Communication Ltd.

...Respondent

Appearances: Mr. C. Shanmugam, DDG for the D.G. [I & R]

ORAL ORDER

04-08-2010

Six weeks time is granted to the D.G. [I & R] to file the Preliminary Investigation Report.

List the matter on 27th October, 2010.

**[Dr. Arijit Pasayat]
Chairman**

**[Rahul Sarin]
Member**

**[Pravin Tripathi]
Member**

COMPETITION APPELLATE TRIBUNAL

R.A. No. 19/2010 IN

C.A. No. 167/1998

CORAM

**Hon'ble Dr. Justice Arijit Pasayat
Chairman**

**Hon'ble Mr. Rahul Sarin,
Member**

**Hon'ble Ms. Pravin Tripathi
Member**

IN THE MATTER OF

Bhasin Kumar Ramlal Patel ...Applicant

Versus

Sunflame Petrochemicals (P) Ltd.
& others ...Respondents

Appearances: Mr. Dinesh Doshi, Advocate for the Applicant
Mr. C. M. Sharma, Advocate for R-2

ORAL ORDER
04-08-2010

Heard. The order dated 29th January, 2010 is recalled and C.A.
No. 167/1999 is restored to its original position.

List the matter on 27th October, 2010.

**[Dr. Arijit Pasayat]
Chairman**

**[Rahul Sarin]
Member**

**[Pravin Tripathi]
Member**

COMPETITION APPELLATE TRIBUNAL

C.A. No. 184/1999

CORAM

**Hon'ble Dr. Justice Arijit Pasayat
Chairman**

**Hon'ble Mr. Rahul Sarin,
Member**

**Hon'ble Ms. Pravin Tripathi
Member**

IN THE MATTER OF

Satyender Kumar Jain & Ors.

...Applicants

Versus

Ansal Properties & Industries Ltd.

...Respondent

Appearances: Mr. Vikas Mahajan, Mr. Dinesh Prashar and
Mr. Ashok Sharma, Advocates for the Applicants
Mr. Avtar Singh, Advocate for the respondent

ORAL ORDER
04-08-2010

Learned counsel for the respondent states that he will file the written synopsis on behalf of the respondent. Four weeks time is granted for the purpose.

List the matter on 28th October, 2010.

**[Dr. Arijit Pasayat]
Chairman**

**[Rahul Sarin]
Member**

**[Pravin Tripathi]
Member**

COMPETITION APPELLATE TRIBUNAL

C.A. No. 417/1999

CORAM

**Hon'ble Dr. Justice Arijit Pasayat
Chairman**

**Hon'ble Mr. Rahul Sarin,
Member**

**Hon'ble Ms. Pravin Tripathi
Member**

IN THE MATTER OF

Masu International ...Applicant

Versus

H.B. Estate Developers Ltd. ...Respondent

Appearances: Mr. S.S. Jauhar with Mr. C.M. Sharma and Mr. Rakesh Makhija, Advocates for the Applicant
Mr. A.N. Haksar, Sr. Advocate with Mr. Pracheta Singh, Advocate for the respondent

ORAL ORDER
04-08-2010

Respondent has moved a Miscellaneous Application for directions regarding filing of written synopsis. Since the same has been filed, the Miscellaneous Application is disposed of.

Arguments heard. Order is reserved.

**[Dr. Arijit Pasayat]
Chairman**

**[Rahul Sarin]
Member**

**[Pravin Tripathi]
Member**

COMPETITION APPELLATE TRIBUNAL

RTPE No. 235/1997 IN
C.A. No. 17/2008

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Mr. Rahul Sarin,
Member

Hon'ble Ms. Pravin Tripathi
Member

IN THE MATTER OF

Balram K. MahendraComplainant

Versus

Ansal Properties & Industries ...Respondent

Appearances: Mr. Aditya Narain, Advocate for the Complainant
Mr. Avtar Singh, Advocate for the respondent

ORAL ORDER
04-08-2010

List the matter on 28th October, 2010.

[Dr. Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

COMPETITION APPELLATE TRIBUNAL

RTPE No. 89/1984

C.A. No. 1705/1989

C.A. No. 2091/1989

CORAM

**Hon'ble Dr. Justice Arijit Pasayat
Chairman**

**Hon'ble Mr. Rahul Sarin,
Member**

**Hon'ble Ms. Pravin Tripathi
Member**

IN THE MATTER OF

D.G. [I & R]	...Complainant
Ghasitamal Mela Ram Suri Paper Marketing Co.	... Applicant

Versus

Ballarpur Industries & anr.	...Respondents
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Appearances: Mr. R. D. Makheeja, Advocate for the D.G. [I & R]
Mr. O.P. Dua, Sr. Advocate with Ms. Deepti Mishra,
Advocate for the Applicant
Mr. D. K. Malhotra, advocate with Dr. V.K. Aggarwal
and Mr. Rajesh Malhotra, Advocates for the
respondent

ORAL ORDER

04-08-2010

Mr. Makheeja, learned counsel for D.G. [I & R] has filed the written synopsis. Mr. Dua, learned counsel for the applicant has also filed the written synopsis. The written synopsis shall be exchanged by the parties.

List the matter on 26th October, 2010.

**[Dr. Arijit Pasayat]
Chairman**

**[Rahul Sarin]
Member**

**[Pravin Tripathi]
Member**

COMPETITION APPELLATE TRIBUNAL

C.A. No. 170/2006

CORAM

**Hon'ble Dr. Justice Arijit Pasayat
Chairman**

**Hon'ble Mr. Rahul Sarin,
Member**

**Hon'ble Ms. Pravin Tripathi
Member**

IN THE MATTER OF

M/s. Dinesh Trading Co. ...Applicant

Versus

New Holland Tractors (I) Pvt. Ltd. ...Respondent

Appearances: Mr. Amrit Pal Singh, Advocate for the Applicant
Ms. Ritika Ahuja, Advocate for the respondent

ORAL ORDER
04-08-2010

Admission/denial of the documents shall take place on 13th
September, 2010. List the matter on 6th October, 2010.

**[Dr. Arijit Pasayat]
Chairman**

**[Rahul Sarin]
Member**

**[Pravin Tripathi]
Member**

ultimate question is what is the effect if it is not in legible print. We need not go into the question in detail because of the offer made by R-2 to settle the matter by paying Rs. 50,000/- to the claimant in full and final settlement. In our view the amount appears to be on the lower side and we fix it as Rs.75,000/- to be paid within four weeks to the informant. The receipt showing the amount being paid shall be filed within a period of six weeks for the purpose of record. The proceedings are closed.

[Dr. Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

COMPETITION APPELLATE TRIBUNAL
NEW DELHI

Compensation Application No.417 of 1999

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Mr. Rahul Sarin
Member

Hon'ble Mrs. Pravin Tripathi
Member

IN THE MATTER OF :-

M/s. Masu International,
C-36/2, Wazirpur Industrial Area,
Delhi-110052.
Versus

....Complainant

M/s. HB Estate Developers Ltd.,
25/3, East Patel Nagar,
New Delhi-110008.

....Respondent

Appearances : Mr. S.S. Jauhar with Mr. C.M. Sharma and Mr.
Rakesh Makhija, Advocates for the Applicant
Mr. A.N. Haksar, Sr. Advocate with Mr. Pracheta
Singh,
Advocate for the respondent.

ORAL ORDER

04.08.2010

DR. JUSTICE ARIJIT PASAYAT, CHAIRMAN

The applicant has filed this application in terms of Section 12B of the Monopolies and Restrictive Trade Practices Act, 1969 (in short the 'Act').

Background facts as highlighted by the applicant are essentially as follows:

The respondent gave wide publicity that there was a proposal for construction of H.B. Twin Towers in Wazirpur District Centre, Delhi on plots to be allotted by the Delhi

Development Authority (in short the 'DDA'). As per the price list, as on 1.2.1996 the basic price for an office on the first floor was Rs.3,600/- per sq. ft. subject to a discount of Rs. 100 per sq. ft. Thus the effective price of office space on the first floor was Rs.3,500/- per sq. ft. Terrace wherever available was priced at Rs.1050 per sq. ft. i.e. @30% of the basic price for an office. All these were clearly stipulated in the advertisement issued. It was clearly mentioned that office space was available on first to ninth floors. It was indicated that the drafts and cheques were to be issued in favour of the respondent payable at Delhi. For original booking, the prospective buyers were advised to contact M/s. Parasnath and Associates Pvt. Ltd. G-2, Ground Floor, Arunachal 19, Barakhamba Road, New Delhi who were acting as agents of the respondents.

The applicant were lured by glossy pictures given about the type of construction and other features (which according to the advertisements were par excellence). It was also indicated that facility of availing loan from associate company i.e. M/s H.N. Portfolio Leasing, if needed was an added attraction. Since proposed towers were close to the manufacturing unit of the applicant, it booked on 19.3.1996 office space measuring 600 sq. ft. (Flat No. 109 on the first floor alongwith adjacent terrace measuring 334 sq. ft) at the rate of Rs.3,500 and Rs.1050

per sq. ft. respectively. The applicant sent two cheques as booking charges to be adjusted against the price of the flat and the adjacent terrace. Subsequently also the applicant made payments by cheques. Applicant came to know from the conduct of the respondent that it had no intention of allotting the flat and on the contrary on false pretext huge sums of money were taken from the applicant and several others. Respondent was to receive payments depending on the progress of construction and therefore the conduct of the respondent in denying offer of the possession of the flat after having received substantial sum of money is illegal. It is pointed out that the applicant had made the following payments:

S. No	Date	Particulars	Amount
1.	16.03.1996	Booking Amount	1,00,000.00
2.	01.04.1996	-do-	1,36,625.00
3.	01.11.1996	1 st Instalment	2,51,625.00
4.	07.06.1997	2 nd Instalment	2,44,125.00
5.	18.10.1997	3 rd Instalment	2,44,125.00
6.	23.05.1998	4 th Instalment	1,22,500.00
7.	23.05.1998	5 th Instalment	1,22,500.00
8.	29.9.1998	6 th Instalment	1,22,500.00
Total			13,44,000.00

Details of Cheques tendered which is refunded after 7 ½ months.

9.	15.11.1998	7 TH Instalment	1,22,500.00
10.	31.12.1998	9 TH Instalment	1,22,500.00
11.	15.02.1999	10 TH Instalment	1,22,500.00
12.	31.03.1999	11 TH Instalment	1,22,500.00
13.	15.05.1999	12 TH Instalment	1,22,500.00

Total 6,12,500.00

19,56,500.00

It is submitted that Payment Plan 'B' was based on the construction progress which was never intimated by the respondent.

Alleging restrictive trade practices/unfair trade practices, the compensation application has been filed. It has been stated that subsequently with a malafide motive, the respondent brought to the notice of the applicant that instead of the first floor it was willing to give a flat on the eighth floor as first floor cannot be allotted for office purposes. The prayer essentially is that the respondent should hand over the possession of flat No. 109 with adjacent terrace on the stipulated price against which nearly 90% has been paid. It has also pointed out that five cheques for more than Rs.6,00,000/- (six lakhs only) were tendered by the applicant to the respondent which were retained for about seven months and thereafter returned. Alternatively it has been prayed that the amount deposited should be returned alongwith interest at the rate of 24% per annum.

Per contra, the respondent submitted that the applicant has not come before the Forum with clean hands. According to it the details of payment made and which had not been paid in respect of instalments due are as follows:

SL. NO	Instalment	Due Date	Amount (Rs.)	Receipt Date	Amount received	Delay upto 14 th May 1999	Interest upto 14 May, 1999
1.	Booking Amount	18.03.1996	2,44,125/-	16.3.96 01.04.96 5.11.96	1,00,000 1,36,625 7,500	-----	Waived
2.	1st Inst.	18.04.1996	2,44,125/-	5.11.96	2,44,125/-	201	32,265/-
3.	2 nd Inst.	18.05.1996	2,44,125/-	10.06.97	2,44,125/-	388	62,282/-
4.	3 rd Inst.	17.06.1996	2,44,125/-	20.10.97	2,44,125/-	490	78,655/-
5.	4 th Inst.	15.10.1997	1,22,500/-	23.05.98	1,22,500/-	221	17,801/-
6.	5 th Inst.	07.12.1997	1,22,500/-	23.05.98	1,22,500/-	168	13,532/-
7.	6 th Inst.	13.02.1998	1,22,500/-	05.10.98	1,22,500/-	234	18,848/-
8.	7 th Inst.	03.03.1998	1,22,500/-	-----	-----	437	35,200/-
9.	8 th Inst	25.04.1998	1,22,500/-	-----	-----	384	30,930/-
10.	9 th Inst	25.06.1998	1,22,500/-	-----	-----	323	26,017/-
11.	10 th Inst	07.08.1998	1,22,500/-	-----	-----	280	22,553/-
12.	11 th Inst	01.10.1998	1,22,500/-	-----	-----	226	18,204/-
13.	12 th Inst	18.10.1998	1,22,500/-	-----	-----	208	16,754/-
14.	13 th Inst	28.03.1999	1,22,500/-	-----	-----	47	3,786/-
15.	14 th Inst	20.04.1999	1,22,500/-	-----	-----	24	1,933/-
	Total		23,24,000		13,44,000/-		3,78,760/-

With reference to Clause 10 of the Agreement it is submitted that in case of failure to pay the instalment on time, twenty percent of the amount deposited, which was in the nature of earnest money, was to be deducted, even if there is a direction for payment.

In view of the rival submissions the first question emerges is whether there can be any direction for delivery of possession. That prayer cannot be accepted in view of what has been stated by the Supreme Court in Ghaziabad Development Authority v. Ved Prakash Aggarwal (2008(7) SCC 687).

The residual question is the amount that the respondent can be directed to refund and the rate of interest thereon. It has been pleaded by the respondent that in terms of clause 10 of the Agreement, it is entitled to deduct twenty percent of the amount

deposited. It is seen that there are some peculiar facts involved. Though it is pleaded by the respondent that office space could not have been given on the first floor and therefore alternatively the office on the eighth floor was offered, yet from the beginning the applicant had tendered the money in respect of the first floor and more particularly for the flat No. 109. Though the applicant at some point of time had expressed its inability to pay the amount in full because of some financial constraints, yet to prove its bonafide, it had given cheques for about Rupees six lakhs covered by five cheques. Undisputedly the applicant had deposited Rs.13,44,000/- (thirteen lakhs and forty four thousand only) on various dates as noted above. The respondents shall be entitled to make adjustment of 10% and not 20% in terms of Clause 20.

The basic question as noted above which needs consideration is as to what rate of interest is to be fixed which would include compensation/damage components as well or separately. The respondent has taken a stand that interest rate of 24% per annum claimed by the claimant is exorbitant and irrational. At this juncture, it would be necessary to take note of what the Hon'ble Supreme Court, inter-alia, stated in Ghaziabad Development Authority v. Balbir Singh and connected cases

reported in 2004(3) SCALE 671, it was inter-alia observed as follows:

“6. The learned Attorney General submitted that the liability to pay interest only arises if there is any default or omission on the part of the Body which caused damage or prejudice to the allottee of the flat/plot. This submission requires to be accepted. However, in the context of the Consumer Protection Act the principles laid down in the case of Lucknow Development Authority v. M.K. Gupta [1994(1) SCC 243], have to be kept in mind. In this case the question was whether a Development Authority rendered service to bring it within the purview of the Consumer Protection Act. It has been held that the Development Authority is rendering service. It has been also held as follows :-

“8. Having examined the wide reach of the Act and jurisdiction of Commission to entertain a complaint not only against business or trading activity but even against service rendered by statutory and public authorities the stage is now set for determining if the Commission in exercise of its jurisdiction under the Act could award compensation and such compensation could be for harassment and agony to a consumer. Both these aspects specially the latter are of vital significance in the present date context. Still more important issue is the liability of payment. That is , should the society or the tax payer be burdened for oppressive and capricious act of the public officers or it be paid by those responsible for it. The administrative law of accountability of public authorities for their arbitrary and even ultra virus actions has taken many strides. It is now accepted both by this Court and English Courts that the State is liable to compensate for loss or injury suffered by a citizen due to arbitrary actions of its employees. In State of Gujarat v. Memon Mahomed Haji Hasam (AIR 1967 SC 1885) the order of the High Court directing payment of compensation for disposal of seized vehicles without waiting for the outcome of decision in appeal was upheld both on principle of bailee’s legal obligation to preserve the property intact and also the obligation to take reasonable care of it....to return it in the same condition in which it was seized’ and also because the government was, ‘bound to return the said

property by reason of its statutory obligation or to pay its value if it had disabled itself from returning it either by its own act or by act of its agents and servants'. It was extended further even to bona fide action of the authorities if it was contrary to law in *Lala Bishambar Nath v. Agra Nagar Mahapalika, Agra* (AIR 1973 SC 2389). It was held that where the authorities could not have taken any action against the dealer and their order was invalid, 'it is immaterial that the respondents had acted bona fide and in the interest of preservation of public health. Their motive may be good but their orders are illegal. They would accordingly be liable for any loss caused to the appellants by their action'. The theoretical concept that King can do no wrong has been abandoned in England itself and the State is now held responsible for tortuous act of its servants. The First Law Commission constituted after coming into force of the Constitution on liability of the State in tort, observed that the old distinction between sovereign and non-sovereign functions should no longer be invoked to determine liability of the State. Friedmann observed:

“It is now increasingly necessary to abandon the lingering fiction of a legally indivisible State, and of a feudal conception of the Crown, and to substitute for it the principle of legal liability were the State, either directly or through incorporated public authorities, engages in activities of a commercial industrial or managerial character. The proper test is not an impracticable distinction between Governmental and non-Governmental function, but the nature and form of the activity in question.”

Even *Kasturi Lal Ralia Ram Jain v. State of U.P.* (AIR 1965 SC 1039) did not provide any immunity for tortuous acts of public servants committed in discharge of statutory function if it was not referable to sovereign power. Since house construction or for that matter any service hired by a consumer or facility availed by him is not a sovereign function of the State the ratio of *Kasturi Lal* could not stand in way of the Commission awarding compensation. We respectfully agree with Mathew, J in *Shyam Sunder v. State of Rajasthan* (1974 (1) SCC 690) that it is not necessary, 'to consider whether there is any rational

dividing line between the so-called sovereign and proprietary or commercial functions for determining the liability of the State' (SCC p. 695, Para 20). In any case the law has always maintained that the public authorities who are entrusted with statutory function cannot act negligently . as far back as 1878 the law was succinctly explained in *Geddis v. Proprietors of Bann Reservoir* (1878 (3) AC 430) thus :

“I take it, without citing cases, that is now thoroughly well established that no action will lie for doing that which the Legislature has authorized, if it be done without negligence, although it does occasion damage to anyone, but an action does lie for doing what the Legislature has authorized, if it be done negligently.”

Under our Constitution sovereignty vests in the people. Every limb of the constitutional machinery is obliged to be people oriented. No functionary in exercise of statutory power can claim immunity, except to the extent protected by the statute itself. Public authorities action in violation of constitutional or statutory provisions oppressively are accountable for their behavior before authorities created under the statute like the Commission or the Courts entrusted with responsibility of maintaining the rule of law. Each hierarchy in Act is empowered to entertain a complaint by the consumer for value of the goods or services and compensation. The word 'compensation' is again of very wide connotation. It has been defined in the Act. According to dictionary it means, 'compensating or being compensated; thing given as recompense,'. In legal sense it may constitute actual loss or expected loss and may extend to physical, mental or even emotional suffering, insult or injury or loss. Therefore, when the Commission has been vested with the jurisdiction to award value of goods or services and compensation it has to be construed widely enabling the Commission to determine compensation for any loss or damage suffered by a consumer which in law is otherwise included in wide meaning of compensation. The provision in our opinion enables a consumer to claim and empowers the commission to redress any injustice done to him. Any other construction would defeat the very purpose of the Act. The Commission

or the Forum in the Act is thus entitled to award not only value of the goods or services but also to compensate a consumer for injustice suffered by him.”

The Court then went on to hold as follows:

"10. Who should pay the amount determined by the Commission for harassment and agony, the statutory authority or should it be realised from those who were responsible for it? Compensation as explained includes both the just equivalent for loss of goods or services and also for sufferance of injustice. For instance in Civil Appeal No.... of 1993 arising out of SLP (Civil) No.659 of 1991 the Commission directed the Bangalore Development Authority to pay Rs.2446 to the consumer for the expenses incurred by him in getting the lease-cum-sale agreement registered as it was additional expenditure for alternative site allotted to him. No misfeasance was found. The moment the authority came to know of the mistake committed by it, it took immediate action by allotting alternative site to the respondent. It was compensation for exact loss suffered by the respondent. It arose in due discharge of duties. For such acts or omissions the loss suffered has to be made good by the authority itself. But when the sufferance is due to mala fide or oppressive or capricious acts etc. of a public servant, then the nature of liability changes. The Commission under the Act could determine such amount if in its opinion the consumer suffered injury due to what is called misfeasance of the officers by the English Courts. Even in England where award of exemplary or aggravated damages for insult etc. to a person has now been held to be punitive, exception has been carved out if the injury is due to, 'oppressive, arbitrary or unconstitutional action by servants of the Government' (Salmond and Heuston on the Law of Torts). Misfeasance in public office is explained by Wade in his book on Administrative Law thus:

"Even where there is no ministerial duty as above, and even where no recognised tort such as trespass, nuisance, or negligence is committed, public authorities or officers may be liable in damages for malicious, deliberate or injurious wrong-doing. There is thus a tort which has been called misfeasance in public office, and

which includes malicious abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury." (p.777).

The jurisdiction and power of the courts to indemnify a citizen for injury suffered due to abuse of power by public authorities is founded as observed by Lord Hailsham in *Cassell & Co. Ltd. v. Broome* [1972 AC 1027: (1972) 1 All ER 801] on the principle that, an award of exemplary damages can serve a useful purpose in vindicating the strength of law'. An ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. That is provided by the rule of law. It acts as a check on arbitrary and capricious exercise of power. In *Rookes v. Barnard* [1964 AC 1129: (1964) 1 All ER 367, 410] it was observed by Lord Devlin, 'the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service'. A public functionary if he acts maliciously or oppressively and the exercise of powers results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it. Compensation or damage as explained earlier may arise even when the officer discharges his duty honestly and bona fide. But when it arises due to arbitrary or capricious behaviour then it loses its individual character and assumes social significance. Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous. Crime and corruption thrive and prosper in the society due to lack of public resistance. Nothing is more damaging than the feeling of helplessness. An ordinary citizen instead of complaining and fighting succumbs to the pressure of undesirable functioning in offices instead of standing against it. Therefore the award of compensation for harassment by public authorities not only compensates the individual, satisfies him personally but helps in curing social evil. It may result in improving the work culture and help in changing the outlook. Wade in his book *Administrative Law* has observed that it is to the credit of public authorities that there are simply few reported English decisions on this form of malpractice, namely, misfeasance in public offices which includes malicious

use of power, deliberate maladministration and perhaps also other unlawful acts causing injury. One of the reasons for this appears to be development of law which apart, from other factors succeeded in keeping a salutary check on the functioning in the government or semi-government offices by holding the officers personally responsible for their capricious or even ultra vires action resulting in injury or loss to a citizen by awarding damages against them. Various decisions rendered from time to time have been referred to by Wade on Misfeasance by Public Authorities. We shall refer to some of them to demonstrate how necessary it is for our society. In *Ashby v. White* (1703) 2 Ld. Raym 938 the House of Lords invoked the principle of *ubi jus ibi remedium* in favour of an elector who was wrongfully prevented from voting and decreed the claim of damages. The ratio of this decision has been applied and extended by English Courts in various situations. In *Roncarelli v. Duplessis* (1959) 16 DLR 2d 689 the Supreme Court of Canada awarded damages against the Prime Minister of Quebec personally for directing the cancellation of a restaurant-owner's liquor licence solely because the licensee provided bail on many occasions for fellow members of the sect of Jehovah's Witnesses, which was then unpopular with the authorities. It was observed that, 'what could be more malicious than to punish this licensee for having done what he had an absolute right to do in a matter utterly irrelevant to the Alcoholic Liquor Act? Malice in the proper sense is simply acting for a reason and purpose knowingly foreign to the administration, to which was added here the element of intentional punishment by what was virtually vocation outlawry. In *Smith v. East Elloe Rural District Council* [1956 AC 736: (1956) 1 All ER 855] the House of Lords held that an action for damages might proceed against the clerk of a local authority personally on the ground that he had procured the compulsory purchase of the plaintiff's property wrongfully and in bad faith. In *Farrington v. Thompson* [1959 UR 286] the Supreme Court of Victoria awarded damages for exercising a power the authorities knew they did not possess. A licensing inspector and a police officer ordered the plaintiff to close his hotel and cease supplying liquor. He obeyed and filed a suit for the resultant loss. The Court observed:

"Now I take it to be perfectly clear, that if a public officer abuses his office, either by an act of omission or commission, and the consequence of that is an injury to an individual, an action may be maintained against such public officer."

In Wood v. Blair [The Times, July 3, 4, 5, 1957 (Hallett J and Court of Appeal)] a dairy farmer's manageress contracted typhoid fever and the local authority served notices forbidding him to sell milk, except under certain conditions. These notices were void, and the farmer was awarded damages on the ground that the notices were invalid and that the plaintiff was entitled to damages for misfeasance. This was done even though the finding was that the officers had acted from the best motives.

11. Today the issue thus is not only of award of compensation but who should bear the brunt. The concept of authority and power exercised by public functionaries has many dimensions. It has undergone tremendous change with passage of time and change in socio-economic outlook. The authority empowered to function under a statute while exercising power discharges public duty. It has to act to subserve general welfare and common good. In discharging this duty honestly and *bona fide*, loss may accrue to any person. And he may claim compensation which may in circumstances be payable. But where the duty is performed capriciously or the exercise of power results in harassment and agony then the responsibility to pay the loss determined should be whose? In a modern society no authority can arrogate to itself the power to act in a manner which is arbitrary. It is unfortunate that matters which require immediate attention linger on and the man in the street is made to run from one end to other with no result. The culture of window clearance appears to be totally dead. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match that inaction in public oriented departments gets frustrated and it erodes the credibility in the system. Public administration, no doubt involves a vast amount of administrative discretion which shields the action of administrative authority. But where it is found that exercise of

discretion was mala fide and the complainant is entitled to compensation for mental and physical harassment then the officer can no more claim to be under protective cover. When a citizen seeks to recover compensation from a public authority in respect of injuries suffered by him for capricious exercise of power and the National Commission finds it duly proved then it has a statutory obligation to award the same. It was never more necessary then today when even social obligations are regulated by grant of statutory powers. The test of permissive form of grant is over. It is now imperative and implicit in the exercise of power that it should be for the sake of society. When the court directs payment of damages or compensation against the State the ultimate sufferer is the common man. It is the tax payers' money which is paid for inaction of those who are entrusted under the Act to discharge their duties in accordance with law. It is, therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression, which finding of course should be recorded carefully on material and convincing circumstances and not lightly, then it should further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behavior by dividing it proportionately where there are more than one functionaries.”

We are in full agreement with what is observed herein. Thus the law is that the Consumer Protection Act has a wide reach and the Commission has jurisdiction even in cases of service rendered by statutory and public authorities. Such authorities become liable to compensate for misfeasance in public office i.e. an act which is oppressive or capricious or arbitrary or negligent provided loss or injury is suffered by a citizen. The word compensation is of a very wide connotation. It may constitute actual loss or expected loss and may extend to compensation for physical, mental or even emotional suffering, insult or injury or loss. The provisions of the Consumer Protection Act enable a consumer to claim and empower the Commission to redress any injustice done. The Commission or the Forum is entitled to award not only value of goods or services but also to compensate a

consumer for injustice suffered by him. The Commission/ Forum must determine that such sufferance is due to mala fide or capricious or oppressive act. It can then determine amount for which the authority is liable to compensate the consumer for his sufferance due to misfeasance in public office by the officers. Such compensation is for vindicating the strength of law. It acts as a check on arbitrary and capricious exercise of power. It helps in curing social evil. It will hopefully result in improving the work culture and in changing the outlook the officer/ public servant. No authority can arrogate to itself the power to act in a manner which is arbitrary. Matters which require immediate attention should not be allowed to linger on. The consumer must not be made to run from pillar to post. Where there has been capricious or arbitrary or negligent exercise or non exercise of power by an officer of the authority, the Commission/ Forum has a statutory obligation to award compensation. If the Commission/ Forum is satisfied that a complainant is entitled to compensation for loss or injury or for harassment or mental agony or oppression, then after recording a finding it must direct the authority to pay compensation and then also direct recovery from those found responsible for such unparadonable behavior.

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9. That compensation cannot be uniform and can best be illustrated by considering cases where possession is being directed to be delivered and cases where only monies are directed to be returned. In cases where possession is being directed to be delivered the compensation for harassment will necessarily have to be less because in a way that party is being compensated by increase in the value of the property he is getting. But in cases where monies are being simply returned then the party is suffering a loss inasmuch as he had deposited the money in the hope of getting a flat/plot. He is being deprived of that flat/plot. He has been deprived of the benefit of escalation of the price of that flat/plot. Therefore the compensation in such cases would necessarily have to be higher. Further if the construction is not of good quality or not complete, the compensation would be the cost of putting it in good shape or completing it alongwith some compensation for harassment. Similarly, if at the time of giving possession a higher price or other amounts is collected

unjustifiably and without there being any provision for the same the direction would be to refund it with a reasonable rate of interest. If possession is refused or not given because the consumer has refused to pay the amount, then on the finding that the demand was unjustified the consumer can be compensated for harassment and a direction to deliver possession can be given. If a party who has paid the amount is told by the authority that they are not in a position to ascertain whether he has paid the amount and that party is made to run from pillar to post in order to show that he had paid the amount, there would be deficiency of service for which compensation for harassment must be awarded depending on the extent of harassment. Similarly, if after delivery of possession, the sale deeds or title deeds are not executed without justifiable reasons, the compensation would depend on the amount of harassment suffered. We clarify that the above are mere examples. They are not exhaustive. The above shows that compensation cannot be the same in all cases irrespective of the type of loss or injury suffered by the consumer.

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21. In a Scheme known as “Karpuriapuram Scheme” plots were allotted, monies collected. However, thereafter the scheme was cancelled. In some of the matters we have seen that the District Forum has recorded that the authority could give no explanation as to why the Scheme was cancelled. Before us some sort of explanation is sought to be given. In our view, irrespective of whether there was genuine reason to cancel or not, the monies must be returned with interest at the rate of 18%. We say so because it is clear that even if the body is going to derive great profit from this land and therefore compensating the allottee with interest at 18% per annum is just and fair.

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23. As stated above the interest, in both these cases, will be payable from the date the monies were paid till they are retained or deposited in Court/Tribunal. We however clarify that merely because we are maintaining awards of interest it must not be taken to mean that in future the Commission/Forum must not work out compensation under various heads and that

they can continue to grant interest only by way of damage/compensation.”

Though the decision was rendered in a case alleging remiss on the part of public authorities, the principles laid down are clearly applicable. While fixing the rate of interest various factors having relevance have to be taken into account; one of them is the bank rate of interest on short term and long term deposits during relevant point of time. In the instant case claimant had deposited the amounts between 1996 to 1998.

Above being the position, we direct the respondent shall pay interest at the rate of 15% p.a. from the date when the amounts were deposited till their return. Obviously while working out the interest payable, the dates on which the amounts were paid have to be taken note of.

Compensation Application is accordingly disposed of.

Pronounced in open Court on 13th day of August, 2010.

(Dr. Arijit Pasayat)
Chairman

(Rahul Sarin)
Member

(Pravin Tripathi)
Member