

तातडीचे



राज्य ग्राहक तक्रार निवारण आयोग, महाराष्ट्र

जुने प्रशासकीय महाविद्यालय इमारत, रु.नं.१,२,५ व ६, हजारीमल सोमानी मार्ग,
छत्रपती शिवाजी टर्मिनससमोर, मुंबई-४०० ००९

०२२-२२०५७४०९ / २२०७२०९७ E-mail : mah-sforum@nic.in Website : <https://grahak.maharashtra.gov.in/>

वाचा ०: १) मा.सर्वोच्च न्यायालयाने पारीत केलेले आदेश ०:-

- अ) गांगियाबाद डेव्हलपमेंट ऑथोरिटी वि.बलबीर सिंग-II(2004)CPJ 12 (SC)
- आ) गांगियाबाद डेव्हलपमेंट ऑथोरिटी वि.सुभाष गुप्ता-III(2004)CPJ 8 (SC)
- २) मा.राष्ट्रीय आयोगाने रिहीजन पिटीशन क्र.१२५०/२००४ या प्रकरणांत
दि.२५.०८.२००५ रोजी पारीत केलेले आदेश
- ३) मा.राज्य आयोग, महाराष्ट्रने मुरलीधर एकनाथ मसने वि.सुश्रुषा सिटीझन्स को.ओ.
हॉस्पीटल या प्रकरणांत पारीत केलेले आदेश-2003 (SCDRC-Mah.)683
- ४) मा.अध्यक्ष, राज्य आयोग, महाराष्ट्र यांचे प्रधान सचिव, अन्न, नागरी पुरवठा व
ग्राहक संरक्षण विभाग, मंत्रालय, मुंबई यांना अग्रेषित केलेले अ.शा.प.क्र.PA/2003,
dt.10th March, 2003 व त्याद्वारे राज्यातील सर्व जिल्हा मंचांना दिलेले दिशानिर्देश
- ५) या कार्यालयाचे पत्र क्र.SC/Guidelines/05/872, dt.07/10/2015 व त्यासोबत जोडलेले
सह प्रबंधक, राष्ट्रीय आयोग यांचे पत्र क्र.A/24B/NCDRC/05,
dt.22nd September, 2005
- ६) मा.अध्यक्ष, राज्य आयोग यांचे अ.शा.प.क्र.SC/Circular/07/147, dt.19/12/2007

जा.क्र.राआ/महा./आस्था-३/परिपत्रक/२०१५/२०१७

दिनांक १२ मार्च, २०१५

-०: परिपत्रक ०:-

वर नमुद केलेले मा.सर्वोच्च न्यायालय, मा.राष्ट्रीय आयोग व मा.राज्य आयोगाने
वेळोवेळी अनेक प्रकरणांत पारीत केलेल्या आदेशांनुसार व वर नमुद केलेल्या पत्रांद्वारे राज्य आयोग
व जिल्हा मंच कार्यालयांत संबंधित पक्षकारांकडून जमा करण्यात येणारी आदेशित रक्कम
(Decreetal Amount) त्या त्या कार्यालयाद्वारे राष्ट्रीयीकृत बँकेत मुदत ठेव स्वरूपात ठेवण्याबाबत
स्वयंस्पष्ट निर्देश संबंधित कार्यालयांना दिलेले आहेत.

परंतु या कार्यालयाचे असे निर्दर्शनास आले आहे की, वरीलप्रमाणे वेळोवेळी
स्वयंस्पष्ट निर्देश देण्यात आलेले असतांनाही काही कार्यालयांद्वारे सदरील कार्यालयात जमा
होणारी आदेशित रक्कम (Decreetal Amount) राष्ट्रीयीकृत बँकेत मुदत ठेव स्वरूपात न ठेवता
वैयक्तिक लेखा ठेव खात्यात (Personal Leader Account) ठेवण्यात येते. सदरच्या खात्यातील
रकमेवर कोणतेही व्याज देय होत नाही.

सबब वरील वैयक्तिक लेखा ठेव खात्यात (Personal Leader Account) ठेवण्यात आलेली आदेशित रक्कम मा.आयोग / मंचाच्या आदेशानुसार संबंधित पक्षकारांना प्रदान करतांना बिनव्याजी परत करावी लागते. अशा परिस्थितीत संबंधित पक्षकारांचे मोठ्या प्रमाणावर आर्थिक नुकसान होते.

सबब या परिपत्रकाद्वारे खालीलप्रमाणे निर्देश जारी करण्यात करण्यात येत आहेत:-

- १) राज्य आयोग, आयोगाची परिक्रमा खंडपीठे व जिल्हा मंच कार्यालयात जमा होणारी आदेशित रक्कम (Decreetal Amount) वर नमुद केलेले आदेश व पत्रांद्वारे देण्यात आलेल्या निर्देशांस अनुसरुन तात्काळ म्हणजेच संबंधित पक्षकारांकडून जमा करण्यात आलेनंतर आठवड्याचे आंत राष्ट्रीयीकृत बँकेत मुदत ठेव स्वरूपात ठेवण्यात यावी.
- २) राज्य आयोग, आयोगाची परिक्रमा खंडपीठे व जिल्हा मंच कार्यालयात सदरच्या खात्यातुन काढून आठवड्याचे आंत राष्ट्रीयीकृत बँकेत मुदत ठेव स्वरूपात ठेवण्यात यावी.
- ३) तसेच यापुढे आदेशित रक्कम (Decreetal Amount) राष्ट्रीयीकृत बँकेत मुदत ठेव स्वरूपात ठेवण्यात न आल्यास त्याबाबतची प्रशासकीय व आर्थिक जबाबदारी संबंधित कार्यालयाचे आहरण व संवितरण अधिका-यांची राहील, याची सर्व संबंधितांनी नोंद घ्यावी.

हे परिपत्रक मा.अध्यक्ष, राज्य ग्राहक तक्रार निवारण आयोग, महाराष्ट्र यांचे पूर्वमान्यतेने निर्गमित करण्यात येत आहे.

आदेशान्वये,

~~४८००~~
12/03/15

(अ.सा.वैरागडे)

प्रबंधक विधी,

राज्य आयोग, महाराष्ट्र, मुंबई

प्रति,

- १) मा.न्यायिक सदस्य व मा.सदस्य, राज्य आयोग, महाराष्ट्र
- २) मा.अध्यक्ष व मा.सदस्य, सर्व जिल्हा मंच, महाराष्ट्र
- ३) प्रबंधक विधी, राज्य ग्राहक तक्रार निवारण आयोग, महाराष्ट्र, नागपूर व औरंगाबाद प.खंडपीठ
- ४) प्रबंधक, सर्व जिल्हा ग्राहक तक्रार निवारण मंच, महाराष्ट्र राज्य
- ५) आहरण व संवितरण अधिकारी, राज्य आयोग, महाराष्ट्र, मुंबई

उक्त क्र.३ ते ५ मध्ये दर्शविलेल्या अधिका-यांना निर्देश देण्यात येत आहेत की, त्यांनी वरीलप्रमाणे कार्यवाही करून त्याबाबतचा पुर्ता अहवाल या कार्यालयास सादर करावा. सोबत वरील क्र.१ ते २ व ४ ते ६ वर दर्शविलेल्या पत्र, आदेश, इ.च्या प्रती शीघ्र संदर्भासाठी पाठविण्यात येत आहेत.

II (2004) CPJ 12 (SC)
SUPREME COURT OF INDIA
S.N. Variava & H.K. Sema, JJ.
GHAZIABAD DEVELOPMENT AUTHORITY—Appellant
versus
BALBIR SINGH—Respondent

Civil Appeal No. 7173 of 2002 from Judgment & Order dated 28.10.2002 in Petition for Special Leave to Appeal (C) No. 21061/2001 from the Order dated 31.8.2001 of N.C.D.R.C., New Delhi in R.P. No. 703 of 2001 with Civil Appeal No. 7391/2002, C.A. No. 7793/2002, C.A. No. 8400/2002, C.A. No. 7700/2002, C.A. No. 7288/2002, C.A. No. 7792/2002, C.A. No. 7788/2002, C.A. No. 7396/2002, C.A. No. 7685/2002, C.A. No. 8408/2002, C.A. No. 8415/2002, C.A. No. 7786/2002, C.A. No. 7790/2002, C.A. No. 7672/2002, C.A. No. 7289/2002, C.A. No. 7723/2002, C.A. No. 8418/2002, C.A. No. 7690/2002, C.A. No. 8407/2002, C.A. No. 7782/2002, C.A. No. 7725/2002, C.A. No. 7695/2002, C.A. No. 8404/2002, C.A. No. 7662/2002, C.A. No. 7676/2002, C.A. No. 7693/2002, C.A. No. 7724/ C.A. No. 7286/2002, C.A. No. 7670/2002, C.A. No. 7688/2002, C.A. No. 8405/2002, C.A. No. 7787/2002, C.A. No. 7789/2002, C.A. No. 8530/2002, C.A. No. 8527/2002, C.A. No. 8588/2002, C.A. No. 7776/2002, C.A. No. 7667/2002, C.A. No. 7783/2002, C.A. No. 7224/2002, C.A. No. 7699/2002, C.A. No. 7698/2002, C.A. No. 7120/2002, C.A. No. 390/ C.A. No. 394/2003, C.A. No. 397/2003, C.A. No. 399/2003, C.A. No. 400/2003, C.A. No. 413/2003, C.A. No. 414/2003, C.A. No. 415/2003, C.A. No. 416/2003, C.A. No. 417/ 2003, C.A. No. 1057/2003, C.A. No. 1012/ 2003, C.A. No. 1018/2003, C.A. No. 1022/2003, C.A. No. 1488/2003, C.A. No. 1489/2003, C.A. No. 1492/2003, C.A. No. 1493/2003, C.A. No. 1494/2003, C.A. No. 1495/2003, C.A. No. 1499/2003, C.A. No. 3256/2003, C.A. No. 3910/2003, SLP(C)No. 8758/2003, SLP(C) No. 8760/2003, SLP(C)No. 8764/2003, C.A. No. 3955/2003, C.A. No. 4068/2003, SLP(C) No. 6079/2003, SLP(C) No. 6081/2003, SLP(C) No. 6083/2003, SLP(C) No. 6084/2003, SLP(C) No. 6085/2003, SLP(C) No. 9600/2003, SLP(C) No. 9663/2003 SLP(C) No. 9666/2003, SLP(C) No. 9669/2003, SLP(C) No. 9060/2003, SLP(C) No. 9061/2003, SLP(C) No. 9062/2003, C.A. No. 3657/2003, C.A. No. 8417/2002, C.A. No. 2692/2003, C.A. No. 4082/2003, SLP(C) No. 11676/2003, SLP(C) No. 12592/2003, C.A. No. 5473/2003, C.A. No. 1010/2003, SLP(C) No. 16082/2003, SLP(C) No. 12594/2003, C.A. No. 1013/2003, C.A. No. 1019/2003, C.A. No. 1960/2003, C.A. No. 1964/2003, C.A. No. 3382/2003, SLP(C)No. 20283/2003, SLP(C) No. 20285/2003, SLP(C)No. 6299/2003, SLP(C) No. 6302/2003, SLP(C)No. 6303/2003, SLP(C) No. 6304/2003. SLP(C)No. 6305/2003, SLP(C) No. 6306/2003, SLP(C) No. 6307/2003, SLP(C) No. 9715/2003, SLP(C) No. 20289/2003, C.A. No. 8504/2003, SLP(C) No. 22189/2003, C.A. No. 549/2003, SLP(C) No. 23127/2003, C.A. No. 8402/2002, C.A. No. 392/2003, C.A. No. 404/ 2003, C.A. No. 405/2003, C.A. No. 410/2003, C.A. No. 1014/2003, C.A. No. 1491/2003, C.A. No. 1498/2003, C.A. No. 3381/2003, C.A. No. 8514/2002, C.A. No. 1009/2003, C.A. No. 7878/ 2002, C.A. No. 7775/2002, C.A. No. 7781/2002, SLP(C) No. 12584/2003, SLP(C) No. 12596/ 2003, SLP(C) No. 12601/2003, SLP(C)No. 12604/2003, SLP(C) No. 14905/2003, SLP(C) No. 12593/2003, C.A. No. 8229/2002, C.A. No. 7389/2002, C.A. No. 393/2003, C.A. No. 409/ 2003, C.A. No. 9747/2003, C.A. No. 7780/2002, C.A. No. 8403/2002, C.A. No. 7777/2002, SLP(C) No. 14052/2003, SLP(C) No. 14053/ 2003, C.A. No. 7395/2002, C.A. No. 7388/2002, C.A. No. 407/2003, SLP(C) No.

8765/2003, SLP(C)No. 8766/2003, SLP(C) No. 8763/2003, SLP(C)No. 9190/2003, SLP(C)No. 9670/2003, SLP(C)No. 9665/2003, SLP(C)No. 9662/2003, SLP(C) No. 12583/2003, SLP(C) No. 12587/ 2003, SLP(C) No. 12588/2003, SLP(C) No. 12589/2003, SLP(C) No. 12591/2003, SLP(C) No. 12599/2003, SPP(C:) No. 12603/2003, ST.P(C) No. 12605, 2003, SLP(C) No. 126(16/2003 SL,P(C) No. 12607/.2003, SLP(C) Nos 12608-12609/2003, SLP(C) No. 13785/2003 SLP(C)-- No. 12585/2003, SLP(C) No. 12586/2003, SLP(C), No. 14905/ 2003 SLP(C) No. 15139/2003 SLP(C) No. 17803/2003, SLP(C) Nos. 17805-17806/2003, SLP(C) No. 16414/2003, C.A. No. 7397/2002, C.A. No. 7385/2002, C.A. No. 7390/2002, C.A. No. 7875/2002, C.A. No. 7778/2002, C.A. No. 8399/2002, C.A. No. 7774/2002, C.A. No. 7879/2002, C.A. No. 8398/2002, C.A. No. 7232/2002, C.A. No. 7236/2002, C.A. No. 8401/2002, C.A. No. 8586/2002, C.A. No. 8528/2002, C.A. No. 7287/2002, C.A. No. 7779/2002, C.A. No. 389/2003, C.A. No. 391/ 2003, C.A. No. 395/2003, C.A. No. 401/2003, C.A. No. 403/2003, C.A. No. 408/2003, C.A. No. 1011/2003, C.A. No. 1016/2003, C.A. No. 1015/2003, C.A. No. 1017/2003, C.A. No. 1020/2003, C.A. No. 1490/2003, C.A. No. 1496/2003, C.A. No. 1961/2003, C.A. No. 1962/2003, C.A. No. 1963/2003, C.A. No. 1966- 1967/2003, C.A. No. 1965/2003, C.A. No. 3956/2003, C.A. No. 3957/2003, C.A. No. 3958/2003, C.A. No. 3959/2003, C.A. No. 3658/2003, C.A. Nos. 411- 412/2003, C.A. No. 7386/2002, C.A. No. 1021/2003, R.P.(C) No. 1649/2003 in SLP(C) No. 18369/2003, SLP (C) No. 4275/2004

Not ready matters - listed for directions

C.A. No. 7225/2002,C.A. No. 7285/2002,C.A. No. 8589/2002, C.A. No. 8587/2002, C.A. No. 398/2003, C.A, No. 1500/2003, C.A. No. 1501/ 2003, SLP(C) No. 8755/2003, SLP(C) No. 6078/ 2003, SLP(C) No. 6080/2003, SLP(C) No. 9059/ 2003,SLP(C)No. 9063/2003, SLP(C) No. 9064/ 2003, SLP(C) No. 12582/2003, SLP(C) No. 12590/2003, SLP(C) No. 12610/2003, SLP(C) No. 16415/2003, SLP(C) No. 6077/2003, SLP(C) No. 15291/2003, SLP(C) No. 20287/2003, SLP(C) No. 20288/2003, SLP(C) No. 23120/ 2003, SLP(C) No. 23124/2003, SLP(C) No. 23122/2003, SLP(C) No. 6297/2003, SLP(C) No. 6298/2003, SLP(C) No. 6300/2003, SLP(C) No. 6301/2003, SLP(C) No. 9717/2003, C.A. No. 1562/2004, with SLP(C) Nos. 4853-4854 of 2004—Decided on 17.3.2004

Housing : Allotment : Grant of interest @ 18% p.a. by Consumer Forums in all cases not justified : What is being awarded is compensation i.e. recompense for loss or injury : It has to be based on finding of loss or injury and correlate with amount of loss or injury: Forum or Commission must determine deficiency in service and/or misfeasance in public office which has resulted in loss or injury : Compensation can be given if after allotment, there has been cancellation of scheme without any justifiable cause : That compensation cannot be uniform and can be best illustrated by considering cases where possession is being directed to be delivered and cases where Only monies directed to be returned: There must be relationship between amount awarded and default/unjustifiable delay/harassment: Principle of current rate of interest only applicable where proceedings are for recovery of debt or damages : Principles which govern grant of interest do not apply to grant of compensation : Relevant date of payment of interest : Where Commission/ Forum already passed stereo-type order, not necessary to remit matters back to Commission where there is deficiency of service or misfeasance in public office : Authority not entitled to call upon party to refund amount already

paid : No interest/damages could be awarded for period during which stay operated as pointed out by this Court in case of *GDA v. Sanchar Vihar Sahkari Avas Samiti Ltd.*: Unless stay obtained from higher Forum, mere fact of filing of appeal/revision will not entitle authority not to comply with order of Forum.

[Paras 8 to 10, 18 to 20, 24 to 26]

Result : Matters adjourned for 2 weeks.

Cases referred :

1. III (1993) CPJ 7 (SC)=(1994) 1 SCC 243. *(Approved)*
2. II (2000) CPJ 1 (SC)=IV (2000) SLT 654=(2000) 6 SCC 113. *(Referred)*
3. III (2000) CPJ 8 (SC)=VII (2000) SLT 142=JT 2000 (8) SC 154. *(Referred)*
4. VII (2001) SLT 400=I (2002) BC 150 (SC)=(2002) 1 SCC 367. *(Referred)*
5. IV (2000) SLT 465=III (2001) CCR 230 (SC)=(2001) 2 SCC 9. *(Referred)*
6. IV (2002) SLT 262=II (2002) ACC 460 (SC)=(2002) 6 SCC 281. *(Referred)*
7. (1997) 6 SCC 487. *(Referred & Relied)*
8. I (2001) CPJ 8 (SC)=I (2001) SLT 377=(2000) 4 SCC 120. *(Referred & Relied)*
9. (1996) 9 SCC 314. *(Referred & Relied)*

Counsel for the Parties:

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For the Respondent in C.A. No. 8400/2002 : *In person*

For the Respondent in C.A. No. 8418/2002 : *In person*

For the Respondent in C.A. No. 8407/2002 : *In person*

For the Respondent in C.A. No. 7224/2002 : *In person*

For the Respondent in S.I.P(C) No. 6079/2003: *In person*

For the Respondent in SLP (C) No. 6084/2003: *In person*

For the Respondent in SLP(C) No. 9600/2003: *In person*

For the Respondent in SLP(C) No. 9663/2003: *In person*

For the Respondent in SLP(C) No. 9062/2003: *In person*

For the Respondent in SLP(C) No. 6306/2003: *In person*

For the Respondent in C.A. No. 393/2003 : *In person*

For the Respondent in C.A. No. 409/2003 : *in person*

ORDER

1. In this batch of matters the question is whether grant of interest at the rate of 18% per annum by the Consumer Forums in all cases is justifiable. As facts are varying, at this stage, this Court is only dealing with the question of law. Thereafter this Court shall take up each case separately.

2. The National Consumer Disputes Redressal Commission considered a bunch of matters, the lead matter being the case of ***Haryana Urban Development Authority v. Darsh Kumar***. The Commission held, in those cases, that in cases of deficiency of service by Development Authorities like HUDA and GDA, interest must be awarded at the rate of 18% per annum and that this would take into consideration the escalation in the cost of construction as well.

3. Pursuant to this Judgment the National Commission has been disposing of all subsequent matters with a one paragraph order which, for all practical purposes, reads as under:

"We have already taken a view in the case of ***Haryana Urban Development Authority v. Darsh Kumar*** [Revision Petition No. 1197 of 1998], where we have upheld the award of interest at the rate of 18% per annum. We have provided for certain period during which the interest would not run. The impugned judgment is modified only to that extent. This Revision Petition is disposed of in terms of our judgment in the case of ***HUDA v. Darsh Kumar***."

4. It has been shown to us that the facts are varying and different. Whilst facts of all cases cannot be set out by way of illustration it must be stated that in some cases even though monies had been paid and allotments had been made of flats/plots, the scheme itself got cancelled for some reason or the other. Possession was thus refused to be delivered of the flats/plots allotted to the allottees. In some cases, at a much later date, possession of some other flat/plot was offered at an

increased rate. In some cases possession was offered but not taken by the party. In some cases even though the scheme was not cancelled and there was no refusal to deliver possession, yet possession was, not delivered for a number of years even after monies had been received. In some cases the construction was of sub-standard quality or it was incomplete. In some of the cases the authority has demanded extra amounts from the party. In some cases the party had not paid the extra amounts whilst in some cases they had paid those amounts. The question, therefore, was of refund of those amounts wrongly collected. In some cases allotments were made and possession offered of flats/land which was encumbered or occupied by some other party. In some cases the party had asked for refund of amounts paid.

5. Irrespective of the type of case, irrespective of the amount of delay, the National Commission has been granting/confirming interest at the rate of 18% per annum without even going into the facts of the case. It must be mentioned that in some of the matters before us it has been pointed out that the District and the State Forums had granted interest at a lower rate. Appeals had been filed only by the authority. Yet the National Commission has, in the Appeal filed by the authority, increased the rate of interest to 18% per annum.

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* reported in III (1993) CPJ 7 (SC)=(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 the 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 if such compensation could be for harassment and agony to a consumer. Both these aspects specially the latter are of vital significance in the present day 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 vires 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. Mcmon Mahomed Haji Hasam* [(AIR 1967 SC 1885: (1967) 3 SCR 938)] 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 actions of the authorities if it was contrary to law in *Lala Bishambar Nath v. Agra Nagar*

Mahapalika, Agra [(1973) 1 SCC 788 : AIR 1973 SC 12891]. 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 tortious 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 where 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 : (1965) 1 SCR 375: (1966) 2 LLJ 5831] did not provide any immunity for tortious 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 it is now thoroughly well established that no action will lie for doing that which the Legislature has authorised, if it be done without negligence, although it does occasion damage to anyone; but an action does lie for doing what the Legislature has authorised, 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 acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour before authorities created under the statute like the Commission or the Courts entrusted with responsibility of maintaining the rule of law. Each hierarchy in the 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 not 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."

This 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. 2,446/- 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 (Hallet, 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 the 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 than 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 behaviour 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 enables 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 of 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 unpardonable behaviour.

7. At this stage itself it must be mentioned that learned Attorney General had relied upon the case of *Ghaziabad Development Authority v. Union of India* reported in II (2000) CPJ 1 (SC)=IV (2000) SLT 654=(2000) 6 SCC 113, wherein, whilst considering a case of breach of contract under Section 73 of the Contract Act, it has been held that no damages are payable for mental agony in cases of breach of ordinary commercial contracts. This Court considered the case of *Lucknow Development Authority* (*supra*) and held that liability for mental agony had been fixed not within the realms of contract but under principles of administrative law. In this case the award towards mental agony was deleted on the ground that there were no pleadings to that effect and no finding on that point. This authority does not take a contrary view to the principles laid down in *Lucknow Development Authority's* case but merely differentiates it on facts. Thus where there is a specific finding of misfeasance in public office compensation for mental agony can be granted. If there are findings of misfeasance in public office then the principles set out in this authority will have no application and the principles set out in *Lucknow Development Authority's* case (*supra*) would apply. In such cases it

would be open for the Commission/Forums to grant compensation for mental agony.

8. However, the power to and duty to award compensation does not mean that irrespective of facts of the case compensation can be awarded in all matters at a uniform rate of 18% per annum. As seen above what is being awarded is compensation *i.e.* a recompense for the loss or injury. It, therefore, necessarily has to be based on a finding of loss or injury and has to correlate with the amount of loss or injury. Thus the Forum or the Commission must determine that there has been deficiency in service and/or misfeasance in public office which has resulted in loss or injury. No hard and fast rule can be laid down, however a few examples would be where an allotment is made, price is received/paid but possession is not given within the period set out in the brochure. The Commission/Forum would then need to determine the loss. Loss could be determined on basis of loss of rent which could have been earned if possession was given and the premises let out or if the consumer has had to stay in rented premises then on basis of rent actually paid by him. Along with recompensing the loss the Commission/Forum may also compensate for harassment/injury both mental and physical. Similarly, compensation can be given if after allotment is made there has been cancellation of scheme without any justifiable cause.

9. That compensation cannot be uniform and can best of 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 along with 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 has 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 any 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.

10. As has been set out hereinabove, the National Forum has been awarding interest at a flat rate of 18% per annum irrespective of the facts of each case. This,

in our view, is unsustainable. Award of compensation must be under different separate heads and must vary from case to case depending on the facts of each case.

11. At this stage, it must be mentioned that the National Forum has, in its Judgment in *Darsh Kumar's* case (supra) stated that the interest at the rate of 18% per annum takes into consideration the escalation in the cost of construction as well. Even if that be so the compensation cannot be at a uniform rate. If the delay is only of one or two years the escalation in the cost of construction will not be as much as in a case where the delay is of five years or more. Therefore, if compensation has to be awarded for escalation in the costs of construction, it must be done under that head after taking into consideration the amount of delay. Such compensation can be fixed on the basis of indexes of bodies like CPWD or PWD. Further, it must be noted that where a flat is allotted and possession given even though it is given belatedly there will be no question of escalation in the cost of construction. Yet, even in such cases interest at the rate 18% per annum including escalation in the cost of construction has been granted. Further in cases where the Commission/Forum has directed delivery of possession the party has to a certain extent has already got a benefit. The cost of the land/flat would have gone up in the meantime. Of course, even in cases where delivery of possession has been directed there could be compensation for the harassment/loss. But such compensation has to be worked out after looking into the facts of each case and after determining what is the amount of harassment/loss which had been caused to the consumer.

12. The National Forum in the lead judgment has considered the authorities of this Court in the case of *Ghaziabad Development Authority v. Dhanesh Chand Goel* [SLP (Civil) No. 11315/2000) decided on 12th January, 2001 arising from the order of the MRTP Commission dated 22nd February, 2000] and the case of *Haryana Urban Development Authority v. Rajnish Chander Sharde* reported in III (2000) CPJ 8 (SC)=VII (2000) SLT 142=JT 2000 (8) SC 154. From these decisions, the National Forum has concluded that award of interest at the rate of 18% per annum on amount deposited by the allottee where there is a delay in handing over possession is reasonable and could be awarded on equitable grounds. In our view, this conclusion of the National Forum is not correct. In *Dhanesh Chand Gael's* case (supra) the facts were gross. Those facts have been set out in the order of the National Forum itself. Those facts show that GDA started a scheme for allotment of houses in Governdpuram. Dhanesh Chand had applied for allotment. He had paid the amount. He had been intimated on 16th November, 1993 that he had been allotted a house, as per the draw held on 20th October, 1993. Thereafter in 1996 he was informed that there was an increase in the price. He did not pay the increased amount and, therefore, possession was not given to him. It appears that the flat which had been allotted to him was thereafter allotted to one Shanti Suraksha Bal. Shri Dhanesh Chand was asked to give his option for allotment in some other scheme at a different place. It is under those circumstances that refund was directed with interest at the rate of 18% per annum. This Court while dismissing the Special Leave Petition was careful enough to record that the rate of 18% interest per annum was reasonable given the facts recorded by the lower authority. Thus, this case shows that if the facts are gross then 18% interest could be given but the Forum must first conclude that the facts justified grant of interest at such a rate. Similarly, in *Rajnish Chander Sharde's* case (supra), the facts were such that they justified a grant of interest at the rate of 18% per annum. This Court has noted that there was delay in delivery of possession and in the meantime the complainant had been compelled to live in rented accommodation and pay Rs.

1,600/- per month. This Court has noted that interest at 18% was given instead of directing the body to compensate for the loss caused *i.e.* at the rate of Rs, 1,600/- per month. It is on those facts this Court upheld the grant of interest @ 18% per annum. Far from showing that these authorities justify grant of interest at 18% in all cases irrespective of the facts, the authorities of this Court clearly indicate that interest at such rate is to be granted only when the facts so justify.

13. The learned Attorney General submitted that interest is to be awarded taking into consideration the rates of interest which would be payable by Financial Institutions if amounts are deposited with them. He submitted that the Interest Act, 1978 is applicable even to a Tribunal. He pointed out that under the Interest Act the "current rate of interest" would mean the highest of the maximum rates at which interest may be paid on different classes of deposits by different classes of scheduled banks in accordance with the directions given or issued by the Reserve Bank of India under the Banking Regulations Act, 1949. He relied on Section 3 of the Interest Act which provides that in any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the Court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest. He submitted that the Commission whilst awarding interest has to follow the provisions of the Interest At. He submitted that the same principles apply under Section 34 of the Code of Civil Procedure.

14. The learned Attorney General relied upon the case of *Central Bank of India v. Ravindra* reported in VII (2001) SLT 400=I (2002) BC 150 (SC)=(2002) 1 SCC 367, wherein interest has been defined as follows;

"37. Black's Law Dictionary (7th Edn.) defines "interest" *inter alia* as the compensation fixed by agreement or allowed by law for the use or detention of money, or for the loss of money by one who is entitled to its use; especially, the amount owed to a lender in return for the use of the borrowed money. According to Stroud's Judicial Dictionary of Words And Phrases (5th Edn.) interest means, *inter alia*, compensation paid by the borrower to the lender for deprivation of the use of his money. In *Secy., Irrigation Deptt., Govt. of Orissa v. G.C. Roy* [(1992) 1 SCC 508] the Constitution Bench opined that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages.... this is the principles of Section 34 of the Civil Procedure Code. In *Sham Lai Narula (Dr.) v. CIT* [AIR 1964 SC 1878:(1964) 7 SCR 668] this Court held that interest is paid for the deprivation of the use of the money. The essence of interest in the opinion of Lord Wright, in *Riches v. Westminster Bank Ltd.* [(1947) 1 All.ER 469:1947 AC 390(HL)] All ER at p. 472 is that it is a payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the profit he might have made if he had the use of the money, or, conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation; the money due to the creditor was not paid, or, in other words, was withheld from him by the debtor after the time when payment should have been made, in breach of his legal rights, and interest was a compensation whether the compensation was liquidated under an agreement or statute. A Division Bench of the High Court of Punjab speaking through Tek Chand, J. In *CIT v. Dr. Sham Lai Narula*

[AIR 196? Punj 411:(1963) 50 ITR 513] thus articulated the concept of interest: (AIR p. 414, para 8)

"8. The words 'interest' and 'compensation' are sometimes used interchangeably and on other occasions they have distinct connotation. 'Interest' in general terms is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another. In its narrow sense, 'interest' is understood to mean the amount which one has contracted to pay for use of borrowed money.... In whatever category 'interest' in a particular case may be put, it is a consideration paid either for the use of money or for forbearance in demanding it, after it has fallen due, and thus, it is a charge for the use or forbearance of money. In this sense, it is a compensation allowed by law or fixed by parties, or permitted by custom or usage, for use of money, belonging to another, or for the delay in paying money after it has become payable."

In this case it is also observed that the Reserve Bank of India has supervisory role over banking. It is observed that Reserve Bank of India has been issuing directions/circulars dealing with rates of interest. It is held that the Reserve Bank of India circulars can be treated as standards regarding rates of interest.

15. The learned Attorney General then referred to the case of *In Defence of Arnit Das v. State of Bihar* reported in IV (2000) SLT 465=III (2001) CCR 230 (SC)=(2001) 2 SCC 9, wherein, in the context of a claim, under the Motor Vehicles Act, this Court has noted that with the change in economy and policy of Reserve Bank of India the interest rates are lowered. Interest at the rate of 9% was granted on the footing that nationalised banks now grant interest at that rate on fixed deposits for one year. It was pointed out that this reasoning was approved by this Court in the case of *United India Insurance Co. Ltd. v. Patricia fean Mahajan* reported in IV (2002) SLT 262=II (2002) ACC 460 (SC)=(2002) 6 SCC 281.

16. The learned Attorney General also relied on the case of *Bihar State Housing Board v. Prio Ranjan Roy* reported in (1997) 6 SCC 487 wherein it is held that where damages are awarded there must be assessment thereof. It is held that the Order awarding damages must contain an indication of the basis upon which the amount awarded is arrived at. It was held that in the Order there must be some statement about the relationship between the amount awarded and the default and unjustifiable delay and harassment found to have been caused. This Court then remitted the matter back to National Commission for consideration of the aspect of compensation *de hors*. It was directed that if damages are awarded reasons must be set out.

17. The learned Attorney General also relied upon the case of *Prashant Kumar Shahi v. Ghaziabad Development Authority* reported in I (2001) CPJ 8 (SC)=I (2001) SLT 377=(2000) 4 SCC 120. In this case it has been held that facts would have to be looked into to ascertain whether the authority or the allottee was responsible for the alleged delay.

18. There can be no dispute to the principles laid down in *Prashant Kumar Shahi's* case and *Bihar State Housing Board's* case (supra). It is on these principles that it is already held that awarding interest at a flat rate of 18% is not justified. It is clear that in all these cases interest is being awarded as and by way of compensation/damages. Whilst so awarding it must be shown that there is relationship between the amount awarded and the default/ unjustifiable delay/harassment. It is thus necessary that there be separate awards under each such

head with reasons why such award is justified. However, the principles that interest must be granted at the current rate of interest is only applicable where the proceedings are for recovery of debt or damages. They apply where a refund of amount is being claimed and the direction is to refund amounts with interest. The principles which govern grant of interest do not apply to grant of compensation. For this reason also it becomes necessary to consider facts and award damage/compensation under various heads.

19. That brings to the question as to the date from which interest would be payable. Normally in cases of refund interest will be payable from the date the monies were deposited with the body till they are returned either by payment to that party or deposited in a Court. In cases where compensation is directed to be paid, the Commission/Forum must direct payment within a particular period and further direct that if payment is not made within that time the authority will also pay interest. Such interest must be based on the current rate of interest.

20. Now we come to the question as to what is to be done in all these matters where the Commission/Forum has already passed the stereo-type order set out above. To remit all matters back to the Commission would cause undue hardship and unnecessary costs to the Consumer, many of whom are appearing in person as they cannot afford a lawyer. In all future matters the Commission/Forum must now award compensation under various heads if it concludes that there has been deficiency of service or misfeasance in public office. So far as this bunch of matters is concerned instead of remitting them back we consider it expedient to take up each matter ourselves. If we find that the Forum/Commission has on facts found deficiency of service or misfeasance in public office, then depending on facts of that case we may not interfere with the award of interest. We will then treat it to be in lieu of compensation. We may however vary the rate of interest depending on facts of each case. Just by way of example we take two instances set out below.

21. In a scheme known as "Karpuripuram 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 has not already floated another scheme on the same land it is clear that 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.

22. In Civil Appeal No. 7224 of 2002 the respondent had applied for a house in a Scheme floated in 1992. He had paid the entire cost. He had been allotted a flat and issued a reservation letter. Yet no possession was given. Thereafter, in 1996 the respondent was informed that for unavoidable reasons the house has been allotted to somebody else and if he desires, he can obtain an alternate flat at a much higher price. This, therefore, is also a case where absolutely no justifiable reason why the party has not been delivered possession of the flat which had been allotted to him nor has any offer been made to return his money with interest. Instead the body has asked the party to apply for an alternate flat at a higher rate. In our view, on these facts the award of interest at the rate 18% is justified. It is not just interest on the amount invested but is also compensation for the harassment and agony caused to the allottee. We have given these two instances only by way of illustrations.

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.

24. We clarify that in all cases where interest has already been paid @ 18% irrespective of the above order, the authority will not be entitled to call upon the party to refund the amount which have already been paid.

24. Another point also requires consideration at this stage. In the lead judgment the National Commission has held that no interest is payable for the period 24.4.1991 to 16.12.1993 as during that period there was a stay order passed by the Allahabad High Court in operation. Some of the allottees have filed Appeals challenging that portion of the Order. It is contended, on their behalf that there was no stay order in respect of the plots allotted to them. It was contended that the authority cannot justify non-delivery to them. As against this it is pointed out that this Court has already in the case of *G.D.A. v. Sanchar Vihar Sahkari Avas Samiti Ltd.* reported in (1996) 9 SCC 314 upheld the view of the National Commission in refusing interest or damages for the period during which the stay operated. It is also pointed out that the Commission had deputed the Vice-Chairman to enquire and report whether the authority was prevented from delivering possession to all due to the stay order. It is pointed out that the Vice-Chairman had submitted a Report pointing out that even though the stay order was not in respect of all plots, yet the authority could not deliver possession of any plot as well the pipelines and other infrastructural work had to be taken through the plots in respect of which the stay order operated. As per the Report of the Vice Chairman the authority was prevented, by the stay order, from delivering possession to anybody. The National Commission has accepted this Report. We see no reason to take a different view, particularly when another Bench has already refused to interfere on this aspect.

25. Before we part with this Order, we have to mention that many parties complained to us that even the undisputed amounts had not been paid to them. This was disputed on behalf of the authorities. However, it is clear that the amounts were paid/deposited belatedly. We, therefore, clarify that unless there is a stay obtained from a higher Forum, the mere fact of filing of an Appeal/Revision will not entitle the authority to not comply with the Order of the Forum. Even though the authority may have filed an Appeal/Revision, if no stay is obtained or if stay is refused, the Order must be complied with. In such cases the higher Forum should, before entertaining the Appeal/Revision, ensure that the Order is first complied with.

The matters are adjourned for two weeks:

Matters adjourned for 2 weeks.

(Equivalent Citation:- 2004 (2) CPC 275 (SC), 2004 (7) SRJ 231 (SC), 2004 NCJ 570 (SC), 2004 AIR(SC) 4133, 2005(9) SCC 433, 2004(6) JT 99, 2004(6) SCALE 311, 2004(5) Supreme 677)

III (2004) CPJ 8 (SC)
SUPREME COURT OF INDIA
S.N. Variava & Arijit Pasayat, JJ.
GHAZIABAD DEVELOPMENT AUTHORITY—Appellant
versus
SUBHASH GUPTA—Respondent

Civil Appeal No. 6548 of 2002 from Judgment and Order dated 5.4.2002 of National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No. 502 of 2000—Decided on 28.7.2004

Allotment of Plot : Delay : District Forum directed delivery of possession and awarded interest on deposited amount @ 18% p.a. and payment of Rs. 2,000/- as compensation for mental agony : State Forum confirmed award in appeal : Revision by appellants before National Commission : Claim of cancellation of Karpuripuram Scheme : National Commission did not deal with said aspect but increased rate of interest to 18% p.a. : For reasons set out in *Ghaziabad Development Authority*, order of National Commission unsustainable : State Forum directed delivery of possession : Appellants, on their own, deposited all amounts, without any order of any Forum : Appellants cannot get any benefit : Respondent must get interest till he receives his monies : Respondent permitted to withdraw monies deposited [If District Forum invested amounts then respondent entitled to accrued interest] : If amounts lying uninvested, appellants will pay to respondent interest @ 12% from 12.2.1999 till date monies withdrawn by respondent.]

[Paras 8 to 11]

Result : Appeal disposed of.

Case referred :

II (2004) CPJ 12 (SC)=III (2004) SLT 161=2004 (5) SCC 65. (Followed)

Counsel for the Parties :

For the Appellant : Ms. Reena Singh, Mr. T. Mahipal and Mr. Rakesh Uttamchandra Upadhyay (NP), Advocates.

For the Respondent : *In-person.*

JUDGMENT

S.N. Variava, J.—Before this Court a large number of appeals have been filed by the Haryana Urban Development Authority and/or the Ghaziabad Development Authority challenging orders of the National Consumer Disputes

Redressal Commission, granting to complainants, interest at the rate of 18% per annum irrespective of the fact of each case. This Court has, in the case of *Ghaziabad Development Authority v. Balbir Singh*, reported in II (2004) CPJ 12 (SC)=III (2004) SLT 161=2004 (5) SCC 65, deprecated this practice. This Court has held that interest at the rate of 18% cannot be granted in all cases irrespective of the facts of the case. This Court has held that the Consumer Forums could grant damages/compensation for mental agony/harassment where it finds misfeasance in public office. This Court has held that such compensation is a recompense for the loss or injury and it necessarily has to be based on a finding of loss or injury and must co-relate with the amount of loss or injury. This Court has held that the Forum or the Commission thus had to determine that there was deficiency in service and/or misfeasance in public office and that it has resulted in loss or injury. This Court has also laid down certain other guidelines which the Forum or the Commission has to follow in future cases.

2. This Court is now taking up the cases before it for disposal as per principles set out in earlier judgment. On taking the cases we find that the copies of the claim/petitions made by the respondent/complainant and the evidence, if any, led before the District Forum are not in the paper book. This Court has before it the order of the District Forum. The facts are thus taken from that order.

3. In this case the respondent was allotted a plot of 90 sq. mtrs. under Karpuripuram Scheme in the year 1991. The respondent paid all dues. Yet possession was not offered. The respondent thus filed a complaint.

4. The District Forum has directed delivery of possession and awarded interest on the deposited amount at the rate of 18% p.a. from 1st July, 1994 till date possession is given. The District Forum has also directed payment of Rs. 2,000/- as compensation for mental agony.

5. The appellants appealed to the State Forum. We are informed that pending appeal the appellants deposited not just the amounts awarded but also the amounts paid by the respondent to them.

6. The State Forum confirmed the Award in the appeal filed by the appellants.

7. The respondent did not go in revision before the National Commission. The appellants filed a revision before the National Commission. For the first time they now claimed that the Karpuripuram Scheme was cancelled. The National Commission has not dealt with the aspect of cancellation of Scheme but has increased the rate of interest to 18% p.a.

8. For reasons set out in the judgment in the case of *Ghaziabad Development Authority v. Balbir Singh* (supra), the order of the National Commission cannot be sustained. As stated in that order in cases where the Scheme is cancelled interest must be paid at the rate of 18%. The respondent is thus entitled to get back his money with interest at the rate of 18% p.a. In this case the appellants have deposited the amount in the District Forum on 12th February, 1994. The

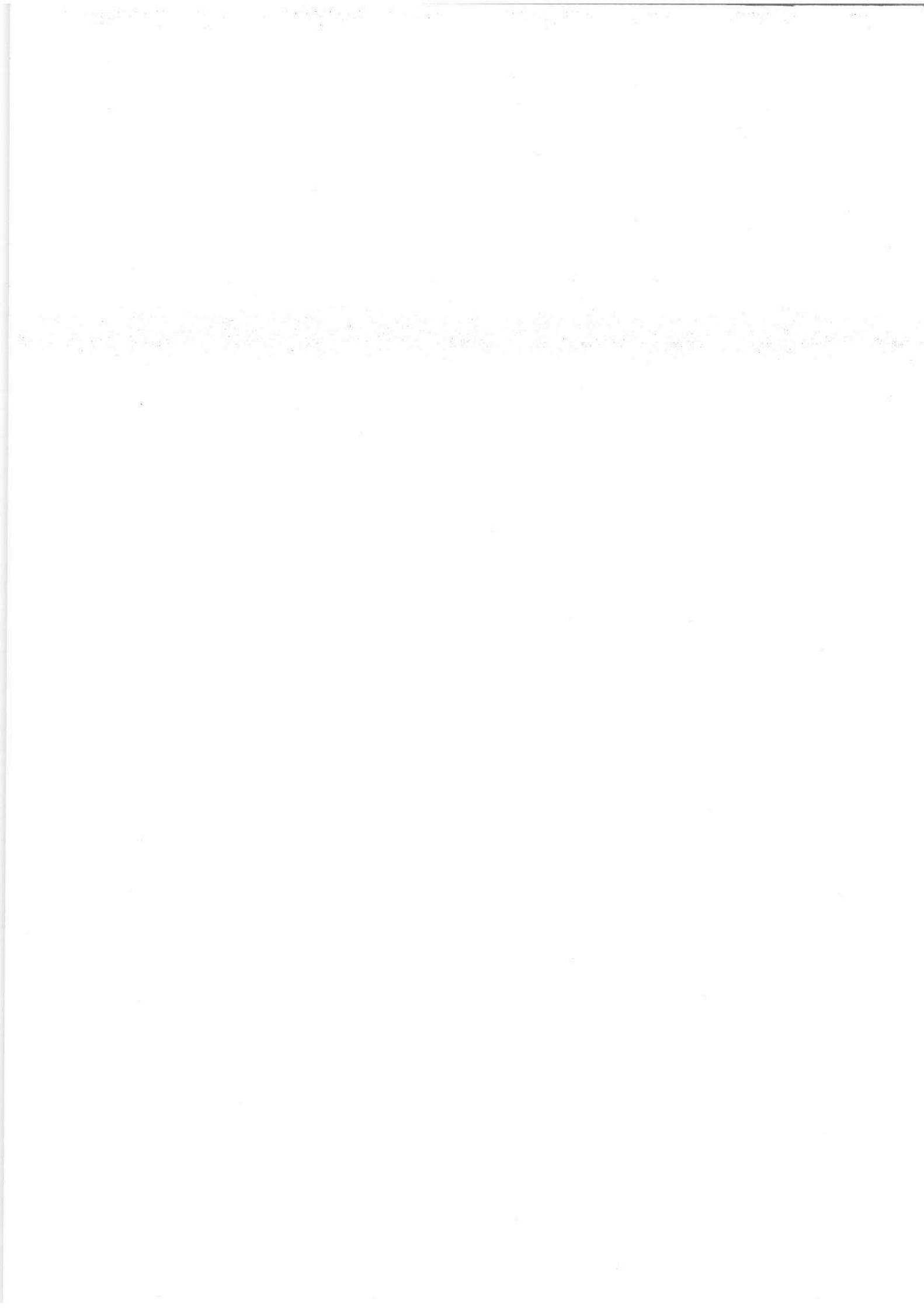
respondent has not withdrawn the amount as, according to him, the order of the District Forum was to give possession and pay interest. He correctly submits that the appellants could not have, contrary to the order of the District Forum, chosen to not give possession and seek to return amounts paid by depositing the same in the District Forum. We find that the appellants, on their own, deposited all amounts, without any order of any Forum. They did not even point out, in the pending appeal before the State Forum, that the Scheme was cancelled. The State Forum in its order also directs delivery of possession. Thus by deposit, contrary to orders of the District and State Forum, the appellants cannot get any benefit. We have by our earlier order permitted cancellation of Scheme on payment of interest at 18%. The respondent must thus get interest till he receives his monies. We therefore permit respondent to withdraw the monies deposited. He must do so within one week from date of this order. If the District Forum has invested the amounts then respondent will be entitled to the accrued interest also. If the amounts are lying uninvested, then appellants will pay to the respondent interest at the rate of 12% from 12th February, 1999 till date the monies are withdrawn by the respondent.

9. We clarify that this order shall not be taken as a precedent in any other matter having been passed on account of the special features of the case. The Forum/Commission will follow the principles laid down by this Court in the case of *Ghaziabad Development Authority v. Balbir Singh* (supra), in future cases.

10. If amounts deposited with the District/State Forum are lying uninvested, they must automatically invest these amounts in nationalized banks and keep them invested till they have to be returned/paid out.

11. This appeal is disposed of in above terms. The appellants will pay to the respondent costs of this appeal fixed at Rs. 5,000/-.

Appeal disposed of.



NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

NEW DELHI

REVISION PETITION NO. 1250 OF 2004

(Against the order dated 24/11/2003 in Appeal Complain No. 419/2001

of the State Commission, Rajasthan)

NATIONAL INSURANCE CORPORATION Petitioner(s)

Vs.

BASAVRAJ MURIGEPPA HATTIKAL Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE S.N. KAPOOR, PRESIDING MEMBER

HON'BLE MR. B.K. TAINI, MEMBER

For the Petitioner : Sri S.I. Gupta, Advocate

For the Respondent : Nemo

Dated the 25th day of August, 2005

ORDER

Admit. Issue notice to the respondent returnable on 5.1.2006. Learned Counsel for the petitioner states that the petitioner is ready to deposit the amount in this Commission.

Ordinarily, we expect that the District Forums should receive the amount awarded and the amount ordered to be deposited with them in some fixed deposit in a nationalized bank and to disburse the amount in terms of orders. But learned counsel informs that the District Forum has no account and they are not in a position to receive and to deposit the amount in fixed deposit.

It is very essential that District Forums should open a Bank Account in Nationalized Bank in order to facilitate deposit and disbursement of the amount at the level of District Forums instead of making the parties to

come to Delhi or to the State Capital Jaipur to receive the payment. Otherwise all the consumer-complainant would be forced to spend unnecessarily money in visiting either Jaipur or Delhi.

All Consumer Fora are supposed to take care of the hapless consumer in this regard. Sometime the amount likely to be spent in visiting Delhi or Jaipur may be more or less equal to the amount awarded. In such cases, it would amount to just a show of granting relief.

A copy of the order should sent to the learned President of the State Commission with the request to make effort to ensure that the District Forums in State of Rajasthan are authorized to open a bank account to enable the opposite parties to deposit the amount in case they are ordered to deposit the amount.

The Bank Account may be opened in the name of the concerned District Forum and it may be operated under the signature of the President of the District Forum and either another member of the District Forum or the senior most official of the District Forum other than the President and member of the District Forum.

List on 5.1.2006.

5/5
S. (S.N. KAPOOR)
PRESIDING MEMBER

5/5
(B.K. TADMI)
MEMBER

MOST IMMEDIATE

XXXXXX

(r) : 23697273

No. PA/2003
Dated : 10th March, 03.

Dear

Subject: P.L.A. Account.

Ref'nce: Govt. communication being No.GSK 4502/2029/Prakra 2536/GS-3,
Dated 24th January,2003 addressed to the Registrar, District Forum,
Ratnagiri with copies to the Registrars of all Fora in the State.

1. The Registry of this Office has drawn my attention to the above Govt. communication copy of which was received by it on 24th February,2003.
2. It is not possible to know as to under which provision of Law, such letter is addressed by the Executive Secretary to the Registrars of Consumer Fora in the State.
3. As I perceive, the said communication is directly in conflict with the order dated 10th July,2002 of the Supreme Court in S.L.P. No. 6928 of 1999 (Civil), relevant part of which is reproduced herein below.

"Consumer Courts – Administrative control over the State Commissions and the District Forums – Consumer Protection Act, 1986 – Section 24-B – National Commission vested with administrative control over all the State Commissions- Similarly each State Commission vested with administrative control over all the District Forums within its jurisdiction in the matters covered by clauses (I), (ii) and (iii) of sub-section (1) – Accordingly directed that no officer of the Executive to carry out inspection of the District Forums and exercise any administrative control thereon, keeping in view the provisions of Section 24-B."

"Our attention is invited to executive orders styled as Office Memorandum No. CP –262/ 29.10.90 dated 16th July, 1990 and Ordinance No. CP-369 (I) 29-10-C.P.-B/88 dated 20th September, 1988. Prima facie, both these appear to be inconsistent with – Section 24-B of the Consumer Protection Act, 1986 (Herein After "The Act" for short) whereunder the National Commission has been vested with administrative control over all the State Commissions- Similarly each State Commission vested with administrative control over all the District Forums within its jurisdiction in the matters covered by clauses (I), (ii) and (iii) of sub-section (1) – We make it clear that no officer of the Executive shall carry out inspection of the District Forums and exercise any administrative control thereon, which apparently can be done in accordance with the provisions of Section 24-B of the Act."

4. Further, I wish to state that our High Court [Aurangabad Bench] being No. 314 of 2000 in Writ Petition against the State Government, has in its order dated 22nd February, 2000, has held as under.

"Section 24-B if read in consonance with the judgement of the Supreme Court in Common Cause case (supra) clearly provides that the administrative and supervisory control over the District Forums is that of the President of the State Consumer D. R. Commission (State Commission for short) and such control cannot be vested with any other authority which is unknown to the Act. If any other interpretation is given to the provisions of Section 24-B it, would negate the law laid down by the Supreme Court in Common Cause case (supra) and, therefore, the transfer orders of President-District Forum must be issued by the President of the State Commission in his administrative powers as embodied in Section 24-B of the Act."

5. This judgment is passed in a matter wherein the State of Maharashtra is the party.

6. In the light of the orders of the Supreme Court and High Court, I hope that the Government will reconsider the position to avoid a sort of avoidable conflict and confrontation, as it would amount to executive interference in judicial work of Consumer Fora.

7. You would recall that the issue about the administrative and supervisory control over District Forums in the State was raised in the recently held meeting, in the Chamber of the Hon'ble Minister In charge of Consumer Affairs, where I was also one of the participants. As the position of Law stands, as explained by the Supreme Court and our High Court, as above, in the aforesaid two decisions, there needs no further elaboration on the issue. I urge that you would bring the position to the kind notice of the Hon'ble Minister as also all concerned, to avoid situation as is the case, in issuance of communication in question.

8. I would briefly dwell on the contents of the said communication and consequences, arising therefrom.

i) The same mentions about Deposit of amount, pertaining to "

(reproduced as it appears in the communication) in P.L.A.

ii) It is to be noted that amounts which are ordered and deposited and are to be deposited with Consumer Forums, as properly understood, are those amounts ordered to be deposited, mostly by the National and State Commissions, in the pending Appeals filed against the orders of the District Forums, in the Consumer disputes, awarding compensation/ damages to the Consumer-Complainants, "specifying relief of interest and period" at the stage of initial admissions of the Appeals, as the condition of grant of stay against the orders in Appeals, directing at the same time, to the Forums to invest the deposited amounts, with the Nationalised Banks.

iii) This is done to secure, to some extent, the compliance of the orders of the District Forums for the payments of compensation etc. to the complainants, on and after disposal of the Appeals, and orders to that effect are made at the stage of final disposal of the Appeals. In the event of dismissal of the Appeals, orders are made directing the Forums to reimburse the

deposited amounts, in the relevant matters, to the parties entitled for the same "with accrued benefits thereon i.e. accrued interest".

iv) It be further noted that rate of interest awarded in Consumer disputes on the amounts of awards is normally on higher side, which may vary from 12% p.a. to 18% p.a., depending upon the facts of the case, whereas rate of interest yield in invested securities, in the Banks, as mentioned at (ii) and (iii) above would be much less and therefore, at the stage of passing the final orders for disbursements of the deposited amounts, as mentioned at (iii) above, order is also made directing the parties against whom awards are made, to make good the difference in the rates of interest awarded and as yielded in the investment. [Emphasis supplied].

v) From above, it would be very clear that i) the amounts ordered to be deposited are on and pursuant to the orders passed in the judicial capacities. ii) in the pending judicial proceedings, iii) Deposits are made by the parties to the Consumer disputes iv) the deposited amounts are eventually meant to and are to be reimbursed to the parties entitled to and v) which is most important, Deposits and disbursements are made pursuant to the orders of the Fora in their judicial capacity.

9) The said communication directs the deposits to be made in PLA only. As is the case in PLA deposits, no interest is yielded and in fact, is being agitated, by the parties, because of the practice followed in the past for deposit in PLA as to who would bear the burden.

10) I think it appropriate to enclose herewith a copy of recent Judgment dated 23rd January, 2003, passed by us, in the case arising under somewhat similar situation and would only urge you to refer to paras 32, 33, 34 and operative Clause No. 4 (1) to (7), which would make the position clear.

11) I may point out, in the above judgment in para 8, we have reproduced the order passed by the National Commission, in the case being the subject matter of the enclosed judgement, in which National Commission has ordered to invest the amounts with Nationalised Banks, in the name of the complainant Consumer.

12) Needless to add, if deposits are to be made in PLA as said Govt. communication directs, to the Forums, then it should be clarified whether the Government would make good the payment of interest thereon, at the rate as specified in the orders, mentioned at 6 (iii) above and specific and definite commitment, in a form undertaking by the Government be furnished to each of the Forums in the State, so that, directions in the said communication can be followed. It would not be out of place to state that such course would involve huge financial implication and as such burden on the Government Treasury, which fact be taken note of.

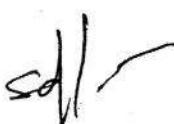
13) I would urge in the circumstances that, the Government would give a serious thought to whatever explained and stated above and come out, without loss of any time, with appropriate

State Commission has given in its enclosed January 23rd Judgement, which is also in consonance with the practice followed by the National Commission, would prevail.

Hence early response.

Yours

Encl : As stated.


M (M.S.Rane)

To,

Smt.Neela Satyanarayan,IAS,
Principal Secretary (F & C S/CP),
Mantralaya, Mumbai.

c.c. to :

- 1) The Hon'ble President, National Consumer D.R. Commission, New Delhi.
- 2) The Presidents of all the District Forums in the State. The copy of the Judgment dated 23.1.03 referred to has already been furnished to you and till the response of the Government, as sought for by above letter is received, you have to adhere to the Guidelines issued in our Judgment. This be also brought to the notice of the Registrar in your Forum. Receipt be acknowledged.


President,
State Commission.

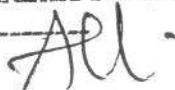
URGENT



No. SC/Guidelines/05/ 872
State Consumer Disputes Redressal
Commission, Maharashtra, Old Admn
Staff Collage Bldg, Room No.1,2,5 &
6, Hajarimal Somani Marg, Opp.C.S.T.
Str, Mumbai-400 001.

Dated : 07th October, 05.

To,
The Registrar,
District Consumer Forum,

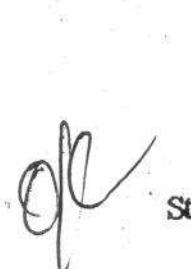


Subject: Guidelines issued by Hon'ble National Commission....

Reference : Letter no. A/24 B/NCDRC/05, Dtd 22nd September, 05 @ Judgement in
R.P.No.1250/2004 of National Commission, New Delhi.

As directed by the Hon'ble President of this Commission with reference to the referred letter of National Commission, I hereby inform you that Hon'ble National Commission, New Delhi by its judgement dtd.25/8/2005 in R.P.No.1250/2004 (National Insurance Corporation v/s Basavraj Murigeppa Hattikal), issued guidelines regarding the opening of a Bank Account for depositing the awarded amount by the Consumer Forums. The Hon'ble National Commission further directed to open a Bank Account with the nearest State Bank of India Branch or any Nationalised Bank and deposit the awarded amount in the said bank account and later on put the said amount in a short term deposit in the form of FDR. The copy of referred letter and order of National Commission, New Delhi enclosed herewith.

Therefore, you are directed to follow the guidelines of National Commission and report the compliance.



(D.J. Khairnar)

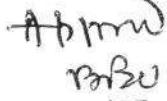
I/c Registrar,

State Commission, Maharashtra.

Encl : As stated.

Copy to : Superintendent (Accounts), State Commission, Mumbai for compliance.

C:\My Documents\APB.doc





B.V. Sharma
Joint Registrar
National Consumer Disputes
Redressal Commission

No. 1/2005/NCDR/25

To

The Registrar,
State Consumer Disputes
Redressal Commission.

Sir,

It has come to the notice of the National Consumer Disputes Redressal Commission that the consumers/litigants are experiencing great difficulty with regard to the deposit of the amount awarded and the amount ordered to be deposited in a Nationalized Bank to disburse the amount in terms of orders passed by the State Commissions and District Forums.

As per the provisions of Section 24 B of the Consumer Protection Act, 1986, the National Commission has directed me to convey its decision to State Commissions and District Forums regarding the opening of a Bank Account for depositing the awarded amount by the Consumer Forums. Accordingly, I would request you to open a Bank account with the nearest State Bank of India Branch or any Nationalized Bank and deposit the awarded amount in the said bank account and later on put the said amount in a short term deposit in the form of FDR. This would facilitate deposit and disbursement of the amount at State Commissions and District Forums levels. The account may be opened in the name of the State Commission/District Forum to be operated through Registrar/Secretary in the case of State Commission and by Senior Officer in the case of District Forums. The account so opened should be operated strictly as per the orders of the State Commissions or District Forums, as the case may be. For this purpose, proper separate account should be maintained by the State Commissions/District Forums mentioning all the details of the parties and the amount deposited or disbursed in the case.

The amount awarded by the National Consumer Disputes Redressal Commission may also be accepted and deposited in the said Bank Account till the National Commission orders release of the same. The amount, so deposited in the Bank Account be released strictly in terms of the orders of the National Commission.

A copy of an order dated 25-08-2005 passed by the National Consumer Disputes Redressal Commission in R.P. No. 1250 of 2004 in the case of National Insurance Corporation Vs. Basavraj Murigeppa Hattikal is enclosed.

~~open account~~
Issue directions
to D.F. in the state.

Encl: As above

JANPATH BHAVAN
5TH FLOOR, 'A' WING
JANPATH
NEW DELHI 110 001
TEL. NO. : 23760107
FAX : 2371 2456

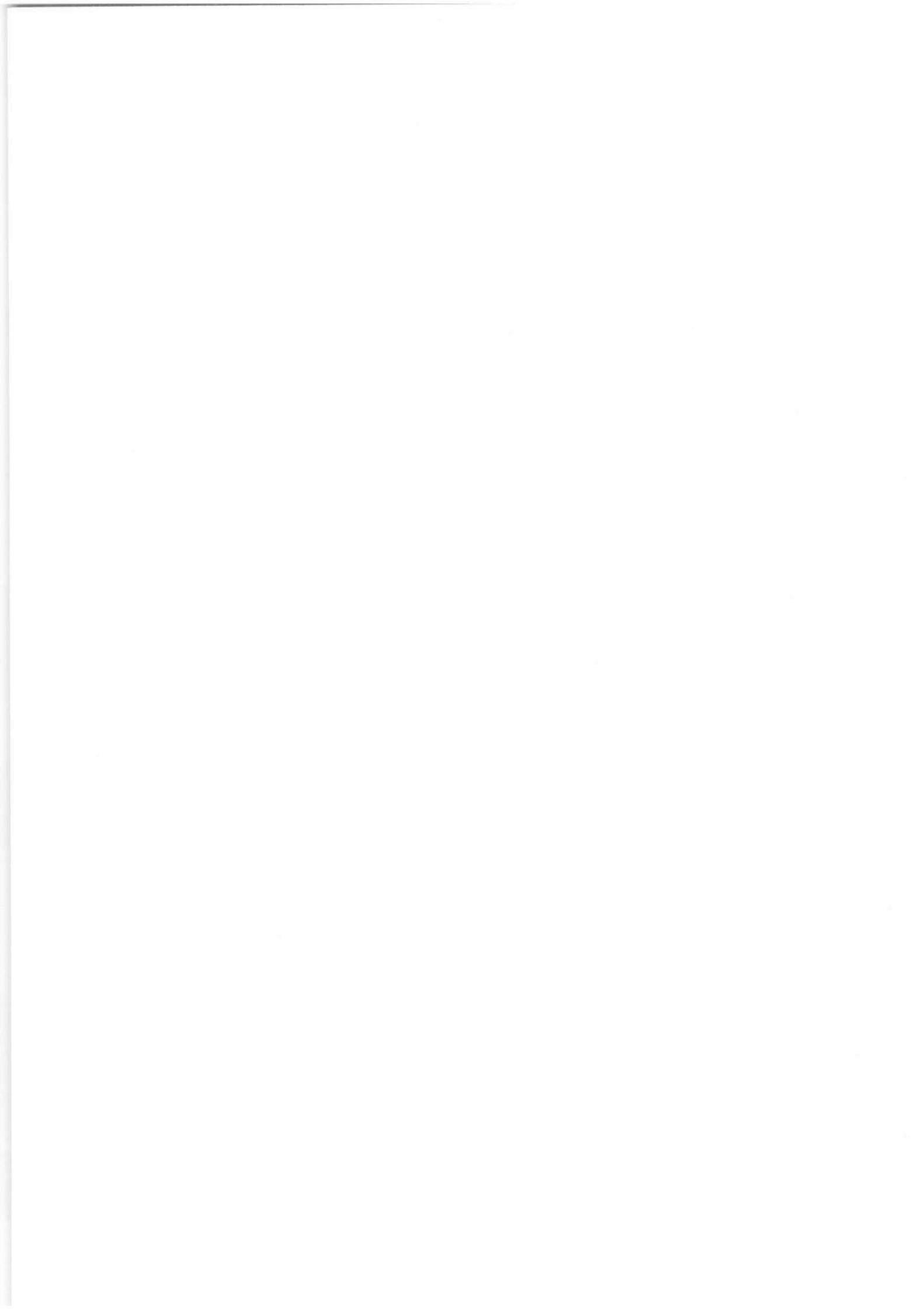
22nd September, 2005

B.B.V
28.9.05

Yours sincerely,

B.V. Sharma

(B.V. Sharma)



Guidelines

No. SC/Circular/07/147

JUSTICE BHALCHANDRA VAGYANI
Former Judge, High Court of Bombay
President
Consumer Disputes
Redressal Commission
Maharashtra State



Old Admn. Staff College.
R#1, 2, 5 & 6, Hajarimal
Somani Marg.
Mumbai 400 001.
Tel. (O) 2207 20 97
Fax & (D) 2201 85 39.

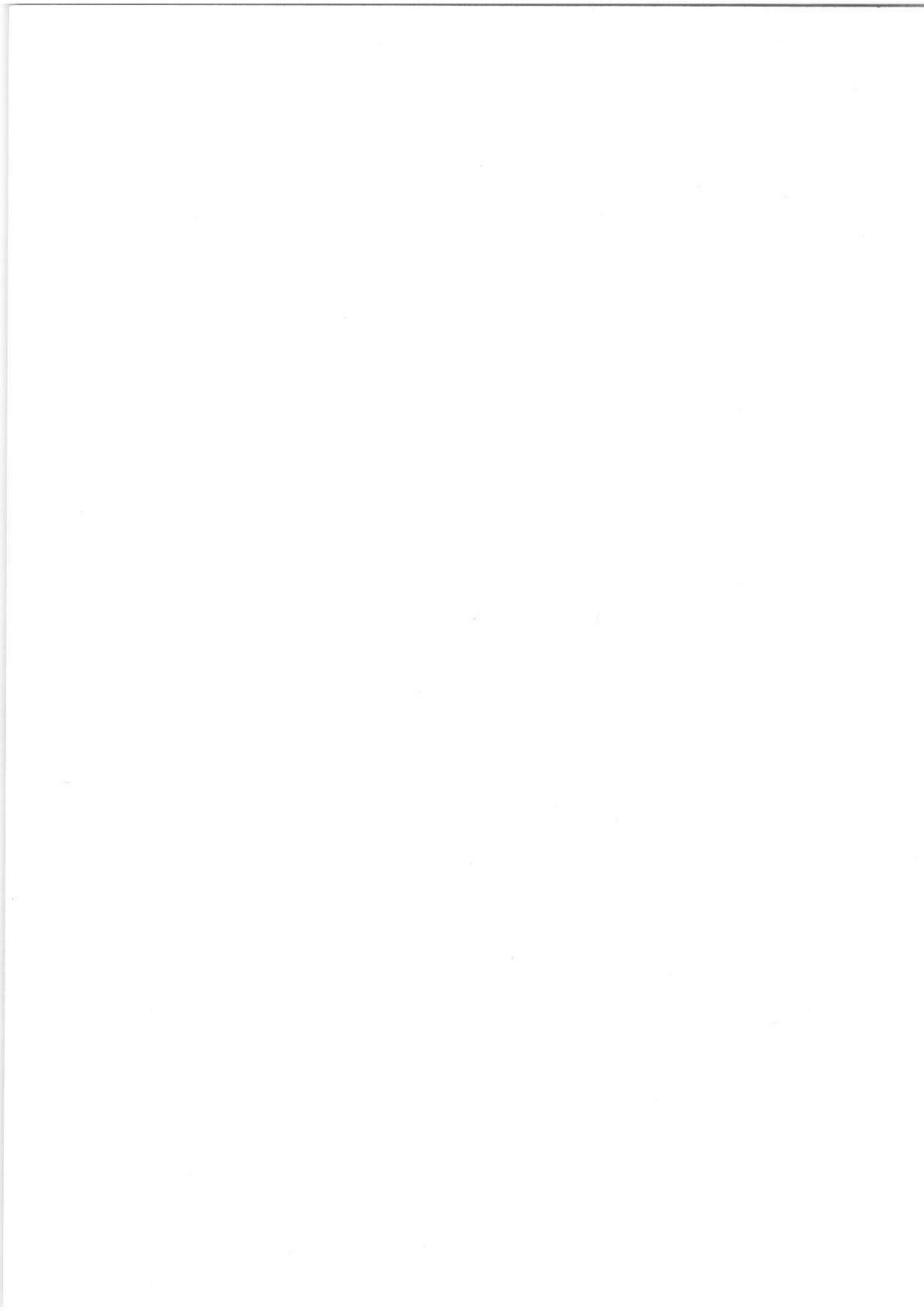
Date: 19th December 2007

Dear Brother/Sister,

It has come to our notice that despite the direction given by the Hon'ble National Commission and State Commission, the deposits directed to be kept in District Consumer Forum are lying ideal or they are deposited in PLA account. This practice is contrary to the directions given by Hon'ble Supreme Court in the case of Ghaziabad Development Authority V/s. Subhash Gupta 2004 CTJ 801 (Supreme Court) (CP). The Hon'ble Supreme Court has clearly laid down that if the amounts deposited are lying uninvested, they must automatically invest those amounts in the Nationalized banks and keep them invested till they have to be returned or paid out.

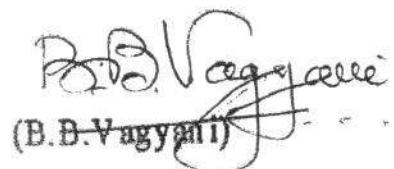
Besides these directions issued by Hon'ble Supreme Court, Hon'ble National Commission in its order dated 25/8/05 in Revision Petition no.1250/04, National Commission issued guidelines regarding operating of bank account for depositing the awarded amount by the Consumer Forums. This letter has been circulated by our State Commission by its letter dated 7/10/05.

Government of Maharashtra has also issued letter to the Registrar of this Commission dated 26/9/07 that necessary instructions should be issued to the District Consumer Fora as to how deposits lying with the District Consumer Forum are to be dealt with. Since we are the administrative authority over all the District Fora in State of Maharashtra, we deem it fit and proper to direct all the District Consumer Fora working in the State of Maharashtra to follow the guidelines issued by Hon'ble Supreme Court and National



Commission mentioned Supra, henceforth it is specifically directed that all the District Consumer Fora and Circuit Benches shall ensure that any amount deposited by any party pertinent to any order passed by National Commission, State Commission, District Consumer Fora and even apex court shall be immediately invested in fixed deposit receipts of the Nationalized banks for short term or long term depending upon the stage of the proceeding involved. For instance, if the case is for admission, fixed deposits for shorter period would be ideal, if matter is already admitted, the fixed deposit should be renewed on long term basis, the purpose being every amount deposited should fetch interest payable by the Nationalised bank, it will benefit either of the party who will succeed in the litigation. It is further made abundantly clear that in case any amount is lying in or has been withdrawn from PLA account, all amounts should be invested in Nationalized bank by way of fixed deposit receipts.

All the District Fora are directed to follow the directions given by State Commission in the case of Murlidhar Eknath Masane V/s. Shushrusha Citizens' Co-op. Hospital reported in 2003 (SCDRC-Mah.) 683, particularly paragraph nos. 34 & 35.



(B.B. Vagyani)

To

1. Judicial Member
State Consumer Disputes Redressal Commission
Circuit Bench at Aurangabad/Nagpur
2. President
District Consumer Disputes Redressal Forum

.....

- c.c. 1. Principal Secretary, Food, Civil Supplies & C.P. Dept.
Mantralaya, Mumbai
2. Financial Advisor & Dy. Secretary,
Food, Civil Supplies & C.P. Dept. Mumbai
3. Superintendent (Accounts department), State Commission,
Mumbai

