

Exam date 03.7

ECL TP 1 – SOLUTION

Answer to Q.1

Deficiency means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service [Section 2(1)(g)].

In the given case the landlord refused to provide the facilities as per the contract, which results in the mental agony of the family members of the tenant. The tenant can therefore move Consumer Dispute Redressal Forum for deficiency by the landlord.

Answer to Q.2

In *Isabella Thoburn College v. Ms. Fatima Effendi [2001 CTJ 386 (CP) (SCDRC)]*, the State Commission held that non-refund of admission fee is not a deficiency of service on the part of the university because admission fee is consideration for admission and respondent herself voluntarily withdrawing admission from one university to join another institute cannot claim refund of admission fee.

In the given case Jolly has got admission in a college and subsequently he voluntarily withdraws admission to join Government Engineering College, cannot claim refund of total fees.

Answer to Q.3

In *Union of India v. Nathmal Hansaria [First Appeal No. 692 of 1993 decided on 24.1.1997 (NCDRC)]* the daughter of the respondent, travelling by a train, fell down from the running train while she was passing through the inter-connecting passage between two compartments and died as a result of crush injuries on her head. In the respondents petition for compensation, the Railways contended that the Consumer Redressal agencies had no jurisdiction to consider a complaint of this nature in view of Section 15 of the Railway Claims Tribunal Act read with Section 13 of that Act.

The State Commission held that a railway passenger travelling in a train on payment of consideration was a consumer within the meaning of the Consumer Protection Act, 1986. Section 82A of the Railways Act referred to in Section 13 of the Railway Claims Tribunal Act, 1987 and the rules made there under provided compensation for railway accidents and not for accidental death of this nature.

Dismissing the appeal the National Commission held that the death of the passenger could not be described as resulting from railway accident but an accidental death caused by the absence of safety devices in the vestibule passage way.

Although the railway administration had claimed that the coach was a new coach and that all coaches had been thoroughly checked at the starting point of the train and that no defect was reported, the railways had not contended that this particular coach was checked at the time of commencement of the journey. The general statement of practice and procedure was not conclusive proof that this particular coach was checked and no

evidence had been produced in support of their contention. Thus, the State Commission was right in holding that the deceased passenger was a consumer.

Answer to Q.4

Section 3(3A)(i) is in the nature of an emergency provision and can be resorted to meet a situation arising at a particular locality. It empowers the Central Government to direct the price at which the foodstuffs in any locality will be sold to general public. This direction will be issued only when the Central Government is of the opinion that takings such step is necessary for controlling price rise or preventing the hoarding of any foodstuff in any locality. The notification issued by the Government to the above effect shall be in force for 3 months only as may be specified therein as per Sub-section (3A)(ii). Further, for selling specified foodstuffs in the specified locality, the seller shall be paid price therefor as follows:

- (a) agreed price, when the price can be agreed upon consistently with the controlled price fixed under this sub-section; or
- (b) the controlled price, when no such agreement can be reached at as stated above; or
- (c) the market rate price as per the prevailing market rate in the locality at the date of sale where neither of the above clause (a) or (b) apply.

Answer to Q.5

Mens rea (Sections 6A and 7)

In *Nathulal v. State of Madhya Pradesh* (AIR 1966 S.C. 43) it was held by the Supreme Court that mens rea or guilty mind is an ingredient of the offence punishable under Section 7 of the Essential Commodities Act, 1955 i.e., an intentional contravention of an order made under Section 3, is an essential ingredient of an offence under Section 7.

In other words, if the dealer did believe bona fide that he could store the foodgrains for instance, without infringing any order under Section 3, there could be no contravention under Section 7.

It was observed by the Supreme Court in this case that mens rea is an essential ingredient of any criminal offence. Mens rea by necessary implication may be excluded from a statute only where it is absolutely clear that the implementation of the object of the Statute would otherwise be defeated. The nature of mens rea that would be implied in a Statute creating an offence depends on the object .of the Act and the provisions thereof.

In *Hariprasad Rao v. State* (AIR 1951 SC 264), it was observed that unless a Statute either clearly or by necessary implication rules out mens rea as a constituent part of a crime, an accused cannot be found guilty of an offence against the criminal law unless he has got a guilty mind. Therefore, mens rea is an essential ingredient of an offence under Section 7 of the Act.

Answer to Q.6

Section 15 of the Act confer powers of inspection on the Director, Controller or any legal metrology officer may, if he has any reason to believe, whether from any information given to him by any person and taken down in writing or from personal knowledge or otherwise, that any weight or measure or other goods in relation to which any trade and commerce has taken place or is intended to take place and in respect of which an offence

punishable under this Act appears to have been, or is likely to be, committed are either kept or concealed in any premises or are in the course of transportation.

The powers include entry at any reasonable time into any such premises and search for and inspect any weight, measure or other goods in relation to which trade and commerce has taken place, or is intended to take place and any record," register or other document relating thereto. The power also include seizer of any weight, measure or other goods and any record, register or other document or article which he has reason to believe may furnish evidence indicating that an offence punishable under the Act has been, or is likely to be, committed in the course of or in relation to, any trade and commerce.

Where any goods seized are subject to speedy or natural decay, the Director, Controller or legal metrology officer may dispose of such goods in such manner as may be prescribed. Every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973, relating to searches and seizures.
