

Bar Of Indian Lawyers Through Its ... vs D.K.Gandhi Ps National Institute Of ... on 14 May, 2024

Author: Bela M. Trivedi

Bench: Pankaj Mithal, Bela M. Trivedi

2024 INSC 410

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2646 OF 2009

BAR OF INDIAN LAWYERS THROUGH
ITS PRESIDENT JASBIR SINGH MALIK

...APPELLANT(S)

VERSUS

D. K. GANDHI PS NATIONAL INSTITUTE
OF COMMUNICABLE DISEASES AND ANR.

...RESPONDENT(S)

WITH

C.A. NO. 2647 OF 2009

DELHI HIGH COURT BAR ASSOCIATION
THROUGH ITS PRESIDENT

...APPELLANT(S)

VERSUS

D. K. GANDHI PS NATIONAL INSTITUTE
OF COMMUNICABLE DISEASES AND ANR.

...RESPONDENT(S)

WITH

C.A. NO. 2648 OF 2009

BAR COUNCIL OF INDIA THROUGH
BY ITS SECRETARY MR. S. RADHAKRISHNAN

...APPELLANT(S)

VERSUS

Signature Not Verified

Digitally signed by
RAVI ARORAD. K. GANDHI PS NATIONAL INSTITUTE
Date: 2024.05.14

...RESPONDENT(S)

14:57:17 IST

Reason:

OF COMMUNICABLE DISEASES AND ANR.

1
WITH

C.A. NO. 2649 OF 2009

M. MATHIAS

...APPELLANT(S)

VERSUS

D. K. GANDHI PS NATIONAL INSTITUTE
OF COMMUNICABLE DISEASES

...RESPONDENT(S)

JUDGMENT

BELA M. TRIVEDI, J.

1. An important question of law pertaining to the Legal Profession as a whole that has fallen for consideration before this Court is – whether a complaint alleging “deficiency in service” against Advocates practising Legal Profession, would be maintainable under the Consumer Protection Act, 1986 as re-enacted in 2019? In other words, whether a “Service” hired or availed of an Advocate would fall within the definition of “Service” contained in the C.P. Act, 1986/2019, so as to bring him within the purview of the said Act?

2. The present set of Appeals emanate from the impugned order dated 06.08.2007 passed by the National Consumer Disputes Redressal Commission (NCDRC), New Delhi in Revision Petition No.1392/2006, in which the NCDRC has held inter alia that if there was any deficiency in service rendered by the Advocates/Lawyers, a complaint under the Consumer Protection Act, 1986 (for short “CP Act, 1986”) would be maintainable.

FACTUAL MATRIX

3. The short facts in C.A. No.2649/2009, arising out of the impugned order passed by the NCDRC are that: -

(i) The appellant is an Advocate by profession. The respondent Mr. D.K. Gandhi had hired the services of the appellant as an advocate for filing a Complaint in the Court of Metropolitan Magistrate, Tis Hazari Court, Delhi, against one Kamal Sharma under Section 138 of the Negotiable Instruments Act, as the cheque for Rs.20,000/- issued by the said Kamal Sharma in favour of the respondent D.K. Gandhi was dishonoured.

(ii) During the course of the said complaint case, the accused Mr. Sharma agreed to pay the sum of Rs.20,000/- for the dishonoured cheque besides Rs.5,000/- as the

expenses incurred by the complainant. It was alleged by the respondent (complainant) that though the appellant had received from the accused Mr. Sharma the DD/pay order for Rs.20,000/- and the crossed cheque of Rs.5,000/- on behalf of the respondent, the appellant did not deliver the same to the respondent and instead demanded Rs.5,000/- in cash from the respondent. The appellant also filed a suit for recovery of Rs.5,000/- in the court of Small Causes, Delhi raising a plea that the sum was due to him as his fees.

Subsequently, the appellant gave the DD/pay order for Rs.20,000/- and cheque for Rs.5,000/- to the respondent, however, the payment of cheque for Rs.5,000/- was stopped by the accused Mr. Sharma at the instance of the appellant. The respondent therefore filed a complaint before the District Consumer Disputes Redressal Forum, Delhi seeking compensation of Rs. 15,000/- in addition to the amount of cheque of Rs.5,000/-, as also Rs.10,000/- for the mental agony and harassment along with the cost. The appellant resisted the said complaint by filing a reply on 03.03.1998 raising a preliminary objection to the effect that the District Consumer Forum had no jurisdiction to adjudicate the dispute raised in the complaint as the Advocates were not covered under the provisions contained in the CP Act.

(iii) The District Forum, however, rejected the said preliminary objection, holding that it had the jurisdiction to adjudicate upon the dispute between the parties and further decided the complaint in favour of the respondent. The appellant being aggrieved by the said order had filed an appeal before the State Commission, which by the order dated 10.03.2006 allowed the same holding that the services of lawyers/advocates did not fall within the ambit of “service” defined under section 2(1)(o) of the CP Act, 1986. The NCDRC, however in the Revision Application preferred by the respondent passed the impugned order as stated hereinabove.

(iv) Being aggrieved by the said impugned order passed by the NCDRC, the present set of appeals has been filed by the Bar of Indian Lawyers, Delhi High Court Bar Association, Bar Council of India, and by the appellant M. Mathias.

SUBMISSIONS

4. Since the issues involved in this batch of Appeals pertain to the Advocates practising in the various courts/tribunals and other legal forums of the country, a wide range of arguments were advanced before us. Having regard to the significance and sensitivity of the issues involved, we had appointed the learned Senior Advocate, Mr. V. Giri as an Amicus Curiae to assist the Court.

5. The broad submissions made by the learned Senior Counsels Mr. Narender Hooda, Mr. Guru Krishna Kumar, Mr. Manoj Swarup, Mr. Manan Mishra, Mr. Jaideep Gupta, Mr. Shekhar Naphade, Mr. Vikas Singh and learned counsel, Mr. D.K. Sharma may be summarized as under: -

(i) The Advocates Act, 1961 is a law dealing exclusively with the legal profession which provides a robust mechanism laying down professional standards for compliance and for determining professional misconduct.

(ii) The legal profession is a noble profession and not a business or trade. It is an extension of system of justice, and the success of judicial process depends on the independence of the Bar. Hence, its autonomy is needed to preserve the democracy and to keep judiciary strong.

(iii) A unique feature which distinguishes an Advocate from other professional is that an Advocate has a duty to the court and his peers, in addition to his duty to the client. He is not mere a mouthpiece but he has to exercise his own judgment for upholding the interest of his client by all fair, legal and reasonable means, and by being respectful to the court.

(iv) The Bar Council of India and State Bar Councils are invested with the disciplinary powers. An error of judgment or mere negligence may not be a professional misconduct. In any case, the professional misconduct which subsumes cases of negligence, which is covered by the special law i.e., Advocates Act, 1961.

(v) The Advocates Act being special law would prevail over the CP Act so far as the conduct of Advocates are concerned.

(vi) The law of negligence recognizes that a professional would be held liable in a civil action for negligence and includes professionals of varied fields who possess special skill in that profession generally.

(vii) The legal professionals in United Kingdom can be sued for negligence by a way of regular civil action, however they would not be liable under the law dealing with consumer rights for trade/commercial activities.

(viii) Allowing consumer protection law to apply to the Advocates would open floodgates of unnecessary litigations and it would not be in the larger public interest to do so. It would also lead to multiple proceedings before multiple forums, reagitation of issues decided by a judicial body including the Supreme Court with potentially conflicting decisions.

(ix) The summary nature of proceeding under the consumer protection law with its accent on inexpensive and speedy remedy (though enacted with laudable objects for protection of consumers against trade and commercial activities), can become an easy tool for disgruntled litigants to knock at the doors of the consumer forums against the advocates. It would lead to speculative/vexatious claims, rather than seeking relief in respect of bona fide grievances against professional misconduct.

(x) The legal profession is recognized as sui generis and stands out among other profession due to its distinctive nature, where the lawyers often find themselves operating in an environment where control is elusive. Unlike many other professions where practitioners may have a higher degree of control over their surroundings, the

lawyers frequently navigate through complex legal landscapes shaped by diverse factors.

(xi) One of the primary distinctions of legal profession is the inherent complexity of legal issues. Lawyers must grapple with intricate statutes, case laws and regulatory frameworks, which often lack definitive answers. Legal disputes frequently involve multiple parties with conflicting interests, further complicating the matters.

Unlike some other professions where problems may have more straightforward solutions, the lawyers often face ambiguity and uncertainty in their work, making control over outcomes elusive.

(xii) The adversarial dynamics have an element of unpredictability, as outcomes depend not only on the lawyer's skill and knowledge but also on the strategies employed by opposing counsel and the decisions of judges.

(xiii) Lawyers are bound by ethical and professional obligations that constrain their autonomy and control over their work. Adherence to the codes of conduct, client confidentiality, and obligations to the court limit the freedom of lawyers to act solely in their own interest or according to their preferences.

(xiv) Unlike any other profession, where professionals are in control of their surrounding fully, legal profession is the sole profession, where advocates have no control over their environment. The environment they work in is controlled by the presiding Judge.

(xv) The Bar Council of India Rules prescribe at least four sets of duty that a lawyer has to oblige, viz., Duty to the Court, Duty to the Client, Duty to Opponent and Duty to Colleagues, in no particular order. These duties are sometimes conflicting in nature, however whenever a conflict arises, the duty to court is considered to be paramount.

(xvi) Unlike the medical profession, where scientific standards exist to decide the standard of care, there is no universal standard of care or objective test that exists or can be prescribed as the threshold in the case of legal profession to adjudicate upon the question of abdication of duty to care.

(xvii) Distinguishing the decision of this Court in *Indian Medical Association vs. V.P. Shantha & Others*¹, it was sought to be submitted that there is a fundamental difference between the practice of law and the practice of medicine, as also the difference in the nature of professional-client relationship. The complexity of legal issues, and the diversity of legal contexts also would take the legal services rendered by the Advocates outside the purview of the services defined under the CP Act.

¹ (1995) 6 SCC 651

6. The learned Senior Advocate Mr. V. Giri - Amicus Curiae, submitted that the Advocates can be broadly classified into two categories based on the terms of their engagement and the nature of work being done by them for their clients – (1) Advocates engaged by clients to conduct their cases and then represent them before any court, tribunal or other forum, on the strength of a vakalatnama and (2) Advocates engaged by clients to provide their professional expertise for providing legal opinions, issuing legal notices, drafting agreements, etc. He submitted that the first category of advocates would not come within the purview of a service provider under the CP Act, as in that case the advocate acts as a representative or agent of the client. He further submitted that it is open to a party to plead and appear in person in the court, however when he executes a vakalatnama, he chooses to engage an Advocate as his agent, and the acts and statements of the advocate, in the course of his duties in the matter, are like the acts and statements of the principal i.e., the client himself. Such relationship cannot be equated to that of a “service provider” and a “consumer” as contemplated in the CP Act. However, the Amicus Curiae Mr. Giri fairly submitted that in the second category of Advocates i.e., the Advocates who are engaged by the clients outside the precincts of the court and outside the litigation process i.e., who are not engaged on the strength of a vakalatnama but engaged to provide legal services outside the court process, would come within the purview of a service provider, and any deficiency or shortcoming in the professional services rendered by such Advocates, completely outside the confines of the litigation process, would be covered under the CP Act.

ANALYSIS

7. Though the question posed before us is, whether a complaint alleging “deficiency in service” against Advocates practising Legal Profession, would be maintainable under the Consumer Protection Act, having regard to the entire spectrum and scheme of the said Act, following further questions stem from the said question, which deserve consideration.

(i) Whether the Legislature ever intended to include the Professions or services rendered by the Professionals within the purview of the CP Act 1986 as re-enacted in 2019?

(ii) Whether the Legal Profession is sui generis?

(iii) Whether a Service hired or availed of an Advocate could be said to be the service under “a contract of personal service” so as to exclude it from the definition of “Service” contained in Section 2 (42) of the CP Act 2019?

8. For advertng to the first question, whether the Legislature ever intended to include the Professions or the services rendered by the Professionals within the purview of the CP Act 1986 as re-enacted in 2019, it would be germane to ascertain the legislative intention and to look back to the history, object and purpose of enacting the CP Act 1986. A three-Judge Bench in case of State of Karnataka vs. Vishwabharathi House Building Coop. Society and Others², while dealing with the issue raised about the constitutional validity of the CP Act 1986, had elaborately considered the history, objects and purpose of enacting the said Act.

“5. Before advertng to the question as regard the competence of Parliament to enact the said Act, we may notice the history of legislation leading to enactment of the said Act.

6. The Secretary General, United Nations submitted draft guidelines for consumer protection to the Economic and Social Council (UNESCO) in 1983. The General Assembly of the United Nations upon extensive discussions and negotiations among governments on this scope and content thereof adopted the guidelines which inter alia provide for the following:

“Taking into account the interests and needs of consumers in all countries, particularly those in developing countries, recognizing that consumers often face imbalances in economic terms, educational level, and bargaining power, and bearing in mind that consumer should have the right of access 2 (2003) 2 SCC 412 to non-hazardous products, as well as the importance of promoting just, equitable and sustainable economic and social development, these guidelines for consumer protection have the following objectives:

(a) To assist countries in achieving or maintaining adequate protection for their population as consumers.

(b) To facilitate production and distribution patterns responsive to the needs and desires of consumers.

(c) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers.

(d) To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers.

(e) To facilitate the development of independent consumer groups.

(f) To further international cooperation in the field of consumer protection.

(g) To encourage the development of market conditions which provide consumers with greater choice at lower prices.”

7. The framework for the Consumer Act was provided by a resolution dated 9-4-1985 of the General Assembly of the United Nations Organisation. This is known as “Consumer Protection Resolution No. 39/248”. India is a signatory to the said Resolution.

8. The said Act was enacted having regard to the aforementioned Resolution.

9. It seeks to provide for better protection of the interests of consumers and for the said purpose, to make provision for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and for matters connected therewith, as would appear from the Statement of

Objects and Reasons of the Act.

10. It further seeks inter alia to promote and protect the rights of consumers such as— “(a) The right to be protected against marketing of goods which are hazardous to life and property;

(b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;

(c) the right to be assured, wherever possible, access to variety of goods at competitive prices;

(d) the right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums;

(e) the right to seek redressal against unfair trade practice or unscrupulous exploitation of consumers; and

(f) right to consumer education.””

9. The scope and object of the said legislation had also come up for consideration before this Court in Common Cause, A Registered Society vs. Union of India and Others³ in which it was observed: -

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

10. In Lucknow Development Authority vs. M.K. Gupta⁴, it was observed in paragraph 2 as under: -

“2.To begin with the preamble of the Act, which can afford useful assistance to ascertain the legislative intention, it was enacted, ‘to provide for the protection of the interest of consumers. Use of the word ‘protection’ furnishes key to the minds of makers of the Act. Various definitions and provisions which elaborately attempt to achieve this objective have to be construed in this light without departing from the settled view that a preamble cannot control otherwise plain meaning of a 3 (1997) 10 SCC 729 4 (1994) 1 SCC 243 provision. In fact the law meets long felt necessity of protecting the common man from such wrongs for which the remedy under ordinary law for various reasons has become illusory.

Various legislations and regulations permitting the State to intervene and protect interest of the consumers have become a haven for unscrupulous ones as the enforcement machinery either does not move or it moves ineffectively, inefficiently and for reasons which are not necessary to be stated. The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces against powerful business, described as, 'a network of rackets' or a society in which, 'producers have secured power' to 'rob the rest' and the might of public bodies which are degenerating into storehouses of inaction where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked.....”

11. Yet in *Laxmi Engineering Works vs. P.S.G. Industrial Institute*⁵, it was held in paragraph 10 as under: -

“10. A review of the provisions of the Act discloses that the quasi-judicial bodies/authorities/agencies created by the Act known as District Forums, State Commissions and the National Commission are not courts though invested with some of the powers of a civil court. They are quasi-judicial tribunals brought into existence to render inexpensive and speedy remedies to consumers. It is equally clear that these forums/commissions were not supposed to supplant but supplement the existing judicial system. The idea was to provide an additional forum providing inexpensive and speedy resolution of disputes arising between consumers and suppliers of goods and services. The forum so created is uninhibited by the requirement of court fee or the formal procedures of a court. Any consumer can go and file a complaint. Complaint need not necessarily be filed by the complainant himself; any recognized consumers' association can espouse his cause. Where a large number of consumers have a similar complaint, one or more can file a complaint on behalf of all. Even the Central Government and State 5 (1995) 3 SCC 583 Governments can act on his/their behalf. The idea was to help the consumers get justice and fair treatment in the matter of goods and services purchased and availed by them in a market dominated by large trading and manufacturing bodies.

Indeed, the entire Act revolves round the consumer and is designed to protect his interest. The Act provides for “business-to-consumer” disputes and not for “business-to-business” disputes. This scheme of the Act, in our opinion, is relevant to and helps in interpreting the words that fall for consideration in this appeal.”

12. Thus, considering the intention of the Legislature, the objects and reasons of the Act of 1986 it was repeatedly held that the said Act was enacted to provide for the better protection of the interests of the consumers against their exploitation by the traders and manufacturers of the consumer goods, and to help consumers in getting justice and fair treatment in the matter of goods and services purchased and availed by them in a market dominated by large trading and manufacturing bodies.

13. After several years of passing of the CP Act 1986, still many shortcomings in the said Act were noticed while administering various provisions of the said Act. Hence, the CP Act 1986 was repealed and the CP Act, 2019 came to be re-enacted. The statement of objects and reasons for re-enacting the said Act of 2019 reads as under:-

“1. The Consumer Protection Act, 1986 (68 of 1986) was enacted to provide for better protection of the interests of consumers and for the purpose of making provision for establishment of consumer protection councils and other authorities for the settlement of consumer disputes, etc. Although, the working of the consumer dispute redressal agencies has served the purpose to a considerable extent under the said Act, the disposal of cases has not been fast due to various constraints. Several shortcomings have been noticed while administering the various provisions of the said Act.

2. Consumer markets for goods and services have undergone drastic transformation since the enactment of the Consumer Protection Act in 1986. The modern market place contains a plethora of products and services. The emergence of global supply chains, rise in international trade and the rapid development of e-commerce have led to new delivery systems for goods and services and have provided new options and opportunities for consumers. Equally, this has rendered the consumer vulnerable to new forms of unfair trade and unethical business practices. Misleading advertisements, tele-

marketing, multi-level marketing, direct selling and e-commerce pose new challenges to consumer protection and will require appropriate and swift executive interventions to prevent consumer detriment. Therefore, it has become inevitable to amend the Act to address the myriad and constantly emerging vulnerabilities of the consumers. In view of this, it is proposed to repeal and re-enact the Act.”

14. It is trite to say that a reference to statement of objects and reasons is permissible for understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the statute, and the evil which the statute had sought to remedy.* As discernible from the statement of objects and reasons for re-enacting the CP Act, 2019, there were certain shortcomings found in the CP Act 1986 while administering the said Act, and at the same time, due to the emergence of global * State of West Bengal vs. Subodh Gopal Bose & Others; AIR 1954 SC 92. supply chains, rise in international trade and rapid development of e-commerce leading to new systems for goods and services, new options and opportunities had become available to the consumers. However, new forms of unfair trade and unethical business practices also came to be developed, which made the consumers more vulnerable. Misleading advertisements, telemarketing, multi-level marketing, e-commerce posed new challenges, which necessitated the Legislature to re-enact the Act.

15. There was not a whisper in the statement of objects and reasons either of the CP Act, 1986 or 2019 to include the Professions or the Services provided by the Professionals like Advocates, Doctors

etc. within the purview of the Act. It is very well accepted proposition of the fact that Professionals could not be called Businessmen or Traders, nor Clients or Patients be called Consumers. It is also required to be borne in mind that the terms 'business' or 'trade' having a commercial aspect involved, could not be used interchangeably with the term 'Profession' which normally would involve some branch of learning or science. Profession as such would require knowledge of an advanced type in a given field of learning or science, or learning gained by a prolonged course of specialized study. As per Black's Law Dictionary, 11th Edition, "Profession" means "a vocation requiring advanced education and training; especially one of the three traditional Professions- Law, Medicine and the Ministry." "Professional" means "someone who belongs to a learned profession or whose occupation requires a high level of training and proficiency."

16. According to Rupert M. Jackson and John L. Powell,* the Occupations which are regarded as Professions have four characteristics, viz.,

- (i) the nature of the work which is skilled and specialized and a substantial part is mental rather than manual;
- (ii) commitment to moral principles which go beyond the general duty of honesty and a wider duty to community which may transcend the duty to a particular client or patient;
- (iii) professional association which regulates admission and seeks to uphold the standards of the profession through professional codes on matters of conduct and ethics; and
- (iv) high status in the community.

17. As observed in Indian Medical Association (supra) :-

"22. In the matter of professional liability professions differ from other occupations for the reason that professions operate * "Jackson and Powell on Professional Liability" 2nd supplement to the 7th edition in spheres where success cannot be achieved in every case and very often success or failure depends upon factors beyond the professional man's control. In devising a rational approach to professional liability which must provide proper protection to the consumer while allowing for the factors mentioned above, the approach of the courts is to require that professional men should possess a certain minimum degree of competence and that they should exercise reasonable care in the discharge of their duties. In general, a professional man owes to his client a duty in tort as well as in contract to exercise reasonable care in giving advice or performing services."

18. In view of the above, a "Profession" would require advanced education and training in some branch of learning or science. The nature of work is also skilled and specialised one, substantial part of which would be mental rather than manual. Therefore, having regard to the nature of work of a professional, which requires high level of education, training and proficiency and which involves skilled and specialized kind of mental work, operating in the specialized spheres, where achieving

success would depend upon many other factors beyond a man's control, a Professional cannot be treated equally or at par with a Businessman or a Trader or a Service provider of products or goods as contemplated in the CP Act. Similarly, the services rendered by a Businessman or a Trader to the consumers with regard to his goods or products cannot be equated with the Services provided by a Professional to his clients with regard to his specialized branch of profession. The legislative draftsmen are presumed to know the law and there is no good reason to assume that the legislature intended to include the Professions or the Professionals or the services provided by the professionals within the ambit of the CP Act. Any interpretation of the Preamble or the scheme of the Act for construing 'Profession' as 'Business' or 'Trade'; or 'Professional' as 'service provider' would be extending the scope of the Act which was not intended, rather would have a counter productive effect. We are therefore of the considered opinion that the very purpose and object of the CP Act 1986 as re-enacted in 2019 was to provide protection to the consumers from the unfair trade practices and unethical business practices only. There is nothing on record to suggest that the Legislature ever intended to include the Professions or the Professionals within the purview of the Act.

19. One should also not lose sight of the fact that the other object of the Act was to provide to the consumers timely and effective administration and settlement of their disputes. If the services provided by all the Professionals are also brought within the purview of the Act, there would be flood-gate of litigations in the commissions/forums established under the Act, particularly because the remedy provided under the Act is inexpensive and summary in nature. Consequently, the very object of providing timely and effective settlement of consumers' disputes arising out of the unfair trade and unethical business practices would be frustrated.

20. We may clarify at this juncture that we do not propose to say that the professionals could not be sued or held liable for their alleged misconduct or tortious or criminal acts. In the process of overall depletion and erosion of ethical values and degradation of the professional ethics, the instances of professional misconduct are also on the rise. Undoubtedly, no professional either legal, medical or any other professional enjoys any immunity from being sued or from being held liable for his professional or otherwise misconduct or other misdeeds causing legal, monetary or other injuries to his clients or the persons hiring or availing his services. The fact that professionals are governed by their respective Councils like Bar Councils or Medical Councils also would not absolve them from their civil or criminal liability arising out of their professional misconduct or negligence. Nonetheless, as discussed hereinabove, we are of the opinion that neither the Professions nor the Professionals were ever intended to be brought within the purview of the CP Act either of 1986 or 2019.

21. Of course, we are conscious of the decision in Indian Medical Association vs. V.P. Shantha & Others (supra), in which a three-Judge Bench of this Court has held inter alia that the wide amplitude of the definition of 'service' in the main part of Section 2(1)(o) would cover the services rendered by Medical Practitioners within the said Section 2(1)(o). However, in our humble opinion, the said decision deserves to be revisited having regard to the history, object, purpose and the scheme of the CP Act and in view of the opinion expressed by us hereinabove to the effect that neither the "Profession" could be treated as "business" or "trade" nor the services provided by the

“Professionals” could be treated at par with the services provided by the Businessmen or the Traders, so as to bring them within the purview of the CP Act .

22. At this juncture, we may rely upon Order VI Rule 2 of the Supreme Court Rules which reads as under: -

“ORDER VI, Rule 2.-

Where in the course of the hearing of any cause, appeal or other proceeding, the Bench considers that the matter should be dealt with by a larger Bench, it shall refer the matter to the Chief Justice, who shall thereupon constitute such a Bench for the hearing of it.”

23. The said Rule has been interpreted in *Triveniben vs. State of Gujarat*⁶, in which it has been observed that: -

“35. This is undoubtedly a salutary rule, but it appears to have only a limited operation. It apparently governs the procedure of a smaller Bench when it disagrees with the decision of a 6 (1989) 1 SCC 678 larger Bench. If the Bench in the course of hearing of any matter considers that the matter should be dealt with by a larger Bench, it shall refer the matter to the Chief Justice. The Chief Justice shall then constitute a larger Bench for disposal of the matter. This exercise seems to be unnecessary when a larger Bench considers that a decision of a smaller Bench is incorrect unless a constitutional question arises”.

24. In view of the above, we are of the opinion that the decision of the three- judge bench, in case of *Indian Medical Association vs. V.P Shantha* (supra) deserves to be revisited and considered by a larger bench. We, therefore refer the matter to Hon’ble the Chief Justice of India for His Lordship’s consideration.

25. This takes us to the next question. Even if, it is held that the CP Act applies to the “Professions” and the “Professionals,” the next question that falls for our consideration is whether the Legal Profession is *sui generis* or is different from the other Profession, particularly from the Medical Profession because the NCDRC in the impugned order has relied upon the decision in case of *Indian Medical Association vs. V.P Shantha* (supra) for bringing the Advocates within the purview of the CP Act.

26. As observed in *Byram Pestonji Gariwala vs. Union Bank of India and Others*⁷, the Indian legal system is the product of history. It is rooted 7 (1992) 1 SCC 31 in our soil; nurtured and nourished by our culture, languages and traditions; fostered and sharpened by our genius and quest for social justice; reinforced by history and heritage. After the attainment of independence and the adoption of the Constitution of India, judicial administration and the constitution of the law courts remained fundamentally unchanged. The concept, structure and organisation of courts, the substantive and procedural laws, the adversarial system of trial and other proceedings and the function of judges

and lawyers remained basically unaltered and rooted in the common law traditions in contradistinction to those prevailing in the civil law or other systems of law. Resultantly, the role, status and capacity of an advocate to represent his client has also remained by and large unaltered.

27. This Court in *R. Muthukrishnan vs. Registrar General, High Court of Judicature at Madras*⁸, delineating the unique nature of the legal profession and of the services rendered by the lawyers, observed thus:

“16. The legal profession cannot be equated with any other traditional professions. It is not commercial in nature and is a noble one considering the nature of duties to be performed and its impact on the society. The independence of the Bar and autonomy of the Bar Council has been ensured statutorily in order to preserve the very democracy itself and to ensure that judiciary remains strong. Where the Bar has not performed the duty independently and has become a sycophant that ultimately results in the denigrating of the 8 (2019) 16 SCC 407 judicial system and judiciary itself. There cannot be existence of a strong judicial system without an independent Bar.

17. It cannot be gainsaid that lawyers have contributed in the struggle for independence of the nation. They have helped in the framing of the Constitution of India and have helped the courts in evolving jurisprudence by doing hard labour and research work. The nobility of the legal system is to be ensured at all costs so that the Constitution remains vibrant and to expand its interpretation so as to meet new challenges.

18. It is basically the lawyers who bring the cause to the Court are supposed to protect the rights of individuals of equality and freedom as constitutionally envisaged and to ensure the country is governed by the rule of law. Considering the significance of the Bar in maintaining the rule of law, right to be treated equally and enforcement of various other fundamental rights, and to ensure that various institutions work within their parameters, its independence becomes imperative and cannot be compromised. The lawyers are supposed to be fearless and independent in the protection of rights of litigants. What lawyers are supposed to protect, is the legal system and procedure of law of deciding the cases.

19. Role of the Bar in the legal system is significant. The Bar is supposed to be the spokesperson for the judiciary as Judges do not speak. People listen to the great lawyers and people are inspired by their thoughts. They are remembered and quoted with reverence. It is the duty of the Bar to protect honest Judges and not to ruin their reputation and at the same time to ensure that corrupt Judges are not spared. However, lawyers cannot go to the streets or go on strike except when democracy itself is in danger and the entire judicial system is at stake. In order to improve the system, they have to take recourse to the legally available methods by lodging complaint against corrupt Judges to the appropriate administrative authorities and

not to level such allegation in the public.

Corruption is intolerable in the judiciary.

20. The Bar is an integral part of the judicial administration. In order to ensure that judiciary remains an effective tool, it is absolutely necessary that the Bar and the Bench maintain dignity and decorum of each other. The mutual reverence is absolutely necessary. The Judges are to be respected by the Bar, they have in turn equally to respect the Bar, observance of mutual dignity, decorum of both is necessary and above all they have to maintain self-respect too.

21. It is the joint responsibility of the Bar and the Bench to ensure that equal justice is imparted to all and that nobody is deprived of justice due to economic reasons or social backwardness. The judgment rendered by a Judge is based upon the dint of hard work and quality of the arguments that are advanced before him by the lawyers. There is no room for arrogance either for a lawyer or for a Judge.

22. There is a fine balance between the Bar and the Bench that has to be maintained as the independence of the Judges and judiciary is supreme. The independence of the Bar is on equal footing, it cannot be ignored and compromised and if lawyers have the fear of the judiciary or from elsewhere, that is not conducive to the effectiveness of the judiciary itself, that would be self-destructive.”

28. In State of U.P and Others vs. U.P. State Law Officers Association and Others⁹, it was observed thus: -

“14. Legal profession is essentially a service-oriented profession. The ancestor of today's lawyer was no more than a spokesman who rendered his services to the needy members of the society by articulating their case before the authorities that be. The services were rendered without regard to the remuneration received or to be received. With the growth of litigation, lawyering became a full-time occupation and most of the lawyers came to depend upon it as the sole source of livelihood. The nature of the service rendered by the lawyers was private till the Government and the public bodies started engaging them to conduct cases on their behalf.”

29. It is thus well recognized in catena of decisions that the legal profession cannot be equated with any other traditional professions. It is not commercial in nature but is essentially a service oriented, noble profession. It cannot be gainsaid that the role of Advocates is 9 (1994) 2 SCC 204 indispensable in the Justice Delivery System. An evolution of jurisprudence to keep our Constitution vibrant is possible only with the positive contribution of the Advocates. The Advocates are expected to be fearless and independent for protecting the rights of citizens, for upholding the Rule of law and also for protecting the Independence of Judiciary. People repose immense faith in the Judiciary, and the Bar being an integral part of the Judicial System has been assigned a very crucial role for preserving the independence of the Judiciary, and in turn the very democratic set up of the Nation. The Advocates are perceived to be the intellectuals amongst the elites and social activists amongst

the downtrodden. That is the reason they are expected to act according to the principles of *uberrima fides* i.e., the utmost good faith, integrity, fairness and loyalty while handling the legal proceedings of his client. Being a responsible officer of the court and an important adjunct of the administration of justice, an Advocate owes his duty not only to his client but also to the court as well as to the opposite side.

30. The legal profession is different from the other professions also for the reason that what the Advocates do, affects not only an individual but the entire administration of justice, which is the foundation of the civilized society. It must be remembered that the legal profession is a solemn and serious profession. It has always been held in very high esteem because of the stellar role played by the stalwarts in the profession to strengthen the judicial system in the country. Their services in making the judicial system efficient, effective and credible, and in creating a strong and impartial Judiciary, which is one of the three pillars of the Democracy, could not be compared with the services rendered by other professionals. Therefore, having regard to the role, status and duties of the Advocates as the professionals, we are of the opinion that the legal profession is *sui generis* i.e unique in nature and cannot be compared with any other profession.

31. The next question that falls for our consideration is whether a service hired or availed of an Advocate could be said to be the service under a “contract of personal service?”

32. At the outset, it may be stated that in the Indian Courts, various sobriquets or epithets like pleaders, advocates, lawyers, vakils, counsels, attorneys etc. are being used interchangeably to describe the Legal Practitioners, may be because various Acts like Legal Practitioners Act, 1879, Bombay Pleaders Act, 1920, Indian Bar Councils Act, 1926 were in force during pre-independence era. However, on the Advocates Act, 1961 having come into force, the provisions of the said Acts stood repealed as per Section 50 of the Advocates Act. The Advocates Act 1961 was enacted to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Councils and an All-India Bar.

33. The Advocates Act defines “Advocate” separately from “Legal Practitioner” -

“2(1)(a) - “advocate” means an advocate entered in any roll under the provision of this Act;” Section 2(1)(i) defines “legal practitioner” as under: -

“2(1)(i) - “Legal Practitioner” means an advocate or vakil of any High Court, a pleader, mukhtar or revenue agent;”

34. Advocate is included in the definition of “Legal Practitioner” but legal practitioner is not included in the definition of “Advocate.” Advocate is one who has been entered in any roll under the provisions of the Advocates Act. If we glean over the provisions of the Advocates Act, 1961, it appears that the said Act was enacted to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Councils and an All-India Bar. As per Section 16 thereof, there are only two classes of Advocates, namely Senior Advocates and other Advocates. As per Section 29, there is only one class of persons entitled to practice the profession of law, namely

Advocates, and as per Section 30, every advocate whose name is entered in the State roll is entitled as of right to practice in all Courts including the Supreme Court and before any Tribunal or any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practice. The disciplinary powers for taking action against the Advocates and impose punishment for their misconduct have been conferred upon the State Bar Councils and Bar Council of India as the case may be under the Chapter V of the Advocates Act. The Bar Council of India Rules framed under the Advocates Act lay down the restrictions on the Senior Advocates, and also lay down the standards of professional conduct and etiquette, which include the duties of the advocate to the Court, to the client, to the opponent and to the colleagues. Thus, comprehensive provisions are contained in the Advocates Act, 1961 and the Bar Council of India Rules framed thereunder, to take care of the professional misconduct of the Advocates, and prescribing the punishments if they are found guilty of professional or other misconduct by the Disciplinary Committees of the State Bar Council or the Bar Council of India as the case may be.

35. In the light of the above provisions of the Advocates Act, let us consider some of the provisions of the Consumer Protection Act 1986/2019. The definition of "Service" contained in Section 2(1)(o) of the CP Act 1986 and in Section 2(42) of the CP Act 2019 is the same which reads as under: -

"Service means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service."

36. There is slight difference in the definition of 'Deficiency' in Section 2(1)(g) of 1986 Act and Section 2(11) of 2019 Act. The same is reproduced as under: -

Section 2(1)(g) of CP Act, 1986:-

"Section 2(1) (g) - "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(11) of CP Act, 2019:-

Section 2(11) - "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 and includes-

(i) any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and

(ii) deliberate withholding of relevant information by such person to the consumer”

37. As can be seen, the definition of ‘service’ is divided into three parts – the first part is explanatory in nature and defines service to mean service of any description which is made available to the potential users; the second part is inclusionary part, which expressly includes the provision of facilities in connection with the specific services; and the third part is exclusionary part which excludes rendering of any service free of charge or under a contract of personal service. Therefore, let us consider whether the service rendered by the Advocates practising Legal Profession could be said to be the Service under “a contract of personal service,” so as to exclude it from the definition of “Service” contemplated under the Act.

38. The question as to whether a given relationship should be classified as a contract ‘for services’ as opposed to a contract ‘of service’ [i.e. contract ‘of personal service’] is a vexed question of law and is incapable of being answered with exactitude without reference to the underlying facts in any given case. This Court in *Dharangadhra Chemical Works Ltd. vs. State of Saurashtra and Others*¹⁰, recognized this position of law and 10 AIR 1957 SC 264 held that “the correct method of approach, therefore, would be to consider whether having regard to the nature of the work there was due control and supervision by the employer”. In the words of Fletcher Moulton, L.J. at P.549 in *Simmons v. Heath Laundry Company* [(1924) 1 KB 762] which were cited with approval in *Dharangadhra Chemical Works Ltd. (supra)*:

“In my opinion it is impossible to lay down any rule of law distinguishing the one from the other. It is a question of fact to be decided by all the circumstances of the case. The greater the amount of direct control exercised over the person rendering the services by the person contracting for them the stronger the grounds for holding it to be a contract of service, and similarly the greater the degree of independence of such control the greater the probability that the services rendered are of the nature of professional services and that the contract is not one of service.”

39. What is sought to be opined in the above cases is that the greater the amount of direct control exercised over the person rendering the services by the person contracting for them, the stronger would be the grounds for holding it to be a “contract of service.” Hence, let us see whether in case of Advocate-Client relationship, the client exercises direct control over the Advocate who is rendering his legal professional services to him. At this stage, it would be beneficial to refer to some of the important provisions of Code of Civil Procedure, which pertain to the representation of party-litigant through Advocates. Order III of CPC pertains to the Recognized Agents and Pleaders. As per the definition of “Pleader” contained in Section 2 (15) CPC, ‘Pleader means any person entitled to appear and plead for another in Court and includes an Advocate, a Vakil and an Attorney of a High Court. Rule 1 of Order III states that any appearance, application or act in or in any Court may be made or done by the party in person, or by his recognized agent or by a pleader appearing, applying or acting, as the case may be on his behalf.

Rule 4 of the said Order III states that no pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by document in writing signed by such person or by his recognized agent or by some other person duly authorized by or under a power of attorney to make such appointment. It further provides that every such appointment shall be filed in Court and shall for the purposes of sub-rule (1) be deemed to be in force until determined with the leave of the Court by writing signed by the client or the pleader as the case may be and filed in the Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client. Such document regarding appointment of a pleader is known in common parlance as “Vakalatnama”, the proforma of which has been appended in Form No.19 of the ‘Appendix H’ to CPC. The said form is reproduced here under: -

“No.19 VAKALATNAMA In the CourtSuit/Miscellaneous case/ Civil Appeal/ Execution Case No..... of 19..../20...,fixed for Plaintiff/ Appellant/ Applicant/ D.H..... Defendant/ Respondent/ Opposite Party/ J.D. Vakalatnama of Plaintiff/ Appellant Applicant/ D.H./ Defendant/ Respondent/ Opposite Party/ J.D. In the case noted above Sri....., each of Sarvasri..... Advocate, is hereby appointed as counsel, to appeals, plead and act on behalf of the undersigned, in any manner, he thinks it proper, either himself or through any other Advocate, and in particular to do the following, namely, -

To receive any process of Court (including any notice from any appellate or revisional Court), to file any applications, petitions or pleadings, to file, produce or receive back any documents, to withdraw or compromise the proceedings, to refer to any matter to arbitration, to deposit or withdraw any moneys, to execute any decree or order, to certify payment, and receive any money due under such decree or order.

The undersigned should be bound by all whatsoever may be done in the aforesaid case (including any appeal or revision therefrom) for and on behalf of the undersigned by any of the said counsel.

Signature.....
Name in full
full.....
Date

Attesting Witness:
Name in
Address.....
Date.....

Accepted/ Accepted on the strength of the signature of the attesting witnesses.”

40. A conjoint reading of the provisions contained in Order III CPC and Chapter IV of Advocates Act pertaining to right to practise, there remains no shadow of doubt that an advocate whose name has been entered in the State roll is entitled as of right to practise in all Courts, however he can act for any person in any Court only when he is appointed by such person by executing the document called “Vakalatnama.” Such Advocate has certain authorities by virtue of such “Vakalatnama” but at the same time has certain duties too, i.e. the duties to the courts, to the client, to the opponent

and to the colleagues as enumerated in the Bar Council of India Rules. In this regard, this Court in *Himalayan Cooperative Group Housing Society vs. Balwan Singh and Others*¹¹ has made very apt observations, which are reproduced hereunder-

22. Apart from the above, in our view lawyers are perceived to be their client's agents. The law of agency may not strictly apply to the client-lawyer's relationship as lawyers or agents, lawyers have certain authority and certain duties. Because lawyers are also fiduciaries, their duties will sometimes be more demanding than those imposed on other agents. The authority-agency status affords the lawyers to act for the client on the subject-matter of the retainer. One of the most basic principles of the lawyer-client relationship is that lawyers owe fiduciary duties to their clients. As part of those duties, lawyers assume all the traditional duties that agents owe to their principals and, thus, have to respect the client's autonomy to make decisions at a minimum, as to the objectives of the representation. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their judgment for that of the 11 (2015) 7 SCC 373 client. The law is now well settled that a lawyer must be specifically authorised to settle and compromise a claim, that merely on the basis of his employment he has no implied or ostensible authority to bind his client to a compromise/settlement. To put it alternatively that a lawyer by virtue of retention, has the authority to choose the means for achieving the client's legal goal, while the client has the right to decide on what the goal will be. If the decision in question falls within those that clearly belong to the client, the lawyer's conduct in failing to consult the client or in making the decision for the client, is more likely to constitute ineffective assistance of counsel.

23. The Bar Council of India Rules, 1975 (for short “the BCI Rules”), in Part VI Chapter II provide for the “Standards of Professional Conduct and Etiquette” to be observed by all the advocates under the Advocates Act, 1961 (for short “the 1961 Act”). In the Preamble to Chapter II, the BCI Rules provide as follows:

“An advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an advocate. Without prejudice to the generality of the foregoing obligation, an advocate shall fearlessly uphold the interests of his client and in his conduct conform to the rules hereinafter mentioned both in letter and in spirit. The rules hereinafter mentioned contain canons of conduct and etiquette adopted as general guides; yet the specific mention thereof shall not be construed as a denial of the existence of others equally imperative though not specifically mentioned.”

24. The Preamble makes it imperative that an advocate has to conduct himself and his duties in an extremely responsible manner. They must bear in mind that what may be appropriate and lawful for a person who is not a member of the Bar, or for a

member of the Bar in his non-professional capacity, may be improper for an advocate in his professional capacity.

25. Section II of the said Chapter II provides for duties of an advocate towards his client. Rules 15 and 19 of the BCI Rules, have relevance to the subject-matter and therefore, they are extracted below:

“15. It shall be the duty of an advocate fearlessly to uphold the interests of his client by all fair and honourable means without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused, bearing in mind that his loyalty is to the law which requires that no man should be convicted without adequate evidence.

19. An advocate shall not act on the instructions of any person other than his client or his authorised agent.”

26. While Rule 15 mandates that the advocate must uphold the interest of his clients by fair and honourable means without regard to any unpleasant consequences to himself or any other. Rule 19 prescribes that an advocate shall only act on the instructions of his client or his authorised agent”

41. When we examine the relationship between an Advocate and his Client from this point of view, the following unique attributes become clear:

- 1) Advocates are generally perceived to be their client’s agents and owe fiduciary duties to their clients.
- 2) Advocates are fastened with all the traditional duties that agents owe to their principals. For example, Advocates have to respect the client’s autonomy to make decisions at a minimum, as to the objectives of the representation.
- 3) Advocates are not entitled to make concessions or give any undertaking to the Court without express instructions from the Client.
- 4) It is the solemn duty of an Advocate not to transgress the authority conferred on him by his Client.
- 5) An Advocate is bound to seek appropriate instructions from the Client or his authorized agent before taking any action or making any statement or concession which may, directly or remotely, affect the legal rights of the Client.

6) The Advocate represents the client before the Court and conducts proceedings on behalf of the client. He is the only link between the court and the client. Therefore, his responsibility is onerous. He is expected to follow the instructions of his client rather than substitute his judgment.

Thus, a considerable amount of direct control is exercised by the Client over the manner in which an Advocate renders his services during the course of his employment. All of these attributes strengthen our opinion that the services hired or availed of an Advocate would be that of a contract 'of personal service' and would therefore stand excluded from the definition of "service" contained in the section 2(42) of the CP Act, 2019. As a necessary corollary, a complaint alleging "deficiency in service" against Advocates practising Legal Profession would not be maintainable under the CP Act, 2019.

42. In that view of the matter, we summarize our conclusions as under-

(i) The very purpose and object of the CP Act 1986 as re-enacted in 2019 was to provide protection to the consumers from unfair trade practices and unethical business practices, and the Legislature never intended to include either the Professions or the services rendered by the Professionals within the purview of the said Act of 1986/2019.

(ii) The Legal Profession is sui generis i.e. unique in nature and cannot be compared with any other Profession.

(iii) A service hired or availed of an Advocate is a service under "a contract of personal service," and therefore would fall within the exclusionary part of the definition of "Service" contained in Section 2 (42) of the CP Act 2019.

(iv) A complaint alleging "deficiency in service" against Advocates practising Legal Profession would not be maintainable under the CP Act, 2019.

43. The impugned judgment passed by the NCDRC is set aside. The Appeals stand allowed accordingly.

44. Before parting, we appreciate and place on record the valuable assistance and services rendered by the learned Senior Advocate Mr. V. Giri appointed as an Amicus Curiae in these matters.

.....J. [BELA M. TRIVEDI] NEW DELHI;

MAY 14th, 2024.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

C.A. NO. 6959 OF 2011

PANDIT DNYANDEV UBALE

...APPELLANT(S)

VERSUS

DNYANESHWAR RAMHARI PHOPLE

...RESPONDENT(S)

WITH

C.A. NO. 8214 OF 2017

A. RAGHAVENDRA

...APPELLANT(S)

VERSUS

M. RAJAMANNAR

...RESPONDENT(S)

ORDER

BELA M. TRIVEDI, J.

1. In view of the judgment passed in Bar of Indian Lawyers through its President Jasbir Singh Malik Vs. D. K. Gandhi PS National Institute of Communicable Diseases and Another, dated 14th May, 2024 (C.A. No. 2646/2009 and others), the present two appeals stand disposed of.

.....J. (BELA M. TRIVEDI) J.

(PANKAJ MITHAL) NEW DELHI;

MAY 14th, 2024.

REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO. 2646 OF 2009 BAR OF INDIAN LAWYERS THROUGH ITS PRESIDENT JASBIR SINGH MALIK ...APPELLANT(S) VERSUS D.K. GANDHI PS NATIONAL INSTITUTE OF COMMUNICABLE DISEASES AND ANR. ...RESPONDENT(S) WITH CIVIL APPEAL NO. 2647 OF 2009, CIVIL APPEAL NO. 2648 OF 2009, CIVIL APPEAL NO. 2649 OF 2009, CIVIL APPEAL NO. 6959 OF 2011 and CIVIL APPEAL NO. 8214 OF 2017 JUDGMENT PANKAJ MITHAL, J.

1. The moot question which emanates from the proceedings at hand, if put in a different way, is whether the legal services of the lawyer availed of by the client would be covered under the Consumer Protection Act, 1986 (now Consumer Protection Act, 2019).

2. It is well recognized that the profession of law is a noble profession having an element of duty towards the court. Lawyers perform multi-faceted duties. They not only have a duty towards the client or their opponents but they have a paramount duty to assist the court as well. In a way, they are officers as well as ambassadors of the court. Thus, in rendering such kind of a duty to enable the courts to come to a just conclusion, it may be possible that at times, the lawyers may earn displeasure of the client while assisting the court.

3. The profession of law, as such, is regarded as sui generis i.e. which is unique. It is distinct from all other professions and is one of its own kind.

4. It is in the above context that we have to examine if the legislature in enacting the Consumer Protection Act intended to include the services rendered by professionals, particularly by lawyers to their clients, within the ambit of the Consumer Protection Act.

5. The laws intended to protect consumers, as opposed to traders are comparatively of recent origin.

6. The General Assembly of United Nations upon extensive discussions with Governments of various nations submitted draft guidelines for consumer protection to the United Nations Economic and Social Council (UNESCO) in the year 1983 inter alia providing for the following:

a) To assist countries in achieving or maintaining adequate protection for their population as consumers;

b) To facilitate production and distribution patterns responsive to the needs and desires of the consumers;

c) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;

d) To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers;

e) To facilitate the development of independent consumer groups;

f) To further international cooperation in the field of consumer protection;

g) To encourage the development of market conditions which provide consumers with greater choice at lower prices;

7. A bare reading of the above guidelines reveals that the same have been formulated taking into account the interests and needs of consumers in various countries, particularly developing countries, in order to level out economic imbalances between consumers and service providers.

8. The General Assembly of the United Nations Organization by Resolution No. 39/248 dated 9.4.1985 provided a framework known as Consumer Protection Resolution to which our country is also a signatory.

9. It is on the basis of the above Consumer Protection Resolution of the UNO that the Consumer Protection Act, 1986 in India was enacted with the objective to save the consumers from unfair conduct and practices of traders.

10. In *Om Prakash vs. Assistant Engineer, Haryana Agro Industries Corporation Ltd. and Anr.*¹ a three Judge Bench vide paragraph 7 described the Objects and Reasons for the enactment of the Consumer Protection Act as under:

“7. From the Statement of Objects and Reasons of the Act, it appears that the purpose of the Act is to protect the interest of the consumer and to provide ‘the right, to seek redressal against unfair trade practices or unscrupulous exploitation of consumers’...”
(1994) 3 SCC 504

11. Recently, in *Laureate Buildwell (P) Ltd. vs. Charanjeet Singh*,² a three Judge Bench of this Court, highlighting the objectives of the Consumer Protection Act held as follows:

“26. If one also considers the broad objective of the Consumer Protection Act, which is to provide for better protection of the interests of consumers and for that purpose, provide for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and for matters connected therewith, as evident from the Statement of Objects and Reasons of the Act. The Statement further seeks inter alia to promote and protect the rights of consumers such as— “2. ... (a) the right to be protected against marketing of goods which are hazardous to life and property;

(b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;

(c) the right to be assured, wherever possible, access to variety of goods at competitive prices;

(d) the right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums;

(e) the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and

(f) right to consumer education.” (2021) 20 SCC 401

12. The idea behind the Consumer Protection Act from 1986 till today has been to help the consumers get justice and fair treatment in matters of goods and services purchased and availed of by them in a market dominated by large trading and manufacturing bodies. The entire Act revolves around the consumer and is designed to protect their interests.

13. Leaving aside India for the time being, if we consider the international practice with regard to the inclusion of lawyer-client relationships within the ambit of consumer protection laws, we would notice that the practice of common law countries evidences the exclusion of lawyers from the umbrella of consumer protection laws. It must be kept in mind that the consumer protection laws of almost all countries are based upon the same resolution of the UNO which forms the foundation for

framing the Consumer Protection Act in India.

14. To illustrate, Consumer Protection Act, 1999 enacted by the Parliament of Malaysia vide Section 2 (2)(e) specifically provides that the said act shall not apply, inter alia, to services provided by professionals who are regulated by any law. It may be worth noting that the services of the professionals such as lawyers in Malaysia are governed by Legal Profession Act, 1976. Therefore, by virtue of the above Section 2 (2) (e), the services provided by the professionals such as lawyers stand excluded from the application of the Consumer Protection Act of Malaysia.

15. This legislative intent of excluding regulated professions from the ambit of Consumer Protection Law has been continuing for over a considerable period of time now. Aspects of such exclusion find mention in the DIRECTIVE 2011/83/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 25 OCTOBER 2011 on consumer rights where it has been said that provisions of the said directive should not apply to regulated professions.

16. At the heart of this legislative intent to exempt such ‘regulated professions’ from the scope of consumer laws lies the fact that such professions are sui generis and paramount as services of general interest.

17. The recent DIRECTIVE (EU) 2018/958 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 28 June 2018 bears a befitting testimony to this continuing intent of lawmakers and the desire to safeguard regulated professions from any outside interference.

18. Similarly, Section 188 of the Consumer Protection Act (Québec) provides that:

“For the purpose of this division, every person offering or providing any of the services referred to in section 189 [covering contracts of service] is considered to be a merchant, except: ... (i) persons who are members of a professional order governed by the Professional Code (chapter C-26).” (emphasis supplied)

19. In a similar vein, States in the USA also exempt legal professionals from consumer laws.

20. Illustratively, the Code of Maryland, Title 13, dealing with minimum standards of consumer protection in Maryland, in Subtitle 1 § 13-104 explicitly states that:

“this title does not apply to: (1) The professional services of a certified public accountant, architect, clergyman, professional engineer, lawyer....” (emphasis supplied)

21. The Code of the District of Columbia, while highlighting the powers of the consumer protection agency in Title 28 Chapter 39 § 28– 3903 states in clause (c) that:

“(c) The Department may not: ... (2) apply the provisions of section §28-3905 [Consumer Protection Complaints] to: ... (C) professional services of clergymen, lawyers, and Christian Science practitioners engaging in their respective professional endeavors”; (emphasis supplied)

22. The Australian High Court, the highest court of the land in Australia, in *D'Orta-Ekenaike vs. Victoria Legal Aid*³ has emphatically echoed the need for such exemption and its direct bearing on the justice delivery system. The reasoning of its majority is instructive and deserves to be quoted in full:

“84. To remove the advocate's immunity would make a significant inroad upon what we have earlier described as a fundamental and pervading tenet of the judicial system. That inroad should not be created. There may be those who will seek to characterize the result at which the Court arrives in this matter as a case of lawyers looking after their own, whether because of personal inclination and sympathy, or for other base motives. But the legal principle which underpins the Court's conclusion is fundamental. Of course, there is always a risk that the determination of a legal controversy is imperfect. And it may be imperfect because of what a party's advocate does or does not do. The law aims at providing the best and safest system of determination that is compatible with human fallibility. But underpinning the system is the need for certainty and finality of decision. The immunity of advocates is a necessary consequence of that need”. (emphasis supplied)

23. It would be trite to mention here that the legal profession is a regulated profession in India. The Advocates Act, 1961 regulates the (2005) 223 CLR 1 conduct of lawyers in India and is a complete code in itself. Given the regulation, India also needs to bring the working of its regulated professions in alignment with international practices.

24. In the era of globalization, though I am conscious that a law has to be applied in context with the prevailing situation of the country, nonetheless, to have a uniform application of any law particularly the one which has been framed on the basis of the common resolution of the UNO, laws must have a uniform application in all nations. It is, therefore, essential that the consumer protection laws in all countries may somewhat have universal application and be confined to ‘consumers’ only i.e. to the persons who buys any goods for consideration or hires or avails of any service for consideration, impliedly excluding the professional services especially that of a lawyer whose profession is *sui generis*.

25. In doing so, in India also the services of professionals more particularly that of lawyers have to be excluded from consumer protection law in accordance with the intention expressed in enacting the same.

26. With the above additional reasoning supplementing the various other grounds for excluding the services of the professionals from the Consumer Protection Act, I am in agreement with the opinion expressed by my esteemed sister and I am of the view that the legislature in India as in some other countries, had not intended to include the services rendered by the professionals especially the lawyers to their client within the purview of Consumer Protection Act, 1986 and re-enacted in 2019.

27. Accordingly, the view taken by the NCDRC to the effect that in respect of deficiency in service rendered by the lawyers, a complaint in Consumer Protection Act, 1986 would be maintainable, is incorrect and stands overruled.

28. The impugned order of the National Consumer Disputes Redressal Commission dated 06.08.2007 is hereby set aside.

29. The appeals stand disposed of accordingly.

..... J.

(PANKAJ MITHAL) NEW DELHI;

MAY 14, 2024.