

Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

"An aware consumer is an asset to the nation"

Website : www.advantageconsumer.com

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Queries & Answers through the Web

(www.advantageconsumer.com is the website of Consumer Protection Council, Rourkela. One of the major attractions of the website is that a visitor can ask queries on issues relating to consumer protection. Answers to these queries are made free of cost, by the Chief Mentor of the Council, Sri B. Vaidyanathan.)

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Lawyers do not come under the purview of the Consumer Protection Act

An interesting and important Order has been pronounced by the Supreme Court, recently. The two concurring judgments pronounced by (Ms.) Justice Bela M. Trivedi and Justice Pankaj Mithalon various courts have ruled that the advocates do not come under the purview of the Consumer Protection Act, in short, the Act.

While Justice Trivedi's reasoning goes to address the basic concept of "Contract for Personal Service", like that of a housemaid, which are excluded from the purview of the Act. The rationale of excluding an unskilled or at the maximum a semi-skilled individual, male or female, whose services are to a substantial extent are manual in nature, is obviously clear, as they perform their duty as directed by her mistress and she does not have any control, even to prioritise them, as per her wish. In contrast, by any stretch of imagination can services of an advocate be compared with such deprived and underprivileged workers, is a mute question.

Still contentious, is the recommendation to the Chief Justice of India to reconstitute a larger bench and reconsider the earlier decision of the Court, in *Indian Medical Association vs. V.P. Shantha & Others*, which unequivocally brought the medical negligence under the purview of the Consumer Protection Act. Since the judgment is a bit lengthy to publish in our in-house newsletter, *Advantage Consumer*, I have presented the concurring judgment of Justice Mithal only.

In the concurring judgment, elaborate details have been discussed about different countries, which have excluded the legal professionals from the ambit of the Consumer Protection Law. An important logic put forward is that since Advocates Act, 1961, is in place, any negligence on the part of the lawyer can be tried under that Act.

A relevant aspect of the Consumer Protection Act needs to be noted. It is only an enabling Act to protect the consumers, with summary trials, in a time bound and cost-effective manner. Under this structure only all defective products and deficient services are to be addressed, by applying various statutes which are already available; whether it is the Standards of Weights & Measures Act (Packaged Commodity Rules), Prevention of Food Adulteration Act, etc. That being so, Consumer Courts also have the wherewithal to try negligence as stipulated under the Advocates Act, 1961.

Before I conclude, it is worth noting that in the entire history of the Consumer Protection Act, of over 34 years, one hardly comes across cases pertaining to the negligence of the Lawyers, who are penalised by these bodies. That is the reality.

B. Vaidyanathan
Chief Mentor

**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

J U D G M E N T

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). 1
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) b) c) d) e) f) g)
7. To assist countries in achieving or maintaining adequate protection for their population as consumers; To facilitate production and distribution patterns responsive to the needs and desires of the consumers; To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers; To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers; To facilitate the development of independent consumer groups; To further international cooperation in the field of consumer protection; To encourage the development of market conditions which provide

consumers with greater choice at lower prices; A bare reading of the above guidelines reveals that the same have been formulated considering the interests and needs of 3 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’...” 1(1994) 3 SCC 504 4

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.” 2(2021) 20 SCC 401 5

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. 7

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 § 283903 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 Aid³ 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 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 10 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.

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