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Smells like Consumer Protection: Advocates as Service Providers under the Consumer Protection Regime

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ABSTRACT

Courts in India and in many other jurisdictions have repeatedly been asked whether the services rendered by advocates fall within the purview of consumer protection. The Supreme Court of India had earlier held, in Indian Medical Association v. V.P. Shantha, that the medical profession, and by extension other professions such as the legal profession, came within the reach of consumer protection law. The Court reached a different conclusion in Bar of Indian Lawyers v. D.K. Gandhi PS National Institute of Communicable Diseases, where the question arose directly as to whether advocates are service providers for the purposes of consumer protection law. This article examines the findings and observations of the Court on that question and explores the longstanding debate as to whether the clients of advocates may claim remedies under consumer protection law.

Keywords: *Advocates, Legal Profession, Service Provider, Consumer Protection, Deficiency in Service, Contract of Personal Service, Sui Generis*

I. INTRODUCTION

Over the last few decades the practice of consumer protection has expanded worldwide, with many countries enacting new statutes or overhauling older ones. Some of these laws have pushed beyond the traditional boundaries of consumer protection and extended its safeguards to newer situations. In *Bar of Indian Lawyers v. D.K. Gandhi PS National Institute of Communicable Diseases*,¹ heard along with *Delhi High Court Bar Association v. D.K. Gandhi PS National Institute of Communicable Diseases*,² *Bar Council of India v. D.K. Gandhi PS National Institute of Communicable Diseases*,³ and *M. Mathias v. D.K. Gandhi PS National*

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¹ *Bar of Indian Lawyers v. D.K. Gandhi PS National Institute of Communicable Diseases*, 2024 INSC 410, Civil Appeal No. 2646 of 2009 (Sup. Ct. India, May 14, 2024).

² *Delhi High Court Bar Association v. D.K. Gandhi PS National Institute of Communicable Diseases*, Civil Appeal No. 2647 of 2009 (Sup. Ct. India).

³ *Bar Council of India v. D.K. Gandhi PS National Institute of Communicable Diseases*, Civil Appeal No. 2648 of 2009 (Sup. Ct. India).

Institute of Communicable Diseases,⁴ the Supreme Court of India considered whether advocates could be brought within the notion of service providers and whether their clients could, as a result, avail themselves of the protection afforded by the consumer protection regime. The question is not a moot one; it is a live debate in many jurisdictions. Courts across the world are frequently asked whether professions such as those of advocates and doctors fall within consumer protection statutes. Governments today can no longer maintain a purely domestic approach to consumer protection that is out of harmony with international developments.⁵ The findings and observations in this case may therefore guide courts in other jurisdictions towards a more uniform approach to the treatment of the professions under consumer protection law.

II. FACTS OF THE CASE

D.K. Gandhi engaged an advocate to file a complaint before the Court of the Metropolitan Magistrate, Tis Hazari, Delhi, in respect of a cheque for Rs. 20,000 that had been dishonoured. During the proceedings the accused agreed to pay the sum of Rs. 20,000 covered by the dishonoured cheque, besides a further Rs. 5,000 towards the expenses incurred by D.K. Gandhi. Although the advocate received from the accused a demand draft or pay order for Rs. 20,000 and a crossed cheque for Rs. 5,000 on behalf of D.K. Gandhi, he did not hand them over to his client. He instead demanded Rs. 5,000 in cash from him and filed a suit in the Court of Small Causes, Delhi, to recover that amount as the fees due to him.⁶

III. PROCEDURAL HISTORY

The advocate filed a suit for the recovery of his fees in the Court of Small Causes, Delhi. He subsequently handed over the demand draft or pay order for Rs. 20,000 and the cheque for Rs. 5,000 to his client, although payment of that cheque was stopped by the accused in the cheque dishonour case at the instance of the advocate himself.⁷ The client then filed a complaint before the District Consumer Disputes Redressal Forum, Delhi, a quasi-judicial body established under the Consumer Protection Act, 1986 (since replaced by the Consumer Protection Act, 2019),⁸ seeking compensation of Rs. 15,000 in addition to the amount of the cheque for Rs. 5,000, as well as Rs. 10,000 for mental agony and harassment, along with costs. The advocate resisted the complaint by filing a reply that raised a preliminary objection to the jurisdiction of the

⁴ *M. Mathias v. D.K. Gandhi PS National Institute of Communicable Diseases*, Civil Appeal No. 2649 of 2009 (Sup. Ct. India).

⁵ CHARLES E.F. RICKETT & THOMAS G.W. TELFER, *INTERNATIONAL PERSPECTIVES ON CONSUMERS' ACCESS TO JUSTICE 1* (Cambridge University Press 2003).

⁶ *Bar of Indian Lawyers* (n 1) para. 3(i)-(ii); *Negotiable Instruments Act, 1881*, s. 138 (India).

⁷ *Id.* para. 3(ii).

⁸ *Consumer Protection Act, 1986*, s. 9(a) (India); *Consumer Protection Act, 2019*, s. 28(1) (India).

District Forum, contending that advocates were not covered by the Consumer Protection Act, 1986. The Forum rejected the objection and decided the complaint in favour of the client.⁹ Aggrieved by that decision, the advocate appealed to the State Commission, which allowed the appeal and held that the services of lawyers and advocates do not fall within the scope of "service" as defined in section 2(1)(o) of the Consumer Protection Act, 1986.¹⁰ In a revision application preferred by the client, however, the National Consumer Disputes Redressal Commission (NCDRC) held that a complaint on the ground of deficiency in the service rendered by advocates and lawyers is maintainable under the Consumer Protection Act.¹¹ A set of appeals was accordingly filed by the Bar of Indian Lawyers, the Delhi High Court Bar Association, the Bar Council of India and the advocate, M. Mathias.

IV. ISSUES BEFORE THE COURT

Although the question posed before the Court was the maintainability of a complaint on the ground of deficiency in service rendered by advocates and lawyers under the Consumer Protection Act, the Court, given the importance of the matter, framed three further questions:¹²

- (i) whether the legislature ever intended to include the professions, or the services rendered by professionals, within the purview of the Consumer Protection Act, 1986 as re-enacted in 2019;
- (ii) whether the legal profession is *sui generis*; and
- (iii) whether a service hired or availed of an advocate could be said to be a service under "a contract of personal service", so as to exclude it from the definition of "service" contained in section 2(42) of the Act.

V. JUDGMENT

The Court found that there was nothing on record to suggest that the legislature had ever intended to bring the various professions within the purview of the Consumer Protection Act.¹³ On the position of advocates, it held that the legal profession cannot be compared with the other professions and is therefore *sui generis*.¹⁴ Finally, it declared that a service hired or availed of an advocate is a service under "a contract of personal service" and is thus excluded from the definition of "service" contained in section 2(42) of the Act of 2019.¹⁵ In the light of these

⁹ *Bar of Indian Lawyers* (n 1) para. 3(ii)-(iii).

¹⁰ *Id.* para. 3(iii).

¹¹ *Id.* paras. 2, 3(iii).

¹² *Id.* para. 7.

¹³ *Id.* paras. 15, 18-19, 42(i).

¹⁴ *Id.* paras. 30, 42(ii).

¹⁵ *Id.* paras. 41, 42(iii).

findings, the Supreme Court of India set aside the judgment passed by the NCDRC and declared that a complaint of "deficiency in service" against advocates is not maintainable under the Act of 2019.¹⁶

VI. NOTABLE SUBMISSIONS IN THE CASE

The counsel appearing on behalf of the appellants submitted that the legal profession is not a "business or trade", since an advocate is duty bound towards the court and towards his peers as well as towards his client, the duty to the court being paramount.¹⁷ They further argued that the Advocates Act, 1961 deals exclusively with the legal profession and lays down professional standards for compliance and for the determination of professional misconduct, and that, being a special law, it would prevail over the Consumer Protection Act.¹⁸ V. Giri, a senior advocate, was appointed *amicus curiae* by the Court. He classified advocates into two categories: those who represent their clients before a court or any other forum through the execution of a *vakalatnama*, and those who only provide professional expertise by giving legal opinions, issuing legal notices, drafting agreements and the like.¹⁹ According to V. Giri, the first category of advocates, that is, those who represent clients in court, does not come within the scope of the Consumer Protection Act, because on the execution of a *vakalatnama* the advocate acts as the representative or agent of the client.²⁰ The relationship between principal and agent, on this view, cannot be compared with that between a service provider and a consumer. The second category, who provide legal services outside the court without a *vakalatnama*, may however come within the orbit of the service provider and thus fall within the purview of the Act.²¹

VII. NOTEWORTHY OBSERVATIONS OF THE COURT

After a thorough consideration of the intention of the legislature and of the objects and reasons of the Act, both before and after the amendments, Bela M. Trivedi J. found no indication that the professions, or the services rendered by professionals such as advocates, were contemplated as falling within the purview of the Act.²² While deliberating on whether the service provided by an advocate could fall under a "contract of personal service", she was of the opinion that the greater the degree of direct control exercised over the person rendering the service, the stronger the presumption in favour of a "contract of service".²³ She further stated that the provisions of

¹⁶ *Id.* paras. 42(iv), 43.

¹⁷ *Id.* para. 5(ii)-(iii).

¹⁸ *Id.* para. 5(i), (iv)-(v).

¹⁹ *Id.* para. 6.

²⁰ *Id.* para. 6.

²¹ *Id.* para. 6.

²² *Id.* paras. 12, 14-15, 18-19.

²³ *Id.* para. 39.

Order III of the Code of Civil Procedure, 1908, read with Chapter IV of the Advocates Act, 1961, confer on an advocate the right to practise, but that he can act for a person in court only upon the execution of a *vakalatnama*.²⁴ The judgment also emphasised the fact that an advocate owes duties to the courts, to the client, to other advocates and to his adversary. Pankaj Mithal J. added that, while fulfilling his duty towards the court, an advocate may at times earn the displeasure of his client.²⁵ Citing *Himalayan Cooperative Group Housing Society v. Balwan Singh*,²⁶ Trivedi J. observed that lawyers are perceived to be their clients' agents, that they owe fiduciary duties to their clients, and that they are expected to follow the client's instructions rather than substitute their own judgment for that of the client.²⁷ Because of this direct control exercised by the client over the advocate's delivery of the service, the service rendered by an advocate was held to be one under a contract "of personal service" and was therefore excluded from the definition of "service" contained in section 2(42) of the Consumer Protection Act, 2019.²⁸

VIII. EVALUATING ADVOCATES AS SERVICE PROVIDERS

Before the present decision, the NCDRC had taken the view that a client who hires the services of a lawyer for consideration is a consumer, and that a complaint of deficiency in service against an advocate is therefore maintainable.²⁹ Consumer protection law aims to protect the interests of consumers and to shield them from unfair practices and exploitation.³⁰ It is for this purpose that consumer protection has at times been invoked in relation to professions that, in the traditional sense, do not carry on a "business or trade".

If the services of a profession are not protected by any legislation, the proper fulfilment of consumer protection may require a broad construction of consumer protection statutes so as to bring the profession in question within their ambit. Even the *Basic Principles on the Role of Lawyers* adopted by the United Nations stipulate proceedings before an independent statutory authority as one of the mechanisms available for scrutinising the actions of lawyers.³¹ The legal profession, however, has always been regulated by specific legislation. Pankaj Mithal J. in this

²⁴ *Id.* para. 40; Code of Civil Procedure, 1908, Order III (India); Advocates Act, 1961, ch. IV (India).

²⁵ *Bar of Indian Lawyers* (n 1) para. 2 (Pankaj Mithal, J.).

²⁶ *Himalayan Cooperative Group Housing Society v. Balwan Singh*, (2015) 7 SCC 373 (India).

²⁷ *Bar of Indian Lawyers* (n 1) para. 40.

²⁸ *Id.* paras. 41, 42(iii).

²⁹ *D.K. Gandhi v. M. Mathias*, Revision Petition No. 1392 of 2006 (National Consumer Disputes Redressal Commission, Aug. 6, 2007), set aside in *Bar of Indian Lawyers* (n 1) paras. 2, 43.

³⁰ *Lucknow Development Authority v. M.K. Gupta*, (1994) 1 SCC 243 (India); *Laxmi Engineering Works v. P.S.G. Industrial Institute*, (1995) 3 SCC 583 (India).

³¹ *Basic Principles on the Role of Lawyers*, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, Principle 28.

case gave the examples of the Consumer Protection Act 1999 of Malaysia,³² the Consumer Protection Act of Quebec³³ and the laws of several states of the United States of America,³⁴ each of which expressly provides that the statute does not apply to services rendered by professionals who are regulated by another law.³⁵ He further gave the example of the European Union, which excludes regulated professions from the scope of consumer protection in its directives.³⁶ The Bar Council of a country, as well as the local bar at the district or state level, is usually vested with disciplinary powers to regulate the legal profession. Besides this, lawyers may incur liability under the law of contract, since the relationship with the client may be contractual in nature,³⁷ and may even incur liability in tort.³⁸ Clients therefore do have forums that will entertain complaints of negligence and professional misconduct against an advocate. There is ample scope to revisit these laws and to add further protections for clients as well as for advocates, so as to enable the latter to exercise their right to practise without interference of any sort. Nonetheless, so long as such laws exist, the invocation of consumer protection law is not needed, since it opens up the possibility of multiple proceedings before multiple forums.³⁹

Although there is nothing wrong in providing clients with multiple forums in which to address their grievances, the *sui generis* nature of the legal profession becomes an obstacle. It was rightly observed in this case that advocates are duty bound towards the courts, their colleagues and even their adversaries, quite apart from their clients.⁴⁰ The standard of care or duty owed by an advocate to a client in the legal context is therefore entirely different from that owed by an ordinary service provider. The Supreme Court of Washington in *Short v. Demopolis* declined to apply the protection of consumer protection law to the "actual practice of law", since doing so might alter the standard of care owed by lawyers to their clients.⁴¹ The summary nature of proceedings under consumer protection law is indeed unsuited to adjudicating *bona fide* instances of professional misconduct and negligence on the part of an advocate.⁴²

³² Consumer Protection Act 1999 (Malaysia), s. 2(2)(e).

³³ Consumer Protection Act (Quebec), s. 188.

³⁴ Code of Maryland, Title 13, Subtitle 1, s. 13-104 (USA); Code of the District of Columbia, Title 28, Chapter 39, s. 28-3903(c) (USA).

³⁵ *Bar of Indian Lawyers* (n 1) paras. 13-14, 18, 20-21 (Pankaj Mithal, J.).

³⁶ Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018 on a Proportionality Test Before Adoption of New Regulation of Professions [2018] OJ L173/25; Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on Consumer Rights [2011] OJ L304/64; *Bar of Indian Lawyers* (n 1) paras. 15, 17 (Pankaj Mithal, J.).

³⁷ Venugopal B.S., *Civil Liability of Lawyers for Deficiency in Services: A Critical Analysis*, 53(2) JOURNAL OF THE INDIAN LAW INSTITUTE 275, 276-79 (2011).

³⁸ *Id.* at 280-95.

³⁹ *Bar of Indian Lawyers* (n 1) paras. 5(viii), 19.

⁴⁰ *Id.* paras. 5(iii), 29.

⁴¹ *Short v. Demopolis*, 103 Wash. 2d 52, 691 P.2d 163 (Wash. 1984).

⁴² *Bar of Indian Lawyers* (n 1) paras. 5(ix), 19.

In Bangladesh, for example, advocates are regulated by the Bangladesh Legal Practitioners and Bar Council Order, 1972, the Bangladesh Legal Practitioners and Bar Council Rules, 1972, the Canons of Professional Conduct and Etiquette, and the Legal Practitioners (Fees) Act, 1926.⁴³ Even outside these instruments, which are dedicated exclusively to the regulation of advocates, many other statutes contain protections for clients in their dealings with the legal profession. Section 126 of the Evidence Act, 1872, for instance, protects professional communications between an advocate and his client, while section 129 protects confidential communications between a person and his legal adviser.⁴⁴ Again, in Scotland, the Scottish Legal Complaints Commission, a statutory body, decides complaints concerning the quality of service and disputes over fees,⁴⁵ while complaints concerning ethical breaches are remitted to the relevant professional body, which in the case of solicitors is the Law Society of Scotland, itself a statutory body.⁴⁶ Where regulation of this kind is already so extensive, the invocation of consumer protection law is unnecessary and will only result in a multiplicity of proceedings.

The classification proposed by V. Giri, the *amicus curiae* in the case, would nonetheless bring within the purview of consumer protection law those legal professionals who provide services to their clients outside the court without the execution of any *vakalatnama*.⁴⁷ It is true that legal professionals providing services outside litigation are not duty bound towards the court, but the Advocates Act, 1961 still regulates them. Section 29 of that Act allows only advocates to practise law, and the practice of law includes both litigious and non-litigious services.⁴⁸ In the presence of a law that regulates every kind of professional service provided by advocates, V. Giri's classification is not necessary.

IX. WHAT ABOUT OTHER PROFESSIONS?

The Supreme Court of India had earlier held, in *Indian Medical Association v. V.P. Shantha*,⁴⁹ that the definition of "service" in the Act covers the services rendered by medical practitioners. In the present case, however, Bela M. Trivedi J. was of the opinion that that decision deserved to be revisited.⁵⁰

⁴³ Bangladesh Legal Practitioners and Bar Council Order, 1972 (President's Order No. 46 of 1972); Bangladesh Legal Practitioners and Bar Council Rules, 1972; Canons of Professional Conduct and Etiquette (BANGLADESH BAR COUNCIL); Legal Practitioners (Fees) Act, 1926 (Act No. XXI of 1926).

⁴⁴ Evidence Act, 1872 (Bangladesh), ss. 126, 129.

⁴⁵ Legal Profession and Legal Aid (Scotland) Act 2007, ss. 2-25.

⁴⁶ Legal Profession and Legal Aid (Scotland) Act 2007, Part 1 (conduct complaints remitted to the relevant professional organisation); Solicitors (Scotland) Act 1980; Legal Services (Scotland) Act 2010.

⁴⁷ *Bar of Indian Lawyers* (n 1) para. 6.

⁴⁸ Advocates Act, 1961, s. 29 (India); *Bar Council of India v. A.K. Balaji*, (2018) 5 SCC 379 (India).

⁴⁹ *Indian Medical Association v. V.P. Shantha*, (1995) 6 SCC 651 (India).

⁵⁰ *Bar of Indian Lawyers* (n 1) para. 21.

As stated earlier, some consumer protection statutes in other jurisdictions have expressly provided that professions such as those of lawyers and medical practitioners do not fall within their scope. In those jurisdictions the question does not arise at all: the professions are simply kept outside the protection of consumer protection law. It was never the aim of consumer protection to bring the professions within its purview. The professions, as mentioned earlier, do not fall within the traditional meaning of "business" or "trade". Moreover, the technical nature of professional work, and of the issues it generates, makes it highly unsuitable for adjudication through the summary remedies usually available before consumer protection forums.

In the absence of an express bar in consumer protection legislation, however, its protection could be extended to a profession that no other law regulates. This may be regarded as a necessary evil, adopted in order to protect the clients of unregulated professions, who might otherwise find themselves without any remedy. Since the availability of effective redress is one of the recognised principles of consumer protection,⁵¹ it is to be expected that a profession will be brought within the scope of consumer protection where no redress mechanism otherwise exists. Such protection should, however, be contemplated as a temporary measure, because it is the responsibility of the government to enact laws to regulate the profession and to provide proper redress suited to the nature of the profession in question.

X. CONCLUSION

Although, through its thorough discussion, the Supreme Court of India has settled the question of the ineligibility of advocates as service providers under consumer protection law, the debate is far from over. The Court referred its earlier judgment in *Indian Medical Association v. V.P. Shantha*, on the question whether the professions are governed by the Consumer Protection Act, 2019, to the Chief Justice of India for consideration by a larger bench.⁵² A three-Judge Bench subsequently declined to reconsider that judgment, holding that, since the Court had already concluded in unequivocal terms that the legal profession is not covered by the Act, the reference was not necessary.⁵³ The debate is likely to continue in India and in other jurisdictions. For the greater interest of the proper administration of consumer protection, however, it is desirable that a common approach be adopted, excluding lawyers and the other professions from consumer protection law. It must be remembered that excluding lawyers from consumer protection does

⁵¹ *United Nations Guidelines for Consumer Protection* (as expanded in 1999), ECOSOC Res. 1999/7 (26 July 1999), Section II, para. 3(e).

⁵² *Bar of Indian Lawyers* (n 1) paras. 22, 24.

⁵³ *Bar of Indian Lawyers v. D.K. Gandhi PS National Institute of Communicable Diseases*, order dated 7 November 2024 in Civil Appeal Nos. 2646-2649 of 2009 (Sup. Ct. India) (three-Judge Bench holding the reference to a larger bench unnecessary).

not deprive clients of redress in respect of the services rendered to them. Bringing every service within the scope of consumer protection may weaken its enforcement machinery and hamper proper redress in cases of professional misconduct and negligence by professionals. Besides, an abundance of differing legal standards governing a particular matter becomes a hindrance to its smooth regulation.⁵⁴ That being said, it cannot be denied that advocates have in recent times made the practice of law more like a business, which has in turn prompted aggrieved clients to invoke consumer protection law. It is in the greater public interest that the laws regulating advocates be updated and that they contain sufficient protections for clients.

⁵⁴ Arafat Ibnul Bashar, *Food Safety Laws of Bangladesh: Legal Responsibility of Different Stakeholders*, 2(3) SCLS LAW REVIEW 24, 28 (2019).