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ADVOCATES EXEMPTION FROM LIABILITY UNDER CONSUMER PROTECTION ACT: OPENING OF A PANDORA BOX OF EXEMPTIONS?

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ABSTRACT

A two-Judge Bench of Honourable Supreme Court (SC) of India in *Bar of Indian Lawyers Through its President Jasbir Singh Malik v. D. K. Gandhi PS National Institute of Communicable Diseases and Anr (2024)*.¹ held that professional services rendered by advocates fall under "contract of personal service" as opposed to a "contract for service" and accordingly, advocates are exempt from liability for deficiency in services under the Consumer Protection Act (CPA), 2019. The judgement brings the contentious issue of advocate's liability as 'service providers' under the Act back to focus. The case arose out of challenge to a ruling by National Consumer Disputes Redressal Commission (NCDRC) in *D.K. Gandhi PS v. M. Mathias (2007)*.² The NCDRC made advocates liable as service providers under CPA. The apex court, in fact, also went on to opine that the landmark SC ruling by three-judge bench in *Indian Medical Association v. V P Shantha (1995)*.³ delivered almost 3 decades ago needs reconsideration and referred it to the Chief Justice for determination by a larger bench. This article seeks to uncover the liability of advocates as service providers in light of landmark supreme court judgements and the implications of recent judgement on other professions.

1 Civil Appeal No. 2646 of 2009 along with Civil Appeal No. 2647 of 2009, 2648 of 2009 and 2649 of 2009.

2 MANU/CF/0142/2007

3 MANU/SC/0836/1995

INTRODUCTION

The consumer movement primarily started in the west. *Carlill v. Carbolic Smoke Ball Company*⁴ was one of the notable early cases which recognised the liability of the manufacturer for certain minimum standards of quality. *Donoghue v. Stevenson*⁵ was another leading case where it was held that manufacturer owes a *duty of care* towards end-consumer. Thus, the consumer movement kept gaining significant momentum over the years. The United Nations – General Assembly approved guidelines for protection of interests of the consuming class on April 9, 1985. These guidelines intended to encourage governments across the globe to develop consumer protection through appropriate legislation. United Nations Guidelines on Consumer Protection provide that there exists great asymmetry on all frontiers-economic, educational and bargaining power between the business class and the consuming class and consumer protection becomes all the more necessary, more so in developing countries.⁶

The Consumer policy framework as laid down in UN Guidelines stressed on consumer rights and accordingly CPA came up in India in 1986. It had the noble intention of ensuring justice which is simple, speedy and inexpensive. It aimed to address major issues associated with commercial litigation-time, cost and technicalities. The proceedings under the Act are also to be conducted through summary trial. The strict rules of civil procedure code or the Evidence act are not required to be followed by consumer commissions. Another distinct feature of the legislation was that one doesn't need to engage the services of an advocate. A consumer could fight his case on his own. However, the experience over the years shows that the consumer self-representation at consumer courts has taken a serious hit and complainants engage the services of advocates in majority of cases. It is very difficult to find consumers at consumer courts. On account of changed market dynamics – international sup-

ply chains and the massive growth of E-commerce the law needed to catch up. Accordingly, the new CPA 2019 replaced the erstwhile 1986 legislation. The Act provides that the consumers aggrieved by defect in goods or deficiency in service can seek relief by filing consumer complaints before appropriate consumer disputes redressal commissions.

In *D. K. Gandhi PS National Institutes case*⁷ the two-Judge Bench of SC held that services rendered by advocates falls under “contract of personal service” as opposed to a “contract for service” and accordingly, advocates are exempt from liability for deficiency in services under the CPA, 2019. The judgement brings the contentious issue of advocate's liability as ‘service providers’ back to focus. The case arose out of challenge to a ruling by NCDRC in *D.K. Gandhi PS v. M. Mathias* ⁸.(2007). The NCDRC held advocates liable as service providers under CPA.

1. THE CASE AT HAND: FACTUAL MATRIX

Mr D.K, Gandhi-the complainant/respondent availed the services of appellant advocate and a complaint was filed against Kamal Sharma. The said complaint was filed under Section 138 of Negotiable Instruments (NI) Act, 1881. The issued cheque of Rs 20,000/ – got dishonoured. Later on, the accused Kamal agreed to pay back Rs 20,000 and additional Rs 5000 for expenses suffered by Mr Gandhi. The respondent claimed that appellant has received the cheque from the accused on behalf of the respondent, however has not provided it to him and instead demanded Rs 5000/ – as fees for his services. The appellant also filed a suit in the court of Small Causes, Delhi for recovery of Rs. 5000/ – Later though the Demand Draft of Rs. 20,000 was handed over to the respondent but the cheque of Rs 5000 was not paid as Kamal did stop payment at the instructions of appellant.

Aggrieved by this, the respondent filed a consumer complaint claiming total Rs 15000/ that included cost for mental agony and harassment. The appellant raised the argument that the advocates

4 Carlill v. Carbolic Smoke Ball Co. (1893)1Q.B. 256

5 Donoghue v. Stevenson (1932) A.C. 562: 147 LT 281:48 TLR 494 (HL).

6 United Nations Guidelines for Consumer Protection, United Nations Conference on Trade and Development (UNCTAD), (2016) [ditccplpmisc2016d1_en.pdf](#) ([unctad.org](#)) (Last accessed: 17.05.2024).

7 Civil Appeal No. 2646 of 2009 along with Civil Appeal No. 2647 of 2009, 2648 of 2009 and 2649 of 2009.

8 MANU/CF/0142/2007

are not contemplated to be covered by CPA. District Forum rejected the contention and decided in favour of respondent. The State Commission reversed District forum's order and held advocates are not covered by the Act. The NCDRC overturned the ruling and laid that advocate too are covered by the CPA.

Aggrieved by NCDRC's order, the present appeal was preferred by the appellants. The Apex Court held services rendered by advocates to be falling under "contract of personal service" as opposed to a "contract for service" and accordingly held advocates not exempt from liability under CPA, 2019.

1.1 Service Providers Liability: Indian Medical Association Case

CPA covers cases of defective goods as well as deficient services. Indian Medical Association v. V P Shantha (1995) involved an interesting question as to whether a medical practitioner can be said to be providing service under the Act. The legal team of Indian Medical Association (IMA) argued the distinction between occupation and profession. While the services rendered as part of occupation attracts being a service, the professional service providers like medical professionals are not intended to be covered. The medical professionals are already covered by Medical Council of India (MCI) and are governed by Medical Code of Ethics. It was also contended that in professions like medicine failure and success depends on many factors outside the control of medical practitioners. They also claimed that '*which is made available to potential users*'

partakes to only institutional type services, i.e., commercial enterprise to the exclusion of professional service providers.

It was also argued from IMA that 'service' needs to be evaluated and judged on specific norms of quality, nature and manner of performance. There exist no standards for evaluating and judging medical practitioners' services cannot be equated with a commercial service. SC disagreed with the contention and referred to Section 14 of the earlier legislation by quoting the nature of reliefs for deficiency in services provided under the Act: As per Section 38 of CPA 2019, the following reliefs can be granted to the complainants in case of deficiency in services.

(c) Return of price/charges along with interest, as may be decided,

(d) compensation for any loss/injury suffered due to the negligent act or omission of other party:

(f) removal of defects in goods/ deficiency in services;

The term '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*";⁹ It can be bifurcated into three parts as follows (see Table 1.).

The use of word 'potential' mentioned in the main part of the definition conveys an extensive

⁹ Section 2(42) of the Consumer Protection Act, 2019.

Table 1

SERVICE under Section 2(42) of The Consumer Protection Act, 2019	
Main Part	It provides that service of <i>any description</i> which is offered to any <i>potential consumer</i> can be subject matter of service
Inclusionary Part	It provides few suggestive services – banking, financing, insurance, transport, telecom, etc. By stating ' <i>but not limited to</i> ' it also states that the list is merely indicative and there can be many others services as well.
Exclusionary Part	Any services which is provided <i>free of charge</i> (without consideration) or under any <i>contract of personal service</i> is to be excluded from the scope of service.

meaning in the sense that the word ‘any description’ and ‘potential’ includes something which does not exist for now but which will come in existence at some future time. The way this part is spelt out indicates the legislative intent that the term is accommodative and ever evolving with time.

The second part of the definition provides idea as to suggestive services—banking, financing, insurance, transport, processing, etc. In fact, even in Lucknow Development Authority case, the SC held that ‘housing’ too is service and was included in the definition later on in 1995.

The Exclusionary part lays down that when services are provided free of charge (without consideration) and when provided under a contract of service, are to be excluded from the definition of service. ‘Contract of service’ and ‘contract for service’ are significantly different. ‘Contract for service’ means a kind of arrangement in which one party renders service (professional or technical) where service provider is not subject to superintendence of the service recipient.¹⁰ ‘Contract of Service’ refers to a scenario where service provider is under the supervision of the service recipient. It’s like a master-servant relationship – master dictated what is to be done, when is to be done and how is to be done. The servant does not exercise autonomy and discretion in work unlike a professional. The exclusionary part of the definition intentionally uses ‘contract of personal services’.

1.2 Enlarged Scope of Deficiency in Service under CPA, 2019

It is also important to note the definition of ‘Deficiency’ under CPA, 2019 with regards to the issue. “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 com-

mission by such person which causes loss or injury to the consumer; and

(ii) deliberate withholding of relevant information by such person to the consumer”;¹¹

Under the earlier CPA, 1986 deficiency was provided as: ‘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”¹²

Thus, definition of ‘Deficiency’ under 2019 legislation is much more comprehensive and wider than the one under earlier 1986 legislation. The latest definition also expressly provides the acts of negligence or omission or commission and withholding of information deliberately which causes an injury or injury to consumer as elements of deficiency. It is very ironic that the medical services which was held to be a service by the apex court under the previous definition of deficiency. With the addition of the aspects of negligence/act/omission/withholding of information causing loss or injury, it is all the more ironical that the services of advocates have been excluded from the framework of CPA.

The Disturbing Judgement:

SC in *D. K. Gandhi* case emphasised that professionals cannot be appraised at par with businessmen or traders. The later involve a deep-rooted commercial aspect. It stated that including the advocates as service providers will be a very far – fetched interpretation. The court also held that making advocates liable under the act might lead to multiplicity of litigation and many vexatious claims might be brought before the court. It shall seriously hit the objective of providing timely and inexpensive relief to the consumers. SC even went on to state that the legislature never intended to include professional service providers. This is sharp contrast to the ruling of 3 judge bench of the SC in 1995. The bench in the recent case, invoked Order VI Rule 2 of the Supreme Court rules to refer the matter to a larger bench. Referring the matter to Chief Justice for consideration by a larger bench and simultaneously also exempting advocates

10 Venkatesan V., Supreme Court Observer (SCO) (2024, June 20), Lawyers excluded from the consumer protection law. Are doctors next? [Lawyers excluded from the consumer protection law. Are doctors next? – Supreme Court Observer \(scobserver.in\)](#) (Last accessed: 12.06.2024).

11 Section 2(11) of The Consumer Protection Act, 2019.

12 Section 2(1)(g) of The Consumer Protection Act, 1986.

from CPA sets a very bad precedent and is a clear case of judicial indiscipline.¹³

As regards the advocates liability, the duties of an advocate are provided under The Advocates Act, 1961. The advocate owes duties towards the court, client, opponent and professional colleagues.¹⁴ There can be conflicting situations at times. However, the duty towards the court in administration of justice assumes great significance. In fact, the lawyers have been exempted from consumer protection regime in several other jurisdictions too. Their services are well recognised in administration of time and are accordingly taken to be sui-generis.¹⁵ The court held that advocates can be made liable under civil/criminal law. But holding them liable under consumer protection law will be against the legislative intent.

The NCDRC had held that services provided by lawyers fell under CPA. It did acknowledge that an advocate cannot be made liable for unfavourable outcome of a case of complainant. There are many factors which decide the outcome and many of such factors are beyond control of advocate. However, a total exclusion from liability goes against the basic tenets of the Act.

Even with regards to medical services, if they are excluded from CPA, it shall seriously affect the range of rights available to patients. Though it is true that the professional bodies like MCI do provide a recourse to the affected parties, the rights available under CPA are much wider and it extends far beyond practitioners in individual capacity and

also includes the institutions they are affiliated with. Comparatively, this offers a wide bouquet of remedies than the one provided by professional bodies. Thus, judgement might just open the Pandora box for other professions to seek exemption on similar grounds—Medical, Chartered Accountants etc. to name a few.

Concluding Remarks:

Medicine, Law and Teaching are held to be oldest professions. It is true that these are noblest of professions however one also needs to be in sync with the changing times. The consumerism has expanded like never before and arguably the three oldest professions are also the most commercialised ones today. The consumer seeks value for money from the service provider. Like there is a Bar Council of India (BCI) for Advocates, there also exists the Medical Council of India (MCI) for the medical professionals. The current ruling is likely to dilute consumer law. It opens the doors for many other professions to seek exemptions on similar ground. A professional by its very nature is governed by a professional regulatory body. By that logic most professions will have to be left out to the detriment of consumers. The recent ruling of the supreme court might open the Pandora box for many other professional service providers to be claiming exemption on similar ground. A blanket exclusion for advocates shall do more harm than good. One only hopes that the larger bench of the Supreme Court gives an all-pervasive consideration on the issue with a consumer centric approach.

13 Venkatakrisshnan Haripriya, Columns Bar and Bench (2024, May 28). Supreme Court on advocates and Consumer Protection Act: A case of judicial indiscipline? [Supreme Court on advocates and Consumer Protection Act: A case of judicial indiscipline? \(barandbench.com\)](#) (Last accessed: 12.06.2024).

14 Attri Sumit, Pandey Priyanshi & Singh Mayank Dispute Resolution Blog Cyril Amarchand Mangaldas (2024, May 16) Advocates no longer liable under Consumer Protection Laws for alleged deficiency in services [Advocates no longer liable under Consumer Protection Laws for alleged deficiency in services | Dispute Resolution Blog \(cyrilamarchandblogs.com\)](#) (Last accessed: 02.06.2024). Sharma

15 Rachit, Chourikar Parth, Taxmann's Advisory & Research [Corporate Laws] (2024, May 18). [Analysis] Ad-vocates' Accountability vs. Consumer Rights | M. Mathias v. D. K. Gandhi PS National Institute of Communicable Diseases [\[Analysis\] Advocates' Accountability vs. Consumer Rights | M. Mathias v. D. K. Gandhi PS National Institute of Communicable Diseases \(taxmann.com\)](#) (Last accessed: 12.06.2024)

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