

(1996) 03 MAD CK 0161

In the Madras High Court

Case No : Writ Petition No's. 21557 and 21560 of 1994 and Writ Petition No's. 2109, 2110 and 4233 of 1995

Srimathi and others

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 06-03-1996

Acts Referred:

Advocates Act, 1961 — Section 6
Consumer Protection Act, 1986 — Section 12, 13, 17, 2, 3
Indian Medical Council Act, 1956 — Section 3
Railway Claims Tribunal Act, 1987 — Section 15

Citation : (1996) 1 LW 473

Hon'ble Judges : M. Srinivasan, J;Abdul Wahab, J

Bench : Division Bench

Judgement

Srinivasan, J.—In these writ petitions, a common question is raised regarding the constitutional validity of Section 3 of the Consumer Protection Act, 1986. The prayer in all the writ petitions is for a declaration that Section 3 of the said Act is unconstitutional, being opposed to the object of the Act. The petitioners in these cases are practising advocates. Claims have been made against them by certain persons who are impleaded as respondents in the respective cases before the Consumer Disputes Redressal Forum. In some cases it is before the District Forum and in some cases it is before the State Forum.

2. The contention of the petitioners is that advocates are governed by the Advocates Act and they shall not be made to answer the claims under the Consumer Protection Act. It is contended that the objects of the Act do not contain any provision which will bring in the services rendered by an advocate to his client within the scope of the Consumer Protection Act. It is also argued that the definition of "consumer" will not include a client, who was availed of the services of an advocate. It is further contended that an advocate should not be made liable to face claims under different statutes. According to the petitioners, an advocate in a particular case, can be made to defend a proceeding (1) under

the Advocates Act before the Bar Council, (2) under the Criminal Law before the Criminal Courts, (3) before Civil Court under the Civil Law, and (4) before the Consumer Redressal Forum under the Consumer Protection Act. It is argued that when there is a special enactment governing the advocates, viz., Advocates Act, he shall not be made to face claims under the different Acts, referred to above. In particular, it is stated that the provision contained in Section 3 of the Consumer Protection Act, by which, the provisions of the said Act are declared to be in addition to and not in derogation of the provisions of any other law for the time being runs counter to the objects of the Act. According to the petitioner, if that Section is struck down as unconstitutional, it will not be possible for any person to drag the advocate before the Consumer Redressal Forum as the claim will be outside the scope of the said Act. It is also submitted that in a proceeding before the Consumer Redressal Forum, no Court-fee is payable and it may be possible for any person to file a frivolous action against the advocate in that Forum and even if that person fails ultimately, and if the advocate wants to make a claim for damages, it cannot be made without payment of Court-fee by the advocate in a Civil Court. Such provisions cause undue hardship and place and advocate in a hazardous situation thereby making his profession worthless.

3. Though the arguments are somewhat attractive, we do not find any substance in the same. As pointed out already, the prayer in these cases is to declare Section 3 of the Consumer Protection Act as unconstitutional, being opposed to the objects of the Act. The Statement of Objects and Reasons of the Act reads as follows :

"It 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 consumer's 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.

4. We are unable to find anything in the Statement of Objects and Reasons which runs counter to the provisions of Section 3 of the Act. What all Section 3 of the Act says is that the provisions of the Act shall be in addition to and not in derogation of the provisions of any other law. In other words, the Act does not have the effect of overriding other enactments with reference to matters dealt

with in the Act. The section only provides that it will be open to any person to claim the benefits of this Act and also avail himself of the provisions of other enactments if there is no inconsistency or conflict and if he is not barred otherwise, by any other principle of law, like estoppel or election.

5. We are unable to appreciate the second limb of the arguments that, if the section is struck down as unconstitutional, no person can institute any proceeding before Consumer Redressal Forum against an advocate. Even if the section is declared to be unconstitutional the other sections of the Act will continue to be intact and if the services of the advocate fall within the definition of service u/s 2(o) of the Act, then, it will be certainly open to a client to proceed against the advocate before the Consumer Redressal Forum. Hence, the object of the petitioners in these writ petitions to exclude the advocates from the purview of the Consumer Redressal Forum cannot be achieved by the grant of the prayer made in these writ petitions. We are at a loss to understand the reason for the petitioners making such a prayer in these petitions.

6. Our attention is drawn to the judgment in *M/s. Nathmal Ashok Kumar v. Western Railway*, (1991) CPJ 618. The question before the Forum was whether the complaint made before the Forum u/s 12 r/w Section 17(1)(a) of the Consumer Protection Act was barred by the provisions of Section 15 of the Railway Claims Tribunal Act, 1987. Section 15 of the Railway Claims Tribunal Act bars the jurisdiction of any Court or other authority in relation to the matters referred to in sub-section (1) of Section 13 of that Act. Referring to the provisions of Section 13 of that Act, Rajasthan Forum found that the claim made before the said Forum fell within the scope of Section 13 and consequently, the bar u/s 15 of said Act would apply. Hence, it was held that the proceedings before the Forum were not maintainable, inasmuch as, they were barred by Section 15 of the Railway Claims Tribunal Act.

7. The ruling cannot help the petitioners herein as it is a question of interpretation of the relevant provisions of the Act. It is seen that there is a specific section in the Railway Claims Tribunal Act barring the jurisdiction of other Courts and authorities. But, there is no such provision in the Advocates Act to bar the jurisdiction of other Courts and authorities or Tribunals in relation to matters connected with the advocates or disputes arising between the clients and their advocates. Section 6 of the Advocates Act sets out the functions of State Bar Council. There is no provision in the Advocates Act to enable the Bar Council to deal with the dispute between the client and the advocate if the clients seeks to remedy of damages or refund of money paid to the advocates or sums on monetary claim. The Bar Council can deal with only disciplinary matters and consider whether the advocate is guilty of misconduct which will fall u/s 6(1) of the Advocates Act. Hence, there is no substance in the contention that the Advocates Act will prevail over the Consumer Protection Act and Consumer Redressal Forum will have no jurisdiction to deal with claims against the advocates.

8. There is also no merit in the contention that an advocate will have to pay court-fee, if he wants to proceed against his client for damages or other remedies, whereas the client need not pay the court-fee if he goes before the Consumer Redressal Forum. That cannot invalidate the provisions of the Consumer Protection Act.

9. Learned counsel for the petitioners referred to Section 2(d) of the Act wherein "consumer" is defined. According to him, the definition of Consumer will not take in a client who engaged the advocate for professional services. We cannot accept this contention. The language in Clause 2 of Section 2(d) of the Act is very wide. It uses the expression "avails of any service for a consideration." That will not certainly exclude the services rendered by advocate. Further, the matter is made clear by the definition of "service" in Section 2(d) of the Act. The section read as follows :

"Service" means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, 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."

10. It is not necessary for us to labour much on this aspect of the matter in view of the fact that the Supreme Court has recently considered the definition of "service" in two cases. First of that is in Lucknow Development Authority v. M.K. Gupta, (1993) 1 CTJ 929 (SC) : 1994 (I) MLJ 55. Referring to the word "service" the Court said :

"The term has variety of meanings. It may mean any benefit or any act resulting in promoting interest or happiness. It may be contractual, professional, public, domestic, legal, statutory, etc. The concept of service thus is very wide."

11. Referring to the definition in Section 2(o) of the Act, the Court said :

"It is in three parts. The main part is followed by inclusive clause and ends by exclusionary clause. The main clause itself is very wide. It applies to any service made available to potential users. The words "any" and "potential" are significant. Both are of wide amplitude. The word "any" dictionaryally means "one or some or all". In Black's Law Dictionary it is explained thus, "word "any" has a diversity of meaning and may be employed to indicate "all" or "every" as well as "some" or "one" and its meaning in a given statute depends upon the context and the subject-matter of the statute. The use of the word "any" in the context it has been used in clause (d) indicates from one to all."

12. When the question was raised whether the medical profession will be covered by the provisions of the Consumer Protection Act, the Supreme Court answered the same in the affirmative. While doing so, the Supreme Court reversed the judgment of this Court. In Indian Medical Association v. V.P. Shantha, (1994) 2

CTJ 969 (SC) : 1995 (6) SC 651 the Supreme Court has held that the applicability of the Consumer Protection Act cannot be questioned on the ground that the medical practitioners are subject of disciplinary control under Medical Council Act, 1956. The contention similar to the one, put forward before us, was urged before the Supreme Court and negatived. It is useful to refer to the following passages in the judgment of the Supreme Court which are relevant for the purpose of this case :

"It has been urged that medical practitioners are governed by the provisions of the Indian Medical Council Act, 1956 and the code of Medical Ethics made by the Medical Council of India, as approved by the Government of India u/s 3 of the Indian Medical Council Act, 1956 which regulates their conduct as members of the medical profession and provides for disciplinary action by the Medical Council of India and/or State Medical Council against a person for professional misconduct."

xxx xxx xxx xxx xxx xxx xxx xxx 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 specialised 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.

The learned authors have stated that during the twentieth century, an increasing number of occupations have been seeking and achieving "professional" status and that this has led inevitably to some blurring of the features which traditionally distinguish the professions from other occupations. In the context of the law relating to "Professional" Negligence, the learned authors have accorded professional status to seven specific occupations, namely, (i) architects, engineers and quantity surveyors, (ii) surveyors, (iii) accountants, (iv) solicitors, (v) barristers, (vi) medical practitioners, and (vii) insurance brokers. (See : Jackson and Powell on Professional Negligence, paras 1.01 and 1.03, 3rd Edn."

xxx xxx xxx xxx xxx xxx xxx xxx Immunity from suit was enjoyed by certain professionals on the grounds of public interest. The trend is towards narrowing of such immunity and it is no longer available to architects in respect of certificates negligently given and to mutual valuers. Earlier, barristers were enjoying complete immunity but now even for them the field is limited to work done in Court and to a small category of pre-trial work which is directly related to what

transpires in Court. [See : Jackson and Powell, para 1.66; Saif Ali v. Sidney Mitchell & Co., (1980) 1 App. Cas. 198; Rees v. Sinclair (1974) 1 NZLR 188. Giannarelli v. Wraith (1988) 81 ALR 417. Medical practitioners do not enjoy an immunity and they can be sued in contract or tort on the ground that they have failed to exercise reasonable skill and care.

It would thus appear that medical practitioners, though belonging to the medical profession, are not immune from a claim for damages on the ground of negligence. The fact that they are governed by the Indian Medical Council Act and are subject to the disciplinary control of Medical Council of India and/or State Medical Councils is no solace to the person who has suffered due to their negligence and the right of such person to seek redress is not affected.

xxx xxx xxx xxx xxx xxx xxx xxx We are, therefore, unable to subscribe to the view that merely because medical practitioners belong to the medical profession they are outside the purview of the provisions of the Act and the services rendered by medical practitioners are not covered by Section 2(1)(o) of the Act.

xxx xxx xxx xxx xxx xxx xxx xxx It cannot, therefore, be said that since the members of the Consumer Disputes Redressal Agencies are not required to have knowledge and experience in medicine, they are not in a position to deal with issues which may arise before them in proceedings arising out of complaints about the deficiency in service rendered by medical practitioners."

xxx xxx xxx xxx xxx xxx xxx xxx In complaints involving complicated issues requiring, recording of evidence of experts, the complainant can be asked to approach the Civil Court for appropriate relief. Section 3 of the Act which prescribes that the provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force, preserves the right of the consumer to approach the Civil Court for necessary relief. We are, therefore, unable to hold that on the ground of composition of the Consumer Disputes Redressal Agencies or on the ground of the procedure which is followed by the said Agencies for determining the issues arising before them, the service rendered by the medical practitioners are not intended to be included in the expression "service" as defined in Section 2(1)(o) of the Act."

13. The above decision of the Supreme Court is a complete answer to the question raised by the petitioners in these matters. It is not necessary for us to add anything thereto in order to reject the contentions of the petitioners. It may also be pointed out that the validity of several provisions of the Act has been upheld by a Division Bench of this Court in the The Registrar, University of Madras and Another Vs. Union of India (UOI) and Others, to which one of us (Srinivasan, J.) was a party. Learned counsel for the petitioners submitted that the Act has been struck down as unconstitutional by the Calcutta High Court relying on a news paper report. But, it is seen from the subsequent reports in the newspapers that the said judgment has been appealed against and the appellate Bench has granted stay of operation of the order by which the single Judge

struck down the provisions of the Act. But, it is unnecessary for us to take note of the same in view of the fact that a Division Bench of this Court has upheld the validity of the provisions of the Act, we are not bound by the judgment of the Calcutta High Court.

14. In the result, all the contentions urged by the petitioners are negatived and the writ petitions are dismissed. No costs. It is needless to point out that it is open to the Advocates, in all these petitions against whom proceedings have taken before the Consumer Redressal Forum, to raise all defences available to them in law excepting the question that the Advocates are not covered by the provisions of the Consumer Redressal Act.