

SLP(C) No. 3052/08 etc.

ITEM NO.66 COURT NO.10 SECTION XVII

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).3052/2008
(From the judgement and order dated 06/08/2007 in RP No. 1392/2006
of The NATIONAL CONSUMERS DISPUTES REDRESSAL COMMISSION, NEW
DELHI)

BAR OF INDIAN LAWYERS Petitioner(s)

VERSUS

D.K.GANDHI & ANR. Respondent(s)

WITH SLP(C) NO. 3053 of 2008(With Office Report)
SLP(C) NO. 11539 of 2008(With office report)
SLP(C) NO. 8786 of 2008(With prayer for interim relief and office report)

Date: 13/04/2009 These Petitions were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA
HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Petitioner(s) Mr. Anoop G. Choudhary, Sr. Adv.
Mr. Jasbir Singh Malik, Adv.
Ms. Monika Shram, Adv.
Mr. Ruchi Kaushik, Adv.
Mr. Daya Krishan Sharma, Adv.

Mr. Jasbir Singh Malik, Adv.
Mr. S.K. Sabharwal, Adv.

Mr. Preet Pal Singh, Adv.
Mr. Sanjeev Sachdeva, Adv.

For Respondent(s) In-Person (NP)

Mr. Daya Krishan Sharma, Adv.
Ms. Monika Shram, Adv.
Mr. Ruchi Kaushik, Adv.

UPON hearing counsel the Court made the following
ORDER

Leave granted in all the special leave petitions.

Printing dispensed with. The appeals shall be heard on the SLP paperbooks. Parties may file additional documents from the record, if any, within six weeks.

There shall be stay of the impugned order of the National Consumer Disputes Redressal Commission, New Delhi during the pendency of the appeals.

(Ajay Kr. Jain) (Usha Sharma)
Court Master Court Master

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1392 OF 2006

(From the order dated 10.3.2006 in Appeal No.1815/2000 of the State Commission, Delhi)

D.K. Gandhi
PS, National Institute of
Communicable Diseases,
22, Sham Nath Marg,
Delhi-110 054.

... Petitioner

Vs.

M. Mathias,
20, Dhirpur,
Nirankari Colony,
Delhi-110 009

... Respondent

BEFORE :

**HON'BLE MR. JUSTICE M.B. SHAH, PRESIDENT
MRS. RAJYALAKSHMI RAO, MEMBER**

For the Petitioner

... In Person

For the Respondent

... In Person

Dated the 6th August , 2007

ORDER

M.B.SHAH, J. PRESIDENT.

The State Commission, Delhi, by its order dated 10.3.2006 in Appeal No.1815 of 2000 held that the services rendered by the Lawyer would not come within the ambit of Section 2(1)(o) of the Consumer Protection Act, 1986, as the client executes the power of attorney authorizing the Counsel to do certain acts on his behalf and there is no term of contract as to the liability of the lawyer in case he fails to do any such act. The State Commission further observed that it is a unilateral contract executed by the client giving authority to the lawyer to appear and represent the matter on his behalf without any specific assurance or undertaking.

Against that order the Complainant has preferred this Revision Petition.

Findings:

In our view, the reasoning given by the State Commission is totally erroneous. The ambit and scope of Section 2(1)(o) of the Consumer Protection Act which defines 'service' is very wide and by this time well established. It covers **all services** except rendering of services free of charge or a contract of personal service. Undisputedly, lawyers are rendering service. They are charging fees. It is not a contract of personal service. Therefore, there is no reason to hold that they are not covered by the provisions of the Consumer Protection Act, 1986. The State Commission approached the question totally in an erroneous manner by holding that by executing power of attorney the client authorizes the Lawyer to do certain acts on his behalf and there is no term of contract as to the liability of the lawyer in case he fails to do such act. It is to be stated that a Lawyer may not be responsible for the favourable outcome of a case as the result/out come does not depend upon only on lawyers' work. But, if there is deficiency in rendering services promised, for which consideration in the form of fee is received by him, then the lawyers can be proceeded against under the Consumer Protection Act. Further, it is totally erroneous to hold that it is a unilateral contract executed by the client by giving authority to the lawyer to appear and represent the matter. Apparently, it is a bilateral contract between the client and the lawyer, and, that too, on receipt of fees, lawyer would appear and represent the matter on behalf of his client. To hold that contract is unilateral is to ignore the fact that even after discussion the client may not engage the Advocate or the Advocate may refuse to accept the brief. Hence, such a contract can never be said to be unilateral.

Further, it is not necessary to refer to judgments on this well settled law, still, we would refer to the case of Lucknow Development Authority v. M.K. Gupta, (1994) 1 SCC 243 , at pages 254-255, wherein the Apex Court observed as under:

“The concept of service thus is very wide. How it (the concept of 'service') should be understood and what it means, depends on the context in which it has been used in any enactment. Clause (o) of the definition section defines it as under:

“ '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, board 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;”

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' dictionarily 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 (o) indicates that it has been used in wider sense extending from one to all.**

The Court held that the importance of the Act lies in promoting welfare of the society inasmuch as it attempts to remove the **helplessness of a consumer as he faces against powerful business; “producers have secured power” to “rob the rest”**. **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 and shocked.**

To what extent the aforesaid observations apply to various professions in the country is to be imagined and it is a matter of guess work.

Thereafter in the case of Indian Medical Association v. V.P. Shantha and Others - 1995 (6) SCC 651 the Apex Court discussed whether medical practitioner would be covered by the said definition. For this purpose, it was observed that **in the matter of professional liability, professions differ from other occupations for the reason that professions operate 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. If there is negligence on the part of medical practitioner, the right of affected person to seek redress would be covered by the Act. Medical practitioners would not be outside the purview of the provisions of the Act.

The same principle would apply in case of service to be rendered by a lawyer.

Lastly, in Kishore Lal vs. Chairman, Employees' State Insurance Corpn. (2007) 4 SCC 579 the Apex Court observed:

“It has been held in numerous cases of this Court that jurisdiction of the Consumer Fora has to be construed liberally so as to bring many cases under it for their speedy disposal. The Act being a beneficial legislation, it should receive a liberal construction”.

Finally in the case of Jacob Mathew vs. State of Punjab – (2005) 6 SCC 1 (para 18) the Apex Court has held that in law of negligence, professionals such as lawyers, doctors, architects and others are included in the category of persons professing some special skill or skilled persons generally and a professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess.

Further, this Commission has taken a consistent view that if there is deficiency in service rendered by the Lawyers, complaint under the Consumer Protection Act, 1986 is maintainable.

For the reasons stated above, the impugned order passed by the State Commission is set aside and the matter is remitted to the State Commission for deciding the same

on merits in accordance with law. The Appeal stands allowed accordingly. There shall be no order as to costs.

Sd/-
.....**J.**
(M.B.SHAH)
PRESIDENT

Sd/-
.....
(RAJYALAKSHMI RAO)
MEMBER