

THE SUPREME COURT RULES THAT THE SERVICES RENDERED BY ADVOCATES DO NOT FALL UNDER THE PURVIEW OF THE CONSUMER PROTECTION ACT, 1986

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The Supreme Court in a landmark judgment impacting the legal profession overruled the National Consumer Dispute Redressal Commission's ("NCDRC") 2007 judgment¹ passed in the revision application and held that legal representation for a fee cannot be classified as 'service' under section 2(o) of the Consumer Protection Act, 1986 ("the C.P. Act"), and as such Advocates cannot be covered under the purview of the C.P. Act.

The Bench comprising Hon'ble Ms. Justice Bela Trivedi and Hon'ble Mr. Justice Pankaj Mithal drew a distinction between professionals and individuals engaged in business or trade or a service provider of products or goods. The Court held that a profession requires skill and intellectual work in a specialized sphere, where actual success is beyond one's control and therefore it cannot be treated at par with business or trade. Although the Advocates cannot be governed under the C.P Act, the Court clarified that professionals governed by their respective Councils like Bar Councils or Medical Councils would not absolve them from their civil or criminal liability arising from their professional misconduct.

WHAT HAD THE NATIONAL CONSUMER DISPUTE REDRESSAL COMMISSION HELD?

In the impugned judgment of NCDRC, it was held that Advocates cannot be held responsible for the propitious outcome in a case. However, if there are shortcomings in the services, for which the Advocate receives compensation in the form of a fee, then the client can proceed against the Advocate under the C.P. Act.

1. D.K Gandhi PS vs. M. Mathias (2007) SCC Online NCDRC 55

SUPREME COURT'S VIEW ON THE SUBJECT

The first question that was discussed by the Court was whether the Legislature ever intended to encompass the services provided by professionals under the scope of the Act.

While referring to a catena of judgments, the Court held that neither the statement of objects and reasons of the C.P Act of 1986 nor its 2019 re-enactment made any mention of including professions or services provided by professionals such as Advocates or doctors within the purview of the C.P. Act. The very purpose of the C.P. Act since its enforcement was to provide protection to consumers from unfair trade practices and unethical business practices only. It is widely acknowledged that professionals cannot be equated to businessmen or traders, and clients or patients cannot be classified as consumers.

The Court further clarified that being governed by bodies like Bar Councils or Medical Councils does not exempt professionals from liability for misconduct. While professionals can be sued for their actions, the Supreme Court's has taken a view that neither professions nor professionals were meant to fall under the Consumer Protection Act of 1986 or its 2019 re-enactment.

The Court further referred to the landmark judgment of the three-judge bench of the Hon'ble Supreme Court in *Indian Medical Association v VP Shantha*² that was relied upon by the NCDRC in its impugned judgement. It was held in the judgement that the wide amplitude of the definition of 'service' in the main part of Section 2(1)(o) would cover the services rendered by Medical Practitioners. However, the Court opined that the question dealt with in the aforesaid judgment should be revisited in the light of the object and scheme of the C.P Act and accordingly, referred the same to a larger bench.

The second question that came up for consideration was whether the legal profession is *sui-generis* or not.

The Court has expressed that the conduct of advocates impacts not just individuals but the entire justice system, which is the foundation of civilised society.

Considering the role, status, and responsibilities of Advocates as professionals, the Court held that the legal profession is *sui generis* i.e. unique in nature and incomparable to any other profession.

Therefore, the court clarified that even if the C.P Act is applicable to 'Professionals' and 'Professions' it won't be applicable to the Legal Profession.

Lastly, the Court deliberated on whether the engagement of an Advocate's services could be classified as a 'contract of personal service'

The definition of services in Section 2(1)(o) of the C.P. Act excludes rendering of any service free of charge or under a contract of personal service. The Court referred to *Dharangadhra Chemical Works Ltd. vs. State of Saurashtra and Others*³ wherein the method to classify the relationship as a contract 'for services' as opposed to a contract 'of service' (i.e. contract 'of personal service') was held to be an assessment of whether the nature of work involved due control and supervision exercised by the employer.⁴

Advocates represent clients in Courts and conduct proceedings on their behalf. Before taking any action or making statements that could impact the client's legal rights, the Advocate must seek appropriate instructions from the client. This direct control exercised by the client over the Advocate led the Court to determine that the services engaged or obtained from an advocate fall under a "contract of personal service" and are thus excluded from the definition of "service" as outlined in Section 2(42) of the C.P. Act.

3. AIR 1957 SC 264

4. Paragraph 38, SLP No. 3052/2008

CONCLUSION

The Court determined that the services provided by Advocates lie beyond the purview of the Consumer Protection Act. The Hon'ble Supreme Court set aside the judgment passed by the NCDRC that held that Advocates³ cannot be held liable under the C.P Act for any deficiency in their services.



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