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Citizen consumer and civic Action Group

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June 12, 2024

Ms. Nidhi Khare  
Secretary  
Department of Consumer Affairs  
Government of India  
Krishi Bhavan, New Delhi 110001

Dear Madam,

**Sub: Supreme Court Judgement on “Bar of Indian Lawyers v/s D K Gandhi National Institute” – in the interest of consumers – DoCA intervention requested**

Greetings from Citizen consumer and civic Action Group (CAG)!

As you know, CAG is a 38-year-old non-profit organization based in Chennai, that works towards protecting citizens' rights in consumer, civic and environmental issues, and promoting good governance processes, including transparency, accountability and participatory decision making.

We write this in relation to the judgement of the Hon'ble Supreme Court, dated May 14, 2024 in the matter as mentioned in the subject above, where the Court has observed that advocates will not come within the ambit of the Consumer Protection Act.

Para 18 of the judgement states that “we are therefore of the considered opinion that the very purpose and object of the CPA, 1986 as re-enacted in 2019 was to provide protection to the consumers from the unfair trade practices and un-ethical business practices **ONLY**. There is nothing on record to suggest that the legislature ever intended to include the Professions or the Professionals within the purview of the Act”. The same has been reiterated in para 20 of the judgement. CAG was actively involved in the consultations while the Consumer Protection Act was being framed, and we strongly disagree with these observations made by the Hon'ble Court, as it was not so.

On carefully going through the judgement, we find that there are no fresh grounds/ objections in this judgement, other than those already raised and decided in the IMA vs V P Shantha case. All the grounds and objections under consideration in this judgement were already dealt with in depth by the larger Bench in the IMA vs V P Shantha case, and were discussed and reaffirmed subsequently by several other Benches of the Hon'ble Supreme Court.

It is surprising that the Union of India was not made a party in this matter, though the Bench was considering “statutory interpretations” and “legislative intent”. The Court, without any evidence, has presumed that the legislative intent was to exclude Professionals from the purview of the Consumer Protection Act. The Consumer Protection Act does not explicitly exclude Professions or Professionals from the definition of “Service”, as can be noted from the number of complaints and appeals against advocates that were pending before various Commissions and the Supreme Court, awaiting the Supreme Court's verdict on its maintainability. The grounds relied on by the Bench in deciding the legislative intent are far from convincing.

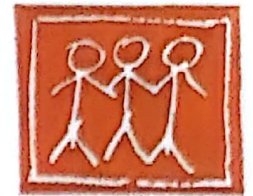
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The Supreme Court, in many of its earlier judgements, has observed that a socio-benevolent legislation like the Consumer Protection Act needs liberal interpretation, and has gone on to expand the scope and ambit of the Consumer Protection Act, for the benefit of affected consumers. Contrarily, this judgement restricts not only the scope and ambit of the Act, but also its spirit and legislative intent, as it has an effect of dismissing all complaints and appeals against Advocates, as well as other Professionals, pending in various Consumer Commissions in the country, relegating the complainants to unaffordable and time-consuming civil remedy. The fear expressed by the Hon'ble Bench about opening of the flood gates of complaints against Advocates is, in fact, a factor which should have persuaded it to hold that the Advocates are bound to be made liable to their clients under the Consumer Protection Act, which provides for easy and speedy remedy.

This judgement has, in one stroke, over-ruled or disregarded several landmark judgements of the various Benches of the Hon'ble Supreme Court, a few of which are given below:

IMA vs V P Shantha

Lucknow Development Authority vs M K Gupta

Springmeadows Hospital vs Harjyot Ahluwalia

Secretary, Thirumurugan Credit Coop. Society vs M Lalitha

Dr J. J. Merchant vs Shrinath Chaturvedi

State of Karnataka vs Vishwabharati House Building Co-op Society

We honestly believe that the said judgement will have serious repercussions and will set a wrong precedent. This judgement, if not reversed or nullified soon, will defeat the very objective of the Consumer Protection Act, of better protection of consumers.

Instead of re-visiting the IMA v/s VP Shantha judgement by constituting a larger Bench, as suggested by the Bench to the Hon'ble Chief Justice of India, there is an urgent need to re-visit this judgement which contains errors and judicial improprieties. It should either be reversed or nullified in the wider consumer interest, and there is an urgent need to undo the damage it has caused to the consumer movement.

In this regard, we request the DoCA to seriously consider:

1. Filing a Review Petition – before the Supreme Court of India, under Article 137 of the Constitution of India, and also seek immediate stay on this judgement pending the outcome of the Review Petition
2. Amending the definition of “Service” under the Consumer Protection Act – by introducing a clarification. Notwithstanding the filing of the Review Petition and outcome thereof, we suggest taking urgent steps to amend the definition of “Service” under the Consumer Protection Act, 2019 by adding an explanatory note at the end.

*The Definition of “Service”, after the amendment, shall read as follows: “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 purveying of news or other information, but does not include rendering of any service free of charge or under a contract of personal service; Explanation: For the purpose of this sub-clause ‘contract of personal service’ does not include any contract (written or unwritten) between a consumer and any professional like doctor, advocate, chartered accountant etc.*



Since the matter is extremely urgent, it would be appropriate and expedient to issue an Ordinance to effect this amendment.

We earnestly request you to take urgent steps as above in order to protect the wider consumer interest and prevent distortion of the Consumer Protection Act, 2019.

We look forward to your prompt action on the matter, please.

Thank you.

Regards,

S. Saroja  
Executive Director

CC: Mr. Anupam Mishra  
Joint Secretary, and Chairperson, CCPA  
Department of Consumer Affairs  
Government of India  
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Encl.: The SC Judgment in 'Bar of Indian Lawyers v/s D K Gandhi PS National Institute'