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C. VENKATACHALAM

v.

AJITKUMAR C. SHAH AND OTHERS

(Civil Appeal No. 868 of 2003)

B

AUGUST 29, 2011

**[DALVEER BHANDARI DR. MUKUNDAKAM SHARMA
AND ANIL R. DAVE, JJ.]**

C

Consumer Protection Act, 1986:

*Historical perspective of the consumer movement –
Discussed.*

D

Appearance before consumer fora by “authorised agent” – Permissibility – Whether authorized agents, who are not advocates, can file complaints and represent persons before the Consumer fora as a lawyer and whether this would not violate the Advocates Act – Held: The appearance of authorized agents is not inconsistent with s.33 of the Advocates Act – The legislature in its wisdom has granted

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permission to the authorized agents because most of the cases before the Consumer Forums are small cases of relatively poor people where legal intricacies are not involved and great legal skills are not required, which may be handled by the authorized agents – The other reason is that a large

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number of litigants may not be able to afford heavy professional fees of trained advocates, therefore, authorized agents have been permitted – The agents have been permitted to appear to accomplish the main object of the act of disposal of consumers’ complaints expeditiously with no

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costs or small costs – The High Court was fully justified in observing that the authorised agents do not practise law when they are permitted to appear before the District Forums and the State Commissions – The legislature has given an option to the parties before the Consumer Forums to either

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personally appear or be represented by an 'authorized agent' or by an advocate, then the court would not be justified in taking away that option or interpreting the statute differently – The functioning, conduct and behaviour of authorized agents can always be regulated by the Consumer Forums – When the legislature has permitted authorized agents to appear on behalf of the complainant, then the courts can't compel the consumer to engage the services of an advocate –Advocates Act, 1961 – s.33.

Rules for regulation of practice by agents, representatives, registered organizations and/or non-advocates before consumer fora – Held: In order to ensure smooth, consistent, uniform and unvarying functioning of the National Commission, the State Commissions and the District Forums, direction issued to the National Commission to frame comprehensive rules regarding appearances of the agents, representatives, registered organizations and/or non-advocates appearing before the National Commission, the State Commissions and the District Forums governing qualifications, conduct and ethical behaviour of agents/non-advocates/representatives, registered organizations and/or agents appearing before the consumer forums.

Advocates – Appearance by non-advocate representative before authorities and forums – Permissibility – Held: Many statutes and Acts in India permit non-advocates to represent the parties before the authorities and forums – In other jurisdictions also, non-advocates are permitted to appear before quasi-judicial fora or subordinate courts – In most of these jurisdictions, specific rules have been framed for the regulation of qualifications, conduct and ethical behaviour of the non-advocates appearing in these fora – In most jurisdictions, the statutes or court rules impose some form of restrictions on appearances of non-advocate representatives in quasi-judicial fora or subordinate courts – Restrictions on non-advocates agents vary significantly in

A *terms of their specificity, but most forums have rules granting them some discretion in admitting or refusing the appearance of a non-advocate representative.*

B In the instant appeals, the issue which arose for consideration was whether authorized agents, who are not advocates, can file complaints and represent persons before the Consumer fora as a lawyer and whether this would not violate the Advocates Act, 1961.

C The appellants contended that ordinarily the right to practise has been given only to advocates who are enrolled with the Bar Council of a State. Placing reliance on provisions of the Advocates Act, 1961, as also international law and conventions, the appellants contended that only advocates can act, plead and argue before the Consumer Forums and that the agents have no legal training to handle complicated legal matters pertaining to consumers and hence they cannot be permitted to practise law before the Consumer Forums.

E The High Court vide the impugned judgment held that a party before the District Consumer Forum/State Commission cannot be compelled to engage services of an advocate and also that the right of audience inheres in favour of authorized agents of the parties in the proceedings before the District Consumer Forum and the State Commission and such right is not inconsistent or in conflict with the provisions of the Advocates Act, 1961.

Dismissing the appeals, the Court

G HELD:

Historical perspective of the consumer movement

1.1. The consumer movement had primarily started in the West. The organized English consumer movement

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started after the Second World War. The Labour Party for the first time gave slogan of "battle for the consumers" in Parliament. In the decade of 1960, number of legislations were introduced in Britain for the protection of the consumers. The consumer movement in the United States of America developed in the beginning of the 19th century. Subsequently, the General Assembly of the United Nations adopted a set of general guidelines for consumer protection and the Secretary General of the United Nations was authorized to persuade member countries to adopt these guidelines through policy changes or law. These guidelines constitute a comprehensive policy framework outlining what governments need to do to promote consumer protection in following seven areas: Physical safety; Protection and Promotion of the consumer economic interest; Standards for the safety and quality of consumer goods and services; Distribution facilities for consumer goods and services; Measures enabling consumers to obtain redress; Measures relating to specific areas (food, water and pharmaceuticals); and Consumer education and information programme. Though not legally binding, the guidelines provide an internationally recognized set of basic objectives particularly for governments of developing and newly independent countries for structuring and strengthening their consumer protection policies and legislations. These guidelines were adopted recognizing that consumers often face imbalances in economic terms, educational levels and bargaining power and bearing in mind that consumers should have the right of access to non hazardous products as well as the importance of promoting just, equitable and sustainable economic and social development. [Paras 23, 27, 28, 33, 34] [836-A; 837-A-C; 839-E-H; 840-A-D]

A Indian perspective

1.2. It was in this background that the Indian Parliament had enacted the Consumer Protection Act, 1986. The declared objective of the statute was “to provide for better protection of the interests of consumers.” It seeks to provide a speedy and inexpensive remedy to the consumer. The Consumer Protection Act, 1986 is one of the benevolent social legislations intended to protect the large body of consumers from exploitation. The Act has come as a panacea for consumers all over the country and is considered as one of the most important legislations enacted for the benefit of the consumers. The Consumer Protection Act, 1986 provides inexpensive and prompt remedy. The Consumer Protection Act, 1986 is dedicated, as its preamble shows, to provide for effective protection of the rights of the consumers. According to the Statement of Objects and Reasons, it seeks to provide speedy and simple redressal to consumer disputes. The object of the Act is to render simple, inexpensive and speedy remedy to the consumers with complaints against defective goods and deficient services and for that a quasi-judicial machinery has been sought to be set up at the District, State and Central levels. The Consumer Protection Act has come to meet the long-felt necessity of protecting common man from wrongs for which the remedy under the ordinary law for various reasons has become illusory. The Consumer Protection Act, 1986 was amended in the years 1991, 1993 and in 2002 to make it more effective and purposeful. To effectuate this objective, a provision has been made in Chapter II of the Act for the constitution of ‘the Central Consumer Protection Council’ and ‘the State Consumer Protection Councils.’ The purpose as indicated in section 6 is to “promote and protect the rights of consumers” against the “marketing of goods and services which are

hazardous to life and property; the right to be informed A
about the quality, quantity, potency, purity, standard and
price of goods or services, as the case may be, so as to
protect the consumer against unfair trade practices; the
right to be assured, wherever possible, access to a B
variety of goods and services at competitive prices; the
right to be heard and to be assured that consumer's
interests will receive due consideration at appropriate
Forums; the right to seek redressal against unfair trade
practices or restrictive trade practices or unscrupulous
exploitation of consumers and the right to consumer C
education." A perusal of Chapter II clearly shows that the
statute seeks to protect the 'consumer' of goods and
services in every possible way. It aims at providing a
speedy and inexpensive remedy. Any interpretation of
the provisions of the 1986 Act and the rules framed D
thereunder must promote this objective of the enactment.
In furtherance of the declared objective of protecting the
consumer against exploitation as well as providing an
inexpensive and speedy remedy, the competent authority
has framed Rules which enable the party to appear either E
personally or through an 'agent'. [Paras 35 to 41] [840-E-
H; 841-A-H; 842-A-B]

Harishankar Rastogi v. Girdhari Sharma and Another
(1978) 2 SCC 165: 1978 (3) SCR 493 – referred to.

Carlill v. Carbolic Smoke Ball Company 1893 (1) Q.B.
256; *Donoghue v. Stevenson* (1932) A.C. 562 and *Donald*
C. MacPherson v. Buick Motor Company 217 N.Y. 382, 111
N.E. 1050 – referred to.

O.N. Mohindroo v. The Bar Council of Delhi and Others
1968 (2) SCR 709 – cited.

Article on "Consumer Movement" by Paul S. Boyer
[Oxford Companion to United States History, 2001] –
referred to.

A Legislative intention

B 2.1. The agents have been permitted to appear before the Consumer Forums. The appearance of authorized agents is not inconsistent with section 33 of the Advocates Act, 1961. The legislature in its wisdom has granted permission to the authorized agents because most of the cases before the Consumer Forums are small cases of relatively poor people where legal intricacies are not involved and great legal skills are not required, which may be handled by the authorized agents. The other reason is that a large number of litigants may not be able to afford heavy professional fees of trained advocates, therefore, authorized agents have been permitted. It is the bounden duty and obligation of the Court to carefully discern the legislative intention and articulate the same.

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D In the instant case one is not really called upon to discern legislative intention because there is specific rule defining the agents and the provisions of permitting them to appear before the Consumer Forums. The agents have been permitted to appear to accomplish the main object of the act of disposal of consumers' complaints expeditiously with no costs or small costs. [Paras 79 to 82] [854-B-F]

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F 2.2. The High Court was fully justified in observing that the authorised agents do not practise law when they are permitted to appear before the District Forums and the State Commissions. In the impugned judgment the High Court aptly observed that many statutes, such as, Sales Tax, Income Tax and Competition Act also permit non-advocates to represent the parties before the authorities and those non-advocates cannot be said to practise law. On the same analogy those non-advocates who appear before Consumer fora also cannot be said to practise law. [Paras 83, 84] [854-G-H; 855-A-B]

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2.3. The legislature has given an option to the parties before the Consumer Forums to either personally appear or be represented by an 'authorized agent' or by an advocate, then the court would not be justified in taking away that option or interpreting the statute differently. [Para 85] [855-B-C]

2.4. The functioning, conduct and behaviour of authorized agents can always be regulated by the Consumer Forums. When the legislature has permitted authorized agents to appear on behalf of the complainant, then the courts can't compel the consumer to engage the services of an advocate. [Paras 86, 87] [855-D-E]

R.M.D. Chamarbaugwalla and Another v. Union of India and Another AIR 1957 SC 628; *Anandji Haridas & Company Private Limited v. Engineering Mazdoor Sangh and Another* (1975) 3 SCC 862: 1975 (3) SCR 542; *Kartar Singh v. State of Punjab* (1994) 3 SCC 569: 1994 (2) SCR 375; *District Mining Officer and Others v. Tata Iron and Steel Company and Another* (2001) 7 SCC 358: 2001 (1) Suppl. SCR 147; *Bhatia International v. Bulk Trading S.A. and Another* (2002) 4 SCC 105: 2002 (2) SCR 411; *Lucknow Development Authority v. M.K. Gupta* (1994) 1 SCC 243: 1993 (3) Suppl. SCR 615; *Laxmi Engineering Works v. P.S.G. Industrial Institute* (1995) 3 SCC 583: 1995 (3) SCR 174; *Indian Photographic Company Limited v. H.D. Shourie* (1999) 6 SCC 428: 1999 (1) Suppl. SCR 9; *Dr. J.J. Merchant and Others v. Shrinath Chaturvedi* (2002) 6 SCC 635: 2002 (1) Suppl. SCR 469; *Common Cause, A Registered Society v. Union of India and others* (1997) 10 SCC 729: 1993 (1) SCR 10 – referred to.

Blackstone's Commentaries on the Laws of England, Vol. I, 2001; Edited by Wayne Morrison.

3. The National Commission being aware of a

- A possibility of misuse of the right by an agent had framed Regulation 30-A of the Consumer Protection Act, 1986, wherein certain restrictions on the right of audience and also certain precautions to rule out any misuse of liberty granted has been taken by way of framing Regulation 16.
- B Clauses 6 and 7 of Regulation 16 were enacted for providing proper guidelines and safeguards for regulating appearance and audience of the agents. The aforesaid regulation is a reasonable restriction on the right to appear by an agent. Such reasonable restrictions
- C as provided for are to be strictly adhered to and complied with by the Consumer Forum hearing cases under the Consumer Protection Act so as to rule out any misuse of the privilege granted. In terms of the said regulation and other regulations as provided and framed by the
- D National Commission and as approved by the Parliament of India, the Consumer Forum has the right to prevent an authorized agent to appear in case it is found and believed that he is using the said right as a profession. The Consumer Forums being empowered with such
- E Regulations would be in a position to judge whether the agent appearing before it is in any manner exercising such privileges granted for any ulterior purpose. [Paras 88, 89] [855-F; 856-C-E]

4. Many statutes and Acts in India permit non-
- F advocates to represent the parties before the authorities and forums. In other jurisdictions also, non-advocates are permitted to appear before quasi-judicial fora or subordinate courts. In most of these jurisdictions, specific rules have been framed for the regulation of
- G qualifications, conduct and ethical behaviour of the non-advocates appearing in these fora. In most jurisdictions, the statutes or court rules impose some form of restrictions on appearances of non-advocate
- H representatives in quasi-judicial fora or subordinate courts. Restrictions on non-advocates agents vary

significantly in terms of their specificity, but most forums have rules granting them some discretion in admitting or refusing the appearance of a non-advocate representative. [Paras 90, 91 and 92] [856-F-H; 857-A-D] A

Directions

5.1. In order to ensure smooth, consistent, uniform and unvarying functioning of the National Commission, the State Commissions and the District Forums, it is deemed appropriate to direct the National Commission to frame comprehensive rules regarding appearances of the agents, representatives, registered organizations and/or non-advocates appearing before the National Commission, the State Commissions and the District Forums governing their qualifications, conduct and ethical behaviour of agents/non-advocates representatives, registered organizations and/or agents appearing before the consumer forums. [Para 109] [862-B-C] B C D

The National Commission may consider following suggestions while framing rules E

5.2. The Commission may consider non-advocates appearing without accreditation - A party may appoint a non-advocate as its representative provided that the representative – F

- (1) is appearing on an individual case basis
- (2) has a pre-existing relationship with the complainant (e.g., as a relative, neighbour, business associate or personal friend) G
- (3) is not receiving any form of direct or indirect remuneration for appearing before the Forum and files a written declaration to that effect H

- A (4) demonstrates to the presiding officer of the Forum that he or she is competent to represent the party.

Accreditation Process

- B (a) The National Commission may consider creating a process through which non-advocates may be accredited to practice as representatives before a Forum.
- C (b) Non-advocates who are accredited through this process shall be allowed to appear before a Forum on a regular basis
- (c) The accreditation process may consist of –
- D (1) an written examination that tests an applicant's knowledge of relevant law and ability to make legal presentations and arguments
- E (2) an inspection of the applicant's educational and professional background
- (3) an inspection of the applicant's criminal record
- F (d) the National Commission may prescribe additional requirements for accreditation at its discretion provided that the additional requirements are not arbitrary and do not violate existing law or the Constitution.
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Fees

- (a) A representative who wishes to receive a fee must file a written request before the Forum
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- (b) The presiding officer will decide the amount of the fee, if any, a representative may charge or receive A
- (c) When evaluating a representative's request for a fee, the presiding officer may consider the following factors : B
 - (1) the extent and type of services the representative performed
 - (2) the complexity of the case C
 - (3) the level of skill and competence required of the representative in giving the services
 - (4) the amount of time the representative spent on the case; and D
 - (5) the ability of the party to pay the fee
- (d) If a party is seeking monetary damages, its representative may not seek more a fee of more than 20% of the damages E

Code of Conduct for representatives

- The National Commission to create a code of conduct which would apply to non-advocates, registered organizations and agents appearing before a Forum. F

Disciplinary Powers of a Forum

- (a) The presiding officer of a Forum may be given specific power to discipline non-advocates, agents, authorized organizations and representatives for violating the code of conduct or other behaviour that is unfitting in a Forum G
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- A (a) In exercising its disciplinary authority, the presiding officer may –
- (1) revoke a representative's privilege to appear before the instant case
- B (2) suspend a representative's privilege to appear before the Forum
- (3) ban a representative from appearing before the forum
- C (4) impose a monetary fine on the representative [Para 110] [862-D-H; 863-A-H; 864-A-H]

5.3. The National Commission is directed to frame comprehensive Rules as expeditiously as possible, in any event, within three months from the date of communication of this order. The copy of this judgment be sent to the National Commission. [Para 111] [865-A]

E Case Law Reference:

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|-----------------------------|-------------|-------------|
| 1968 (2) SCR 709 | cited | Para 20 |
| 1978 (3) SCR 493 | referred to | Para 21, 52 |
| 1893 (1) Q.B. 256 | referred to | Para 23 |
| F (1932) A.C. 562 | referred to | Para 25 |
| 217 N.Y. 382, 111 N.E. 1050 | referred to | Para 28 |
| AIR 1957 SC 628 | referred to | Para 58 |
| G 1975 (3) SCR 542 | referred to | Para 59 |
| 1994 (2) SCR 375 | referred to | Para 60 |
| 2001 (1) Suppl. SCR 147 | referred to | Para 61 |
| H 2002 (2) SCR 411 | referred to | Para 62 |

C. VENKATACHALAM v. AJITKUMAR C. SHAH AND 827
ORS.

1993 (3) Suppl. SCR 615	referred to	Para 74	A
1995 (3) SCR 174	referred to	Para 75	
1999 (1) Suppl. SCR 9	referred to	Para 76	
2002 (1) Suppl. SCR 469	referred to	Para 77	B
1993 (1) SCR 10	referred to	Para 78	

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 868
of 2003.

From the Judgment & Order dated 04.09.2002 of the High C
Court of Judicature at Bombay in Writ Petition No. 1425 of
2002.

WITH

C.A. Nos. 869-870 of 2003. D

J.L. Gupta, Santosh Paul, Arvind Gupta, K.K Bhat, Meera
Mathew (for M.J. Paul), Sanjeev Sachdeva, Pree Pal Singh,
Vibhu Verma for the Appellant.

Bharat Sangal, Vernica Tomar, Alka Singh for the E
Respondents.

The Judgment of the Court was delivered by

DALVEER BHANDARI, J. 1. These appeals emanate F
from the judgment dated 4.9.2002 delivered by the Division
Bench of the Bombay High Court in Writ Petition Nos. 1147
and 1425 of 2002. We propose to dispose of these appeals
by a common judgment because same questions of law are
involved in these appeals. G

BRIEF FACTS:

2. A complaint bearing no.428 of 2000 of alleged
deficiency in service was filed before the South Mumbai District H

- A Consumer Disputes Redressal Forum, Mumbai (for short, Consumer Forum) against the two tour operators. During the pendency of the complaint, applications were filed by the opposite parties contending that the authorized agent should not be granted permission to appear on behalf of the complainants as he was not enrolled as an Advocate. The Consumer Forum considered the applications and held that the authorized agent had no right to act and plead before the Consumer Forum as he was not enrolled as an advocate.

3. In complaint bearing no.167 of 1997 filed before the Consumer Forum, the majority expressed the view that the authorized agents have a right to file, act, appear, argue the complaint to its logical conclusion before the Consumer Agencies. The issue was taken to the State Consumer Disputes Redressal Commission (for short, State Commission) which stayed the hearing of the matters in which authorized agents were appearing and refused to grant stay where authorized agents were enjoined from appearing before the Consumer Forum. As a result, the proceedings in a large number of cases where the authorized agents were appearing had come to standstill.

4. The interim order passed by the State Commission was challenged in two writ petitions before the Bombay High Court. The petitions were allowed by the Division Bench. The High Court held that the Consumer Fora constituted under the Consumer Protection Act, 1986 have "trappings of a civil court" but "are not civil courts within the meaning of the provisions of the Code of Civil Procedure."

5. The High Court in the impugned judgment held that a party before the District Consumer Forum/State Commission cannot be compelled to engage services of an advocate.

6. The High Court further held that the Act of 1986 is a special piece of legislation for the better protection of the interests of consumers. The Act has been enacted to give

succour and relief to the affected or aggrieved consumers quickly with nil or small expense. The Consumer Forum created under the Act of 1986 is uninhibited by the requirement of court fee or the formal procedures of court – civil or criminal.....any recognized consumers Association can espouse his cause.....Even the Central Government or State Governments can act on his/their behalf...restrictive meaning shall not be consistent with the objectives of the Act of 1986...The right to appear, therefore, includes right to address the Court, examining, cross-examining witnesses, oral submissions etc..

7. The Division Bench also held that the right of audience inheres in favour of authorized agents of the parties in the proceedings before the District Consumer Forum and the State Commission and such right is not inconsistent or in conflict with the provisions of the Advocates Act, 1961.

8. The Division Bench also observed that the right of an advocate to practise is not an absolute right but is subject to other provisions of the Act. According to the Division Bench, permitting the authorized agents to represent parties to the proceedings before the District Forum/State Commission cannot be said to practise law.

9. The Division Bench also held that there are various statutes like Income Tax Act, Sales Tax Act and the Monopolies and Restrictive Trade Practices Act which permit non-advocates to represent the parties before the authorities under those Acts and those non-advocates appearing before those Forums for the parties cannot be said to practise law. The Rules of 2000 framed under Act of 1986 permit authorized agents to appear for the parties and such appearance of authorized agents cannot be said to be inconsistent with section 33 of Advocates Act.

10. The Division Bench also dealt with the disciplinary aspect of the matter and held that if authorized agent appearing for the party to the proceedings misbehaves or exhibits violent

- A behaviour or does not maintain the decency and decorum of the District Forum or State Commission or interferes with the smooth progress of the case then it is always open to such District Forum or State Commission to pass an appropriate order refusing such authorized agent the audience in a given case.
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11. These appeals have been preferred before this court against the impugned judgment.

- C 12. A two-judge Bench of this Court on 21.2.2007 referred these matters to a larger Bench in view of the importance of the matter. The order dated 21.2.2007 reads as under:

- D “The basic issue involved in these appeals is whether a person under the purported cover of being an “agent” can represent large number of persons before the forums created under the Consumer Protection Act, 1986 (In short the ‘Act’) and the Rules made thereunder. According to the appellant Rule relating to agents cannot be used to by passing stipulations under the provisions of the Advocates Act, 1961 (in short the ‘Advocates Act’), more particularly under Sections 29, 31 and 32. Rule 2(b) of the Consumer Protection Rules, 1987 (in short the ‘The Rules’) defines an ‘agent’ as under:
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- F “agent means a person duly authorized by a party to present any complaint, appeal or reply on its behalf before the National Commission.”

- G Similarly, Rule 14(1) and 14(3) also deal with the acts which an agent can undertake.

- H Learned counsel for the respondents has submitted that in Civil Appeal No. 2531 of 2006 (R.D. Nagpal Vs. Vijay Dutt & Anr.) this Court has accepted the stand that even a Doctor is authorised by a party can cross examine the complainant.

So far as individual cases are concerned, it may not present difficulty. But the question is whether somebody who is not a legal practitioner, can represent large number of parties before their forums thereby frustrating objects embodied in the Advocates Act. A

It is submitted by the learned counsel for the appellants that a large number of persons who are otherwise not entitled to appear before the forums are doing so under the garb of being agents. B

As the matter is of great importance, we refer the same to a larger Bench. C

Papers may be placed before Hon'ble the Chief Justice of India so that necessary orders can be passed for placing these matters before the appropriate Bench." D

13. Hon'ble the Chief Justice of India has referred these appeals before a three judge Bench.

14. It is imperative to properly comprehend the objects and reasons of the Consumer Protection Act, 1986 in order to deal with the controversy involved in the case. E

"Statement of Objects and Reasons – The Consumer Protection Bill, 1986 seeks to provide for better protection of the interests of consumers and for the purpose, to make provisions for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and for matters connected therewith. F

2. It seeks, *inter alia*, to promote and protect the rights of consumers such as- G

(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, H

- A 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 an array of goods at competitive prices;
- B (d) the right to be heard and to be assured that consumer interests will receive due consideration at appropriate forums;
- (e) the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and
- C (f) right to consumer education.

D 3. These objects are sought to be promoted and protected by the Consumer Protection Council to be established at the Central and State level.

E 4. To provide speedy and simple redressal to consumer disputes, a quasi-judicial machinery is sought to be set-up at the district, State and Central levels. These quasi-judicial bodies will observe the principles of natural justice and have been empowered to give relief of a specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non-compliance of the orders given by the quasi-judicial bodies have also been provided.”

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G 15. Mr. Santosh Paul, learned counsel appearing for the appellants argued these appeals and also submitted the written submissions. He submitted that ordinarily right to practise has been given only to advocates who are enrolled with the Bar Council of a State. Section 29 of the Advocates Act, 1961 recognised advocates as class of persons entitled to practise the profession of law. Section 29 reads as under:

H **“29. Advocates to be the only recognized class of**

persons entitled to practice law – Subject to the provisions of this Act and any rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practise the profession of law, namely, advocates.” A

16. Section 32 of the Advocates Act, 1961 deals with the power of court to permit appearances in particular cases where court can permit any person not enrolled as an advocate. Section 32 reads as under: B

“Power of Court to permit appearances in particular cases – Notwithstanding anything contained in this Chapter, any court, authority, or person may permit any person, not enrolled as an advocate under this Act, to appear before it or him in any particular case.” C

17. Section 33 of the Advocates Act, 1961 says that no person shall, on or after the appointed day, be entitled to practise in any court or before any authority unless he is enrolled as an advocate. Section 33 reads as under: D

“Advocates alone entitled to practise – Except as otherwise provided in this Act or in any other law for the time being in force, no person shall, on or after the appointed day, be entitled to practise in any court or before any authority or person unless he is enrolled as an advocate under this Act.” E F

18. According to Mr. Paul, analysis of these provisions lead to clear conclusion that only advocates can act, plead and argue before the Consumer Forums.

19. He placed reliance on the following judgments of this court :- G

20. In *O.N. Mohindroo v. The Bar Council of Delhi and Others* 1968 (2) SCR 709, the court held as under:- H

- A "The object of the Act is thus to constitute one common Bar for the whole country and to provide machinery for its regulated functioning. Since the Act sets up one Bar, autonomous in its character, the Bar Councils set up thereunder have been entrusted with the power to regulate
- B the working of the profession and to prescribe rules of professional conduct and etiquette, and the power to punish those who commit breach of such rules. The power of punishment is entrusted to the disciplinary committees ensuring a trial of an advocate by his peers. Sections 35,
- C 36 and 37 lay down the procedure for trying complaints, punishment and an appeal to the Bar Council of India from the orders passed by the State Bar Councils. As an additional remedy section 38 provides a further appeal to the Supreme Court. Though the Act relates to the legal practitioners, in its pith and substance it is an enactment which concerns itself with the qualifications, enrollment, right to practise and discipline of the advocates. As provided by the Act once a person is enrolled by any one of the State Bar Councils, he becomes entitled to practise in all courts including the Supreme Court. As aforesaid, the
- D Act creates one common Bar, all its members being of one class, namely, advocates. Since all those who have been enrolled have a right to practise in the Supreme Court and the High Courts, the Act is a piece of legislation which deals with persons entitled to practise before the Supreme
- E Court and the High Courts. Therefore the Act must be held to fall within entries 77 and 78 of List I. As the power of legislation relating to those entitled to practise in the Supreme Court and the High Courts is carved out from the general power to legislate in relation to legal and other professions in entry 26 of List III, it is an error to say, as
- F the High Court did, that the Act is a composite legislation partly falling under entries 77 and 78 of List I and partly under entry 26 of List III."
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21. In *Harishankar Rastogi v. Girdhari Sharma and Another* (1978) 2 SCC 165, the court held as under:- A

"Advocates are entitled as of right to practise in this Court (Section 30(i) of the Advocates Act, 1961). But, this privilege cannot be claimed as of right by any one else. While it is true that Article 19 of the Constitution guarantees the freedom to practise any profession, it is open to the State to make a law imposing, in the interest of the general public, reasonable restrictions on the exercise of the right. The Advocates Act, by Section 29, provides for such a reasonable restriction, namely, that the only class of persons entitled to practise the profession of law shall be advocates. Even so, is it not open to a party who is unable for some reason or other to present his case adequately to seek the help of another person in this behalf? To negative such a plea may be to deny justice altogether in certain cases, especially in a land of illiteracy and indigence and judicial processes of a sophisticated nature. That is precisely why legislative policy has taken care to provide for such contingencies. Sections 302, 303 and 304 of the Criminal Procedure Code are indicative of the policy of the legislature. I do not think that in this Court we should totally shut out representation by any person other than the party himself in situations where an advocate is not appearing for the party...." B C D E

22. Mr. Paul appearing for the appellants also gave reference to international law and conventions to strengthen his submissions that only advocates enrolled with the respective Bar Councils alone can practise in the Consumer Forums and the agents cannot appear. He submitted that practice under the Consumer Protection Act, 1986 requires extensive legal skills which only a trained legal practitioner possesses and he alone can discharge those functions. He submitted that the agents have no legal training to handle complicated legal matters pertaining to consumers and hence the agents cannot be permitted to practise law before the Consumer Forums. F G H

A Historical perspective of the consumer movement

23. The consumer movement had primarily started in the West. We can trace history of the consumer movement from the judgment of the leading case *Carlill v. Carbolic Smoke Ball Company* 1893 (1) Q.B. 256. In this case first time Manufacturers' liability for minimum quality standard for product was established.

24. For the first time in 1856 a select committee recommended that a cheap and easy remedy, by a summary charge before a magistrate, should be afforded to consumers who received adulterated or falsely described food. This suggestion was taken up in the Merchandise Marks Act, 1887. Section 17 of the Act provides as follows :

"That a person applying a trade description to a product was deemed to warrant that it was true, so that a false trade description constituted breach of both criminal and civil law."

25. In a leading English case *Donoghue v. Stevenson* (1932) A.C. 562, where the consumer claimed to have suffered injury as well as result of drinking from a bottle of ginger-beer containing a decomposed snail. Over a strong dissent the majority held that the manufacturer would be liable. The case did not herald strict liability but it facilitated more claims than were provided under the nineteenth century approach. Lord Atkin enunciated the manufacturer's duty of care in the following words:

".....the preparation or putting up of the products will result in an injury to the consumer's life or property, owes a duty to the consumer to take that reasonable care."

26. This theory of strict liability already exists under the Consumer Protection Act, 1961.

27. The organized English consumer movement started after the Second World War. The Labour Party for the first time gave slogan of "battle for the consumers" in Parliament. In the decade of 1960, number of legislations were introduced in Britain for the protection of the consumers. The Consumer Safety Act, 1978 was enacted.

United States of America

28. The consumer movement in the United States of America developed in the beginning of the 19th century when in *Donald C. MacPherson v. Buick Motor Company* 217 N.Y. 382, 111 N.E. 1050 the New York Court of Appeal observed that a car manufacturer had to compensate a consumer who had been injured when one of the car wheels collapsed because of defect. The court held that the manufacturer had been negligent because the defect could have been discovered by reasonable inspection. In 1972, the Consumer Product Safety Act was enacted.

29. Paul S. Boyer, a distinguished author, in his article on "Consumer Movement", published by The Oxford Companion to United States History, 2001, has mentioned about the modern consumer movement. The relevant following extract is instructive and is reproduced as under.

"The modern consumer movement arose in the *Progressive Era*, as citizens concerned about unsafe products and environmental hazards used lobbying, voting, and journalistic exposés to press for government protection. In the same vein, the Consumers Union (1936), publisher of *Consumer Reports*, tests products for safety, economy, and reliability, to give consumers an objective basis for choice.

.....Such socially engaged consumerism actually had long historical antecedents, including Revolutionary Era patriots who had boycotted English tea and textiles and

A abolitionists who had refused to purchase goods made of slave]produced cotton.

Consumer activism revived in the late 1960s, flourished in the 1970s, and, despite a conservative backlash against government regulation, survived in diminished form in the 1990s. A by]product of 1960s social activism, consumer advocates insisted on citizens' rights to safe and reasonably priced goods and services and to the full disclosure of product information. The lawyer Ralph *Nader* gained fame for *Unsafe at Any Speed* (1965), which detailed safety hazards plaguing General Motors' (GM) Corvair automobile. Using \$425,000 won in an invasion]of]privacy suit against GM in 1970, Nader founded numerous consumer groups, nicknamed "Nader's Raiders," that pursued legal challenges to unsafe products and demanded greater government protection for consumers. The formation of the Consumer Federation of America (1968), the Occupational Safety and Health Administration (1970), and the Consumer Product Safety Commission (1972) attested to the movement's success but also to its regulatory and legalistic bent. Focused on consumers' rights, the modern movement downplayed the power of consumers to effect social change."

30. Ralph Nader played an extremely important role in consumer movement in the United States of America. A note appears in "America in Ferment : The Tumultuous 1960s – Ralph Nader and the Consumer Movement." An extract is reproduced. It reads :-

G "Ralph Nader has been called the nation's nag. He denounced soft drinks for containing excessive amounts of sugar (more than nine teaspoons a can). He warned Americans about the health hazards of red dyes used as food colorings and of nitrates used as preservatives in hot dogs. He even denounced high heels: "It is part of the whole tyranny of fashion, where women will inflict pain on

themselves ... for what, to please men." Since the mid-1960s, Ralph Nader has been the nation's leading consumer advocate." A

31. Ralph Nader is an extraordinary example of total devotion to the cause. It is men like him who leave an imprint and make history. Consumer movements all over the world have taken great inspiration from Ralph Nader. B

32. Every year 15th March is observed as the World Consumer Rights Day. On that day in 1962 President John F. Kennedy of the United States called upon the United States Congress to accord its approval to the Consumer Bill of Rights. They are (i) right to choice; (ii) right to information; (iii) right to safety; and (iv) right to be heard. President Gerald R. Ford added one more right i.e. right to consumer education. Further other rights such as right to healthy environment and right to basic needs (food, clothing and shelter) were added. Unfortunately, in most of the countries these rights are still not available to the consumers. In India 24th December every year celebrated as National Consumer Rights Day. C D

33. The General Assembly of the United Nations adopted a set of general guidelines for consumer protection and the Secretary General of the United Nations was authorized to persuade member countries to adopt these guidelines through policy changes or law. These guidelines constitute a comprehensive policy framework outlining what governments need to do to promote consumer protection in following seven areas: E F

- (i) Physical safety; G
- (ii) Protection and Promotion of the consumer economic interest;
- (iii) Standards for the safety and quality of consumer goods and services; H

- A (iv) Distribution facilities for consumer goods and services;
- (v) Measures enabling consumers to obtain redress;
- B (vi) Measures relating to specific areas (food, water and pharmaceuticals); and
- (vii) Consumer education and information programme.

34. Though not legally binding, the guidelines provide an internationally recognized set of basic objectives particularly for governments of developing and newly independent countries for structuring and strengthening their consumer protection policies and legislations. These guidelines were adopted recognizing that consumers often face imbalances in economic terms, educational levels and bargaining power and bearing in mind that consumers should have the right of access to non hazardous products as well as the importance of promoting just, equitable and sustainable economic and social development.

Indian perspective

35. It was in this background that the Indian Parliament had enacted the Consumer Protection Act, 1986. The declared objective of the statute was "to provide for better protection of the interests of consumers." It seeks to provide a speedy and inexpensive remedy to the consumer.

36. The Consumer Protection Act, 1986 is one of the benevolent social legislations intended to protect the large body of consumers from exploitation. The Act has come as a panacea for consumers all over the country and is considered as one of the most important legislations enacted for the benefit of the consumers. The Consumer Protection Act, 1986 provides inexpensive and prompt remedy.

37. The Consumer Protection Act, 1986 is dedicated, as its preamble shows, to provide for effective protection of the

rights of the consumers. According to the Statement of Objects and Reasons, it seeks to provide speedy and simple redressal to consumer disputes. The object of the Act is to render simple, inexpensive and speedy remedy to the consumers with complaints against defective goods and deficient services and for that a quasi-judicial machinery has been sought to be set up at the District, State and Central levels. The Consumer Protection Act has come to meet the long-felt necessity of protecting common man from wrongs for which the remedy under the ordinary law for various reasons has become illusory.

38. The Consumer Protection Act, 1986 was amended in the years 1991, 1993 and in 2002 to make it more effective and purposeful.

39. To effectuate this objective, a provision has been made in Chapter II of the Act for the constitution of 'the Central Consumer Protection Council' and 'the State Consumer Protection Councils.' The purpose as indicted in section 6 is to "promote and protect the rights of consumers" against the "marketing of goods and services which are hazardous to life and property; the right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be, so as to protect the consumer against unfair trade practices; the right to be assured, wherever possible, access to a variety of goods and services at competitive prices; the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate Forums; the right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers and the right to consumer education."

40. A perusal of Chapter II clearly shows that the statute seeks to protect the 'consumer' of goods and services in every possible way. It aims at providing a speedy and inexpensive remedy. Any interpretation of the provisions of the 1986 Act and the rules framed thereunder must promote this objective of the enactment.

A 41. In furtherance of the declared objective of protecting the consumer against exploitation as well as providing an inexpensive and speedy remedy, the competent authority has framed Rules which enable the party to appear either personally or through an 'agent'.

B 42. The issue is – Do the Rules permit a party to have an 'Agent' for merely presenting the papers on its behalf or can the Agent even act and argue?

Maharashtra Consumer Protection Rules, 1987

C Rule 2(b) defines an Agent to mean "a person duly authorized by a party to present any complaint, appeal or reply on its behalf before the State Commission or the District Forum."

D Under Rule 4(7), the parties are obliged to either appear personally or through "authorized agent." If "the complainant or his authorized agent fails to appear before the District Forum" it may "in its discretion either dismiss the complaint for default or decide it on merit." Similarly, "where the opposite party (defendant) or its authorized agent fails to appear on the day of hearing, the District Forum may decide the complaint ex parte."

F A perusal of the provisions show that while the advocates have not been debarred from pleading and appearing, the parties have been given an option to either appear personally or be represented by "duly authorized" agents. Every advocate appointed by a party is an agent. However, the agent as contemplated under the rules need not necessarily be an advocate.

G The provision in the Rules promotes the object of the statute. It is meant to help the consumer to

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vindicate his right without being burdened with intricate procedures and heavy professional fees. A

In the very nature of things, the disputes under the 1986 Act can involve claims for small amounts of money by way of compensation. Engagement of advocates in all such matters may not be economically viable. It is equally possible that the claim may involve professional expertise. To illustrate: A person may sue a hospital for medical negligence. Or an Architect for a faulty design. Or a building contractor for defective work. In such cases, a professional like a doctor, architect or an engineer may be more suitable than an advocate. Thus, both the parties have been given an option to choose from an advocate or any other person who may even be a professional expert in the particular field. B
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D

43. Such an interpretation is not only literally correct but also promotes the declared objective of the statute. It helps the claimant and the defendant equally. It does not violate any provision of the Advocates Act. E

44. The Consumer Protection Act, 1986 was amended in the year 2002, in pursuance to the United Nations resolution passed in April, 1985 indicating certain guidelines under which the Government could make law for better protection of the interest of the consumers. Such laws were necessary, particularly in the developing countries to protect the consumers from hazards to their health and safety and to provide them available speedier and cheaper redressal of their grievances. F
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45. The amended Act 62 of 2002 reads as under:

"Amendment Act 62 of 2002. – The enactment of the Consumer Protection Act, 1986 was an important milestone in the history of the consumer movement in the H

- A country. The Act was made to provide for the better protection and promotion of consumer rights through the establishment Consumer Councils and quasi-judicial machinery. Under the Act, consumer disputes redressal agencies have been set up throughout the country with the District Forum at the district level, State Commission at the State level and National Commission at the National level to provide simple, inexpensive and speedy justice to the consumers with complaints against defective goods, deficient services and unfair and restrictive trade practices. The Act was also amended in the years 1991 and 1993 to make it more effective and purposeful."

46. In the developed countries the consumer movement has been going on for several decades in which the trader and the consumer find each other as adversaries.

47. The Consumer Protection Act, 1986 was enacted with the object and intention of speedy disposal of consumer disputes at a reasonable cost, which is otherwise not possible in ordinary judicial/court system.

48. In the book on Administrative law, its distinguished author M.P. Jain has brought about the distinction between the Court and the Tribunal. According to him Courts are bound by prescribed rules of procedures and evidence and their proceedings are conducted in public. The lawyers are entitled to appear before them and the judge in the open Court hears the case and decides it by giving reasons for a judgment. The courts are totally independent of the executive will, whereas, the Tribunals are not ordinarily governed by the provisions of Code of Civil Procedure and the Evidence Act, except to the extent it is indicative in the Act itself. There is also a significant difference between the Court and the Tribunal with regard to the appointment of Members. The object of the constitution of a Tribunal is to provide speedy justice in a simple manner and the Tribunal be should easily accessible to all.

49. According to the celebrated book on 'Administrative A
Law' by Wade, the other object of constituting a Tribunal is to
create specialist Forum which would include specialists in the
field to adjudicate efficiently and speedily the matters requiring
adjudication in that field and that commands the confidence of
all concerned in the quality and reliability of the result of such B
adjudication.

50. The Consumer Protection Rules, 1987 also defines the
expression 'agent' in the same manner.

51. The appellants submitted before the High Court that C
the complainant may appear through its authorized agent, but,
that doesn't mean that authorized agent is empowered to act,
appear or plead on behalf of the party before the State
Commission or the District Forum as a lawyer. According to
the appellants (Bar Council of India and advocate), the agent D
appointed by the complainant is empowered only to present
any complaint, appeal or rely on behalf of the party to the
complaint before the Consumer Forum by physically remaining
present on the date/dates of hearing. This contention was
rejected by the Division Bench of the High Court. E

52. According to the judgment of this Court in *Harishankar*
Rastogi (supra), a non-advocate can appear with the
permission of the Court. The Court may, in an appropriate case,
even after grant of permission withdraw it if the representative F
proves himself reprehensible. It is only a privilege granted by
the Court and it depends entirely on the discretion of the court.

53. The learned counsel for the respondent has drawn our
attention to Rule 9 of the Maharashtra Consumer Protection
Rules, 2000 which provides for procedure for hearing appeals. G
He also referred to sub-rules 1 and 6 of Rule 9 which reads as
under:

"9. Procedure for hearing appeal –

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A (1) Memorandum shall be presented by the appellant or his authorized agent to the State Commission in person or sent by registered post addressed to the Commission.

B (6) On the date of hearing or any other day to which hearing may be adjourned, it shall be obligatory for the parties or their authorized agents to appear before the State Commission. If appellant or his authorized agent fails to appear on such date, the State Commission may, in its discretion, either dismiss the appeal or decide it on the merit of the case. If respondent or his authorized agents fails to appear on such date, the State Commission shall proceed ex-parte and shall decide the appeal ex-parte on merits of the case."

D 54. The clear interpretation of the Rules is that the authorised agent appointed by the (consumer) complainant may appear before the Consumer Fora. The Consumer Fora may, in its discretion, either dismiss the appeal or decide it on the merit of the case. In this view of the matter, it is abundantly clear that the authorized agent of the complainant can act and plead before the State Tribunal otherwise the complaint is liable to be dismissed.

F 55. The learned counsel for the respondents submitted that non-advocates are permitted to appear in various Forums including Income Tax Tribunal, Sales Tax Tribunal and Monopolies and Restrictive Trade Practises Tribunal, therefore, wherever the legislature has accorded the permission to the persons other than advocates, who appear before these Tribunals can act and appear according to the object of the Act and legislative intention.

G **Legislative intention**

H 56. We deem it appropriate to briefly deal with the importance of gathering legislative intention while interpreting provisions of law.

57. In Blackstone's Commentaries on the Laws of England, Volume I, published in the year 2001 (Edited by Wayne Morrison), it has been observed as under:- A

"The fairest and most rational method to interpret the will of the legislator is by exploring his intentions at the time when the law was made, by signs the most natural and probable. And these signs are either the words, the context, the subject matter, the effects and consequence, of the spirit and reason of the law." B

58. A Constitution Bench of this Court in *R.M.D. Chamarbaugwalla and Another v. Union of India and Another* AIR 1957 SC 628 has laid down that in interpreting the statute the legislative intent is paramount and the duty of the Court is to act upon the true intention of the legislature. C

59. In *Anandji Haridas & Company Private Limited v. Engineering Mazdoor Sangh and Another* (1975) 3 SCC 862, this Court laid down that as a general principle of interpretation where the words of a statute are plain, precise and unambiguous, the intention of the Legislature is to be gathered from the language of the statute itself and no external evidence such as parliamentary debates, reports of the Committees of the Legislature or even the statement made by the minister on the introduction of a measure or by the framers of the Act is admissible to construe those words. D E

60. In another Constitution Bench judgment in *Kartar Singh v. State of Punjab* (1994) 3 SCC 569, this Court has observed that though normally the plain ordinary grammatical meaning of an enactment affords the best guide and the object of interpreting a statute is to ascertain the intention of the legislature enacting it, other methods of extracting the meaning can be resorted to if the language is contradictory, ambiguous or leads really to absurd results so as to keep at the real sense and meaning. F G

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A 61. In *District Mining Officer and Others v. Tata Iron and Steel Company and Another* (2001) 7 SCC 358, a three Judge Bench of this Court has observed:

B "A statute is an edict of the legislature and in construing a statute, it is necessary to seek the intention of its maker. A statute has to be construed according to the intent of them that make it and the duty of the court is to act upon the true intention of the legislature. If a statutory provision is open to more than one interpretation, the court has to choose that interpretation which represents the true intention of the legislature."

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62. In *Bhatia International v. Bulk Trading S.A. and Another* (2002) 4 SCC 105, a three Judge Bench of this Court has held as under:-

D "The conventional way of interpreting a statute is to seek the intention of its makers. If a statutory provision is open to more than one interpretation then the Court has to choose that interpretation which represents the true intention of the legislature."

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63. It is the bounden duty of the courts to discern legislative intention and interpret the statutes accordingly. The instant case Act and Rules have made specific provisions by which the agents have been permitted to plead and appear on behalf of the parties before the Consumer Forums. Therefore, to interpret it differently would be contrary to legislative intention.

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64. We have heard the learned counsel for the parties and the learned amicus curiae.

G 65. In the written submissions, Shri Jawahar Lal Gupta, learned amicus curiae, submitted that the advocates in these appeals can have no cause for any apprehension. In case, a party chooses an incompetent person as its agent before the Consumer Forum or the State Commission, he can pose no

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competition or threat to any profession. Such a person will get automatically eliminated with the passage of time. However, in case the parties choose competent persons to act as agents and they perform well, it will not only promote the object of the 1986 Act and the Rules framed thereunder but also provide healthy competition to the advocates. It violates no provision of the Advocates Act, 1961 or any other law. It can provide no cause for complaint.

66. He further submitted that there is another aspect of the matter. Every person has the right to lead a life of dignity. Every person has a right to work and make an honest living. Every individual has the right and freedom to do anything so long as he does not violate any law. Thus, a retired or even an unemployed doctor, engineer, scientist, teacher or any other person has the right to offer his/her services as an 'agent'. In other words, an individual has the right to choose 'acting as agent' as his profession. Article 19(1)(g) guarantees that freedom. The mandate of Article 21 is fulfilled. In doing so, he does not practise the profession of law or violate the provisions of the Advocates Act, 1961. He only invokes the freedom guaranteed under the Constitution and exercises the right conferred by the Rules. He merely helps the party before the Consumer Forum or the Commission. It also enables him to earn some money and lead a dignified existence. He has the freedom and the right to do so. The action is in conformity with the Constitution. It even promotes the objective as contained in Article 39A.

67. Shri Gupta further submitted that the provision permitting the parties to be represented by agents as made in the Rules has not been challenged. In fact, the provision is in strict conformity with the constitution. It violates no law. Actually, there are various statutes which permit the parties to be represented by persons who may not be advocates. By way of instance, reference may be made to the provisions of the Industrial Disputes Act; the Income Tax Act and the Sales Tax

- A Act or the Monopolies and Restrictive Trade Practices Act. Such instances can be multiplied.

68. Shri Gupta also dealt with the disciplinary aspect of the matter. He submitted that in the appeal filed by the Bar Council, considerable emphasis on discipline and ethics was expressed by the learned counsel for the Council. During the course of hearing, a reference was made to the Regulations as framed by the National Consumer Disputes Redressal Commission (For short, 'National Commission') under the Act with the approval of the Central Government in 2005. The Regulations actually appear at page 52 of the Bar Act (Professional's – 2010 Edition).

69. A perusal thereof shows that the Regulations appear to have been framed by the National Commission in exercise of the power conferred by section 30A with the previous approval of the Central Government. The footnote indicates that these were published in the Gazette of India dated May 31, 2005.

70. Specifically, Regulation 16 *inter alia* makes provision to ensure that the agents do not indulge in any malpractice or commit misconduct. The relevant part provides as under:-

“(6) A Consumer Forum has to guard itself from touts and busybodies in the garb of power of attorney holders or authorised agents in the proceedings before it.

(7) While a Consumer Forum may permit an authorised agent to appear before it, but authorised agent shall not be one who has used this as a profession: Provided that this sub-regulation shall not apply in case of advocates.

(8) An authorised agent may be debarred from appearing before a Consumer Forum if he is found guilty of misconduct or any other malpractice at any time.”

71. Mr. Bharat Sangal, learned counsel appearing for the

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ORS. [DALVEER BHANDARI, J.]

respondents submitted that Maharashtra Consumer Protection Rules, 2000 defines 'agents'. The authorized agents can appear on behalf of complainant in consumer fora. A

72. Mr. Sangal also submitted that when the legislature permits the authorized agents to appear, then they cannot be restrained from appearing before the consumer fora. B

73. Mr. Sangal also submitted that the authorized agents can't be said to practise law. He further submitted that there are many Forums and Tribunals where non-advocates are permitted to appear, therefore, there is no merit in restraining the agents from appearing before the Consumer Fora. C

74. Reliance was placed on the judgment in the case of *Lucknow Development Authority v. M.K. Gupta* (1994) 1 SCC 243. This court observed that the provisions of the Act have to be construed in favour of the consumer to achieve the purpose of enactment as it is a social benefit oriented legislation. The primary duty of the court while construing the provisions of such an Act is to adopt a constructive approach subject to that it should not do any violence to the language of the provisions and is not contrary to the attempted objective of the enactment. In other words, according to the purpose of enactment the interest of the consumer is paramount. D E

75. In *Laxmi Engineering Works v. P.S.G. Industrial Institute* (1995) 3 SCC 583 this Court observed thus: F

"10. A review of the provisions of the Act discloses that the quasi-judicial bodies/authorities/agencies created by the Act known as District Forums, State Commissions and the National Commission are not courts though invested with some of the powers of a civil court. They are quasi-judicial tribunals brought into existence to render inexpensive and speedy remedies to consumers. It is equally clear that these forums/commissions were not supposed to supplant but supplement the existing judicial G H

- A system. The idea was to provide an additional forum providing inexpensive and speedy resolution of disputes arising between consumers *and* suppliers of goods and services. The forum so created is uninhibited by the requirement of court fee or the formal procedures of a court. Any consumer can go and file a complaint. Complaint need not necessarily be filed by the complainant himself; any recognized consumers' association can espouse his cause. Where a large number of consumers have a similar complaint, one or more can file a complaint on behalf of all. Even the Central Government and State Governments can act on his/their behalf. The idea was to help the consumers get justice and fair treatment in the matter of goods and services purchased and availed by them in a market dominated by large trading and manufacturing bodies. Indeed, the entire Act revolves round the consumer and is designed to protect his interest. The Act provides for "business-to-consumer" disputes and not for "business-to-business" disputes. This scheme of the Act, in our opinion, is relevant to and helps in interpreting the words that fall for consideration in this appeal."

E 76. In *Indian Photographic Company Limited v. H.D. Shourie* (1999) 6 SCC 428 the court has held that a rational approach and not a technical approach is the mandate of law.

F 77. In *Dr. J.J. Merchant and Others v. Shrinath Chaturvedi* (2002) 6 SCC 635 it is observed as under:-

- G "7. ...One of the main objects of the Act is to provide speedy and simple redressal to consumer disputes and for that a quasi-judicial machinery is sought to be set up at the district, State and Central level. These quasi-judicial bodies are required to observe the principles of natural justice and have been empowered to give relief of a specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non-compliance with the orders given by the quasi-judicial bodies have also
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been provided. The object and purpose of enacting the Act is to render simple, inexpensive and speedy remedy to the consumers with complaints against defective goods and deficient services and the benevolent piece of legislation intended to protect a large body of consumers from exploitation would be defeated. Prior to the Act, consumers were required to approach the civil court for securing justice for the wrong done to them and it is a known fact that decision in a suit takes years.

12. ...It should be kept in mind that legislature has provided alternative efficacious, simple, inexpensive and speedy remedy to the consumers and that should not be curtailed on the ground that complicated questions of facts cannot be decided in summary proceedings. It would also be totally wrong assumption that because summary trial is provided, justice cannot be done when some questions of facts required to be dealt with or decided. The Act provides sufficient safeguards."

78. In *Common Cause, A Registered Society v. Union of India and others* (1997) 10 SCC 729, the Supreme Court held thus:

"The object of the legislation, as the Preamble of the Act proclaims, is "for better protection of the interests of consumers". During the last few years preceding the enactment there was in this country a marked awareness among the consumers of goods that they were not getting their money's worth and were being exploited by both traders and manufacturers of consumer goods. The need for consumer redressal fora was, therefore, increasingly felt. Understandably, therefore, legislation was introduced and enacted with considerable enthusiasm and fanfare as a path-breaking benevolent legislation intended to protect the consumer from exploitation by unscrupulous manufacturers and traders of consumer goods. A three-tier fora comprising the District Forum, the State

- A Commission and the National Commission came to be envisaged under the Act for redressal of grievances of consumers...”

B 79. The agent has been defined both in the Consumer Protection Rules, 1987 and under the Maharashtra Consumer Protection Rules, 2000. The agents have been permitted to appear before the Consumer Forums. The appearance of authorized agents is not inconsistent with section 33 of the Advocates Act, 1961.

C 80. The legislature in its wisdom has granted permission to the authorized agents because most of the cases before the Consumer Forums are small cases of relatively poor people where legal intricacies are not involved and great legal skills are not required, which may be handled by the authorized agents.

D 81. The other reason is that a large number of litigants may not be able to afford heavy professional fees of trained advocates, therefore, authorized agents have been permitted.

E 82. It is the bounden duty and obligation of the Court to carefully discern the legislative intention and articulate the same. In the instant case we are not really called upon to discern legislative intention because there is specific rule defining the agents and the provisions of permitting them to appear before the Consumer Forums. The agents have been permitted to appear to accomplish the main object of the act of disposal of consumers' complaints expeditiously with no costs or small costs.

F 83. In our considered view the High Court was fully justified in observing that the authorised agents do not practise law when they are permitted to appear before the District Forums and the State Commissions.

G 84. In the impugned judgment the High Court aptly observed that many statutes, such as, Sales Tax, Income Tax

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and Competition Act also permit non-advocates to represent the parties before the authorities and those non-advocates cannot be said to practise law. On the same analogy those non-advocates who appear before Consumer fora also cannot be said to practise law. We approve the view taken by the High Court in the impugned judgment.

85. The legislature has given an option to the parties before the Consumer Forums to either personally appear or be represented by an 'authorized agent' or by an advocate, then the court would not be justified in taking away that option or interpreting the statute differently.

86. The functioning, conduct and behaviour of authorized agents can always be regulated by the Consumer Forums. Advocates are entitled as of right to practise before Consumer Fora but this privilege cannot be claimed as a matter of right by anyone else.

87. When the legislature has permitted authorized agents to appear on behalf of the complainant, then the courts can't compel the consumer to engage the services of an advocate.

88. However, at this stage we hasten to add that the National Commission being aware of a possibility of misuse of the right by an agent had framed Regulation 30-A of the Consumer Protection Act, 1986, wherein certain restrictions on the right of audience and also certain precautions to rule out any misuse of liberty granted has been taken by way of framing Regulation 16. Reference is made to Clauses 6 and 7 thereof. We may extract the aforesaid provisions for ready reference:

"16. Appearance of Voluntary Consumer Organization:

(6) A Consumer Forum has to guard itself from touts and busybodies in the garb of power of attorney holders or authorized agents in the proceedings before it.

A (7) While a Consumer Forum may permit an authorized agent to appear before it, but authorised agent shall not be one who has used this as a profession:

B Provided that this sub-regulation shall not apply in case of advocates."

89. These provisions are enacted for providing proper guidelines and safeguards for regulating appearance and audience of the agents. The aforesaid regulation in our considered opinion is a reasonable restriction on the right to appear by an agent. Such reasonable restrictions as provided for are to be strictly adhered to and complied with by the Consumer Forum hearing cases under the Consumer Protection Act so as to rule out any misuse of the privilege granted. In terms of the said regulation and other regulations as provided and framed by the National Commission and as approved by the Parliament of India, the Consumer Forum has the right to prevent an authorized agent to appear in case it is found and believed that he is using the said right as a profession. The Consumer Forums being empowered with such Regulations would be in a position to judge whether the agent appearing before it is in any manner exercising such privileges granted for any ulterior purpose.

90. In the foregoing paragraph, it has been indicated that many statutes and Acts in India permit non-advocates to represent the parties before the authorities and forums.

91. In other jurisdictions also, non-advocates are permitted to appear before quasi-judicial fora or subordinate courts. In most of these jurisdictions, specific rules have been framed for the regulation of qualifications, conduct and ethical behaviour of the non-advocates appearing in these fora.

92. In most jurisdictions, the statutes or court rules impose some form of restrictions on appearances of non-advocate representatives in quasi-judicial fora or subordinate courts.

C. VENKATACHALAM v. AJITKUMAR C. SHAH AND 857
ORS. [DALVEER BHANDARI, J.]

Restrictions on non-advocates agents vary significantly in terms of their specificity, but most forums have rules granting them some discretion in admitting or refusing the appearance of a non-advocate representative. A

Brief summary of Rules pertaining to Non-Advocates in different jurisdictions B

United States of America

- Congressional legislation neither grants nor denies the right to have a non-attorney representative in quasi-judicial proceedings. C
- The individual fora (administrative law courts) are allowed to create their own rules for non-attorney representatives. D
- Several administrative law courts/fora allow non-attorney representatives to appear if they meet certain qualifications.

Social Security Administration E

93. In addition to administering Social Security Retirement and Disability payments, the Social Security Administration (SSA) handles disputes arising from Social Security Payments or the lack thereof. If a current or former recipient of social security believes that he has been wrongfully denied some or all of his benefit amount, he may first apply for reconsideration. F

94. According to SSA Rules, any attorney in good standing is allowed to represent a claimant before the ALJ and Appeals Council. A non-attorney is allowed to represent a claimant if the non-attorney : G

- (1) Is generally known to have a good character and reputation;

H

- A (2) Is capable of giving valuable help to you in connection with your claim;
- (3) Is not disqualified or suspended from acting as a representative in dealings with us; and
- B (4) Is not prohibited by any law from acting as a representative.

95. SSA rules also restrict the amount that any representative of claimant (attorney or non-attorney) may receive for the services rendered by him.

Tax Court

96. The US Tax Court adjudicates disputes over federal income tax. Taxpayers are permitted to litigate in many legal forums (such as a district federal court), but many choose the Tax Court because they may litigate their case without first paying the disputes tax amount in full.

Non-Attorney Representation

97. Tax Court Rules state that all representatives must be admitted to practice before the Tax Court in order to appear in proceedings on behalf of a taxpayer. To be admitted, a non-attorney must pass a special written examination and obtain sponsorship from two persons who are already admitted to practice before the Court.

98. Representatives before the Court are instructed to act "in accordance with the letter and spirit of the Model Rules of Professional Conduct of the American Bar Association."

99. Representatives may be disciplined for inappropriate conduct and may be suspended or banned from appearing in the Court.

Court of Appeals for Veterans' Claims

99. The Court of Appeals for Veteran's Claims reviews decision of the Board of Veterans' Appeals, which adjudicates

disputes pertaining to Veteran's benefits.

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Non-Attorney representation

100. A non-attorney may represent claimants if (1) he is under direct supervision of an attorney or (2) he is employed by an organization that the Secretary of Veteran's Affairs has deemed is competent to handle veterans' claims. However, if the Court deems it appropriate it may admit non-attorney representatives to represent the claimants.

B

South Africa

C

The Equality Court

101. The Equality Court hears complaints pertaining to unfair discrimination, harassment and hate speech. The court rules allow parties in this court to be represented by lawyers and non-lawyers. However, the rules also require the judge of the court inform a party accordingly if he is of the opinion that a particular non-attorney representative "is not a suitable person to represent the party."

D

England and Wales

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102. There are two kinds of courts in England that are similar in structure and function to the consumer courts in India: Magistrate Courts and Tribunals.

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Magistrates' Courts

103. Magistrates' Courts are lowest level of court in England and Wales and deals with minor civil and criminal offences. There are also specialist courts within the Magistrates' Courts system, such as the Family Proceedings Court and the Youth Court. Under statute, a party may only be represented in a Magistrates' Court by a "legal representative". A "legal representative" is a person who has been authorized by a government-approved regulator to perform "reserved legal activities."

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A Tribunals

104. England and Wales also have a fairly complex system of tribunals that hear special complaints. These tribunals are similar to US administrative courts in that they are allowed to create their own procedural rules that regulate representation. For instance, the Asylum and Immigration Tribunal permits non-attorney representatives to appear if they meet certain requirements elaborated in Section 84 of the Immigration and Asylum Act, 199. Other tribunals may follow different procedures.

C

Small Claims Court

105. There is no bar for small claims court. A non-attorney may appear as a representative without prior authorization from the court. He may, however, be dismissed at the judge's discretion.

D

(1) Non-attorney advocates do not appear to be bound by any code of conduct. But they may be dismissed by a judge if they judge disapproves of their conduct.

E

(2) The judge may disqualify a non-attorney from appearing in court if the judge "has reason to believe" the non-attorney "has intentionally misled the court, or otherwise demonstrated that he is unsuitable to exercise [the right to be a representative]. The statute specifically mentions that the judge may disqualify a representative for conduct done in previous judicial appearances.

F

(3) The court rules and relevant legislation do not appear to prescribe a limit to the number of appearances a non-lawyer can make before the small claims court. However, the statute allows a judge to discipline a non-attorney representative for conduct in previous judicial proceedings. This

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suggests that if a judge believes a non-attorney is making frequent appearances before a small claims court and charging in appropriate fees, the judge may disqualify the non-attorney from appearing in a particular case.

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Australia

106. State Governments in Australia have their own court systems and also specialized courts to deal with certain subject matter. In the State of Victoria, statutory law states that only lawyers may appear in court as representatives with a few exceptions. A non-attorney may represent a party in a cause of action for a debt or liquidated demand if the non-attorney is in the exclusive employment of the aggrieved party. Also, the statute mentions that a non-attorney representative may appear if empowered by some other piece of legislation.

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New Zealand

107. New Zealand has a large number of tribunals that are similar to India's consumer courts and seek to provide quick and easy dispute resolution. There appears to be a strong preference in tribunals for the parties to represent themselves; professional lawyers are rarely allowed to appear as representatives. Two tribunals are discussed below, but New Zealand's other tribunals should function similarly.

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Disputes Tribunal

108. The Disputes Tribunal hears civil complaints that concern amounts less than \$15,000. Parties subject to proceedings are generally required to represent themselves. However, the Tribunal may permit a representative to appear on a party's behalf under certain special circumstances. Representatives may only appear with specific authorization from the Tribunal and cannot be lawyers.

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A **Directions**

109. In order to ensure smooth, consistent, uniform and unvarying functioning of the National Commission, the State Commissions and the District Forums, we deem it appropriate to direct the National Commission to frame comprehensive rules regarding appearances of the agents, representatives, registered organizations and/or non-advocates appearing before the National Commission, the State Commissions and the District Forums governing their qualifications, conduct and ethical behaviour of agents/non-advocates/representatives, registered organizations and/or agents appearing before the consumer forums.

The National Commission may consider following suggestions while framing rules

110. The Commission may consider non-advocates appearing without accreditation - A party may appoint a non-advocate as its representative provided that the representative—
- (1) is appearing on an individual case basis
 - (2) has a pre-existing relationship with the complainant (e.g., as a relative, neighbour, business associate or personal friend)
 - (3) is not receiving any form of direct or indirect remuneration for appearing before the Forum and files a written declaration to that effect
 - (4) demonstrates to the presiding officer of the Forum that he or she is competent to represent the party.

G **Accreditation Process**

- (a) The National Commission may consider creating a process through which non-advocates may be

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accredited to practice as representatives before a Forum. A

- (b) Non-advocates who are accredited through this process shall be allowed to appear before a Forum on a regular basis B
- (c) The accreditation process may consist of –
 - (1) an written examination that tests an applicant's knowledge of relevant law and ability to make legal presentations and arguments C
 - (2) an inspection of the applicant's educational and professional background
 - (3) an inspection of the applicant's criminal record D
 - (d) the National Commission may prescribe additional requirements for accreditation at its discretion provided that the additional requirements are not arbitrary and do not violate existing law or the Constitution. E

Fees

- (a) A representative who wishes to receive a fee must file a written request before the Forum
- (b) The presiding officer will decide the amount of the fee, if any, a representative may charge or receive F
- (c) When evaluating a representative's request for a fee, the presiding officer may consider the following factors : G
 - (1) the extent and type of services the representative performed
 - (2) the complexity of the case H

- A (3) the level of skill and competence required of the representative in giving the services
- (4) the amount of time the representative spent on the case; and

- B (5) the ability of the party to pay the fee
- (d) If a party is seeking monetary damages, its representative may not seek more a fee of more than 20% of the damages

C Code of Conduct for representatives

The National Commission to create a code of conduct which would apply to non-advocates, registered organizations and agents appearing before a Forum.

D Disciplinary Powers of a Forum

- (a) The presiding officer of a Forum may be given specific power to discipline non-advocates, agents, authorized organizations and representatives for violating the code of conduct or other behaviour that is unfitting in a Forum

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- (b) In exercising its disciplinary authority, the presiding officer may –

F

- (1) revoke a representative's privilege to appear before the instant case

- (2) suspend a representative's privilege to appear before the Forum

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- (3) ban a representative from appearing before the forum

- (4) impose a monetary fine on the representative

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111. We direct the National Commission to frame A
comprehensive Rules as expeditiously as possible, in any
event, within three months from the date of communication of
this order. The copy of this judgment be sent to the National
Commission.

112. On consideration of totality of the facts and B
circumstances, the view taken by the Division Bench of the
Bombay High Court in the impugned judgment cannot be said
to be erroneous and unsustainable in law. Consequently, these
appeals being devoid of any merit are accordingly dismissed. C

113. In the facts and circumstances of the case, we direct
the parties to bear their own costs.

114. Before we part, we would like to observe that we had
requested Shri Jawahar Lal Gupta, a distinguished Senior D
Advocate to assist the court as amicus curiae. He graciously
agreed and provided excellent assistance to this court. Shri
Gupta also submitted written submissions. We record our deep
appreciation for his valuable assistance provided by him to this
court. E

B.B.B.

Appeals dismissed.