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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISIDICTION

PUBLIC INTEREST LITIGATION NO. 58 OF 2021

Medicos Legal Action Group .. Petitioner

Versus

Union of India (Through Secretary,
Department of Consumer Affairs,
Ministry of Consumer Affairs,
Food and Public Distribution) .. Respondent

Mr. Ashish S. Chavan a/w Mr. Adithya Iye a/w Mr. Kunal Shinde for petitioner.

Mr. Anil C. Singh, Addl. Solicitor General a/w Mr. Aditya Thakkar a/w Mr. D. P. Singh for respondent-UOI.

C0RAM: DIPANKAR DATTA, CJ. &
G. S. KULKARNI, J.

DATE: OCTOBER 25, 2021

PC:

1. This is a thoroughly misconceived Public Interest Litigation and we have no doubt that it deserves outright dismissal.

2. The petitioning Trust, registered in Chandigarh, seeks declaration from this Court that services performed by healthcare service providers are not included within the purview of the Consumer Protection Act, 2019 (hereafter "the

Act of 2019" for short) as well as for mandamus directing all consumer fora within the territorial jurisdiction of this Court not to accept complaints filed under the 2019 Act against healthcare service providers.

3. The ground on which such reliefs, as noted above, have been claimed is that parliamentary debates on the Consumer Protection Bill, 2018 (hereafter "the Bill" for short) preceding the 2019 Act led to exclusion of 'healthcare' from the definition of the term "service" as defined in the Bill. It has been stated in paragraph 5.11 of the writ petition that the Hon'ble Minister for Consumer Affairs, Food and Public Distribution, had stated on the floor of the Parliament that 'healthcare' had been deliberately kept out of the 2019 Act for the reasons cited therefor. This clearly indicates the parliamentary intent of not including 'health care' within the definition of "service" in the 2019 Act. Paragraph 5.13 of the writ petition reveals that the petitioning Trust and its members were relieved to note upon introduction of the 2019 Act that the term 'health care' was not included in the definition of "service", as defined by section 2(42) thereof, leading to a sense of relief that the issue had finally been laid

to rest. The cause of action for moving the writ petition appears to have been pleaded in paragraph 5.14. The petitioning Trust is of the view that the 2019 Act having been brought into force upon repeal of the Consumer Protection Act, 1986 (hereafter "the Act of 1986" for short), registration of complaints, which are filed against doctors, by the consumer fora in the State of Maharashtra is illegal and be declared as such.

4. For facility of appreciation, "service" defined in section 2(1)(o) of the 1986 Act and in section 2(42) of the 2019 Act are reproduced hereinbelow in a tabular form: -

As per the 1986 Act	As per the 2019 Act
"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, board or lodging or both, housing construction,	"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

entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;	construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;

5. Reading the two definitions, we do not see any material difference between the two. Except inclusion of 'telecom' in section 2(42) of the 2019 Act, the terms of the definition are identical.

6. Section 2(1)(o) of the 1986 Act did not in terms include services rendered by doctors within the term "service", but such definition was considered by the Supreme Court in its decision in **Indian Medical Association Vs. V. P. Shantha & Ors.**, reported in (1995) 6 SCC 651, and it was held as follows: -

> "55. On the basis of the above discussion, we arrive at the following conclusions:
>
> (1) Service rendered to a patient by a medical practitioner (except where the doctor renders service free of charge to every patient or under a contract of personal service), by way of consultation, diagnosis and treatment, both medicinal and surgical, would fall within the ambit of 'service' as defined in Section 2(1)(o) of the Act.

(2) The fact that medical practitioners belong to the medical profession and are subject to the disciplinary control of the Medical Council of India and/or State Medical Councils constituted under the provisions of the Indian Medical Council Act would not exclude the services rendered by them from the ambit of the Act.

(3) A 'contract of personal service' has to be distinguished from a 'contract for personal services'. In the absence of a relationship of master and servant between the patient and medical practitioner, the service rendered by a medical practitioner to the patient cannot be regarded as service rendered under a 'contract of personal service'. Such service is service rendered under a `contract for personal services' and is not covered by exclusionary clause of the definition of 'service' contained in Section 2(1)(o) of the Act.

(4) The expression 'contract of personal service' in Section 2(1)(o) of the Act cannot be confined to contracts for employment of domestic servants only and the said expression would include the employment of a medical officer for the purpose of rendering medical service to the employer. The service rendered by a medical officer to his employer under the contract of employment would be outside the purview of 'service' as defined in Section 2(1)(o) of the Act.

(5) Service rendered free of charge by a medical practitioner attached to a hospital/Nursing home or a medical officer employed in a hospital/Nursing home where such services are rendered free of charge to everybody, would not be "service" as defined in Section 2(1)(o) of the Act. The payment of a token amount for registration purpose only at the hospital/nursing home would not alter the position.

(6) Service rendered at a non-Government hospital/Nursing home where no charge whatsoever is made from any person availing the service and all patients (rich and poor) are given free service - is outside the purview of the expression 'service' as defined in Section 2(1)(o) of the Act. The payment of a token amount for registration purpose only at the hospital/Nursing home would not alter the position.

(7) Service rendered at a non-Government hospital/Nursing home where charges are required to be paid by the persons availing such services falls within the purview of the expression 'service' as defined in Section 2(1)(o) of the Act.

(8) Service rendered at a non-Government hospital/Nursing home where charges are required to be paid by persons who are in a position to pay and persons who cannot afford to pay are rendered service free of charge would fall within the ambit of the expression 'service' as defined in Section 2(1)(o) of the Act irrespective of the fact that the service is rendered free of charge to persons who are not in a position to pay for such services. Free service, would also be "service" and the recipient a "consumer" under the Act.

(9) Service rendered at a Government hospital/health centre/dispensary where no charge whatsoever is made from any person availing the services and all patients (rich and poor) are given free service - is outside the purview of the expression 'service' as defined in Section 2(1)(o) of the Act. The payment of a token amount for registration purpose only at the hospital/nursing home would not alter the position.

(10) Service rendered at a Government hospital/health centre/dispensary where services are rendered on payment of charges and also rendered free of charge to other persons availing such services would fall within the ambit of the expression 'service' as defined in Section 2(1)(o) of the Act irrespective of the fact that the service is rendered free of charge to persons who do not pay for such service. Free service would also be "service" and the recipient a "consumer" under the Act.

(11) Service rendered by a medical practitioner or hospital/nursing home cannot be regarded as service rendered free of charge, if the person availing of the service has taken an insurance policy for medical care whereunder the charges for consultation, diagnosis and medical treatment are borne by the insurance company and such service would fall within the ambit of 'service' as defined in Section 2(1)(o) of the Act.

(12) Similarly, where, as a part of the conditions of service, the employer bears the expenses of medical treatment of an employee and his family members dependent on him, the service rendered to such an employee and his family members by a medical practitioner or a hospital/nursing home would not be free of charge and would constitute 'service' under Section 2(1)(o) of the Act.”

After recording such conclusions, the Court proceeded to uphold the decisions of the National Consumer Disputes Redressal Commission under appeal and proceeded to dispose of the appeals in the manner as directed.

7. We see no reason to hold that merely because of enactment of the 2019 Act upon repeal of the 1986 Act as well as the parliamentary debates referred to by the petitioning Trust, the efficacy of the law laid down in the decision in **Indian Medical Association** (supra) as a binding precedent would stand eroded. The definition of "service" in both the enactments (repealed and new) are more or less similar and what has been said of "service" as defined in section 2(1)(o) of the 1986 Act would apply *ex proprio vigore* to the definition of the terms "service" in section 2(42) of the 2019 Act. Therefore, we have little reason to hold that services rendered by doctors in lieu of fees/charges therefor are beyond the purview of the 2019 Act.

8. We may, at this stage, travel down memory lane to ascertain what was the view of the Supreme Court on references to speeches in course of debates on the floor of a house. In **State of Travancore-Cochin vs. Bombay Co.**

Ltd., reported in AIR 1952 SC 366, Hon'ble Patanjali Shastri, CJI (as His Lordship then was) had the occasion to observe that a speech made in the course of debate on a bill could at best be indicative of the subjective intent of the speaker, but it would not reflect the inarticulate mental process lying behind the majority vote which carried the bill, nor is it reasonable to assume that the minds of all those legislators were in accord. His Lordship, in **Aswini Kumar Ghose vs. Arabinda Bose**, reported in AIR 1952 SC 369, ruled that speeches made on the floor of the Parliament are not admissible as extrinsic aids to the interpretation of statutory provisions. Hon'ble B.P. Sinha, CJI (as His Lordship then was), in **State of West Bengal vs. Union of India**, reported in AIR 1963 SC 1241, held that a statute is the expression of the collective intention of the Legislature as a whole and any statement made by an individual, albeit a Minister, of the intention and object of the Act, cannot be used to cut down the generality of the words used in the statute.

9. No doubt, the above rigid view has been on the decline in recent years and there are judgments aplenty where Judges are found to have referred to Constituent Assembly

debates or debates on the floor of the house for a particular construction of a statute. Reference in this regard may be made to the decision of the Supreme Court in **K. P. Varghese vs. Income Tax Officer, Ernakulam & Anr.**, reported in (1981) 4 SCC 173. However, we have referred to the aforesaid decisions with the sole intent of gathering guidance on the value to be attached to the speeches when a repealed statute, as earlier read and interpreted by the Supreme Court, bears no ambiguity with the repealing statute and the definition of a particular term in such repealing statute arises for interpretation once again, this time by a High Court.

10. Despite not taking a rigid view, we are of the clear opinion that the contention raised by the learned counsel for the petitioning Trust, of the Hon'ble Minister having made certain statements in course of parliamentary debates on the Bill that preceded the 2019 Act, is of little relevance. From the pleadings it is found that 'health care' was initially included in the definition of the term "service" appearing in the Bill but after extensive debates, the same was deleted. This is the sheet-anchor of the claim raised in the writ petition that 'health care' not being part of the definition of "service" in

section 2(42) of the 2019 Act, as distinguished from the definition in the Bill, deficiency in services relating to 'health care' cannot be the subject matter of complaints before the consumer fora. We wonder, what turns on such deletion. In the context of the 1986 Act and the 2019 Act, there could be no two opinions that the definition of "service" having been read, understood and interpreted by the Supreme Court in **Indian Medical Association** (supra) to include services rendered by a medical practitioner to his patient upon acceptance of fees/charges, the parliamentarians might have thought of not including `health care' as that would have amounted to a mere surplusage. If at all the Parliament while repealing and replacing the 1986 Act with the 2019 Act had intended to give a meaning to the term "service" different from the one given by the Supreme Court, such intention ought to have been reflected in clear words by a specific exclusion of 'health care' from the purview of the 2019 Act. While construing a statute, what has not been said is equally important as what has been said.

11. We, therefore, hold that mere repeal of the 1986 Act by the 2019 Act, without anything more, would not result in

exclusion of ‘health care’ services rendered by doctors to patients from the definition of the term “service”.

12. The writ petition, thus, stands dismissed.

13. The petitioning Trust shall pay, as costs, Rs.50,000/- to the Maharashtra State Legal Services Authority within a month from date failing which such sum shall be recovered as arrears of land revenue.

(G. S. KULKARNI, J.) **(CHIEF JUSTICE)**