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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3074/2019 and CM APPL. 14133/2019**

PAWAN RELEY AND ANR. Petitioners

Through: Petitioners in person.

versus

UNION OF INDIA AND ORS. Respondents

Through: Ms Bharathi Raju, Senior Panel
Counsel for UOI/R-1.

Mr Kirtiman Singh, CGSC with Mr
Madhav Bajaj, Advocate for UOI.

AND

+ **W.P.(C) 3911/2019 and CM APPL. 17710/2019**

ROHAN YADAV AND ANR. Petitioners

Through: Mr Amitabh Chaturvedi, Mr Ankit
Monga and Mr B.L.N. Sanjit,
Advocates.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr Aman Naqvi, Advocate.

AND

+ **W.P.(C) 4454/2019 and CM APPL. 19768/2019**

ARENESS FOUNDATION Petitioner

Through:

versus

UNION OF INDIA AND ANR. Respondent

Through: Mr Anil Soni, CGSC with Mr Rahul
Mourya, Advocate for UOI.

Ms Shruti Shiv Kumar, proxy counsel
for Mr Ravi Prakash, CGSC.

AND

+ **W.P.(C) 9061/2019**

SUNAINA DALMIA Petitioner

Through:

versus

UNION OF INDIA AND ORS.

..... Respondent

Through: Mr Aman Naqvi, proxy counsel for
Mr Shadan Farasat, ASC for GNCTD.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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27.09.2022

1. The present writ petitions have been filed by the petitioners challenging the vires of Section 17 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter “Maintenance Act”).
2. The petitioners have challenged the constitutional validity of Section 17 of the Maintenance Act, alleging to be in violation of Section 30 of the Advocates Act, 1961 in so far as it prevents Petitioner No. 1, who is a Lawyer representing Petitioner No. 2 in W.P.(C) 3074/2019, from representing Petitioner No. 2 before the Maintenance Tribunal. It is also alleged that Section 17 of the Maintenance Act is also unconstitutional on account of being violative of Article 19(1)(g) of the Constitution of India.
3. Petitioner No. 2 has engaged Petitioner No. 1 as her Counsel in relation to a complaint filed under the Maintenance Act before the Maintenance Tribunal. Petitioner No. 1 was denied entry by the Maintenance Tribunal citing Section 17 of the Maintenance Act.
4. Being aggrieved, the petitioners had approached this Court by filing a writ petition titled as *Pawan Reley & Anr. v. Union of India & Ors.* in W.P. (C) 1466/2019, which was withdrawn on 13.02.2019 with liberty to challenge the constitutional validity of provisions of Section 17 of the Maintenance Act. The present petition was, thus, filed praying as aforesaid. Since the issue involved in all the connected matters are same, this Court

does not feel it necessary to state the facts of each case.

5. The petitioner relies upon the judgment passed by the Kerala High Court in *Adv. K.G. Suresh v. Union of India: AIR 2021 Ker 152*, whereby the Hon'ble Kerala High Court has declared Section 17 of the Maintenance Act as *ultra vires* to Section 30 of the Advocates Act, 1961. The petitioner also relies upon the judgment dated 28.05.2014 passed by the Division Bench of the Hon'ble Punjab & Haryana High Court at Chandigarh in CWP 7282/2010 and CWP 12340/2010 and contends that the party cannot be denied legal representation in view of Section 30 of the Advocates Act, 1961.

6. Mr. Kirtiman Singh, learned counsel appearing for the respondent, states that the Union of India has not challenged the judgment passed either by the High Court of Kerala or by the High Court of Punjab and Haryana.

7. It is contended by the learned counsel appearing for the petitioner that they would be satisfied if a party before the Maintenance Tribunal is permitted to have a legal representation and if such right is permitted, they do not wish to challenge the constitutional vires of Section 17 of the Maintenance Act.

8. The Division Bench of the Hon'ble Punjab & Haryana High Court in *Paramjit Kumar Saroya and Ors v. The Union of India & Ors: MANU/0765/2014*, after considering the Act and various judgments passed from time to time, interpreted the import of Section 30 of the Advocates Act, 1961 in relation to the Maintenance Act, 2007. It was held that Section 30 of the Advocates Act, 1961 came into force on 15.06.2011 i.e., much after coming into force of the Maintenance Act in the year 2007. Section 30 of the Advocates Act, 1961 gives an absolute right to an Advocate to

practice before all Courts and Tribunals and would prevail over the Maintenance Act. The Hon'ble Division Bench of Punjab & Haryana High Court construed the provisions of Section 17 of the Maintenance Act and Section 30 of the Advocates Act, 1961 harmoniously, and held as under:

“42. Learned counsel for the Union of India took time and produced notification dated 09.06.2011 on 27.05.2014 in terms whereof this provision had been brought into force w.e.f. 15.06.2011. The question which arises is as to the effect of this in the context of Section 17 of the said Act.

43. It is no doubt true that Section 17 of the said Act begins with the “notwithstanding” clause. However, while determining the right of representation by a legal practitioner, a complete phrase used is “notwithstanding anything contained in any law”. The reference in law can only be a law which is in force. On the date when the said Act came into force on 31.12.2007, Section 30 of the Advocates Act did not exist in the statute book. This is so as the Parliament in its wisdom had given the right to the Executive to notify from which date this provision would be applicable. Thus, Section 30 of the Advocates Act would be “any law” only if it was on the statute book. This provision came on to the statute book only w.e.f. 15.06.2011.

44. No doubt, Section 30 has been part of the Advocates Act as passed by the Parliament in 1961. The said Act is a subsequent statute of the year 2007. However, this provision was not part of the law on account of the conscious will of the Parliament to leave the aspect of its enforcement to the Executive and the Executive thereafter in its wisdom brought it into force only on 15.06.2011 i.e. much after the said Act came into force. It is in that sense a subsequent law which has come into force. In fact, while

enacting Section 17 of the said Act, as is also apparent from Parliamentary debates, the absence of enforcement of Section 30 of the Advocates Act was an aspect noticed. Thus, there was full consciousness in the debates in Parliament on Section 30 not existing as law on that date.

45. We have to also keep in mind that this provision is crucial specifically when we are dealing with the aspect of actual date. While dealing with any Tribunal or person who is legally authorized “to take evidence”, the Tribunal under the said Act is authorized to take evidence. Such evidence is crucial while dealing with Section 30 of the Advocates Act.

46. Learned Amicus Curiae has referred to Section 5 of the General Clauses Act, 1987 which reads as under:-

“5. Coming into operation of enactments -

[(1) Where any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent-

(a) in the case of a Central Act made before the commencement of the Constitution, of the Governor General, and

(b) in the case of an Act of Parliament, of the President]

(3) Unless the contrary is expressed, a¹[Central Act] or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.”

47. The reference aforesaid is in the context as to when a Central Act comes into force i.e. when it is not expressed to come into operation on a

particular day, it is to be on the day when it receives the assent of the President; and on the expiry of the day preceding its commencement under sub section (3) of Section 5 of the General Clauses Act. However, this has a caveat that “unless the contrary is expressed” by the Parliament itself in terms of sub section (3) of Section 1 of the Advocates Act authorizing the Central Government to appoint different dates for different provisions of the Act. Thus, it did not come into force in terms of clause (b) and sub section (3) of Section 5 of the General Clauses Act and came into force almost five decades later. Thus, it became law posterior to the said Act.

48. In the conspectus of the discussions aforesaid, we are thus of the view that the decision vide section 30 of the Advocates Act has become law on a posterior date to Section 17 of the said Act which is sufficient for us to come to the conclusion that there cannot be an absolute bar to the assistance by legal practitioners to a Tribunal or the Appellate Tribunal despite the “notwithstanding” clause. Both the enactments are Central enactments. While the said Act was being enacted, the absence of Section 30 of the Advocates Act was known. Not having conferred that right under Section 30 of the Advocates Act on the legal practitioner, the Parliament in its wisdom had found no reasons to give such rights under Section 17 of the said Act. However, the situation has subsequently changed on account of Section 30 of the Advocates Act having come into force. The right conferred under Section 30, subject to the provisions of the Advocates Act, is on every advocate so far his name is entered in the State roll to practise “throughout the territory to which this Act extends”. Such right is qua all Courts including the Supreme Court. Such right is also before any Tribunal or person “legally authorized to take evidence”. Thus, if a Tribunal is legally authorized to take evidence, there is right in the advocate to practise before the Tribunal. The Tribunal has the right to

take evidence. That being the status of the Tribunal, there has been intrinsic right in the advocate to practise before such a Tribunal in view of Section 30 of the Advocates Act which cannot be taken away. The position would be the same before the Appellate Tribunal in view of the powers conferred on a Tribunal constituted under Section 7 of the said Act. Sections 6, 8 and 11 of the said Act leave no manner of doubt about the vast powers including taking the evidence on oath, enforcing attendance of witnesses, compelling discovery of documents, it being a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Cr.P.C. etc.

49. The over-riding provisions of the said Act under Section 3 in the context of Section 17 of the said Act have to be appreciated in the context of the law prevalent when the said Act was enacted. The ground reality has changed on account of Section 30 of the Advocates Act having come into force on 15.06.2011, while all the judgements taking contrary view are based on Section 30 not being notified and the consequence thereof. Section 30 was not law when the said enactment was enacted and brought into force.

50. The aforesaid anomaly apart from our observations aforesaid itself would be requiring the Central Government to look into the matter of Section 17 of the said Act formally still being on the statute book.

51. We, thus, conclude on the provisions of the Acts as under:-

(i) We would request the Central Government to have a re-look into the provisions of the said Act in view of our observations aforesaid, moreso in the context of Section 30 of the Advocates Act.

(ii) The right to appeal is conferred on a party aggrieved under Section 16 of the said Act.

(iii) Section 17 would not come in the way of legal representation on behalf of parties post 15.06.2011 in view of Section 30 of the Advocates Act having come into force.”

9. The Hon’ble Punjab & Haryana High Court, by way of the said judgment, had requested the Central Government to have a re-look into the provisions of the Maintenance Act in context of Section 30 of the Advocates Act, 1961.

10. We are informed that as of yet neither any decision has been taken in that respect nor any appeal has been filed against the judgment passed by Hon’ble Punjab & Haryana High Court.

11. We are in agreement with the view taken by the Hon’ble Punjab & Haryana High Court and direct that Section 17 would not come in way of legal representation on behalf of the parties before the Maintenance Tribunal.

12. The present writ petitions are disposed of in the above terms.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

SEPTEMBER 27, 2022

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