

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No. 26216 of 2023

**Sudip Paul
Vs.
State of West Bengal & Ors.**

For the petitioner	:	Mr. Srinjoy Das
For the State	:	Md. Sk. Galib Ms. Jyotsna Roy Mukherjee
For the respondent no. 4	:	Mr. Supratim Bhattacharjee
Hearing concluded on	:	16.05.2024
Judgment on	:	21.05.2024

Sabyasachi Bhattacharyya, J:-

1. As recorded in the order dated May 16, 2024, the petitioner does not press relief (a), which has already become infructuous. The present challenge is restricted to the refusal by the respondent no. 3, the Sub-Divisional Officer, who is the appropriate adjudicatory authority under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as, "the 2007 Act") to decide on the request of the petitioner to permit the petitioner to be represented through a learned advocate who, in the present case, is the petitioner's son-in-law.
2. Learned counsel for the petitioner places reliance on a Division Bench judgment of the Delhi High Court in *Pawan Reley and another v. Union*

of India and others, reported at 2022 SCC OnLine Del 3221, where the said Division Bench, by relying on a previous Division Bench judgment of the Punjab and Haryana High Court in *Paramjit Kumar Saroya v. Union of India and another* reported at AIR 2014 P&H 121, held that in view Section 30 of the Advocates Act, 1961 (for short, “the 1961 Act”), the bar of Section 17 of the 2007 Act has to be read down. The proposition laid down in both the said judgments is that since Section 30 of the 1961 Act came into force in the year 2011, subsequent to the enactment of the 2007 Act, the latter overrides the bar contemplated in Section 17. At the time of enactment of the 2007 Act, the Legislature was not posted with Section 30, since the same had not been given effect to at that juncture.

3. Heard learned counsel for the parties. The short question which arises for consideration is whether in view Section 30 of the 1961 Act, the bar to appearance of advocates under Section 17 of the 2007 Act loses force.
4. It transpires from a perusal of the Acts that both are Central Acts. Whereas the 2007 Act is a special Act in the field of providing for maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution, the 1961 Act was promulgated to implement the recommendations of the All India Bar Committee made in 1953, to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Councils, and an All India Bar. Thus, whereas the 2007 Act deals with provisions of

maintenance and welfare of senior citizens, the 1961 Act is a special statute insofar as legal practitioners are concerned.

5. Seen from such perspective, in the event of a conflict between the provisions of the two in the field of representation of persons by legal practitioners/advocates, the 1961 Act ought to prevail over any other statute.

6. Section 30 of the 1961 Act reads as follows:

“30. Right of advocates to practice.--Subject to the provisions of this Act, every advocate whose name is entered in the State roll shall be entitled as of right to practise throughout the territories to which this Act extends,--

- (i) in all courts including the Supreme Court;*
- (ii) before any tribunal or person legally authorised to take evidence; and*
- (iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise.”*

7. Thus, in terms of the said provision, advocates whose names are entered in the State roll shall be entitled *as of right* to practise throughout the territories to which the Act extends in all courts including the Supreme Court, before any tribunal or person legally authorized to take evidence and before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise. Under Clause (ii), an advocate is thus entitled “as a matter right” to practise before any Tribunal or person legally authorized to take evidence.

8. The 2007 Act designates the Sub-Divisional Officer (SDO) as the Authority to take up matters under the said Act. For such purpose, quasi-judicial powers akin to a Tribunal/Civil Court in certain

respects have been vested in the said Authority. The SDO acts as a Tribunal and, under the provisions of the 2007 Act, can not only grant maintenance and consequential orders but also has the power to enforce its orders by the mode prescribed under the said statute.

9. Hence, for all practical purposes, the Maintenance Tribunal under the 2007 Act comes within the purview of a 'Tribunal' as well as a 'person legally authorized to take evidence' under Section 30(ii) of the 1961 Act.
10. Section 30 was given effect to from June 15, 2011 *vide* Notification No. 8(5)/88-IC dated June 9, 2011 issued by the Government of India, which was published as S.O. No. 1349(E) in Part II, Section 3, sub-section (ii) of the Gazette of India.
11. Thus, as on the date when Section 17 of the 2007 Act was enacted, Section 30 of the 1961 Act was not in force.
12. Section 17 provides that notwithstanding anything contained in any law, no party to a proceeding before a Tribunal or Appellate Tribunal shall be represented by a legal practitioner.
13. At that juncture, the Legislature, in its wisdom, took into consideration the prevalent law and inserted such bar in the 2007 Act. However, being fully aware of the said provision, Section 30 of the 1961 Act was given effect to from June 15, 2011. Thus, by necessary implication, the Legislature was fully aware of the restrictions in Section 17 when giving effect to Section 30 of the 1961 Act. Hence, there cannot be any manner of doubt that the blanket rights conferred

under Section 30 to advocates enrolled with the State Bar Councils overrides the bar in Section 17 of the 2007 Act.

14. In any event, if there is a conflict between two statutes, the special statute operating in the particular field concerned is to be given primacy. In the present case, the 2007 Act does not deal with legal practitioners or the field of law practice but contemplates providing protection and maintenance to senior citizens and parents. Thus, the issue of rights of the legal practitioners to practise law is dealt with by the 1961 Act, in which regard it is a special statute and has primacy over the 2007 Act.
15. Thirdly, Article 19(1)(g) of the Constitution of India confers the right on any person to carry on any occupation, trade or business as long it is not prohibited by any law coming within the purview of Article 19(6) of the Constitution. An interpretation in favour of a fundamental right is always to be preferred over one which takes away such right. Seen from such perspective as well, the right of an advocate to practise before any Tribunal or forum having power to take evidence takes precedence over a bar in a special statute operating in a different field restricting such right.
16. Thus, with utmost respect, I concur with the opinion of the Division Benches of the Punjab and Haryana and Delhi High Courts respectively, as expressed in the judgments cited by the petitioner, and come to the conclusion that the bar under Section 17 of the 2007 Act is subsumed by the overriding effect of Section 30 of the 1961 Act. Hence, a litigant before the Maintenance Tribunal or Appellate

Tribunal under the 2007 Act has a right to be represented by advocates, as do the advocates have a corresponding right to appear before such Tribunal and Appellate Tribunal.

17. In such view of the matter, WPA No. 26216 of 2023 is allowed, thereby holding that the petitioner has every right to be represented by an advocate before the Maintenance Tribunal/SDO designated under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, in connection with M.T. Case No. 13 of 2023 and/or otherwise.
18. There will be no order as to costs.
19. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)