IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

W.P.O. No. 202 of 2026

Kripal Singh Khurana

Vs.

State of West Bengal & Ors.

Mr. Srijib Chakraborty
Mr. Rittick Chowdhury
Mr. Pankaj Agarwal
Mr. Sohom Saha

....For the petitioner.

Mr. D.N. Ray
Mr. Atanu Basu
Mr. Nikhil Jhunjhunwala

....For the respondent nos. 1 to 3.

Mr. Ramesh Chandra Paul

....For the respondent no. 4.

Mr. Raspreet Singh Khurana

....For the respondent no. 5-in-person.

Hearing Concluded On : 21.07.2026

Judgment Delivered On : 10.08.2026

Judgment Uploaded On : 10.08.2026

Krishna Rao, J.:

1. The petitioner has filed the present writ petition praying for mandamus upon the respondents to permit the petitioner to be represented by an Advocate of his choice in the proceedings before the Senior Citizen Tribunal constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as "Act of 2007").

2. The petitioner is a senior citizen and is aged about 63 years. The petitioner is the owner of a residential property being Flat No. 4B, Middleton Apartment, situated at 3 Middleton Row, Kolkata, through inheritance from his father. Another property in the same premises being Flat No. G on the fifth floor of the said building was purchased by the petitioner in the name of his wife.

3. There is a dispute between the petitioner and his wife as well as his son. The petitioner has filed a detailed application before the Learned Maintenance Tribunal praying for eviction of his wife and his son, and restoration of the peaceful possession of his residential flat, protection of his life and property and other consequential reliefs. As the Tribunal was not taking the application filed by the petitioner, the petitioner has filed a writ petition before this Court being WPO No. 61 of 2026 praying for a direction upon the respondent authorities for expeditious disposal

of the application filed before the Maintenance Tribunal. During the pendency of the application, the Tribunal has issued a notice by fixing a date for hearing of the application filed by the petitioner and accordingly, the petitioner has withdrawn the application.

4. On 21st April, 2026, the petitioner had appeared before the Tribunal along with his Learned Advocate but the Tribunal declined to permit the petitioner to appear before the Tribunal through the Learned Advocate in view of the Section 17 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

5. Mr. Srijib Chakraborty, Learned Advocate representing the petitioner submits that Section 30 of the Advocates Act, 1961, confers an absolute statutory right upon an Advocate to practice before all Courts, Tribunals and Authorities legally authorized to take evidence, which right came into force on 15th June, 2011 and operates notwithstanding any prior statutory restriction.

6. Mr. Chakraborty submits that Section 17 of the Act of 2007, cannot be interpreted to override a subsequent statutory right, particularly when Section 30 was not in force at the time of enactment of the Act of 2007. He submits that the Maintenance Tribunal is vested with powers to record evidence, enforce attendance, and compel production of documents, squarely falls within the ambit of “authority legally authorized to take evidence” thereby attracting the application of Section 30 of the Advocates Act, 1961.

7. Mr. Chakraborty submits that embargo under Section 17, even with a non-obstante clause, cannot operate to defeat a later and specific statutory right conferred under Section 30, and must, therefore, be read down. He submits that it has been judicially settled that post 15th June, 2011, there exists no absolute bar to legal representation before the Maintenance Tribunal. He submits that the Act of 2007 is a beneficial and welfare-oriented legislation enacted to ensure speedy, inexpensive and effective relief to senior citizens who are subjected to neglect, harassment and dispossession.

8. In support of his submission, Mr. Chakraborty has relied upon the judgment in the case of ***Paramjit Kumar Saroya vs. The Union of India & Anr.*** reported in ***2014 SCC OnLine P&H 10864*** and submits that the Hon'ble Division Bench of the Punjab and Haryana High Court passed an order directing the Central Government to look into the matter of Section 17 of the Act of 2007 so that Section 17 would not come in the way of legal representation on behalf of parties post 15th June, 2011 in view of Section 30 of the Advocates Act, 1961, having come into force.

9. Mr. Chakraborty has relied upon the judgment in the case of ***Advocate K.G. Suresh vs. Union of India, Represented by Secretary & Ors.*** reported in ***2021 SCC OnLine Ker 1686,*** and submits that the similar issue was raised before the Hon'ble Division Bench of the Kerala High Court for declaring the Section 17 of the Act of 2007 is ultra vires the constitution, and void, repugnant to Section 30 of the Advocates Act,

1961. He submits that the Hon'ble Division Bench of the Kerala High Court declares the Section 17 of the Act of 2007 as ultra vires of Section 30 of the Advocates Act, 1961.

10. Mr. Chakraborty further relied upon the judgment in the case of ***Pawan Reley & Anr. vs. Union of India & Ors.*** reported in ***2022 SCC OnLine Del 3221*** wherein the Hon'ble Division of the Delhi High Court by taking into consideration of the judgment of the ***Paramjit Kumar Saroya (supra),*** directs that Section 17 would not come in way of legal representation on behalf of the parties before the Maintenance Tribunal.

11. Mr. Chakraborty further relied upon the judgment in the case of ***Kusum Ingots & Alloys Ltd. vs. Union of India & Anr.*** reported in ***(2004) 6 SCC 254*** and submits that an order passed on a writ petition questioning the constitutionality of a parliamentary act whether interim or final keeping in view the provisions contained in Clause (2) of Article 226 of the Constitution of India, will have effect throughout the Territory of India subject of course to the applicability of the Act. Mr. Chakraborty submits that the Hon'ble Division Bench of the Kerala High Court has declared Section 17 of the Act of 2007 as ultra vires of Section 30 of the Advocates Act, 1961 and thus, the order of the Hon'ble Division Bench of the Kerala High Court is equally applicable in the State of West Bengal.

12. Mr. D.N. Ray, Learned Advocate appearing for the respondents no. 1 to 3, Mr. Ramesh Chandra Paul, Learned Advocate appearing for the respondent no. 4 and Mr. Raspreet Singh Khurana, the respondent no. 5-in-person submits that if the Hon'ble Division Bench of the Kerala High Court has held that Section 17 of the Act of 2007 is ultra vires of Section 30 of the Advocates Act, 1961 and the Hon'ble Supreme Court has held that an order passed on a writ petition questioning the constitutionality of a Parliamentary Act whether interim or final keeping in view the provisions contained in Clause (2) of Article 226 of the Constitution of India will have effect throughout the Territory of India and thus, in the State of West Bengal also Section 17 of the Act of 2007, be declared as ultra vires.

13. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, is an Act to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognised under the Constitution and for matters connected therewith or incidental thereto. Section 4 of the Act speaks about Maintenance of parents and senior citizens and it reads thus:

> *"**4. Maintenance of parents and senior citizens**.-(1) A senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an application under section 5 in case of—*
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> *(i) parent or grand-parent, against one or more of his children not being a minor;*

(ii) a childless senior citizen, against such of his relative referred to in clause (g) of Section 2.

(2) The obligation of the children or relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.

(3) The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.

(4) Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such citizen or he would inherit the property of such senior citizen:

Provided that where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property."

14. Section 5 of the Act, 2007, speaks about application for maintenance and it reads thus:

*"**5. Application for maintenance.** (1) An application for maintenance under section 4, may be made--*

(a) by a senior citizen or a parent, as the case may be; or

(b) if he is incapable, by any other person or organization authorized by him; or

(c) the Tribunal may take cognizance suo motu.

Explanation.--For the purposes of this section "organization" means any voluntary association registered under the Societies Registration Act, 1860 (21 of 1860) or any other law for the time being in force.

(2) The Tribunal may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this section, order such children or relative to make a monthly allowance for the interim maintenance of such senior citizen including parent and to pay the same to such senior citizen including parent as the Tribunal may from time to time direct.

(3) On receipt of an application for maintenance under subsection (1), after giving notice of the application to the children or relative and after giving the parties an opportunity of being heard, hold an inquiry for determining the amount of maintenance.

(4) An application filed under sub-section (2) for the monthly allowance for the maintenance and expenses for proceeding shall be disposed of within ninety days from the date of the service of notice of the application to such person:

Provided that the Tribunal may extend the said period, once for a maximum period of thirty days in exceptional circumstances for reasons to be recorded in writing.

(5) An application for maintenance under sub-section (1) may be filled against one or more persons:

Provided that such children or relative may implead the other person liable to maintain parent in the application for maintenance.

(6) Where a maintenance order was made against more than one person, the death of one of them does not affect the liability of others to continue paying maintenance.

(7) Any such allowance for the maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or expenses of proceeding, as the case may be.

(8) If, children or relative so ordered fail, without sufficient cause to comply with the order, any such Tribunal may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person for the whole, or any part of each month's allowance for the maintenance and expenses of proceeding, as the case be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made whichever is earlier:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Tribunal to levy such amount within a period of three months from the date on which it became due."

15. Section 6 of the Act speaks about jurisdiction and procedure, and it reads thus:

*"**6. Jurisdiction and Procedure**.- (1) The proceedings under section 5 may be taken against any children or relative in any district-*

(a) where he resides or last resided; or

(b) where children or relative resides.

(2) On receipt of the application under section 5, the Tribunal shall issues a process for procuring the presence of children or relative against whom the application is filed.

(3) For securing the attendance of children or relative the Tribunal shall have the power of a Judicial Magistrate of first class as provided under the Code of Criminal Procedure, 1973 (2 of 1974).

(4) All evidence to such proceedings shall be taken in the presence of the children or relative against whom an order for payment of maintenance is proposed to be made, and shall be

recorded in the manner prescribed for summons cases:

Provided that if the Tribunal is satisfied that the children or relative against whom an order for payment of maintenance is proposed to be made is willfully avoiding service, or willfully neglecting to attend the Tribunal, the Tribunal may proceed to hear and determine the case ex parte.

(5) Where the children or relative is residing out of India, the summons shall be served by the Tribunal through such authority, as the Central Government may by notification in the official Gazette, specify in this behalf.

(6) The Tribunal before hearing an application under section 5 may, refer the same to a Conciliation Officer and such Conciliation Officer shall submit his findings within one month and if amicable settlement has been arrived at, the Tribunal shall pass an order to that effect.

Explanation.-For the purposes of this sub-section "Conciliation Officer" means any person or representative of an organization referred to in Explanation to sub-section (1) of section 5 or the Maintenance Officers designated by the State Government under sub-section (1) of section 18 or any other person nominated by the Tribunal for this purpose."

16. Section 7 of the Act speaks about constitution of Maintenance Tribunal, and it reads thus:

*"**7. Constitution of Maintenance Tribunal**.- (1) The State Government shall within a period of six months from the date of the commencement of this Act, by notification in Official Gazette, constitute for each Sub-division one or more Tribunals as may be specified in the notification for the purpose of adjudicating and deciding upon the order for maintenance under section 5.*

(2) The Tribunal shall be presided over by an officer not below the rank of Sub-Divisional Officer of a State.

(3) Where two or more Tribunals are constituted for any area, the State Government may, by general or special order, regulate the distribution of business among them."

17. Section 8 of the Act speaks about summary procedure in case of inquiry, and it reads thus:

*"**8. Summary procedure in case of inquiry.**-(1) In holding any inquiry under Section 5, the Tribunal may, subject to any rules that may be prescribed by the State Government in this behalf, follow such summary procedure as it deems fit.*

(2) The Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Tribunal shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) Subject to any rule that may be made in this behalf, the Tribunal may, for the purpose of adjudicating and deciding upon any claim for maintenance, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.

18. Section 15 of the Act speaks about the constitution of Appellate Tribunal, and it reads thus:

*"**15. Constitution of Appellate Tribunal**.-(1) The State Government may, by notification in the Official Gazette, constitute one Appellate*

Tribunal for each district to hear the appeal against the order of the Tribunal.

(2) The Appellate Tribunal shall be presided over by an officer not below the rank of District Magistrate."

19. Section 16 of the Act speaks about appeals, and it reads thus:

*"**16. Appeals.**- (1) Any senior citizen or a parent, as the case may be, aggrieved by an order of a Tribunal may, within sixty days from the date of the order, prefer an appeal to the Appellate Tribunal:*

Provided that on appeal, the children or relative who is required to pay any amount in terms of such maintenance order shall continue to pay to such parent the amount so ordered, in the manner directed by the Appellate Tribunal:

Provided further that the Appellate Tribunal may, entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) On receipt of an appeal, the Appellate Tribunal shall, cause a notice to be served upon the respondent.

(3) The Appellate Tribunal may call for the record of proceedings from the Tribunal against whose order the appeal is preferred.

(4) The Appellate Tribunal may, after examining the appeal and the records called for either allow or reject the appeal.

(5) The Appellate Tribunal shall, adjudicate and decide upon the appeal filed against the order of the Tribunal and the order of the Appellate Tribunal shall be final:

Provided that no appeal shall be rejected unless an opportunity has been given to both the parties of being heard in person or through a dully authorized representative.

(6) The Appellate Tribunal shall make an endeavour to pronounce its order in writing within one month of the receipt of an appeal.

(7) A copy of every order made under sub-section (5) shall be sent to both the parties free of cost.

20. Section 17 of the Act of 2007, reads as follows :

*"**17. Right to legal representation**- Notwithstanding anything contained in any law, no party to a proceeding before a Tribunal or Appellate Tribunal shall be represented by a legal practitioner."*

21. Advocates Act, 1961, is an Act to amend and consolidate the law relating to legal practitioners and to provide for the Constitution of Bar Councils and an All-India Bar. Section 2(a) defines "advocate" to mean an advocate entered in any roll under the provisions of this Act.

22. Section 30 of the Act speaks about rights of advocates to practice and the same reads thus:

*"**30. Right of advocates to practise**.— Subject to the provisions of this Act, every advocate whose name is entered in the 3 [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 authorized 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."

23. In exercise of the powers conferred by sub-section (3) of Section 1 of the Advocates Act, 1961, the Central Government have appointed 15th day of June, 2011 as the date on which Section 30 of the said Act shall come into force.

24. Article 19(1)(g) of the Constitution of India reads thus:

*"**19. Protection of certain rights regarding freedom of speech etc.**-(1) All citizens shall have the right-*

(a) to freedom of speech and expression;
(b) to assemble peaceably and without arms;
(c) to form associations or unions;
(d) to move freely throughout the territory of India;
(e) to reside and settle in any part of the territory of India; and
(f) omitted
(g) to practise any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

(3) Nothing in sub clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State

from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub clause.

(5) Nothing in sub clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to-

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii)

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise."

25. Article 39A of the Constitution of India speaks about equal justice and free legal aid and the same reads thus:

> *"**39A. Equal justice and free legal aid**.- The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."*

26. In the case of ***Paramjit Kumar Saroya (supra),*** the Hon'ble Division Bench of the Punjab and Haryana High Court has considered the Section 17 of the Act of 2007 and Section 30 of the Advocates Act, 1961, which reads as follows:

> ***"RIGHT TO LEGAL REPRESENTATION:***
>
> *The right to legal representation has been specifically denied under Section 17 of the said Act which reads as under : -*
>
> *"**17. Right to legal representation**- Notwithstanding anything contained in any law, no party to a proceeding before a Tribunal or Appellate Tribunal shall be represented by a legal practitioner."*
>
> *We may note that by an interim order dated 09.08.2011, this in fact has been stayed.*
>
> *The aforesaid Section did receive the attention of the Members of the Parliament during the course of debate as is apparent from perusal of the debates. The Hon'ble Minister while piloting the Bill referred to section 125 of the Cr.P.C. incorporating the provision for maintenance of parents and in that context it was observed that going to the Court*

and engaging lawyers would be a very cumbersome process as well as time consuming apart from costs. The emphasis was put on conciliation and, thus, it was observed there would be no advocates. The Tribunal would follow summary procedure and the claims would be disposed of in a time bound manner. In fact, some reservation was expressed in this behalf in Parliament as to how the application would be drafted, service effected etc. without any legal assistance. One of the Members Sh. S.K. Kharventhan observed that since more Tribunals are being constituted, the powers of the Courts are shrinking. In that context, it was observed that Section 30 of the Advocates Act dealing with the right of advocates to practise, though forming a part of the original Act of 1961, had still not been implemented and, thus, was taking away the powers of the lawyers. He expressed concern that if the lawyers are not appearing, but NGOs appear in matters of conduct of cases and adducing evidence there would be a problem. There would be no accountability of such representatives contrary to the lawyers representing where there is the Bar Council.

We have referred to the aforesaid in the context of Section 30 of the Advocates Act having been brought into force as on the date of discussion or even the passing of the Bill and the said Act.

Learned Amicus Curiae submits that on a thorough examination of the judicial pronouncements in this behalf, the view which appears to prevail is that there can be such exclusion. He, however, hastens to add that in most legislations like the Industrial Disputes Act, 1947 or the Consumer Protection Act, 1986, the right to be represented through a legal representative has been left at the discretion of the concerned Tribunal, authority or the consent of the opposite party. He pointed out the significance of Section 30 of the Advocates Act which reads as under : -

*"**30. Right of advocates to practise** - Subject to 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 authorized 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."

The aforesaid provision confers a right to practise on the advocate throughout the territories before Courts, Tribunals and any other authority before whom such advocate is entitled to practise. He laid emphasis on the aspect "legally authorized to take evidence" to submit that the role of a legal practitioner becomes crucial where evidence has to be adduced, as under the provisions of the said Act, they no more remain simple proceedings of just determining maintenance upto Rs. 10,000/-, but deal with rights in immovable properties and declarations to nullify transfers under a deeming provision of fraud or coercion or undue influence. These are ticklish legal issues for which any forum would require proper legal assistance. A Tribunal can enforce attendance of parties and issue bailable & nonbailable warrants. Powers under Civil and Criminal Procedure Codes have been conferred practically on the lines of a Court to a forum. In such complexities, it is obvious that there is a very high chance of either the person who claims or the opposite side seeking assistance from a legal practitioner at a stage prior to filing. If that be the position, should such assistance of legal practitioners be debarred at the crucial stage of taking depositions and arguments thereafter as the prelims can always be done in chambers of legal practitioners.

The judicial pronouncements brought to our notice for discussion and relied upon are as under: -

(a) Smt. Hemlata Kantilal Shah v. State of Maharashtra, (1981) 4 SCC 647. The issue related to legal representation before the Advisory Board under the COFEPOSA Act, 1974. There was no bar

created on legal representation under Section 8(e), but it was left to the discretion of the Board. The Hon'ble Supreme Court negated the challenge on dual grounds that the Advisory Board was not a party and the decision would be academic. It was, however, observed that there may be certain cases which were complicated and assistance of lawyers may be necessary on behalf of parties to explain acts and laws involved in the case.

(b) Lingappa Pochanna Appealwar v. State of Maharashtra, 1985 AIR (SC) 389. One of the questions raised was of the constitutional validity of Section 9 A of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1975, which was couched in similar terms as Section 17 of the said Act beginning with the "notwithstanding" clause depriving the pleader's right to appear on behalf of parties in any proceedings under the Act before the Collector, Commissioner or the Maharashtra Revenue Tribunal. The plea raised was that it affected the fundamental right of an advocate enrolled to carry on his profession under Article 19(1)(g) of the Constitution of India as well as rights of the non-tribals to be represented by legal practitioners of their choice being terminated. In that context, it was observed in paras 34 and 35 as under : -

"34. That contention that an advocate enrolled under the Advocates Act, 1961 has an absolute right to practise before all Courts and Tribunals can hardly be accepted. Such a right is no doubt conferred by Section 30 of the Advocates Act. But unfortunately for legal profession, Section 30 has not been brought into force so far though the Act has been on the Statute Book for the last 22 years. There is very little that we can do in the matter and it is for the Bar to take it up elsewhere. A person enrolled as an advocate under the Advocates Act is not ipso facto entitled to a right of audience in all Courts unless Section 30 of that Act is first brought into force. That is a matter which is still regulated by different statutes and the extent of the right to practise must depend on the terms of those statutes. The right of an advocate brought on the rolls to practise is, therefore, just what is conferred

on him by Section 14(1)(a), (b) and (c) of the Bar Councils Act, 1926. The relevant provisions reads as follows:

"14(1) An advocate shall be entitled as of right to practise:

(a) subject to the provisions of sub section (4) of 9, in the High Court of which he is an advocate, and

(b) save as otherwise provided by sub section (2) or by or under any other law for the time being in force in any other Court and before any other Tribunal or person legally authorized to take evidence, and

(c) before any another authority or person before whom such advocate is by or under the law for the time being in force entitled to practise."

In view of the various authorities on the subject, we cannot but hold that Section 9 A of the Act is not an unconstitutional restriction on advocates to practise their profession.

35. That brings us to the second aspect of the matter i.e. the so called right of a litigant to be represented before the Collector in matters not covered by Section 3(1) and 4 of the Act. Now it is well settled that apart from the provisions of Article 22(1) of the Constitution, no litigant has a fundamental right to be represented by a lawyer in any Court. The only fundamental right recognized by the Constitution is that under Article 22(1) by which an accused who is arrested and detained in custody is entitled to consult and be defended by a legal practitioner of his choice. In all other matters i.e. in suits or other proceedings in which the accused is not arrested and detained on a criminal charge, the litigant has no fundamental right to be represented by a legal practitioner. For aught we know, the legislature felt that for the implementation of the legislation, it would not subserve the public interest if lawyers were allowed to appear, plead or act on behalf of the non tribal transferees. It cannot be denied that a tribal

and a non tribal are unequally placed and non tribal transferee being a person belonging to the more affluent class, would unnecessarily protract the proceedings before the Collector under Sections 3(1) and 4 of the Act by raising all kinds of pleas calculated to delay or defeat the rights of the tribal for restoration of his lands. The proceedings before the Collector have to be completed within sufficient dispatch and the transferred lands restored to a tribal under sub section (1) of Section 3 and 4 of the Act without any of the law's delays."

The aforesaid discussion, thus, shows that the basic reasoning is predicated on Section 30 of the Advocates Act not being brought into force. In this context, while referring to Section 14 of the Bar Council Act, 1926, an emphasis was laid on the expression "persons legally authorized to take evidence" before any "tribunal" or "persons". This attains significance in view of Section 30 of the Advocates Act which had unfortunately not been brought into force till then.

(c) Aeltemesh Rein, Advocate, Supreme Court of India v. Union of India, (1988) 4 SCC 54. An advocate of the Supreme Court approached the highest judicial forum for enforcement of Section 30 of the Advocates Act. The Hon'ble Supreme Court held that no writ of mandamus could be issued to bring a statute or a statutory provision into force when according to the said statute the date on which it should be brought into force is left to the discretion of the Central Government. This was in the context of the majority view of the Constitutional Bench of the Hon'ble Supreme Court in A.K. Roy v. Union of India, 1982 AIR (SC) 710. However, this did not come in the way of the Hon'ble Supreme Court in issuing a writ in the nature of mandamus to the Central Government to consider whether the time to bring Section 30 of the Advocates Act into force had arrived or not, as the matter could not lie over without application of mind. Six months' time was fixed for the said purpose. Para 6 of this judgement reads as under : -

"6. The effect of the above observations of the Constitution Bench is that it is not open to this

Court to issue a writ in the nature of mandamus to the Central Government to bring a statute or a statutory provision into force when according to the said statute the date on which it should be brought into force is left to the discretion of the Central government. As long as the majority view expressed in the above decision holds the field it is not open to the Court to issue a writ in the nature of mandamus directing the Central Government to bring Section 30 of the Act into force. But, we are of the view that this decision does not come in the way of this Court issuing a writ in the nature of mandamus to the Central Government to consider whether the time for bringing Section 30 of the Act into force has arrived or not. Every discretionary power vested in the executive should be exercised in a just, reasonable and fair way. That is the essence of the rule of law. The Act was passed in 1961 and nearly 27 years have elapsed since it received the assent of the President of India. In several conferences and meetings of lawyers resolutions have been passed in the past requesting the Central Government to bring into force Section 30 of the Act. It is not clear whether the Central Government has applied its mind at all to the question whether Section 30 of the Act should be brought into force. In these circumstances, we are of the view that the Central Government should be directed to consider within a reasonable time the question whether it should bring Section 30 of the Act into force or not. If on such consideration the Central Government feels that the prevailing circumstances are such that Section 30 of the Act should not be brought into force immediately it is a different matter. But it cannot be allowed to leave the matter to lie over without applying its mind to the said question. Even though the power under Section 30 [sic Section 1(3)] of the Act is discretionary, the Central Government should be called upon in this case to consider the question whether it should exercise the discretion one way or the other having regard to the fact that more than a quarter of century has elapsed from the date on which the Act received the assent of the President of India. The learned Attorney General of India did not seriously dispute the jurisdiction of this Court to issue the writ in the manner indicated above."

In the course of arguments on 26.05.2014, a question arose whether this mandate had been fulfilled.

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.

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.

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.

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.

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, a [1][Central Act] or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement."

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.

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.

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.

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.

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."

27. In the case of ***Adv. K.G. Suresh (supra),*** the Hon'ble Division Bench of the Kerala High Court, has held as follows :

*"**50.** Contention of the learned counsel for the petitioner and the Bar Council of India, that the Tribunals are clothed with the powers of Civil Courts, for the purpose of taking evidence, enforcing attendance, production of evidence, and that denial of legal assistance to the parties before the Tribunal constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, requires consideration, for the reason that parties to the lis are not expected to know the nuances of law, evidence, both oral and documentary, to be produced.*

51. *Legal aid is a constitutional right guaranteed under Article 21 of the Constitution of India and legal assistance cannot be confined only to legal advice, which, in our view, would not be sufficient, in the interest of the parties.*

52. *Contention of the Union of India, that since the main intention of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is to provide speedy and cost effective mechanism to the parents/senior citizens, to claim maintenance from their children/grandchildren/relatives, as the case may be, and participation of advocates in the proceedings will jeopardize this objective, cannot be accepted, for the reason that mere engagement of a lawyer would not delay the process of adjudication of a dispute before the Maintenance Tribunal.*

53. *Cost effective mechanism, cited as one of the reasons for denying legal assistance, also cannot be accepted, for the reason that if any litigant is enable to engage a lawyer of his choice, Legal Services Authority, constituted under the Legal Services Authorities Act, 1987, comes into the aid of such litigant, by engaging a lawyer to assist him.*

54. *Union of India, cannot undermine the role of the Legal Services Authority, and the lawyers engaged by them, to assist the litigants, in comparison to the lawyers to be engaged by the children/grandchildren/relatives, solely on the ground that they are financially in a better position to avail the services of the best advocates.*

55. *True that the legislation, Maintenance and Welfare of Parents and Senior Citizens Act, 2007, has envisaged that the disputes and differences should be resolved amicably and in that context, laid emphasis on the role of a Conciliation Officer, nominated by the Tribunal, but he will not be a substitute for a lawyer.*

56. *Contention of the Union of India, that the makers of the Act foresaw that engagement of legal practitioners to represent cases will prolong the matter and will be more of a harassment for the*

parents in their last phase of life as judgment will be delayed, is wholly unacceptable.

57. *As Section 30 of the Advocates Act, 1961 has been brought into force from 15.06.2011, Advocates enrolled under the said Act have been conferred with an absolute right thereof, to practice before all the Courts and Tribunals. By virtue of Section 30 of the Advocates Act, 1961, coming into force from 15.06.2011, the restriction imposed is taken away and in such circumstances, Article 19 of the Constitution of India, which guarantees the freedom to practice any profession, enables the Advocates to appear before all the Courts and the Tribunals, subject to Section 34 of the Advocates Act, 1961.*

58. *In the light of the above discussion and decisions, Section 17 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, is declared as ultra vires of Section 30 of the Advocates Act, 1961 and thus, the petitioner is entitled for a declaration that he has a right to represent the parties before the Tribunal/Appellate Tribunal/Court, constituted under Act 56 of 2007. Accordingly, this writ petition is allowed."*

28. In the case of ***Kusum Ingots & Alloys Ltd. (supra),*** the Hon'ble Supreme Court held that:

*"**21.** A parliamentary legislation when it receives the assent of the President of India and is published in the Official Gazette, unless specifically excluded, will apply to the entire territory of India. If passing of a legislation gives rise to a cause of action, a writ petition questioning the constitutionality thereof can be filed in any High Court of the country. It is not so done because a cause of action will arise only when the provisions of the Act or some of them which were implemented shall give rise to civil or evil consequences to the petitioner. A writ court, it is well settled, would not determine a constitutional question in a vacuum.*

22. *The Court must have the requisite territorial jurisdiction. An order passed on a writ*

petition questioning the constitutionality of a parliamentary Act, whether interim or final keeping in view the provisions contained in clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act.

29. The Division Bench of the Hon'ble Punjab and Haryana High Court in the case of ***Paramjit Kumar Saroya (supra),*** requested the Central Government to have a re-look into the provisions of the Act of 2007 in view of the observations made by the Court and in the context of Section 30 of the Advocates Act, 1961 but till date neither any appeal is preferred against the said judgment nor the Central Government has taken any decision. In the meantime, the Hon'ble Division Bench of the Kerala High Court in the case of ***Adv. K.G. Suresh (supra),*** has also dealt with the same issue and declared that Section 17 of the Act of 2007 is ultra vires of Section 30 of the Advocates Act, 1961 and declared that the Advocate has a right to represent either of the parties before the Tribunal/Appellate Tribunals/Court, constituted under the Act of 2007.

30. In the present case also the grievance of the petitioner that the Tribunal is not allowing the petitioner to be represented through an Advocate in view of Section 17 of the Act of 2007. Considering the judgment passed by the Hon'ble Division Bench of the Punjab and Haryana High Court in the case of ***Paramjit Kumar Saroya (supra),*** and the Hon'ble Division Bench of the Kerala High Court in the case of ***Adv. K.G. Suresh (supra),*** which is also followed by the Hon'ble Division Bench of

the Delhi High Court in the case of ***Pawan Reley (supra),*** this Court has no other alternative but to declare Section 17 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 as *ultra vires* of Section 30 of the Advocates Act, 1961 and the petitioner is entitled to be represented by an Advocate/Advocates before the Tribunal, Appellate Tribunal and the Courts constituted under the Act of 2007.

31. WPO No. 202 of 2026 is **allowed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)