

STATE INFORMATION COMMISSION, PUNJAB

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Sukhchain Lal
S/o Sh. Kasturi Lal,
78/9, Main Bazar,
Katra Khazana,
SriAmritsar Sahib

....Appellant

Vs

Public Information Officer,
O/o The Commissioner,
Municipal Corporation,
SriAmritsar Sahib

...Respondent

Complaint Case No. 2902 of 2013

ORDER

This case was last heard on 07.04.2015 and the order was reserved.

Since this Complaint case has been pending for a long period so we are of the considered view that facts of this case be revisited.

The present complainant, Sh. Sukhchain Lal had moved an application to the PIO/Municipal Corporation, SriAmritsar Sahib on 17.06.2013 seeking copies of file noting, action taken report and day to day progress report in the matter.

Subsequently he filed a complaint under Section 18 of the Right to Information Act, 2005, (hereinafter referred as Act), which was received in the State Information Commission (hereinafter referred as Commission), Punjab, vide Diary No. 17532 dated 26.07.2013. Notice of hearing was issued to the respondent PIO concerned.

A written reply was filed by Sh. Suresh Raj, Assistant Town Planner-cum-deemed PIO O/o Municipal Corporation, Sri Amritsar Sahib stating that the request for information was transferred to him under Sections 5 (4) and 5 (5) of the Act vide Municipal Corporation, letter

No. PIO/RTI/300 dated 18.06.2013. Thereafter information was compiled and sent through PIO's letter no. MTP/286 dated 22.08.2013.

Subsequently another response was sent by speed post on 07.10.2013. Copies of these letters have been placed on record. It is averred that the information in possession of the respondent PIO has since been given to the information seeker and that there is no other information, held by the respondent PIO, has been denied to the complainant. It was also averred that the complainant has not pointed out any deficiency in the information and therefore the complaint should be dropped and proceedings be closed.

During the course of hearing on 21.11.2013, Sh. Lal appeared in person but was represented by one Sh. P. C. Bali, who made presentation in the Commission on behalf of the complainant. This, however, was objected to by the respondent on the ground that an information seeker can be represented by an authorised Advocate and since Sh. Bali is not a registered Advocate, he cannot intervene on behalf of the complainant or argue the case of the complainant before the Commission.

When Sh. Sharma raised objection that Information Seeker/Complainant cannot be represented by authorised person before the Commission, Sh. Bali also pleaded before the Commission that advocate must not be allowed to appear before the Commission as the State Information Commission is a Tribunal, which does not try any evidence on oath. The advocates should be allowed if the Commission initiates any action under Code of Civil Procedure (CPC), while dealing with that particular case, u/s 18 of the Act if desired ever.

During the hearing, held on 10.01.2014 certain issues were drawn up for determination by the Bench, headed by the then Hon'ble Chief Information Commissioner (CIC), Sh. R. I. Singh, under Section 18 of the Act.

The issues, which were drawn up for determination by the Commission, are as follow:-

(i) Whether a person not registered as an Advocate can appear on behalf of an information-seeker before the Commission.

(ii) Whether a person not registered as an Advocate and not holding a pleader's license can appear on behalf of an information-seeker in the Commission and plead on his behalf in the proceedings under Sections 18 and 19 of the Right to Information Act, 2005.

(iii) Whether such a non-Advocate can appear after charging certain consideration from the concerned information seeker.

(iv) Whether there should be a specific format of Vakalatnama/authorization which must be submitted by non-Advocate representing an information-seeker before the Commission.

(v) Whether a formal Order needs to be passed by the Commission in each case permitting such non-Advocate to represent an information-seeker, before such individual can be allowed to appear or plead on behalf of the information seeker.

During the hearings, held by the Full Bench, consisting of undersigned, both Sh. Sharma, advocate and Sh. Bali, who represented respondent PIO and the Complainant respectively, pleaded that they do not want to make additional written and oral submissions, apart from the submissions, which they have already made.

They also informed the Bench that requisite information in this case had been supplied to the information seeker.

However, during the hearing, held on 24.02.2015, Sh. Sharma, advocate, raised a new issue in connection with the fact that as to whether the State Information Commission has got power under Section 18 of the Act to adjudicate on the issues, which had been thrashed out by the then Full Bench, headed by the then Hon'ble CIC, Sh. R. I. Singh, on 10.01.2014.

Since Sh. Sharma has raised an important issue during the proceedings of the instant case, we are of the considered view that this issue must be addressed in proper manner before deciding the other issues, thrashed out for determination on 10.01.2014.

Sh. Sharma, advocate, made the following claims to support the contentions made by him in this case that non-advocates cannot appear before the Commission on behalf of complainant and the both the parties can be represented by the advocates only.

He also pleaded that he wanted to draw attention of the Bench to the following cases which very relevant and applicable to the present case:-

(a) Harishanker Rastogi Vs. Girdhari Sharma and anr 1978 AIR 1019, 1978 SCR (3) 1978 dated 13/03/1978;

- (b) **Bhiwa Yeshwant Vs. Regional Director, E.S.I. H.C (Bombay) dated 25/04/1978**
- (c) **C.M. Visalakshi And Ors. vs K. Kuppusamy And Ors. Madras High Court dt.14/09/1987**
- (d) **Perfect Paper And Steel ... vs The Bombay National General ... on 27 /02/1989 Bombay H.C.**
- (e) **Mrs. Varsha A. Maheshwari vs M/S. Bhushan Steel Limited Bombay H.C. dt. 01/02/2011**
- (f) **Tata Chemicals Limited vs Deputy Commissioner Of ... ITAT-Bombay 05/02/1997**
- (g) **Tata Chemicals Limited vs Deputy Commissioner Of ... H.C. Bombay on 5 December, 1997**
- (h) **K. Umeshwar vs Electronics Corporation Of ... Andhra High Court on 27 June, 2000**
- (i) **Surender Raj Jaiswal And Ors. vs Vijaya Jaiswal Andhra High Court on 7 March, 2003**
- (j) **Perfect Paper And Steel ... vs Bombay National General Workers ... Bombay High Court on 9 August, 1983**
- (k) **Smt. K. Padmasree, Secunderabad vs M/S.Lotus Aluminium Private ... on 15 April, 2009 Andhra High Court**
- (l) **Madras Bar Association Vs. Union of India and another (C) NO. 150 OF 2006 SUPREME COURT OF INDIA.**

He claimed that in the case titled as “Harishankar Rastogi vs Girdhari Sharma And Anr on 13 March, 1978 (Equivalent citations: 1978 AIR 1019, 1978 SCR (3) 493)”, the Hon’ble SUPREME COURT of INDIA has held that:-

“1. A private person, who is not an Advocate, has no right to barge into Court and claim to argue for a party. He must get the prior permission of the Court for which the motion must come from the party himself. It is open to the Court to grant or withhold permission in its discretion. In fact, the Court may even after grant of permission withdraw it half-way through if the representative proves himself reprehensible. The antecedents, the relationship, and reasons for requisitioning the services of the private person and a variety of other circumstances must be gathered before grant or refusal of permission.

2. The Advocates are entitled as of right to practice in this Court under S. 30(1) of the Advocates Act, 1961 subject to the reasonable restriction provided under s. 29 of that Act viz. that the only class of persons entitled to practice the profession of law shall be advocates. Even so, it is open to a party, who is unable for some reason or the other to present his case adequately, to seek the help of another person in his behalf. To negative such a plea may be denying justice altogether in certain cases, especially in a land of illiteracy and

indigence and judicial processes of sophisticated nature. Ss.302, 303 and 304 of the Cr.P.C. are indicative of the policy of the Legislature to provide for such contingencies. This Court should not totally shut out representation by person other than the party himself in situations where an advocate is not appearing for the party.

The second judgement, on which he placed his reliance, is titled as

“ Goa Antibiotics & ... vs R.K.Chawla And Anr (CRIMINAL MISCELLANEOUS PETITION NO. 10490 OF 2011) (decided on July 04, 2011).

The Hon'ble Supreme Court held that:-

“A natural person can, of course, appear in person and argue his own case personally but he cannot give a power of attorney to anyone other than a person who is enrolled as an advocate to appear on his behalf. To hold otherwise would be to defeat the provisions of the **Advocates Act. Section 32** of the Act, however, vests discretion in the court, authority or person to permit any person who is not enrolled as an advocate to appear before the court and argue a particular case. **Section 32** of the Act is not the right of a person (other than an enrolled advocate) to appear and argue before the court but it is the discretion conferred by the Act on the court to permit any one to appear in a particular case even though he is not enrolled as an advocate.....

There is a distinction between the right to appear on behalf of someone, which is only given to enrolled lawyers, and the discretion in the Court to permit a non-lawyer to appear before it. Under **Sections 29** and **33** of the Act only those persons have a right to appear and argue before the court who are enrolled as an advocate while under **Section 32** of the Act, a power is vested in the court to permit, in a particular case, a person other than an advocate to appear before it and argue the case. A power of attorney holder cannot, unless he is an enrolled lawyer, appear in Court on behalf of anyone, unless permitted by the Court under **Section 32** of the Act, though of course he may sign sale deeds, agreements etc. and do other acts on behalf of someone else, unless prohibited by law.”

He also placed his reliance on the judgement given by Hon'ble Madras High Court in C.M. Visalakshi And Ors. vs K. Kuppusamy And Ors. on 14 September, 1987 (Equivalent citations: AIR 1989 Mad 27), which has held that:- “9. While dealing with an

application like this, a Court should bear in mind that any person, who is not an Advocate, cannot as of right force himself, to appear before a Court and claim to plead for another. Permission may, however, be granted by a Court, taking into consideration the several factors for such non-professional representation.”

And the judgment given by Hon’ble **Bombay High Court in Mrs. Varsha A. Maheshwari vs M/S. Bhushan Steel Limited** (on 1 February, 2011), it has been held that, “9. In the result, we hold that a person holding a power of attorney on behalf of a party authorizing him to appear, act or plead for him before a Court of law is not entitled to a right of audience before a Court of law and cannot be heard as a representative of the party unless specifically permitted by the Court to do so upon a proper application moved by the party himself.....”

On other judgement given by Hon’ble **Bombay High Court in Perfect Paper And Steel ... vs Bombay National General Workers ...** on 9 August, 1983 (Equivalent citations: 1984 (2) BomCR 30), it has been held that, “12. It is no doubt true that an employer has a right to be represented before the Industrial Court in any lawful manner. He has an unqualified right to be represented by the class of persons enumerated in Regulation 11. In a given case the Court in its judicial discretion may grant him permission to be represented by some other person i.e. other than the one referred to in regulations. However since the Labour Advisers are not entitled to practise the profession of law in view of the provision of **Advocates Act**, they cannot be permitted to achieve the same result, that is to practise the profession of law by framing a regulation under **section 33** of the Act. They cannot also be permitted to practise the profession of law under the cover or garb of special power of attorney. In this context Shri Deshmukh has rightly placed reliance upon the decision of the Supreme Court in **Harishankar Rastogi v. Girdhari Sharma and another**, . The following observations of the Supreme Court in para 2 are pertinent : "2, 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. A comprehensive programme of free legal services is in a sense a serious obligation of the State if the rule of law were to receive vitality in its observance. Until then parties may appear through Advocates, and where they are not represented by one such through some chosen friend. Such other person cannot practice the profession of habitually representing parties in Court. If a non-Advocate specialises in practicing in Court, professionally he will be violating the text of the interdict in the Advocates Act. I cannot allow him to do so. Nevertheless, it is open to a person, who is party to a proceeding, to get himself represented by a non-Advocate in a particular instance or case. Practicing a profession means something very different from representing some friends or relation on one occasion or in one case or on a few occasions or in a few cases. In the present instance, permission is sought for representation through a non-Advocate. It is absolutely clear that anyone who is not an Advocate, cannot, as of right, force himself into this Court and claim to plead for another. Permission may however, be granted by this Court taking the justice of the situation and several other factors into consideration for such non-professional representation. This approach accords with the policy of the Criminal Procedure Code (I am concerned with a criminal proceeding here) as spelt out in section 2(q). A pleader by definition, includes any person other than one authorised by law to practise in a Court if he is appointed with the permission of the Court, to act in a particular proceeding. This Court's power may well be exercised in regulating audience before it in tune with the spirit of section 2(q) of the Code."

Then in para 3 of the judgment the Supreme Court has considered the wisdom of the discretion in granting permission to some other persons to represent a party. The Supreme Court observed that the Bar is an extension of the system of justice, and an Advocate is an officer of the Court. He is master of an expertise but more than that accountable to the Court and governed by a high ethic. The success of the judicial process often depends on the services of legal profession. Then in para 4 this is what the Supreme Court has observed : "

4. Having regard to this conspectus of considerations I hold that a private person, who is not an Advocate has no right to barge into Court and claim to argue for a party. He must get the prior permission of the Court, for which the motion must come from the party himself. It is open to the Court to grant or withhold permission in its discretion. In fact, the Court may, even after grant of permission, withdraw it halfway through if the representative proves himself

reprehensible. The antecedents, the relationship, the reasons for requisitioning the services of the private person and a variety of other circumstances must be gathered before grant or refusal of permission."

Though the Supreme Court held that the Court has power to grant permission to the party to be represented by a chosen friend, it is made clear that such other person cannot practice the profession of habitually representing parties in Court. If a non-Advocate specialises in practising in Court, professionally he will be violating the text of the interdict in the **Advocates Act** and he cannot be allowed to do so. Therefore, it is quite obvious that what is prohibited by the **Advocates Act** cannot be indirectly achieved or granted while exercising the discretionary power of the Court. The discretion conferred upon the Court will have to be exercised in judicial manner without caprice and according to the principles of law and rules of natural justice. No general rule can be laid down in this behalf and to some extent it must depend on the facts and circumstances of each case. Sufficient guidelines have been laid down by the Supreme Court in Harishankar Rastogi's case for exercising this discretionary power....."

He also placed his reliance on the judgement given by Hon'ble Andhra High Court in **K. Umeshwar vs Electronics Corporation Of ...** on 27 June, 2000 (Equivalent citations: 2000 (4) ALD 184, 2000 (3) ALT 791), in which it has been held that

"18. In **T.C. Mathai v. District and Sessions Judge, Thiruvananthapuram**, , the Supreme Court while dealing with right of a party to represent him in Court observed :

"Legally qualified persons who are authorised to practise in the Courts by the authority prescribed under the statute concerned can appear for parties in the proceedings pending against them. No party is required to obtain prior permission of the Court to appoint such persons to represent him in Court. **Section 30** of the Advocates Act confers a right on every advocate whose name is entered in the Roll of Advocates maintained by a State Bar Council to practise in all the Courts in India including the Supreme Court. **Section 33** says that no person shall be entitled to practise in any Court unless he is enrolled as an advocate under that Act. Every advocate so enrolled becomes a member of the Bar. The Bar is one of the main wings of the system of justice. An advocate is the officer of the Court and is hence accountable to the Court. Efficacious discharge of judicial process very often depends upon the valuable services rendered by the legal profession.

But, if the person proposed to be appointed by the party is not such a qualified person, the Court has first to satisfy itself whether the expected assistance would be rendered by that person. The reason for Parliament for fixing such a filter in the definition clause (Section 2(q) of the Code) that prior permission must be secured before a non-advocate is appointed by the party to plead his cause in the Court, is to enable the Court to verify the level of equipment of such a person for pleading on behalf of the party concerned."

19. In *M. Krishnanmal v. T. Balasubramania Pillai*, AIR 1937 Mad. 937 (FB), it is observed that:

"An agent with a power of attorney to appear and conduct judicial proceedings, but who has not been so authorised by the High Court, has no right of audience on behalf of the principal, either in the appellate or original side of the High Court..... There is no warrant whatever for putting a power of attorney given to a recognised agent to conduct proceedings in Court in the same category as a vakalat given to a legal practitioner, though latter may be described as a power of attorney (which) is confined only to pleaders, i.e., those who have a right to plead in Courts."

20. In *Hari Om Rajender Kumar v. Chief Rationing Officer*, 1990 (1) ALT 645, this Court speaking through M. Jagannadha Rao, J., (as his Lordship then was) held that the right to appear and plead for a principal in Court as also the right to practise are concerned, are governed by **Sections 32 and 33** of the Advocates Act. It is held that:

24. This Court is duty bound to protect the purity of judicial process. The remedy under **Article 226** and the relief to be granted is discretionary. This Court is entitled to regulate its proceedings. This Court is not only entitled but duty bound to reject the claim of an agent who is not an advocate to represent a party in a proceeding under **Article 226** of the Constitution of India, if it comes to conclusion that the appearance of such power of attorney agent is for dubious reason. Only an advocate has right to argue the case. Of course, party in person can always represent himself but no agent other than advocate has any right to represent a party-in-person. The practice of permitting the power of attorney agent who is not an advocate enrolled under the **Advocates Act, 1961** should be put to an end.

In other judgment given by Hon'ble Andhra High Court in *Surender Raj Jaiswal And Ors. vs Vijaya Jaiswal* on 7 March, 2003 (Equivalent citations: AIR 2003 AP 317, 2003 (2) ALD 828, 2003 (3) ALT 38), it has been held that, "10. It is clear from **Section 32** of the

Advocates Act that the Court cannot permit a person to appear in general in all cases and that right can be exercised by the Advocates only.....

11. Similarly, Gujarat High Court in [Jaymal Thakore v. Charity Commissioner](#), held that the power given to a recognized agent cannot be permitted to act the role of the pleader and he was not having any right to plead. The provisions under the [Advocates Act, 1961](#) confers a monopoly right of pleading and practising law only on the enrolled or registered Advocates. [Section 30](#) of the Advocates Act confers such a right to practise on a pleader or Advocate. Under [Section 32](#) of the Advocates Act, a discretionary power was given to the Court to permit appearance to any non-Advocate for a party. [Section 32](#) restricts the power of the Court to permit any non-Advocate only to appear on behalf of the party in any particular case. But the Chartered Accountant - a Power of Attorney Holder was not entitled to practise as a pleader or an Advocate. In the said case, the Power of Attorney Holder was not entitled to practise and the Court rightly refused to permit him to practise. But whereas in the instant case, the General Power of Attorney of the 1st respondent was rightly permitted to appear on behalf of the respondent in the particular case alone but not to practise.

Sh. Sharma also relied on the judgement in the case of C. Venkatachalam vs. Ajitkumar C. Shah and others with Civil Appeal Nos.869-870 of 2003 and in Bar Council of India vs. Sanjay R. Kothari and Ors. (decided on 29.8.2011 by the Hon'ble Supreme Court of India.).

Sh. Bali also relied on the abovementioned judgment also to support his contentions.

The paras of the abovementioned judgment, which, we think are relevant to the instant case, are reproduced as under:-

1. These appeals emanate 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.

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

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 proves himself reprehensible. It is only a privilege granted by the Court and it depends entirely on the discretion of the court.

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](#).

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.

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.

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.

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.

84. 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. 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. (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:

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.

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.

He also placed his reliance on **MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS (Department of Personnel and Training) NOTIFICATION New Delhi, the 31st July, 2012**

He says that under the abovementioned notification, the Central Government has made the following rules, namely “Right to Information Rules, 2012.”

And the Rule 13 of said notification (Presentation by the Public Authority) allows that the public authority may authorise any representative of any of its officers to present its case.

He also placed his reliance on the opinion given by the Karnataka State Information Commission (KSIC) to the Karnataka State Government in its staff meeting held on 31.10.2009.

In its opinion KSIC has said to the Karnataka State Government that KSIC has no objection to the Advocates appearing before it in its proceedings either for the petitioner or for Respondent. Concerned parties namely Public Authorities/Government have to take their own decision, whether the concerned PIOs can engage Advocates at their cost.

He also claimed that Section 119 of C.P.C., which is reproduced hereunder to have better understanding of the objection, also put a bar on non-advocates to appear in the Commission:-

119. Unauthorized persons not to address Court—

“ Nothing in this Code shall be deemed to authorize any person on behalf of another to address the Court in the exercise of its original civil jurisdiction, or to examine witnesses, except where the Court shall have in the exercise of the power conferred by its charter authorized him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils and attorneys.”

The undersigned respondent wants to draw your kind attention to the Order 3 rule 4 of CPC which is reproduced hereunder:-

4. Appointment of pleader—

(1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorized by or under a power-of-attorney to make such appointment.

He also placed reliance on section 2(q) of Cr.P.C to define pleader. Section 2(q) Pleader reads as :-“Pleader is defined with reference to any proceeding in any court. In that context it means a person authorized by or under any law for the time being in force, to practice in such court. It includes any other person appointed with the permission of the court to act in such proceeding.”

He pleaded that keeping in view of the above said facts and circumstances the Bench must disallow the unauthorised representation made by Sh. Bali on the behalf of the complainant and drop the complaint proceedings initiated against the undersigned respondent.

Sh. Bali made the following arguments to support his claims.

He placed his reliance on the Judgment of Hon'ble Supreme Court in the case titled as

“State Of Madhya Pradesh vs Shobharam And Ors on 22 April, 1966”, in which it has been held that The High Court was in error in setting aside the conviction. Under Art. 22(1) a person arrested has the constitutional right to consult a legal practitioner concerning his arrest; and, a person who has been arrested as well as one who though not arrested runs the risk of loss of personal liberty as a result of a trial, have the constitutional right to be defended by an advocate of their choice. But in a trial under a law which does not provide for an order resulting in the loss of his personal liberty, he is not entitled to the constitutional right, because, the Article is concerned only with giving protection to personal liberty.

He claimed that whenever any Public Authority is called for hearing before the Commission, the said Public Authority does not have the luxury of being defended by the legal Counsel of their choice because of the fact that there is no loss of personal liberty even if Show cause notice is issued/penalty is imposed on them.

He claimed that Article 144 in The Constitution Of India 1949 has made it mandatory that “Civil and judicial authorities to act in aid of the Supreme Court All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court”

Similarly, the Article 141 in The Constitution Of India 1949 has declared that, “Law declared by Supreme Court to be binding on all courts The law declared by the Supreme Court shall be binding on all courts within the territory of India.”

He stated that as per Article 144 and Article 141 of the Constitution, every Public Authority is bound to implement the decision/judgement given by Hon’ble Supreme Court of India and hence also the PIO of Municipal Corporation, Sri Amritsar Sahib.

He claimed that moreover Section 30 of Advocate Act says, “Right of advocates to practice:- Subject to provisions of this Act, every advocate whose name is entered in the 1[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.

The Right to Information Act, 2005, does not have any provision allowing the advocate to appear on behalf of the Public Information Officer or Public Authority. As such the advocates are not allowed to appear on behalf of Public Information Officer of Public Authority.

Moreover, the Notice of hearing issued by this Hon'ble Commission says that "You are hereby directed to appear in person or through a duly authorised officer (not below the rank of an APIO/PIO) who should be well conversant with the facts of this case. In case you are represented by a duly authorised officer at the time of hearing, his version and statement made before the Commission shall be treated as if made by you and you will be responsible for their correctness and fulfillment.

He also claimed that on 21/11/2013, in another matter listed as CC 2521/2013, Hon'ble CIC decided the same issue and held that "Authorised Persons" could well appear from the side of Information seeker. The issue connected with the fact that there is no provision to permit an ordinary citizen, who is not registered as an advocate to pleaded on behalf of information seeker in proceedings before State Information Commission has thoroughly been discussed and finally decided by Hon'ble Ex CIC, Sh RI Singh and held that "I see no ground to debar a non-advocate to appear in the Commission as authorised representative of any Information Seeker".

That as such the issue in this matter CC 2902 of 2013 remained settled as per directions of CC 2521/2013 on "Theory of precedents" as laid convention of Legal Protocol.

He claimed that due to decision in CC 2521/2013, the present issues numbering 1 and 2 stand decided and need no further arguments.

He claimed that Hon'ble Apex Court in the case titled as "Union of India ... (Petitioner) Versus Namit Sharma ... (Respondent) WITH REVIEW PETITION [C] No.2675 OF 2012 IN WRIT PETITION [C] NO.210 OF 2012 State of Rajasthan & Anr. ... Petitioners Versus Namit Sharma ... "has already decided that Information Commissions are "Administrative Tribunals".

The Para 20 of above Judgement reads that "This function obviously is not a judicial function, but an administrative function conferred by the Act on the Information Commissions....."

Para 21 reads, "... The Information Commission, therefore, while deciding this it does not really perform a judicial function, but performs an administrative function in accordance with the provisions of the Act....."

Hence the objections raised by the counsel of respondent have no weight as the above legal restrictions of detailed Vakalatnamma and the order of the Court to allow a non advocate to plead as power of attorney is not applicable as the same are mandated by the "Advocate Act" and "Code of Civil Procedure" only for Courts. And further law does not prohibit anywhere that an authorised person cannot accept any honorarium, considerations in cash, kind or services and expenses incurred in representing the party for whom he works to represent. The arguments of the counsel of respondent on these issues are baseless, verbal and without any concrete citations of any court of the country. A Registered Advocate is doing practice of law and as such cannot join any other profession other than Legal Practice and the same is for a Registered Doctor with IMA, a CA, a CS, a CWA and other registered practitioners for different disciplines of profession where there is such binding with their parent associations. But a deed writing, Sales Tax Practice, Income Tax practice, Labour Law Practice can be done along with other professional activities. There are many a diplomas in Law which allows a limited legal activity side by side alongwith other lawful means of earning. An Authorised representative to represent in Information Commission cannot be held to be barred if he is not a Registered Advocate and if he works on some considerations even.

.....There is bar to do legal practice by non advocates in Courts, but there is no bar to represent as an authorised representative in any tribunals by non advocates, on considerations or free of considerations, there is no rule and bar and still no citation/rule is in knowledge of the undersigned.

He claimed that in the cases titled as "A.N. Rangaswami and Anr. Vs. The Industrial Tribunal, Fort St. ... on 29 September, 1952 Equivalent citations: AIR 1953 Mad 447, (1953) ILLJ 24 Mad, (1953) IMLJ 315), the Hon'ble Madras High Court held that (Author: J Subbarao Bench) and

Madras High Court A. N. Rangaswamy and Anr. Vs The Industrial Tribunal, Fort. ... on 18 September, 1953 Equivalent citations: AIR 1954 Mad 553 (Author: V Aiyar Bench: Rajamannar, V Aiyar)

.....a detailed observation has been made that right to practise by an Advocate is not absolute but a statutory one. The advocates have been conferred rights to practice not only in all courts including the Supreme Court but also before any tribunal or person legally authorized to take evidence and also before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practice. Therefore, the rights of an advocate to practice profession of law is a statutory right and not a fundamental right.-(1981) 2 Cal HN 56. Right of the advocate to appear and conduct cases in the court is not an absolute right. It is subject to the rule framed by Supreme Court under Art. 145 of the Constitution of India or High Court under section 34. Court can thus frame rules debarring advocates guilty of contempt, unprofessional or unbecoming conduct from appearing before courts.

In the case titled as Harish Uppal v. UOI, AIR 2003 SC 739, the Hon'ble Supreme Court has held that [Article 145](#) of the Constitution of India and [Section 34](#) of the Advocates Act clearly show that there is no absolute right to an Advocate to appear in a Court. An Advocate appears in a Court subject to such conditions as are laid down by the Court.

The rights of an advocate to practice profession of law clearly flows from the Advocates Act and therefore it is a statutory right and not a fundamental right.-(1981) 2 Gal HN 56.

He claimed that as in RTI Act, there is no provision for Evidence procedure unless if any special enquiry is made u/s 18 of Act during a complaint investigation under CPC, and in such situation a Public Authority can be represented though an Advocate.

In ordinary complaint/Appeal proceedings, only PIO or RTI designated officers can appear and an advocate is not allowed to appear on their behalf.

He prayed that in view of above, the Commission must pass an order to the effect that the non advocates can appear as "Authorised Persons" on behalf of Information seekers only in the Information Commission, (as a designated Tribunal) and such Authorised Persons are not supposed to file a detailed power of attorney as said to be "Vakalatnamma" in general. Such Authorised Persons are entitled to appear before the Commission free of any considerations or for any considerations/ honorarium/expenses/services in lieu of their representation in Commission, as mutually agreed between the Information seeker and Authorised Persons.

He also prayed that Commission must pass an order to the effect that registered advocates cannot appear before the Information Commission, as it is a Tribunal, which does not try any evidence on oath. The registered advocate should be allowed to appear if the Commission initiates any action under CPC u/s 18 of the Act if desired ever.

In a written representation moved before the Commission, which was received through diary number 1120, dated 16.01.2014, Sh. Bali pleaded that apart from the abovementioned two judgments, the judgment in civil appeal No 868 of 2003 of Hon'ble SC be examined also as the above judgment prove that an advocate or non-advocate can appear before any court, on cost even.

First of all, we are of the considered view that question, which was raised by Sh. Sharma that as to whether the State Information Commission has got power under Section 18 of the Act to adjudicate on the issues, which had been thrashed out by the then Full Bench, on 10.01.2014, be decided.

In this regard, we are of thoughtful consideration that the issues, which have been thrashed out by the Bench of the then Hon'ble Chief Information Commissioner, on 10.01.2014 came into existence only when both Sh. Bali and Sh. Sharma strongly objected the presence of each other in the hearing in the Commission in the instant Complaint case as representatives/pleaders of their respective clients.

Regarding the issues raised by Sh. Sharma as to whether the State Information Commission has got power under Section 18 of the Act to adjudicate on the issues, which had been thrashed out by the then Full Bench, on 10.01.2014, be decided, we are of the considered view that since these issues have been raised before the Bench of the undersigned during the proceeding of the instant complainant case, these must be addressed and decided as per the provisions of the RTI Act.

Regarding the issues raised by Sh. Sharma, we are of the thoughtful view that Section 18 of the RTI Act has nothing to do with the adjudication on the issues, thrashed out by the Full Bench.

The parties concerned in the instant compliant case aggressively urged before the successive Benches of the Commission, before which, the instant compliant case was put for hearing, to decide these issues (thrashed out on 10. 01. 2014) time and again and the parties went to the extent of supporting their contentions, made in favour and against the claims of each other, by placing various judgments of Hon'ble Supreme Court and different Hon'ble High Courts on record.

On the aggressive arguments and 'undying and unending persistence' of the parties concerned, we decided to adjudicate to the issues, thrashed out by the Full Bench.

The other objection raised by Sh. Sharma during one of the hearings is connected with the fact that as to whether the applicant or his representative can take additional ground during the hearing of the Compliant case in the Commission, which has not been taken by the applicant in his original complaint, We have given a thoughtful consideration and have found that additional ground regarding the fact that whether an Advocate can represent Municipal Corporation, Sri Amritsar Sahib before the Commission or not, was taken by Sh. Bali, during one of the hearings of the instant case and the same was not taken neither by him nor by the information seeker in his original complaint made under section 18 of the Act.

When Sh. Bali raised objection regarding representation of Municipal Corporation by an Advocate, Sh. Sharma first raised counter objection to same and then both Sh. Sharma and Sh. Bali, entered into heated exchange before the Bench during one of the hearings. They also raised objection against the presence of each other as representative of their respective clients in the Commission.

Though both Sh. Bali and Sh. Sharma objected the presence of each other in the Commission as representatives of their respective parties to plead their case, the Bench never passed any order to the effect to bar the presence of Sh. Sharma and Sh. Bali in the Commission to plead the case of their respective parities/clients.

In this regard, We are of the considered view that any party could raise new issues/points/arguments, which they have not raised in their original complaint/representation/pleading at any stage during the hearing of the case before the Commission unless and until the Bench passes a specific order that no more pleadings/arguments/ additional grounds will be entertained in a particular case.

Now after going through the oral and written submissions/pleadings/representations of the parties concerned and their representatives, We record our findings, regarding the issues concerned, as under :

Section 3 of the RTI Act confers a right on all citizens to seek information.

Section 6 (1) provides that a person who desires to obtain any information under this Act shall make a request in writing or through electronic means accompanying such fee as may be prescribed, to the concerned PIO. The proviso to Section further provides that the concerned PIO shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

From the language of this Section, it is very obvious that the request for information shall have to be made only by the person concerned seeking information and not on his behalf by another person.

Similarly, provisions of Section 18 confer the right to file complaint in the Commission and Section 19 confers right to file an appeal.

These provisions are very clear in language. Only the person, who has sought for information, has the right to file a complaint under Section 18 or an appeal under Section 19.

Punjab Government has notified 'The Punjab Right to Information Rules, 2007'. Rule 3 (1) provides that "a person, who desired to obtain any information admissible under the Act, shall make an appeal in Form 'A'"

The language of the Rule, thus make it very clear that it is the person, who desires to obtain the information, has to make the application and not any other person.

The question, however, is whether after a person has made an application to the PIO or filed a Complaint or Appeal under Section 18 and Section 19 of the Act respectively, can he be represented by another person including by an Advocate.

We are of the considered view that preamble of the RTI Act must be brought into scene at this stage so that intent of the parliament, who enacted the Act, could be ascertained.

The preamble reads as, "An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of

every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

Whereas the Constitution of India has established democratic Republic;

And whereas democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

And whereas revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

And whereas it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

Now, therefore, it is expedient to provide for furnishing certain information to citizens who desire to have it.”

From the plain reading of the preamble, it can be rightly said that the RTI Act has paved way for informed citizenry which would strengthen the democratic government of India. It is a subject of fundamental importance to civilized society and so the provisions of the Act must not be given meaning of any kind in the manner, which can deny any information seeker to get information from the Public Authority concerned and subsequent justice from the Central Information Commission (CIC) and State Information Commission by approaching the same through compliant or appeal under section 18 and section 19 of the Act on account of his illiteracy, economic hardships and other handicaps.

There is always a wide disparity between the legislation in theory and legislation in practice. Several of the legislations have met failure in practical implementation. And this adds to the ‘social cause’ of Right to information, which shall maintain transparency in administration, to restrain corruption to greater extent. And it has to be noted that several legislations have been enacted after the independence, but very few them have been successfully implemented and having such a massive social impact.

Perhaps there is no other law like RTI Act, which touches the day to day life of a common man.

RTI Act was a powerful weapon the common people had in their possession and can use the same to fight against different kinds of malaise prevailing in the functioning of governments and their instrumentalities.

The other interesting and important feature of the instant compliant case is that both the parties have placed their reliance prominently on the judgement given by Apex court in the case titled C. Venkatachalam vs. Ajit kumar C. Shah and others with Civil Appeal Nos.869-870 of 2003.

The Hon'ble Supreme Court has given judgement in the above mentioned case that an 'agent' appointed by a party can plead a case before the Consumer Disputes Redressal Forum, even though he may not be an advocate. The Supreme Court upheld the judgment of the Bombay High Court which allowed non-advocates to appear and practice before the Consumer Forums. The bench comprising Justice Dalveer Bhandari, Justice M.K. Sharma and Justice Anil R. Dave also suggested a mechanism whereby non-lawyers could be accredited to appear before the Consumer Forums as representatives, on a regular basis.

Hence, from the judgement of the Apex Court, it has become clear that non-advocates can represent the case of any party before the Consumer Forums

The para 36 and 37 of the judgement, which is relevant here, are reproduced as under:-

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.

We are of the considered view that Right to Information Act, 2005, is also a legislation of its own class, enacted by the parliament to curb corruption by empowering the commoners to question the actions of those, who govern them. we are also of thoughtful view that authorised persons/agents of the parties concerned in complaint or appeal case under the RTI Act before the Commission should be allowed to appear in the Commission to plead/argue on their behalf so that intent of the law makers that all the countrymen must be having information regarding actions/decisions of those, who rule/govern them.

This kind of right will enable the commoners to put question marks on the actions/decisions of those, who rule/govern them and commoners would be able enough to take the 'wrongdoers' to task.

As the commoners get empowered to question the wrongdoings of those, who rule/govern them, it would help in setting up of "Rule of Law" in the country in real sense apart from curbing corruption prevailing in the different departments/ agencies and instrumentalities of the governments.

Hence, with the hope that RTI Act will certainly act as an 'effective tool' to decimate corruption from the governments, we are of the firm view that proceedings initiated under RTI Act in complaint/appeal case, must be kept 'insulated' from unnecessary legal disputes/controversies.

So we are of the considered view that intent and purpose of law makers, who enacted the RTI Act to empower the commoners to question their 'Rulers', must not be defeated by allowing any party to the case to raise any dispute or controversy on unfounded and baseless grounds.

After recording our findings, we decide all the issues as below:-

ISSUES NO.1, 2 & 4

All these issues are interconnected and hence taken up together. The respondent/Public Information Officer (PIO) has raised arguments that the appearance of the information seeker/appellant through his agent/representative is totally illegal and unwarranted as per law.

Section 32 and 33 of the Advocates Act read with order 3 Rule 4 of Civil Procedure Code (CPC) clearly bars any agent or representative to appear in an appeal without seeking permission from the Commission.

Section 33 of the Advocates Act provides that “no person not enrolled as an Advocate under Advocates Act, on that particular day is entitled to practice before any authority or a person”.

Section 32 of the Advocates Act vests discretion in the Public Authority or person to permit any such person, who is not enrolled as an Advocate to appear before that authority or person and to argue the particular case. Order 3 Rule 4 of the CPC lays down that no pleader shall act for any person in any Court unless he has been appointed for the purpose by such person, consented (signed) by that person or by some other person duly authorized by or under a Power of Attorney to make such appointments, whereas Section 30 of the Advocates Act lays down that every Advocate having his name entered in the State Roll has right to practice throughout the territory of jurisdiction to which the Advocates Act extends including the Tribunal or person authorised to take evidence.

The right of audience can be curtailed or restricted to Advocates or the person appointed with the permission of authority or person in order to keep check upon such person with regard to his conduct before such authority or person.

Whereas information seeker has submitted that an information seeker can appear through an authorized agent or representative as the basic purpose of Right to Information Act is to grant a right to citizens to provide access to information under the control of the Public Authorities and to promote the transparency and accountability in the working of every public authority, to promote the real administration, which requires informed citizenry.

If the right to representation through authorized agent or representative will be curtailed, then it will amount to curtailing the right of public spirited citizens.

Sometimes the information seekers are not well equipped with the means or got overawed by the grandeur and majesty of the State Information Commission. Sometimes the information seeker has not enough resources at his or her command to approach the State Information Commission time and again.

As the seat of the State Information Commission is at State Head Quarter, which is Chandigarh, the Information seeker has to travel long distance from time to time to pursue his right of complaint/appeal, which sometimes is cumbersome for public spirited information seekers.

In the eventualities listed out in above paras, if the information seeker is allowed to appear through an agent or representative, it will help in advancing and promoting the object, for which the Right to information Act has been enacted by the Parliament.

We find force in the contention of the information seeker that if the right of information seeker to appear before the Tribunal through an agent or representative is rejected and he is not allowed to appear through an agent or representative, then certainly it will amount to curtailing the right of information seeker to a considerable extent as most of the time the information sought for by the information seekers project the problems, faced by the people at street in the real and genuine way.

Sometimes the information seeker is not a resourceful person and he has no resources to approach the Information Commission as the seat of the Information Commission is located at the State Head Quarter.

There is always a likelihood that Information seekers have to travel long distances to attend proceedings in an appeal case, time and again due to number of adjournments, being taken by the respondent PIOs and such situation always add to burden to the information seekers.

Sometimes, the information seeker may not have sufficient level of education and may feel overawed in approaching the State Information Commission in an appeal even if the right to seek information has been wrongfully rejected by the respondent PIO/public authority.

So, if the restriction is imposed upon the information seeker to appear personally in complaint/appeal cases in all eventualities, then certainly, it will “adversely” affect the right to information of the general public.

Moreover, Sh. Bali has claimed that on 21/11/2013, in another matter listed as CC 2521/2013, Hon'ble CIC decided the same issue and held that "Authorised Persons" could well appear from the side of Information seeker. The issue connected with the fact that there is no provision to permit an ordinary citizen, who is not registered as an advocate to pleaded on behalf of information seeker in proceedings before State Information Commission has thoroughly been discussed and has held that "I see no ground to debar a non-advocate to appear in the Commission as authorised representative of any Information Seeker".

That as such the issue in this matter CC 2902 of 2013 remained settled as per directions of CC 2521/2013 on "Theory of precedents" as laid convention of Legal Protocol.

He claimed that due to decision in CC 2521/2013, the present issues numbering 1 and 2 stand decided and need no further arguments.

He claimed that for issue number 4, it is submitted that Hon'ble Apex Court in the case titled as "Union of India ... (Petitioner) Versus Namit Sharma ... (Respondent) WITH REVIEW PETITION [C] No.2675 OF 2012 IN WRIT PETITION [C] NO.210 OF 2012 State of Rajasthan & Anr. ... Petitioners Versus Namit Sharma ... "has already decided that Information Commissions are "Administrative Tribunals".

The Para 20 of above Judgement reads that "This function obviously is not a judicial function, but an administrative function conferred by the Act on the Information Commissions....."

Para 21 reads, "... The Information Commission, therefore, while deciding this lis does not really perform a judicial function, but performs an administrative function in accordance with the provisions of the Act....."

Hence the objections raised by the counsel of respondent have no weight as the above legal restrictions of detailed Vakalatnamma and the order of the Court to allow a non advocate to plead as power of attorney is not applicable as the same are mandated by the "Advocate Act" and "Code of Civil Procedure" only for Courts.

So keeping in view all the situations and taking into considerations all the handicaps, which the information seekers have been facing, we firmly hold that information seeker can appear into State Information Commission through an agent or representative to attend hearings in both complaint/appeal cases.

Now, it is to be seen as to if this right to appear through an agent or representative is to remain unregulated. Whether any person can appear on behalf of information seeker proclaiming himself/herself as the agent or representative as a matter of right or such appearance is required to be regulated.

As per the provisions of Section 33 of the Advocates Act, any person, who is not enrolled as an Advocate, has no unregulated right to appear before an authority or person. For smooth conduct of business of Commission, right to appear before Commission is required to be regulated. Unregulated entry may result in causing hindrance in conduct of business.

The right of information seeker to appear through agent or representative is to be regulated and the agent or representative of information seeker can seek audience of the Tribunal, only by moving an appropriate application on his behalf and Commission can pass an order granting or refusing the permission to such agent or representative to appear on behalf of the information seeker.

Similar question was decided by the Hon'ble Apex Court in C. Vankatachalam Versus Ajit Kumar C. Shah in Civil Appeal No. 868 of 2003, decided on 29-08-2011. In that matter the Hon'ble Supreme Court has held that before the Consumer Forum, a consumer can appear through agent or representative, but his right to appear has to be regulated by framing regulations with regard to qualifications and his conduct and ethical behaviour.

The Hon'ble Apex Court has held that there is significant difference between the Court and the Tribunal with regard to Constitution. The object of constituting a Tribunal is to provide speedy disposal in a simple manner and the Tribunal should be easily assessable to all. So, the object of the constituting a Tribunal is to create Special authority in the specific field which has to redress the grievances satisfactorily, speedily and legally.

Before the State Information Commission, an information seeker can appear through an agent or representative. But State Information Commission has a right to decline the audience of such an agent or representative, if he fails to maintain decorum before the Commission or his conduct and behaviour is such that he is not fit to appear before the Commission. In such an eventuality, the right to appear and audience of such agent/representative can be curtailed.

So all these issues are decided accordingly.

ISSUE NO. 3

On this issue, Sh Bali has claimed And further law does not prohibit anywhere that an authorised person cannot accept any honorarium, considerations in cash, kind or services and expenses incurred in representing the party for whom he works to represent.

With regard the question of right of non Advocate to appear before the Commission after charging the certain consideration from the concerned Information Seeker is concerned, neither the respondent PIO nor his representative has specifically addressed this issue in their written submissions. However, Sh. Bali has made a small argument in favour of fact that non-advocates can appear in the Commission on behalf of information seeker against any consideration.

On this issue, we have given our thoughtful consideration and we are of the considered view that a non Advocate can charge fee from either of the parties for making appearance on their behalf before the Commission as this is one kind of the arrangements, which exist between parties and their agents/representatives and the Commission has nothing to do with the same.

Whether the parties concerned to the complaint or appeal case are willing to make payment to their agents/representatives, appearing in the Commission, in lieu of the expenditure incurred by them (agents/representatives) for traveling up to place, where the Commission is situated and on other arrangements, is a “private sorts of affairs” and Commission must kept itself aloof from interfering in such ‘dealings’,

So, the issue No. 3 is answered accordingly.

ISSUE NO. 5

With regard to issue No. 5, we held that a formal order needs to be passed by the Commission in each case, permitting the non Advocate to appear before the Commission and to plead on behalf of the information seeker.

As such, the issue No. 5 is decided accordingly.

Another issue, which cropped up in the instant complaint case is connected with the fact that as to whether PIO has right to appear through an Advocate before the Commission or not?

On this issue, it has been argued that that PIO has right to appear through an Advocate before the Commission in order to defend himself as sometimes PIOs are not legally well versed in the issues raised in complaint/second appeal before the Commission. PIOs required expert legal guidance in such matters.

However, information seeker/his representative Sh. Bali has submitted that PIO has no right to appear though an Advocate.

Sh. Bali further submitted that as per law laid down by Constitutional Bench of Hon'ble Supreme Court in State of Madhya Pradesh Versus Shoba Ram, AIR 1966 Supreme Court 1910, a person has right to be represented before Court or Public Authority through lawyer/advocate only in matters where his personal liberty is threatened or endangered as only then he is entitled to the protection of Article 22 (1) of Constitution Of India.

In complaint/appeal cases before the Commission no personal liberty of PIOs is at stake or under threat. He further submitted that Right to Information Act, 2005, was enacted to help the information seekers and not to bail out the Public Authorities.

Most of the time, the Information seekers are poor, innocent, mostly illiterate and also from the far flung areas of the State and they incur their own money and time to expose corruption prevailing in different departments of government and its instrumentalities, various acts of omission and commission of government functionaries, misdeeds of officials and to unearth scams. Whereas the PIOs always have the luxury of appearing/attending hearings in the Commission by not spending the money out of their own pockets but spending the money belonging to State government.

So, it is a fight between two or more than two "un-equals" and if right to appear through Advocate is granted to PIO it will increase the inequality between the parties to the case.

He further submitted that Right to Information Act does not specifically allow Advocate to appear before the Commission. Advocates are not an instrumentality of the Public Authority rather they are outsiders and engaging them will amount to violation of Official Secrets Act.

The Commission has considered the rival contentions carefully and minutely. Argument of Information seeker that a person has constitutional right to be defended by an Advocate only in case his personal liberty is jeopardized is misconceived. In State of M.P. Versus Shoba Ram (Supra),

Constitutional Bench of Hon'ble Supreme Court was dealing with the question as to whether Section 63 of Madhya Bharat Panchayat Act is void as offending Article 22 (1) of the Constitution of India. Section 63 specifically barred the appearance of Advocates before Nyaya Panchayat, the same is re-produced as under :

“No legal practitioner shall appear on behalf of or shall plead for or defend any party in any dispute, case or proceedings pending before the Nyaya Panchayat.”

Hon'ble Apex Court held Section 63 of Madhya Bharat Panchayat Act as violative of Article 22 (1) of the Constitution and held that the same is void to the extent that it denies any person who is arrested, the right to be defended by a legal practitioner of his choice in any trial of crime for which he is arrested.

Question of personal liberty is not in issue before this Commission and PIO is not claiming his right to appear through an Advocate as a Constitutional Right provided under Article 22 of Constitution of India rather he is claiming the same as a legal right. So, that he could effectively defend the appeal.

There is no denying the fact that Right to Information Act was enacted to help the information seeker to get information from Public Authorities. In order to make the Right to Information of citizens an effective right, no such restrictions, which could defeat the purpose of the RTI Act, could be imposed on the parties concerned. There is no provision in the RTI Act, which bars advocates from representing any party.

In view of the above, we find that either of the parties could be represented by an advocate in compliant or appeal case before the Commission to meet the ends of justice.

Hence, this issue is decided accordingly.

(Praveen Kumar)
S. I. C.

(Ravinder Singh Nagi)
S. I. C.

(Chander Parkash)
S. I. C.

7th January, 2016