UNION OF INDIA & ANR.

v.

N. R. SRIVASTA & ORS.

(Civil Appeal No. 2823 of 2020)

JULY 23, 2020

[DR. DHANANJAYA Y. CHANDRACHUD, INDU MALHOTRA AND K. M. JOSEPH, JJ.]

Consumer Protection Act, 1986:

s. 2(1)(o) – Medical negligence – Complaint – Against a private hospital and a Government hospital – District Consumer Forum dismissed the complaint against the private hospital while as against the Government hospital held that it was not maintainable as the treatment was offered free of cost – State Consumer Commission held the private hospital guilty of negligence and directed it to pay compensation of Rs. 2 lakhs – As regards Government Hospital, State Commission held that complaint was not maintainable against it, but it was guilty of negligence – National Consumer Commission in the Revision Petition filed by the private hospital held that it was not guilty of negligence – As regards Government hospital, National Commission held that finding of State Commission that the hospital was not amenable to jurisdiction of consumer fora was contrary to decision in Indian Medical Association *case and holding that the hospital was guilty of medical negligence directed it to pay compensation of Rs. 2 lakhs – Appeal to Supreme Court – Held: As regards the question of jurisdiction of consumer fora against the Government hospital, in absence of factual foundation in the pleadings and evidence, the question is left open – National Commission by reversing the finding on maintainability of the complaint against the Government hospital in a Revision Petition filed by the private hospital, exercised the powers conferred on an appellate Court under Order XLI Rule 33 CPC – The question whether the National Commission could exercise such powers in exercise of its Revisional jurisdiction is also left open – However, the judgment of National Commission is affirmed on the ground that quantum of the compensation is small enough to attract interference of Supreme Court – The judgment of National*

A *Commission or this judgment not to be regarded as precedent – Appeal dismissed.*

Indian Medical Association v. V.P. Shantha **(1995) 6 SCC 651 : [1995] 5 Suppl. SCR 110 – referred to.**

Case Law Reference

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[1995] 5 Suppl. SCR 110	**referred to**	**Para 4**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2823 of 2020.

From the Judgment and Order dated 07.10.2016 of the National C Consumer Disputes Redressal Commission, New Delhi in R.P. No. 1299 of 2014.

R S Suri, ASG, Dr. Manish Singhvi, Sr. Adv., Gurmeet Singh Makker, Rajesh Ranjan, Vansdeep Dalmia, Sandeep Jha, Ms. Ruchi Kohli, Ms. Shobhana T., Ms. Mahua Kalra, Dinesh Kumar, Naresh Kumar, D Shantanu Sagar, Pramod Dayal, Shekhar Prit Jha, Asis, Ashish Dholakia, Amit, Ikshit Singhal, Mohit Kaushik, M.K. Singh, G. Balaji, Advs. for the appearing parties.

The Judgment of the Court was delivered by

E **DR DHANANJAYA Y CHANDRACHUD, J.**

1. Leave granted.

2. The appeal arises from an order of the National Consumer Disputes Redressal Commission[1] dated 7 October 2016. The Union of India, through the Secretary in the Ministry of Health and Family Welfare, F and Safdarjung Hospital have challenged the order of the NCDRC. The first respondent was the original complainant in a consumer complaint[2] instituted before Consumer Disputes Redressal Forum – II[3], New Delhi. The complaint alleged medical negligence against Sarvodaya Hospital and Safdarjung Hospital. The NCDRC allowed the revision of Sarvodaya Hospital. While exonerating it of the finding of medical negligence, it G held Safdarjung Hospital liable to pay the compensation of Rs 2 lakhs imposed by the State Consumer Disputes Redressal Commission[4].

[1] NCDRC
[2] Case No. 55/2005
[3] District Forum
H [4] SCDRC

3. The spouse of the complainant who was pregnant, was admitted to Sarvodaya Hospital in a medical emergency at about 5 am on 9 March 2004. She delivered a baby at about 8 am, a few hours after admission. The baby was delivered prematurely and, according to the complainant, required medical care in a Nursery ICU. The complainant and his spouse were referred to Safdarjung Hospital for admission of the child for emergency medical care. The grievance against Sarvodaya hospital was that prior to the delivery, it had been represented that the Hospital was fully equipped with a Nursery ICU and that when the complainant came to realise that this was not the case, he felt cheated. The complainant proceeded to Safdarjung Hospital with his spouse and child between 12 and 1 pm on 9 March 2004. The grievance of the complainant was that at Safdarjung Hospital, the baby was not placed in a Nursery ICU, but was initially admitted to the General Ward and thereafter to a General ICU. The child died in the last week of April 2004. A complaint was presented before the District Forum seeking damages against Sarvodaya Hospital and Safdarjung Hospital.

4. The District Forum dismissed the consumer complaint. As regards, Sarvodaya Hospital, it arrived at the finding that there was no misrepresentation of fact and that the Hospital had an independent facility of a Nursery and ICU available. The District Forum held that the spouse of the complainant was operated upon in an emergency to save the lives of the mother and the child. Hence, there was no deficiency on the part of Sarvodaya Hospital in referring the complainant to a specialized facility. As regards Safdarjung Hospital, the complaint was held not to be maintainable on the ground that treatment had been afforded free of cost to the patient. Relying on the decision of this Court in **Indian Medical Association** v **V P Shantha**[5], the complaint was held not to be maintainable.

5. An appeal[6] was filed before the State Consumer Disputes Redressal Commission by the original complainant. The SCDRC, by its judgment dated 10 December 2013, came to the conclusion that Sarvodaya Hospital was guilty of medical negligence and directed it to pay a sum of Rs 2,00,000 as compensation and costs quantified at Rs 20,000. However, the complaint was held not to be maintainable against Safdarjung Hospital. The SCDRC relied upon an affidavit of Dr

[5] (1995) 6 SCC 651

[6] FA-429/07

A K C Aggarwal who deposed in support of the plea that the treatment had been provided free of cost without charging any fees. Finding that there was no denial of this assertion and relying on the decision of this Court in **Indian Medical Association**, the complaint was rejected as against Safdarjung Hospital. However, the SCDRC had also found negligence on the part of Safdarjung Hospital.

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6. A revision[7] was filed against the judgment of the SCDRC by Sarvodaya Hospital before the NCDRC. The NCDRC, by its judgment dated 7 October 2016, allowed the revision and came to the conclusion that Sarvodaya Hospital was not guilty of medical negligence. The finding of fact was that the spouse of the complainant had been admitted to the hospital in a precarious condition and was a high risk patient. Relying on the progress notes of the hospital, the NCDRC noted that the hospital had referred the patient to a specialized facility after taking the consent of the complainant. The finding was to the following effect:

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> "19. A brief perusal of the prescription shows that the patient was admitted in the First Opposite party Hospital in a precarious condition of umbilical cord collapsing through the vagina; a gross risk of survival of the baby inside the womb; the risk of the blood supply being cut off and high chances of the baby being born asphyxiated. The progress notes show that all due care and caution was taken which was required under the standard practice of normal medical parlance by the First Opposite party Hospital in delivering the baby through Caesarian Section and hence, no deficiency can be attributed to the first Opposite Party Hospital or its Doctors, as there is no documentary evidence suggesting any kind of negligence in the line of treatment rendered to the patient. The baby was rightly referred to a higher management Hospital, in the absence of the necessary nursery facilities required to handle a premature baby. We hold accordingly."

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7. However, having allowed the revision that was filed by Sarvodaya Hospital against the finding of negligence, the NCDRC elaborated on the question as to whether Safdarjung Hospital had been correctly exonerated. Safdarjung Hospital was a party to the proceedings before the NCDRC and was heard in the revision that was filed by Sarvodaya Hospital. The NCDRC noted that though Safdarjung Hospital was exonerated by the District Forum and the SCDRC on the ground

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[7] Revision Petition No 1299 of 2014

that the treatment had been rendered free of charge and the hospital was not amenable to the jurisdiction of the consumer fora under the Consumer Protection Act 1986[8], the SCDRC had, on merits, come to the conclusion that though it had the facility of a Nursery with a ventilator, it had not been made available to the child of the complainant. The baby was admitted to Ward No 20, then to Ward No 18 and eventually in the General ICU. This finding had attained finality. The NCDRC held that the finding of the SCDRC that Safdarjung Hospital was not amenable to the jurisdiction of the consumer fora was contrary to the decision of this Court in **Indian Medical Association**. The NCDRC held that though the complainant had not filed a revision against the order of the SCDRC specifically holding that Safdarjung Hospital was not amenable to the jurisdiction of the consumer fora, he was not precluded from challenging a finding which was adverse to him in the revision petition. On these facts, the NCDRC sustained the finding of medical negligence against Safdarjung Hospital and directed it to pay compensation quantified at Rs 2 lakhs.

8. Mr R S Suri, Additional Solicitor General, has appeared in support of the appeal filed by the Safdarjung Hospital. The submission is that no charges across the board are levied at Safdarjung Hospital and, hence, the finding that was arrived at by the NCDRC is unsustainable. Mr Dinesh Kumar, learned counsel has appeared on behalf of the original complainant and opposed the appeal. Sarvodaya Hospital has been represented by Mr Shantanu Sagar, learned counsel.

9. While evaluating the submission which has been urged by Mr R S Suri, it is necessary, at the outset, to have regard to the principles which have been laid down in the judgment of this Court in **Indian Medical Association.** In the judgment of this Court, the provisions of Section 2(1) 6 (o) of the Act fell for interpretation. Section 2(1)(o) provides as follows:

> ""service" means service of any description which is made available to the potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, [housing construction], entertainment, amusement or the purveying of news or other information, but does not include rendering of any service free of charge or under a contract of personal service;"

[8] Act

10. Interpreting the above provision, a three judge Bench of this Court held that it is only where a hospital provides medical services free of charge across the board to all patients that it would stand outside the purview of the Act. The Court held that a hospital which renders free services to a certain category of patients, while providing for services which are charged to the bulk of others would not lie outside the purview of the jurisdiction of the consumer fora. This principle is evident from the following extract from the decision of this Court:

> "43...The third category of doctors and hospitals do provide free service to some of the patients belonging to the poor class but the bulk of the service is rendered to the patients on payment basis. The expenses incurred for providing free service are met out of the income from the service rendered to the paying patients. The service rendered by such doctors and hospitals to paying patients undoubtedly fall within the ambit of Section 2(1) (o) of the Act."

11. From the record, we find that, in the present case, the only factual foundation that was led before the District Forum was the evidence of Dr K C Aggarwal who deposed that the patient in question had been treated free of charge. We have scrutinized the grounds of appeal in the Special Leave Petition. Not even a single ground has been raised by Safdarjung Hospital, challenging the factual basis of the finding that has been arrived at by the NCDRC on the issue of jurisdiction. Nor has any other factual material been placed on the record to enable the Court to decide on whether it satisfies the tests enunciated in **Indian Medical Association**. Hence, in the absence of a proper challenge before the District Forum, the SCDRC or the NCDRC and, as we have seen above, even before this Court, it would be inappropriate for this Court to render a conclusive opinion. We ought not to do so in the absence of a factual foundation in the pleadings and evidence. We are also mindful of the fact that the award in the present case is in a relatively small amount of Rs 2 lakhs.

12. However, Mr R S Suri submitted that it would be appropriate for this Court, having regard to the recurring nature of the issue, to leave the question of jurisdiction open to be decided in an appropriate case where a factual foundation can be laid by the Union of India and Safdarjung Hospital, both in the pleadings and evidence. We consider this to be appropriate so as to ensure that while we are affirming the judgment of the NCDRC in the present case on the ground that the

quantum of the claim is small enough to not warrant the intervention of this Court, the decision of this Court (or of the NCDRC) is not regarded as a precedent for having decided a question of law in the generality of cases that may arise involving Safdarjung Hospital. We therefore confine the judgment of the NCDRC to the peculiar factual background, as we have noted in the present case. We clarify that we have left open the issue as to whether Safdarjung Hospital would be governed by the provisions of the Act, more particularly, having regard to the provisions of Section 2(1)(o), to be decided in an appropriate case. The impugned judgment of the NCDRC shall not be cited as a precedent. The issue, including any other issues which may arise is left open to be adjudicated upon in an appropriate case.

13. Another aspect which requires mention is that the SCDRC had held that Safdarjung Hospital was not amenable to the jurisdiction created by the Act. This was not challenged by the complainant. Sarvodaya Hospital challenged the order of the SCDRC. The NCDRC reversed the finding on maintainability which was in favour of Safdarjung Hospital in a revision by Sarvodaya Hospital. It attempted to do "complete justice", ignoring that it is not entrusted with the jurisdiction which is exclusively conferred on this Court under Article 142. In an appropriate case, it will have to be decided whether the NCDRC can at all exercise in revisional proceedings the powers which have been conferred on an appellate court under Order XLI Rule 33 of the Code of Civil Procedure 1908. This issue is also specifically kept open.

14. Subject to the aforesaid clarification, in the peculiar facts, which we have noted above, we are not inclined to entertain the appeal only on the ground of the smallness of the quantum involved. The appeal is accordingly dismissed but with the above clarifications. The payment of Rs 2 lakhs in compliance of the order of the NCDRC shall be made to the original complainant within a period of two months from the date of receipt of a certified copy of this order. Time to pay the amount of Rs 2 lakhs is accordingly extended.

15. Pending application, if any, stands disposed of.

Kalpana K. Tripathy Appeal dismissed.