

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 596 OF 2022

(Against the Order dated 11/03/2022 in Appeal No. 581/2012 of the State Commission
Orissa)

1. KALINGA EYE HOSPITAL & RESEARCH CENTREPetitioner(s)

Versus

1. BHABAGRAHI SAHU & ANR.Respondent(s)

BEFORE:

HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER

FOR THE PETITIONER : MR. MERUSAGAR SAMANTRAY, ADVOCATE WITH
MR. K.R. SOTOPOTTY, ADVOCATE AND
MR. L. SHINY K., ADVOCATE

FOR THE RESPONDENT : MR. ABHISHEK KUMAR, ADVOCATE WITH
MR. VIKASH KUMAR, ADVOCATE AND
MR. ATUL KUMAR, ADVOCATE

Dated : 14 December 2023

ORDER

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondents as detailed above, under section 21(b) of Consumer Protection Act 1986, against the order dated 11.03.2022 of the State Consumer Disputes Redressal Commission, Orissa (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 581 of 2012 in which order dated 04.07.2012 of District Consumer Disputes Redressal Forum, Deogarh (hereinafter referred to as District Forum) in Consumer Complaint (CC) No. 02/2012 was challenged, inter alia praying for setting aside the order and judgment dated 11.03.2022 passed by the State Commission in FA/581/2012.

2. The Revision Petitioner (hereinafter also referred to as OP-1) was Appellant before State Commission and OP-1 before the District Forum. The Respondent No.1 (hereinafter also referred to as complainant) was Respondent No.1 before the State Commission and Complainant before the District Forum and Respondent No.2 herein (hereinafter also referred to as OP-2) was Respondent No. 2 before the State Commission and OP-2 before the District Forum.

3. Notice was issued to the Respondents on 05.08.2022. Parties filed Written Arguments/Synopsis on 02.05.2023 (Petitioner) and 12.09.2023 (Respondent No.1) respectively.

4. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Commission and other case records are that:-

As per the schedule of the National Programme for Control of Blindness (NPCB) of the Govt. of India and the World Health Organization (WHO), the C.D.M.O., Deogarh requested the Petitioner to hold a 'Free Eye Camp' at Deogarh District Head Quarters Hospital from 05.12.2009 to 09.12.2009. The State/CDMO gave Rs.750/- per cataract surgery to the Petitioner towards motivation, sutures and drugs, screening, transportation of patients, fooding, consumables and Intra-Ocular lens and other incidental expenses necessary for conducting the eye camp. No consumables are provided by the CDMO, the Petitioner had to procure the said items on its own from Rs.750/- given for each operation. The Respondent No.1 appeared for free eye checkup with complaint of defect of vision in his left eye and got the eye surgery done on 08.12.2009. The Discharge ticket had instruction on back of it in the local language that the patient has to attend the doctor within 24 hours if there is any sudden problem. After the operation 14.01.2010 was fixed for check-up but Respondent No.1 did not turn up for check-up nor reported to the District Headquarter Hospital for any issue. On 01.08.2011, Respondent No.1 approached Respondent No. 2 i.e. after one year and 8 months of the surgery for issuance of Financial Benefit Certificate in his favour and alleged that on the next day after the operation he lost sight of his left eye. He was referred to V.S.S. Medical College, Burla. Respondent No.1 alleged before the Doctors of V.S.S. Medical College, Burla that he lost his vision on 1st post-operative day i.e. 09.12.2009. Hence, Respondent No.1 filed Consumer Dispute before the District Forum, Deogarh.

5. Vide Order dated 04.07.2012, in the C.D. Case No. 02/2012 the District Forum has allowed the complaint and passed the following order:-

“We direct the O.P.No.1 (N.G.O. Hospital) to pay Rs.2,00,000/- (Rupees Two Lacs) for the loss of vision of the complainant caused by the O.P.No.1 (N.G.O. Hospital) resulting in defective cataract operation conducted by its doctor. The O.P.No.1 is also directed to give Rs.2,000/- (Rupees two thousand only) for the litigation expenses. The O.P.No.1 is directed to comply the above direction within 45 days of receipt of this order failing which the O.P.No.1 is liable to pay a further @ 9% per annum interest on the above amount till realization.”

6. Aggrieved by the said Order dated 04.07.2012 of District Forum, Petitioner appealed in State Commission and the State Commission vide order dated 11.03.2022 in FA No.

581/2012 has dismissed the Appeal and confirmed the order of the District Forum.

7. Petitioner has challenged the said Order dated 11.03.2022 of the State Commission mainly on following grounds:

- i. The impugned order is illegal, unsustainable in law and are therefore liable to be set aside. The impugned order is contrary to the facts & evidences available on record. The State Commission failed to consider the fact that the cataract operation was conducted under the National Programme for Control of Blindness in India (NPCB) which is a Govt. of India program to combat blindness in the country and the Petitioner was asked by the State Health Department through Chief District Medical Officer (CDMO), Deogarh to conduct the said free eye camp due to non-availability of medical facilities (Ophthalmic Surgeon) in the District Headquarter Hospital. The surgeries conducted were totally free of cost for the patients. The Respondent No.1 did not mention anything regarding having paid any consideration/fees/money in his complaint. Respondent No. 1 signed the consent for Surgery and Risk Bond, therefore showing that the Respondent No.1 know the risk associated for the surgery and also gave his consent to proceed with it. The surgery was conducted by the Ophthalmic Surgeon possessing necessary educational qualification and skill and 59 other cases in the said eye camp had no complaint till date. The State Commission failed to consider the fact that there were 60 operations of cataract in the said camp, yet none of the beneficiary complained. The complainant did not follow the instructions written in local language in the back of the discharge ticket that the patient has to attend the doctor within 24 hours if there is any sudden problem. The complainant was handed over post-operative care literature by the Petitioner in the eye camp. He also did not come for follow up/check up on the date fixed i.e. 14.01.2010. The State Commission failed to consider the fact that there were no complaint on the part of Respondent No.1 either to Respondent No.2 or Petitioner NGO till filing of the complainant before the District Forum. Respondent-1 approached the CDMO after about 20 months of the cataract operation. The CDMO specifically mentioned in its written version before the District Forum that the complainant has not produced any document about loss of vision of left eye. The State Commission failed to consider that during the pendency of the Appeal before the State Commission the Petitioner received a letter of demand dated 09.08.2021 from the complainant demanding Rs.40-50,000/- towards settlement of the case. The conduct of the complainant was never considered by the State Commission and it has wrongly dismissed the appeal. The State Commission failed to consider that 'Consumer' means any person who hires any services for consideration as defined u/s 2(7) of the Act. The Respondent No.1 as an afterthought had filed an affidavit dated 29.05.2012 before the District Forum alleging for the first time, a payment of Rs.18000 to the Petitioner for which no receipt was alleged issued.

ii. The State Commission failed to consider that the Hon'ble Supreme Court in **Indian Medical Association Vs. V.P. Shantha**, AIR 1996 SC 550 has held that where there is a service rendered to a consumer by the medical practitioner free of charge, then the same would not fall under the definition clause of the Act mentioned in Section 2 (1)(o) of the Act. The State Commission failed to consider the judgment of **Maharaja Agrasen Hospital Vs. Rishabh Sharma** (2020) 6 SCC 501 wherein the Hon'ble Court held that the burden of proof is on complainant to establish medical negligence. The cause of action arises after damage has been caused. The injury caused to victim should be sufficiently proximate to breach of duty by medical practitioner. He would be liable only when his conduct falls below the standards of a reasonably competent practitioner in his field.

8. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.

8.1 Petitioner in addition to repeating what has been stated in para 7 under the grounds, has contended in its written arguments that Respondent No.1 does not fall under the definition of Consumer as provided under the Act. No service was provided against any consideration to Respondent No. 1. The argument of Respondent No.1 that it lost its eye day after the surgery took place is a blatant lie as it differs from that of the patient case card submitted for the Respondent No.2. Respondent No.1 approached the Respondent -2 after 20 months of the operation. There is delay in filing the complaint before the competent forum. Negligence by the Respondent -1 cannot fall upon the Petitioner. Respondent-1 signed the consent form for Surgery and Risk Bond, therefore showing that the Respondent No.1 knows the risk associated for the surgery and also gave his consent to proceed with it.

8.2 On the other hand Respondent No.1 contended that the Respondent is 75 years old person with injured/lost eye-vision and waiting for justice. Petitioner has filed the Petition without showing any cogent reason and just to harass the Respondent, who has fought very hard for justice. Order dated 11.03.2022 passed by the State Commission is commensurate with fact and Law and does not need any intervention from this Commission. The judgment passed by the State Commission is clear in stating that doctor or institution has not been able to prove their innocence despite being given opportunity to them, it is duty of doctor, who is treating the doctor to keep the patient aware about all follow up procedure to be undertaken. It is also stated in the order of the State Commission that no treatment record was maintained by the doctor or by the Hospital. No medical record with regard to the treatment given to the complainant for the procedures done on his left eye has been placed on record. This act of the petitioner amounts to deficiency in service and adoption of unfair trade practice which constitutes medical negligence. Respondent -1 has relied upon the

judgment passed by the Hon'ble Supreme Court in the case of **Nizam Institute of Medical Sciences V/s Prashant S. Dhanauka and others II** (2009) CPJ 61 (SC) has held that in case of medical negligence, once an initial burden has been discharged by the complainant by making of a case of negligence on the part of the hospital or the doctor concerned, the onus then shifts on the hospital or to the attending doctors and it is for the opposite party-hospital to satisfy the court that there was no lack of care or diligence. Petitioner is an influential organization and have done everything to create an impediment, so Respondent could not get the compensation which he truly deserves. It is further contended that the hospital is hand-in-glove with the doctor and concealed the surgery notes from the complainant as well from this court. Hospital again has been deficient in its services. The doctor and the hospital are not only guilty or deficient in service but also guilty of fabricating records to wriggle out of the clutches of law.

9. We have carefully gone through the orders of the State Commission, District Forum, other relevant records and rival contentions of the parties. In this case, there are concurrent findings of both the Fora below regarding medical negligence and deficiency in service on the part of Petitioner herein.

10. As was held by the Hon'ble Supreme Court in **Rubi Chandra Dutta Vs. United India Insurance Co. Ltd.** [(2011) 11 SCC 269], the scope in a Revision Petition is limited. Such powers can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order. In **Sunil Kumar Maity Vs. State Bank of India & Ors.** [AIR (2022) SC 577] held that *“the revisional jurisdiction of the National Commission under [Section 21\(b\)](#) of the said Act is extremely limited. It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the State Commission had exercised a jurisdiction not vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity.”*

11. The Hon'ble Supreme Court in **Rajiv Shukla vs Gold Rush Sales And Services Ltd.** Civil Appeal No. 5928 of 2022, decided on 8 September, 2022, held that:-

“13. As per Section 21(b) the National Commission shall have jurisdiction to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. Thus, the powers of the National Commission are very limited. Only in a case where it is

found that the State Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise the jurisdiction so vested illegally or with material irregularity, the National Commission would be justified in exercising the revisional jurisdiction.

14. In exercising of revisional jurisdiction the National Commission has no jurisdiction to interfere with the concurrent findings recorded by the District Forum and the State Commission which are on appreciation of evidence on record. Therefore, while passing the impugned judgment and order the National Commission has acted beyond the scope and ambit of the revisional jurisdiction conferred under Section 21(b) of the Consumer Protection Act.”

12. Both the State Commission and District Forum have appropriately considered the contentions of both sides and given well-reasoned orders. We are in agreement with the findings of both the Fora below and find no reason to interfere with the same. There is no illegality or material irregularity or jurisdictional error in the order of the State Commission, hence, the same is upheld. Accordingly, the Revision Petition is dismissed.

13. The pending IAs in the case, if any, also stand disposed off.

.....
DR. INDER JIT SINGH
PRESIDING MEMBER