

(1993) 03 MAD CK 0035

In the Madras High Court

Case No : Writ Petition No. 4450 of 1992

Dr. A. Indira Narayanan

APPELLANT

Vs

Government of India and others

RESPONDENT

Date of Decision : 28-03-1993

Acts Referred:

Consumer Protection Act, 1986 — Section 12, 13, 16, 2, 24

Citation : (1996) 86 CompCas 740 : (1994) 1 MLJ 24

Hon'ble Judges : Bakthavatsalam, J

Bench : Single Bench

Advocate : M. Krishnappan, for the Appellant; V. Prakash, for the Respondent

Judgement

Bakthavatsalam, J.—The prayer in this writ petition is as follows :

... to issue a writ of prohibition or any other appropriate writ, order or direction in the nature of a writ, prohibiting the State Consumer Disputes

Redressal Commission, Madras, the second respondent herein, from proceeding with the complaint given by the third respondent herein in O. P.

No. 50 of 1992 taken on its file and pass.

2. The petitioner, who is a medical practitioner has come before this court with this writ petition, when the third respondent filed O. P. No. 50 of

1992 before the State Consumer Disputes Redressal Commission. During June, 1988, it seems that the wife of the third respondent, Smt. Indira,

was admitted in the Murari Hospital with labour pain. The Murari Hospital, where the petitioner was working, was run by a society registered

under the Tamil Nadu Societies Registration Act. Since the wife of the third respondent did not deliver till late in the evening (on June 17, 1988),

the petitioner thought of applying forceps and the child was delivered at 9.50 p.

m. by the use of forceps. It was then found out that the child had its left eye lying outside. It seems that the petitioner immediately dressed the eye and informed the third respondent's mother-in-law, that subsequently, the petitioner wanted to have the paediatrician retained with the hospital to examine the child, but the third respondent's relations who arrived on June 18, 1988, were in a hurry to take the child to the Children's Hospital, Egmore, Madras, that the third respondent through his counsel sent a notice dated June 13, 1991, alleging that the injury to the child was due to the negligence of the petitioner and that the child had been operated at the Children's Hospital, Egmore, Madras, and that the child could not speak or walk after three years and as such a sum of Rs. 1,10,000 was demanded. It is further seen that the petitioner has sent a reply on July 3, 1991, to the said notice denying the allegations of negligence and wrong handling, that in view of the above situation, the third respondent had filed a complaint in O. P. No. 50 of 1992 against the petitioner before the State Consumer Disputes Redressal Commission, Madras, claiming a sum of Rs. 1,10,000 as damages for the alleged injury caused to his child in Murari Hospital, at the time of delivery and that when the summons was issued in that O. P. No. 50 of 1992 to the petitioner, the petitioner has come to this court for the aforesaid relief.

3. It is alleged in the affidavit filed in support of the above writ petition that the third respondent is not a "consumer" as defined by the Consumer Protection Act, 1986 (hereinafter referred to as "the Act"), that the said complaint (O. P. No. 50 of 1992) has been filed more than three years after the date of the alleged negligence on the part of the petitioner, that "professional service" is "personal service" and is exempted from the purview of the Act, that the Act does not define the words "personal service", that its meaning has got to be gathered as ordinarily understood, that section 16 of the Act provides for composition of the State Commission, that section 16 of the Act does not provide for appointment of persons qualified in medicine, or experts in medical practice, that the service rendered by a medical practitioner are of a personal nature and are excluded from the purview of the Act, that, therefore, the second respondent has no jurisdiction to entertain the complaint, that there is no privity of contract between the petitioner and the third respondent, that the third respondent did

not avail of any services from the petitioner, that, therefore, the complaint before the second respondent is not maintainable in law, that the above complaint (O. P. No. 50 of 1992) has been filed after more than 3 1/2 years from the date of the alleged negligence on the part of the petitioner, that there is no deficiency in the service rendered by the petitioner, that the professional work done by the petitioner is not coming within the purview of the definition of "service" under the Act and that the medical experts have not been included u/s 16 of the Act for any adjudication by the consumer forum.

4. Though no counter-affidavits have been filed on behalf of respondents Nos. 1 and 2, the third respondent has filed a detailed counter-affidavit, wherein it is stated that there is no substance in the contention raised by the petitioner that the second respondent Commission has no jurisdiction to deal with the disputes.

5. Mr. Krishnappan, learned counsel appearing for the petitioner, draws my attention to the Objects and Reasons for the passing of the Act.

Learned counsel appearing for the petitioner also invites my attention to the definitions of the terms "consumer" and "service" made u/s 2(1)(d) and (o) of the Act, respectively.

6. u/s 2(1)(d), the term "consumer" is defined as follows :

"consumer" means any person, who, -

(i) buys any goods for a consideration, which has been paid or promised or partly paid and partly promised, or under any system of deferred

payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or

partly promised or under any system of deferred payment when such use is made with the approval of such person, but does not include a person

who obtains such goods for resale or for any commercial purpose; or

(ii) hires any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred

payment and includes any beneficiary of such services other than the person who hires the services for consideration paid or promised, or partly

paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned

person.

7. The term ""service"" is defined under clause 2(1)(o) of the Act which reads as follows :

(o) ""service"" means service of any description which is made available to 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, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.

8. According to learned counsel for the petitioner, by no stretch of imagination, the service of a doctor comes under the definition of ""service"" in the

Act and the medical profession is not included in the service. Relying on the decision in A.S. Mittal and Another Vs. State of U.P. and Others, ,

learned counsel for the petitioner contended that to hold that a doctor is liable for the damages there must be a misconduct of a negligent nature.

According to learned counsel, the profession of doctors will not come under the definition, i.e., service rendered by the doctors as per the

definition given u/s 2(1)(o) of the Act as such the second respondent will have no jurisdiction to entertain the complaint filed by the third

respondent.

9. Mr. V. Prakash, learned counsel appearing for the third respondent, refers to the various provisions of the Act. Learned counsel appearing for

the third respondent contends that if the definition of the term ""consumer"" is read together with the definition of the term ""service"", it cannot be said

that the professional work done by a doctor will not come within the purview of the definition of the term ""service"" as defined in the Act. Learned

counsel appearing for the third respondent relies upon the decision in Cosmopolitan Hospital v. Smt. Vasantha P. Nair [1992] 1 CPR 820 and

contends that in the event of any deficiency in the performance of the services rendered by a doctor, the aggrieved party can invoke the remedies

provided under the Act by filing a complaint before the consumer forum having jurisdiction.

10. I have carefully considered the arguments advanced by learned counsel appearing on behalf of both the parties. It is relevant to extract section

2 of the Act which gives the clue to the issue (see [1987] 61 Comp Cas 178 :

The Consumer Protection Bill, 1986, seeks to provide for better protection of the interests of consumers and for the purpose, to make provision

for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and for matters connected therewith.

(2) It seeks, inter alia, to promote and protect the rights of consumers such as -

(a) the right to be protected against marketing of goods which are hazardous to life and property;

(b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade

practices;

(c) the right to be assured, wherever possible, access to a variety of goods at competitive prices;

(d) the right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums;

(e) the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and

(f) the right to consumer education.

11. The term "deficiency" is defined u/s 2(1)(g) of the Act which reads as follows :

"deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be

maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or

otherwise in relation to any service".

12. Section 9 of the Act which provides for the establishment of Consumer Disputes Redressal Agencies reads as follows :

There shall be established for the purposes of this Act, the following agencies, namely :-

(a) a Consumer Disputes Redressal Forum to be known as the "District Forum" established by the State Government with the prior approval of

the Central Government in each district of the State by notification;

(b) a Consumer Disputes Redressal Commission to be known as the "State Commission" established by the State Government with the prior

approval of the Central Government in the State by notification; and

(c) a National Consumer Disputes Redressal Commission established by the Central Government by notification"".

13. Section 12 of the Act provides for the manner in which complaints shall be made. Section 12 of the Act reads as follows :

A complaint in relation to any goods sold or delivered or any service provided, may be filed with a District Forum by -

(a) the consumer to whom such goods are sold or delivered or such service provided;

(b) any recognised consumer association, whether the consumer to whom the goods were sold or delivered or service provided is a member of

such association or not; or

(c) the Central or the State Government.

14. Section 13 of the Act prescribes the procedure on receipt of a complaint. Section 13 of the Act reads as follows :

(1) The District Forum shall, on receipt of a complaint, if it relates to any goods, -

(a) refer a copy of the complaint to the opposite party mentioned in the complaint directing him to give his version of the case within a period of

thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;

(b) where the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the

complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to

settle the consumer dispute...

15. Section 24 of the Act refers to the finality of orders. Section 24 of the Act reads as follows :

Every order of a District Forum, State Commission or the National Commission shall, if no appeal has been preferred against such order under

the provisions of this Act, be final"".

16. In my view, a combined reading of clause (g) and (o) of section 2(1) will clearly show that the definition ""service"" includes the services

rendered by a doctor also. The expression service has been defined in section 2(1)(o) of the Act as meaning ""service of any description"". The only

two categories of service exempted from the purview of the Act under the said definition are ""service rendered free of charge"" or under a contract

of personal service. If the definition of the term "service" is read with the definition of the term "consumer" which occurs in section 2(1)(d) of the

Act (extracted above), I have no hesitation to hold that the services rendered by a doctor are basically professional service and, therefore, it will

be incorrect to call the sophisticated high class professional service as "personal service". Further, the meaning of the word "hire" is given in the

Concise Oxford Dictionary (New VII Edition) in the following terms :

employ (person) for wages or fee, procure (from person) grant (out to person), temporary use of (thing) for stipulated payment; borrow (money)

girl or man, domestic servant esp. on farm....

17. In Craies on Statute Law (VIIth edition) it is seen if meaning is plain, consequences to be disregarded, construction according to intention is

provided as hereunder (at p. 64) :

The cardinal rule for the construction of Acts of Parliament is that they should be construed according to the intention expressed in the Acts

themselves. If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in

their ordinary and natural sense. The words themselves alone do in such a case best declare the intention of the lawgiver. The tribunal that has to

construe an Act of a Legislature, or indeed any other document, has to determine the intention as expressed by the words used. And in order to

understand these words it is natural to inquire what is the subject matter with respect to which they are used and the object in view. In 1953, Lord

Goddard C. J. said : "A certain amount of common sense must be applied in construing statutes. The object of the Act has to be considered.

Where the language of an Act is clear and explicit, we must give effect to it, whatever may be the consequences, for in that case the words of the

statute speak the intention of the Legislature".

18. Therefore, the contention of Mr. Prakash, learned counsel appearing for the third respondent, that the second respondent has jurisdiction to

entertain the complaint preferred by the third respondent, has to be accepted. I do not think that the professional service is a personal service and

that the same is exempted from the purview of the Act. I have no hesitation to hold that the activity of providing medical assistance for payment

carried on by hospitals and members of the medical profession falls within the

scope of the expression ""service"" as defined in section 2(1)(o) of the Act and that in the event of any deficiency in the performance of such service the aggrieved party can invoke the remedies provided under the Act by filing a complaint before the consumer forum having jurisdiction.

19. In view of the above reasoning, I do not think that a writ of prohibition as sought by for the petitioner can be issued in this case. In the result, this writ petition fails and the same shall stand dismissed. However, it is open to the petitioner to raise his objections with regard to the limitation and other factual aspects of the case before the consumer forum. No costs.