

(2014) 08 NCDRC CK 0059

In the National Consumer Disputes Redressal Commission

K.G. Sharma

APPELLANT

Vs

Ex -Servicemen Contributory Health Scheme (Echs) Cell

RESPONDENT

Date of Decision : 28-08-2014

Acts Referred:

Citation : 2014 4 CPJ 447

Hon'ble Judges : V.B.GUPTA J.

Judgement

1. PETITIONER /Complainant being aggrieved by order dated 13.7.2012 passed by State Consumer Disputes Redressal Commission, Rajasthan, Jaipur (for short as, "State Commission") has filed the present revision petition under Section 21(b) of Consumer Protection Act, 1986 (for short as "Act") vide which (First Appeal No. 1596 of 2011) filed by the petitioner was dismissed. Petitioner's case is that he is a retired Corporal from Air Force and is member of Ex. Servicemen Contributory Health Scheme (for short, ECHS) for medical facility available to Ex. Servicemen after retirement. On 12.1.2010 when he had gone to Delhi to meet his sister, he suffered chest pain at late night whereupon he was got admitted in Apollo Hospital, New Delhi where his open heart surgery was performed on 14.1.2010 and he was discharged from the said hospital on 22.1.2010. Before that on 15.1.2010, per the ECHS Scheme, intimation of his open heart surgery and treatment was sent to Base Hospital, Delhi Cantt. Thereafter, claim of Rs. 2,46,726 spent on treatment was submitted to the respondent on 2.2.2010 after completing all the formalities, against which payment of Rs. 1,30,000 only was made through cheque which was protested by him through letters dated 17.6.2010, 27.8.2010 and 3.12.2010 with the request to make payment of full amount. However, respondent paid no heed. Petitioner in the complaint has prayed for allowing balance amount of Rs. 1,19,014 with 9% interest per annum and Rs. 10,000 as compensation for mental agony and Rs. 5,000 as cost.

2. IN reply respondent has stated that petitioner can avail medical facility only as per the Rules and Provisions as contained in the ECHS Information Brochure for Ex. Servicemen Medical Facility. Petitioner on 1.1.2010 got his checkup done

from Dr. Ramesh Bhamnani, M.D. ECHS Polyclinic, Ajmer and he referred the petitioner to Heart and General Hospital, Jaipur which is empanelled hospital for ECHS. The petitioner got his angiography done in Empanelled Hospital. Based on the Angiography Report, Polyclinic Doctor, Ajmer advised for conducting C.A.B.G. Test of the patient. On 5.1.2010, petitioner got admitted in Empanelled Hospital, Jaipur and after conducting necessary tests, steps were taken for performing the operation, but petitioner had a well thought conspiracy with the Doctor of Indraprastha Apollo Hospital, as a result of which on 6.1.2010 he refused to undergo the operation and took on Request Discharge. The doctor of said hospital has clearly recorded on the Discharge Slip to contact the treating doctor, but petitioner failed to follow this and left for Delhi without any information to any nearby Polyclinic. As such, petitioner had made false statement to mislead the Forum and has not come to the Forum with clean hands. It is further stated that payment of Rs. 1,30,000 has been made to the petitioner for C.A.B.G. treatment only as per CGHS prescribed rates, which had been willingly accepted by the petitioner. The payment in excess of prescribed amount, is not payable to the petitioner as per the rules. Thus, respondent has not committed any deficiency in service.

3. DISTRICT Consumer Disputes Redressal Forum, Ajmer (for short as, "District Forum"), vide order dated 21.7.2011, allowed the complaint and directed the respondent to pay Rs. 3,650 the balance of the rate of ECHS to the petitioner within two months time and also to pay Rs. 2,000 for mental agony and cost of complaint.

4. AGGRIEVED by the order of District Forum, petitioner filed (First Appeal No. 1596 of 2011 for enhancement) whereas respondent also filed (First Appeal No. 1628 of 2011). The State Commission vide impugned order dismissed both appeals and affirmed the order of the District Forum.

5. HENCE , the present revision.

6. WE have heard learned Counsel for petitioner and gone through the record. It has been contended by learned Counsel that respondent has committed deficiency in service by not making full payment of Rs. 2,49,014 spent on the treatment of the petitioner in emergency condition. Thus, by making illegal deduction out of the aforesaid amount, respondent has committed deficiency in service.

7. THE State Commission, in its impugned order observed: "7. It is evident from the medical record submitted by both the parties that the complainant was referred firstly on 1.1.2010 and then on 5.1.2010 by the ECHS Polyclinic, Ajmer to the empanelled Heart and General Hospital, Jaipur (Marks 1 and 3) and he was advised by the empanelled hospital to undergo CABG (Mark 2). It is also evident that the complainant was admitted from 5.1.2006 to 6.1.2006 in the Heart and General Hospital, Jaipur and was advised to undergo CABG immediately at the same hospital. But he showed his unwillingness to undergo

CABG and therefore he was discharged at his own sweet -will from the hospital on 6.1.2010 (Marks 4 and 6). It is also an admitted position that the Heart and General Hospital, Jaipur has all the facilities for open heart surgeries and is an empanelled hospital with the ECGS.

8. From the perusal of the letter dated 5.8.2010 of the Regional Centre, ECHS, Pune (Mark 7), it is evident that the CGHS rates for CABG at Jaipur and Delhi are Rs. 1,30,000 and Rs. 1,33,650 respectively and the charges admissible to a patient of General Ward category are 15% less in comparison to semi -private category. The complainant is admittedly retired Corporal of the Indian Air Force and so he is entitled to facilities of General Ward category therefore, the deduction of 15% from the maximum limit of CABG could have been done but the non -applicants themselves have made the reimbursement to the complainant to the extent of Rs. 1,30,000 after examining the case of the complainant and there had been no fraud or misrepresentation made by the complainant. Therefore, in the light of judgments of Hon''ble Supreme Court in, 2000 WLC (UC) 646 Aalam Ali v. State of Rajasthan, : 1995 Suppl, (1) SCC 18, Sahib Ram v. State of Harayana, 1994 (2) SCC 521, Shyam Babu Verma v. Union of India, no recovery of excess amount paid to the recipient could be made where he did not misrepresent or commit any fault.

9. During the hearing of the appeals, the complainant has produced a photocopy of the office memorandum dated 27.12.2006 of Govt. of India which shows the authorities competent to sanction or approve the raised limit of reimbursement of medical claims to the members of CGHS but the circular no where shows that the rate of CABG for ECHS or CGHS has been raised from Rs. 1,30,000 or Rs. 1,33,650 to Rs. 2.5 lacs or to Rs. 2,46,726, the actual expenses incurred by the complainant and claimed by him. This circular also no where shows that the so - called revised rates were adopted by the ECHS also. No other document has been produced by the complainant to show that rates for CABG at Delhi were revised by ECGS from Rs. 1,33,650 to Rs. 2,46,726 as claimed by him.

10. For the aforesaid reasons, it appears that the learned DCF has rightly appreciated the evidence and the material available before it and did not make any mistake either of fact or law and was justified in partly allowing the complaint and in directing the non -applicants to make payment of balance amount of Rs. 3650 from the maximum limit of Rs. 1,33,650 for CABG at Delhi and awarding an amount of Rs. 2000 for mental agony to the complainant. The DCF has properly exercised its discretion while deciding the complaint and we do not find any error or illegality in the impugned order dated 21.7.2011 passed by it so as to call for any further interference in the present appeals.

8. THEREFORE , both the appeals i.e. Appeal No. 1596/2011 of the complainant K.G. Sharma and Appeal No. 1628/2011 of the ECHS are dismissed and the impugned order dated 21.7.2011 of the learned DCF is affirmed." 11. It is an admitted fact that petitioner was getting treatment at Jaipur. It was only on petitioner''s request that doctor of Jaipur hospital had recorded in the Discharge

Slip "Contact your treating doctor". However, petitioner did not contact the doctor at ECHS, Ajmer Polyclinic. Instead, he left for Delhi and got admitted in the Apollo Hospital. This clearly goes on to show that petitioner wanted to have treatment in a hospital of his choice. However, the hospital at Jaipur had all the facilities for open heart surgery. Under these circumstances, there is no deficiency on the part of the respondent. There are concurrent findings of fact given by both the fora against the petitioner on this point.

It is well settled that under Section 21(b) of the Act, scope of revisional jurisdiction is very limited. Under Section 21 of the Act, this Commission can interfere with the order of the State Commission where such State Commission has exercised a 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.

9. HON "ble Supreme Court in *Mrs. Rubi (Chandra) Dutta v. United India Insurance Company*, : II (2011) CPJ 19 (SC) : IV (2011) SLT 303 : 2011 (3) Scale 654, has observed; "Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21(b) of the Act, under which, the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view that what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21(b) of the Act has been transgressed. It was not a case where such a view could have been taken, by setting aside the concurrent finding of two Fora."

10. IN view of the concurrent findings of fact given by both the Fora below, we do not find any infirmity or illegality in the impugned order passed by the State Commission. Accordingly, present revision petition stand dismissed with cost of Rs. 5,000 (Rupees five thousand only). Petitioner is directed to deposit the cost by way of demand draft in the name "Consumer Legal Aid Account" of this Commission, within four weeks from today.

11. IN case, petitioner fails to deposit the cost within the prescribed period, then he shall be liable to pay interest @ 9% p.a., till realization. List for compliance on 10.10.2014.