
(2014) 11 NCDRC CK 0112

In the National Consumer Disputes Redressal Commission

MAJOR SINGH

APPELLANT

Vs

State Of Punjab Through Collector Hoshiarpur (Punjab)

RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Citation : 2014 4 CPJ 622

Hon'ble Judges : K.S.CHAUDHARI J.

Advocate : L.S.Marwaha , MUKAND GUPTA , V.K.MENON

Judgement

1. THIS revision petition has been filed by the petitioner against the order dated 03.08.2012 passed by the Punjab State Consumer Disputes Redressal Commission, Chandigarh (in short, "the State Commission") in Appeal No. 06/2008 - Major Singh Vs. State of Punjab & Ors. by which, while dismissing appeal, order of District Forum dismissing complaint was upheld.

2. BRIEF facts of the case are that complainant/petitioner employer of Police Department sustained injury on duty on 21.1.2006 and was referred to Civil Hospital, Hoshiarpur. Complainant remained under treatment of OP No.3/ Respondent No. 3 from 1.2.2006 to 6.3.2006. On 10.3.2006, OP No. 3 operated complainant and cut wrong vein and ultimately after treatment in Tagore Hospital and Pasricha Hospital, Jalandhar, his right foot was amputated on 27.4.2006 and he was declared 40% handicapped. Complainant was appointed by OP NO. 1/ Respondent No. 1 and OP No. 1 has to bear expenses of medical treatment of the complainant. Alleging deficiency on the part of OP, complainant filed complaint before District Forum. OP No. 1 and 2 resisted complaint and submitted that complainant is not consumer qua OP NO. 1 as he availed services free of cost. It was further submitted that complicated questions were involved and there was misjoinder of parties and negligence on the part of doctor was denied and prayed for dismissal of complaint. OP No. 3 also raised similar objections and prayed for dismissal of complaint. Learned District Forum after hearing both the parties dismissed complaint as no negligence was proved. Appeal filed by complainant was dismissed by learned State Commission vide impugned order against which

this revision petition has been filed.

3. NONE appeared for Respondent No. 1 and 2 even after service. Heard learned Counsel for the petitioner and respondent no. 3 and perused record.

4. LEARNED Counsel for the petitioner submitted that complainant falls within purview of consumer and medical deficiency proved beyond doubt; even then, learned State Commission committed error in dismissing appeal; hence, revision petition be allowed and complaint be allowed. On the other hand, learned Counsel for the respondent submitted that order passed by learned State Commission is in accordance with law; hence, revision petition be dismissed.

5. LEARNED State Commission placed reliance on judgment of Hon'ble Apex Court in Law Finder Doc Id # 71349 = 1996 (1) Consumer Law Today - 1 (SC) - Indian Medical Association Vs. V.P. Shantha & Ors. and held that complainant does not fall within purview of consumer. Paragraph 44 of the aforesaid judgment runs as under: "The other part of exclusionary clause relates to services rendered "free of charge". The medical practitioners, Government hospitals/nursing homes and private hospitals/nursing homes (hereinafter called "doctors and hospitals") broadly fall in three categories : -

i) where services are rendered free of charge to everybody availing the said services.

ii) where charges are required to be paid by everybody availing the services and

iii) where charges are required to be paid by persons availing services but certain categories of persons who cannot afford to pay are rendered service free of charges. There is no difficulty in respect of first two categories. Doctors and hospitals who render service without any charge whatsoever to every person availing the service would not fall within the ambit of "service" under Section 2(1) (o) of the Act. The payment of a token amount for registration purposes only would not alter the position in respect of such doctors and hospitals. So far as the second category is concerned, since the service is rendered on payment basis to all the persons they would clearly fall within the ambit of Section 2(1) (o) of the Act. 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."

In the light of aforesaid observation it becomes clear that where services are rendered free of charge to everybody availing the said services, patient does not fall within purview of consumer. In the case in hand, learned Counsel for the petitioner could not place any document on record to prove that OP No. 2, where OP No. 3 was working as surgeon was not rendering services free of charge to everybody and in such circumstances, complainant does not fall within purview

of consumer.

6. LEARNED Counsel for the petitioner has drawn my attention towards paragraph 56 (12) which runs as under: "56(12) Similarly, where, as a part of the conditions of service, the employer bears the expenses of medical treatment of an employee and his family members dependent on him, the service rendered to such an employee and his family members by a medical practitioner or a hospital/nursing home would not be free of charge and would constitute "service" under Section 2(1) (o) of the Act. Learned Counsel for the petitioner submitted that as employer was bearing expenses of medical treatment of the complainant given in Respondent No. 2 hospital, complainant falls within purview of consumer. This argument is devoid of force because perusal of aforesaid observation makes it clear that if medical expenses are given by the patient to any hospital or to the medical practitioner and reimbursed by employer then patient falls within purview of consumer. In the case in hand, no treatment charges have been paid by the petitioner or by the Government to OP No. 2 and in such circumstances, complainant does not fall within purview of consumer and State Commission has not committed any error in dismissing appeal on this ground.

7. THIS Commission in I (1992) CPJ 259 (NC) - Consumer Unity and Trust Society, Jaipur Vs. The State of Rajasthan & Ors. observed that a person who avails facility of medical treatment in Government hospital is not a consumer and no complaint is maintainable under C.P. Act.

8. IN the light of aforesaid judgment, it becomes clear that learned State Commission has not committed any error in dismissing appeal on the ground that complainant does not fall within purview of consumer and revision petition is liable to be dismissed.

9. CONSEQUENT LY , revision petition filed by the petitioner is dismissed with no order as to costs.