

(1997) 02 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

MANJU KUMAR CHOUDHURY

APPELLANT

Vs

S.K.Ghosh

RESPONDENT

Date of Decision : 07-02-1997

Acts Referred:

Citation : 1997 3 CPJ 249 : 1998 1 CPR 597

Hon'ble Judges : A.K.Bhattacharyya , Sunil Kanti Kar , S.Dutta J.

Final Decision : Appeal disposed of

Judgement

1. THIS is an appeal against an order dated 20.6.1995 passed by the Calcutta District Forum in C.D.F. Case No. 1510 of 1994 dismissing the complaint of the petitioner/appellant with the observation that the dispute raised by the complainant is not a consumer dispute and as such the forum has no jurisdiction to entertain the same and hence dismissed the complaint.

2. THE complainants' case is that they are full brothers and their younger brother Bholanath Chowdhury developed abnormality in him and was admitted in the opposite party. Respondents Nursing Home as a Psychophrenic patient for medical treatment which is still continued at the said Nursing Home since 2.3.1989 and for that they are paying Rs. 2,000/- p.m. to meet up the various charges inclusive of lodging, fooding etc. till today. But suddenly the Nursing Home raised its demand fixing Rs. 5,000/- for each patient with admission and monthly charges @ Rs. 3,000/- respectively and issued a threatening letter adding that failing of such payment the complainants should take away their brother from the Nursing Home. The opposite party/respondent vehemently contested the case and admitting the said patient's admission and treatment at their Nursing Home since 2.3.1989 stated that with the reorganisation and opening of a new regular ward of psychiatry under the guidance of eminent experts the admission charges in the said ward was fixed at Rs. 3,000/- and monthly charges Rs. 3,000/- and a further sum of Rs. 5,000/- has been fixed for deposit in advance for a patient which they demanded from the complainant/appellant, but they refused to comply with the same. The respondent further

alleged that the behaviour of the complainant towards visiting the patient at the Nursing Home was very irregular, as if they did not want to take back their brother at home. They also produced opinions of two eminent doctors who had examined the patient and opined that the patient may now be discharged with the instruction of domiciliary treatment at least for 2/3 years and the respondents also informed this fact to the complainants/appellants by a letter dated 3.7.1996, but the complainant/appellant refused.

In the appeal, the appellant challenged the order of the Calcutta District Forum on grounds of jurisdiction which is mainly based on presumption and surmises and wrongly admitting the contention of the opinions of two eminent doctors as truth. The appellants' contention is that they have paid money for their brother's admission, lodging and treatment since 1989 @ Rs. 2,000/- p.m. which they are still paying, the respondents enhanced the amount of Rs. 2,000/- to Rs. 3,000/- at their sweet will on the plea of reorganisation of their Nursing Home and added further that the opinion of the two eminent doctors attached to the Nursing Home are obtained after the appellant denied to pay such excess money and issued a letter dated 7.5.1994 intimating the respondent Nursing Home that they are willing to increase the amount of Rs. 2,500/- instead of Rs. 2,000/- considering the present rise in prices and maintenance charges which, according to the appellant, are motivated one and created at the instance of the respondents. The appellant further contended that since they are paying charges to the Nursing Home they are consumers for service as provided in Section 2(1)(d)(ii) of the C.P. Act, 1986 and the acts and deeds of the Nursing Home and finally its attempts to remove the mental patient from the Nursing Home on the plea of non-payment of the forced charges, as well as the opinion of their own eminent doctors who according to them though opined for the discharge of the patient but advised to continue the treatment for another 2/3 years treatment, are nothing but deficiency in service and as such it is a consumer dispute and it is maintainable and the Forum have jurisdiction to try the case and disposed of. Besides that the cause of action arises in Calcutta, which is within the jurisdiction of the Calcutta District Forum. In connection with this case the appellant also cited the recent judgment of the Apex Court Re: Indian Medical Association v. V.P. Santhana & Ors., as reported in III (1995) CPJ 1 (SC).

3. WE, therefore, allow this appeal, set aside the impugned order and evaluating the facts and circumstances of the case and evidence adduced by both the parties. Hence it is ordered that (1) this is a consumer dispute and the Forum has jurisdiction to try the case being maintainable as per provisions laid down in C.P. Act, 1986, (2) directed the respondent not to remove the patient Bholanath Chowdhury from the Nursing Home till he is fully cured, and (3) ordered that the complainants shall pay charges to the Nursing Home of Rs. 2,500/- p.m. for the allied charges including treatment of their brother from the date of this order. There shall be no order as to costs. The appeal is thus disposed of. Mr. Justice A.K. Bhattacharji, President- I do not agree.

4. THERE is no reason to hold that the complainant is a consumer. It is not a case of medical negligence against a Doctor or Nursing Home. Neither it is a case of deficiency of service, as there cannot be a hiring of service without payment of consideration. In this case the complainant is evidently not willing to pay the fixed charges of the opposite party. The District Forum has discussed the case with good reasons. In the above order proposed by Prof. Kar no reason has been shown why the judgment of the Lower Court should be set aside. Considering the case in all its aspects I think that the views expressed by the District Forum are correct. Hence this appeal is dismissed. I, however, expect that if the complainant is willing to pay the proper charges of the opposite party respondent the latter will allow his brother to continue his treatment for a reasonable period until his recovery. Appeal disposed of.