(2010) 04 NCDRC CK 0063

In the National Consumer Disputes Redressal Commission

Peerless Hospital and B.K. Roy Research Centre — APPELLANT

Vs

Gopal Chandra Mukherjee — RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

Citation : 2010 0 NCDRC 51 : 2010 3 CPJ 95

Hon'ble Judges : B.N.P.Singh , S.K.Naik J.

Final Decision : Revision petition and the same is dismissed

Judgement

1. PETITIONER-Peerless Hospital and B.K. Roy Research Centre had entered into a memorandum of agreement with the Director, Central Government Health Scheme (CGHS) for being recognized under the CGHS for treatment of beneficiaries covered under CGHS. As per terms of the agreement, hospital was to provide credit facilities to the patients and in case of retired members of CGHS, bills were to be submitted to the concerned Additional Director, CGHS for payment after treatment of the patient. Complainant Gopal Chandra Mukherjee, respondent no.1 herein, is a retired Central Government employee and has been issued CGHS Card No. P56383, covering him and his wife for benefit under the Scheme. It so happened that on 2nd of January, 2005 the respondent-complainant had to take his wife for treatment for acute retention of urine and no easing of stool to the petitioner hospital on the advice of their family doctor. His wife was examined by doctors on duty at the emergency department of the petitioner hospital who diagnosed her problem to be a case of "rectal prolapse" requiring surgical intervention and advised admission under Dr. Amol Chakravarti, a surgical specialist. When, however, he went to admission counter and filled-in the requisite form for admission, he was directed to first deposit a sum of Rs.5000/- as a pre-requisite for admission. His pleadings, however, that no such payment was required to be paid by him since he was a CGHS card holder, did not cut ice with the admission desk. He thereafter met the Public Relations Officer of the petitioner hospital, who too expressed her inability in the matter. Allegedly, when the respondent-complainant requested her to let him speak to her superior authority/doctor, she reportedly curtly replied that the

doctor could not be disturbed at his residence. As per the respondent-complainant, he was forced to leave the hospital with the ailing wife, as admission without depositing the advance was not possible. The respondent-complainant, however, subsequently got his wife admitted in the Apollo Gleneagles Hospital, which was similarly registered with the Director of CGHS, and availed their treatment.

2. THE main grouse of the respondent-complainant was that despite he being a senior citizen of 87 years old was not only put to physical and mental torture in the process of going up and down with ailing wife but had to face humiliation at the hands of the petitioner hospital staff, who despite his legal right of being treated free of charge literally forced him out of the hospital. He, therefore, filed a complaint before the District Consumer Disputes Redressal Forum (S) 24 Pgs. (District Forum for short). THE complaint was resisted by the petitioner-hospital and the other opposite parties. On the basis of evidence produced by either sides, the District Forum held the petitioner hospital deficient in service and directed them to pay compensation of Rs.50,000/-. Aggrieved thereupon, the petitioner hospital had filed an appeal before the West Bengal State Consumer Disputes Redressal Commission, Kolkata (State Commission for short), who vide the order under challenge held that the order passed by the District Forum was well-reasoned and did not warrant any interference. The State Commission, therefore, while dismissing the appeal, imposed a cost of Rs.5000/- on the petitioner hospital and directed them to pay the same along with the compensation within a period of thirty days from the date of communication of the order, failing which the amounts were directed to carry interest @ 10% per annum till payment.

Further aggrieved that the petitioner hospital has filed this revision petition.

3. WE have heard the learned counsel for the petitioner and the respondent-complainant, who has appeared in person and argued his case. WE have also perused the records of the case very carefully. There is no controversy and it is admitted by either side that on 2nd of January, 2005 the respondent-complainant approached the petitioner hospital for treatment of his 85 years old wife with complaint of pain in the abdomen and history of constipation. She was attended to in the emergency section of the petitioner hospital, where the doctor after examination advised admission for general surgery under Dr. Amol Chakravarti. It is also not denied that thereafter the respondent complainant made an attempt to get the patient admitted into the hospital, for which, as per hospital rules, the admission section and Public Relations Officer asked the complainant to first deposit a sum of Rs.5000/- as advance before the patient could be admitted for indoor treatment. The controversy arises only at this point. While the respondent complainant alleges that he informed the admission desk and the Public Relations Officer that he being a CGHS beneficiary and CGHS card holder, no amount was required to be paid to the hospital and had produced the CGHS card, the contention of the petitioner hospital is that no such submission was

made before the staff of the hospital nor was any CGHS card produced. This aspect has been dealt with in detail by the State Commission in the order under challenge. The State Commission did not find substance in the submissions and objections raised before it by the petitioner hospital to disapprove the contention of the respondent complainant.

4. BEFORE us, learned counsel for the petitioner hospital has very strenuously argued on the same point and has submitted that the respondent complainant was in fact not in possession of the CGHS card on the 2nd of January, 2005. This, he contends, is proved from the fact that at the time of the cross-examination on 20th January, 2006 before the District Forum, the complainant had agreed to submit his original CGHS card on the next date of hearing. However, on 10th of March, 2006, only a duplicate card, with an endorsement "valid for whole life" issued on 26th of October, 2005 was produced. According to him, there was an endorsement on the reverse of the card that it was valid upto 30th of June, 1997. He, therefore, vehemently argues that the complainant had no valid original card at the time of his visit to the hospital on 2nd of January, 2005 since the card had not been renewed after 30th of June, 1997 and the duplicate card was issued on 26th of October, 2005. The State Commission has rejected this argument holding that since the Apollo Gleneagles Hospital on the basis of the same CGHS card has treated the patient and, therefore, the claim of the petitioner hospital that no such card was ever produced or that the card was not valid on that day, could not be believed. Before us, learned counsel for the petitioner hospital has again raised the same point, laying much emphasis on the point that before the District Forum at the time of rendering evidence, only a duplicate card bearing no. P56383 was produced, which had an endorsement that it was issued on 26th of October, 2005. We fail to understand as to how on the basis of this endorsement, it could be proved that the complainant was not in possession of a valid CGHS card on the 2nd of January, 2005 because, as the per complainant, the card had been subsequently misplaced for which he had obtained a duplicate copy but even the original card had been subsequently traced. It is not denied by the petitioner hospital that the card had a stamp stating that it was valid for whole life and the endorsement on the reverse that it was valid upto 30th of June, 1997 will have no relevance as the card was made valid for whole life w.e.f. 1st of January, 2003. What is, however, noteworthy is the fact that while the petitioner hospital and its officials in their affidavits admit that the respondent complainant pleaded with them that he was a CGHS beneficiary and he had taken his old ailing wife in an emergency, the least that was expected of the Public Relations Officer of the hospital or the authorities of the hospital was to have kept the patient under observation in the emergency and asked him to produce the CGHS card if indeed he had carried or produced the card before them. But to have demanded Rs.5000/- first before any further action could be taken to admit her as an indoor patient makes their defence hollow. Further, when the other hospital i.e. Apollo Gleneagles Hospital has admitted the patient on the basis of the respondent complainant being a CGHS

beneficiary, it is difficult to believe that he would not have produced the card before the petitioner hospital. We find it rather strange that when respondents no. 2 to 4, who are the CGHS authorities, tendered their evidence in the form of affidavit, no effort whatsoever was made by the petitioner hospital to cross-examine or ascertain from them as to whether on the day of the respondent complainant approaching the hospital the CGHS card of the complainant was valid or had been lying in expired state. That would have clinched the matter, but we are sorry to observe that the petitioner hospital has been, without any concrete evidence, raising the issue of the validity of the card despite the claim of the respondent complainant that he indeed presented the card before the Public Relations Officer. It appears that getting a deposit of Rs.5000/- for the hospital was more important than the terms of the agreement entered into with the CGHS for first rendering services free of cost and then claiming the reimbursement from the Government.

5. WE also find it rather strange that the petitioner hospital having entered into a memorandum of understanding to first provide free services to a CGHS beneficiary and thereafter claim the reimbursement from the Government has taken the plea that the complainant was not a "consumer". The State Commission has dealt with this objection in detail and has rightly overruled their contention. It has been rightly held that the petitioner was running "a wellness business which should be in compatible with its objective and ethics". It further rightly held that having voluntarily undertaken the obligation to treat the CGHS beneficiary under Clause 6 of the agreement grossly failed to comply with the provision therein. Clause 6 of the agreement reads as under :- "6. In emergency, the recognized private hospital shall not refuse admission or demand an advance payment from the beneficiary or his family member and provide credit facilities to the patient whether the patient is a serving employee or a pensioner availing CGHS facilities on production of a valid CGHS card and the hospital shall submit the bill for reimbursement as per approved rates to the concerned Dept. in the case of serving employees and to the office of the concerned Addl. Director, CGHS in the case of pensioner beneficiary.

WE also notice that under Clause 13 of the said agreement the petitioner hospital was to undertake the treatment of the CGHS beneficiary patient free of cost under the package deal, which included the cost of medicines, drugs, surgical instruments etc. Clause 13 of the said agreement states as under :- 13. During In-patient Department (IPD) treatment of the CGHS beneficiary, the hospitals would not ask the beneficiary to purchase separately the medicines from outside but bear the cost of its own as the package deal rate fixed by the CGHS at Annexure-I includes the cost of drugs, surgical instruments and other medicines etc."

6. WE are somewhat dismayed that the petitioner hospital, having entered into an agreement with the Director of CGHS to first treat their members on the basis of a credit and thereafter lodge the claim for reimbursement, advanced the plea

that the complainant was not a consumer. The Consumer Protection Act, 1986 defines a consumer in para 2(d) as under :- "consumer" means any person who, - (i) " (ii) hires or avails of 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 or avails of 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 but does not include a person who avails of such services for any commercial purpose"

It would be clear from the reading of this provision that the definition of a "consumer" includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised. In the present case, even though the Director, CGHS is to make the payment, the beneficiary is the complainant and the petitioner hospital has on its own volition entered into an agreement to provide the services. The service, thus, was to be provided on a deferred payment basis and not free, as is attempted to be made out. Thus, the very fact that such an objection has been raised lends support to the allegation that the hospital has entered into agreement just to attract the CGHS beneficiary but once approached they have conveniently and deliberately failed to abide by the terms of the contract. This is a practice which cannot but be deprecated. Further, as already discussed, the bogie of CGHS card having expired or not being valid or that it was not at all produced simply cannot be believed as the circumstances and preponderance of evidence goes against the petitioner hospital.

In this view of the matter, we find absolutely no merit in the revision petition and the same is dismissed with a cost of Rs.10,000/-. The petitioner hospital is directed to pay the compensation of Rs.50,000/- along with costs of Rs.15,000/- (i.e. Rs.5000/- as awarded by the State Commission and Rs.10,000/- as awarded by this Commission) within a period of two months to the respondent complainant, failing which the amounts will carry interest @ 9% per annum till date of the payment.

