

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**

**NEW DELHI**

**REVISION PETITION NO. NC/RP/574/2025**

(Against the Order dated 3rd October 2024 in Appeal No. SC/9/A/408/2017 of the State Consumer Disputes Redressal Commission Uttar Pradesh)

**WITH**

**NC/IA/4473/2025 (CONDONATION OF DELAY)**

RAKESH KUMAR SHUKLA

PRESENT ADDRESS - RZ C-180, NIHAL VIHAR, DELHIWEST, DELHI.

.....Petitioner(s)

Versus

ALOK EYE HEALTH AND OPTICAL CENTRE

PRESENT ADDRESS - SEMRI CHAURAH BHINGA SHRASASTI THROUGH ITS PROP. ALOK KUMAR MISHRA S/O SRI RAMESH CHANDR MISHRA R/O VILL. UDAIPUR POST PARSURAM PUR PARAGANA AD TEHSIL BHINGA DISTT. SHRAWASTISHRAVASTI, UTTAR PRADESH.

.....Respondent(s)

**BEFORE:**

**HON'BLE DR. INDER JIT SINGH , PRESIDING MEMBER**

**HONBLE JUSTICE DR. SUDHIR KUMAR JAIN , MEMBER**

**FOR THE PETITIONER:**

FOR THE PETITIONER MD. ZARYAB JAMAL RIZVI, ADVOCATE

**FOR THE RESPONDENT:**

EX-PARTE VIDE ORDER 12.01.2026

**DATED: 30/01/2026**

**ORDER**

**DR. SUDHIR KUMAR JAIN, J.**

1. Briefly stated relevant facts of the case are that the petitioner/the complainant/Ms. Rakesh Kumar Shukla (hereinafter referred to as “**the petitioner**”) avers that on 09.06.2010, his left eye turned red. On the following day, 10.06.2010, he visited the respondent/opposite party/ Alok Eye Health And Optical Centre (hereinafter referred to as “**the respondent**”) shop for treatment of the said eye. The respondent administered oral medicines and eye drops, prepared a treatment prescription in his own handwriting, and received Rs.500/- in cash as payment for the consultation and treatment. However, due to the respondent's negligent treatment, the petitioner's left

eye worsened progressively, developing a severe infection and deteriorating further. On 11.06.2010, the petitioner traveled to Bahraich and consulted eye specialist Dr. A.K. Mishra, who diagnosed that the eye had become highly infected as a direct result of the medicines prescribed by the respondent. Subsequently, on 19.06.2010, the petitioner sought a second opinion from eye specialist Dr. Kishan Lal, who confirmed that the eye was completely infected. Despite these interventions, the infection persisted and could not be controlled. Thereafter, on 10.07.2010, the petitioner was admitted to Dr. Rajendra Prasad Eye Centre in New Delhi for advanced treatment. Regrettably, the vision in his left eye was lost permanently. During the course of this treatment, the petitioner incurred medical expenses amounting to approximately Rs.2,00,000/-. Consequently, the petitioner being aggrieved by the act of the petitioner filed the present consumer complaint bearing no 09/2011 titled as **Mr. Rakesh Kumar Shukla V. Alok Eye Health And Optical Centre**. under section 12 of the Consumer Protection Act, 1986 (hereinafter referred to as "**the Act**") before the District Consumer Disputes Redressal Forum, Shrawasti (hereinafter referred to as "**the District Forum**") and claimed Rs.5,00,000/- and Rs.2,00,000/- for medical treatment and annual interest of 10% on the amount from 10.06.2010 until full recovery, compensation of Rs.1,00,000/- , litigation coast of Rs.5,000/-,

**2.** The respondent filed reply before the District Forum and submitted that the statement made in the complaint that the petitioner had approached him on 10.06.2010 for an eye examination. After examining the petitioner's eye, he prepared a prescription for medication and provided the same to the petitioner. However, the respondent has categorically denied all remaining allegations made by the petitioner, terming them as false, baseless, and unsubstantiated.

In his additional statements, the respondent has clarified that the petitioner is related to him as the nephew of his paternal aunt's husband and had visited him on 10.06.2010 at approximately 6:00 PM for the purpose of getting spectacles made. Upon examination of the petitioner's eye, the respondent found that his eye vision was 6/9 with a refractive error of -0.25 Diopter Spherical. Accordingly, he advised the petitioner to wear corrective glasses and recommended the use of photochromic lenses to enable proper functioning of the eye. The petitioner, however, did not proceed with getting the glasses made following the examination. Instead, he

complained to the respondent about experiencing burning sensation and watering in his eye. In response to these symptoms, the respondent prepared a prescription for appropriate medication and provided it to the petitioner for purchase.

2.1 The respondent has specified that he prescribed three tablets for the petitioner, namely Tab-Raxly-150mg, Tab-Nimsin-P, and Tab-Aquasal, along with three injections comprising Dexamethasone, Diclofenac, and Ceftazidime, all of which are pain relievers. The respondent has asserted that the use of these medications could not have caused any harm to the eye. He has further stated that the petitioner's allegation that the consumption of the medicines prescribed by him caused unbearable pain in the petitioner's eye and led to severe infection is entirely false and baseless. The respondent has also refuted as false and baseless statement made by the petitioner that eye specialists, namely Dr. A.K. Mishra of Divya Drishti Eye Hospital, Dr. Kishan Lal of Delhi, and the eye specialists at Dr. Rajendra Prasad Centre for Ophthalmic Sciences in New Delhi, had informed the petitioner that his eye became infected due to medical negligence on the part of the respondent and the prescription of incorrect medication. According to the respondent, the loss of vision in the left eye has not occurred as a result of the intake of medicines prescribed by him, and he has not committed any medical negligence whatsoever. The respondent has further contended that he neither charged any fee from the petitioner nor sold any medicine to him. Consequently, the petitioner does not fall within the category of a consumer, and therefore, the present complaint is not maintainable. The respondent has submitted that the petitioner has filed this complaint with malicious intent on the basis of imaginary and baseless facts, and the same deserves to be dismissed in its entirety.

3. The District Forum in order dated 31.01.2017 dismissed the complaint. The relevant portion of the impugned order is reproduced as under verbatim:

**26. As far as the question is concerned, the Opposite Party did not have any medical certificate to prescribe allopathic medicines, nor was he authorized to prescribe allopathic medicines as a medical officer. Despite this, the Opposite Party has prescribed allopathic medicines to the Complainant on document no. 6. Since in this case, it is not proved that the Complainant paid any consideration to the Opposite Party for**

receiving the services of the opposite party, in such a situation, the Complainant is not found to be a consumer under section 2 (1)(d) of the Consumer Protection Act, 1986, and the complaint given by the Complainant is not considered to be covered under the definition of the word 'service' given under section 2 (i) (o) of the said Act. Therefore, the complaint filed by the Complainant is not found to be maintainable. However, the Complainant can take legal action in the competent court or under any other law against the Opposite Party to obtain the desired relief in the said regard.

Thus, on the basis of the above review, the Tribunal comes to the conclusion that the complaint filed by the Complainant is liable to be dismissed with costs without any result on the ground that the Complainant has completely failed to prove the allegations mentioned in the complaint.

### **ORDER**

The complaint presented by the Complainant is dismissed along with the costs. However, the Complainant may, against the opposite party file a case in the competent court or take appropriate legal action under any other independent legal provision to seek the desired relief.

**(Extracted from translated copy)**

4. The petitioner being aggrieved from order dated 31.01.2017 passed by the District Forum filed First Appeal bearing no FA/408/2017 titles as **Mr. Rakesh Kumar Shukla V. Alok Eye Health And Optical Centre** before State Consumer Disputes Redressal Commission, Lucknow, Uttar Pradesh (hereinafter referred to as “**the State Commission**”). The State Commission vide order dated 31.05.2017 (hereinafter referred to as “**the impugned order**”). The State Commission upheld the order dated 03.10.2024 by the district forum. The relevant portion of the impugned order is reproduced as under verbatim:

### **ORDER**

16. The appeal is dismissed. The decision/order passed by the District Consumer Commission is confirmed.

Both the parties will bear their own appellate litigation expenses.

In the present appeal, if any amount has been deposited by the Appellant, then the said amount along with the accrued interest

**should be sent to the concerned District Consumer Commission for disposal as per the law at the earliest.**

**(Extracted from translated copy)**

5. The petitioner being aggrieved filed the present Revision Petition bearing no 574 of 2025 titled **Mr. Rakesh Kumar Shukla V. Alok Eye Health And Optical Centre** as under section 21(1) (b) of the Act **1986** to challenge the impugned order primarily on grounds that the impugned order was perverse and devoid of merits being passed against law and facts. The State Commission has regrettably overlooked a fundamental deficiency in the proceedings before the District Forum. That the District Forum failed to conduct a thorough and comprehensive examination of the case on its merits, neglecting to scrutinize each aspect with the requisite attention and diligence that the matter demanded. The impugned judgment and order appear to have been passed in a perfunctory and casual manner, which is not only in contravention of the established principles of law but also contrary to the facts on record. The State Commission has failed to take into account that the learned District Forum did not adequately consider a critical aspect of the matter. Specifically, the District Forum overlooked the fact that the respondent's failure to provide competent care and appropriate advice amounts to a deficiency in service. Such deficiency is clearly defined and established under Section 2(1)(g) of the Consumer Protection Act, 1986. This oversight by the District Forum, which went unaddressed by the State Commission, represents a significant lapse in the proper application and interpretation of the statutory provisions governing consumer protection in the present case. The District Forum erred in overlooking the fact that the respondent conducted a thorough examination of the petitioner and subsequently administered treatment by personally applying medication to the affected left eye, in addition to providing a handwritten prescription that included an eye drop. The respondent demanded a consultation fee of Rs.500/- in cash for the treatment rendered, which the petitioner duly paid. However, the respondent failed to issue any receipt for the payment received, a practice that is commonplace among individual doctors and small clinics, not only in smaller towns but also in larger metropolitan cities such as Delhi. The petitioner also challenged the impugned order on other grounds. It was prayed that the impugned order be set aside.

**6.** We have heard Sh. Md. Zaryab Jamal Rizvi, counsel for the petitioner. We have also considered the relevant records including the order passed by the District Forum, the impugned order passed by the State Commission. We have also perused written submission submitted on behalf of the petitioner.

None also appeared on behalf of the respondent on the date of argument. Therefore the respondent was proceeded ex parte on merits by order dated 12.01.2025.

**7.** The counsel for the petitioner besides referring the factual background of the case argued that the District Forum erroneously dismissed the complaint on a preliminary ground of maintainability, holding that the petitioner had not proved payment of consultation fee and was therefore not a "consumer" under the Consumer Protection Act, 1986. Having dismissed the complaint on this threshold issue alone, the District Forum failed to return any findings on the core determinative issues, including the illegality of prescription by an unqualified person, medical negligence and deficiency in service, the causal link between the prescription and loss of vision, and the question of relief and compensation. Furthermore, the District Forum observed that the petitioner may approach the civil court for remedies, which approach itself demonstrates a failure to exercise the jurisdiction vested in the consumer forum under the statute once the consumer relationship and deficiency in service were established.

**7.1** The error committed by the District Forum was compounded by the State Commission. Although the State Commission accepted in appeal that the affidavit of the petitioner regarding payment of Rs.500/- could be considered proof of payment, thereby effectively accepting that the petitioner was a consumer for purposes of Section 2(1)(d) of the Act, it failed to adopt the only legally correct course in the circumstances. Once the State Commission accepted the petitioner as a consumer, it ought to have set aside the dismissal on maintainability and remanded the matter for adjudication on merits, given that the District Forum had returned no findings on the determinative issues. However, instead of remanding the matter, the State Commission dismissed the appeal on merits and recorded a finding that the respondent, being a diploma holder, could prescribe allopathic medicines. This finding is wholly baseless, contrary to Central legislation, and contrary to binding law

declared by the Hon'ble Supreme Court. It was specifically argued and demonstrated from the record, including the reply and the orders of the fora below, that the respondent had admitted to prescribing allopathic medicines, yet the State Commission nonetheless legitimized such prescription by treating an optometry diploma as sufficient authority, which is impermissible in law.

**7.2** The law governing modern medicine and allopathy is occupied by Central legislation, namely the Indian Medical Council Act, 1956, now succeeded by the National Medical Commission Act, 2019, and the right to practise and prescribe is traceable only to a recognised medical qualification and registration as contemplated under the Central law. Section 15(1) and Section 15(2) of the Indian Medical Council Act, 1956, expressly prohibit any person from practising or prescribing medicine unless he possesses a recognised medical qualification and is duly registered in the State Medical Register. The Hon'ble Supreme Court, while dealing with the issue of diploma holders and rural health practitioners and the interplay of State action vis-à-vis Central law, in **Baharul Islam & Ors. v. Indian Medical Association & Ors.**, decided on 24th January 2023, has held that the field of medical education, qualification and standards is substantially occupied by Central legislation, and that diploma holders or rural health practitioners are not entitled to practice or prescribe allopathic medicine. In the facts of the present case, even assuming without admitting that the Respondent possesses some diploma in optometry or allied field, the same does not confer any statutory authority to prescribe allopathic medicines. Therefore, the act of prescription itself constitutes deficiency in service and negligence by operation of law, and the injury caused to the petitioner is a direct consequence of such illegal practice.

**8.** It is reflecting from record that the petitioner, Rakesh Kumar Shukla, on 09.06.2010 experienced redness in his left eye. On the following day, being 10.06.2010, he visited Alok Eye Health And Optical Centre for medical treatment of the affected eye. The respondent examined the petitioner and administered oral medicines and eye drops, personally preparing a treatment prescription in his own handwriting, and received a sum of Rs.500/- in cash towards consultation and treatment charges. However, owing to the allegedly negligent treatment provided by the respondent, the

petitioner's condition deteriorated progressively, with his left eye developing a severe infection that continued to worsen. On 11.06.2010, the petitioner proceeded to Bahraich and consulted Dr. A.K. Mishra, a qualified eye specialist, who upon examination diagnosed that the eye had become highly infected as a direct consequence of the medicines prescribed by the respondent. Subsequently, on 19.06.2010, seeking a second medical opinion, the petitioner consulted another eye specialist, Dr. Kishan Lal, who confirmed that the eye was completely infected. Despite these medical interventions, the infection could not be brought under control and continued to persist. Consequently, on 10.07.2010, the petitioner was compelled to seek admission at Dr. Rajendra Prasad Eye Centre, New Delhi, for advanced medical treatment. Regrettably, despite all efforts, the vision in his left eye was permanently lost. In the course of obtaining treatment for this condition, the petitioner incurred substantial medical expenses approximating Rs.2,00,000/-.

**9.** Having carefully considered the submissions advanced by the counsel for the petitioner, perused the record, and examined the impugned orders passed by the District Forum and the State Commission, we are of the considered view that the appeal filed by the petitioner deserve to be allowed and the impugned order is liable to be set aside for the reasons that follow.

**9.1** The District Forum committed a grave error in dismissing the complaint on the preliminary ground of maintainability, holding that the petitioner had failed to prove payment of consultation fee and was therefore not a "consumer" under Section 2(1)(d) of the Consumer Protection Act, 1986. By disposing of the complaint solely on this threshold issue, the District Forum abdicated its statutory duty to adjudicate upon the core determinative issues that were squarely raised before it, including the illegality of prescription by an unqualified person, the alleged medical negligence and deficiency in service and the loss of vision suffered by the petitioner. The error committed by the District Forum was further compounded and perpetuated by the State Commission. The State Commission, in appeal, accepted the affidavit of the petitioner regarding payment of Rs.500/- as proof of payment and thereby effectively accepted that the petitioner was a consumer within the meaning of Section 2(1)(d) of the Act. There is no reason to interfere with the said findings of the State



Commission. We are in agreement that the petitioner was a 'consumer' and the respondent was a 'service provider'. The State Commission however observed that the respondent, being a diploma holder, could lawfully prescribe allopathic medicines which was not sustainable in law, being contrary to binding statutory provisions, contrary to Central legislation governing the field of medical practice, and contrary to the law declared by the Hon'ble Supreme Court.

**9.2** The law governing the practice of modern medicine and allopathy is occupied by Central legislation, namely the Indian Medical Council Act, 1956, which has been succeeded by the National Medical Commission Act, 2019. The right to practice medicine and prescribe allopathic medicines is traceable only to a recognised medical qualification as contemplated under the Central law and registration in the State Medical Register in accordance with the provisions of the said legislation. Section 15(1) and Section 15(2) of the Indian Medical Council Act, 1956, expressly prohibit any person from practicing medicine or prescribing allopathic medicines unless such person possesses a recognised medical qualification included in the schedules to the Act and is duly registered in the State Medical Register. The Hon'ble Supreme Court, in the landmark judgment in **Baharul Islam & Ors. v. Indian Medical Association & Ors.**, rendered on 24.01.2023, has categorically held that the field of medical education, qualification, and standards is substantially occupied by Central legislation, and that diploma holders or rural health practitioners are not entitled to practice or prescribe allopathic medicine. This binding declaration of law by the Hon'ble Supreme Court leaves no room for the interpretation adopted by the State Commission. The diploma in optometry or any allied field, such qualification does not confer any statutory authority or entitlement to prescribe allopathic medicines by the respondent. The act of prescribing allopathic medicines by a person not possessed of a recognized medical qualification and not registered under the Indian Medical Council Act, 1956, constitutes deficiency in service and negligence by operation of law, irrespective of the outcome of such prescription. In the present case, the injury caused to the petitioner is alleged to be a direct consequence of such illegal practice.

**10.** After careful analysis of material placed on record, we are of the opinion that the State Commission was not justified in dismissing the appeal of the petitioner. The impugned order passed by the State Commission cannot be legally sustained and is accordingly set aside. The revision petition is allowed. After considering the material on record, we are of the considered opinion that grant of compensation of Rs. 2,00,000/- to the petitioner would be appropriate for the injuries caused to him by the negligence act of the respondent. Accordingly, the respondent is directed to pay Rs.2,00,000/- to the petitioner as compensation along with simple interest @ 9% per annum from the date of filing of the complainant till realization besides litigation cost of Rs.20,000/-. Pending application(s) if any also stand disposed of.

.....  
**DR. INDER JIT SINGH**  
**PRESIDING MEMBER**

.....J  
**DR. SUDHIR KUMAR JAIN**  
**MEMBER**