

STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND
DEHRADUN

Date of Admission: 14.05.2019

Date of Final Hearing: 09.02.2026

Date of Pronouncement: 24.02.2026

SC/5/A/185/2019

1. Sh. Neeraj Sharma aged about 30 years' S/o Sh. S.B. Sharma
R/o L-113, Shivalik Nagar, BHEL, Ranipur
District Haridwar
2. Smt. Deepshikha Sharma W/o Sh. Neeraj Sharma
R/o L-113, Shivalik Nagar, BHEL, Ranipur
District Haridwar

(Through: Sh. K.R. Uniyal, Advocate)
..... Appellants

Versus

1. Raja Ram Hospital-Maternity & Trauma Centre
through its Director Dr. Sarita Gupta
R/o K-6, Shivalik Nagar, Ranipur
District Haridwar
2. Dr. Sarita Gupta
R/o K-6, Shivalik Nagar, Ranipur
District Haridwar

(Through: Sh. Parveen Kumar, Advocate)
..... Respondents**Coram:****Ms. Kumkum Rani,**
Mr. B.S. Manral,**President**
Member**ORDER****(Per: Ms. Kumkum Rani, President):**

This appeal under Section 15 of the Consumer Protection Act, 1986 has been directed against the impugned judgment and order dated 18.02.2019 passed by learned District Consumer Disputes Redressal Forum, Haridwar (hereinafter to be referred as "The District

Commission”) in consumer complaint No. 143 of 2014, styled as Sh. Neeraj Sharma and another Vs. Raja Ram Hospital-Maternity & Trauma Centre and another, wherein and whereby the consumer complaint filed by the appellants / complainants was dismissed.

2. The facts giving rise to the present appeal, in brief, are, as such that the appellant No. 1 / complainant No. 1 – Sh. Neeraj Sharma got his wife, i.e., appellant No. 2 / complainant No. 2 – Smt. Deepshikha Sharma treated at respondent No. 1 / opposite party No. 1 – Raja Ram Hospital-Maternity & Trauma Centre under the supervision of respondent No. 2 / opposite party No. 2 – Dr. Sarita Gupta, on payment of requisite fee / charges from time to time. The appellant No. 2 was pregnant and the respondent No. 2 assured that the appellant No. 2 would be properly treated and that the hospital is fully equipped with all the required facilities, so as to deal with any problem / emergency situation, which may arise during pregnancy period. Thereafter, the appellants availed the services of respondent No. 2 and as per the advice of respondent No. 2, got the check-up of appellant No. 2 done on different dates, i.e., 10.06.2013; 29.06.2013 and 02.07.2013 and also got conducted her tests, report whereof was told to be normal. Later on, the appellant No. 2 visited hospital on 30.07.2013; 10.08.2013; 12.08.2013 and 13.08.2013, whereupon the respondent No. 2 told that everything is normal and advised to get the ultrasound of appellant No. 2 done from Dhanwantri Ultrasound & X-ray Centre, Ranipur More, Haridwar and after seeing the ultrasound report, the respondent No. 2 told that the condition of fetus is fine and advised to come for further consultation on 31.08.2013. For routine check-up, the respondent No. 2 was also consulted on 07.09.2013 and 01.10.2013, who after checking the appellant No. 2 told that the test report etc. are

normal and also told the condition of fetus as fine. In the night intervening 26/27.10.2013, the appellant No. 2 felt abdomen pain, whereupon the appellant No. 1 took appellant No. 2 to respondent No. 2 on 27.10.2013, i.e., very next day. The respondent No. 2 got the check-up of appellant No. 2 done in emergency and prescribed medicine for five days', stating there is no need to fear and that the condition of fetus is fine. However, on the next day, i.e., 28.10.2013, the appellant No. 2 again suffered pain, whereupon the respondent No. 2 advised certain tests. On going through the test reports on dated 31.10.2013, the respondent No. 2 told that the reports are alright / normal and asked to come on 02.11.2013 for test and routine check-up.

3. It was also stated that after tests and check-up of appellant No. 2, the respondent No. 2 continued to tell that the condition of the fetus is normal and advised the appellant No. 2 to consume prescribed medicines and assured that normally during the pregnancy period, the a woman usually faces abdomen pain and restlessness, hence there is no need to worry much. However, the appellant No. 2 did not get any relief in abdomen pain and restlessness and the pain continued to remain. On dated 04.11.2013 and 07.11.2013, the appellant No. 1 took appellant No. 2 to respondent No. 2, whereupon the respondent No. 2 again advised for ultrasound and on perusal of the ultrasound report, it was told that the fetus has died, which caused shock and mental agony to the appellants. The appellant No. 2 wanted to know the cause of death of the fetus, on which the respondent No. 2 got annoyed and asked to leave the hospital and further said that she did not take any guarantee of child birth and the appellant No. 2 should get her tests done and treatment carried out from wherever she desires. There had been gross medical negligence on the part of respondent No. 2. On 08.11.2013,

the appellant No. 1 took appellant No. 2 to Dr. (Smt.) Gargi Gupta, B-18, Sharda Nagar, Jwalapur, Haridwar, who looking at bad condition of appellant No. 2, advised for immediate medical termination of pregnancy and verbally told that the fetus has died due to negligence and prescribing wrong medicines by Dr. Sarita Gupta. On the same day, the appellant No. 2 underwent medical termination of pregnancy at Ananya Maternity Centre, Arya Nagar, Jwalapur, Haridwar and with a great difficulty, her life could be saved. On account of medical negligence on the part of respondent No. 2, six months' old fetus in the womb of appellant No. 2 had died. Therefore, alleging deficiency in service and unfair trade practice on the part of respondents, consumer complaint was set in motion by the appellants before the District Commission.

4. The respondent No. 1 / opposite party No. 1 submitted before the District Commission that the hospital is in agreement / concurs with the written statement filed by respondent No. 2 / opposite party No. 2 and the hospital has nothing more to add therein and prayed for dismissal of the consumer complaint.

5. The respondent No. 2 / opposite party No. 2 filed written statement before the District Commission and pleaded that she is a qualified and experienced Gynecologist & Obstetrician. The appellant No. 2 took treatment from respondent No. 2, as per her own wish and she never asked the appellant No. 2 to get her check-up done treatment conducted only from respondent No. 2. The appellant No. 2, for the first time, consulted respondent No. 2 on 29.06.2013 and by that time, she was two months' pregnant. Along with routine check-up, the appellant No. 2 was advised for ultrasound and the appellant No. 2, as

per her own wish, got her ultrasound done on 02.07.2013 instead of 29.06.2013 and on 02.07.2013, the appellant No. 2 did not consult respondent No. 2. The appellant No. 2 consulted respondent No. 2 after a month on 30.07.2013, whereupon the respondent No. 2 again advised for ultrasound, which the appellant No. 2 did not get done on the same day. The appellant No. 2 again visited respondent No. 2 after two weeks' on 12.08.2013 and the respondent No. 2 again advised for ultrasound, which the appellant No. 2 got done on 13.08.2013 at Dhanwantri Ultrasound & X-ray Centre, Haridwar, which shows negligence on the part of appellant No. 2 in getting her treatment done, as she was not adhering to the advice of respondent No. 2. On 13.08.2013, the appellant No. 2 visited respondent No. 2 with the problem of throat infection and fever. Thereafter, the appellant No. 2 visited respondent No. 2 after 2½ months' on 27.10.2013 and the appellants have not submitted any facts as to during the said period, where the appellant No. 2 showed herself and what she did and what she didn't do. The appellant No. 2 came with the complaint of abdomen pain, for which while giving proper advice, ultrasound was suggested, which the appellant No. 2 did not get done.

6. It was also stated that in order to know the development and health of fetus, ultrasound is necessary, which the appellant No. 2 was getting done as per her will. A doctor can merely give advice and regular & proper treatment depends upon the patient. On 31.10.2013, the appellant No. 2 did not consult respondent No. 2, which proves the allegation of the appellants wrong that the respondent No. 2 had advised the appellant No. 2 to consult her on 02.11.2013 and further that she had given any assurance. On 04.11.2013, the appellant No. 2 visited respondent No. 2, but by that time, the ultrasound report was still

awaited. On complaint of abdomen pain by appellant No. 2, proper treatment and advice was given by respondent No. 2. Thereafter, the appellant No. 2 came on 07.11.2013 and she was time & again advised for ultrasound test. The said state / position was as per fundal height amenorrhea period. According to appellant No. 2, she was facing problem / difficulty for the period from 04.11.2013 to 07.11.2013, then why she did not consult respondent No. 2 during the said period. The appellant No. 2 got her ultrasound done on 07.11.2013 and upon perusal of the report, it was noticed that the fetus has died. The respondent No. 2 advised appellant No. 2 to go for medical termination of pregnancy, which the appellant No. 2 postponed for next day and later on, consulted general physician – Dr. (Smt.) Gargi Gupta, who is not a Gynecologist. The fact that appellant No. 2 choose to visit Dr. (Smt.) Gargi Gupta, general physician, who is situated at a distance of about 14 kms., goes to show that she was not serious about her treatment, inspite of there being various hospitals near her house and also that during her pregnancy, the appellant No. 2 had been taking treatment from Dr. (Smt.) Gargi Gupta. According to Dr. Ritu Sharma of Ananya Maternity Centre, Haridwar, the blood pressure of appellant No. 2 was normal and her vitals were stable and the said doctor has nowhere stated that there was any sort of risk to the life of appellant No. 2. The respondent No. 2 had treated the appellant No. 2 as per modern technique and has not committed any medical negligence in the treatment of appellant No. 2. The appellants are not entitled to any relief and the consumer complaint deserves to be dismissed.

7. The District Commission, after hearing learned counsel for respondents / opposite parties as well as after perusing the written arguments filed on behalf of the appellants / complainants and taking

into consideration the material available on record, dismissed the consumer complaint vide impugned judgment and order dated 18.02.2019. Feeling aggrieved by the impugned judgment and order, the complainants have preferred the present appeal before this Commission as appellants.

8. We have heard learned counsel for the parties and perused the record.

9. The case of the appellants / complainants is that respondent No. 2 / opposite party No. 2 (treating doctor) committed medical negligence in the treatment of appellant No. 2 (patient), with the result that the fetus in the womb of appellant No. 2 had died. It is pertinent to mention here that in regard to the alleged medical negligence on the part of respondent No. 2, appellant No. 1 filed an application under Section 156(3) of the Code of Criminal Procedure, 1973 bearing complaint case No. 218 of 2013; Sh. Neeraj Sharma Vs. Dr. Sarita Gupta, stating that due to medical negligence on the part of respondent No. 2, pregnancy of wife of appellant No. 1 resulted in a stillbirth. On the said application, learned Additional Chief Judicial Magistrate, Haridwar vide order dated 07.12.2013 called a report from the Expert Committee. The Expert Committed submitted report, stating therein that there was no negligence on the part of respondent No. 2 and on the basis of the report of the Expert Committee, the complaint filed by appellant No. 1 was dismissed by learned Additional Chief Judicial Magistrate, Haridwar vide order dated 26.08.2014. Against the order dated 26.08.2014, the appellant No. 1 filed Criminal Revision No. 506 of 2014 before the court of learned 3rd Additional Sessions Judge, Haridwar, which was allowed vide judgment and order dated

29.06.2016, thereby quashing the order dated 26.08.2014 and the matter was remitted back to the court of learned Additional Chief Judicial Magistrate, Haridwar for decision afresh. Aggrieved by the judgment and order dated 29.06.2016, the respondent No. 2 approached Hon'ble High Court of Uttarakhand at Nainital and preferred Criminal Miscellaneous Application No. 775 of 2016; Dr. Sarita Gupta Vs. State of Uttarakhand and another. The aforesaid criminal miscellaneous application was allowed by Hon'ble High Court of Uttarakhand at Nainital vide order dated 19.06.2025, thereby quashing the judgment and order dated 29.06.2016 passed by learned 3rd Additional Sessions Judge, Haridwar in Criminal Revision No. 506 of 2014. The above factual position is evident from the certified copy of order dated 19.06.2025 passed by Hon'ble High Court of Uttarakhand at Nainital in Criminal Miscellaneous Application No. 775 of 2016; Dr. Sarita Gupta Vs. State of Uttarakhand and another (Paper Nos. 78 to 87).

10. In paragraph No. 10 of its order, Hon'ble High Court of Uttarakhand at Nainital has held in so many words that, "In view of the law laid down by Hon'ble Apex Court in the aforesaid cases, this Court has no hesitation in holding that the respondent No. 2 has failed to make out any case of medical negligence against the applicant".

11. It would not be out of place to mention here that against the order passed by Uttarakhand Medical Council, thereby holding that there has been no professional misconduct and medical negligence on the part of respondent No. 2 in the treatment administered to appellant No. 2, an appeal dated 30.09.2015 was filed by appellant No. 2 before the Ethics Committee, who discussed the matter in its meeting held on

30.06.2016. The operative part of proceedings of the said meeting is reproduced below:

“The Ethics Committee discussed the matter in detail and after detailed deliberation, decided that the treatment given to Smt. Deepshikha Sharma is as per standard norms and there is no medical negligence in the case. Therefore, the Committee decided to close the case.”

12. Apart from above, there is nothing on record having been produced by the appellants to even remotely show that there was any sort of medical negligence or professional misconduct on the part of respondent No. 2 while treating appellant No. 2, the wife of appellant No.1. Even otherwise, as stated above, the Ethics Committee has not found any medical negligence on the part of respondent No. 2.

13. In the case of **Martin F. D’Souza Vs. Mohd. Ishfaq** reported in **(2009) 3 Supreme Court Cases 1**, Hon’ble Apex Court has held in paragraph No. 106 as under:

“106. We, therefore, direct that whenever a complaint is received against a doctor or hospital by the Consumer Fora (whether District, State or National) or by the criminal court, then before issuing notice to the doctor or hospital against whom the complaint was made, the Consumer Forum or the criminal court should first refer the matter to a competent doctor or committee of doctors, specialised in the field relating to which the medical negligence is attributed, and only after that doctor or committee reports that

there is a prima facie case of medical negligence, should notice be then issued to the doctor/hospital concerned. This is necessary to avoid harassment to doctors who may not be ultimately found to be negligent. We further warn the police officials not to arrest or harass doctors unless the facts clearly come within the parameters laid down in *Jacob Mathew case*¹, otherwise the policemen will themselves have to face legal action.”

14. In the case of **Dr. Harish Kumar Khurana Vs. Joginder Singh and others** reported in **(2021) 10 Supreme Court Cases 291**, Hon’ble Apex Court has held as under:

“While it is necessary that the hospital and doctors are required to exercise sufficient care in treating the patient in all circumstances, in every case where the treatment is not successful or the patient dies during surgery, it cannot be automatically assumed that the medical professional was negligent. To indicate negligence, there should be material available on record or else appropriate medical evidence should be tendered. The negligence alleged should be so glaring, in which event the principle of *res ipsa loquitur* could be made applicable and not based on perception.”

15. For the reasons aforesaid, we are of the considered opinion that the District Commission has properly considered the material available on record and has rightly dismissed the consumer complaint per impugned judgment and order, which does not call for any interference and is fit to be confirmed. The appeal being bereft of merit, warrants dismissal.

16. Appeal is dismissed. No order as to costs of the appeal.
17. A copy of this Order be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986 / 2019. The Order be uploaded forthwith on the website of the Commission for the perusal of the parties. A copy of this Order be sent to the concerned District Commission for record and necessary information.
18. File be consigned to record room along with a copy of this Order.

(Ms. Kumkum Rani)
President

(Mr. B.S. Manral)
Member

Pronounced on: 24.02.2026