

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 48 OF 2023

(Against the Order dated 25/08/2022 in Complaint No. 1/2018 of the State Commission
Maharashtra)

1. AMARJEET B. MISHRA

R/O KENWOOD PARK, FLAT NO. 302, BLDG NO.14,
RAMDEV PARK ROAD, MIRA ROAD (E)

THANE

.....Appellant(s)

Versus

1. DR. PANJABRAO ALIAS BHAUSAHEB DESHMUKH
MEMORIAL MEDICAL COLLEGE AMRAVATI & 5 ORS.
DESHMUKH MEMORIAL MEDICAL COLLEGE,
AMRAVATI.

2. THE MEDICAL SUPRITENDANT

DR, PANJABRAO ALIAS BHAUSAHEB DESHMUKH
MEMORIAL MEDICAL COLLEGE, AMRAVATI.

3. DR. AJAY DAPHALE

PRACTICING AT: DR. PANJABRAO ALIAS BHAUSAHEB
DESHMUKH MEMORIAL MEDICAL COLLEGE,
AMRAVATI.

4. DR. DILIP JANE

DR. PANJABRAO ALIAS BHAUSAHEB DESHMUKH
MEMORIAL MEDICAL COLLEGE, AMRAVATI.

5. DR. ARUNSHELKE, PRESIDENT

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6. SH. VINAY BHAMBORKAR, SECRETARY

PRACTICING AT: DR. PANJABRAO ALIAS BHAUSAHEB
DESHMUKH MEMORIAL MEDICAL COLLEGE,
AMRAVATI.

.....Respondent(s)

BEFORE:

**HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING
MEMBER**

HON'BLE MR. BHARATKUMAR PANDYA, MEMBER

FOR THE APPELLANT : MS. JASVINDER KAUR, ADVOCATE
(THROUGH VIDEO CONFERENCING)

FOR THE RESPONDENT : FOR THE RESPONDENTS-1&2 : MOHD. ABDUL, ADVOCATE
FOR THE RESPONDENT-3 : MR. ANISH KASHYAP, ADVOCATE

Dated : 17 September 2024

ORDER

1. Heard Ms. Jasvinder Kaur, Advocate for the appellant, Mohd. Abdul, Advocate for respondents-1 & 2 and Mr. Anish Kashyap, Advocate for respondent-3.

2. Above appeal has been filed against the order of Maharashtra State Consumer Disputes Redressal Commission, Nagpur dated 25.08.2022 in RBT/CC/18/1, whereby the State Commission dismissed the complaint with cost of Rs.50000/- to be paid to the opposite parties.
3. Amarjeet B. Mishra filed Consumer Complaint No.RBT/CC/18/1 with the State Commission for directing the opposite parties to (a) pay Rs.one crore; (b) pay the cost of litigation; and (c) any other relief deemed fit and proper by the Commission.
4. Complainant's son Vijay A. Mishra who was 24 years old completed his MBBS from Dr. Panjabrao Alias Bhausahab Deshmukh Memorial Medical College (OP-1) in the year 2015. After completing the MBBS course, he started serving in the OP-1 medical college as an intern. On 23.03.2015 at about 11.20 pm the complainant had a telephonic talk with his son and at that time he was hale and hearty and nothing adverse about his health was told by him nor the complainant noticed any such thing. On 24.03.2015 at 4.13 am father of Ms. Neha (Mr. Pramod Tiwari) received a telephonic call from one Mr. Vijay Bhatkar but the call could not be attended. At 4.15 am he again received a phone call from the mobile number of Vijay A. Mishra which also could not be attended. At 4.32 am he again received a call which was attended by Ms. Neha and she handed over the phone to her father. He was informed that Vijay A. Mishra is very sick and is in ICU and he was asked to come fast with Vijay's father. Father of the patient who was in Mumbai came to Amravati by morning flight alongwith Mr. Pramod Tiwari, who told him that Ms. Neha also had a long whatsapp chat between 11.00 pm to 12.45 am on 23/24.03.2015 with Vijay A. Mishra and also had a telephonic talk with him. She also did not notice anything adverse about his health nor Vijay A. Mishra told anything adverse about his health. At the Nagpur Airport he came to know that one Dr. Ajay Yadav and Tushar Tardeja (MBBS student) have come to receive him at the airport to take him to the hospital. They reached the hospital at about 1.00 pm. The complainant found that his son has died and more than 400 doctors including the interns were sitting on Dharna in front of OP-1 hospital on account of death of Vijay A. Mishra due to medical negligence of OP-1 hospital and its doctors. The complainant came to know that there were no life-saving and other medical equipments in the hospital which resulted in sudden death of his son on 24.03.2015 at 2.45 am. The complainant and Mr. Pramod Tiwari requested Dr. Ajay Daphale (OP-3) who treated the deceased and other doctors including the Dean of the medical college to conduct the post-mortem of the deceased to ascertain the cause of death but they refused to do so stating that the deceased was the student of their medical college and they know best about his medical history. The opposite parties took quick steps to transport the body to Mumbai alongwith interns/students including Ajay Yadav and Tushar Tardeja. OP-1 has taken advantage of the state of mind of the complainant and obtained his signatures on certain documents and handed over the body of his son in an ambulance arranged by OP-1. The complainant and Mr. Pramod Tiwari were shocked and were not in a proper state of mind to take a decision for conducting post-mortem in Mumbai and cremated the body on 25.03.2015. On enquiry, the complainant came to know from one Ms. Laxmi Tiwari, mother of a student of OP-1 medical college that on 24.03.2008 at 2.30 am the deceased was taken to the hospital and he died at 2.45 am. However, the medical college declared the time of death as 5.30 am. The son of the complainant has died in mysterious conditions and the opposite parties have played mischief and foul. Some MBBS students, namely Tushar Tardeja, Ajay Yadav, intern, Akash Dhand, intern, Rohit Mapari, Jr. MBBS student, Ms. Akansha Singh

have also connived with the opposite parties. One Ms. Rashmi Tiwari, a social and human right activist, who also lives in Amravati informed the complainant that she got a claim lodged through OBC Association, Amravati with the District Collector, Amravati for compensation of Rs.5/- crores to the complainant. On 06.04.2015, the complainant received a letter from the student union of OP-1 pointing out the deficiency of service and requesting for providing the facilities mentioned therein. Some newspaper reports also stated the Doctors sitting on dharna had a meeting with the Dean and other superior officers of OP-1 wherein they pointed out the deficiencies in the basic facilities and the necessary requirements in the medical college. The medical college and the police authorities did not conduct any enquiry with regard to the sudden death of complainant's son rather than the police was patrolling in the area of the medical college since early morning of 24.03.2015 till the dead body of the deceased was taken back by the complainant. It was the duty of the police authorities to intimate the nearest Executive Magistrate to hold an enquiry to ascertain the cause of death. The complainant also received a copy of the letter dated 25.03.2015 written by the student union of OP-1 to the Dean intimating that the death of Vijay A. Mishra was caused due to lack of medical facilities including the ICU facility and other basic facilities in the medical college and the hospital. The State CID during investigation collected some material to show involvement of some MBBS students/interns in the death of complainant's son and they covered up the truth by influencing the senior officers of OP-1 as well as the police authorities. Few days after the death of complainant's son, the complainant had a discussion with Tushar Tardeja, MBBS student and he told that the deceased and he were having beer in the boys hostel between 10.30 to 12.00 midnight. Thereafter, they went to intern's hostel to take 'all out' for prevention of mosquito. Then the deceased had a chest pain. Tushar Tardeja took him to the hospital where he was admitted but there was lapse of necessary treatment and emergency drugs. The complainant also met with the DGP, Maharashtra who advised him to give a written complaint to the local police who will conduct an enquiry in the matter. The complainant gave a written complaint to the police but no FIR was registered nor any enquiry was conducted. Then the complainant made complaints to various authorities including the Secretary, Home Department; Hon. Minister, Mantralaya as well as Hon'ble Chief Minister, Mantralaya, Mumbai; Commissioner of Police, Amravati; MLA Shri Pratap Sarnaik, Minister of State for Home Shri Ram Shinde but all in vain. The complainant filed criminal writ petition 465/2015 before the Bombay High Court at Nagpur Bench with the prayer to conduct an enquiry by CBI. The High Court vide order dated 25.01.2016 allowed the writ petition and directed the CID, Amravati to conduct an investigation into the matter and conclude the investigation within six months. The complainant obtained the copy of the CID investigation papers by an application under Right to Information Act dated 03.08.2016 wherein there were several interpolations, over writings, forgery of signatures of the complainant and other discrepancies. In the hospital record at page number marked as 10/54 there is overwriting in the timing. Similarly on page 11/55 forged signatures of the complainant have been done at 4.00 am whereas at that time the complainant was in district Thane and had not even left for Amravati. At page No.12/56 the signatures of the complainant had been made at 12.30 pm whereas at that time the complainant was in Mumbai and on the next page the time has been shown as 3.50 am. There is also overwriting on the date shown as 25.03.2015. Page Nos.66, 67 and 68 are also fabricated documents which are cardiogram reports of some other patient. CID was silent over the whatsapp chatting and income and outgoing calls of the deceased. The documents received by the complainants show that the CID has sought expert opinion/report from the

panel of Doctors of J.J. Group of Hospitals with regard to the treatment given to the deceased. The complainant visited the office of the CID and he was intimated that the matter has been referred to the forensic department and J.J. Hospital and their reports are awaited. The complainant sent a legal notice dated 27.10.2016s to the State CID, Amravati to submit the final investigation report in compliance of the order of the High Court. The manner in which the investigation was conducted shows that the concerned officers were connived with the OPs. The complainant sought information from the CID through RTI application whereby he received a report from the panel of J.J. Group of Hospitals observing that the patient received appropriate treatment for his illness and prognosis of extensive anterior wall myocardial infraction with hypertension is poor as per the natural history of the deceased. There is all probability that either OP-1 hospital has not provided the treatment record to the panel of doctors of J.J. Group Hospital or it has provided fabricated treatment record in order to obtain a favourable report. In response to the application under RTI the State CID has provided the report showing whatsapp chats retrieved by the CID from the cellular company. A perusal of last five outgoing calls to Akansha in just two minutes between 1.10.48 am to 1.12.54 am on 24.03.2015 and two whatsapp chats with Akansha in three minutes between 1.15.57 am to 1.18.59 am on 24.03.2015 and earlier whatsapp chats on 23.03.2015 at 12.13.46 am sent from the cell phone of the deceased to Akansha clearly show that there was apparent deliberate act and omission coupled with negligence and deficiency in service on the part of OP-1 hospital. Whasapp chats of the deceased with Akansha show that she had an affair with Tushar Tadreja. There is possibility that Tushar Tadreja had come to know about the repeated calls and watsapp chats between the deceased and Akansha and Tushar Tadreja had decided to commit death of Vijay A. Mishra. Tushar Tadreja and his friends have served the beer to him after mixing some foreign material. This fact finds support from the admitted position that the deceased had vomited in the hospital. The opposite parties have fabricated or destroyed the evidence at the instance of said Tushar Tadreja due to his links with political and other influential persons. The culprits themselves accompanied the dead body from Amravati to Mumbai to ensure that the dead body is created in time. With the above allegations, the complainant filed consumer complaint No.RBT/CC/18/1 with the State Commission.

5. The opposite parties resisted the complaint by filing the written statements. OP-2 (Superintendent of OP-1 medical college) wherein it is admitted that the deceased had completed his MBBS course from Panjarao Deshmukh Memorial Medical College, Amravati. It is also admitted that at the relevant time he was working with OP-1 as intern. It is stated that the allegations have been made by the complainant with the motive to harass the OPs, malign their image and gain monetary benefit. There is no specific allegation regarding medical negligence or deficiency in service by the OPs. CID enquiry has also been conducted in the matter and nothing has been found against the OPs. The complainant was intimated about the ill-health of his son on 24.03.2015 at 4.00 am. It is denied that the intern and doctors were sitting on Dharna due to deficiency in service on the part of the OPs and non-availability of necessary equipments in the hospital. Dharna was a natural reaction of doctors and interns of the sudden death of their colleague. Panjarao Deshmukh Memorial Medical College, Amravati is a prestigious medical college recognised by Medical Council of India having all necessary facilities which are required for a medical college. Son of the complainant died due to heart attack and the allegation of the complainant that his son died in mysterious circumstances is false. It is denied that the complainant or Mr. Pramod Tiwari

asked the doctors for post-mortem of the deceased. The complainant could have easily got the post-mortem done either at Amravati or at Mumbai. If the death is caused in mysterious circumstances the post-mortem is generally advised by the doctors. Mortality rate of the patients with extensive myocardial infraction with hypertension i.e. heart attack is around 50 to 55% even with the best treatment. If the death is caused due to extensive myocardial infraction with hypertension i.e. heart attack, doctors do not advise for post-mortem. As the patient had died due to heart attack which is clear from the record, the doctors had not advised for post-mortem. It is wrongly alleged that the deceased died at 2.45 am. First ECG was done at 3.10 am which showed that the patient had suffered severe heart attack. State CID has obtained a report from the panel of doctors from Sir J.J. Group of Hospitals, Mumbai, wherein it is mentioned that the treatment given by the OP hospital was appropriate. It is denied that the hospital has supplied incomplete or wrong papers to the panel of doctors relating to the treatment of the deceased. The deceased was brought to OP-1 hospital at 3.10 am on 24.03.2015. OPs are not aware as to what happened before that. They are not aware about the whatsapp chatting or phone calls. The complainant is relying on newspaper cuttings, which is not admissible in evidence. If the complainant is not satisfied with the CID report, he has a remedy under the law to challenge the same instead of approaching this Commission. It is denied that the hospital has destroyed or fabricated the treatment record. Entire record was supplied to the state CID. The allegation that the deceased has not previous history is denied. When he was brought to the hospital, he himself informed that he had consumed alcohol few hours back and he was a chronic smoker. Some friends of the deceased had also given their statements to the CID corroborating the fact that he was chronic alcoholic and a chronic smoker. The OP is having CCTV recordings of the incident that can be produced as and when asked by this Commission. The allegations made by the complainants are false and the complaint deserves to be dismissed.

The complainant has made various allegations against Tushar Tardeja and the police authorities but they have not been impleaded as opposite parties, therefore, the complaint is liable to be dismissed for non-joinder of necessary parties.

6. Opposite parties 4 to 6 filed their joint written version repeating the reply as given by OP-2 except that at the time of filing the complaint OPs 4 to 6 were not concerned with the medical college. OP-4 resigned from the post of Dean; OP-5 (President) lost the election; and OP-6 resigned from the post of Secretary. They are not liable for any act or omission done on the part of the hospital or the trust. They have been unnecessarily impleaded as opposite parties and the complaint qua OPs-4 to 6 is not maintainable.

6. The State Commission, vide impugned order dated 25.08.2022 dismissed the complaint with the observation that the complainant is not a consumer as no consideration was paid to the hospital for treatment of his son. The State Commission also imposed cost of Rs.50000/- to be paid to the opposite parties.

7. We have considered the arguments of the counsel for the appellant and counsel for opposite parties 1, 2 & 3 and examined the record. Counsel for the appellant submitted that the State Commission failed to appreciate that on completion of MBBS course, the deceased was rendering services as an intern in the OP-1 hospital without any internship allowance or stipend, therefore, the services rendered by the deceased may be treated as consideration. In this regard, he relied on the judgment of this Commission in **Jagdish Kumar Bajpai vs.**

Union of India IV (2005) CPJ 197 NC and submitted that the consideration can be in cash or kind. It is also submitted that the State Commission failed to appreciate the fact that the death of the deceased was caused in mysterious circumstances and it was the duty of the OP-1 hospital to conduct the post-mortem of the deceased. The State Commission failed to consider the arguments of the appellant and the judgments relied upon by him.

8. The issue before us is whether the complainant is a consumer or not. In this regard, Section 2 (1) (d) of the Consumer Protection Act, 1986 is relevant, which reads as follows: -

(d) "consumer" means any person who— (i) buys any goods 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 user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) hires or avails of any service 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 service 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 service for any commercial purpose. Explanation.—For the purposes of this clause,— (a) the expression "commercial purpose" does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment; (b) the expressions "buys any goods" and "hires or avails any services" includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing;

Section 2 (1) (e) defines service as under: -

“service” means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;

From the above, it is clear that the person who hires or avails services without any consideration cannot be considered to be a consumer. The onus is on the complainant to prove that any consideration was paid to the opposite parties for treatment of his son. The complainant alleged that the fees paid for MBBS course in itself is a consideration paid to the opposite parties. In the impugned order, the State Commission has given the details of the fees paid by the deceased, which includes tuition fees, caution money, laboratory fees, stationary charges, library fees, enrolment fees, HSS, computer and session fees. Fees paid

by the complainant for MBBS course cannot be treated as consideration. In this regard Larger Bench of this Commission in Consumer Case No.261 of 2012 “**In Re. Manu Solanki and Ors. vs. Vinayaka Mission University and Ors**” observed as under: -

51. In view of the foregoing discussion, we are of the considered opinion that the Institutions rendering Education including Vocation courses and activities undertaken during the process of pre-admission as well as post admission and also imparting excursion tours, picnic, extra co-curricular activities, swimming, sport, etc. except Coaching Institutions, will, therefore, not be covered under the provisions of the Consumer Protection Act, 1986.”

The complainant has not adduced any evidence whatsoever to prove that any amount was paid to the opposite parties for treatment of the deceased. The complainant has taken a new plea that the services rendered by the deceased as an intern were in the form of ‘consideration.’ This argument is not acceptable in absence of any agreement in this regard between the hospital and the intern. The judgment relied upon by the complainant in **Jagdish Kumar Bajpai** (supra) is not applicable in the present case as in that case it was held that ‘the services rendered by the government employees before retirement would be consideration for providing medical facilities to him or his family members.’ In the present case the deceased was practicing as an intern. An intern cannot be equated with the regular employee. As per Black’s Law Dictionary an intern is an advanced student or recent graduate who is apprenticing to gain practical experience before entering a specific profession.’ As the complaint has failed to prove that any consideration was paid to the opposite parties, the complaint cannot be treated as a ‘consumer.’ We do not find any illegality or irregularity in the impugned order of the State Commission. The appeal deserves to be dismissed.

ORDER

In view of aforesaid discussions, the appeal is dismissed.

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RAM SURAT RAM MAURYA
PRESIDING MEMBER

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BHARATKUMAR PANDYA
MEMBER