

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1186 OF 2018

(Against the Order dated 20/12/2017 in Appeal No. 328/2009 of the State Commission
Delhi)

1. DR. AJAY SINGH PUNDEER & ANR.
MEDICAL DIRECTOR, METRO PLUS HOSPITAL,
NAJAFGARH
NEW DELHI-110043

2. METRO PLUS HOSPITAL
NAJAFGARH,
NEW DELHI-110043

.....Petitioner(s)

Versus

1. SHAMSHER SINGH & ANR.
S/O. LT. SHRI OM PRAKASH, R/O. V.P.O. CHHAWLA,
NEAR NAJAFGARH
NEW DELHI

2. DR. VINAY,
HOUSE NO. 155, NEAR POLE NO. 68, VILLAGE AND
POST OFFICE ISSAPUR,
NEW DELHI-110073

.....Respondent(s)

BEFORE:

HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER

FOR THE PETITIONER : MR. PRADEEP KUMAR, ADVOCATE

FOR THE RESPONDENT : MR. SURJIT SINGH REP. THE RESPONDENT-1
WITH MR. SHAMSHER SINGH, 'IN PERSON'

Dated : 22 August 2023

ORDER

1. The present Revision Petition (RP) has been filed by the Petitioners against Respondents as detailed above, under section 21 (b) of Consumer Protection Act 1986, against the order dated 20.12.2017 of the State Consumer Disputes Redressal Commission, Delhi (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 328 of 2009 in which order dated 30.03.2009 of District Consumer Disputes Redressal Forum, Shekh Sarai, Delhi (hereinafter referred to as District Forum) in Consumer Complaint (CC) No. DF-VII/923/08 was challenged, inter alia praying for setting aside/reversing the judgment and order dated 20.12.2017 passed by the State Commission in FA/328/009 and also judgment and order dated 30.03.2009 passed by District Forum-VII, Shekh Sarai in CC No. 923/2008 dismissing the complaint filed by Respondent No.1.

2. Notice was issued to the Respondents on 04.05.2018. The operation of the impugned order qua the petitioners was stayed subject to deposit of Rs.1,00,000/- with the state Commission. Petitioners filed their Written Arguments/Synopsis on 26.11.2021 and Respondent No.1 filed his written arguments/synopsis on 26.07.2023.

3. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Forum and other case records are that on 20.05.2007, Sh. Om Prakash, the father of complainant was brought to the hospital of the petitioners at 12 PM with abdominal pain. The patient was not attended till 2-00 P.M. After 2-00 P.M., Respondent No.2 prescribed medicines and the condition of the patient deteriorated around 5-10 P.M. and Dr. Ajay Singh Pundeer, Petitioner No.1 was called at 5-45 P.M. but ultimately the patient collapsed and expired at 6-00 P.M. due to cardiac arrest. The complainant filed complaint before the District Forum alleging that the father of the complainant died on 20.05.2007 due to willful and intentional negligence of the OPs. The complainant alleged that the father of the complainant was not attended by the OPs nor he was given any treatment for two hours. Thereafter, Respondent No.2 attended the patient and given some medicines but there was no response. It is alleged that the Respondent No.2 introduces himself as MBBS but in fact he does not hold any degree of MBBS and he is BAMS and is not even registered with the competent authority. Respondent No.2 was not even entitled to prescribe treatment as per the complications arisen in E.C.G. taken at 2-00 P.M. Respondent No. 2 called another doctor at 5-45 P.M. The condition of the patient deteriorated and the other doctor OP-1 was called and ultimately the father of complainant died at 6-00 P.M. The complainants filed complaint before the District Forum alleging that his father had not been given proper treatment by the OPs. Dr. Pundeer, who himself was not specialist and the OP-2 called Dr. Pundeer when the condition of father of complainant deteriorated. No proper treatment throughout the day was given to the father of complainant by the OPs and the OPs neither sent the patient to ICU nor called any competent or specialist doctor for treatment. OP-2 was doctor of Ayurveda but was prescribing medicine of Allopathy, which clearly violated the guidelines and directions/orders passed by the Hon'ble Supreme Court of India. On enquiry by the Police, it was revealed that the OPs were not the branch of renowned Metro Plus Hospital which has specialization in heart diseases. The father of the complainant had also suffered heart trouble which treatment was never given by the OPs and ultimately the father of the complainant collapsed and expired at 6-00 P.M. on 20.05.2007 due to willful fault, negligence of service and the acts of the OPs amounts to deficiency of service.

4. Vide Order dated 30.03.2009, in the CC no. 923 of 2008 the District Forum allowed the complainant and directed the OPs to pay Rs.5,00,000/- to the complainants within 30 days of the complainant submitting affidavit giving names and particulars all the LRs on record and copy to the OPs.

5. Aggrieved by the said Order dated 30.03.2009 of District Forum, Petitioners appealed in State Commission and the State Commission vide order dated 20.12.2017 in FA No.328 of 2009 has dismissed the Appeal filed by OP-3 and by the same order the State Commission also dismissed the Appeal FA/273/2009 filed by the Complainant for enhancement of compensation.

6. Petitioners have challenged the said Order dated 20.12.2017 of the State Commission mainly on following grounds:

(i) The impugned order dated 20.12.2017 passed by the State Commission in FA/328/2009 and the District Forum dated 30.03.2009 are against the facts and material on record and against the canons of justice and are liable to be set aside. The order passed by the State Commission is based on conjectures and surmises. The State Commission has attached an undue and unwarranted importance to the complainant's version and evidence led by the complainant and thereby holding petitioners' negligence on vague pretext. The State Commission failed to appreciate that the objections filed by the petitioners that the Delhi Medical Council did not take into account that the medicine such as GTN Spray, injection Voveran, Injection Acilok, Tablet Nimecet P, Tablet Oflox TZ, Tablet Pantocid D and Gel Acifix were meant for the patient who had not disclosed whether he was suffering from any heart ailment earlier and as such the patient had his attendants complained that he has only having acidity and that is why the patient feeling uneasy. But the doctor attending the patient got ECG done and when it was revealed that the ECG was having complications he was advised for admission which the attendants refused as they alleged that the patient was suffering from gastric problem and as per standard protocol the above said medicines were prescribed and the Delhi Medical Council did not apply its mind when they passed the impugned order because GTN spray in its full form Glyceryl trinitrate and it is given only for angina pain and it is a spray which is taken to ease angina pain when it happens. Some people take a tablet or spray and as such it is one of the fast and effective medicine for relief from angina pain. It works in two ways. It relaxes blood vessels in the body to widen and this reduces the strain on the heart and making it easier for the heart to pump blood. It relaxes and widens coronary arteries which increase the flow of blood to the heart muscles. The factum of medical negligence could not be proved by an expert before the State Commission as well as before the District Forum as both the Fora below did not referred the matter to the medical board.

(ii) The State Commission failed to appreciate the basic principle relating to medical negligence known as BOLAM Rule. This law was laid down in the judgment of Justice MC Nair in **Bolam Vs. Friern Hospital Management Committee**

(1957) 1 WLR 582 as “It is well established law that it is sufficient if he exercises that ordinary skill of an ordinary competent man exercising that particular art.” The Bolam test has been approved by the Supreme Court in Jacob Mathew case. Even in Halsbury Laws of England, the degree of skill and care required by a medical practitioner is that the practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise reasonable degree of care neither the very highest nor a very low degree of care and competence. There was no occasion for the State Commission to come to conclusion that the proper treatment has not been given for the disease which would otherwise evident from record filed by Respondent No.1 as well as by the Petitioners. The State Commission failed to appreciate that the Petitioner hospital had attended the patient promptly and the treatment was given immediately on being brought. The State Commission failed to appreciate that the patient attendants concealed the fact that the patient was taking any medicine for heart disease, moreover the patient was brought to the hospital for ECG as referred by local practitioner. The State Commission mis-read the judgment passed by the Hon’ble Supreme Court in Civil Appeal No. 3541/2002 titled as **Martin F. D’Souza Vs. Mohd. Ishfaq** decided on 17.02.2009.

(iii) The State Commission failed to consider the notification filed by the Petitioners which were issued in the year 1998 and further relied upon the judgment passed in the year 1996 and 1998 where the said notification was not at all considered while passing the judgment in fact the notification was passed by the department of Ayush, Government of India and as such the said notification widely covers the right of practitioners in the Indian System of Medicine to practice modern system of medicine (which is commonly known as allopathic medicine).

(iv) The State Commission relied on judgments which are not applicable to the facts and circumstances of the case and moreover the State Commission failed to appreciate the judgments relied upon by the Petitioners and further mis-read the judgment (2009) 4 SCC 705.

(v) The State Commission did not observe the case in correct prospective and further denied the opportunity to the Petitioner for getting the expert opinion as the application filed by the Petitioners was dismissed without cogent reasons and moreover, if the Petitioner objected to the DMC opinion, the matter should have been referred to the expert medical body for their opinion but in the instant case the same was denied and the valuable opportunity for obtaining the medical board opinion was not given to the Petitioner.

7. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.

7.1. It is admitted by the Petitioner that both Dr. Vinay and Dr. Pundeer (Opposite Party No. 2 & 3 before the District Forum) were the Doctors on the rolls of Metro Plus Hospital (OP-1 before District Forum) on the date the patient was admitted / died in the Hospital i.e., 20.05.2007. It is also admitted that Dr. Vinay is an Ayurvedic Doctor while Dr. Pundeer is an Allopathic Doctor. It was further stated that Dr. Vinay was the Duty Doctor who attended the patient on this date in consultation with Dr. Pundeer. Later on, Dr. Pundeer also attended the patient. In this case District Forum has held all the OPs liable and Order to pay the compensation is against all the OPs. Dr. Vinay has neither filed any appeal before State Commission nor revision before the National Commission. It is admitted by the Petitioner that the prescription dated 20.05.2007 was made by Dr. Vinay (the hand written portion prescribing medicine and regarding case history/ symptom etc.) and this prescription is signed by Dr. Pundeer. The name of Dr. Vinay does not appear in the typed list of various Doctors on the left hand penal of the prescription. To this the Counsel states that he being a Duty Doctor, normally the names of Duty Doctors are not mentioned on the prescription. The Petitioner claims that the Metro Plus Hospital is registered/ approved with the competent authority however, he is not in a position to confirm whether their Hospital is authorized to do treatment of both the stream of medicine i.e., Ayurvedic and Allopathic.

7.2. The Respondent produced the copy of order dated 10.06.2011 of the Delhi Medical Council (DMC) in which the complaint of the Respondent alleging medical negligence of the part of Dr. Vinay, Dr. Pundeer and Metro Plus Hospital was taken up. It is observed in this report that neither Dr. Pundeer, Director of Metro Plus Hospital filed his written statement nor provided the details of the Dr. Vinay who was employed at Metro Plus Hospital in spite of directions from DMC. DMC Order further observes that as per the information received from Directorate of Health Services (DHS) vide letter dated 16.02.2010, Metro Plus Hospital was not registered with Directorate of Health Services and accordingly, DHS was asked to take stringent actions against Dr. Pundeer for running Metro Plus Hospital in violation of Delhi Nursing Home Registration Act. DMC Order further observes that the patient was admitted and administered treatment by Dr. Vinay who is holder of BAMS qualifications from Maharishi Dayanand University. For practicing system of Allopathy in NCT of Delhi a person should hold recognized medical qualifications, as per First, Second and Third Schedule of Indian Medical Council Act of 1956, and should be registered with DMC. Qualification of BAMS is not a recognized qualification as per aforementioned Schedules to Indian Medical Council Act, 1956 hence, Dr. Vinay being holder of BAMS, is neither qualified nor authorized to practice Allopathic system of medicine. Order further observes that as per records the patient late patient Shri Om Prakash was admitted in the Metro Plus Hospital under the care of Dr. Pundeer, however, in spite of this, Dr. Pundeer neither examined nor advised any treatment to the patient and instead allowed him to be left in the management of Dr. Vinay, who was neither qualified nor competent to treat his patient. Now, it is observed that due to lack of proper care and treatment, the patient died.

7.3. Accordingly, the DMC came to the conclusion that Dr. Vinay, a person unqualified in the field of modern scientific system of medicine (Allopathy) acted recklessly by administering treatment, which was beyond his knowledge, skill and competence, with scant regard to life and safety of the patient and that the actions on the part of Dr. Vinay constitute an act of criminal negligence, for which he is liable to prosecuted under the Provision of Indian Penal Code in addition to Section 27 of Delhi Medical Council Act 1997. DMC also held Dr. Pundeer guilty of professional misconduct for violation of provision of Regulation 1.9 and 1.6 of IMC (professional Conduct, etiquette and ethics) Regulation 2002 and also guilty of Medical Negligence. The Order further states that Order directing removal of name from the State Medical Register of Dr. Pundeer shall come into force after 30 days from the date of Order.

7.4. The Counsel for Petitioner herein states that they have not challenged the said Order dated 10.06.2011 before any higher Forum / or any Court. However, this Order was challenged by Dr. Vinay by way of appeal before the Medical Council of India. Respondents have produced a copy of communication dated 19.10.2011 of the Medical Council of India (MCI) addressed to Dr. Vinay, vide which decision of the ethics committee concurring with the observations of the DMC in the said Order dated 10.06.2011 have been conveyed to Dr. Vinay.

7.5. Counsel for the Petitioner relies of resolution of Central Council of Indian Medicine vide which Execution Committee of the Council meeting held on 13.08.1996 resolved as follows:-

“Institutionally qualified practitioners of Indian System of Medicine (Ayurvedic, Unani & siddha) and those covered under Indian Medicine Central Council Act, 1970 are eligible to practice Indian System of Medicine and Modern Medicines, which is commonly known as allopathic Medicines, including Surgery, Gynecology and Obstetrics, training and teaching is included in the syllabus of C.C.I.M.

The meaning of word Modern Medicines means advances made in various branches of modern scientific medicine, clinical, non-clinical, bio-Sciences.”

It is further resolved that the above Resolution be intimated to all States of India for implementation and be notified publically.

They also drew our attention to a public notice published in the Newspaper by daily Bharatya Chikitsa Parishad in this regard. However, we find that the said Resolution is unsigned and its contents being in violation of provisions of Indian Medical Council Act/Delhi Medical Council Act, its authenticity is in doubt. Hence, no reliance can be placed on such Resolution or the newspaper public notice referred to above. In any case, it is not the case of Petitioner herein that Dr. Vinay was qualified to simultaneously practice both Allopathy and Ayurvedic System of Medicine and was holder of any valid registration certificate entitling him to simultaneously practice both systems of medicines. Hon'ble Supreme Court in **Poonam Verma Vs. Ashwin Patel & Ors.** (AIR 1996 SC 2111) held that *“A person who does not have knowledge of a particular system of medicine but practices in that system is a Quack and a mere pretender to medical knowledge or skill or to put it differently a charlatan.”*

8. Hon'ble Supreme Court in **Jacob Mathew Vs. State of Punjab & Anr.** (2005) 6 SCC 1 has held that “degree of negligence in criminal negligence and negligence in civil law are jurisprudentially different – to fasten liability in criminal law, degree of negligence has to be higher than negligence enough to fasten liability for damages in civil law. Negligence which is neither gross nor of higher degree may provide a ground for action in civil law. Hence, it is clear that for negligence under civil law, negligence need not be gross or of a higher level, which are essential to fasten liability in criminal law. Hon'ble Court in the **Jacob Mathew Case** (supra) further stated that there is a marked difference as to the effect of evidence viz. proof. In civil proceedings, a mere preponderance of probability is sufficient, and defendant is not necessarily entitled to the benefit of every reasonable doubt. At the same time, in a claim of medical negligence, it is enough for the defendant to show that the standard of care and skill attained was that of an ordinary competent medical practitioner exercising an ordinary degree of professional and that test for medical negligence laid down in Bolam case was applicable in India. Hon'ble Court also observed that the essential components of negligence, as recognized, are three “**duty**”, “**breach**” and “**resulting damage**” that is to say

- i. The existence of a duty to take care, which is owed by the defendant to the complainant.
- ii. The failure to attain that standard of care, prescribed by the law, thereby committing a breach of such duty; and

- iii. Damage, which is both causally connected with such breach and recognised by the law, has been suffered by the complainant.

9. In **Laxman Balkrishana Joshi vs. Trimbak Bapu Godbole & Ors.** (AIR 1969) SC 128, Hon'ble Supreme Court observed as under:

“11. The duties which a doctor owes to his patient are clear. A person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties, viz., a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give or a duty of care in the administration of that treatment. A breach of any of those duties gives a right of action for negligence to the patient. The practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.”

10. In **Nizam Institute of Medical Sciences Vs. Prasanth S.Dhananka & Ors.** (2009) 6 SCC 1, Hon'ble Supreme Court observed as under:

“32. We are also cognizant of the fact that in a case involving medical negligence, once the initial burden has been discharged by the complainant by making out a case of negligence on the part of the hospital or the doctor concerned, the onus then shifts on to the hospital or to the attending doctors and it is for the hospital to satisfy the Court that there was no lack of care or diligence.”

11. In this case, both the Fora below have given concurrent findings of medical negligence on the part of Petitioner 1 & 2 and Respondent-2 herein. DMC has also concluded that Dr. Vinay has acted recklessly and his actions constitute an act of criminal negligence. DMC also found Dr. Pundeer guilty of professional misconduct and medical negligence. DMC also concluded that Petitioner-2 Hospital was running in violation of Delhi Nursing Home Regulation Act.

12. As was held by Hon'ble Supreme Court in **Rubi Chandra Dutta Vs. United India Insurance Co. Ltd.** [(2011) 11 SCC 269]], the scope in a Revision Petition is limited. Such powers can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order. In **Sunil Kumar Maity Vs. State Bank of India & Ors.** [AIR (2022) SC 577] held that *“the revisional jurisdiction of the National Commission under [Section 21\(b\)](#) of the said Act is extremely limited. It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the State Commission had exercised a jurisdiction not vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity.”* State Commission has given a well-reasoned and speaking order. We do not find any illegality or material irregularity or jurisdictional error in the order of the State Commission, hence the same is upheld. Accordingly, this Revision Petition is dismissed with cost of Rs.25,000/- to be paid jointly by Petitioner-1 & Petitioner-2 to the Respondent No.1 herein.

13. The pending IAs in the case, if any, also stand disposed off.

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DR. INDER JIT SINGH
PRESIDING MEMBER