

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**REVISION PETITION NO. 2375 OF 2013**

(Against the Order dated 04/03/2013 in Appeal No. 234/2010 of the State Commission Jharkhand)

1. BHAGIRATHI DEVI & ANR.

W/O LATE SHARWAN KUMAR SINGH, R/O WHITE  
HOUSE COMPOUND, SHUKLA COLONY, HINDOO  
P.O + P.S DORANDA,

RANCHI - 834002

JHARKHAND

.....Petitioner(s)

Versus

1. DR. ANUP KUMAR SAHU & ANR.

S/O LATE DR. R.P SAHU, SAHU NURSING HOME,  
36 RADIUM ROAD,

RANCHI - 834001

JHARKHAND

2. UNITED INDIA INSURENCE CO LTD,

SHANTI BHAWAN, ALBERT EKKA CHOWK,

RANCHI - 834001

JHARKHAND

.....Respondent(s)

**BEFORE:**

**HON'BLE MR. JUSTICE R.K. AGRAWAL, PRESIDENT**

**HON'BLE DR. S.M. KANTIKAR, MEMBER**

**For the Petitioner :**

**For the Respondent :**

**Dated : 15 Feb 2022**

**ORDER**

*Appeared at the time of arguments*

For the Petitioners : Mr. Sushmit Pushkar, Advocate

Mr. Gaurav Sharma, Advocate

For the Respondent No. 1 : Mr. M. S. Mittal, Senior Advocate

Mr. Harshvardhan Jha, Advocate

For the Respondent No. 2 : Ms. Suman Bagga, Advocate

**Pronounced on: 15<sup>th</sup> February 2022**

**ORDER**

**DR. S. M. KANTIKAR, MEMBER**

1. The present Revision Petition has been filed by the Petitioners under Section 21 (b) of the Consumer Protection Act, 1986 (hereinafter referred to as the “Act”) against the impugned Order dated 04.03.2013, passed by the Jharkhand State Consumer Disputes Redressal Commission (hereinafter referred to as the “State Commission”) in First Appeal No. 234/2010, whereby the Appeal filed by the Respondent No. 1 was dismissed and the Order of District Consumer Disputes Redressal Forum, Ranchi (hereinafter referred to as the “District Forum”) was modified.

2. Facts in short that on 05.05.2005, the Complainant Smt. Bhagirathi Devi (hereinafter referred to as the “patient”) was operated by Dr. Anup Kumar Sahu (hereinafter referred to as the “Opposite Party No. 1”) in his Sahu Nursing Home for removal of kidney stone. It was alleged that Opposite Party No. 1 assured to perform the operation by laser method. After the operation, a bandage was seen on the waist region, therefore on enquiry learnt that the operation was performed by Puncture surgery. The Opposite Party No. 1 tried to convince the patient and assured about no harm. The patient was discharged on 08.05.2005. Again after three days the patient started getting severe pain. Therefore, on 18.05.2005, the Opposite Party No. 1 operated her again and removed few small stones, which were present in the urinary tract. The Complainant alleged that before operation the Opposite Party No. 1 did not confirm the location of stones by Intravenous Pyelography (IVP) study, but performed the Puncture Operation and failed to insert catheter for appropriate drainage of material. Even then, after 2<sup>nd</sup> operation, there was no relief and therefore she took treatment at the Apollo Hospital from 26.05.2005 to 31.05.2005. The problems continued and from January, 2006 the patient took treatment at Kolkata from Dr. B. K. Biswas, but at the end her right kidney was removed on 4.4.2006 at Gamma Century Health Care Pvt. Ltd. Thus, being aggrieved by the alleged careless treatment from the Opposite Party No. 1, she filed a Consumer Complaint before the District Consumer Disputes Redressal Forum, Ranchi, Jharkhand praying for compensation of Rs. 5,35,000/-.

3. The Opposite Parties in their written version denied the negligence during treatment. It was submitted that the patient was explained about entire procedure for removal of stone by Percutaneous Nephrolithotomy (PCNL). She gave informed consent. During the procedure Retrograde Pyelography (RGP) was done. On 18.05.2005, the patient was brought again to the hospital and based on the condition of the patient RGP was done again. The PCNL was performed on 20.05.2005 and the urine output found to be more than 1000 ml, which was indication of a good kidney function. The patient was discharged on 22.05.2005 with advice to come for reconstructive

surgery after one month, but the patient never turned up. After lapse of several months, patient's right kidney was removed at Kolkata.

4. The District Forum held the Opposite Party No. 1 deficient in his services and awarded a sum of Rs.3,50,000/- as principal amount spent on medical treatment and an amount of Rs.7,00,000/- as compensation towards mental harassment and agony. The cost of litigation of Rs. 10,000/- was also awarded.

5. The Opposite Party preferred first appeal before the State Commission, it was partly allowed with modification award. The State Commission reduced the award to Rs. 1,20,000/-.

6. Being aggrieved, this instant Revision Petition has been filed by the Complainant.

7. We have heard the learned Counsel for both the sides. Perused the material on record, *inter alia*, orders of both the fora below, the medical literature on Renal Stone and PCNL.

8. The District Forum in conclusion observed as below:

22. After the two operations done by the O.P., it is clear that some damage had been done to the kidney/ureter of the Complainant for which he had advised to come after one month for reconstructive surgery. Reconstructive surgery goes to show that the previous surgery was not successful and there had been some damage for which reconstructive operation was required. This fact is also corroborated by the later complication faced by the Complainant. After six months of the operation when she had serious complication and admitted at the Apollo Hospital, where the Doctor performed the aforesaid operation. However, the right kidney of the Complainant did not heal up and deteriorated to the extent that it was completely damaged and had to be removed at a specialized kidney hospital of Kolkata.

23. From the narration of the aforesaid facts, it is clear that there has been deficiency in service on the part of the O.P. Dr. Anup Kumar Sahu, while performing operation for removal of stone from the kidney / Ureter of the Complainant, which was badly damaged and had to be removed. Accordingly, we hold that there has been deficiency in service on the part of the O.P. on all the aforesaid counts. This issue is decided accordingly.

9. The State Commission affirmed the finding of District Forum and held Dr. Sahu for deficiency and negligence in the treatment of patient. However, the State Commission set aside the part of Order and held that the total amount (Rs.10,50,000/-) was not supported by the facts and valid reasons. Therefore, State Commission directed the doctor to pay the cost of treatment incurred by her at Sahu Nursing Home and Apollo Hospital total Rs. 70,000/- with interest @ 9% per annum from the date of filing of the Complaint and Rs. 50,000/- towards compensation for physical, financial and mental agony.

10. This case revolves around whether pre-operative IVP was necessary in the instant case before PCNL done on 05.05.2005 and failure to do IVP was medical negligence.

11. As per the of expert from Medanta Kidney & Urology Institute, Gurgaon, that "Laser" is procedure use of energy to break stones in to pieces. It is not an alternative of PCNL and IVP study is not mandatory or and less superior than retrograde pyelogram (RGP) which was done by

OP Dr. Sahu. In fact, IVP would be contraindicated in stone patients with renal insufficiency. The plain x-ray along with an ultrasound study may provide sufficient anatomical information for the procedure, whereas retrograde study during the procedure is more accurate than IVP to provide anatomical information specially in poorly functioning kidneys.

12. We have gathered some information from standard medical books on Renal Pathology. An intravenous pyelogram (IVP) is done by injecting contrast dye into a vein for better X-ray images. It is performed to detect a problem of the kidneys, ureters, and bladder. Most often, the IVP is done to locate a suspected obstruction to the flow of urine through the collecting system. The most common cause of blockage is a kidney stone. It also gives information about the functioning of the kidneys.

The Retrograde Pyelogram (RPG) is done by cystoscopy, which involves injecting contrast dye directly into your urinary tract through a thin tube called an endoscope. It is a quick, relatively painless procedure that helps identify abnormalities in your urinary tract.

13. In the instant case, we note that on 05.05.2005, based on X-ray and USG report, the Opposite Party attempted PCNL for upper ureteric calculus and patient was discharged on 08.05.2005. In our view, the functional anatomy of kidney is well judged by IVP. In the instant case there was neither renal insufficiency nor any contraindication (high values of Urea / Creatinine) to perform IVP. Thus, not doing IVP prior to PCNL (05.05.2005) was deficiency in service. The exact location of renal stone was not confirmed. It resulted in to partial removal of stone and development of subsequent complications. At this juncture the opinion of Dr. B. K. Biswas, at Kolkata is more relevant. It is reproduced as below:

Date -15-5-09

#### TO WHOM IT MAY CONCERN

Before any major kidney operation IVU (intravenous urogram) or CT scan with contrast to be done to demonstrate the anatomy and function of kidney. if not possible at least retrograde pyelogram to be done to demonstrate the anatomy of the affected kidney.

Thus, the IVP at initial stage would have given clear picture of the Right kidney functioning. It could be compared with the findings after 9 months noted at Kolkata. No doubt due to Pyelonephritis (renal infection), the Right kidney became nonfunctional, thus it was removed.

14. In the present case there is concurrent finding of the fact and the revisional jurisdiction of this Commission is limited. We do not find any illegality, material irregularity or jurisdictional error in the Impugned Order dated 04.03.2013 passed by the State Commission warranting our interference in revisional jurisdiction under Section 21(b) of the Consumer Protection Act, 1986. We would like to rely upon the decision of the Hon'ble Supreme Court in the case of '**Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd.** [\[1\]](#).

Similarly, in the recent judgement of the Hon'ble Supreme Court in '**Sunil Kumar Maity vs. State Bank of India & Anr.**' [\[2\]](#), it was held that the revisional Jurisdiction of this Commission is extremely limited by observing as under:-

“9. It is needless to say 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. In the instant case, the National Commission itself had exceeded its revisional jurisdiction by calling for the report from the respondent-bank and solely relying upon such report, had come to the conclusion that the two fora below had erred in not undertaking the requisite in-depth appraisal of the case that was required. ....”

15. Respectfully following the principles laid down by the Hon’ble Supreme Court *supra* , we do not find any merit in the present Revision Petition and the same is dismissed. Considering the facts and injury suffered by the Complainant after the PCNL, in our considered view, the award of State Commission is just and proper. Consequently, the impugned Order dated 04.03.2013 passed by the State Commission is upheld. Keeping in view the facts and circumstances of the present case, there shall be no order as to costs.

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[1] *2011 11 SCC 269*

[2] *Civil Appeal No. 432 / 2022 Order dated 21.01.2022*

.....J  
**R.K. AGRAWAL**  
**PRESIDENT**

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**DR. S.M. KANTIKAR**  
**MEMBER**