

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 590 OF 2021

(Against the Order dated 16/03/2020 in Appeal No. 728/2017 of the State Commission
Maharashtra)

1. M/S. MAHATMA GANDHI MISSION HOSPITALPetitioner(s)

Versus

1. PARSHURAM LANDGERespondent(s)

REVISION PETITION NO. 591 OF 2021

(Against the Order dated 16/03/2020 in Appeal No. 728/2017 of the State Commission
Maharashtra)

1. DR. SHEENU GUPTAPetitioner(s)

Versus

1. PARSHURAM LANDGERespondent(s)

BEFORE:

HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER

FOR THE PETITIONER : MS. POOJA BHARDWAJ, PROXY COUNSEL FOR
MR. PRASHANT R. DAHAT, ADVOCATE

FOR THE RESPONDENT : MR. B.S. SHARMA, ADVOCATE
MR. SURYAVRAT DUBEY, ADVOCATE

Dated : 24 April 2024

ORDER

1. The two Revision Petitions (RPs) have been filed by the Petitioner(s) against Respondent as detailed above, under section 58(1)(b) of Consumer Protection Act 2019, against the common order dated 16.03.2020 of the State Consumer Disputes Redressal Commission, Maharashtra, Mumbai (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 728/2017 in which order dated 18.01.2017 of Additional Thane District Consumer Disputes Redressal Forum (hereinafter referred to as District Commission) in Consumer Complaint (CC) no 44/2010 was challenged, inter alia praying to set aside the order passed by the State Commission.

2. While the Revision Petitioner(s) (hereinafter also referred to as OP-1 and OP-2) were Respondents before the State Commission and OPs (OP-1 and OP-2) before the District Commission. The Respondent (hereinafter also referred to as Complainant) was Appellant before the State Commission and Complainant before the District Commission. As the RPs 590/2021 & 591/2021 involve similar facts and questions of law and have been filed against the same orders of State Commission, these have been taken up together. RP/590/2021 has been taken as lead case.

3. Notice was issued to the Respondent. Parties filed Written Arguments/Synopsis on 26.09.2023 (Petitioner in RP/590/2021/OP-1), 02.11.2023 (Petitioner in RP/591/2021, OP-2) and 16.10.2023 (Respondent/Complainant) respectively.

4. Brief facts of the case, as emerged from the RPs, Order of the State Commission, Order of the District Commission and other case records are that on 15.10.2007, around 6:45 p.m., complainant's son, Master Devanand, aged about 12 years, was bitten by a snake. He immediately rushed his son to the hospital (OP-1) where Dr. Sheenu Gupta (OP-2) was present. The complainant requested Dr. Sheenu Gupta to administer treatment to his son, however, Dr. Sheenu Gupta allegedly advised him to take his son to the government hospital, stating that he could not afford treatment at their hospital. After the complainant insisted, Dr. Sheenu Gupta prescribed an injection worth Rs. 500/- and requested him to purchase it. The complainant managed to arrange the money and purchased the injection, along with other costly injections prescribed by Dr. Sheenu Gupta, by pawning his wife's gold ornaments. Upon returning to the hospital and handing over the injections, the complainant requested immediate treatment for his son. However, Dr. Sheenu Gupta allegedly refused to start treatment until the complainant deposited more money. Despite the complainant's repeated pleas, Dr. Sheenu Gupta neglected to administer treatment, resulting in his son's death at 8:30 p.m. The complainant asserts that the medical negligence of the hospital and Dr. Sheenu Gupta led to the death of his son, causing irreparable loss. As a result, the complainant filed a consumer complaint, alleging the hospital and Dr. Sheenu Gupta responsible for the tragic outcome.

5. Vide Order dated 18.01.2017, in the CC no. 44/2010 the District Commission has dismissed the complaint. Aggrieved by the said Order dated 18.01.2017 of District Commission, complainant appealed in State Commission and the State Commission vide common order dated 16.03.2020 in FA No. 728/2017 has set aside the order passed by the District Commission; directed OPs to pay jointly and severally Rs. 10,00,000/- (out of which Rs. 8,00,000/- by OP-1) to the complainant; directed OPs to pay Rs. 2,00,000/- towards mental agony and harassment.

6. Petitioner(s) have challenged the said common Order dated 16.03.2020 of the State Commission mainly on following grounds:

- i. The State Commission disregarded the reports submitted by the High Power Internal Enquiry Committee, comprising the Medical Superintendent and Dean, which were crucial in evaluating the matter. The State Commission's decision to favor the respondent's/complainant's appeal appears to be based on sympathetic grounds rather than legal merit. Moreover, the Commission failed to acknowledge the ulterior motives behind the complainant's consumer complaint, filed three years after the incident,

suggesting an attempt to extort ransom from the OP hospital. Furthermore, the Commission overlooked the OP hospital's reputation and its history of dealing with false complaints, including politically motivated or extortion-driven ones. Despite the OP hospital's efforts to treat the patient and investigate the allegations thoroughly through high-power enquiry committees, the Commission failed to recognize their diligence. The OP hospital and its staff, including Dr. Sheenu Gupta (OP-2), diligently provided necessary treatment without any negligence, as affirmed by the internal inquiry committee's report.

- ii. Additionally, the Commission should have considered the OP hospital's longstanding reputation, its contribution to charitable causes, and its provision of quality healthcare services to various organizations and communities. The OP hospital's commitment to quality care and its contributions to society should have been taken into account. The complainant's allegations regarding prescription costs lacked substantiating evidence, and the internal inquiry committee's report confirmed the absence of negligence in the treatment provided by Dr. Sheenu Gupta and the hospital staff. The OP hospital operates on a no-loss-no-profit basis, and if a doctor does not charge fees for their services, they cannot be sued for medical negligence as per the Consumer Protection Act, 1986. The State Commission did not consider the high-risk consent form signed by the complainant, absolving the hospital and doctor of responsibility if the patient's death occurs despite proper care and treatment. The Commission also overlooked the fact that the patient died due to snakebite, and any delay in bringing the patient to the hospital should not render the hospital liable for the death. Moreover, the Commission questioned the findings of the expert doctor committee without valid reasons and failed to apply the precedent set by the Supreme Court in the case of **Martin F. D'souza VS. Mohd. Ishfaq** (2009) CPJ 32 SC, which outlines the standards for medical negligence.
- iii. The Commission did not consider the hospital's contention that the consumer complaint was false and fabricated, filed with the intention of maligning the hospital's image and extorting money under the guise of compensation. The complaint was barred by limitation and there was a delay in bringing the patient to the hospital due to the complainant's negligence. The State Commission failed to consider the circumstances surrounding the patient's condition upon arrival at the hospital. The patient's delay in reaching the hospital resulted in the commencement of neurological complications, indicative of a highly poisonous snakebite, which contributed to the patient's death. Dr. Sheenu Gupta, the pediatrician on duty, promptly administered necessary treatment upon learning of the patient's condition, including injections and anti-snake venom. Despite her efforts, the patient's condition deteriorated, leading to his unfortunate demise. Both internal inquiries conducted by the hospital and the Dean of MGM Medical College and Hospital affirmed that due care was taken by the doctors, and necessary treatment was provided to the patient.

iv. Additionally, the Commission misinterpreted the timeline of events, erroneously stating that the vaccine was administered after 45 minutes when, in fact, the first dose was given immediately upon admission. Moreover, the Commission's examination of Dr. Sheenu Gupta's clinical notes lacked thoroughness, as her signature was not questioned during the hearing. Furthermore, transferring the patient to another hospital for ventilator availability would have delayed life-saving measures, especially considering the high-risk consent signed by the patient's relatives.

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.

- i. The Petitioner's/OP-1's counsel argued that the State Commission overlooked the delay of approximately half an hour by the complainant in bringing the patient to the hospital, resulting in the patient experiencing Ptosis and deteriorating condition upon arrival. They suggested the patient likely suffered from neuron paralytic complications and asserted the possibility of a highly venomous snake, such as the Cobra, being responsible. Despite immediate and free treatment provided by Dr. Sheenu Gupta (OP-2), including anti-snake venom and life-saving medications, the patient did not respond positively and eventually passed away. Investigations concluded no negligence by hospital staff.
- ii. The counsel argues that the complainant fails to meet the criteria of a consumer under the Consumer Protection Act, 1986, warranting dismissal of the revision petition. Additionally, they contest the complainant's allegations regarding prescribed injections, citing a lack of evidence such as receipts or prescriptions. The counsel further challenges the complainant's claim of personally handing over injections to Dr. Sheenu Gupta, stating it contradicts hospital protocol. The absence of evidence, such as unused injections, weakens the credibility of the allegation. All drugs were supplied by the hospital without payment, and constant updates were provided to the patient's relatives without complaints about the treatment. The complainant's decision to continue treatment at the hospital, evidenced by signing a high-risk consent form, indicates satisfaction with the provided treatment.
- iii. The counsel refutes the complainant's claim of no treatment during the patient's 1.40-hour hospital stay, presenting evidence to the contrary. They stress the patient's serious condition upon arrival, contradicting the complainant's assertion of good health. The discrepancies in timing between manual and computerized case papers are deemed routine and not indicative of manipulation. The counsel outlines emergency department procedures, emphasizing the priority of saving lives and stabilizing patients before

transfer to other facilities. The patient survived for only one hour and forty minutes after arriving at the hospital. The complainant incited a mob to attack the hospital staff and property after the patient's demise, purportedly to extort money. An inquiry committee, chaired by Dr. G. V. Uppe, concluded that the patient received adequate treatment. The counsel asserts that OPs promptly informed the police about the patient's arrival and demise, though the police constable did not promptly collect information about the death. Regarding the demand for a post-mortem, it was unnecessary since the cause of death was evident and consistent with snakebite signs, suggesting the complainant's motive is greed.

- iv. The counsel representing OP-2 argues that the State Commission's findings in its order lack merit, they were reached without proper consideration of the evidence presented by the OPs. The State Commission arbitrarily set aside the findings of the District Forum without sufficient evidence, relying on assumption and presumption. The findings of the District Forum were solely based on unchallenged evidence presented during the proceedings, including medical records, lists of medicines, case management details, internal inquiry reports, and reports submitted to the police station, forming the basis of their decision. The District Forum observed that the patient was promptly brought to the hospital, and treatment commenced immediately upon arrival, as indicated by medical records. District Forum highlighted the absence of documentary evidence supporting the complainant's claim of depositing money with the hospital. Furthermore, it concluded that essential treatment, including anti-snake venom, was administered to the patient without delay or negligence, supported by medical records. However, the State Commission disregarded these findings and introduced new issues, such as questioning handwriting, lacking adequate evidence or legal basis.
- v. The District Forum provided detailed findings regarding the timeline of events surrounding the snake bite incident and subsequent treatment. While acknowledging the absence of specific documentary evidence to determine the exact time of the incident, it noted that a doctor attended to the patient at 7:00 p.m. based on medical records. The forum recognized that complications had already begun by the time the patient arrived at the hospital, as supported by medical papers. The counsel asserts that the complainant did not raise concerns about handwriting in the medical records, and there was no challenge to their genuineness or authenticity. The State Commission failed to consider medical jurisprudence regarding the development of symptoms after a snake bite. The counsel also challenge the State Commission's conclusion about the absence of documentation regarding the treating consultant's involvement, citing affirmation of the consultant's presence and treatment by the complainant. Additionally, the remark about the unavailability of ventilators does not imply a lack of ventilators in the hospital but rather that all were in use and occupied at the time.

- vi. The counsel disputes the State Commission's observation regarding the administration of Anti Snake Venom (ASV), stating it is factually inaccurate and contradicts the evidence on record. According to medical records, the patient was brought to the hospital at 7:00 pm, with the ASV test promptly conducted at 7:05 pm and results received by 7:15 pm, indicating "No reaction seen." The ASV was ordered at 7:20 pm and administered at 7:30 pm, with the second dose administered at 7:40 pm, not the first dose as asserted by the State Commission. The administration of ASV followed established medical protocols and practices, with records indicating prompt testing upon the patient's arrival and subsequent administration without delay. Additionally, evidence presented by the counsel shows that the complainant and their family continued seeking treatment at the hospital post-incident, suggesting trust in the hospital's services and undermining claims of negligence or deficiency.
- vii. The counsel representing the Respondent/Complainant asserts that the documents submitted, including witness affidavits, clearly indicate gross deficiency of service and negligence by the OP hospital, ultimately resulting in the tragic loss of the complainant's only son. Despite the hospital's representation as a multi-specialty facility offering emergency care, it failed to provide timely and adequate treatment when the complainant's son was bitten by a snake. This delay in administering necessary medical care ultimately led to the untimely death of the patient. Despite promptly arriving at the hospital at 6:50 p.m., the OP-1 and the treating doctor (OP-2) purportedly failed to initiate treatment immediately. The complainant made repeated requests for treatment to commence and even purchased prescribed injections, yet treatment was purportedly withheld until payment was made. Tragically, the patient succumbed to the snakebite due to this delay in treatment. Additionally, the counsel argues that witness testimony, particularly from Mrs. Gangubai Thankedar, supports their version of events, offering compelling evidence of the hospital's deficient and negligent services.
- viii. Upon examination of the indoor medical papers, it appears they were manipulated to falsely suggest that treatment began immediately upon the patient's hospital arrival. The complainant, along with accompanying individuals, attested that despite numerous requests, the OP-1 and the treating doctor failed to administer timely treatment. Furthermore, the counsel refutes the OP's assertion that the State Commission disregarded reports from two High Power Internal Enquiry Committees that cleared the hospital and treating doctor of medical negligence. They clarify that the State Commission did consider these reports but deemed them unreliable due to potential bias, as committee members were affiliated with the OP hospital. Hence, this cannot serve as a basis for challenging the impugned order, which is reasoned and justifiable. Additionally, the counsel highlights that documents relied upon by the OP-1 and treating doctor were fabricated to absolve them of negligence. Moreover, the absence of a ventilator at the OP hospital raises questions about its ability to handle emergencies such as snake bites.

- ix. The counsel asserts that the OP's claim regarding delay on the part of the complainant in bringing the patient to the hospital is false and aimed at evading their liability. They argue that the complainant promptly brought his son to the OP hospital within five minutes of the snake bite, supported by a witness who accompanied them throughout the hospitalization. Additionally, the patient walked into the hospital from the auto and was in good health upon arrival. However, it was the OP and the treating doctor who failed to provide timely treatment. Accusations by the OP that the complaint was politically motivated or aimed at extortion are baseless and defamatory, especially considering the complainant's impoverished status and the severity of their loss. The complainant purchased prescribed medicines and borrowed money by pawning ornaments to pay for treatment, as affirmed by witness affidavits. The State Commission affirmed that even when some patients are treated free of charge, they still qualify as consumers under the law. Moreover, the counsel highlights discrepancies regarding the signature on the high-risk consent form, which was obtained from an unrelated person falsely represented as the victim's grandfather. Only parents and close relatives should sign such forms, indicating negligence on the part of the OP and treating doctors.
- x. The counsel further argues that the OP hospital deliberately avoided conducting a postmortem examination of the victim, a crucial step in medical cases, to obscure facts and potentially manipulate any claims of mistreatment. Additionally, the OP failed to clarify which snake species caused the victim's death, further complicating the matter. The absence of a postmortem examination raises doubts about whether proper treatment was administered to the victim. This deliberate avoidance of a postmortem examination underscores the gross negligence of the OP-1 and OP-2 in providing treatment to the complainant's son, ultimately leading to his tragic death. Furthermore, the OP's failure to inform the local police station about the incident is another lapse. Such notification is essential in emergency and medical-legal cases, yet the copy of the intimation letter submitted by the OP lacks authentication, suggesting manipulation. Inquiries made by the complainant revealed that the local police station did not have any record of such notification. This discrepancy further highlights the attempts by the OPs to mislead the court with fabricated evidence.

8. We have carefully gone through the orders of the State Commission, District Forum, other relevant records and rival contentions of the parties. District Forum dismissed the complaint concluding that there was no medical negligence. However, State Commission in appeal came to the finding that complainant was consumer and that complainant has proved that there was deficiency in service and medical negligence by the OPs. State Commission observed *“From this it is known that, the patients in the OP no. 1 hospital are charged and some patients are treated under the charity scheme of 2 %. It is now settled principle that, when few patients are charged and few patients are treated free of charge, even the free treated patients are also consumers as per the definition of "Consumer" under Section 2 (1) (d).”* After considering the facts of the case and evaluating the available evidence, State

Commission held that there was medical negligence on the part of OPs. Extract of relevant paras of orders of State Commission is reproduced below.

“6. It is observed from the medical record submitted, that the patient was brought to the hospital at 6.45 pm and was taken to the emergency ward, from where the patient was referred to OPD for examination by the treating consultant. There is discrepancy in the statements in the documents submitted by opposite parties. In the written statement of OP no.2, it is mentioned that she was on duty for her OPD, timings between 7 pm to 8 pm and as she was entering the OPD for her duty she received call from casualty which she attended immediately and treated the patient Page. C 48. Another document Annexure C, page 75 of compilation, which is first page of "Case Management Details" submitted by the hospital (Opposite parties) mentions that, "On reference. Dr. Sheenu Gupta who was in the hospital for routine rounds took over the treatment of the patient". Moreover, the OPD and indoor case record from pages C 65 to C 74 nowhere the name of treating consultant is seen or nowhere the said consultant has written notes in her handwriting. So though in written statement, OP no.2 narrates the treatment given by her to the patient, it cannot be inferred that, she actually gave and monitored the treatment, as this was not documented in her own handwriting.

7. Another noting on page C 67, that, "Ventilator not available". It cannot be believed that in 2007, a good and equipped hospital like OP no.1, did not have ventilator. Alternatively, question is when the ventilator was not available, why at all the patient of snake bite was treated by the hospital? So we are of the opinion, that decision to treat the snake bite patient when, ventilator was not available, was not reasonable and prudent decision by the doctor's at the hospital. Another discrepancy in document that, the Anti Snake Venom was ordered on continuation sheet at 7.40pm, while the order was carried out at 7.30 pm as per the drug chart. So it can be inferred that, the patient received ASV after more than 45 minutes of reaching the hospital. From the above findings it can be inferred that, the opposite parties undertook the treatment of snake-bite patient when the Hospital was not equipped to treat such patient and there was definitely delay in deciding and initiating the treatment for snake bite that resulted in loss of life of the patient. So we are of the opinion that, there was deficiency in service by OP no.1 and medical negligence by OP no.2. Hence we answer POINT no.2 as AFFIRMATIVE.”

9. We are broadly in agreement with the observations/findings of State Commission except with respect to its observations that *“when the ventilator was not available, why at all the patient of snake bite was treated by the hospital? So we are of the opinion, that decision to treat the snake bite patient when, ventilator was not available, was not reasonable and prudent decision by the doctor's at the hospital.”* Patient of snake bite require urgent medical attention and treatment. Had the hospital declined to admit/treat the patient due to non-availability of ventilator and referred to another institute having ventilator, perhaps much more valuable time could have been lost in referring and transporting the patient to nearest

institute having facility of ventilators. It is not known as to how far was the nearest facility from the OP-1 hospital. Hence, we are of the view that OP-1 hospital/OP-2 doctor were justified in treating the patient themselves rather than referring to a institute with ventilator facility. We are in agreement with the observations of State Commission with respect to non-reliability of the report of internal enquiry committee. Further, reasons given by OPs for not conducting the post-mortem are not valid, a post-mortem report would have provided clarity on the cause of death. Based on the considerations outlined above, we affirm the decision of the State Commission and uphold the relief granted by the forum. All amounts payable as per the order shall be paid by the OPs within 30 days of this order, failing which amount payable at the end of 30 days shall carry interest @9% p.a. till the date of actual payment. Both RPs (RP/590/2021 and RP 591/2021) are disposed off accordingly.

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

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DR. INDER JIT SINGH
PRESIDING MEMBER