

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1814 OF 2017

(Against the Order dated 10/02/2017 in Appeal No. 783/2015 of the State Commission
Maharashtra)

1. DR. ANURADHA

W/O. SURESH GUND, R/O. KOLHAR B.K. TQ. RAHATA,
DISTRICT-AHMEDNAGAR-414001
MAHARAHSTRA

.....Petitioner(s)

Versus

1. DR. PANDIT & ANR.

S/O. PALASKAR, DEOGIRI NURSING HOUME, 1-
BHANUDAS NAGAR, BEHIND AKASHWANI & BIG
BAZAR, JAWAHAR COLONY,
AURANGABAD-431005

MAHARAHSTRA

2. DR. YESHWANT GADE,

GADE HOSPITAL OPP. GAJANAN MANDIR CHOWK,
PUNDLIK NAGAR ROAD, GARKHEDA,
AURANGABAD

MAHARAHSTRA

.....Respondent(s)

BEFORE:

HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER

FOR THE PETITIONER : MR. PULKIT AGARWAL, ADVOCATE

MR. PRASHANT KUMAR, ADVOCATE

FOR THE RESPONDENT : MR. RAHUL G JOSHI, ADVOCATE

Dated : 12 October 2023

ORDER

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondent(s) as detailed above, under section 21(b) of Consumer Protection Act 1986, against the order dated 10.02.2017 of the State Consumer Disputes Redressal Commission, Circuit Bench, Aurangabad, Maharashtra, (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 783/2015 in which order dated 21.09.2015 of District Consumer Disputes Redressal Forum, Aurangabad (hereinafter referred to as District Forum) in Consumer Complaint (CC) no 318/2013 was challenged, inter alia praying to:-

(i) Set aside the order passed by State Commission;

- (ii) Direct OP-1 and OP-2 to pay medical expenses incurred by the complainant of Rs. 2,65,875/- @ 9% interest p.a.;

- (iii) Direct OP-1 and OP-2 to pay amount of Rs. 5,00,000/- towards deficiency in service to the complainant;

- (iv) Direct OP-1 and OP-2 to pay amount of Rs. 5,00,000/- towards mental agony and physical agony to the complainant;

- (v) Direct OP-1 and OP-2 to pay amount of 5,00,000/- towards financial losses of the complainant;

- (vi) Direct OP-1 and OP-2 to pay Rs. 15,000/- towards cost of litigation to the complainant.

2. While the Revision Petitioner (hereinafter also referred to as complainant) was Appellant and the Respondent(s) (hereinafter also referred to as OPs) were respondents in the said FA/783/2015 before the State Commission, the Revision Petitioner was complainant and Respondent(s) were OPs before the District Commission in the CC no 318/2013.

3. Notice was issued to the Respondent(s) on 30.05.2018. Parties filed Written Arguments/Synopsis on 28.11.2022 (OP-1), 17.08.2023 (OP-2) and 29.05.2019, 05.09.2022 (complainant) respectively.

4. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Commission and other case records are that: -

The complainant/petitioner and her husband, both medical professionals, sought medical care for the complainant's gynaecological issues in September 2011. Dr. Gondkar initially diagnosed her with uterine prolapse and a uterine fibroid, which was confirmed by Dr. Palaskar (OP-1/Respondent-1). Following this diagnosis, she underwent surgery on 03.10.2011, at OP-1's nursing home to address these issues and preserve her uterus and ovaries. However, she experienced severe back pain after the surgery, which was allegedly attributed to post-operative effects. Despite being discharged with painkiller prescriptions,

her condition did not improve. Subsequent medical consultations and examinations, including sonography and an MRI, indicated complications related to the initial surgery. Various treatments and medications were prescribed, but her pain persisted. She was referred to an orthopaedic specialist, Dr. Yashwant Gade (OP-2/Repondent-2), who suspected orthopaedic-related back pain and recommended further investigations. A repeat MRI revealed Infective Spondelo Discitis at L5S1, likely caused by a Koch's pathology. Antibiotics and antidepressants were prescribed accordingly. Despite these efforts, the complainant's condition did not improve, and she was referred back to OP-1 after ruling out gynaecological or post-operative complications. However, the treatment provided by OP-1 failed to alleviate her pain. After 55 days of suffering, she sought consultation with Dr. Mohgaonkar, an orthopaedic surgeon, who conducted a CT scan revealing complex left ovarian cysts, bulky right ovaries with multiple simple cysts, and minimal free fluid in the pouch of Douglas. Concerned about the severity of her condition, the complainant sought medical attention at KEM Hospital in Pune, where doctors identified an active infection caused by contaminated surgical equipment used during her surgery by OP-1. To address this infection and its associated complications, the complainant underwent a pan-hysterectomy, involving the removal of both ovaries and the uterus, along with a laminectomy of the L5 and S1 vertebrae. The complainant alleges medical negligence on the part of the doctors involved in her care, resulting in her prolonged suffering.

5. Vide Order dated 21.09.2015, in the CC no. 318 of 2013 the District Commission has dismissed the complaint.

6. Aggrieved by the said Order dated 21.09.2015 of District Commission, Petitioner appealed in State Commission and the State Commission vide order dated 10.02.2017 in FA No. 783 of 2015 has dismissed the appeal.

7. Petitioner has challenged the said Order dated 10.02.2017 of the State Commission mainly on following grounds:

- i. The State Commission purportedly failed to recognize that the transmission of the aerobic bacteria *pseudomonas aeruginosa* occurred through medical devices cleaned with contaminated water. State Commission allegedly disregarded the expert opinion of Dr. Vijay Balkrishna Patil, a qualified medical expert who holds an MBBS and MD in Forensic Medicine, along with other qualifications. This expert provided an affidavit with his opinion to the District Forum, which was not considered by both lower courts. The State Commission allegedly failed to provide any reasoning in its judgment to address Dr. Vijay Patil's medical expert opinion or Dr. Changdeo Aher's expert opinion, which is an independent medical expert witness and supported the complainant's case with providing detailed information on the bacteria in question, including its

morphology, pathogenesis, and clinical significance. However, the courts did not consider this expert opinion where Dr. Changdeo Aher specifically stated in his opinion that the source of infection at the L5-S1 disc was due to unhygienic conditions during the surgery, involving the use of laparoscopic equipment washed with contaminated water or mass cotton used during the procedure.

- ii. The State Commission considered affidavits from six medical experts presented by OP-1 (Dr. Pandit Palaskar) and gave weight to their evidence which are not credible and should be discarded for various reasons. That the identity of these experts is allegedly in doubt as they have not provided their entire details and the qualifications of these experts having not been disclosed in their affidavits; the registration numbers of these experts have not been provided, which raises questions about their credibility; the type of medical qualification is not clarified in their affidavits and these experts have not indicated whether they are post-graduates or competent to provide opinions to the court; the years of medical practice of these experts have not been stated in their affidavits or the information about the current status of these experts, such as whether they work in hospitals, have independent clinics, or are involved in academia. The Courts are expected to restrict experts from giving opinions in an unrealistic manner and have the authority to discard expert opinions that do not meet the mandatory criteria of medical protocols. Expert opinions are not considered infallible if they do not inspire confidence or transparency. The affidavits of the six medical experts allegedly raise doubts and unanswered questions.
- iii. The complainant should be compensated for the sleepless nights and the mental and physical agony endured. While the exact quantification of this suffering is difficult, appropriate and adequate damages should be awarded. The primary objective of undergoing laparoscopic Shirodkar Sling Surgery was to preserve the uterus and both ovaries. However, due to the negligence of the OP-1, a pan hysterectomy had to be performed, which resulted in the loss of organs. The complainant has incurred an economic loss due to the negligence of the OPs. This includes the closure of her clinic for nearly two months and the financial burden of the operation performed at KEM hospital. These losses are a direct consequence of the doctors' negligent behaviour. The loss of organs is a significant aspect that should be duly compensated.

8. 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 counsel for petitioner/complainant contends that the complainant underwent a Shirodkar Sling Surgery at Deogiri Nursing Home on 03.10.2011, performed by OP-1.

This surgery was necessitated by a year-long external prolapse of the uterus, with the primary aim of safeguarding the uterus and ovaries from potential future infections. The intricate procedure involved the elevation of the prolapsed uterus using Mersilene Tape and securing it to the S1 vertebra at the sacral promontory. However, post-surgery, the complainant experienced severe back pain and persistent fever, attributed by OP-1 to an oversight in removing stitches. Despite the administration of painkillers and voeran injections, the distress endured. On 10.10.2011, an abdominal ultrasound (USG) was conducted at Shanti Imaging Center, Aurangabad, as per OP-1's recommendation, due to worsening back pain. The USG report revealed a post-wall fibroid and "adherent ovaries," raising questions about GB calculi. The term "Adherent Ovaries" strongly implied ovarian swelling, suggesting that the surgical procedure itself had introduced infection into the ovaries, leading to subsequent complications.

(ii) Furthermore, the counsel emphasizes on substantial evidence presented

which substantiates the claim that post-operative infection in the ovaries and the resulting swelling were direct consequences of gross negligence either by OP-1 or by their staff and the issue of Pseudomonas Aeruginosa Bacteria infection was caused during the surgery. The whole-body PET CT Scan Report, which provided compelling evidence of a hypermetabolic lesion conspicuously located in the L5/S1 vertebrae, accompanied by a prominent soft tissue component, is indicative of an active infection. Additionally, the findings within the whole-body CT Scan Report dated 28.11.2011, state explicit observations, including the presence of a complex ovarian cyst and other pertinent findings, augment the assessment of this case.

(iii) The counsel argues that the origin of the infection is implausible to be

anything other than the surgical procedure conducted by OP-1. This contention is supported by an array of compelling medical reports, including those procured from Seth Nandlal Dooth Hospital and the Department of Pathology at KEM Hospital, Pune. Additionally, the counsel contends the judgment of the State Commission on 10.02.2017, for ostensibly overlooking pivotal medical expert opinions presented by the complainant. Notably, the opinions of Dr. Vijay Bhasker Patil and Dr. C.S. Aher, submitted on affidavit and integral to the case, appear to have been marginalized. Furthermore, the Commission omitted to provide a reasoned finding on the Expert evidence presented by the complainant.

(iv) The counsel asserts that Expert evidence, as expressly recognized under

Section 45 of the Indian Evidence Act, assumes heightened relevance when it complements and clarifies direct evidence. The Expert opinions are advisory in nature; it is paramount to underscore the Court's prerogative to draw inferences based on such expert testimony. In this instance, the Expert opinions under consideration

span a comprehensive spectrum, encompassing a meticulous analysis of preoperative diagnosis, intra-operative observations gleaned from KEM Hospital, Pune (encompassing both gynecological and orthopedic dimensions), and exhaustive post-operative reports.

(v)The counsel representing OP-1/Respondent-1 assert that after intra-

abdominal surgery, it is natural for tissue swelling and adhesions to occur, which is a recognized phenomenon in Gynecology textbooks and is not indicative of infection. They emphasize that the sonography report does not indicate signs of infection, and there was no documented history of fever in the complainant's medical records. Furthermore, they highlight that the histopathological examination of the removed organs did not reveal any signs of infection, which dismisses the possibility of infection related to the surgery. Regarding the origin of the Pseudomonas bacteria found later, the counsel suggests multiple potential sources or contamination possibilities, that Pseudomonas Aeruginosa is a normal part of human flora and can be found in various natural environments. Textbooks in the field emphasize its presence in nature and the potential for contamination in laboratory settings.

(vi)The counsel raises concerns about the complainant's complaint, characterizing it as ill-intentioned and based on insufficient medical evidence presented two months after the surgery. They also point out that the complainant acknowledged overwriting in some reports, implying an attempt to mislead. Moreover, the counsel contends that none of the medical reports provided by the complainant support the claims of medical negligence, and the PET CT scan indicates a tuberculosis infection unrelated to the surgery. They argue that the complex ovarian cyst is hormonal in nature and not infectious, a conclusion supported by medical literature. They question the authenticity of a report from KEM Hospital Pune, citing discrepancies in the mention of L5-S1 and the unspecified location of the tissue specimen, and assert that neither the hospital nor any expert supported the complainant's allegations.

(vii) The counsel also addresses the possible complications of Shirodkar's sling surgery, emphasizing that like any surgical procedure, it has its limitations and potential complications. They mention the recognized complication of back pain due to intervertebral discitis and assert that removal of the mesh is typically sufficient for alleviating non-responsive pain, with no need for removal of the uterus and ovaries. They stress that postoperative complications are part of any surgery and should not be considered as negligence. Additionally, the counsel challenges the expertise of the complainant's expert witnesses, Dr. Vijay Patil and Dr. Changdeo Aher, arguing that they lack the necessary qualifications in gynecology and endoscopy to comment on Shirodkar's sling surgery. They assert that the State Commission correctly recognized

the limitations of the complainant's experts, as they lacked personal knowledge of the OP's operation theatre and surgical instruments.

(viii) The counsel representing OP-2/Respondent-2 argues that a thorough review of the judgments from both the District Forum and the State Commission reveals the complainant's inability to substantiate claims of negligence against them. They highlight the absence of compelling documentary evidence or expert affidavits supporting the allegations. OP-2 administered appropriate medical treatment, including medication and physical therapy, following a patient examination. The counsel emphasizes that there is no evidence demonstrating negligence on their part. Regarding the complainant's back pain, the counsel asserts that OP-2 made diligent efforts to diagnose and treat it, including recommending MRIs and tuberculosis tests, which yielded negative results. They argue that the presence of *Pseudomonas aeruginosa* bacteria discovered later cannot be attributed to the initial surgery and may have originated from other hospitals the complainant visited. Furthermore, they allege that the complainant fabricated reports with malicious intent.

9. We have carefully gone through the entire facts and circumstances of the case, orders of the State Commission as well as District Forum, rival contentions of the parties and other case records. State Commission in its order has observed as follows:

“20. Considering the undisputed facts that the complainant was required to visit different places before undergoing Shirodkar Sling Surgery on 3.10.2011 as well as after 3.10.2011 for pathological test, C.T.Scan, MRI. Possibility of bacterial infection at any such place cannot be ruled out. This fact also fortify from the evidence affidavits of opponent's witnesses Dr.Dipti Vaidya, Dr.Laxmikant Kshirsagar, Dr.Vivek Salunke, Dr.Mandipsinh Rajput, Dr.Annasaheb Birajdar, and Dr.Abhishek Rathi. On perusal of all these affidavits of medical practitioners it manifests that pseudomonas bacteria is found almost everywhere in nature like water, plants, environment and human body and isolation of bacteria from a single specimen as caused of infection. It can be a contamination of the specimen. Therefore possibility of bacterial infection to the complainant before performing Shirodkar Sling Surgery on her on 3.10.2011 or after that anywhere in the hospital where she visited or in KEM hospital cannot be ruled out. Therefore the contention of the complainant that due to negligence on the part of opponent Dr.Palaskar there was such bacterial infection to the complainant cannot be accepted.

21. As far as allegations against opponent No.2 Dr.Gade is concern, except the mere contention of complainant that he too acted negligently, there is no evidence to substantiate it. The undisputed facts clearly indicate that whenever the complainant approached to him, he advised her for sonography and C.T.Scan, and tuberculosis test and on perusal of test

report he referred her back to opponent No.1 Dr.Palaskar. Therefore on any count the allegations made by the complainant against both the doctors are being unfounded, they cannot be held liable for medical negligence. Accordingly the Dist. Consumer Forum has rightly held and dismissed the complaint. We find no error or infirmity in the impugned judgment and order. Hence no interference is warranted.”

We tend to agree with the above observations of the State Commission

10. In this case both the Fora below have given concurrent findings of no medical negligence on the part of the respondents. As was held by the 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.*”

11. We do not find any infirmity or material irregularity or jurisdictional error in the order of the State Commission. Both the State Commission and the District Forum have given well-reasoned orders. Accordingly, the order of the State Commission upheld and the Revision Petition is dismissed.

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

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DR. INDER JIT SINGH
PRESIDING MEMBER