

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 520 OF 2018

(Against the Order dated 19/02/2018 in Complaint No. 11/2003 of the State Commission Bihar)

1. SATISH KUMAR

S/O. HARENDRA PRASAD R/O. MOHALLA
CHITRAGUPTA KITAB CHARA POSTAL PARK ROAD NO
1 P.S. KANKARBAGH
PATNA
BIHAR

.....Appellant(s)

Versus

1. DR. SHAILESH KUMAR SINHA & 2 ORS.

ASST. PROF UROLOGY P.M.C.H. PATNA 40 MIGH
KANKARBAGH
PATNA 20

2. DR. MAMTA SINHA

W/O. DR SHALIESH KUMAR SINHA PMCH PATNA 40
MIGH KANKARBAGH
PATNA 20

3. DR RANJAN CHOUDHARY

ROAD NO 12 NEAR RAJENDRA NAGAR TELEPHONE
EXCHANGE RAJENDRA NAGAR
PATNA 800 016

.....Respondent(s)

BEFORE:

**HON'BLE MRS. JUSTICE DEEPA SHARMA, PRESIDING MEMBER
HON'BLE DR. INDER JIT SINGH, MEMBER**

For the Appellant : Ms.Ayesha Zaidi, Advocate

For the Respondent : Mr. Pravin Bahadur, Advocate &
Mr.Saurabh Kumar, Advocate

Dated : 03 May 2023

ORDER

JUSTICE DEEPA SHARMA, PRESIDING MEMBER

1. The present Appeal has been filed against the order dated 19.02.2018 in complaint no. 11/2003 of the Appellant whereby his complaint was dismissed on merit. The complainant has submitted that the findings of the State Commission are perverse and contrary to the records available before the State Commission. It is submitted that there are enough documents to prove on record that right kidney of the complainant had been removed at the time when he was operated upon by the respondents on 13.09.2000 for the disease Chyluria Hamaturia. It was submitted that he was given general anesthesia and he did not know as to what had happened to him. Even after his operation, his condition did not improve and he was continuously having abdominal pain and other problems and, therefore, in the year 2003 he consulted the doctor. He was suffering with fluctuating blood sugar and weakness of right leg with mild paralyses. He consulted Dr.Ajay Kumar Sinha who suggested USG of the whole abdomen and complainant was shocked to see the report of the doctor dated 20.07.2003 wherein it is indicated that his right kidney was absent. This fact was again confirmed by Mahavir Cancer Sansthan vide their report dated 27.07.2003. It was contended that after the

operation which the complainant had underwent on 13.09.2000, he had not underwent any other operation and he had never donated or sold his kidney to anyone. He has alleged deficiency in service on the part of the respondent on this count and filed the complaint claiming compensation. He has also filed a complaint against Dr. Ranjan Chaudhuri who had conducted ultra sound of his abdomen after the operation on 30.09.2000 and in his report he had not only noted that the right kidney of complainant was very much visible but had also given its dimensions. It has been contended that said report has been given by Dr. Ranjan Chaudhuri in connivance with the respondents.

2. The claim was contested by the respondents. The preliminary objection taken was that the complaint was barred by limitation since it has been filed 3 years of the date of discharge which was on 02.10.2000. It was also contended that complainant had filed the complaint on the basis of false allegations and right kidney of the complainant was not taken out by the respondents during the operation on 13.09.2000. It was further contended that complainant had not produced the ultrasound film report dated 30.09.2000 which would have established that right kidney of the complainant was intact after the operation. It was further contended that after his discharge the complainant had never contacted the respondents for any discomfort at any time till the filing of the complaint. It is submitted that complainant had contacted Dr. Hai for the first time on 30.08.2000 and on proper investigation he was found to be suffering with Right side Chyluria Hamaturia. The surgery was done with due care and caution as per the line of treatment required in such diseases and the complainant had not suffered with any post operative complications as well. Since he was diabetic, care was taken by Dr. Ajay Kumar. It was further contended that ultrasound report dated 21.07.2023 by Dr. R.R Rao does not suggest that right kidney had been taken out but it only says that right kidney was not visible. It was further contended that vide subsequent report dated 04.01.2003, Dr. R.R.Rao has further clarified that non visualization of kidney during ultra sound could be due to many reasons and causes are to be ascertained only by advance test if so required.

3. Parties led their evidences before the State Commission. An application had been filed by the respondents before the State Commission for constitution of the Medical Board seeking expert opinion on issue. Vide order dated 31.10.2013 the State Commission while allowing the application of the opposite party, ordered the constitution of Medical Board to ascertain the existence / non existence of the right kidney. AIIMS as well as PGI Chandigarh were requested to constitute the medical board to ascertain the said fact. Subsequently, AIIMS showed its inability to constitute the Medical Board and the Commission vide its letter dated 21.03.2014 requested Sanjay Gandhi Institute of Medical Sciences, Lucknow (SGIMS) to constitute the Board. The complainant had appeared before the PGI Chandigarh Medical Board on various dates and underwent several tests. A report from the PGI Chandigarh had been submitted before the State Commission. As regards Medical Board of SGIMS Lucknow is concerned, it has been reported by SGIMS, Lucknow that they could not examine the complainant since he did not appear on the scheduled date of 17.04.2017 for his examination before the Board.

4. On the basis of all the evidences which were produced before the State Commission and after hearing the arguments of the learned counsels for the parties, the State Commission had dismissed the complaint relying on the expert medical opinion obtained from the PGI Chandigarh, wherein it is certified by the Medical Board that the right kidney of the complainant had not been removed rather it was shrunken and severely atrophic.

5. This order has been impugned by the complainant before us in the present appeal. It is submitted in the appeal that non appearance of the complainant before the SGIMS Medical Board Lucknow was not intentional. He was not aware of the date fixed i.e. 17.04.2017 as he was not informed of the said date and he made several attempts to inquire about the date fixed before the said medical Board but in vain. It is contended in the Appeal that State Commission had erred in relying on the report of the Medical Board of PGI Chandigarh because PGI Chandigarh has also stated that kidney was not visible. It is submitted that a criminal case is also going on against the respondents wherein cognizance of the offences had already been taken. It is orally argued that complainant is ready to undertake fresh medical examination by a Medical Board at its own expenses if so directed by this Commission.

6. It is argued on behalf of the respondents that report of the PGI Chandigarh establishes that right kidney was not removed and that State Commission has rightly relied on the report of PGI Chandigarh. It is further argued that the argument of the appellant that PGI Chandigarh has given its findings that right kidney was not visible is misplaced argument because after the non visibility of the right kidney, further tests were

suggested and on the basis of those advanced tests, it was concluded that right kidney was not removed. It is submitted that complainant was very well aware of the date fixed for his medical examination before the Lucknow Medical Board. He is lying in his appeal about his ignorance of the date. His lie is very much clear from the order sheet dated 30.03.2017 wherein his counsel had himself stated that complainant had to appear before the Lucknow Medical Board on 17.04.2017. It is submitted that said Appeal had been filed with the intention to extract money from the respondents.

7. We have heard the arguments and perused the record.

8. The only issue which has been raised by the complainant in the complaint is that his right kidney had been removed during the operation conducted by the respondents on 13.09.2000 for the disease Chyluria Hamaturia. After his discharge, he remained unwell and kept on consulting the doctors and he learnt about the removal of his right kidney only on 20.07.2003 when he underwent Sonography and he learnt that his right kidney was not visible. He further contacted Mahavir Cancer Sansthan who did the USG of the whole abdomen and reported that right kidney was not seen.

9. Whole case of the complainant, is, therefore, based on these two documents wherein it is reported that right kidney was not visible. He has also contended in his complaint that report of Dr. Ranjan Chaudhuri dated 30.09.2000 of USG wherein right kidney was found visible has been given in connivance with the respondents. During the course of arguments, however, counsel for the complainant has failed to point out any evidence on record which could suggest even by preponderance that report of Dr. Ranjan had been given in connivance with other respondents. He had been directed by the State Commission vide its order dated 24.09.2007 to file the plates of ultra sound conducted by Dr. Ranjan. Following is the excerpt of the said order of the State Commission:

“Learned counsel for the appellant is present. OP No.6 is also present and files rejoinder. Copy served. Counsel for OP 1 and 2 is also present who had also been served copy of rejoinder filed by OP 6. Counsel for OP 6 is also present who has also received copy of rejoinder filed by OP 6 and a petition filed about maintainability of the case against OP 3 will be decided with the hearing of case itself. Petition filed by OP 3 will be treated as his show-cause. Heard learned counsel for the parties. Put up on 8.10. Complainant was directed to file plates of Ultrasound even by OP No.6 and also by complainant for ultrasound and on that date counsel of OP should remain present who will duly examine the plates and if they want to submit anything may submit.”

10. Despite directions to produce the plates of ultrasound conducted by OP No.6, the same were not produced. The order sheet dated 08.10.2007 recorded by the State Commission clearly shows that complainant had failed to produce the plates of ultrasound and had made a statement that he was not in possession of such plates. The report of Dr. Ranjan on the basis of ultrasound of the whole abdomen clearly shows not only the existence of both the kidneys but its size was also measured and given as “ the right kidney measures 9.4 x 4.4 cm and the left kidney 12 x 5 cm” was visible. He had given his opinion to the following effect:

“The right kidney measures 9.4 x 4.4 cm and the left kidney 12 x 5 cm.”

11. It is, therefore, clear that opinion given by Dr. Ranjan Chaudhuri is based on his examination of the ultra sound record of the appellant. Since there is no contradictory testimony on record to prove that this report of Dr. Ranjan Chaudhuri is false, same cannot be rejected on the premise that after three years, when the complainant got his ultrasound of abdomen done, his right kidney was not visible in the ultrasound. The appellant has even by preponderance of evidences on record failed to prove that the report of Dr. Ranjan was false and given in connivance of other respondents. This fact conclusively proves that kidney had not been removed during the operation done by the respondents. Rather it was very much intact.

12. The appellant had filed the complaint on the basis of report dated 20.07.2003 and 21.07.2003 of Patna Scan Centre and Mahavir Cancer Sansthan. In the report of Patna Scan Centre, sonography of the whole

abdomen shows that right kidney was not visible and in the report of Mahavir Cancer Sansthan, it is stated that right kidney is not seen. The note below the report of Dr. R R Rao in its report dated 21.07.2003 also shows that he suggested IVP to ascertain the functioning of right kidney. Neither of the report shows that right kidney had been removed. It only suggests that right kidney was visible / seen. It is also apparent that as per the advise of Dr. R.R Rao in its report dated 21.07.2003, the complainant / appellant did not get the IVP done in order to ascertain whether right kidney was functioning or not. The very fact that Dr.R.R.Rao had suggested the IVP to ascertain the functioning of right kidney suggest that he had not ascertained in his report that kidney had been removed. He wanted to give final report of absence of kidney only after conducting further tests. Subsequently, he had clarified that simply because right kidney was not seen by him did not mean that right kidney had been removed. Also he has explained that word 'operated' means that there is presence of an operation mark over skin surface. He has also stated that non visualization of kidney during ultrasound examination may be due to many reasons and the cause of non visualization can be ascertained by advanced tests, if so required. . It, therefore, is clear that document on which the complainant has relied to prove that his kidney had been removed during the operation does not in any way conclude that kidney had been removed from his body during operation. The report only suggest non visibility of right kidney.

13. The State Commission while conducting the proceedings on 31.10.2013 on the request of the respondent constituted the Medical Boards to ascertain the existence or non existence of the right kidney. Surprisingly, the order sheet dated 31.10.2013 shows that complainant had opposed the constitution of the Medical Boards to ascertain this fact. Despite opposition by the complainant, the State Commission, however, directed AIIMS and PGI Chandigarh to constitute the Medical Boards and examine the complainant to ascertain the existence / non existence of the right kidney. For that purpose, the respondents were directed to deposit a sum of Rs.50,000/- to meet the expenses of the complainant to underwent such examination by the Board and the said money was duly deposited by the respondents. When the AIIMS showed his inability to constitute the Board, the State Commission directed Sanjay Gandhi Institute of Medical Sciences (SGIMS) Lucknow to constitute the Board and examine the complainant. The various ordersheets and the observations of the State Commission and the documents on record clearly shows that complainant was not only against formation of the Medical Boards and his examination by the Board but he had also made all efforts to avoid his presence before the Boards. He appeared only before PGI Chandigarh and did not appear before SGIMS Lucknow Medical Board. The trial court record also shows that PGI Chandigarh submitted its report dated 16.03.2016. A letter bearing no. 8466 has been received by the State Commission from SGIMS Lucknow Medical Board dated 19.05.2014 about the complainant not attending the Board. The PGI Chandigarh Medical Report submitted its report on 11.05.2016 wherein it has on the basis of tests conducted reported that right kidney had not been removed. It was only, thereafter that the complainant moved an application before the State Commission dated 20.05.2016 with the prayer to permit him to appear before the Sanjay Gandhi Postgraduate Institute of Medical Science (SGPIMS) Lucknow and this application was taken up for hearing by the State Commission on 22.07.2016. Following is the order passed by the State Commission on the said application by the complainant :

“Dated : 22.07.2016

- i. This complainant's petition is dated 20.05.2016 with a prayer to permit the complainant to appear before the Medical Board at Sanjay Gandhi Post Graduate Institute of Medical Science (SGPIMS), Lucknow and rejoinder dated 30.06.2016 filed on behalf of the OP nos. 1, 2 and 3.
- ii. Complainant submits that in terms of the order dated 31.10.2013 and 21.03.2014 passed by this Commission, the complainant appeared before the Medical Board Constituted by PGIMER, Chandigarh the said institute sent the report to the effect that the right Kidney of the complainant is not removed. The learned counsel for the complainant submits that the report is not correct. As such there is a necessity of examination by another Hospital namely SGPIMS, Lucknow. On the other hand, prayer of the complainant is opposed on the ground that the complainant himself did not went to SGPIMS on 12.05.2014 as fixed by the said Hospital vide letter no. 8466 dated 03.05.2014 followed

by letter no 8486 dated 19.05.2014 informing the State Commission that complainant did not appear on the date fixed, as such prayer of the petitioner deserves to be rejected.

- iii. We find that the complainant was informed to be present for necessary Medical test on 12.05.2014. The complainant neither appeared on the date fixed at SGPIMS nor informed this Commission about the reason for not appearing. However, considering the facts of the circumstances as also letter dated 03.05.2014 of SGPIMS. We are inclined to allow one more opportunity to the complainant especially since the complainant has expressed some doubt on the report of PGIMER, Chandigarh, that his right Kidney was not removed.
- iv. In view of the above, we permit the complainant to appear before the Medical Board constituted by SGPIMS, Lucknow on a date fixed by the said institute. However, the cost if any incurred in connection with the Medical Examination of the complainant or the required test has to be borne by the complainant himself since the complainant had gone twice at Post Graduate Institute of Medical Education and Research (PGIMER), Chandigarh at the cost of opposite party. During the first visit complainant without completing all the tests returned back on its, own and as such complainant at his request was allowed to visit second time on the date fixed by the said institute.
- v. The office is directed to write an appropriate letter to the director of SGPIMS, Lucknow for constituting a Medical Board for the examination of the complainant in light of the allegations of the complainant as per the complaint. The copy of the complaint written statement filed by the opposite party, order of the State Commission dated 31.10.2013 and 16.01.2014 as previously sent to the Sanjay Gandhi Post Graduate Institute of Medical Science, Lucknow. Vide letter no. 419, Patna dated 11.04.2014 be enclosed. The institute after constituting the Medical Board and fixing a date for such examination of the complainant under intimation to the State Commission as also to the complainant giving a margin of at least four (04) weeks.
- vi. The petitioner of the complainant stands allowed as above.”

14. It is also apparent that, thereafter also complainant did not appear before the SGIPMS on the scheduled date i.e. 17.04.2017. The argument of the Appellant on this count is that that he was not aware of the date with the SGIPMS and, therefore, could not appear for his examination on that date. My attention is drawn by the respondents on the ordersheet of the State Commission dated 30.03.2017 and it is argued that counsel for the respondent had himself stated that complainant had to appear before the Sanjay Gandhi Institute of Medical Science, Lucknow for his examination on 17.04.2017 and, therefore, the contention that appellant was not aware of date of appearance before Board is contrary to record and is false. The order of the State Commission dated 30.03.2017 reads as under :

“Learned counsel for the complainant submits that on 17.03.2017 the complainant had appeared before the medical board of the Sanjay Gandhi Institute of the Medical Science Lucknow however received medical examination of the next date has been fixed by the board for complainant examination for 17.04.2017. Learned counsel for the O.P. is present. Put up on 17.05.17.”

15. This clearly shows that complainant was aware of the date of appearance before SGIPMS. He, therefore, is lying before this Commission on oath in Appeal. He states that he was not aware or sure of his date of examination before the Medical Board on 17.04.2017.

16. Not only this, he had been directed by Indira Gandhi Institute of Medical Sciences to undergo medical examination and IGIMS Patna vide letter dated 08.10.2010 no. 110/Uro/10 written by Medical

Superintendent IGIMS Patna clearly shows that complainant had refused to face the medical board inspite of the notice dated 18.10.2010 sent to him. The conduct of the complainant clearly shows that he had been avoiding to appear before the Medical Boards constituted by the State Commission as discussed above as well as under the direction of the Patna High Court and he had done so willfully. The only evidence to ascertain whether kidney had been removed or not removed is report of PGI Chandigarh dated 16.03.2016. The Medical Board has opined as under :

“The patient had undergone CT Angiography on 18.07.2014 in PGIEMR, Chandigarh. It had demonstrated presence of a small artery arising from abdominal aorta at level L1 at 9’0 clock position is seen going upto right renal fossa and may suggest possibility of atrophied right renal artery. The patient was advised to undergo cystoscopy and retrograde ureteropyelography. After admission on 19.07.2014, routine blood tests were done which revealed high sugar. He was advised to remain admitted for control of blood sugar before undergoing cystoscopy. The patient had left the hospital against advice. After a long gap he had agreed to undergo the procedure. After ensuring anesthetic fitness Satish Kumar was taken up for cystoscopy on 05.02.2016 and it was performed under spinal anesthesia as per the wish of the patient.

On cystoscopy the following were noted :

- i. Anterior urethra normal
- ii. Prostrate enlarged
- iii. Trigone normal
- iv. Both the ureteric orifices were normal in appearance and position.
- v. Right ureter was cannulated with 6Fr. Ureteric catheter, the catheter could be passed easily beyond 25 cm. Contrast was instilled through the catheter which delineated the whole ureter and the whole collecting system (pelvicaliceal system) was also delineated by the contrast (Flg.1-3 hard copy attached).
- vi. The ureteric catheter was kept in the system and the patient was taken up for CT Pyelography after instilling contrast (through the ureteric catheter. The CT Pyelogram also demonstrated the presence of whole ureter along with the pelvicaliceal system of right kidney (Fig 4-5 hard copy attached). However, the parenchyma is severely atrophic and shrunken.

In view of findings on cystoscopy, retrograde ureteropyelography and CT Pyelography, the Committee concluded that the right kidney of Mr. Satish Kumar was not removed. However, it is shrunken and severely atrophic.”

17. The State Commission has rightly relied upon the report of the Medical Board for reaching to the conclusion that complainant had not been able to establish that his right kidney had been removed by the respondents during the operation on 13.09.2000. We found no illegality or perversity in the impugned order as the impugned order is based on the evidences on record.

18. The Appeal has no force and same is dismissed.

.....J
DEEPA SHARMA
PRESIDING MEMBER

.....
DR. INDER JIT SINGH

