

**BEFORE THE STATE CONSUMER DISPUTES REDRESSAL COMMISSION
OF TELANGANA AT HYDERABAD**

FA No.230/2018
Against the orders in CC.NO.17/2009
on the file of District Forum at Adilabad

Between:

1. Dr.Shankerlal Lahoti, M.B.B.S.,
Govt. Civil Hospital, Chennur Mandal,
District Adilabad.

..... Appellant/Opposite Party No.1

2. Kalavathi Nurse
Govt.Civil Hospital, Chennur Mandal,
District Adilabad.
(Transposed as Appellant No.2 vide orders in
IA.No.216 of 2021 dated: 12.10.2021)

.....Appellant/Opposite Party No.2

AND

1. Naseemunnisa Begum, D/o.Md.Taha Khan
Aged 15 years, Occ: Student,
R/o.Near Gachi Masjid Chennur,
Mandal and District Adilabad,
The Complainant is minor under
Guardianship of natural father
Md.Taha Khan, Aged 55 years,
Occ: Labour R/o.Near Gachi Masjid,
Chennur Mandal & Dist. Adilabad

.....Respondent/Complainant

2. Government of Andhra Pradesh,
Rep. by D.M.H.O., Adilabad.

3. The Professional Protection and
Welfare Scheme of Indian Medical
Association, A.P.State Branch,
Hyderabad, Rep. by Secretary
(covered with insurance)

.....Respondents/Opposite Parties No.3 & 4

Counsel for Appellant/Opposite Party No.1: M/s.Nisaruddin Ahmed Jeddy

Counsel for Appellant/Opposite Party No.2: Mr.Mohd.Yousuf

Counsel for Respondent/Complainant : M/s.V.Gourisankara Rao-R1

Counsel for Respondent No.2/ Opposite Party No.3 : Set exparte

Counsel for Respondent No.3/Opposite Party No.4: M/s.A.Alavender Goud

**QUORUM: SRI JUSTICE M.S.K.JAISWAL, HON'BLE PRESIDENT
&
HON'BLE SMT MEENA RAMANATHAN, LADY MEMBER**

**MONDAY, THE EIGHTH DAY OF NOVEMBER
TWO THOUSAND TWENTY ONE**

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Order :

1. This is an appeal filed U/s.15 of Consumer Protection Act, 1986 praying this Commission to set aside the order of DCF Adilabad dated 08.06.2018 in CC.No.17 of 2009 and dismiss the complaint, with costs to this Appellant.

2. For the sake of convenience, the parties are referred as arrayed in the complaint.

3. The brief facts of the complaint are that, the Complainant is a school going girl whose age is 15 years. On 17.09.2005, when she was in school, she got fever and cold. The school authorities took her to the Government Hospital, Chennur. The Opposite Party No.1 prescribed some medicines and also injection. One of the Nurses in the hospital named Kalavathi gave injection, by which there was swelling on the part where the injection was given. After two days, there was more swelling on her hand. Complainant's mother complained about the swelling to the Opposite Party. The Opposite Party said that it may happen due to mosquito bite. Believing them, the Complainant continued with medicines. After some days, the condition became critical, but there was carelessness and negligence on the part of the Opposite Party No.1. The parents approached Opposite Party No.3 and informed about the acts of Opposite Party No.1. The Opposite Party No.1 assured the Complainant that all the expenditure will be borne by them. But the Opposite Party No.1 failed to keep up their promise. The parents took the Complainant to another hospital and they incurred lot of expenditure for further treatment. They suffered physically, mentally and financially due to

the carelessness and negligent acts of Opposite Party No.1 & 2. Hence, the complaint.


4. The Opposite Party No.1 filed written version and contended that, the Complainant is not a "Consumer" within the ambit of definition of "Consumer" as defined U/s.2(d). In the instant case, as a Government Doctor, Opposite Party No.1 examines and prescribes number of patients daily and administers injection to the patients. This Opposite Party is not aware and not concerned whether the Complainant took any injection at any place. Hence, it is denied that there was any negligence or deficiency of service on the part of this Opposite Party.

5. The Opposite Party No.2 contends that, she is working as A.N.M. (Auxiliary Nurse and Midwife) in Government Service attached to Government Hospital at Chennur. This Opposite Party is no way concerned with giving injections and the patients who come to hospital for treatment. Therefore, the allegations against this Opposite Party are made with only malafide intention to harass and extract money from them. Hence, this Opposite Party prayed to dismiss the complaint.

6. The Opposite Party No.4 filed written version and contended that, the complaint is not maintainable against them under law or on the facts of the case and prayed to dismiss the complaint against them.

7. The Complainant filed Evidence Affidavit produced documents Ex.A1 to A24 to prove her case. The Opposite Parties filed evidence affidavit and produced Ex.B1 to B3 on their behalf.

8. The learned District Forum after hearing both sides and upon perusal of material on record, allowed the complaint in part and directed the Opposite Parties to pay compensation of Rs.1,98,000/- and Rs.2,000/- towards costs



and reimburse the court fee of Rs.200/- to the Complainant within one month from the date of receipt of this order, failing which the Complainant is at liberty to proceed against the Opposite Parties 1 & 4 U/s.25/27 of C.P.Act. The case against Opposite Party No.2 & 3 is dismissed.

9. Aggrieved by the orders of the District Forum, the Opposite Party No.1 filed the appeal as stated supra.

10. The controversy in the case lies in a narrow compass i.e., as to whether the Appellants who are Opposite Parties 1 and 2 can be made liable for the compensation for the alleged negligence in treating the first Respondent/Complainant. The contention of the Appellants is that, both of them are working in Government Civil Hospital, Chennur and therefore, they are not liable to pay any compensation for the alleged negligence.


11. Adverting to the facts, it is noticed that the case had a chequered history. It started on 17.09.2005, when the first Respondent/Complainant was a school going girl. It is her case that, when she was in school, she developed fever where upon she was taken to Government Hospital, Chennur and the Appellants have treated her, gave some injections due to which she got swelling at her arm and thereafter she was taken to different hospital. Her case is that, there was negligence of the Government Hospital. Originally, the case was disposed of on 18.11.2010. Aggrieved thereby, the first Appellant preferred FA.No.1/2011 before the State Commission. Vide orders dated 02.02.2012, the matter was remanded back to the District Forum for fresh disposal. Subsequently, the matter came to be disposed of by the impugned order on 08.06.2018.

12. As per the provisions of the Consumer Protection Act, in order to attract the jurisdiction, the sine qua non is payment of consideration. Where there is no consideration, the jurisdiction of the Consumer Protection Act will

not be attracted. In the instant case, admittedly, the Appellant/Opposite Parties are the Government Doctor and Nurse in Government hospital at Chennur. No consideration was paid by the first Respondent/Complainant for the treatment. There are catena of authorities which clearly say that, in the absence of there being any consideration, the Opposite Parties are not liable to pay any compensation under the provisions of Consumer Protection Act. This aspect was extensively discussed by the Commission in FA.No.1/2011 relying upon the judgment of Supreme Court in "Kishorilal Vs. E.S.I. Corporation" II (2007) CPJ 25 (SC), wherein it is clearly laid down and if the said dictum is applied to the facts of the present case, the Appellants cannot be made liable for the compensation under the provisions of Consumer Protection Act. The remedy of the first Respondent/Complainant for the alleged negligence, if any, lies somewhere else but certainly not before the District Forum constituted under the provisions of Consumer Protection Act.

13. Contrary to above well settled legal position, the District Forum in the impugned order allowed the complaint and awarded compensation. The District Forum made certain observations in the order which need to be produced which only shows the way the District Forum has adverted to the controversy. In para-7 of the impugned order, the District Forum has observed as under:

"This District Consumer Forum now with application of mind and examining the record placed before them which went in different directions ultimately confusing the mind of the District Consumer Forum but failed to realize that this Hon'ble District Consumer Forum having judicious mind cannot be confused. It is a crystal clear fact the contentions of both parties are taken in to consideration first to ponder over the point whether the Complainant is a consumer or not. It is perfected that the Complainant is a consumer as the parents are paying all



legitimate taxes to Government and hence for the same the Government hospitals are giving their treatment and cannot escape the liability of wrongs which is proved beyond doubt in this particular case. There is deficiency of service by Opposite Party No.1 & 2 and this Forum opines that the same was brought to the notice of Opposite party No.3 & 4 and they admittedly Opposite Party No.3 referred the matter to NIMS, Opposite Party No.4 clearly expresses that they are not liable for the acts done by Opposite Party No.1."

14. Further more in para-8, the District Forum has observed as under:

"It is evident to say that after examining the entire record and considered the complaint by appreciating the order of the District Consumer Forum passed earlier which cannot be interfere by this Hon'ble Consumer Forum in a just way but after looking in to the circumstances the suffering the age and today grown up age of the Complainant is justified to enhance compensation apart from the Medical expenses and others incurred in this long tragic journey of the Complainant, suffering of the entire family is also observed by this Hon'ble District Consumer Forum."

15. The above observations of the District Forum clearly show that absolutely there is no application of mind by the District Forum in adjudicating the controversy. The District Forum appears to be lacking the knowledge of fundamentals of law while it made the observations in para-8 which are re-produced supra. When the Appellate Court remands back the matter to the Trial Court for fresh adjudication, the Court subsequently deciding the case is required to take independent view of the matter but it cannot be said that since the earlier order was passed before the remand, the same cannot be interfered with, is wholly improper. After the remand, the Court hearing the matter has to consider the matter in all aspects

denovo and it cannot be carried away by what was observed by the same Court in the previous round of litigation.

16. Be that as it may, advertng to the merits of the case, we have no hesitation in holding that the first Respondent/Complainant cannot entertain the grievance for the simple reason that, the first Respondent/Complainant was treated in the Government hospital, where no kind of fees was collected either from the Complainant or any other patient. The observations of the District Forum that since the citizens pay taxes to the Government and the Government is running the hospital, they are liable, is obnoxious.

17. In view of the above, the impugned order cannot be sustained and the same is liable to be set aside.

18. In the result, the appeal is allowed and the order dated 08.06.2018 in CC.No.17/2009 passed by the District Forum, Adilabad is set aside. No costs. The statutory amount if any, deposited by the Appellant can be withdrawn by the Appellant No.1 together with accrued interest.



PRESIDENT LADY MEMBER
Date: 08.11.2021
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