

**IN THE COURT OF THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION  
UNDER CONSUMER PROTECTION ACT, 2019 AT NIZAMABAD**

Quorum	Smt.Suvarna Jayasri, M.A., LL.M.,	PRESIDENT
	Smt. J.Shyamala, B.Sc., LL.M.,	LADY MEMBER

Dated this the 03<sup>rd</sup> day of September, 2020

**C.C.No. 57 of 2014**

Date of filing of complaint: 26-11-2014

Date of Order: 03-09-2020

Between:

Smt.Afeeza W/o Shaik, Age:26 years, Occ: House hold, R/o Domakonda, (V)  
& (M) Nizamabad district.

Complainant

AND

M/s Akhila Diagnostics, Dr.P.Mallikarjun, NH-7, Opp: IBP Petrol pump,  
beside Durga , Kamareddy, Nizamabad

Opposite party

This consumer case is coming before us for final hearing on 30-07-2020. Sri. B.Rajender Jain, Sri. GaneshDeshPande, and E.Jayasimha Counsels for the complainant Sri.MS.Srihari Acharya, Counsel for Opposite party. The matter stood for consideration till this day and the Commission made the following :-

**ORDER**

(By Smt J. Shyamala, Lady Member)

The brief facts as set-out in the Complaint are that:

1. The complainant got admitted in the opposite party Hospital with stomach-ache on 30-11-2013. On the advice of opposite party the complainant underwent various tests out which there for HIV, further the complainant paid charges of Rs.1850/-. That on 02-12-2013, the opposite party advised the complainant that the complainant suffering with multiple infection for which needs immediate operation and cost of operation was around Rs.40,000/- since the complainant poor family and stated that the complainant take suggestions from their family with regard to operation, accordingly the complainant got collected test reports which the complainant was under gone various tests by the opposite party, out

those test reports the complainant got find one test report which shows that the complainant having report of "HIV REACTIVE".

After seeing said test report by the complainant and her family members suffered physically, mentally and the husband of the complainant who is living abroad suspecting the character of the complainant as well as in-laws, further the neighbors and well wishers and also the parents of the complainant advised to take another test report from another "DIAGNOSTICS CENTER" accordingly the complainant approached "SDH SURYA HOSPITAL" Domakonda and "SRI SAI DIAGNOSTICS CENTER", Kamareddy, got tested blood test report but both the test report are "HIV NON-REACTIVE" (Negative).

The complainant also got tested in the A.P.State AIDS control society, Hyderabad, in the said report it is clearly mentioned that the complainant was not having any AIDS conforming the report i.e., Non-Reactive. The complainant is a respectable person in the society, due to test report of opposite party the complainant and her family members spoiled their reputation in society as well as in-law house, because of the false report the complainant suffering mentally, physically and also not able to concentrate on day to day works, further the complainant was undergoing psychiatric treatment at M/s VENKATESWAR HOSPITAL Hyderabad and also the complainant incurring heavy expenditure towards treatment, since the complainant was poor family unable bear the expenditure due to the opposite party's deficiency service towards the complainant and also shows negligence of the opposite party while discharging the duties.

The complainant got issued legal notice on 28-12-2013 calling upon the opposite party to settle the claim of the complainant, and also pay the compensation of Rs.2,00,000/-, the said legal notice was received by the

opposite party but no reply was given, as such the complainant forced to filed the present complaint. The complainant with no other option, compelled to approach this Hon'ble Forum for seeking appropriate legal remedy from the opposite party.

Therefore, Complainant prays this Hon'ble Commission to direct the opposite party to return back cost of the test reports Rs.1850/- along with future interest @ 36% P.A. pay the damages / Compensation / Mental Agony of Rs.2,00,000/- to the complainant the costs of the complaint and pass such other relief or reliefs as the Hon'ble Commission deems fit and proper in the circumstances of the case and in the ends of justice.

2. The Opposite party Doctor filed his counter stating that, complainant was admitted in his hospital with stomach pain and tests were conducted and test reports were handed over to her and those are with the complainant. After seeing the test reports opposite party Doctor advised the complainant to get ready for surgery as she was suffering with multiple infections which needs surgery. It is incorrect that one of the test report of his hospital shows that the complainant is having HIV REACTIVE.

That the opposite party stated that he has not issued the report of HIV REACTIVE. The report was created by her and the report does not bear his signature, and the test report is created by her men to blackmail the opposite party. So point of Physical and mental sufferance to the complainant does not arise. The opposite party has no knowledge about obtaining test reports from SRI SAI DIAGNOSTIC CENTRE KAMAREDDY about HIV. The opposite party has no knowledge about testing of complainant by A.P.AIDS CONTROLE SOCIETY HYDERABAD. The opposite party not gave a test report by showing HIV Reactive. So he is not responsible for her mental agony and loss of prestige etc. The

opposite is unaware about her Psychic treatment. There is no negligence in discharging his duties.

The opposite party Doctor is not aware of issuance of legal notice. There is no dispute so point of settlement does not arise and the opposite party is not liable to pay an amount much less Rs.2,00,000/-. The complainant filed this false complaint to extract amount from opposite party. The opposite party not issued any false test report showing H.I.V. reactive hence, he is not liable to pay any compensation. The opposite party hospital is having good reputation for best services at Kamareddy town to the needy patients. By filing this false complaint the complainant caused much mental agony to opposite party and she is liable for all consequences. Hence prayed to dismiss the complaint with costs.

3. During enquiry, the complainant filed her evidence affidavit as Pw-1 and also examined 2 other witnesses as Pw-2 and Pw-3 on her behalf and got marked Ex.A1 to A6 documents and closed her evidence.

The opposite party not adduced any evidence nor filed any Documents to prove his defense.

4. Heard arguments.

5. The points for consideration are:-

- i) Whether there is any deficiency of service on the part of opposite party?
- ii) Whether the Complaint is entitled for Compensation?
- iii) To what Relief?

6. **POINT No.1 & 2 :** There is no dispute that the complainant got admitted in opposite party hospital and underwent certain tests on advise of opposite party Doctor by paying requisite fee. It is also not in dispute that after conducting tests, tests reports were handed over to complainant by opposite party. The issue in dispute is the result of tests conducted by opposite party.

In order to prove the case the complainant filed her affidavit as Pw-1 and Ex.A1 to A6 documents are marked. Ex.A1 is Medical report of Akhila Diagnostics dated 30-11-2013 (HIV test report). Ex.A2 Medical report of SDH Surya Hospital, dated 2-12-2013 (HIV test reports). Ex.A3 Medical report of Sri Sai Diagnostics dated 11-12-2013 (HIV test report). Ex.A4 Laboratory Report form of AP State Aids Control Society, Hyderabad dated 30-12-2013 (HIV test report). Ex.A5 Prescriptions of Dr.Shiva Prasad of Vivekananda Hospital, Hyderabad dated 15-07-2014 and 05-02-2015. Ex.A6 office copy of Legal notice dated 28-12-2013.

The case of the complainant is that, on 30-11-2013 she got admitted in opposite party Hospital with stomach-ache and on advice of opposite party Doctor she underwent various medical tests including HIV test after paying fee of Rs.1850/-. On 02-12-2013 complainant went to opposite party hospital and collected the reports, and the complainant and her family members shocked to notice that as per the test report complainant is HIV positive. Immediately on advice of her in-laws the complainant approached another Laboratory at Domakonda and again underwent the HIV test and the test report was HIV negative as per Ex.A2. To confirm the same again the complainant underwent HIV test by another Lab at Kamareddy on 11-12-2013 and again got HIV negative report as per Ex.A3. As per advice of family members of complainant, for getting authenticate report complainant approached AP State AIDS Control society, Hyderabad got tested and obtained HIV negative report on 30-12-2013 as per Ex.A4. By seeing the opposite party test report, the complainant undergone depression and developed a suicidal tendency and also tried to commit suicide. By seeing the complainant's attitude her brother took her to psychiatrist at Hyderabad on 15-07-2014 who prescribed medicines to improve her moods and the complainant was periodically visiting the psychiatrist as per Ex.A5. As per Ex.A6 dated 28-12-2013 complaint claimed Rs.2,00,000/- (Two

Lakhs Rupees only) from opposite party Doctor, for giving false report causing mental agony to complainant and all the family members but the complainant did not file the postal slip or acknowledgment card as such the service of notice is not proved. We also noticed an unmarked document i.e., complaint in telugu dated 07-12-2013 addressed to SHO Kamareddy to take action against opposite party hospital. On 31-01-2019 Pw-2 i.e. Smt.Sayera Banu neighbor of opposite party hospital and Pw-3 Abdul Majeed, who also resides very near to opposite party hospital filed their evidence affidavits in which they stated that on 02-12-2013 opposite party doctor admitted his mistakes of issuing AIDS report i.e., Ex.A1 and requested them not to take any action against him in the matter. Later on 07-12-2013 the opposite party Doctor and his employees sent some person to complainant house called them to Kishtamma Mandir and again taken the complaint along with Pw-2 and Pw-3 to the house of Local MLA Brother and threatened them to compromise the matter as such the complainant gave complaint to the police on 07-12-2013. But case was not registered by Police. The threatening of opposite party Doctor and his men was neither narrated in the complaint, nor in chief of Pw-1 and Ex.A6 legal notice as such threatening by opposite party Doctor and his employees / technicians on 02-12-2013 and 07-12-2013 is not proved by complainant.

The main Ground on which of the opposite party defended the complaint is that the report does not bear his signature and the HIV +ve report is created by complainant and her men to blackmail opposite party Doctor. Therefore the statement of opposite party Doctor do not hold any force as Ex.A1 report is given by opposite party Diagnostic centre on its Letter head signed by technician of opposite party Doctor's Diagnostic Centre. Even after giving ample opportunities, the opposite party Doctor did not chose to lead any evidence accordingly opposite party's evidence was closed and posted for arguments. Counsel for complainant argued the matter and relied upon orders rendered by Maharashtra

State consumer Disputes Redressal Commission in FA.No.65 of 2011 in the case of Apex Hospital Vs Subhash Mohan Rao Pachlore dated 02-12-2014. The opposite party not advanced his arguments.

Coming to the facts of the case, the complainant approached opposite parties Doctor with complaint of Stomach-ache and underwent certain tests to identify the disease. But the opposite party Doctor has not followed the WHO Guidelines in respect of HIV Test, as the HIV test should be conducted with consent of the patient and secondly the result of said test 'HIV REACTIVE (Positive)' should be kept confidential between Doctor and the complainant. It is further observed that as per the said guidelines of WHO released in the run-up to World AIDS Day-2013 no confirmative test was conducted by opposite party Doctor and without confirmative test the result of the first test report which was HIV positive was delivered to the family of the complainant, which shows negligence and deficiency of service on part of the opposite party Doctor. The false report showing HIV Positive mentally disturbed the complainant and her family members and the complainant had gone into depression having not in a position to talk with anyone. The said report also affected her family life and her family degraded in society. As per Ex.A5 issued by Dr. K.Shiva Prasad, consultant Psychiatrist, the status of complainant was feeling tense, sadness, anxious, sleeplessness, assaulting her children, lost concentration on work and completely stopped her tailoring work, hence the said Doctor prescribed her anti-depression medicines.

We have gone through the Ex.A1 HIV +ve test report dated 30-11-2013 showing +ve and other reports issued by other Pathologists under Ex.A2, A3, A4, legal notice i.e., Ex.A5. The case law submitted by counsel for complaint, is applicable to the present case to some extent. Therefore the disclosure of false HIV +ve report by the opponent Doctor's Diagnostic Centre without conducting

confirmative test, causing mental shock to complainant and her family members, where by the complainant went into depression which further caused mental stress to complainant and blot in the society, leads to medical negligence and deficiency of service on the part of opposite party Doctor as such, the complainant is entitled to receive compensation of Rs.1,00,000/- from opposite party Doctor which includes costs of tests conducted by opposite party Doctor, other Pathologists at various places, visits and treatment by Psychiatrist etc.

In the facts and circumstances of the case, we are of considered view to allow the complaint in part, directing the opposite party Doctor to pay a sum of Rs.1,00,000/-(One Lakh rupees only) to the complainant towards compensation for her mental agony and also to pay the costs of litigation.

**IN THE RESULT**, the Complaint is **"Allowed"** in part as under:

- i) The Opposite party Doctor is directed to pay a sum of Rs.1,00,000/- (One Lakh rupees only) to the complainant towards compensation for her mental agony within one month from date of receiving of this order.
- ii) The Opposite party also directed to pay Rs.3,000/-(Rupees Three thousand only) towards costs of the complaint to the complainant.
- iii) The Opposite party further directed to comply the above 1 and 2 directions within one month from the date of receipt of this order.

Typed to dictation, corrected and pronounced by the Lady Member in Open Commission on this the 03<sup>rd</sup> day of September, 2020.

Sd/-  
**MEMBER**

Sd/-  
**PRESIDENT**



:: APPENDIX OF EVIDENCE ::  
(Witnesses examined on behalf of)

For the Complainant :  
Evidence affidavits of  
Pw1, Pw2 & Pw-3 filed.

For the Opposite Party:  
Not filed

:: EXHIBITS MARKED ::

For the complainant:

- Ex.A1 Medical report of Akhila Diagnostics dated 30-11-2013 (HIV test report)
- Ex.A2 Medical report of SDH Surya Hospital, dated 2-12-2013 (HIV test reports).
- Ex.A3 Medical report of Sri Sai Diagnostics dated 11-12-2013 (HIV test report).
- Ex.A4 Laboratory Report form of AP State Aids Control Society, Hyderabad dated 30-12-2013 (HIV test report).
- Ex.A5 Prescriptions of Dr.Shiva Prasad of Vivekananda Hospital, Hyderabad dated 15-07-2014 and 05-02-2015.
- Ex.A6 office copy of Legal notice dated 28-12-2013.

For the Opposite party :

NIL

Sd/-  
**MEMBER**  
(YS)

Sd/-  
**PRESIDENT**