

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1893 OF 2023

(Against the Order dated 18/04/2023 in Appeal No. A/41/2021 of the State Commission
Kerala)

1. SHRIVARI SONO SCANS

CT COMPLEX NEAR JOSCO JEWELLERY MAIN ROAD

KANHAGABD

KOZHIKODE

KERALA

.....Petitioner(s)

Versus

1. B SURESHAN T.M

THYVALAPPIL HOUSE KODOTH PO KASARGOD

KASARAGOD

KERALA

.....Respondent(s)

BEFORE:

HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER

FOR THE PETITIONER : MR. CHANDRASHEKHAR CHAKALABBI, PROXY COUNSEL
(WITH AUTHORITY)

FOR THE RESPONDENT : MR. ROY PAUL, ADVOCATE

Dated : 04 November 2024

ORDER

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondent as detailed above, under section 58(1)(B) of Consumer Protection Act 2019, against the order dated 18.04.2023 of the State Consumer Disputes Redressal Commission, Kerala (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 41/2021 in which order dated 29.01.2021 of District Consumer Disputes Redressal Forum, Kasaragod (hereinafter referred to as District Forum) in Consumer Complaint (CC) No. 173/2019 was challenged, inter alia praying for setting aside the order dated 18.04.2023 passed by the State Commission and order dated 29.01.2021 passed by the District Forum.

2. The Revision Petitioner (hereinafter also referred to as Opposite Party) was Appellant before the State Commission and Opposite Party before the District Forum and the Respondent (hereinafter also referred to as Complainant) was Respondent before the State Commission in FA/41/2021 and Complainant before the District Forum in Complaint No. 173/2019.

3. Notice was issued to the Respondent on 31.08.2023. Parties filed Written Arguments on 12.12.2023 (Petitioner) and 14.12.2023 and 29.01.2024 (Respondent) respectively.

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

On 12.07.2019, the Complainant consulted Dr. Beena as he was suffering from stomach pain. Dr. Beena advised for sono scanning at OP's scanning centre. The OP conducted scanning on him, the report issued by OP revealed that there was serious illness in the liver and gallbladder. Dr. Beena advised the complainant to have expert medical treatment. Therefore, the complainant went to Kasturba Medical College (KMC) for scanning and further treatment. After scanning at KMC, it was revealed that the complainant was not suffering from any illness in the liver or gall bladder. OP issued a wrong scan report, which suggested liver disease, the complainant suffered much mental agony and hardships, hence, filed complaint before the District Forum.

5. Vide Order dated 29.01.2021, in the CC No. 173/2019, the District Forum partly allowed the complaint and directed the OP to pay Rs.25,000/- towards compensation for deficiency in service along with litigation cost of Rs3000/- with one month of the receipts of the order.

6. Aggrieved by the said Order dated 29.01.2021 of District Forum, Petitioner appealed in State Commission and the State Commission vide order dated 18.04.2023 in FA No. 41/2021 dismissed the Appeal and confirmed the order passed by the District Forum.

7. Petitioner has challenged the said Order dated 18.04.2023 of the State Commission mainly on following grounds:

- i. The State Commission erred in granting the order dated 18.04.2023, dismissing the appeal of the petitioner and upholding the order passed by the District Forum. The State Commission failed to appreciate that the petitioner did not provide any advise to the Respondent regarding any disease.

- ii. The Sono Scanning procedure does not fall under the purview of medical negligence and deficiency in service. (Relied upon the judgment passed by the Hon'ble Supreme Court in Dr. (Mrs.) Chanda Rani Akhouri & Ors. Vs. Dr. M.A. Methusethupathi & Ors. (Civil Appeal No. 6507 of 2009).
 - iii. It is an admitted fact that the respondent did not consult the petitioner and the petitioner did not provide any advice regarding any disease. Therefore, there was no breach of duty on the part of the petitioner. The petitioner conducted the Sono Scanning using standard procedures and techniques, and there is no dispute regarding the same. The scanning report handed over to the respondent mentions the limitations of ultrasound scanning and suggests seeking a review scanning with investigations in case of a difference of opinion.
 - iv. The State Commission failed to appreciate the existence of two contradictory reports. The State Commission should; have verified the accuracy of both reports before passing an order on the alleged deficiency or medical negligence. The State Commission failed to consider the Respondent's admission that Dr. Beena advised him regarding the Sono Scan film. Dr. Beena is not related to the petitioner and should be considered separately from the petitioner's responsibilities.
 - v. The State Commission did not consider the absence of evidence supporting the correctness of KMC, Mangalore report. The District Forum's decision to accept the KMC report as correct without proper proof or expert opinion is questionable.
- (vi) It is admitted fact that neither the respondent consulted the petitioner nor he advised him for any disease. There is no breach of duty.
- vii. The State Commission failed to appreciate that the petitioner is a scanning centre having much repute in the District of Kasargod and not even a single allegation whatsoever is raised against the firm from its inception. The erroneous order passed against the firm is going to harm the reputation that has been build up over the years and would affect the business of the firm.
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.

8.1 In addition to the averments made under the grounds (para 7), the petitioner contended that Petitioner has been practicing in the field of Sonology and Ultrasonography since 1991. The Petitioner has obtained a Diploma in Health Sciences in Ultrasonography and Masters of Science in Diagnostic Ultrasonography from Annamalai University. Petitioner is running a Centre for General USG, HRSG, Colour Doppler Imaging & Echo Cardiography since last 15 years. He is known for his best report. The respondent sought medical attention from Dr. Beena at Poodamkallu. The petitioner conducted the Sonology and generated report, based on the petitioner's expertise and the patient's condition at the time of examination, was handed over to the respondent with a disclaimer stating that if there were differences of opinion, a review scanning could be requested, supported by relevant investigations, as ultrasound scanning has inherent limitations. It is further contended that the petitioner neither reported nor informed about any serious disease nor provided advise for further tests or treatment. In such a scenario holding the petitioner liable becomes questionable as there was no indication or recommendation from the petitioner for additional medical interventions. The scanning report explicitly mentions the diagnostic limitations associated with ultrasound scanning. It suggests that in cases of differences of opinion, a review scanning supported by related necessary investigations should be sought. It is also contended that the dynamic nature of a patient's condition implies that ultrasound findings can change over time. Without an expert opinion, accepting a single report as conclusive evidence might not be reasonable. Dr. Beena, who advised the respondent, is neither a party nor has her evidence been taken on record. The absence of her perspective creates a gap in understanding the complete context of the case.

8.2 On the other hand Respondent contended that the petitioner is not a Sonologist as claimed by him in the affidavit. He is only a medical graduate (MBBS) and do not possess any Postgraduate (PG) qualification in medicine from any recognized institution or university to claim as a specialist like 'Consultant Sonologist' or Sonologist. The document produced by the Travancore Cochin Medical Council (TCMC) of Kerala made it clear that Dr. K.S. Bhat can practice as "Trained in Sonology" only as there is no title as 'Sonologist' or 'Consultant Sonologist' approved by Medical Council of India (MCI) or any other competent authority. So Dr Subrahmanya Bhat is not permitted to use title like 'Sonologist' or 'Consultant Sonologist'. He can sign USG reports as 'Trained in Sonologist' only. Dr. K.S. Bhat is authorized by the District Medical Officer of Health (DMOHG) Kasaragod at Kanhangad to run a Genetic Clinic under Pre-conception and Pre-natal Diagnostic Technique (PCPNDT) Act 1994. The authorization certificate clearly states that it is for carrying out Prenatal Diagnostic Procedures using Ultra Sono Gram (USG)/Ultra Sound. This means the Petitioner can perform USG studies only as in Pregnancy cases only. But he was advertising his Genetic Clinic as Centre for General Sonology, USG, HRSG, Colour Doppler Imaging, Echo Cardiography (Foetal & Adult) and practicing and signing accordingly and signing USG reports as 'Consultant Sonologist'/Sonologist. The scanning report dated 13.07.2019 produced before the District Forum may be considered as the proof of the above illegal practice. Such

medical practice can be done by a doctor with PG qualification in Radiology (Radio Diagnosis & Imaging). So there is misleading advertisement too on the part of the petitioner. So his practice of General scanning for patients of all age and sex is in violation of conditions in registration certificate meant for Genetic Clinic. It is further contended that Dr. Griselda Noronha (Asstt. Professor of Dept. of Radio Diagnostics & Imaging at Kasturba Medical College (KMC) Mangalore is a competent authority and specialist to perform USG. Dr. K.S.Bhat had no authority to do USG Study on the Respondent. Hence, there is illegality and deficiency of services on his part. It is also contended that during during 2004, Dr. K.S. Bhat was practicing as an Obst. & Gynaecologisg (Specialist in Reproductive Medicine and Sonologist) in Bhat's Poly Clinic at Kanhangad exhibiting a fake 'MNAMS' degree. A prescription dated 21.08.2004 is produced. When this quackery was known to the public, the Petitioner became notorious and has to close down his clinic. He has never displayed that title and degree thereafter as found in his subsequent USG report. It is further contended that Petitioner's registration certificate for Genetic Clinic was issued by the DMOH in 2008, he started USG practice only in 2008. As claimed by the petitioner, he is not a reputed Sonologist but a quack violating the direction of TCMC dated 30.08.2008. He was continuing practice as General Sonologist and signing report as Consultant Sonologist, cheating all. TCMC-Kerala has found the Petitioner guilty of continuing violation of the direction of the Council and had punished him by removing his name from the Register of Modern Medicine on 17.05.2021 for a period of two months. The low quantum of punishment was as a result of his confession for TCMC that he has committed mistake. The news of punishment of deregistration of TCMC for professional misconduct was widely shared by media exposing him and denting his reputation. Consequent to his deregistration by TCMC, Indian Medical Association too has suspended his Membership since, he was no more a doctor during the disqualified period. IMA President had called explanation from the Petitioner for the above unethical conduct on 15.04.2008. He had replied on 09.06.2008 that 'I hereby consent to withdraw the word consultant sonologist'. Following deregistering by TCMC on 11.08.2021. DMOH had strictly directed him not to do USG studies other than permitted by PC & PNDDT Act. The Petitioner appealed to National Medical Council (NMC) challenging the deregistration order of TCMC dated 17.09.2021. Vide order dated 01.06.2023, NMC upheld the order of TCMC. The Petitioner had confessed before NMC and has not challenged the said order of NMC, hence the order become absolute and binding on him. Despite disciplinary actions and warnings by Medical Council since 2008, for violation of direction of TCMC, the petitioner has been continuing the same during the last 15 years. The Petitioner is playing dilatory tactics to escape from punishment. The Diploma in Health Sciences in USG and Master of Science in Diagnostic USG-Certificates dated 09.11.2011 from Annamalai University is not recognized by TCMC or MCI as per his own admission before TCMC in 2008. The letter head of Petitioner is a proof of continuing violation of the direction of TCMC. Still the Petitioner has done USG illegally on the respondent without competency skill or authorization violating the rules, laws, and directions of authorities. Apart from that he has issued totally wrong report conveying serious illness of liver and gall bladder and imminent danger to his life. It is further contended that the Respondent is a daily wage earner (coolie) and the only bread winner of a 6 member family. The Petitioner in his written version before the District Forum has

depicted that the Respondent as a Chronic Alcoholic addict and drunkard. The petitioner had defamed the respondent. There was no basis for such statements and it was totally out of context, which amounts to violation of medical ethics, which caused mental agony to the Respondent. In fact the Respondent do not have any health problem related to alcohol, as proved by the medical investigation reports from KMC, Mangalore. It is further contended that at the time of filing the complaint before the District Forum or at the time of Appeal before the State Commission, the Respondent was unaware about the fact that OP were strictly banned from conducting USG studies other than pregnancy scanning by TCMC-Kerala and NMC. He is authorized to do pregnancy scanning only as per under PC&PNDT Act, 1994. Due to faulty and fraudulent report issued by the Petitioner, the Respondent was constrained to approach KMC, Mangalore, which is 100 km away from the residence of respondent, for further investigation and treatment for which he suffered mental agony, hardships, damages, sufferings, loses of huge money and time. It is also requested that the quantum of compensation for the damages granted by the District Commission is disproportionately low considering the gravity of offence which came out recently to the knowledge of respondent. Hence, pray for enhancement of compensation to the tune of Rs.5,00,000/-.

9. There are concurrent findings of both the Fora below as regards deficiency in service on the part of Petitioner herein. Extract of relevant paras of orders of State Commission is reproduced below:

“8. We have considered the contentions raised by both the parties and also perused the records. The specific case of the complainant is that he was having stomach pain and so he consulted Dr. Beena. Dr. Beena advised him to take ultra sound scan of the abdomen and therefore approached the appellant for abdominal scan. The ultra sound scan was done on 13.07.2019. The impression of the scan report shows that (1) uniformly enlarged liver shows coarse echotexture with prominent echogenic IHBR. (2) Distended gall bladder with reactionary wall edema. The complainant again consulted Dr. Beena with this scan report. Since as per the scan report there was serious problem in the liver and gall bladder he was advised to get an expert medical treatment. The complainant as per the doctor’s advice went to KMC where he underwent several tests including scanning and blood test on 15.07.2019. All the tests suggested that there was no problem in the liver or gall bladder. He had unnecessarily undergone much mental agony and hardship due to the wrong report made by the appellant. To prove his case the complainant has produced 11 documents, all are medical reports and also adduced oral evidence. The scan report issued by KMC dated 15.07.2019 just two days after the first report shows that there was no obvious sonological abnormality detected in the abdomen and pelvis. Further Gastro- duodenoscopy done at KMC on 15.07.2019 itself shows that there was normal Gastro-duodenoscopy. These

reports show that there was no problem in the liver or gallbladder. Further blood and urine tests were also carried out on 15.07.2019 to check whether there was problem in the liver or gallbladder. The lab reports (4 in Nos.) dated 15.07.2019 also show that there was no problem with the liver or gall bladder. These reports suggested that the complainant has no serious disease as against the report given by the opposite party. Further, the complainant has deposed that he was not treated for any disease connected with liver or gall bladder thereafter. The opposite party while cross examining the complainant did not challenge the correctness of the scan report or other tests carried out at KMC. Moreover, opposite party has not given any oral or documentary evidence in support of their case. Since the scan report and blood tests carried out at KMC just two days after the scan report of the opposite party suggest that there was no problem either in the liver or gall bladder, it would clearly show that the scan report issued by the opposite party was wrong. In the above circumstances, no expert evidence was required to conclude that the scan report issued by the pathologist of the Sono Scan was wrong. Issuing of wrong scan report is as a result of the negligence by the Pathologist in scanning the patient. It is a clear case of deficiency in service and negligence in diagnosing the illness of the patient and issuing an erroneous test result. Issuing wrong report which suggested serious problem with the liver naturally will cause much mental agony and hardship to the complainant.”

Extract of relevant paras of District Forum’s order is also reproduced:

“3. The complainant filed chief affidavit re-iterating the averments in complaint. Opposite party cross examined PW1 sonological report signed by Dr.K.S Bhat consultant sonologist dated 13/07/2019 is produced. Opposite party did not dispute the genuineness or findings recorded in the report. Complainant also produced scanning report issued by KMC, Mangalore dated 15/07/2019 report shows that no obvious sonological abnormality detected in the abdomen and pelvis. Opposite party did not deny those documents not adduced oral evidence. Lab result of Mangalore is also annexed with report. In cross he deposed that test report is given to Dr. Beena and Dr. Beena told him there is some complication to lever and urinary bladder and refered to Mangalore. Opposite party did not adduce any oral evidence.

Following points raised for consideration in the case:-

a) Whether there is any deficiency in service from the part of opposite

party?

b) Whether complainant entitled for compensation

c) If so for what reliefs?

For convince all the points are considered together.

4. The fact remains that evidence made available in the case both documentary and oral reveals that complainant consulted Dr. Beena with a complaint of stomach ache. Scanning was advised accordingly scanning is done. Opposite party while cross examination did not dispute the correctness of the test result findings recorded by KMC Mangalore. No suggestion to complainant to the effect that medical records are falsely prepared for the case or on what aspects they are wrong. Admission is the best evidence and no further proof is necessary in the case that complainant consulted initially scanning was advised. Scanning report is issued by opposite party, findings recorded revealed uniformly enlarged liver.

5. But on the other hand test results of the complainant issued by KMC Mangalore shows no obvious sonological abnormality detected in the abdomen and pelvis. Thus findings of the very same result of complainant issued by both parties differ one against the other and patient thus really not only confused but also suffered mental tension, agony and there is deficiency in service of opposite party in diagnosing the illness and issuing test results. Opposite party did not adduce any oral evidence. Opposite party gave erroneous test reports to the complainant resulting in "mental trauma". Test report is outcome of negligence such acts by the opposite party deserves to be viewed 'seriously'. The test report provided by the lab had indicated serious problem it shook the complainant and his family badly with two contradictory results.

Learned counsel for opposite party vehemently argued that complainant has not followed the procedure and principles of evidence act. As far as consumers Fora is concerned strict principles of Evidence Act or CPC or CRPC is not followed complainants being a layman who came forward personally to redress his grivence.

A perusal of test result shows that respondent is a qualified pathologist, but the duty of care required in such case to give a correct findings, which was not given in this case, is a clear instance of medical negligence on the part of opposite party. Opposite party failed to do, which was required by prudent pathologist in such matter and committed medical negligence in submitting the incorrect scan

report relating to the complainant. Opposite party is therefore, definitely deficient in service.

6. The duty of care of doctor/pathologist owes to the patient is very important. A person who holds himself ready to give medical advice or treatment impliedly undertakes that he is proposed of skill and knowledge for the purpose. A breach on any of the duties will support an action for negligence by the patient.

We have referred the citations by Honourable Supreme Court in V. Krishan Rao Vs Nikhil Super Specialty Hospital another (2010) 5 sec 5/3 and Samira Kohli Vs Dr. Prabha Manchanda and another (2008) 2 sec 1.

7. Complainant did not adduce any evidence of actual financial loss suffered by him in this regard. But still he managed to go over to Mangalore and conducted test by spending his hard earned money due to wrong mis-leading finding on test results by opposite party and therefore considering the nature and attended circumstance of the case forum finds that a sum of Rs. 25,000/- is found reasonable compensation to be paid by opposite party to complainant.

8. In the result complaint is allowed in part directing the opposite party to pay Rs. 25,000/- (Rupees Twenty Five thousand only) towards compensation for deficiency in service along with litigation cost of Rs. 3000/- (Rupees Three thousand only) within one month of the receipts of the order.”

10. Both the Fora below have given well-reasoned orders, we are in agreement with their observations and findings and find no reasons to interfere with the same. We have carefully seen the report dated 13.07.2019 issued by Petitioner herein, report dated 15.07.2019 of Kasturba Medical College Mangalore and other medical records placed on record. We have also perused various documents referred to by the Respondent in his contentions like orders dated 30.08.2008 and 17.05.2021 of Registrar, Travancore Cochin Medical Council, Certificate of Registration issued by D.M.O. Health, order dated 01.06.2022 of N.M.C. etc. and other relevant records and hold that State Commission has rightly come to a finding of negligence and deficiency in service on the part of Petitioner herein. As was held by Hon'ble Supreme Court in catena of judgments^[1] that the revisional jurisdiction of the National Commission is extremely limited, it should be exercised only in case as contemplated within the parameters specified in the provision i.e. when 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. It is only when such findings are found to be against any provisions of law or against the pleadings or evidence or are found to be wholly perverse, a case for interference may call for at the second appellate

(revisional) jurisdiction. In exercising of revisional jurisdiction, the National Commission has no jurisdiction to interfere with concurrent findings recorded by the District Forum and the State Commission, which are on appreciation of evidence on record.

11. In view of the foregoing, we find no illegality or material irregularity or jurisdictional error in the order of the State Commission, hence the same is upheld. Accordingly, Revision Petition is dismissed with costs of Rs.15,000/- to be paid by Petitioner herein to the Respondent herein within 30 days of this order. As regards request of Respondent herein for enhancement of compensation to Rs.5.00 lakhs is concerned, the same cannot be considered as the Respondent has not challenged the orders of District Forum and State Commission and the same have become final as far as Respondent is concerned. Hence, in the Revision Petition filed by the Petitioner herein, request for enhancement of compensation cannot be considered.

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

[1] Ruby (Chandra) Dutta Vs. United India Insurance Co.Ltd. [(2011) 11 SCC 269, Sunil Kumar Maity Vs. State Bank of India and Ors. (2022) SCC OnLine SC 77, Lourdes Society Snehajali Girls Hostel and Another Vs. H & R Johnson (India) Limited and Ors. (2016) 8 SCC 286, T.Ramalingeswara Rao (Dead) Through Legal Representatives and Anr. Vs. N. Madhava Rao and Ors. (2019) 4 SCC 608, Rajiv Shukla Vs. Gold Rush Sales and Services Limited and Anr. (2022) 9 SCC 31

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DR. INDER JIT SINGH
PRESIDING MEMBER