

**BEFORE THE TELANGANA STATE CONSUMER DISPUTES  
REDRESSAL COMMISSION: HYDERABAD.**

**CC.NO.5 OF 2017**

**Between:**

1. Renukuntla Ravi Raju,  
S/o. Late R.P. Raju,  
Aged 44 years,  
Occ: Ex-Driver,  
R/o.H.No.10-2-20,  
Ramanjaneya Colony,  
Kothagudem town and Mandal,  
Khammam District. ....Complainant

**And**

1. M/s.Poulomi Hospitals,  
ECIL Main Road,  
Secunderabad,  
Rep by Dr. Nanda Kumar B.Madhekar,  
M.S., M.ch., Urologist, R/o.Flat No.A2 &  
B17, Rukminipuri Colony,  
E.C.I.L.Main road, Dr.A.S.Rao Nagar,  
Main Road, Secunderabad-062, Hyderabad.
2. M/s. Poulomi Hospitals,  
ECIL Main Road,  
Secunderabad,  
Rep by Dr. Jayanth, M.D.,  
R/o.Flat No.A2 & B17,  
Rukminipuri Colony,  
E.C.I.L.Main road, Dr.A.S.Rao Nagar,  
Main Road, Secunderabad-062,  
Hyderabad.
3. M/s. Poulomi Hospitals,  
ECIL Main Road,  
Secunderabad,  
Rep by Dr. Prasad Behara.  
R/o.Flat No.A2 & B17,  
Rukminipuri Colony,  
E.C.I.L.Main road, Dr.A.S.Rao Nagar,  
Main Road,  
Secunderabad-062,  
Hyderabad. .....Opposite Parties

(C.C. is dismissed in so far as opposite party no.2  
as per the docket order dt.4.9.2019)

Counsel for the Complainant : M/s.Dodda Prasad

Counsel for the Opposite Parties : M/s.Ramesh Kumar Nayani  
- OPs.1 & 3.

**QUORUM: HON'BLE SRI V.V.SESHUBABU, MEMBER  
&  
HON'BLE SMT R.S. RAJESHREE, MEMBER**

**MONDAY, THE FOURTH DAY OF DECEMBER,  
TWO THOUSAND TWENTY THREE**

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**Order : (Per Hon'ble Smt.R.S.Rajeshree, Member-Non -  
Judicial)**

01). This is a complaint filed by the Complainant under Section 17(1) (a) (i) of the Consumer Protection Act, 1986, praying this Commission to direct the Opposite Parties:

- To pay compensation amount of Rs.50,00,000/- (Rupees fifty lakhs only) with interest @ 24% p.a., from the date of complaint till the realization; and
- To award costs of the petition;

02). Briefly stated facts of the case are that the complainant started his career as Diesel Auto Mechanic and was a successful technician in the said field. In the year 2007 he suddenly developed stomach pain due to which he approached the Kothagudem Govt. Area Hospital and from there he was referred to Gandhi Hospital, at Gandhi Hospital he was tested and diagnosed to have stones in the bladder, due to which he was operated but however the doctor at Gandhi Hospital had left the operated portion open in order to ooze out the pus that was formed inside and subsequently the outer portion was sutured, leaving open the inner portion and after one month he was discharged.

After that in the year 2009 he developed hernia due to which he was approaching Area Hospital every now and then and as he had 'Rajiv Arogya Sree Health Insurance Card' he had approached the opposite party hospital on 9.7.2009 where he was admitted and underwent all the investigations done by the opposite party and the ultrasound scan of whole abdomen was also taken and the report stated that both the kidneys are normal in contour and echo texture, the size of the right kidney was noted as : 96 x 48 mm; left kidney size: 117 x 60 mm. On 20.7.2009 the opposite parties have performed the surgery for Hernia and on 31.7.2009 he was discharged from the opposite party hospital but he was in regular touch with opposite party no.1 who has been prescribing the medicines regularly. Due to this ill health he had to take rest for several days and as he was advised not to take

physical strain he started working as a driver for light motor vehicle but however his health condition has been deteriorating.

While so, in the year 2011 when he went to Calcutta to visit his father-in-law on 10.10.2011 he developed severe stomach pain due to which he approached Dr.Saikat Sarkar at Arogya Maternity & Nursing Home, Tollygunge Circular Road, Calcutta. He was admitted at the hospital and on 21.11.2011 he was operated for hernia and a mesh was put in order to protect further pain, and during his stay there were several investigations and scans done and the doctor had informed that, his scan report had revealed that his "left kidney was not well visualised". It is only then he has realised that the opposite party hospital in 2009 while conducting the operation for hernia had fraudulently in collusion with each other has removed his left kidney without his knowledge, information and consent and the said fact has come to light only in 2011 when the doctor at Calcutta had informed.

On 16.5.2012 he again developed severe stomach pain then he approached Kothagudem Area hospital who referred him to Medicare Diagnostic Centre for medical test, USG abdomen and pelvis, wherein the said scanning report has also revealed that the left kidney was not visualised. Again on 13.6.2012 he had visited Mamata Medical College Hospital, Khammam. There also the scan report had revealed that left kidney was not visible and the complainant has been suffering since then, due to the fraudulent acts of the opposite parties, who had fraudulently removed his left kidney. Due to such culpable act of opposite party the complainant approached AP State Human Rights Commission and registered a case no.3735/2014 which was referred to Kushaiguda Police Station, Cyberabad, who had conducted investigations and inquiry and opined that the act committed by opposite party is deficiency of service and advised the complainant to approach Consumer Court and submitted the said report dated 4.2.2015.

That due to such fraudulent and deficient acts of opposite party the complainant has been suffering continuously from 2009. Due to which the precious life of the complainant had been ruined, his life span has been reduced and he has developed several malfunctioning and his urinary system has also totally crippled his life due to which his marital status has also been affected and he has no children till date. The opposite party doctors being

influential persons and the complainant being a poor man could not get justice, due to such deficient acts of opposite party he has been suffering continuously but the opposite party had removed his left kidney and earned about Rs 50,00,000/- by replacing it into another person. This act of opposite party amounts to deficiency of service. Hence having no other alternative the complainant is before this Commission seeking compensation for the fraudulent and deficient acts of the opposite parties.

03). The opposite party filed written version while admitting the complainant had visited their hospital for treatment of hernia , but however are speculative of the ultrasound report dated 9.7.2009. The opposite party also admitted that the complainant had undergone surgery for hernia at their hospital and the stay in the hospital is also not denied and further pleaded that the complainant had actually undergone treatment at Gandhi hospital prior to coming to their hospital and had underwent multiple surgeries and pleaded that non visualisation of the kidney does not necessarily mean that the kidney is removed, in case of atrophy of kidney, there is a possibility of non visualization of kidney and that there is no nexus between the surgery performed in 2009 and the alleged pain the complainant is suffering from.

The opposite party further pleaded that when the complainant had made a complaint before the Human Rights Commission, the matter was referred to Kushaiguda Police Station and the said police after conducting the enquiries have found that there is no substance in the allegations made in the complainant , as such closed the said enquiry, so also the case, further pleaded that, to receive a kidney for transplantation, huge process and regulations are involved under the special Act called "Organ Donation Act" and the donor of such kidney should be in a healthy condition whereas in the instant case, the complainant himself is suffering from stones in his kidneys and had underwent several surgeries for the same, as such, removing of the kidney does not arise. Further the opposite party had pleaded that for a kidney to be transplanted the donor and donee must be closely related and shall be in good health. The opposite party further pleads that after performing PCNL for renal calculus and Hernia removal on 20.7.2009 , the patient was discharged on 31.7.2009

and before his discharge, an ultra scan was done on 28.7.2009 on the left lumbar region to study the post operative condition and the said ultrascan categorically shows the presence of left kidney admeasuring 123 x 62 mm. and the same was shown to the complainant before his discharge and based on the said document, the Kushaiguda police had closed the enquiry and that they have not committed any negligent acts and the present complaint is filed with an intention to extract money from the opposite parties. The opposite parties further pleaded that the complaint is barred by limitation. Since in 2009 the complainant was treated by them and as per the case of the complainant he got the knowledge of non visualization of kidney in the year 2011, as per Sec.24 of C.P.Act, 1986, the complaint is to be filed within two years of cause of action whereas the present complaint is filed in the year 2017, as such, the same is barred by limitation. Further since the complainant had not paid any consideration and availed the services under Arogyasree Scheme, he does not fall into the category of Consumer, as such, the complaint is not maintainable. The complaint is devoid of merits, as such prayed to dismiss the complaint with costs.

04). The complainant filed evidence affidavit and got marked Exs.A1 to A11. Opposite parties did not choose to file evidence affidavit and no documents are marked on their behalf.

05). Heard the complainant counsel and perused the entire material available on record.

06). Now the points for consideration are:

- i. whether the complaint is barred by limitation?
- ii. whether the complainant is a consumer?
- iii. whether the opposite parties have fraudulently removed the left kidney of the complainant?
- iv. whether the complainant is entitled for the reliefs sought in the complaint?
- v. if yes, to what extent?

07). **Point no.i**: The opposite party had taken a preliminary objection that the complaint is barred by limitation; that as the

complainant had approached their hospital in the year 2009 and he alleges that in the year 2011 when he had taken an USG at Calcutta, that is when he came to know that his left kidney was not visualised and based on the said report the present complaint is filed and the complaint is filed in the year 2017, which is beyond two years and as per section 24 A the complaint has to be filed within two years of cause of action. It is to be observed that the complainant has moved an application under section 24(A) of CP Act 1986, vide IA No 134 of 2015 and the same was allowed by this Commission vide orders dt.23.12.2016 by condoning the delay as such the point of limitation has been already addressed which has become final.

08). **Point no.ii** : The other preliminary objection raised by the opposite party is that as the complainant was treated under the Arogyasri Scheme and as the complainant had not paid any consideration for the services rendered by opposite party and as the Government has made the payments it is also a necessary party to the complaint. Admittedly the complainant was treated under the Arogya Sree Scheme, and at para no. 3 of the complaint the complainant specifically states that he has a Rajiv Arogya Sree Health Insurance card vide No. MC/NZD/8410. It is a fact borne by record that the complainant has not paid any consideration to the opposite parties but the Government has paid the consideration on behalf of the complainant hence it implies that the complainant has paid the valid consideration and had availed the services of opposite party as a beneficiary as such he falls into the definition of 'consumer'.

09). **Point No. iii & iv** : Coming to the merits of the case, it is the specific case of the complainant that in 2009 when he visited the opposite party hospital for treatment of hernia, both his kidneys were normal and the ultra sound scan dated 9.07.2009 reveals the same, which is also evident from Ex.A3 ultra sound scan of whole abdomen wherein it is mentioned as follows

- **Right kidney** size 96 x 48 mm; **Left kidney** size:117 x 60 mm. Both kidneys are normal in contour and echotexture. Corticomedullary differentiation is maintained. Cortical thickness normal. Left Pelvicalyceal system is mildly dilated. Right

pelvicalyceal system is normal. 2 cm. calculus noted in left renal pelvis”.

The whole case of the complainant is based on Ex A6, A7, USG of whole abdomen report dated 18.11.2011 of Medvue Medical Services, Kolkata, Ex A8- USG Abdomen and Pelvis report dated 16.05.2012 of Medicare Diagnostics, Kothagudem, Ex A9 - Ultra Sonography of Abdomen/Pelvis report dated 13.06.2012 of Mamata General & Super Speciality Hospital, Khammam, Ex.A10- USG Abdomen and Pelvis report dated 18.07.2014 of Medicare Diagnostics, Kothagudem, wherein, in all these reports it has been reported as “left kidney not visualised”. Based on the above documents the complainant had stated that as per Ex A3 when he visited the opposite party hospital, both his kidneys were normal and the opposite party while performing the Hernia operation had fraudulently removed his left kidney which is evident from all the above referred Exhibits.

10). Though the wordings in Ex.A6 are not conclusive in nature but Exs.A7, A8, A9 and A10 do provide such details. The opposite party who had appeared and filed written version but had failed to file any evidence affidavit nor any documents, and had contended in the written version that in case of Atrophy of kidney, the kidneys will not be visible. In a medical negligence case, when negligence is alleged and the complainant has supported his allegations with documentary evidence, the burden shifts on the opposite party to prove that they were not wrong and have rendered their services diligently, but in the instant case the opposite party did not choose to file any evidence nor had put any efforts to prove that the kidney was not visualised due to atrophy.

The opposite party themselves being experts are the competent persons to explain what is renal atrophy and that it causes shrinking of kidneys, and the kidney will shrink to such extent that it becomes invisible; that apart at para no. 15 of written version, the opposite party had specifically stated that at the time of discharge from their hospital an ultra sound was done on 28.07.2009 to study the left lumbar region post operation and the left kidney is very well visible in the said report with a measurement of 123 x 62 mm but no such report is filed before

this Commission. This commission is not an medical expert to analyse and conclude that in case of Atrophy the kidney will shrink to the extent that it becomes invisible, it is for the opposite party to furnish such proofs. A mere statement will not suffice, the same has to be established and proved with cogent evidence, the opposite party failed to substantiate their contention with sufficient evidence or medical literature. In the absence of the same an adverse inference can be drawn against the opposite parties that they might have certainly played some mischief with the complainant at the time of surgery for hernia in the year 2009.

11). Since the opposite party remained silent and in order to come to a truthful conclusion this Commission had sent the complainant for examination to the Gandhi Govt. Hospital at Secunderabad and instructed to examine the complainant and to report whether the left kidney of the complainant is visible or is removed by surgical intervention. The Gandhi Hospital had done the examination and sent the report on 19.7.2023, but unfortunately the said report which is marked as Ex C1 is not conclusive in nature since, firstly the said report is hand written which is not supported with any pathology report nor the films of MRI added to that in the said report it is noted as left kidney “**Not visualized**” at one point and at the same time says that the left kidney has a calculus in it, a perusal of Ex C1 report gives the measurement of Right kidney and the measurement of left renal fossa ( in common man’s language renal fossa is the place where kidney is located) the report had given the measurement of left renal fossa but not the left kidney; that apart the Gandhi Hospital had sent a CD along with the report but the same is empty. As such, the report of the Gandhi Hospital cannot be relied upon, as it has not stated anything conclusively.

That apart it is to be observed that the opposite party is well aware that the complainant was sent for examination to Gandhi Hospital and the said hospital had sent a report, in spite of the same the opposite party did not choose to come forward to give any explanation. Recently in CPL **Ashish Kumar Chauhan Vs Commanding Officer and others the Honble Supreme Court** in order dated 26<sup>th</sup> September, 2023 relying on its earlier decisions had invoked the principle of RES IPSA LOQUITUR and had set



aside the order of the Hon'ble NCDRC and awarded compensation to the complainant. In the instant case also the complainant by producing Exs.A6, A7, A8, A9 and 10 had substantiated that his left kidney is not visualized, and alleged that the same has been removed by the opposite parties without his consent during the surgery for Hernia. These documents speak for themselves, in view of these documents the burden shifts on the opposite party to prove that the left kidney was not removed but had shrunk due to atrophy and the same is not visualized but no such evidence is forth coming from the opposite parties.

Therefore based on the above discussion and failure on the part of the opposite party to produce the crucial document 'ultra scan' dated 28.07.2009 and the silence of the opposite party in not coming forward with any sort of explanation supported with evidence and medical literature, all these acts and avoiding and escaping behaviour of opposite parties leads us to irresistibly conclude that the opposite parties under the guise of Hernia operation had illegally removed the left kidney of the complainant, the opposite party had taken undue advantage of the ignorance of the complainant and deceived him, thereby not only causing organ loss to the complainant but the complainant is forced to live with the fear, frustration and disappointment.

12). Now coming to the compensation, strictly speaking the act committed by the opposite parties are criminal in nature. But here we are dealing with the loss and injury suffered by the complainant due to the acts of opposite parties, though any amount of compensation will not restore the loss suffered by the complainant. Since due to the act of the opposite parties, the life expectancy of the complainant has come down and he is forced to live with one kidney, what will the fate of the complainant be if unfortunately his right kidney fails.

However, while computing the loss suffered the following things are to be kept in mind i.e. life expectancy has reduced, the loss he may suffer in future, secondly the expenditure he would incur in further treatment, loss of future earnings, physical sufferance and the mental agony in the form of frustration, disappointment, though these sufferings cannot be calculated in monetary terms, but since the complainant had not provided any

details of earnings, we feel Rs 30,00,000/- would be reasonable compensation that can be awarded.

Hence we have no hesitation to conclude that it was unfair on the part of the opposite party to misuse the trust that the complainant had on the doctors who are considered next to God. The negligent acts of the opposite parties make them liable to pay a compensation and the complaint deserves to be allowed.

13). In the result, the complaint is allowed in part, directing the opposite parties No.1 & 3 jointly & severally:

- (i) To pay a compensation of Rs.30,00,000/- (Rupees Thirty lakhs only) to the complainant; and
- (ii) To pay Rs.25,000/- towards costs.

Time for compliance is one month from the date of receipt of this order.

**Sd/-**

**Sd/-**

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**MEMBER(M-J) MEMBER (M-NJ)**  
**Dt: 04.12.2023.**

**APPENDIX OF EVIDENCE**  
**WITNESS EXAMINED**

**For the complainant**

**For the Opposite parties**

Evidence affidavit of the complainant filed as PW.1.

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**Exhibits marked on behalf of the Complainant:**

- Ex.A1: Xerox Copy of the Case Sheet of the complainant.  
 Ex.A2: Xerox Copy of the Arogyasri Card of the complainant.  
 Ex.A3: Xerox Copy of the Arogyasri Discharge Summary of the Complainant issued by opposite party.  
 Ex.A4: Xerox Copy of the Prescription of the Opposite Party No.1  
 Ex.A5: Xerox Copy of the X-Ray IVP dt.11.7.2009 pertaining to the complainant issued by Opposite party hospital.  
 Ex.A6: Xerox Copy of the Case prescription of Dr.S.Sarkar,Kolkata.  
 Ex.A7: Xerox Copy of the Discharge Certificate issued by Arogya Maternity and Nursing Home at Kolkata.  
 Ex.A8: Xerox Copy of the Report of the USG Abdomen and pelvis.  
 Ex.A9: Xerox Copy of the Report of the Ultra Sonography of Abdomen/Pelvis of the complainant issued by Mamata General & Super Specialty Hospital.  
 Ex.A10: Xerox Copy of the report with regard to USG Abdomen and Pelvis issued by Medicare Diagnostics dt.18.7.2014.  
 Ex.A11: Xerox Copy of the lr. from Government of Telangana State, Police Department, P.S., Kushiguda, Cyberabad addressed to the Secretary, A.P.Human Rights Commission, Hyderabad.

**For the opposite parties** : Nil.

**Sd/-**

**Sd/-**

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**MEMBER(M-J) MEMBER (MN-J)**  
**Dt: 4.12.2023.**





VVS (M-J) & RSR (M-NJ)  
TELANGANA STATE  
CONSUMER DISPUTES  
REDRESSAL COMMISSION  
AT HYDERABAD

**CC.NO.5 OF 2017**

ORDER DATE : 04.12.2023

\*PMK