

A.F.R.
ORAL

STATE CONSUMER DISPUTES REDRESSAL COMMISSION
UTTAR PRADESH LUCKNOW
APPEAL NO. 2300 OF 2012

Ramesh Chandra son of Sri Ramvriksh resident of Mohalla Tulsiram Bichia Colony, District Gorakhpur

Appellant

Versus

1. Chief Medical Officer (C.M.O.) Medical Health and Family Welfare Department, Gorakhpur
2. Medical Superintendent , District Women Hospital, Gorakhpur

Respondents

BEFORE

HON'BLE MR. JUSTICE VIRENDRA SINGH, PRESIDENT
HON'BLE MR A.K. CHAUDHARY, MEMBER

For the Appellant : Sri Ambarish Kaushal Srivastava, Advocate
For the Respondents : None is present.

DATED: 19.03.2014

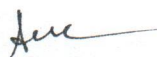
JUDGMENT

MR.JUSTICE VIRENDRA SINGH, PRESIDENT

This appeal has been preferred by the appellant/complainant against the judgment dated 03.09.2012 passed by the District Consumer Forum, Gorakhpur in complaint case no. 137 of 2007 wherein the District Consumer Forum has dismissed the complaint of the complainant/appellant thereby holding that the complainant is not a 'consumer' as the treatment of the complainant's wife remained free of charge in the Government hospital.

We have heard Sri Ambarish Kaushal Srivastava, learned counsel for the appellant who has specifically submitted that since the District Women Hospital, Gorakhpur is a hospital wherein the charges of the treatment were taken from some patients, therefore, the complainant is a consumer irrespective of the fact if any charges of treatment were not paid by the consumer.

Sri Ambarish Kaushal Srivastava, learned counsel for the appellant took recourse of the law laid down by the Hon'ble Supreme Court in the case of "Indian Medical Association versus V.P. Shantha and others reported in



III (1995) CPJ 1 (SC)" and specifically referred the conclusion drawn by the Hon'ble Supreme Court in the aforesaid case at para no. 55 (10) which is reproduced below:-

"Service rendered at a Government hospital/health centre/dispensary where services are rendered on payment of charges and also rendered free of charges to other persons availing such services would fall within the ambit of the expression 'service' as defined in Section 2(1)(o) of the Act irrespective of the fact that the service is rendered free of charge to persons who do not pay for such service. Free service would also be 'service' and the recipient a 'consumer' under the Act."

We are not convinced with the contention of the learned counsel for the appellant because of the conclusion drawn by the Hon'ble Supreme Court in the aforesaid case at para 55 (5) which is reproduced below:-

"Service rendered free of charge by a Medical Practitioner attached to a hospital/Nursing home or a medical officer employed in a hospital/Nursing Home where such services are rendered free of charge to everybody, would not be 'service' as defined in Section 2(1) (o) of the Act. The payment of a token amount for registration purpose only at the hospital/nursing home would not alter the position.

In this regard the learned counsel for the appellant submitted that the conclusion at para 55(5) pertains to the Doctor while the conclusion in para 55 (10) pertains to the hospital and submitted that since the appellant came by way of this appeal against the hospital, therefore, the appeal against the impugned order deserves to be allowed.

In the light of the contentions of the learned counsel for the appellant we have gone through para 43 of the aforesaid judgment which is reproduced below:-

"The other part of exclusionary clause relates to services rendered "free of charge". The Medical practitioners, Government hospitals/nursing homes and private hospitals/nursing homes(hereinafter called "Doctors and



hospitals") broadly fall in three categories:-

- (i) where services are rendered free of charge to every body availing the said services;*
- (ii) where charges are required to be paid by everybody availing the services; and*
- (iii) where charges are required to be paid by persons availing services but certain categories of persons who can not afford to pay are rendered service free of charges.*

There is no difficulty in respect of first two categories. Doctor and hospitals who render service without any charge whatsoever to every person availing the service would not fall within the ambit of 'service' under Section 2(1)(o) of the Act. The payment of a token amount for registration purposes only would not alter the position in respect of such Doctor and hospitals. So far as the second category is concerned, since the service is rendered on payment basis to all the persons they would clearly fall within the ambit of Section 2(1)(o) of the Act. The third category of Doctors and hospitals do provide free service to some of the patients belonging to the poor class but the bulk of the service is rendered to the patients on payment basis. The expenses incurred for providing free services are met out of the income from the service rendered to the paying patients. The service rendered by such Doctors and hospitals to paying patients undoubtedly fall within the ambit of Section 2(1)(o) of the Act."

There is no controversy pertaining to the services rendered free of charge to everybody availing the said services as categorized by the Hon'ble Supreme Court in para 43 (i) and further there is no controversy in the cases where the charges are required to be paid by everybody availing the services as is categorized in para 43(ii). The only controversy is pertaining to para 43(iii) wherein the Hon'ble Supreme Court has held that "where charges are required to be paid by persons availing services but certain categories of persons who cannot afford to pay are rendered service free of charges. Undoubtedly such patients fall within the ambit of Section 2(1)(o) of the Consumer Protection Act. The Hon'ble Supreme Court has concluded in



this regard that the third category of Doctors and hospitals do provide free service to some of the patients belonging to the poor class but the bulk of the service is rendered to the patients on payment basis and the expenses incurred for providing free services are met out of the income from the service rendered to the paying patients and therefore, the service rendered by such Doctors and hospitals to paying patients undoubtedly fall within the ambit of Section 2(1)(o) of the Act."

In the light of the observation as aforesaid when we come to see the conclusion drawn by the Hon'ble Supreme Court in the aforesaid citation at para 55 (10) wherein provided that service rendered at a Government hospital/health centre/dispensary where services are rendered on payment of charges and also rendered free of charges to other persons availing such services would fall within the ambit of the expression 'service' as defined in Section 2(1)(o) of the Act irrespective of the fact that the service is rendered free of charges to persons who do not pay for such service and free service would also be 'service' and the recipient a 'consumer' under the Act", In our view the respondent hospital is not of such category wherein the expenses incurred for providing free service are met out of the income from the service rendered to the paying patients. The Government hospital who is engaged providing medical services merely on registration against a token money cannot be set at par of those Government hospitals who provide free services to some of the patients belonging to poor section but bulk of the services are rendered to the patients on payment basis. There is no contention of the learned counsel for the appellant in this regard and even there is no prima facie evidence on record to show that the respondent hospital is covered in the category of such hospital where charges are required to be paid by persons availing bulk of services but certain categories of persons who can not afford to pay are rendered services free of charges and the expenses incurred for providing free services are met out of the income from the service rendered to the paying patients.

In our view Government hospitals wherein all the patients are being



provided medical facilities free of charge but certain token amount is being taken for the services are not covered under Consumer Protection Act but Government hospitals where charges are required to be paid by persons availing services but certain categories of persons who can not afford to pay are rendered service free of charges are very well covered under the Consumer Protection Act. Hence we come to this conclusion as per law laid down by Hon'ble Supreme Court in the aforesaid citation that the Government Hospital wherein bulk of services are provided on payment basis and merely certain category of persons unable to pay for the services have been provided the services free of charge, may only be covered under the Consumer Protection Act if the expenses incurred on the services rendered free of charge to the patient unable to pay have been met out from those patients who are availing the services on payment basis. The respondent hospital before us is not of such category of the hospital where charges are required to be paid by persons availing services. The respondent hospital does not fall in that category of hospitals which are dealt by the Hon'ble Supreme Court in para 43 (iii) and concluded in para 55(10) in the aforesaid judgment.

Learned counsel for the appellant has also submitted that if the deficiency in service of the Government hospitals is not found covered under the Consumer Protection Act, the hardship to the patient due to deficiency in service of the hospital in treatment of alleged patient could not have been redressed by any way leaving no room to the patient for relief, therefore, liberal approach should be adopted in such type of cases wherein the Government hospital is apparently found deficient in service towards a patient in his treatment. We are not convinced with the contention of the learned counsel for the appellant because what ever may be the remedy for redressal of grievance of a patient pertaining to deficiency in service in Government hospital by implication of civil law, such patient is at liberty to get his grievance redressed under the Civil Law/General Law applicable to the patient concerned.

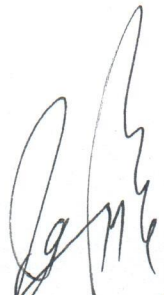
Hence we do not find any merit in this appeal and the learned District



Consumer Forum has rightly held that the complainant/appellant is not a 'consumer' and the opposite party/respondent is not service provider. Therefore, after hearing the learned counsel for the appellant we come to this conclusion that this appeal does not deserve to be allowed and is liable to be dismissed.

ORDER

The appeal is hereby dismissed.


19.03.14
(JUSTICE VIRENDRA SINGH)
PRESIDENT

A.K. Chaudhary
19/3/14
(A.K. CHAUDHARY)
MEMBER

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