

AFR

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
UTTAR PRADESH, LUCKNOW

APPEAL NO. 2413 OF 2014

(Against the judgment/order dated 20-10-2014 in Complaint
Case No.75/2007 of the District Consumer Forum, Jhansi)

Smt. Vineeta Chaturvedi
W/o Sri Ram Prasad Chaturvedi
R/o Brahampuri, Khati Baba
Prem Nagar, Jhansi.

...Appellant/Complainant

Vs.

01. Dr. Pushpa Verma
Zila Mahila Chikitsalaya
Jhansi

02. Ministry of Central Health & Family Welfare
Through Secretary
Ministry of Health & family Welfare
New Delhi

03. The State of U.P.
Through Secretary
Ministry of Health & Family Welfare
Lucknow

...Respondents/Opposite Parties

BEFORE:

HON'BLE MR. JUSTICE VIRENDRA SINGH, PRESIDENT
HON'BLE MR. UDAI SHANKAR AWASTHI, MEMBER

For the Appellant : Sri O P Duvel, Advocate.

For the Respondent : ---

Dated : 13-08-2015

JUDGMENT

MR. JUSTICE VIRENDRA SINGH, PRESIDENT (ORAL)

This is an appeal filed by the appellant/complainant against the judgment and order dated 20-10-2014 passed by the District Consumer Forum, Jhansi in Complaint Case No. 75/2007 Smt. Vineeta Chaturvedi V/s Dr. Pushpa Verma and others thereby dismissing the complaint of the appellant against the respondents/opposite parties seeking compensation for failure of sterilization.

The facts of the case stated in brief are that Smt. Vineeta Chaturvedi



went under operation of tubectomy on 02-01-2002 in District Women Hospital, Jhansi but subsequently she conceived and delivered a female child in December, 2005. According to the appellant/complainant, she being pregnant was the victim of the medical negligence of the respondents.

At the time of admission of this appeal Sri O P Duvel, learned Counsel for the appellant has been heard.

Apparently the impugned order passed by the learned District Consumer Forum is absolutely just and proper and is liable to be upheld as for family planning the appellant/complainant got her sterilization operation done in the Government Hospital wherein no services can be said to have been hired by the complainant on payment basis. The District Consumer Forum held that there is no evidence on record to come to this conclusion that any negligence or deficiency in service has been committed by the opposite parties in conducting the operation. We are convinced with this finding of the District Consumer Forum. The law is very well settled in this regard in the case of Indian Medical Association V/s V P Shantha & others reported in III(1995) CPJ 1 (SC) wherein it is held that in such hospitals and nursing homes if the treatment of the patients is done without taking any fees, the patients are not the consumers for the treatment rendered by the hospitals.

The Hon'ble Supreme Court in the aforesaid case has held that there is no direct nexus between the payment of the salary to the Medical Officer by hospital administration and the person to whom service is rendered. The salary that is paid by the hospital administration to the employee Medical Officer cannot be regarded as payment made on behalf of the person availing the service or for his benefit so as to make the person availing the service a 'consumer' under Section 2(1)(d) in respect of service rendered to him. The service rendered by the employee, Medical Officer to such person would, therefore, continue to be service rendered free of charge and would be outside the purview of Section 2(1)(o).

Tamil Nadu State Consumer Disputes Redressal Commission, Chennai in the case of Government Primary Health Centre and others V/s Prince reported in IV (2010) CPJ 31 has taken the similar view as is the view of ours in this case that where the free service was rendered by the opposite party to the complainant and others in camp of sterilization, that service will not be



attracted by Consumer Protection Act for alleged medical negligence by the doctor being the government doctor and Fora has no jurisdiction to fix culpability. In that case too it is held that in the case of State of Haryana V/s Smt. Santra (supra) wherein a suit was filed before the Civil Court and which was reached up to apex court but that case was not under the Consumer Protection Act. Under the common law, when the government has committed any mistake, though they rendered the service free of charge, the liability can be fixed but that principle cannot be extended as such, to the Consumer Forum since the Consumer Forum has inherent jurisdiction, based upon hiring of service by a person, who is a consumer, as per the definition available in the Consumer Protection Act.

More so, It is held in the case of *St. Stephens Hospital v. Shalini*, 2013 SCC OnLine NCDRC 571 : [2013] NCDRC 566 at page;

6. As far medical negligence is concerned, learned Counsel for the petitioner has drawn our attention towards Annexure 'A' in which it has been mentioned that one tube could not be identified and in such circumstances, her husband should undergo vasectomy. Almost the same thing has been repeated in Annexure 'A' in other person's handwriting, which bears signatures of respondent and thumb impression of respondent's mother. Learned Counsel for the respondent does not dispute signatures of the respondent on Annexure 'A'. It is true that Annexure 'A' contains same particulars in two different handwritings, but merely because same thing has been repeated in other person's handwriting, it cannot be inferred that this document is forged one particularly when it bears signatures of respondent. Perusal of Annexure 'A' clearly reveals that on account of dense adhesions, right fallopian tube could not be detected and it was clearly mentioned that operation may be unsuccessful and her husband should go for vasectomy. In such circumstances, no medical negligence can be imputed on the part of petitioner and respondent is not entitled to get any compensation. Learned Counsel for the petitioner has also placed reliance on (2005) 7 SCC 1 - *State of Punjab v. Shiv Ram*, which has also been referred by learned State Commission in its judgement in which it was observed as under:

"28. The methods of sterilization so far known to medical science which are most popular and prevalent are not 100% safe and secure. In spite of the operation having been successfully performed and without any negligence on the part of the surgeon, the sterilized woman can become pregnant due to natural causes. Once the woman misses the menstrual cycle, it is expected of the couple to visit the doctor and seek medical advice. A reference to the provisions of the Medical Termination of Pregnancy Act, 1971 is apposite. Section 3 thereof permits termination of pregnancy by a registered medical practitioner, notwithstanding anything contained in the Indian Penal Code, 1860 in certain circumstances and within a period of 20 weeks of the length of pregnancy. Explanation II appended to sub-section (2) of Section 3 provides:

"Explanation II. _____ Where any pregnancy occurs as a result of failure of

:4:

any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman."

29. *And that provides, under the law, a valid and legal ground for termination of pregnancy. If the woman has suffered an unwanted pregnancy, it can be terminated and this is legal and permissible under the Medical Termination of Pregnancy Act, 1971.*

30. *The cause of action for claiming compensation in cases of failed sterilization operation arises on account of negligence of the surgeon and not on account of child birth. Failure due to natural causes would not provide any ground for claim. It is for the woman who has conceived the child to go or not to go for medical termination of pregnancy. Having gathered the knowledge of conception in spite of having undergone sterilization operation, if the couple opts for bearing the child, it ceases to be an unwanted child. Compensation for maintenance and upbringing of such a child cannot be claimed".*

As there is no case of payment of the fees to the doctor is made out in this case before us the service provided by the respondent was fully and totally free of charge and if a service was performed, totally free of charge by Government Hospital, that will not attract the provisions of the Consumer Protection Act. Hence looking into the aforesaid discussion we are of this view that the District Consumer Forum has rightly dismissed the complaint of the complainant. Therefore, this appeal has no force and is liable to be dismissed.

ORDER

The aforesaid appeal is hereby dismissed.


13-08-15
(JUSTICE VIRENDRA SINGH)
PRESIDENT


13.8.15
(U S AWASTHI)
MEMBER

pnt