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Court : Andhra Pradesh

Decided On : Apr-17-1992

Reported in : 1992(1)ALT713

Judge : M.N. Rao and ;V. Neeladri Rao, JJ.

Acts : Consumer Protection Act, 1986 - Sections 2, 2(1) and 14(1); Constitution of India - Articles 14, 19 and 19(1); Land Acquisition Act, 1894 - Sections 23(2); Indian Medical Council Act, 1956

Appeal No. : W.A. No. 1402/91

Appellant : Dr. A.S. Chandra and ors.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : B. Narayana Reddy, Addl.S.C. for C.G. for R- 1 in W.A. 1402/91, ;G.P. for Civil Supplies for R-2 in W.A. No. 1402/91, ;M. Gouri Shanker for R-3 in W.A. 1402/91, ;K.G. Kannabiran, Adv. for R-4 in W.A.

Advocate for Pet/Ap. : S. Suryaprakasa Rao, Adv. in W.A. 1402/91, ;C.V. Mohan Reddy and ;L. Ravi Chander, Advs. in W.A. Nos. 344, 997 and 1075 of 1991, ;C.V. Rajeeva Reddy, Adv. in W.P. No. 5224/1990, ;Mohd. Imthiaz and ;P.

Disposition : Petition dismissed

Judgement :
ORDER

M.N. Rao, J.

1. In this batch of cases common questions arise for consideration and so we are inclined to deal with them by this common judgment. Writ Appeal No. 1402 of 91 is from the order of our learned brother Sivaraman Nair, J., in W.P.No. 15595 of 91 dismissing the writ petition filed by Dr. A.S. Chandra, a private medical practitioner running Sarada Nursing Home in Chirala, Prakasam district. The wife of the fourth respondent received treatment as an out patient between 15-7-91 and 26-7-91 at Sarada Nursing Home for Epigastrium and Chest pain and Nausea. After routine tests were conducted she was admitted as an inpatient on 26-7-91 and operated for Cystectomy, Hystrectomy and Appendectomy. When Laparotomy test was conducted upon her on 15-8-91 it was found that she developed Peritonitis. The nursing home collected Rs. 500/- towards medical fee and Rs. 200/- each for the anaesthetist and two surgeons, Rs. 1,100/- in all. The patient had to be removed to the Government Hospital, Guntur for further treatment; she was admitted in the Guntur Hospital on 25-8-91 and after an operation was performed she died in the Hospital. The fourth respondent filed consumer dispute No. 750/91 in the District Forum, Prakasam district alleging that the death of his wife was due to the negligence of the appellant Dr. A.R. Chandra.

2. The District Forum issued notice in C.D.C.No. 750/91 calling upon the appellant to appear before the Forum on 13-12-91. Challenging the jurisdiction of the District Forum W. P.No. 15595/91 was filed by the appellant contending that enquiries relating to professional services rendered by medical practitioners do not fall within the purview of 'complaint' under Section 2(b) of the Consumer Protection Act, 1986 (hereinafter referred to as the Act). The expression 'service' as defined by Section 2(o) of the Act excludes professional services rendered by members of the medical profession. If the services rendered by a doctor for consideration are to be brought within the purview of Section 2(o) of the Act, it was contended that the same would be unconstitutional being violative of Article 14 of the Constitution. It was also pleaded that the consumer forum is not the proper forum to decide the

question since the allegations levelled by the fourth respondent constitute a tortious act, the adjudication of which requires receiving of elaborate evidence and consideration of complicated medical norms. Hauling up of doctors before consumer protection forums in respect of the professional services rendered by them for consideration would be violative of Article 19(1)(g) of the Constitution. The learned judge negatived all the pleas and dismissed the writ petition holding that the bodies entrusted with the administration of the Act consist of and presided over by persons with matured judicial training. The choice of the personnel itself indicates that there are inbuilt safeguards. Except where services were rendered free of charge or under a contract of personal service, all the other services are comprehended, according to the learned judge by Section 2(o) of the Act. Merely because the provisions of the Indian Medical Council Act provide for disciplinary action against an erring medical practitioner there is nothing to hold that the jurisdiction of the District Forum is ousted under the provisions of the Act. While dismissing the writ petition the learned judge directed the appellant to raise all the contentions including the point of jurisdiction before the District Forum. Aggrieved by that writ appeal No. 1402 of 91 was preferred by the nursing home. In three other writ petitions also the learned judge has taken the same view. Against those writ petitions the aggrieved persons preferred W.A.Nos.997/91, 344/ 91 and 1075/91.

3. Writ Petition 7341/91 was filed by the Indian Medical Association, Andhra Pradesh, A.P.State Branch seeking a writ of prohibition directing all the District Forums in the State not to proceed further with the enquiries relating to allegations against members of the medical profession. It was averred that one of the objects of the Indian Medical Association is to protect the interests of the medical science and medical profession in the State of Andhra Pradesh and it is the duty of the Association to maintain the honour and dignity of the noble profession. Several instances came to the notice of the Association that patients after availing of medical treatment from the doctors are approaching the consumer disputes redressal agencies claiming damages and compensation for alleged deficiencies of the services rendered by the doctors. Neither the district forums nor the State Commission have jurisdiction to entertain such complaints. The service rendered by the doctors is 'personal service' outside the purview of Section 2(o) of the Act

and, therefore, the Act does not govern them. Doctors some times have to take 'snap decisions' and if their actions are to be questioned on the ground that the services rendered by them were deficient, it would be violative of Article 19(1)(g) of the Constitution since they would not be in a position to practice their profession.

4. One of the questions raised in W.P.No. 5224/90 is that as no period of limitation is prescribed under the Act, claims which are barred under the general law of limitation cannot be brought for adjudication before the consumer redressal agencies. In W.P.No. 15006/90 one of the additional pleas raised is that no one has a right to file a civil suit claiming damages alleging medical negligence and also simultaneously approach a consumer redressal agency for the same relief.

5. In W.P.No. 10785/90, the second petitioner is Hyderabad Eye Institute, a Society registered under the Societies Registration Act and the contention advanced is that the intendment of the Act is not to create a parallel forum for claiming damages. It is not necessary to refer to the facts in the rest of the writ petitions as the questions raised are common.

6. Non-accountability of the medical profession to the forums created under the Act in respect of the services rendered for consideration is the principal question for decision in the entire batch of cases. In view of the importance of the question we have directed notice to the learned Advocate-General to assist the Court and he has readily agreed to do so. We record out grateful appreciation. Arguments covering the entire gamut of the questions involved have been advanced by learned counsel on both sides. The learned Advocate-General has confined his arguments to the essential question as to whether the members of the medical profession who treat patients for consideration can be said to have rendered 'service' within the meaning of Section 2(o) of the Act. He distinguished the concept of 'contract of personal service' from 'contract for personal service' and submitted that the former predicates master and servant which is not the case with regard to doctor and patient and as Section 2(o) excludes only contract of personal service, the petitioners must be brought within the purview of the Act.

7. Before we consider the principal contention which centres around the definition of 'service' under Section 2(o), we feel it convenient to take up the subsidiary

questions first the scheme of the Act. The Consumer Protection Act, 1986 was enacted to provide for better protection of the interests of consumers and to achieve that it provides for establishment of consumer redressal forums for settlement of consumers disputes and for matters connected therewith. The Act consists of 31 sections and is divided into four chapters. Chapter-I bears the heading 'Preliminary' and it comprises Sections 1 - 3. Consumer Protection Councils are dealt in Chapter-II which consists of Sections 4 - 8. Consumer Disputes Redressal Agencies are covered by Chapter-Ill comprising Sections 9 - 27. Miscellaneous provisions are included in Chapter-IV comprising Sections 28 - 31. Not only individual consumers but consumer associations registered under the Companies Act or under any other law for the time being in force or the Central or any State Government are comprehended by the expression 'complaint' as denned in Clause (b) of Section 2. 'Complaint' by Clause (c) means any allegation by a complainant that due to unfair trade practice adopted by any trader loss or damage was suffered by him, or the goods mentioned in the complaint are defective, or the services mentioned in the complaint suffer from deficiency in any respect. Section 2(d) defines 'consumer' inclusively. Not only a person who buys any goods for consideration, but also any one who uses such goods with the approval of the purchaser is a consumer. But if any one obtains such goods for resale or for any commercial purpose he is not a consumer. The definition includes also a person who hires any services for consideration. Expressions like 'consumer dispute', 'defect', 'deficiency', 'service', 'trade are also defined by Section 2. Section 3 says that the provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Chapter-II comprising Sections 4 - 8 incorporates provisions relating to Central and State Consumer Protection Councils and their objects. Chapter-Ill incorporates provisions relating to consumer disputes and agencies. At the district level the forum is called District Forum; it consists of a person who is, or has been, or is qualified to be a District Judge as the President and two others; (1) a person of eminence in the field of education trade or commerce; and (2) a woman social worker. The jurisdiction of the District Forum by Section 11 extends to entertaining complaints where the value of the goods or services and the compensation, if any, claimed is less than one lakh of rupees. The procedure to be followed by a District

Forum on receipt of complaint is contained in Section 13. When the District Forum finds after enquiring into the complaint that any of the allegations contained therein are proved, it is empowered to issue four types of directions specified in Clauses (a) to (d) of Sub-section (1) of Section 14, namely-

'(a) to remove the defect pointed out by the appropriate laboratory from the goods in question;

(b) to replace the goods with new goods of similar description which shall be free from any defect;

(c) to return to the complainant the price, or as the case may be, the charges paid by the complainant;

(d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.'

A statutory right of appeal to the State Commission against an order passed by the District Forum is provided by Section 15. Section 16 deals with composition of the State Commission; it consists of a President who is or has been a judge of a High Court and two other members who have adequate knowledge or experience in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. One of the two members shall be a woman. Besides entertaining appeals from the orders passed by a District Forum, the State Commission is clothed with the original jurisdiction by Section 17(a) to entertain complaints where the value of the goods or services or compensation if any claimed exceeds rupees one lakh but does not exceed rupees ten lakhs. The State Commission is vested with revisional jurisdiction in respect of orders passed by a District Forum.

8. Section 19 confers appellate jurisdiction on the National Commission in respect of order passed by the State Commission in exercise of its original jurisdiction. Besides appellate jurisdiction, the National Commission is vested with original jurisdiction also; it can entertain complaints where the value of the goods or

services and compensation, if any, claimed exceeds rupees ten lakhs. It also acts as a revising authority in respect of orders passed by a State Commission. The National Commission, by Section 20, consists of a President and four other members. The President shall be one who is or has been a judge of the Supreme Court. The other members shall be persons of adequate knowledge or experience in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. One of the four members shall be a woman.

Chapters I, II and IV came into force with effect from 15-4-87. Chapter III dealing with consumer disputes redressal agencies was brought into force with effect from 1-7-87. No period of limitation is prescribed either under the Act or under the rules made thereunder for preferring complaints to the redressal agencies.

In W.P.No. 5224/90 the cause of action arose on 8-4-85 on which date it alleged that the third respondent approached the petitioner Dr. P. Siva (Sic) of pain and total loss of vision. The disease was found to be Marginal Caratitis affecting the Cornea. He was admitted to the Private Nursing Home presumably belonging to the petitioner Dr. Siva Reddy on the same day and was discharged on 11-4-85. According to the petitioner Dr.Siva Reddy, a simple procedure called Cauterisation was done and the right eye was saved from further complications. Before performing the cauterisation operation, the consent of the third respondent was also obtained. On 17-3-90 the third respondent preferred a complaint to the State Commission, the first respondent, claiming from the petitioner Rs. 5,55,540/- towards expenses compensation and damages. Reckoning the period from 8-4-85, the date when the cause of action arose, the complaint was filed before the State Commission after a lapse of four years, eleven months and twenty three days.

9. The contention advanced by Shri Subrahmanya Reddy, learned counsel for the petitioner is that the C.D.C.No. 20/90 filed by the third respondent before the State Commission was barred by time and on that ground alone it must be thrown out. Where a forum was created by a Special enactment which does not contain any provision as to limitation as regards claims to be brought before the forum, it has

no power to entertain any claim which is barred under the general law is the submission of the learned counsel. In opposition to this Shri Gouri Shanker Rao, learned counsel for the third respondent says that absence of a provision as to limitation in a special enactment will not deprive the forum of its power to adjudicate the claims brought before it. In other words, without any embargo as to limitation, the special forum can adjudicate the claims brought before it.

10. As regards original complaints to the three forums-District Forum, State Commission and the National Commission-no period of limitation is prescribed under the Act. Sections 15 and 23 which relate to appellate jurisdiction of the State Commission and the National Commission respectively lay down thirty days as the period of limitation for preferring appeals to them. In respect of wrongful acts or omissions the period of limitation prescribed under Article 72 of the Limitation Act is one year and the time runs from the date when the act or omission takes place. There is no dispute that the Limitation Act does not apply to the consumer redressal forums under the Act. There is little controversy that had the third respondent filed a suit for damages in 1990 in respect of the alleged negligence or Dr.Siva Reddy, the petitioner, between 8-4-85 and 11-4-85, it would have been barred by time. Does the situation differ materially when a claim is brought before the State Commission under the Act? Our answer is an emphatic No. By the date of the cause of action the Act was not born. Even by 1-7-87, when Chapter-Ill dealing with consumer redressal agencies was brought into force, the alleged claim was out of time. It admits of no controversy that the law of limitation falls within the realm of procedural law. A provision in an enactment dealing with a procedural aspect must be construed to have retrospective effect. The Consumer Protection Act by Section 3 clearly lays down that the provisions of the Act are only in addition to and not in derogation of the provisions of any other law for the time being in force. If under the substantive Law of Torts for any wrongful act or omission an action could be brought before a regular civil court we think there was no procedural bar to bring such an action before any of the redressal agencies under the Act. But if even by 1-7-87, the date of the coming into being of the redressal agencies, a cause of action under the general law of limitation was barred, it could not be validly adjudicated by any of the redressal agencies under the Act; put differently, matters which became final by operation of the general law

of limitation prior to coming into force of the consumer disputes redressal agencies cannot be resuscitated. Those claims are dead and no life can be breathed into them.

11. By not specifically providing for any period of limitation for complaints, the Act has taken care to see that no stale matters are revived. The legislative intendment is thus very transparent. In S.S. Gadgil v. Lal and Co., : [1964]53ITR231(SC) . Section 34 (1) (b) Proviso (iii) of the Income-tax Act, 1922 fell for consideration. The third proviso as it stood prior to its amendment in 1956 provided a period of one year limitation for issuing a show cause notice for assessment or reassessment against a person deemed to be an agent of a non-resident person under Section 43 of the Act. By Section 18 of the Finance Act, 1956, the period of limitation was increased to two years. The question before the Supreme Court was whether after the expiry of one year period since the Amendment Act came into force, but before the two year period prescribed by the Amendment Act had lapsed, it was open to the Income-tax Officer to issue a reassessment notice for commencing proceedings under Section 34. The Supreme Court speaking through Shah,)., (as he then was) expressed the view:

'But the application of the amended Act is subject to the principle that unless otherwise provided if the right to act under the earlier statute has come to an end, it could not be revived by the subsequent amendment which extended the period of limitation. The right to issue a notice under the earlier Act came to an end before the new Act came into force. There was undoubtedly no determinable point of time between the expiry of the earlier Act and the commencement of the new Act; but that would not, in our judgment, affect the application of this rule.'

The above reasoning is very apposite in the present context. The well accepted basic principle of law that lapse of time vitiated and destroys rights which are otherwise well founded finds expression in the statement of law laid down by the Supreme Court, the ruling in Athani Municipality v. Labour Court, Hubli, : (1969)IILLJ651SC . cited by Shri Gauri Shankar for the third respondent is in no way relevant to the question at issue. The decision relates to entertaining by Labour Court of applications not barred by Section 20(1) of the Minimum Wages

Act.

12. We, therefore, hold that claims which were barred by 1-7-87, the date when Chapter - III came into force cannot be entertained by any of the consumer redressal agencies under the Act.

13. The second subsidiary question arises in W.P.No. 15006/90: Whether a person alleging negligence against a doctor can pursue remedies simultaneously by filing a civil suit for damages and also a complaint for the same relief before a consumer redressal agency under the Act?

14. The first respondent Smt. K.Ramalakshmi, W/o.K.Tulasi Ram was admitted to the Christian Medical Centre, Pithapuram, East Godavari District, the first petitioner, for an ailment which was diagnosed as presence of 'dense mass' in the Pelvic for which surgery was advised. After obtaining her consent, operation was performed on 11-12-89 by the second petitioner Dr.Nicholus, Medical Superintendent of the Medical Centre assisted by the third petitioner Dr.P.Savithri and another Dr.Sanjeeva Rao. The first respondent was discharged from the Medical Centre on 25-12-89 and the total charges collected for the operation and for her stay in the hospital came to Rs. 2,592/-. It appears that subsequently the first respondent consulted one Dr.A.Vijayalakshmi in Kakinada who advised her immediate Histerectomy. She issued a notice dated 18-4-90 to the petitioners alleging that when x-ray was taken in Madanapalle, a fibroid was found in her abdominal cavity and calling on them to pay all the expreses to be incurred by her for operation of fibroid uterus and removal of spatula in a hospital of the standing of Appollo hospital. On receipt of the notice, realising the mistake that occurred, the Medical Centre expressed it readiness to take her to the Vellore Hospital or Appollo Hospital. But she preferred operation by Dr. Revathi at Vidyasagar Nursing Home in Tirupathi. The expenditure incurred which came to Rs. 15,000/- was met by the first petitioner and a receipt was given by the first respondent acknowledging the amount without prejudice to her rights and contentions.

15. Subsequently the first respondent Smt. Ramalakshmi issued notices to the three petitioners claiming a sum of Rs. 9,85,000/- towards damages under various heads. The petitioners got issued a reply notice denying the liability to pay the

damages as claimed by the first respondent since they already met the expenditure incurred by the first respondent for her treatment at Vidyasagar Nursing Home in Tirupathi. The first respondent thereafter filed a complaint C.D.C.No. 70/90 before the second respondent-the State Commission. Challenging the jurisdiction of the State Commission the above writ petition was filed.

16. It is not disputed that subsequent to the filing of the complaint petition before the State Commission the first respondent instituted a suit in forma pauperis in the court of Subordinate Judge at Madanapalle seeking damages in respect of the same cause of action.

17. Shri Poornaiah, learned counsel for the petitioner contended that in view of the suit now pending in the court of the Subordinate Judge where all disputed questions as to the alleged negligence will be enquired into it is not open to the State Commission simultaneously to have seisen of the same subject matter. Contesting this proposition Shri Bhatt, learned counsel for the respondent has submitted that in view of the doubtful legal position as to the jurisdiction of the State Commission under the Act to adjudicate complaints as to the negligence of medical practitioners, by way of abundant caution, the civil suit was instituted.

18. The Act provides for hierarchy of agencies for redressal of consumer grievances. The assertion of the first respondent is that under the Act the State Commission has jurisdiction to decide the question of negligence of the petitioners. The Act contemplates speedier and effective remedies in respect of consumer disputes. A proper finding as to the nature of the negligence attributed by the first respondent to the petitioners in the particular facts of this case, we think, is not possible in the absence of elaborate evidence and enquiry into complicated questions of law. The civil court undoubtedly is the best forum and evidently realising this the suit was laid by the first respondent. We, therefore, hold that having elected to file the suit she cannot insist upon pursuing both the remedies simultaneously.

19. Section 3 of the Act lays down that the provisions of the Act are in addition to and not in derogation of the provisions of any other law for the time being in force.

One such law in force is the Law of Torts incorporating the principle that for proved medical negligence the victim is entitled to damages. Where law provides two remedies before two forums necessarily the claimant must choose one of the two and not both. In Premier Automobiles v. K.S. Wadke, : (1975)IILLJ445SC . one of the questions that fell for consideration was whether a remedy available both under the general law and the Industrial Disputes Act, could be availed of simultaneously. Answering the question in the negative, the Supreme Court expressed the view:

'.....where the industrial dispute is for the purpose of enforcing any right, obligation or liability under the general law or the common law and not a right, obligation or liability created under the Act, then alternative forums are there giving an election to the suitor to choose his remedy of either moving the machinery under the Act or to approach the Civil Court. It is plain that he cannot have both. He has to choose the one or the other.'

20. Government hospitals and doctors employed therein as well as doctors who render treatment or medical advice, free of charge or without any consideration, are outside the purview of this batch of cases. We are only concerned with privately managed medical institutions and private doctors who treat patients for consideration. In order to decide the principal question of the alleged non-accountability of such medical institutions and private doctors we must consider:

(1) Whether the complainants before the consumer redressal agencies are consumers within the meaning of Clause (1)(d) of Section 2 of the Act?;

(2) Whether the services rendered by the medical institutions and the doctors fall within the ambit of 'service' under Clause (o) of Sub-section (1) of Section 2 of the Act?;

(3) In respect of cases of alleged medical negligence the relief claimed being damages, whether the power to grant compensation vested in the consumer redressal agencies excludes awarding of damages? In other words, whether damages are not comprehended by the expression 'compensation' under Section 14(1)(d) of the Act?;

(4) Whether the composition of the redressal agencies under the Act makes them unsuitable for awarding damages for negligence of a medicine practitioner on the alleged ground that it is not possible to adduce elaborate evidence before them and in the absence of comprehensive evidence it is not possible to record a finding as to negligence?;

(5) Whether there can be two parallel forums-the regular civil courts and the forums under the Act-for awarding damages for medical negligence?

(6) Whether the intendment of the Act was not to include medical practitioners from its purview since the composition of the consumer redressal agencies excludes representatives from the medical profession? and

(7) If it is to be held that the Act applies to Private Medical Practitioner Nursing Homes and Private Hospitals, whether the Act unconstitutional on the ground of violation of Article 19(1)(g) of Constitution?

21. Re: (1) and (2):- A private individual or a voluntary (Sic) or Government (either Central or State) can be a complainant under Section 2(1)(b) of the Act. 'Consumer' is defined by Clause (1)(d) Section 2 of the Act:

'consumer' means any person who-

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval who obtains such goods for resale or for any commercial purpose; or

(ii) hires any services for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment and includes any Beneficiary of such services other than the person who hires the services for consideration paid or promised or partly paid and partly promissed or under any system of deferred payment, when such services are availed of with approval of the first mentioned person;'

22. We are concerned with Sub-clause (ii) relating to hiring of services for consideration. 'Service' is defined inclusively by Clause (o) of Sub-section (1) of Section 2 of the Act:

'Service means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, entertainment, amusement or the purveying a news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.'

Except services rendered free of charge or under a contract of personal services, all other services of any description made available to potential users are comprehended by the expression 'service'. The definition is confined only to cases where consideration is charged for the services rendered. This is made abundantly clear by the explicit exclusion of services rendered free of charge and the emphasis on the aspect of consideration in the definition of 'consumer'. The contention strenuously pressed before us by the learned counsel for the petitioners is that no one 'hires' the services of a medical practitioner; doctors are engaged to treat patients, but they are not hired. We find little material difference between hiring and engaging. According to the Concise Oxford Dictionary 'hire' in its noun form, inter alia, means 'payment by contract for use of thing or personal service; engagement on these terms;' as verb transitive it means 'employ (person), for wages; procure,.....for stipulated payment.' The word 'hire' as a verb when applied to persons means engaging the services for a stipulated reward. The Corpus Juris Secundum (in Volume 40 at page 402) says that the word 'hire' as verb when applied to persons 'means to engage in service for a stipulated reward; and some-times, although perhaps less accurately it is applied to securing of professional services, as where one is said to hire a lawyer or a doctor or a person of that class.' Engaging a doctor is undoubtedly a dignified and elegant expression. But that is not the only expression to articulate the idea of having the services of a doctor. When a person consults a doctor by paying fees or receives treatment for consideration, in our view, he is a consumer within the meaning of Section 2(1)(b) of the Act. Whether the service for consideration is from an

individual doctor or from a medical institution makes no difference. In either case it is service for consideration.

23. Reliance by the learned counsel for the petitioners on the decision of a Division Bench of the Delhi High Court in Ballarpur Industries v. O.G.I. & R., 1988 (64) Company Cases 884. is of no assistance. The Division Bench of the Delhi High Court was dealing with a case arising under the Monopolies and Restrictive Trade Practices Act in which the expression 'consumer' is not defined. As it is denned in the Consumer Protection Act, the Delhi High Court expressed the view that the Consumer Protection Act and the Monopolies and Restrictive Trade Practices Act are cognate legislations in regard to unfair trade practices and on that view held that consumer means 'a person who buys and uses goods'. We reject with no hesitation the contention that under the Consumer Protection Act the definition of consumer is confined only to a person who buys and uses goods. Sub-clause (ii) of Section 2(1)(d) of the Act, dealing with the definition of consumer, expressly covers any person who hires any services for a consideration. This part of the definition of consumer did not come up for consideration before the Delhi High Court. The question related to unfair trade practices only and in that context the Delhi High Court rightly held that consumer means one who buys and uses goods.

24. The definition of service in Section 2(1)(o) is very wide. It covers service of any description made available to potential users: Inclusively the definition clause specifies certain services-banking, financing, insurance, transport, processing, supply of electrical and other energy, board or lodging or both, entertainment, amusement or the purveying a news or other information. The debate centered round the question whether the word 'includes' occurring in Section 2(1)(o) limits 'services' to what are specifically mentioned in the clause or the concept of service is wide and exhaustive taking within its purview services of every description including those specifically mentioned therein. The learned counsel for the petitioners urged that the word 'includes' in the context must be interpreted as limiting the concept of service to what are specifically mentioned in the clause; service rendered by medical doctors not having been specifically included must be deemed to have been excluded. Reliance was placed upon S.G.R.Tiles

Manufacturers v. State of Gujarat, : [1977]1SCR878 . and Reserve bank of India v. Peerless General Finance and Investment Company Limited, AIR 1987 SC 1023.

25. The question in S.G.R.Tiles Manufacturers case is whether entry 22 added by Gujarat Government, by notification issued on 27-3-1967 to Part I of the schedule to the Minimum Wages Act, 1948, covers Mangalore pattern roofing tiles. Entry 22 concerned itself with employment in potteries industry. The explanation to the entry read 'for the purpose of this entry potteries industry includes the manufacturer of the following articles of pottery viz.....' Mangalore pattern roofing tiles are not one of the named articles of pottery. The Supreme Court noticed that all the nine items mentioned in the explanation are articles of pottery. After stating the legal position that the expression 'includes' is 'generally used as a word of extension, but the meaning of word or phrase is extended when it is said to include things that would not properly fall within its ordinary connotation' and after referring to the explanation the Court observed: 'If the objects specified are also 'articles of pottery, then these objects are already comprised in the expression 'potteries industry'. It hardly makes any sense to say that potteries industry includes the manufacture of articles of pottery, if the intention was to enlarge the meaning of potteries industry in any way..... The inclusion in the list of objects which are well-recognised articles of pottery makes it plain that the explanation was added to the entry not by way of abundant caution.' The case is not an authority for the proposition that the expression 'includes' has the effect of limiting the scope or the provision to the specific categories mentioned in the provision. There is no such inflexible canon of interpretation. Depending upon the context in which the word 'includes' is found, the interpretation varies. This was recognized by the Supreme Court in the above case when it ruled. 'We do not think there could be any inflexible rule that the word 'include' should be read always as a word of extension without reference to the context'. The intention of the legislature as found by the Supreme Court was not to cover everything that the potteries industry turns out. In the Reserve Bank of India case the same principle was reiterated by the Supreme Court stating that depending on the context an inclusive; definition may enlarge or limit the meaning of words. In both the cases the Supreme Court referred to the following well-known passage in the judgment of the House of Lords in Dilworth v. Commissioner of Stamps, 1899 (19) LT 473. as to the interpretation of the word

'include':

'The word 'include' is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also these things which the interpretation clause declares that they shall include. But the word 'include' is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to 'mean and include', and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions.'

26. The intention of Parliament, in our view, was not and could not be to confine the definition of 'service' to what are specifically mentioned in Clause (1)(o) of Section 2. The opening words of the clause, 'service means service of any description.....' clearly bring out the intention of Parliament that service of every description is comprehended by Clause (o); inclusively certain services are mentioned. By no stretch of reasoning can it be said that services mean only what are specified in that clause especially when the opening part comprehends service of any description. Therefore, in the context the expression 'includes' enlarges the meaning of word 'service' without confining it to what are specifically mentioned in the clause. The Act does not exclude services rendered by professionals. They are too numerous to be specified and that was the reason why inclusive definition was adopted.

27. Two categories are excluded from the definition of service under Section 2(1)(o) of the Act:

(a) Service rendered free of charge; and

(b) Service rendered under a contract of personal service.

Whether the relationship of doctor and patient is a contract of personal service?

28. In Simmons v. Heath Laundry Company, 1910 (1) KB 543. one of the earliest cases, the Court considered the meaning of the term 'contract of service' in the Workmen's Compensation Act. A girl aged 19, employed in a laundry as a skirt machine hand, sustained an injury in the course of her employment which rendered her left hand practically useless; the hand was crushed between two hot rollers. Besides her employment at the laundry she had extra income as a teacher of music lessons and playing accompaniments on the piano. She claimed that her other earnings also should be taken into account in assessing the amount of compensation. Her plea was negatived. The Workmen's Compensation Act comprehended only cases of 'contract of service or apprenticeship, with an employer whether by way of manual, labour, clerical work or otherwise.' A skilled music teacher who gives lessons to a pupil either in his own house or in the pupil's house could not be regarded as a workman and the pupil as the employer. There was no relationship of master and servant between a music teacher and his pupil. It was a case of contract for services but not a contract of service. The difference between 'contract of service' and 'contract for services' was explained by Fletcher Moulton, L.J., as follows:

'The greater the amount of direct control exercised over the person rendering the services by the person contracting for them the stronger the grounds for holding it to be a contract of service, and similarly the greater the probability that the services rendered are of the nature of professional services and that the contract is not one of service... Where a person goes to a music and singing master to take lessons it would be absurd to hold that the person giving the lessons is the servant of the person taking them in any sense of the word.'

29. In Ready Mix Concrete v. Minister of Pensions, All England Law Reports 1968 (1) 433. Mackenna, J., held, 'An obligation to do a work subject to other party's control is a necessary, though not always a sufficient, condition of a contract of service. If the provisions of the contract as a whole are inconsistent with its being a contract of service, it will be some other kind of contract, and the person doing the work will not be a servant.'

The question who is a workman within the meaning of Section 2(s) of the Industrial Disputes Act fell for consideration in D.C. Works Ltd. v. State of Saurashtra, : (1957)ILLJ477SC . . The observations of Lord Denning in Stevenson, Jordan Andharrison Ltd., v. Macdonald and Evans, 1952-1 TLR 101 at 110. were cited:

'One feature which seems to run through the instances is that, under a contract of service, a man is employed as part of the business, and his work is done as an integral part of the business; whereas, under a contract for services, his work, although done for the business, is not integrated into it but is only accessory to it.'

After reviewing the case law the Supreme Court held:

'The principle which emerges from these authorities is that the prima facie test for the determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work, or to borrow the words of Lord Uthwatt at page 23 in Mersey Docks and Harbour Board v. Coggins & Griffith (Liverpool) Ltd., 1947-1 AC 1, at p.23(E). The proper test is whether or not the hirer had authority to control the manner of execution of the act in question'.'

30. The 'contract of personal service' excluded by the definition of service in Section 2(1)(o) of the Act predicates master and servant or employer and employee relationship. Even if the adjective 'personal' relates to quality of work, nonetheless it is a contract of service. In our opinion it would be absured to say that the relationship between a doctor and patient is that of a master and servant or an employer and employee. The tests laid down in Simmons v. Heath Laundry Company (8 supra) as to what constitutes a contract of service in contra distinction to a contract for services are very relevant in deciding the question whether the relationship of doctor and patient is a contract of personal service or a contract for personal services. We are inclined to take the view that the relationship is one of contract for personal services. A patient does not exercise any control, much less direct control over a doctor or a medical institution where he undergoes treatment and therefore absence of control being the chief determining factor it must be held that the relationship is one of contract for personal services but not contract of

personal service.

31. We do not think that the rulings cited for the petitioners are of any help to advance their case. Dr. A.J. Ram v. The Asiatic Government Security life Assurance Co. Ltd., Bangalore, 1941 Mysore High Court Reports (Vol. 29 Page 1) was relied upon very strongly for the proposition that the service rendered by a medical practitioner is a contract of personal service. In that case an insurance company engaged the services of a doctor, a lawyer and another person for a period of 12 years as Directors and to that effect agreements were concluded. When their services were terminated they brought actions claiming damages and also for payment of full remuneration as stipulated in the agreements. The District Court granted decrees for recovery of amounts upto the date of suit for damages for breach of contract, but negatived the claims for future payments, In the Second Appeals, the Mysore High Court held:

'Whatever the ground may be for the termination of the services of the plaintiffs, the fact remains that the company wanted to terminate the services of the plaintiffs and did so. If the grounds are unreasonable or even illegal all that the plaintiffs can complain is that the contract has been wrongfully repudiated and they can sue for damages. The plaintiffs cannot insist that they should be retained in service because the reason given for terminating their services is an incorrect one..... Apart from Section 21(b) which bars specific performance in respect of a contract of the kind in question we consider that Clause (g) of Section 21 is to the effect that a contract, the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date cannot be specifically enforced. The contracts in question involve the performance of a continuous duty as medical adviser or legal adviser extending over a period of ten years. Consequently these contracts clearly come under Clause (g) and cannot be specifically enforced.'

32. The Mysore High Court dismissed the Second Appeal taking the view that specific performance cannot be granted. After referring to Section 21 Clause (b) of the Specific Relief Act it was observed:

'There can be no doubt that a contract to employ in service as a medical adviser or a legal adviser is a contract for personal service.... Medical advice and legal advice are undoubtedly dependent on personal qualifications or volition of the parties, and it is not possible for the court to enforce performance of the material terms of such contracts of service.'

33. The distinction between contract of personal service and contract for personal services has not been highlighted in the judgment. Although the Court has not discussed the difference between the two concepts, it rightly ruled that the agreements concluded by the plaintiffs with the Insurance Company were contracts for personal services.

34. Jagannath Patnaik v. Pitambar Mohapatra, : AIR1954 Ori241 . relates to a claim for enforcement of contract of personal service. The plaintiff was appointed as Diwan of an estate by a Raja for a period of seven years. The order communicated to the plaintiff inter read. 'Your services shall not be terminated during 7 years to come except on proved dishonesty or misconduct'. The appointment order was dated 26-12-1940. The Raja died on 10-12-1943 and his grandson who succeeded to the estate terminated the services of the plaintiff with effect from 1-4-1944. The plaintiff brought a suit for salary for the balance of 7 years period originally stipulated in the contract. Noticing the fact that the principles of English law of contract relating to master and servant have not been expressly incorporated in Section 37 of the Indian Contract Act, and after referring to the provisions of Section 40 of the Indian Contract Act, the Orissa High Court held that there was no basis to infer that the parties to the contract contemplated that it should continue after the death of the employer.

'On the other hand, it appears more probable that they presumed that the state of things which existed in 1940 would continue for the stipulated period of seven years and it was with reference to that presumption alone that they entered into the contract. The principles of English law dealing with contracts of personal service would therefore apply with full force and the contract should be held to be dissolved by the death of the previous proprietor.'

35. This decision is of no relevance to the question at issue. The Mysore case-Dr. A.J. Ram v. The Asiatic Government Security Life Assurance Co., Ltd., (12 supra) lays down the proposition that the services rendered by a medical practitioner constitute a contract for personal services.

36. One of the points urged for the petitioners is based upon Section 12 of the Act which deals with the manner in which complaint shall be made. It says that a complaint in relation to any goods sold or delivered or any services provided may be filed with a District Forum by the consumer or any recognised consumer association of Central or State Government. The definition of 'consumer' as already noticed includes a person who hires any services for a consideration. In respect of those services also a complaint can be made and this is explicitly stated in Section 12. We, therefore, do not see any force in the assertion that a consumer under the Act is one who buys goods and that persons who obtain the services of professionals for consideration are outside the ambit of the Act.

In the context of the debate on the aspect of services rendered by medical professionals it was urged by Sri Subrahmanya Reddy that if every service was to be brought within the ambit of the Act it would not be possible to run the administration and as an instance he stated that even judicial service also amounts to service under the Act. This contention, in our view, is fallacious. Sovereign functions performed by the State are not services for consideration falling within the ambit of Section 2(1)(0) of the Act. The distinction between sovereign functions and non-sovereign functions is well-known. It is true that some of the services mentioned in Section 2(1)(o) of the Act are rendered by the State, but they are not sovereign functions. Administration of justice, maintenance of law and order, security of the State are some of the essential sovereign functions which the State must perform. These are not the services which can be claimed by any individual 'for a consideration'.

37. 'Service' under Section 2(o) of the Act, as already stated excludes 'contract of personal service'. The phrase implies agreement by which a person offers to render service personally: it predicates relationship of master and servant or employer and employee. 'Contract for personal service' implies obligation to

render specified service by the person offering the service. This is not excluded from the definition of service. The service rendered for consideration by private medical practitioners, private hospitals and nursing homes must be construed as 'service' within the ambit of Section 2(o) of the Act.

38. We, therefore, hold that in this batch of cases the complainants before the consumer redressal agencies are consumers within the meaning of Section 2(1)(o) and that the services rendered by private medical practitioners and private medical institutions for consideration fall within the ambit of service under Section 2(1)(o) of the Act.

39. Re.(3):- The question to be considered is whether the forums under the act have no power to award damages? A District Forum, after enquiry is empowered under Section 14(1) of the Act to pass an order directing the opposite party to take one or more of the following things, namely:-

'(a).....

(b).....

(c).....

(d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.'

Although in respect of a State Commission and the National Commission there is no specific provision in the Act analogous to Section 14, the two commissions mutatis mutandis exercise powers similar to those specified in Section 149(1) by virtue of Sections 18 and 22 of the Act. The contention urged by Shri Subrahmanya Reddy, learned counsel for the petitioners is that the expression 'compensation' in Section 14 cannot be equated with 'damages' since both are different concepts. Compensation is money equivalence for balancing the actual loss sustained whereas damages although relate to estimate in terms of money of what has been lost, the estimate in confined not to the actual loss but it also comprehends suffering and the feelings a person has undergone because of the

loss sustained. In sapport of this reliance was placed upon the observations of a Division Bench of the Calcutta High Court in Md. Mozaharal Ahmad v. Md. Azimaddin, AIR 1923 Calcutta 506 at 511 . The Division Bench was dealing with the question as to the period of limitation for instituting a suit for recovery of dower debt when there was a registered dower deed. The view taken by the Division Bench was that Article 116 of the Limitation Act, 1908 which provided six years limitation for instituting suits for breach of a written registered contract was applicable. Referring to Articles 115 and 116 in which the term 'compensation' occurs the Division Bench said:

'The term compensation, as used in Arts.115 and 116 is thus, perhaps not sufficiently precise, while the technical distinction between debt and damages may be too refined for the purpose.'

The decision turned upon the fact that the dower debt in question was by a registered deed and not upon the meaning of the term 'compensation'.

40. In our view, there is no substantial difference between the terms 'compensation' and 'damages'. One of the meanings of compensation as mentioned in the Concise Oxford Dictionary is: 'thing given as recompense'. The same dictionary says: in law the term 'damage' when used as plural means, 'sum of money claimed or adjudged in compensation for loss or injury'. Anything given to make amends for loss or recompense is compensation as ruled by the Supreme Court in State of Gujarat v. Snantilal, : [1969]3SCR341 .:

'In ordinary parlance the expression 'compensation' means anything given to make things equivalent; a thing given to or to make amends For loss, recompense, remuneration or pay.'

According to Concise Oxford Dictionary one of the meanings of 'recompense' is, 'make amends to (person or for another's loss, injury etc.)'. Any amount paid for making amends for loss or injury caused need not therefore be strictly monetary equivalence of the actual loss sustained. In this context we may also refer to the concept of 'compensation' under the Land Acquisition Act, 1894. That Act does not confine compensation only to the actual money equivalent of what the owner has

been deprived of; it also by Sub-section (2) of Section 23 provides for solatium for the compulsory nature of the i acquisition. The amount paid by way of solatium is over and above the market value and the concept of compensation takes in both the actual value and also the solatium. There are no precise contours between the two expressions; they overlap each other and unless the statute expressly provides otherwise both the expressions convey one and the same meaning. We accordingly hold that the term 'compensation' occurring, in Section 14(1)(d) of the Act comprehends damages also.

41. Re: (4) and (5):- The contention urged is that the composition of the redressal agencies makes them unsuitable for awarding damages on the ground of medical negligence. The composition of the consumer redressal agencies we have already referred to supra. Sections 12, 13 and 14 deal with the procedural aspects to be adhered to by the District Forum. The same procedure mutatis mutandis is applicable to a State Commission by virtue of Section 18. The National Commission under Section 22 exercises the powers of a civil court in the disposal of any complaints brought before it. What all powers under the Code of Civil Procedure a civil court exercises while trying a suit, the District Forum also exercises the same powers under Sub-section (4) of Section 13 in respect of the following matters:

'(i) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;

(ii) the discovery and production of any document or other material

object producible as evidence; (iii) the reception of evidence on affidavits;

(iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;

(v) issuing of any commission for the examination of any witness; and

(vi) any other matter which may be prescribed.'

Section 21 which deals with the manner in which complaints shall be made says, inter alia, that a complaint in relation to any service may be filed. When such a complaint relating to any service is filed, Sub-section (2) of Section 3 lays down that a copy of the complaint has to be sent to the opposite party within a period of thirty days and if the opposite party on receipt of a copy of the complaint denies or disputes the allegation or fails to represent his case within the time given by the District Forum, the dispute has to be settled by the District Forum on the basis of the evidence placed before it by the complainant and the opposite party or on the basis of the evidence produced by the complainant where the opposite party has not adduced any evidence or failed to take any action to represent his case. The Presiding Officer of the consumer redressal agencies at the District level, State level and National level is a legally trained person. The other members may or may not be having experience in law. The Act contemplates speedy and effective remedy, but takes care to mandate compliance with the principles of natural justice and rendering of decisions after considering the evidence on record. The Act fully ensures procedural due process: the opposite party is heard, evidence is considered and finding is recorded only after enquiry. In every complaint relating to medical negligence as a general rule it cannot be said that comprehensive evidence irrespective of the nature of questions thrown open must be brought on record for recording a finding as to the alleged negligence. If the questions raised are simple and do not warrant adduction of voluminous evidence the same must be decided by the consumer redressal agency. Very many complaints fall under this category. But if complex questions are raised necessitating elaborate evidence of a highly technical nature and examination of witnesses especially expert witnesses is going to be a time consuming process, the redressal agency will have little choice but to ask the parties to approach the regular civil court for adjudication. Anything more than this we are not inclined to express: it is neither possible nor appropriate to lay-down any specific guidelines to categorise complaints for susceptibility to expeditious enquiry under the Act and adjudication by ordinary civil courts.

42. Whether damages are awarded by a civil court for medical negligence or damages in the form of compensation are awarded by a consumer redressal agency, there must be a finding as to the alleged medical negligence. The

principles of law which the civil courts have to bear in mind for awarding damages are the same which must be followed by the consumer redressal agencies under the Act. What is the test that should be applied in cases of medical negligence was stated by Me Nair, J., in Bojam v. Friern Hospital Committee, (1957) 2 All. E.R. 118 at 121-122. :

'The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill at the risk of being found negligent. It is well-established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art.'

The learned judge expanded the idea further:

'Putting it the other way round, a doctor is not negligent, if he is acting in accordance with such a practice, merely because there is a body of opinion that takes a contrary view. At the same time, that does not mean that a medical man can obstinately and pig-headedly carry on with some old technique if it has been proved to be contrary to what is really substantially the whole of informed medical opinion. Otherwise you might get men today saying: 'I don't believe in anaesthetics. I don't believe in antiseptics. I am going to continue to do my surgery in the way it was done in the eighteenth century.' That clearly would be wrong.'

This statement of law was approved by the House of Lords in Whitehouse v. Jordon,(1981) 1 WLR 246. . The difference between error of judgment and negligence was highlighted by Lord Fraser of Tully belton in his speech:

'Merely to describe something as an error of judgment tells us nothing about whether it is negligent or not. The true position is that an error of judgment may or may not, be negligent; it depends on the nature of the error. If it is one that would not have been made by a reasonably competent professional man professing to have the standard and type or skill that the defendant held himself out as having, and acting with ordinary care, then it is negligent. If, on the other hand, it is an error that such a man, acting with ordinary care, might have made, then it is not negligent.'

The law in our country is no different from the English Law. The Supreme Court in Laxman v. Trimbak, : [1969]1SCR206 . laid down the duties a doctor owes to his patients:

'The duties which a doctor owes to his patient are clear. A person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties viz., a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give or a duty of care in the administration of that treatment. A breach of any of those duties gives a right of action for negligence to the patient. The practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires: (Ch.Halsbury's Laws of England, 3rd Ed. Vol.26 p.19.)'

After reviewing the case law on the subject it was held by one of us (M.N. Rao, J.,) in Pinnamaneni Narasimha Rao v. Gundavarapu Jayaprakasu, : AIR 1990 AP207 . :

'Negligence constitutes an independent basis of tort liability. Law imposes a duty on every one to conform to a certain standard of conduct for the protection of others. In the case of persons who undertake work requiring:

'special skill must not only exercise reasonable care but measure up to the standard of proficiency that can be expected from persons of such profession.' (See John G. Flemming's 'The Law of Torts', Fifth Edition at p.109).

Failure to conform to the required standard of care resulting in material injury is actionable negligence if there is proximate connection between the defendant's conduct and the resultant injury. A surgeon or anaesthetist will be judged by the standard of an average practitioner of class to which he belongs or holds himself out to belong. In the case of specialists a higher degree of skill is called.'

As already observed by us, the entire gamut of law relating to medical negligence comes into play irrespective of the fact whether the seisin of the matter is by the civil court or one of the redressal agencies under the Act. The basic law applicable for adjudicating complaints against members of the medical profession must be the Law of Torts; the creation of special forums in the form of redressal agencies under the Act makes little difference in this regard. Section 3 as already noticed makes it explicit that the provisions of the Act shall be in addition to but not in derogation of any other law for the time being in force. The creation of additional forums under the Act was conceived of in the interest of general public for expeditious and effective adjudication of complaints instead of driving the affected parties to the time consuming process of civil actions in regular civil courts. An additional forum is not a parallel forum and about this we have already adverted to supra while dealing with W.P.No. 15006/90- the claimant must choose one of the two forums and not both.

43. Re; (6):- Sections 10, 16 and 20 respectively deal with the composition of the District Forum, the State Commission and the National Commission. The President of each of these bodies shall be a legally trained person as specified in the respective provisions. At the District level besides the President, there are two other members; one shall be a woman social worker and the other shall be a person of eminence in the field of education, trade or commerce. At the district level there is no requirement that the woman social worker shall be a person of eminence in the field of education, trade or commerce. In the State Commission, both the members shall have experience or knowledge in 'economics, law, commerce, accountancy, industry, public affairs or administration,' but one of them shall be a woman. At the National Commission level there are four members of whom one shall be a woman, and all of them shall have experience in the aforesaid fields of speciality. The expert member at the district level according to Section 10(1)(b) as already noticed shall be a person of eminence in the field of education, trade or commerce. But Sections 16(1)(b) and 20(1) which deal respectively (with the qualifications of members of State Commission and the National Commission do not say that the members should be 'persons of eminence' in the fields of speciality mentioned therein. The language used in both the sections is that the members:

'....shall be persons of ability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman.'

Despite the seemingly marked difference in the language as to the measure of intellectual equipment of the members of the different redressal agencies, we are inclined to view the distinction as one without any difference having regard to the transparent intendment of the legislation. In their respective fields the members shall be persons of eminence.

44. The contention forcefully urged by Sri Subrahmanya Reddy and Sri Poornaiah, learned counsel for the medical practitioners is that the composition of the three forums at the District, State and National level excludes representatives in the medical profession and this is the surest indication that it was not the intention of the law-makers to include the medical profession within the purview of the Act.

45. The number of members in the District and State Forums is limited to two besides the President and in the National Commission, to four besides the President. The fields of specialty for the members of the State Commission and National Commission are seven in member and at the district level, three. It would be totally unrealistic to conclude that at the district level the complaints should be confined only to the fields of education, trade or commerce and at the State and National level to the seven specified fields. Complaints could be in respect of service of any description or in relation to any goods sold or delivered. The services inclusively mentioned in Clause (o) of Section 2 are thirteen in number viz., 'banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, entertainment, amusement or the purveying a news or other information....' Association of persons of eminence in the several fields of speciality mentioned in the Act was intended only to facilitate easy and quick appreciation of the nature of the complaints received in order to rendex effective and expeditious adjudication. An expert in one field will be in a better position to grasp the basics or fundamentals involved in any other field unlike a person who is not an expert in any field. It is impossible in a legislation of

the present type to associate representatives of all professions with the adjudicating bodies.

46. Although not argued exhaustively, some of the learned counsel in passing, referred in the course of their arguments to The Indian Medical Council Act, 1956 and contended that the medical profession is fully regulated by the said Act and, therefore, the Consumer Protection Act has no application. The contention is totally misconceived. We must mention in this context that there was no serious argument on this aspect; our attention has not been drawn to any of the provisions of the aforesaid Act.

47. Medical profession which has been rightly considered as the noblest of all the professions, from time immemorial enjoyed the highest esteem and gratitude of the community. The very nature of the functions a doctor discharges calls (Sic) strict code of conduct both ethical and legal. In the words of Mason and Me Call Smith:

'The doctor's involvement with his patient is thus very special but the two sides of the relationship are not always equally balanced; just as the lawyer knows more about the law than does his client, the doctor knows more about medicine than does his patient. The patient's attitude is, therefore, poised between trust in the learning of another and the general distrust of one who finds himself in a state of uncertainty. Such ambivalence leads naturally to a sense of inferiority; it is the function of medical ethics to ensure that the potential superiority of the doctor is not abused.' Mason & Mc Call Smith on 'Law And Medical Ethics' Second edition p. 3 and 7.

The fundation for the medical ehics according to the learned authors is:

'....the practice of medicine cannot be conducted solely on the basis of the individual conscience; the conduct of doctors is circumscribed by the public conscience and, whether the public conscience fashions the law or whether the law moulds the public's attitudes, these latter attitudes are in evitably reflected in the law.'

48. The Medical Act of 1858 by which the General Medical Council was established in England regulated standards of the medical profession until 1978 when the Medical Act was passed. The Medical Council functioning under the Medical Act, 1978 undertakes advisory functions when requested by the registered medical practitioners. The Professional Conduct Committee constituted under the Act is the 'ultimate tribunal in respect of the discipline and subjected only to appeal to the Privy Council'. In India, the first legislative enactment was in 1933- The Indian Medical Council Act-which was repealed by the Indian Medical Council Act, 1956. The Act was brought in for registration of medical practitioners, formation of committee of postgraduate medical education for assisting the Medical Council of India to prescribe standards, of post-graduate medical education and to provide for the maintenance of an all India register by the Medical Council to incorporate the names of all medical practitioners possessing recognised medical qualifications. Section 20A deals with professional conduct. Sub-section (1) confers power on the Medical Council to 'prescribe the standards of professional conduct and etiquette and a code of ethics for medial practitioners'. By Sub-section (2) power in conferred on the Council to make regulations in regard to professional conduct. Disciplinary jurisdiction exercised by the Medical Council of India under the 1956 Act does not extend to adjudication of complaints brought against members of the medical profession for the purpose of awarding compensation or damages. It is, therefore, futile to contend that the existence of disciplinary jurisdiction under the Medical Council Act excludes adjudication of complaints by the redressal agencies under the Consumer Protection Act.

49. Re;(7):- We have already held that the Consumer Protection Act does not exclude Private Medical Practitioners and Nursing Homes from the purview of the Act if they had rendered service for consideration. If it was to be held so, the contention advanced was that the Act would be unconstitutional on the ground of violation of Articles 14 and 19(1)(g) of the Constitution.

50. Article 14 prescribes arbitrariness: incorporating the principle of non-discrimination it permits reasonable classification. It ordains that like should be treated alike and not all alike. Article 19(1)(g) guarantees that all citizens shall have the right to practice any profession or carry on any occupation, trade or

business. It is undeniable that practice of medicine is a profession. Clause (6) of Article 19 lays down that reasonable restrictions can be imposed in respect of the right guaranteed under Article 19(1)(g) in the interest of the general public. The existing rights of the members of the medical profession either under the Indian Medical Council Act, 1956 or the regulations made thereunder have not been curtailed or in any manner restricted by any of the provision's of the Consumer Protection Act. The law Was enacted for the purpose of providing for better protection of the interests of consumers: inter alia, it seeks to protect:

'the right to seek redressal against unfair trade practice or unscrupulous exploitation of consumers'

as is evident from the Statement of Objects and Reasons. It does not in any manner adversely affect the interests of the members of the medical profession. The basic principles of Law of Torts which shall constitute the foundation for adjudicating the question of negligence shall govern proceedings in this regard whether they are by way of a civil action in a regular civil court or by Way of a complaint before a redressal agency under the Consumer Protection Act Creation of an additional forum for expeditious and effective disposal of complaints emnating from consumers does not amount to invasion or any fundamental right of the members of any profession. In the impugned Act we discern neither arbitrariness nor discrimination againsthe medical profession nor does it in any manner adversely affect the right of medical doctors to practice their profession. We have, therefore, no hesitation to reject the contention advanced in this regard.

51. For the foregoing reasons, we allow W.P.No. 5224 of/1990 on the question of limitation and accordingly we declare that the State Commission, the first respondent, has no jurisdiction to proceeed with the adjudication of CD.C.No. 20 of 1990. W.P.No. 15006 of 1990 is partly allowed. We declare that the complaint C.D.C.No. 70 of 1990 before the State Commission filed by the first respondent Smt. K.Ramalakshmi is not maintainable any longer as she has elected to file a comprehensive civil suit in the Court of Subordinate Judge, Madanapalle where admittedly it is now pending. The writ appeals and all the other writ petitions are dismissed. No costs.

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