

Dr. S.S. Prasad Vs. Sumitra Devi

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Court : Jharkhand

Decided On : Feb-26-2007

Reported in : 2007(2)BLJR1578; [2007(3)JCR562(Jhr)]

Judge : M.Y. Eqbal and; D.K. Sinha, JJ.

Acts : [Consumer Protection Act, 1986](#) - Sections 9, 11, 12, 13, 14, 15, 19, 20, 21, 23 and 27; Code of Civil Procedure (CPC) - Sections 115; Constitution India - Articles 32, 136, 226, 227, 323A and 323B

Appeal No. : WPC No. 6829 of 2005

Appellant : Dr. S.S. Prasad

Respondent : Sumitra Devi

Advocate for Def. : Mitul Kumar and; R.N. Prasad, Adv.

Advocate for Pet/Ap. : A.K. Das and; C. Mukherjee, Adv.

Disposition : Application dismissed

Judgement :

ORDER

1. In the instant writ application under Article 226 of the Constitution India the petitioner has prayed for quashing the order dated 31st August 2005 passed by National Consumer Disputes Redressal Commission, New Delhi in Revision

Petition No. 1769/05 and also for quashing the order dated 2.5.2005 and 29.3.2000 passed by the State Consumer Disputes Redressal Commission in Appeal No. 162/04 and the District Consumer Disputes Redressal Forum, Ranchi in Complaint Case No. 84/96 respectively.

2. The brief facts of the case are that respondent Smt. Sumitra Devi filed a complaint before the District Consumer Redressal Forum, Ranchi (in short District Forum) alleging that her husband was admitted in petitioner's Nursing Home, namely, Prasad Nursing Home on 5.5.1996 on the advice of the petitioner making allegation that a sum of Rs. 2200/- was deposited on the demand of the doctor. After taking the aforesaid amount, petitioner alleged to have demanded from the respondent, Rs. 3000/- more otherwise he would not take up the case. Respondent alleged to have rushed to arrange the money but due to less money and due to late treatment, patient died on 7.5.1996. Respondent, therefore, claimed compensation of Rs. 4,50,000/-. After giving notice to the petitioner and after hearing the parties the District Forum allowed the complaint case and directed for payment of Rs. 4,50,000/-. Petitioner preferred appeal before the State Consumer Disputes Redressal Commission (in short State Commission) being Appeal No. 162/04. The State Commission dismissed the appeal by passing a reasoned order on 2.5.2005. Petitioner, thereafter, preferred revision application before the National Consumer Disputes Redressal Commission, New Delhi (in short National Commission) being Revision Petition No. 1769/05. The National Commission after hearing the parties dismissed the Revision Application by order dated 31.8.2005. Petitioner, thereafter, challenged the aforesaid orders by filing this writ application under Article 226 of the Constitution of India.

3. A counter affidavit has been filed by the respondents raising objection with regard to maintainability of the writ application on the ground that the dispute has been finally decided by the National Commission in revision filed by the petitioner. It is stated that this Court under Article 226 of the Constitution may not interfere with the finding of facts recorded by the three forums.

4. In the aforesaid background of this case, with the consent of the learned Counsel appearing for the parties, the writ application is being heard and disposed

of by this order.

5. Mr. A.K. Das, learned counsel for the petitioner submitted that final order passed by the National Commission in exercise of revisional power can be challenged under Article 226 of the Constitution of India. Learned Counsel put reliance on the decisions in the case of *Jyotendrasinhjt. v. S.I. Tripathi and Ors.* (1993) Supp.(3) SCC-3S9, in the case of *L. Chandra Kumar v. Union of India and Ors.* : [1997]228ITR725(SC) , in the case of *M.D. District Cooperative Milk Union Limited v. Presiding Officer, State Consumer Disputes Redressal Commission, Ranchi* (2004) 1 JLJR-79 and in the case of *Pick Up Stock and Securities Pvt. Ltd. v. Smt. Chandra Prabha Ray*(2004) 3 JLJR-259.

6. Before appreciating the submission made by the learned Counsel, I would first like to discuss some of the relevant provisions of the [Consumer Protection Act, 1986](#) (short 'the Act') which has been enacted to provide better protection to the interests of the consumers by establishing quasi-judicial authorities for the settlement of disputes. Section 9 of the Act makes provisions for establishment of Consumers' Disputes Redressal Forum in each district of the State. Section 11 of the Act confers jurisdiction upon the District Forum to entertain complaints where the value of the goods or the services and compensation, if any, claimed, does not exceed Rs. 20 lacs. Section 12 of the Act provides the manner in which complaint shall be filed before the District Consumer Forum. Section 13 of the Act lays down the procedure of hearing by the District Forum after admission of a complaint. Section 14 of the Act lays down procedure for passing final order by the District Forum. Section 15 of the Act prescribes provision of appeal against the order of the District Forum which reads as under:

15. Appeal - Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed:

Provided that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

Provided, further that no appeal by a person, who is required to pay any amount in terms of an order of the District Forum, shall be entertained by the State Commission unless the appellant has deposited, in the prescribed manner fifty per cent of that amount or twenty-five thousand rupees, whichever is less.

7. The Act further provides that in every State, there shall be a State Commission having original jurisdiction as well as appellate jurisdiction. The State Commission shall hear appeal against the order of any District Forum within the State. Section 19 of the Act makes provision of appeal before the National Commission against the order of State Commission established under Section 9 of the Act. Section 19 of the Act reads as under:

19. Hearing of appeal. - An appeal filed before the State Commission or the National Commission shall be heard as expeditiously as possible and an endeavour shall be made to finally dispose of the appeal within a period of ninety days from the date of its admission.

Provided that no adjournment shall be ordinarily granted by the State Commission or the National Commission, as the case may be, unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by such Commission.

Provided further that the State Commission or the National Commission, as the case may be, shall make such orders as to the costs occasioned by the adjournment as may be provided in the regulations made under this Act.

Provided also that in the event of an appeal being disposed of after the period so specified, the State Commission or the National Commission, as the case may be, shall record, in writing the reasons for the same at the time of disposing of the said appeal.

8. Section 20 of the Act prescribes procedure of composition of the National Commission. According to Section 20, the National Commission shall consist of a person who is or has been a Judge of the Supreme Court appointed by the Central Government who shall be its President along with four other members who are

eligible in terms of the proviso of the Act.

9. Section 21 of the Act is the relevant provision which lays down the jurisdiction of the National Commission. Section 21 reads as under:

21. Jurisdiction of the National Commission. - subject to the other provisions of this Act, the National Commission shall have jurisdiction -

(a) to entertain -

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees one crore; and

(ii) appeals against the order of any State commission: and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

10. From reading of the aforesaid provision, it is manifest that National Commission shall have both original jurisdiction to entertain complaints where the value of the goods or services and compensation claimed, exceeds Rs. One Crore and has also appellate jurisdiction to hear appeal against the orders passed by any State Commission. Clause (b) of Section 21 of the Act confers revisional jurisdiction to the National Commission empowering it to call for the records and pass appropriate order in any consumer disputes which is pending or has been decided by any State Commission, where it appears to the National Commission that such State Commission has exercised jurisdiction not vested in it by law or has failed to exercise jurisdiction so vested or has acted in the exercise of its jurisdiction illegally or with material irregularity. The original jurisdiction conferred by Clause (b) of Section 21 is similar to that of the revisional power vested in the High Court under Section 115 of the Code of Civil Procedure.

11. Section 23 is also relevant and important for the purpose of deciding the issue involved in this case. Section 23 of the Act makes a provision of appeal before the Supreme Court against the order passed by the National Commission in exercise of its power conferred by Sub-clause (i) of Clause (a) of Section 21 of the Act. Section 23 of the Act reads as under:

23. Appeal. - Any person, aggrieved by an order made by the National Commission in exercise of its powers conferred, by Sub-clause (i) of Clause (a) of Section 21, may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

Provided further that no appeal by a person who is required to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless that person has deposited in the prescribed manner fifty per cent of that amount or rupees fifty thousand, whichever is less.

12. From reading of the aforesaid provision, it appears that when the National Commission passes an order under Clause (a) of Section 21 exercising original jurisdiction by deciding a complaint case or exercising appellate jurisdiction by deciding appeal against the order of State Commission, then against such order, appeal will lie to the Supreme Court. The second proviso to Section 23 provides that such appeal before the Supreme Court shall not be entertained unless the person required to pay compensation determined by the State Commission, deposits 50% of that amount or Rs. 50000/- whichever is less. However, no provision has been made in the Act for appeal to the Supreme Court against the order passed by the National Commission exercising revisional jurisdiction under Clause (b) of Section 21 of the Act.

13. First question that falls for consideration is as to whether orders passed by the District Forum, State Commission in appeal and the National Commission in Revision under Section 21(b) of the Act can be challenged by filing writ application

under Articles 226 and 227 of the Constitution of India

14. The question has no longer res integra. In the case of *L. Chandra Kumar v. Union of India and Ors.* : [1997]228ITR725(SC) , a larger Bench of the Supreme Court has held that power of judicial review as enjoined under Articles 226 and 227 of the Constitution to the High Court is the basic structure of the Constitution and can never be ousted and excluded. The Rule of law always recognizes the power of judicial review vested in the Supreme Court and the High Courts under Articles 32, 136, 226 and 227 of the Constitution of India. In *L. Chandra's* case, the Supreme Court observed:

81. If the power under Article 32 of the Constitution, which has been described as the 'heart' and 'soul' of the Constitution, can be additionally conferred upon 'any other court', there is no reason why the same situation cannot subsist in respect of the jurisdiction conferred upon the High Courts under Article 226 of the Constitution. So long as the jurisdiction of the High Courts under Articles 226/227 and that of this Court under Article 32 is retained, there is no reason why the power to test the validity of legislations against the provisions of the Constitution cannot be conferred upon Administrative Tribunals created under the Act or upon Tribunals created under Article 323B of the Constitution. It is to be remembered that, apart from the authorisation that flows from Articles 323A and 323B, both Parliament and the State Legislatures possess legislative competence to effect changes in the original jurisdiction of the Supreme Court and the High Courts. This power is available to Parliament under Entries 77, 78, 79 and 95 of List I and to the State Legislatures under Entry 65 of List II; Entry 46 of List III can also be availed of both by Parliament and the State Legislatures for this purpose.

15. Their Lordships further observed:

91. It has also been contended before us that even in dealing with cases which are properly before the Tribunals, the manner in which justice is dispensed, by them leaves much to be desired. Moreover, the remedy provided in the parent statutes, by way of an appeal by special leave under Article 136 of the Constitution, is too costly and inaccessible for it to be real and effective. Furthermore, the result of providing such a remedy is that the docket of the Supreme Court is crowded with

decisions of Tribunals that are challenged on relatively trivial grounds and it is forced to perform the role of a first appellate court. We have already emphasised the necessity for ensuring that the High Courts are able to exercise judicial superintendence over the decisions of the Tribunals under Article 227 of the Constitution. In R.K. Jain case 6, after taking note of these facts, it was suggested that the possibility of an appeal from the Tribunal, on questions of law to a Division Bench of a High Court within whose territorial jurisdiction the Tribunal falls, be pursued. It appears that no follow-up action has been taken pursuant to the suggestion. Such a measure would have improved matters considerably. Having regard to both the aforesaid contentions, we hold that all decisions of Tribunals, whether created pursuant to Article 323A or Article 323B of the Constitution, will be subject to the High Court's writ, jurisdiction under Articles 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular Tribunal falls.

92. We may add here that under the existing system, direct appeals have been provided from the decisions of all Tribunals to the Supreme Court under Article 136 of the Constitution. In view of our above-mentioned observations, this situation will also stand modified. In the view that we have taken, no appeal from the decision of a Tribunal will directly lie before the Supreme Court under Article 136 of the Constitution; but instead, the aggrieved party will be entitled to move the High Court under Articles 226/227 of the Constitution and from the decision of the Division Bench of the High Court the aggrieved party could move this Court under Article 136 of the Constitution.

16. In the light of Catena of decisions of the Supreme Court including L. Chandra's case (Supra) it can safely be concluded that there is no bar entertaining the writ petition under Article 226 of the Constitution against the order passed by the National Commission exercising revisional jurisdiction under Section 21(b) of the Act.

17. The second and the last question that falls for consideration is as to whether this Court in exercise of extraordinary jurisdiction under Articles 226/227 of the Constitution of India interfere with the impugned orders passed by the Tribunals.

18. In the present case it appears that the applicant being aggrieved by the order of the District Forum went in appeal before the State Commission under Section 15 of the [Consumer Protection Act, 1986](#) where the appeal was dismissed. Thereafter the applicant against the order of State Commission went to National Commission in Revision under Section 21(b) instead of appeal under Section 21(a)(ii) of [Consumer Protection Act, 1986](#) where his revision application has been rejected. Thus the intension of legislature is very clear that where there is ample opportunities for the aggrieved person to redress their grievances on every stages there should be extra ordinary situation to invoke the extraordinary jurisdiction under Article 226 of the Constitution of India. Final order of National Commission in revision may be questioned in High Court under Article 226 only to save the miscarriage of justice when there is error flagrant in the impugned order. Further the intension of the legislature is to give speedy and effective relief. Therefore, in the present case the said intension will be defeated if proceeding are elongated by entertaining the application under Article 226 of the Constitution without any substantive reasons for invoking the writ jurisdiction of High Court in view of the fact that a number of forum available under the Act have already been exhausted by the applicant under the [Consumer Protection Act, 1986](#). I do not find any compelling circumstances or imperative element or glaring infirmity in the impugned order passed by the National Commission so as to require the interference by the High Court.

19. Apart from this the Act is dedicated, as its preamble shows to provide for better protection of the interest of consumers and for that purpose to make provision for the establishment of several authorities for settlement of consumer disputes and for other connected matters. The purpose of enacting the Act is to render simple, inexpensive and speedy remedy to the consumers with complaints against defective goods and deficient services and unfair & restrictive trade practices and for that a quasi-judicial machinery has been sought to be set up at the District, State and Central levels. These quasi-judicial bodies are required to observe the principle of natural justice and have been empowered to give relief of a specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non-compliance with the orders given by the quasi-judicial bodies have also been provided.

20. Thus, [Consumer Protection Act, 1986](#) is a complete statute where various stages/forums are available for the redressal of the grievances by way of appeal, revision to the parties right from District Forum to State Commission to National Commission and to the Supreme Court. Thus, adequate legal remedies are available to the parties under the Act to make it more effective and purposeful. Thus the Act provides for an alternative system of 'Consumer Justice' by summary trial. Having due regard to the aforesaid schemes of the Act and careful examination the order under challenge, I hold that it is not a proper case to interfere with and to exercise the extraordinary jurisdiction in absence of violation principles of natural justice, infringement of fundamental rights, or patent error of law in the impugned order.

21. From perusal of the order passed by National Commission it is clear that the National Commission has gone in detail and recorded a finding of fact. Paragraph 5 and 6 of the order of Commission is worth to be quoted herein below:

5. In the light of the rival contentions, the only question arises as to whether the release of the patient from RMCH to Private. Nursing Home of the appellant was justified? Equally associated question is whether there has been any deficiency, latches and negligence on the part of the appellant Dr. S.S. Prasad. The appellant has himself admitted in his written statement that he being the Head of Deptt. of the Medicine and Nephrology in R.M.C.H. where highest degree of treatment for such ailment are done with well experienced and skilled staff and technician under the supervision of the Pathology Section. In such circumstances, I am of the view that the appellant doctor S.S. Prasad should not have admitted the patient in his private Nursing Home particularly keeping in view the serious condition of the patient and should have referred back to R.M.C.H. where expert treatment is easily made for such ailment according to the appellant himself. He being the Head of Deptt. of the Medicines & Nephrology, he should have called for an explanation from the Assistant Casualty officer on duty as to how and under what circumstances the patient, who needed immediate dialysis, was referred to his private Nursing Horns. The day when the patient was referred to his Nursing Home was a Sunday and the appellant Dr. Prasad was aware of the fact of non-availability of dialysis machine Even then, he kept mum and allowed, the patient to

remain in his Nursing Home uncared till the next day. It is true that positive evidences by way of rebuttal has not been made available to court, but, the fact remains that the patient has been referred from the R.M.C.H. to his private Nursing Home seems to be malafide, intentional and only to squeeze money from such helpless patient. There is a controversy as to when the patient died either on 6/5/96 or 7/5/96 but in our view this is immaterial. In such cases, it is to be ascertained whether there has been a negligence and or deficiency on the part of the attending physicians and/or surgeon. It is not only a case of negligence but a definitely a case of intentional and malafide action on the part of the appellant only for squeezing money from the helpless patient who was initially admitted in RMCH where the applicant was the Head of Deptt. of Medicines and Nephrology, Having regard to the admitted facts, and other related circumstances emerging from the materials available on record including the pleading of the parties, are that the patient was referred from RMCH to the Nursing Home of the appellant on 5.5.96. The appellant Dr. Prasad being the Head of the Deptt. of Medicines and Nephrology, conclusively go to show that the appellant in connivance with the officers on duty in RMCH has got the patient shifted to his Private Nursing Home when the patient was in a critical condition. When the patient was referred to the Nursing Home of the appellant on 5.5.96, the appellant Dr. Prasad was aware that the dialysis machine was not available either in his Nursing Home nor in Ranchi market since only one shop namely Azad Pharmacy where the machine could be available, was closed on 5.5.96 being Sunday. There was no justification for keeping the patient uncared for the whole day & night in his private Nursing Home. Being Head of the Deptt. he should not have allowed the patient to be shifted from RMCH to his Nursing Home when the patient had already knocked the door of RMCH. According to the appellant doctor himself, the patient required immediate dialysis and transplantation of kidney. Admittedly, the appellant doctor was aware that the dialyser can not be purchased on 5.5.96 being Sunday, he could have immediately referred the patient back to RMCH. It has come on record that the patient was not treated on 5/5/96. According to the appellant doctor, the dialysis was however started on 6/5/96 but the court below has held that there was not a chit of paper to suggest that the dialyser was purchased from Azad Pharmacy on 6.5.96. In course of the argument, learned Counsel Mr. S.N. Gupta for the

appellant has shown a cash memo of Azad Pharmacy, which does not categorically prove that the dialyser was purchased on 6/5/96. It has come on record that two documents have been filed on behalf of the appellant in court below which was marked as Annexure-A-A1. The exhibit A-A1 issued from Nishant Medical Hall which is under the control of doctor Prasad. Nursing Home. From annexure A1 it transpires that some articles like guide wire, normal sline etc. price of which, has not been disclosed. Coming to annexure A, the price has been shown as Rs. 350/- for different items but the said two documents did not bear the date, initial of doctor or store keeper of the said medical hall. There is nothing on record to suggest that the appellant doctor has actually performed the dialysis even on the following day i.e. 6/5/96. The District Forum, on the basis of materials available on record has come to the conclusion that the appellant doctor has realized a sum of Rs. 2200/- which was not sufficient for purchase of dialyser. According to the doctor appellant the cost for dialysis comes to Rs. 3500/- including a sum of Rs. 500/- by way of service charge. The District Forum has further recorded a finding to the effect that the certificate issued by the appellant doctor on 7/5/96 showing the patient died on 6/5/96 at 9.30 PM. We fail to understand as to why the appellant doctor has issued such certificate on 7/5/96. It is to be kept in mind that according to the complainant, the patient died on 6/5/96 itself. From the discussion aforesaid, it clearly goes to show that even though the opposite party received Rs. 2200/- for treatment of the deceased, admittedly, dialysis was not performed on that day. The patient remained, uncared for the whole day and night even though adequate facilities for dialysis with the help of experts were available in RMCH Ranchi the appellant allowed the patient to remain uncared for whole day and night in his private Nursing Home, itself is a deficiency in rendering the medical services on the part of the appellant. From the order under challenge it is apparent that the complainant has sought for Rs. 4.50 lakhs by way of compensation but the court below has allowed a meager amount of Rs. 1 lakh only. It is true that any amount will not compensate the loss of human life but by way of consolation, the court below has allowed compensation as aforesaid with interest at the rate of 12% per annum. I am not inclined to interfere with the amount of compensation since no appeal has been filed for enhancement of the amount.

6. Having regard to the discussions aforesaid and further taking all aspects of the matter into consideration, we are of the view that the court below has rightly recorded the findings which are based upon the correct appraisal and appreciations of the evidence on record including the circumstances emerging from the pleadings of the parties. In the result, the appeal fails and is accordingly dismissed with a cost assessed at Rs. 10,000/- (Rupees ten thousand). Both principal amount with interest aforesaid including the cost must be paid to the complainant within three weeks from the date of receipt and/ or production of a copy of this order failing which, the complainant /respondent will be at liberty to execute the order in accordance with law including the remedy available under Section 27 of the Consumer Protection Act.

22. There is nothing wrong in the impugned order to interfere in its extraordinary jurisdiction and facts of this lead me to a logical conclusion that exercise of the power under Article 226 may be described as misuse of the power. There is neither any manifest error of law, nor it is a case of defect of jurisdiction or violation of any legal or fundamental right or the order is contrary to any provisions of law, mala fide, bias, ultra vires, perverse, arbitrary, purported, violative of principles of natural justice and so on. As a consequence, it appears that the writ petitioner has approached to this Court to circumvent the process of law and to prolong the matter for an indefinite period. A statutory order of District Forum and confirmed by State Commission in appeal and by National Commission in Revision cannot be avoided through writ jurisdiction.

23. In the backdrop, having gone through the impugned order, I find that no illegality has been committed and I do not think it proper to invoke extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The aggrieved petitioner has no cogent ground warranting interference by this Court. Accordingly this writ application is wholly misconceived and is dismissed being devoid of merit.

D.K. Sinha, J.

24. I agree.

