

State of Orissa

Vs

Divisional Manager, LIC and another

Civil Appeal No. 7092 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

18.03.1996

### JUDGMENTS

1. This appeal is treated as special leave petition under Art. 136 of the Constitution.
2. Leave granted.
3. We have heard learned counsel on both sides.
4. This appeal arises from the order dated February 17, 1995 in F.A. No. 510 of 1992 of the National Consumer and Redressal Commission, New Delhi. The respondent-Haribandhu Setha filed a claim before the State Commission, Orissa under the Consumer Protection Act, 1986 (for short, the 'Act') for damages. The State Commission awarded damages against the first respondent-LIC. In appeal, the appellant was impleaded as party respondent and the National Forum awarded damages against the State in a sum of Rs.1,00,000/- (Rupees one lakh only) and directed to pay compensation within a period of three months. Thus, the appeal by special leave.
5. The only question is : whether the appellant is liable to pay compensation to Haribandhu Setha under the Act and whether the claim is maintainable Section 2(1)(o) of the Act defines 'services' as under :

" 'services' 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 of loading or both housing construction entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service."

(Emphasis supplied)

6. A reading of the definition would indicate that the services contemplated thereunder alone are the services within the meaning of the Act except excluded services mentioned thereunder. The excluded services are "service free of charge or under a contract of personal service". The concept of contract of personal service was considered in a recent judgment of this Court in Indian Medical Association v. V. P. Shantha (1995) 6 SCC 651 : (1995 AIR SCW 4463). This Court had held therein that the expression "personal service" has a well known legal connotation and has been construed in the context of the right to seek enforcement of such a contract under the Specific Relief Act. For that purpose, a contract of personal service has been held to cover a civil servant, the

managing agents of a company and a Professor in the University. There can be a contract of personal service if there is relationship of master and servant between a doctor and the availing of his services and in that event the services rendered by the doctor to his employer would be excluded from the purview of the expression under S.2(1)(o) of the Act by virtue of their exclusionary clause in the said definition. The other excluded service is service rendered free of charge.

7. It is not in dispute that the respondent was a Government servant and, therefore, he is bound by the service conditions and the State was rendering services free of charge to the contesting respondent. Under those circumstances the Government servant has been excluded from the purview of the Act to claim any damages against the State under the Act. Therefore, if any claim arises for the contesting respondent, it would be open to him to claim, in any other forum, but not under the Act. If the claim is barred by limitation, time taken during the entire proceedings shall stand excluded.

8. The appeal is accordingly allowed. No costs. Appeal allowed.