

SUPREME COURT OF INDIA

Bhanwar Kanwar

Vs

R.K.Gupta

C.A.No.8660 of 2009

(G.S.Singhvi and Sudhansu Jyoti Mukhopadhaya JJ.)

05.04.2013

JUDGMENT

SUDHANSU JYOTI MUKHOPADHAYA, J.

1. This appeal has been preferred by the complainant-appellant against the order and judgment dated 29th January, 2009 passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as the 'National Commission') in Original Petition No. 234 of 1997 whereby the National Commission quantified the compensation payable by the respondents as Rs. 5,00,000/- and directed respondent No.1 to pay a consolidated sum of Rs.2,50,000/- to the appellant and to deposit the remaining amount of Rs.2,50,000/- in the account of the Consumer Legal Aid of the National Commission.

2. The appellant is aggrieved by the said order and judgment with respect to the total amount of compensation granted. She has also challenged that part of the order whereby Rs.2,50,000/- out of the total compensation amount has been ordered to be deposited in the account of Consumer Legal Aid of the National Commission.

3. The facts that lead the complainant to move before the National Commission are as follows:

Prashant, son of the appellant born in May 1989 suffered from febrile convulsions during fever at the age of six months. He was taken to nearby Doctor who after examining him informed that the children can get such

kind of fits during fever. He was treated by giving paracetamol tablet. Even after that Prashant had high fever he suffered convulsions for which he was treated by one Dr. Ashok Panagariya, Consultant Neurologist and Associate Professor of Neurology SMS Medical College Hospital, Jaipur and at All India Medical Sciences, New Delhi.

4. According to the appellant, she came across an advertisement published in a newspaper 'Jan Satta' dated 8.8.1993 offering treatment of the patients having fits with Ayurvedi medicine by Dr. R.K. Gupta- respondent No.1. The advertisement impressed the appellant as the respondent No.1 claimed total cure of fits. The appellant wrote a detailed letter to respondent No.1 about her son's fits during high fever. In response, respondent No.1 sent a letter dated 23rd November, 1993 assuring that he had specialised treatment for the problem of Prashant by Ayurvedic medicines. He advised the appellant to bring her son Prashant in his Clinic. Accordingly, on 21st February, 1994 the appellant and her husband along with Prashant visited respondent No.2-Neeraj Clinic Pvt. Ltd., run by respondent No.1 at Rishikesh. Prashant was registered vide Registration No.7955 dated 21.2.1994. The appellant was made to pay Rs.2,150/- towards consultancy charges and the cost of medicines for one year vide Cash Memo No.61 dated 21.2.1994 by respondent No.1. She was told by respondent No.1 that medicines given were the combination of hundreds of herbs. Respondent No.1 also handed over a printed circular to the appellant who started thereafter giving medicines to Prashant regularly in the hope that he will be cured. It was alleged that despite medicines being given regularly the condition of Prashant started deteriorating day by day and the fits which were occasional and occurred only during the high fever, started occurring even without fever.

5. On being informed of the condition of Prashant respondent No.1 intimated that the medicine being Ayurvedic had slow effect. He instructed the appellant to regularly administer the medicines. Respondent No.1 sent medicine through VPP. On seeing condition of Prashant getting deteriorated again, the appellant sent a fax dated 18th June, 1995 to respondent No.1 and in response thereto, respondent No.1 sent fax advising to continue the medicines as before. Thereafter another communication was sent to respondent No.1, in response whereof respondent No.1 sent a letter on 30.9.1995 reassuring that the line of treatment was correct and he advised the appellant to bring Prashant for check up and also the left over medicines. The appellant along with Prashant again visited the Clinic at Rishikesh to consult respondent No.1 in October, 1995. After examining Prashant respondent No.1 gave medicines for which he charged Rs.1500/-. The appellant was given black and thick white tables to be administered to Prashant. In the fax dated

20.6.1995 respondent No.1 advised the appellant to continue with the treatment for 3 years. Meanwhile, the fits became more frequent and for longer durations. On 14th November, 1995, the appellant contacted respondent No.1 over telephone and during discussion, respondent No.1 told the appellant not to worry and assured her to send more powerful medicines. Thereafter, respondent No.2 sent white coloured tablets with a letter dated 14.11.1995. During the period from February 1994 to October 1996 the appellant did not contact Dr. Ashok Pangariya. However, since the condition of Prashant worsened the appellant again consulted Dr. Ashok Pangariya on 28th October, 1996 who told her that there was no hope of the child becoming normal and he will not grow as a normal child. To ensure the family tree growing, the complainant wanted to have another child, but due to her physical and mental condition and total preoccupation with Prashant she was advised to undergo medical termination of pregnancy. On making enquiry as to the nature of medicines prescribed by respondent no.1 to Prashant it was revealed that the small white tablets were Selgin which is not meant for children. It is alleged that respondent No.1 was passing off Allopathic medicines as Ayurvedic medicines. It is further alleged that he is a quack and guilty of medical negligence, criminal negligence and breach of duty as he was playing with the lives of innocent people without understanding the disease. He was prescribing Allopathic medicines, for which he was not competent to prescribe. It was, inter alia, prayed that direction be issued to respondents to pay a sum of Rs.20 lakhs as compensation; to refund the charges paid by the appellant to the respondents and to reimburse the expenses incurred by the appellant on travelling to Rishikesh and a sum of Rs.10 lakhs for undergoing termination of pregnancy.

6. On notice, the respondents appeared before the National Commission and denied the allegation. According to respondent No.1 he obtained Ayurvedacharaya degree on 31st December, 1984 and established respondent No.2-Clinic in the year 1991. It was accepted that the appellant approached the respondent No.1 for treatment of her son's seizures. After examination of the appellant's son he prescribed medicines, namely, 'Phenobarbitone' or 'Phenobarbital' and 'Wafera' which are Allopathic as well as ayurvedic medicines and which are considered to be an appropriate drug for epilepsy patients. The Medicine Code-A1-'Wafera' is an Ayurvedic medicine and is a brain tonic. He denied that medicine 'Selgin' was prescribed. It was alleged that the appellant failed to administer the medicines as prescribed by him. On the other hand, she consulted various other Doctors simultaneously for treatment of her son including Dr. Ashok Panagariya and Doctors at AIIMS. It was asserted that the treatment given to Prashant, son of the appellant was proper treatment for epilepsy and Prashant could have developed mental retardation due to the intake of other medicines. The Ayurvedic medicines

take their own time before showing signs of recovery and, therefore, there was slow improvement.

7. So far as entitlement of respondent No.1 to prescribe allopathic medicine is concerned, the respondents relied on a letter dated 24th February, 2003 issued by one Shri Jagjit Singh, Secretary, Medical Education Department, Government of U.P. to suggest that the Aurvedic/Unani Practitioners practicing Ayurvedic System are also authorised to use allopathic medicines under U.P. Indian Medical Council Act, 1939.

8. The National Commission by its order dated 16th January, 2003 directed that the medicines be sent to an appropriate laboratory. By an order dated 5th March, 2004, the medicines were sent to Shri Ram Institute for Industrial Research, New Delhi. As per the reports of the said Institute the medicines were Allopathic medicines, except one which could not be identified.

9. After hearing the parties and on perusal of the report submitted by Shri Ram Institute for Industrial Research Laboratory, the National Commission by the impugned judgment held that respondent No.1 having made the false representation was guilty of unfair trade practice but held that in the light of letter dated 24th February, 2003 respondent No.1 was entitled to prescribe Allopathic medicines. With a view to curb such a false representation and to restore faith of the people in Ayurvedic System the National Commission passed a direction under Section 14(1) (f) of the Consumer Protection Act, 1986 to pay compensation of Rs.5 lakhs but it ordered to pay only a sum of Rs.2.50 lakhs to the appellant and to deposit the rest of the amount of Rs.2.50 lakhs in favour of Consumer Legal Aid Account of the National Commission.

10. The respondents have not challenged the finding of the National Commission to the effect that respondent No.1 has made false representation and was guilty of unfair trade practice.

11. In the present case, the learned counsel for the appellant has challenged the quantum of compensation ordered to be paid in favour of appellant and the part of compensation ordered to be deposited with Legal Aid. She has also raised doubt on the authority of respondent No.1 to prescribe Allopathic medicines. It was contended that the letter dated 24th February, 2003 is of no help to respondent No.1 and cannot be given retrospective effect.

12. Considering these challenges by the appellant and on accepting the finding of the National Commission that respondent no.1 is guilty of unfair trade practice the questions that arise for our consideration are:

(i) Whether respondent No.1 was entitled to practice and prescribe modern Allopathic medicines; and

(ii) What is the amount of compensation to which the appellant is entitled ?

13. The incident and treatment as alleged by the appellant relate to the period 1994 to 1997. Therefore, letter dated 24th February, 2003 is of no avail to the respondents as the same was not in existence during the period of treatment. The said letter dated 24th February, 2003 reads as follows: “No.726/71-2-2003-15

From

Jagjit Singh

Secretary, U.P. Government

Medical Education Department

To

All Medical Officers

Uttar Pradesh

Medical Education Department-2

Lucknow: Dated 24 February 2003

Sub: To stop activities of harassment and suppression of Integrated Medical Practitioners in the State.

Sir,

I have been directed to state that it is known that the job of Registering Ayurvedic/Unani Practitioners is done by U.P. Indian Medical Council. In the State Ayurvedic/Unani Practitioners practicing Ayurvedic System are

authorized to use allopathic medicines under UP Indian Medical Council Act, 1939 Section 39(1) and 41(2) and they hold the same rights as that of allopathic practitioners. Hon'ble High Court has directed to take action against quacks who are registered nowhere. Accordingly it has been decided that if during any such harassment any of the Registered Ayurvedic/Unani Practitioner produces the Registration Certificate then no action should be taken against him.

Therefore the above orders are to be complied strictly.

Yours faithfully,

Sd/-

Jagjit Singh

Secretary”

From the aforesaid letter it is clear that in connection with some case the High Court of Allahabad issued direction to take action against the quacks who are practicing in Allopathic Medicine but not registered with Medical Council.

14. Learned counsel for the respondents has not brought to our notice any Act known as U.P. Indian Medical Council Act, 1939 but we find that there is an Act known as U.P. Indian Medicine Act, 1939. In any case respondent No.1 has nowhere pleaded that he was registered with the Medical Council or enrolled in the State Medical Register. He has not cited even the registration number and no specific plea has been taken that he has already been registered with the U.P. State Medical Council. Even the registration number has not been mentioned. Merely on the basis of a vague plea; the National Commission held that respondent No.1 was entitled to practice and prescribe modern Allopathic medicine.

15. The National Commission has already held that respondent No.1 was guilty of unfair trade practice and adopted unfair method and deceptive practice by making false statement orally as well as in writing. In view of the aforesaid finding, we hold that both Prashant and the appellant suffered physical and mental injury due to the misleading advertisement, unfair trade practice and negligence of the respondents. The appellant and Prashant thus are entitled for an enhanced compensation for the injury suffered by them. Further, we find no reason given by

the National Commission for deducting 50% of the compensation amount and to deposit the same with the Consumer Legal Aid Account of the Commission.

16. We, accordingly, set aside that part of the order passed by the National Commission and enhance the amount of compensation at Rs.15 lakhs for payment in favour of the appellant with a direction to the respondents to pay the amount to the appellant within three months. The appeal is allowed but there shall be no separate order as to costs.