

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 138 OF 2020

(Against the Order dated 21/12/2019 in Appeal No. 257/2018 of the State Commission
Himachal Pradesh)

1. AKASH HOSPITAL & DIAGNOSTICS & ORS.
(A MULTI SPECIALITY HOSPITAL) THROUGH ITS
MANAGING DIRECTOR, NALAGARH
DISTRICT-SOLAN
HIMACHAL PRADESH
2. DR. BHUPESH GUPTA
S/O. LATE SHRI JAGDISH CHAND AKASH HOSPITAL
AND DIAGNOSTICS,(A MULTI SPECIALITY HOSPITAL)
NALAGARH DISTRICT-SONAL HIMACHAL PRADESH
3. HARISH KUMAR, OT TECHNICIAN,
AKASH HOSPITAL AND DIAGNOSTICS,(A MULTI
SPECIALITY HOSPITAL) NALAGARH DISTRICT-SONAL
HIMACHAL PRADESH
4. PAWAN KUMAR, TECHNICIAN
AKASH HOSPITAL AND DIAGNOSTICS,(A MULTI
SPECIALITY HOSPITAL) NALAGARH DISTRICT-SONAL
HIMACHAL PRADESH

.....Petitioner(s)

Versus

1. ATTAM CHAND MANDHOTRA & ORS.
S/O. PADAM DEV MANDHOTRA R/O. HOUSE NO. 182,
BASANTI BAG, BADDI, TESHIL BADDI,
DISTRICT-SOLAN
HIMACHAL PRADESH
2. MS. NITIKA
D/O. SH. ATTAM CHAND MANDHOTRA,R/O. HOUSE NO.
182, BASANTI BAG, BADDI, TESHIL BADDI,
DISTRICT-SOLAN
HIMACHAL PRADESH
3. NEELAXI
D/O. SH. ATTAM CHAND MANDHOTRA,R/O. HOUSE NO.
182, BASANTI BAG, BADDI, TESHIL BADDI,
DISTRICT-SOLAN
HIMACHAL PRADESH
4. DIRECTOR CUM CHIF EXECUTIVE OFFICER,
ESI AT RED CROSS BHAWAN, CHHOTA
SHIMLA
HIMACHAL PRADESH
5. REGIONAL COMMISSIONER, ESI
HOUSING BOARD PHASE I, SAI ROAD, BADDI
DISTRICT-SOLAN
HIMACHAL PRADESH

.....Respondent(s)

BEFORE:**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.), PRESIDING MEMBER**

FOR THE PETITIONER : FOR THE PETITIONERS : MR. M.L. SHARMA, ADVOCATE
FOR THE RESPONDENT : FOR RESPONDENTS : MR. ARJUN JAIN, ADVOCATE

Dated : 07 February 2024**ORDER**

1. The present Revision Petition has been filed by the Petitioner under Section 58(1)(b) of the Consumer Protection Act, 2019 (the "Act") against impugned order dated 21.12.2019, passed by the State Consumer Disputes Redressal Commission, Himachal Pradesh at Shimla (for short 'State Commission') in First Appeal No. 257 of 2018. In this the Petitioners/OPs appeal was dismissed, thereby affirming the Order dated 25.08.2018, passed by the District Consumer Disputes Redressal, Solan (For short "District Forum") in Consumer Complaint No. 30 of 2017, wherein the Complaint filed by the Complainant was partly allowed.

2. For the sake of convenience, the parties in the present matter are denoted as per the Consumer Complaint before the learned District Forum. Complainants No. 1 to 3 are recognized as the legal heirs, with Complainant No. 1 being the husband and Complainant No. 2 & 3 being the minor children of Smt. Geeta Devi (hereinafter referred to as 'the patient' or 'the deceased'). The Akasah Hospital and Diagnostics, through its Managing Director, is identified as OP-1, Dr. Bhepesh Gupta is identified as OP-2, Shri Harish Kumar-Accountant is identified as OP-3, Shri Pawan Kumar-Technician is identified as OP-4, and ESI Hospital, through its Director-Cum-CEO & Regional Commissioner, are identified as OP-5 & 6.

3. Brief facts of the case, as per the Complainant, are that Mrs. Geeta Devi, the spouse of Complainant No.1, was employed at M/s Bagrrys India Ltd Bhatoli Kalan Baddi from January 2011 onwards. During her pregnancy in May-June 2014, she sought regular checkups at ESI Hospital Baddi. On 24.01.2015, OP-6 referred her to OP-1 Hospital for normal delivery. Upon admission at OP-1 Hospital on 24.02.2015, she exhibited no ailment/complications, and the Expected Date of Delivery (EDD) was 27.02.2015 and OP-2 doctor assured a normal delivery. Allegedly, OP-3, an untrained nurse along with OP-1 to 4 were negligent during their attendance to her. During the intervening night of 24th /25th February 2015, at about 2:00 AM she was taken to the operation theatre. Later, she was abruptly referred to PGI, Chandigarh without informing Complainant No.1, and accompanied by an allegedly untrained OP-3 (Sh. Harish) in a non-emergency ambulance. During transit, OP-3 who lacked expertise, negligently removed the fetus from the patient's womb and informed that the child had died. Despite pleas to continue to PGI, the patient was taken back to OP-1 hospital, where OP-2, allegedly under the influence of liquor, failed to provide adequate care. Due to uncontrollable bleeding, she was again referred to PGI Chandigarh but succumbed on the way, declared dead two kilometers from PGI Chandigarh.

No treatment summary was provided during her stay at OP-1 hospital. Postmortem was conducted at Nalagarh Hospital, and an FIR was lodged at PS Nalagarh. The death of Smt. Geeta Devi and the newborn allegedly resulted from sheer negligence by the Opposite Parties. Being aggrieved, Complainants filed Consumer Complaint No. 30 of 2017 before the District Forum, seeking compensation of Rs.19.50 Lakhs, interest at 12% P.A. from the date of death till its realization, and Rs.50,000/- towards litigation costs.

4. In reply, OP-1 to 4 contended that the present complaint is not maintainable, and the complainants are estopped from filing a consumer complaint due to their acts, conduct, and acquiescence. The OPs asserted that the Complainants lack locus standi to file the complaint and have no cause of action against OP-1 to 4. During an emergency call, Dr. Bhupesh Gupta (OP-2) was present at OP-1 Hospital to examine the deceased. OP-1 Hospital did not have an emergency ambulance, and the patient was transported to PGI Chandigarh by a non-emergency ambulance along with Harish Kumar, an OT Technical Assistant holding a certificate of first aid training course. Additionally, it was argued that the deceased was brought back to OP-1 Hospital at the request of Complainant No. 1. Further, it was contended that a team of doctors from IGMC Shimla HP had issued a Medical Board Report after examining the matter, concluding that Private Akash Hospital and Diagnostics, Nalagarh, H.P. (OP-1 Hospital) was not negligent and had followed the standard line of treatment. Therefore, OP-1 Hospital and its staff did not commit any medical negligence or deficiency in service.

5. In their reply, OP-5 and OP-6 refuted any allegations of medical negligence. OP-1 Hospital is empanelled for the implementation of ESI Schemes in the State. OP-5 argued that the Complainants lack a cause of action against OP-5 as they are not consumers of OP-5 and sought dismissal of the complaint against them. OP-6 contended that their role is limited to providing finance under the ESI Act. Based on the complaint against OP-1, an Inquiry Committee was formed and OP-1 empanelment was temporarily suspended from 23.03.2015. The Inquiry Committee's report indicated that OP-1 Hospital had not taken proper precautions and arrangements in terms of trained staff and equipment. They disbursed benefits under the ESI Act to the Complainants. Thus there is no cause of action against them.

6. The learned District Forum vide Order dated 25.08.2018, partly allowed the complaint against OP-1 and 2 and dismissed against OP-3 to 6, with the following order:

“32. Accordingly, the complaint is partly allowed against opposite parties No. 1 and 2 and is dismissed against opposite parties No.3 to 6. The opposite parties No. 1 and 2 are jointly and severally directed to pay Rs.15.00 lacs as compensation to the complainants alongwith interest @ 9% per annum from the date of death of Smt. Geeta Devi wife of complainant i.e. 25.2.2015 till payment. The aforesaid compensation shall be shared by the complainants in equal shares. The shares of the

minor complainants No. 1 and 1 shall be deposited in some nationalized co-terminus their age of maturity. The opposite parties No. 1 and 2 are also directed to pay Rs.40,000/- as compensation to the complainant No. 1 on account of loss of consortium, besides litigation charges to the tune of Rs.5,000/-. A copy of this order be sent to the parties as per Rules and the file after needful be consigned to the record-room.”

7. Being aggrieved by the District Forum Order, the OP No. 1 to 4/ Appellants filed Appeal No. 257 of 2018 before the learned State Commission. The State Commission vide order dated 21.12.2019 dismissed the Appeal and affirmed the Order passed by the District Forum, with the following findings:- -

“30. State Commission is of the opinion that order of Learned DCF/DCC does not warrant any interference from State Commission keeping in view of factum that new born minor child and young lady aged about 35 year died due to medical negligent act and due to non providing emergency ambulance equipped with latest medical equipments during transit on the part of private Akash Hospital and Diagnostics Nalagarh H.P....”

31 In view of findings upon point No.1 above appeal filed by appellants is dismissed. Order of Ld. DCF/DCC is affirmed. Partied are left bear their own litigation costs before the State Commission. Report submitted by State Medical Commissioner ESI Corporation Himachal Pradesh dated 06.07.2015 Annexure C-11 shall form part and parcel of order. Appellants No. 1 and 2 will comply order within thirty days from the date of receipt of certified copy of order jointly and severally on the concept of vicarious liability.”

8. Being dissatisfied by the Impugned Order dated 21.12.2019 passed by the State Commission, the Petitioners/Opposite Party No. 1 to 4 filed the instant Revision Petition No. 138 of 2020.

9. Upon notice in the instant Revision Petition, the Respondent No. 1 to 3 /Complainants filed written submission asserting the stand.

10. I have examined the entire material on record, including the Orders of both the learned State Commission and the District Forum as well as the inspection report submitted by State

Commissioner ESI Corporation, Himachal Pradesh and rendered thoughtful consideration to the arguments advanced by the learned Counsels for both the parties.

11. It is a well settled position in law that revision under section 58(1)(b) of the Consumer Protection Act, 2019, (*which are pari materia to Section 21(b) of the Act, 1986*) confers limited jurisdiction on this Commission. In the present case there are concurrent findings of the facts and the revisional jurisdiction of this Commission is limited. In the present case, I do not find any illegality, material irregularity or jurisdictional error in the impugned Order passed by the State Commission warranting interference in revisional jurisdiction under Section 21(b) of the Consumer Protection Act, 1986. I rely upon the decision of Hon'ble Supreme Court in the case of '**Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd., (2011) 11 SCC 269**'. Further, The Hon'ble Supreme Court in '**Sunil Kumar Maity Vs. State Bank of India & Anr. Civil Appeal No. 432 OF 2022**' Order dated 21.01.2022, has held that the revisional Jurisdiction of this Commission is extremely limited by observing as under: -

"9. It is needless to say that the revisional jurisdiction of the National Commission under Section 21(b) of the said Act is extremely limited. It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the State Commission had exercised a jurisdiction not vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity. In the instant case, the National Commission itself had exceeded its revisional jurisdiction by calling for the report from the respondent-bank and solely relying upon such report, had come to the conclusion that the two fora below had erred in not undertaking the requisite in-depth appraisal of the case that was required."

12. Similarly, in a recent the Hon'ble Supreme Court in '**Rajiv Shukla Vs. Gold Rush Sales and Services Ltd. (2022) 9 SCC 31**', it was held that:-

As per Section 21(b) the National Commission shall have jurisdiction 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 its 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. Thus, the powers of the National Commission are very limited. Only in a case where it is found that the State Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise the jurisdiction so vested illegally or with material irregularity, the National Commission would be justified in exercising the revisional jurisdiction. In exercising of revisional jurisdiction the National Commission has no jurisdiction to interfere with the concurrent findings recorded by the District Forum and the State Commission which are on appreciation of evidence on record.

13. Based on the deliberations above, I do not find any merit in the present Revision Petition and the same is Dismissed. Consequently, the impugned Order passed by the State

Commission is upheld. Keeping in view the facts and circumstances of the present case, there shall be no order as to costs.

14. All other pending Applications, if any, stand disposed of.

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AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER