

HIGH COURT FOR THE STATE OF TELANGANA

WRIT PETITION No.25784 of 2022

Between :

M/s. Sravani Dental Hospital,
Rep. by its Dentist - Dr. Kartik Reddy,
Ground Floor, Sagacity Heights,
Beside Tilak Nagar Hospital,
Tilak Nagar, Hyderabad.

...Petitioner

and

The National Consumer Disputes Redressal Commission,
Rep. by its Registrar,
NCDRC, Upbhokta Nyay Bhawan,
'F' Block, G.P.O. Complex, INA,
New Delhi - 110023 and another.

.... Respondents

DATE OF JUDGMENT PRONOUNCED : 25.01.2024

THE HONOURABLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

1. Whether Reporters of Local Newspapers : No
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

*** THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY
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Vs.

\$ The National Consumer Disputes Redressal Commission,
Rep. by its Registrar,
NCDRC, Upbhokta Nyay Bhawan,
'F' Block, G.P.O. Complex, INA,
New Delhi - 110023 and another

.... Respondents

!Counsel for the Petitioner : Sri N. Naveen Kumar

Counsel for the Respondent No.2 : Ms. Anitha Tangellamudi,
party-in-person.

<Gist :

>Head Note:

? Cases referred:

1. 2022 LiveLaw (SC) 481
2. (2001) 8 SCC 97
3. (2022) 4 SCC 181

**THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY**

WRIT PETITION No.25784 of 2022

ORDER: *(per Hon'ble Sri Justice Laxmi Narayana Alishetty)*

This writ petition is filed challenging the order dated 08.03.2022 passed by the respondent No.1 - National Consumer Disputes Redressal Commission at New Delhi (for short, 'the National Commission') in Revision Petition No.2736 of 2012, whereby the NCDRC, while upholding the compensation awarded by the Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad (for short 'the State Commission') in First Appeal No.126 of 2012, reduced the rate of interest from 9% to 6% per annum.

2. Heard Mr. N. Naveen Kumar, the learned counsel for the petitioner and Ms. T. Anitha, the respondent No.2 - party-in-person.

3. For the sake of convenience, the parties are referred to as they are arrayed before the District Forum.

4. The facts of the case, in brief, are that on 26.07.2008, the respondent No.2 - complainant approached the petitioner-opposite party with a complaint of gap between her chewing teeth in the upper left side upper jaw, due to which, there was difficulty in chewing as well as mild pain in the teeth. Dr. Karthik Reddy, the doctor at opposite party, instead of giving treatment to the problematic teeth, persuaded her to undergo Root Canal Treatment for three teeth. Accordingly, the doctor performed the Root Canal Treatment for three upper teeth, though there was no necessary.

5. It is stated that on 13.08.2008, the doctor gave plastic caps to put them on the grinded teeth for 60 days, but, she faced difficulty during speech and brushing of teeth. On 04.09.2008, the complainant requested the doctor to provide at least two crowns for two upper teeth and one for lower tooth. The doctor took impression of her teeth and provided metal ceramic crown on 25.09.2008. However, the crowns started falling while talking, brushing etc. Aggrieved by the negligent dental treatment of the opposite party, the complainant filed a Consumer Complaint *vide*

C.C.No.595 of 2009 before the District Forum-II, Hyderabad, seeking compensation of Rs.20,00,000/-.

6. The opposite party filed counter denying the allegations made by the complainant and stating that the complainant visited the opposite party on 10.11.2007 for surgical removal of severely decayed teeth in the upper left region. On 19.07.2008, the complainant again visited the opposite party complaining pain. The opposite party further stated that due to the age and complicated teeth movements, the orthodontic treatment was not possible. Therefore, the complainant was advised for Root Canal Treatment and fixation of crowns. Accordingly, Root Canal Treatment was done by a competent Endodontist. It was further stated that the complainant might have got the treatment from outside the clinic of the opposite party and had cleverly got the teeth grinded to a level that they can be restored by post core technique, to demand money from the opposite party. It is further stated that there was no negligence on the part of the opposite party and prayed to dismiss the Consumer Complaint.

7. On behalf of the complainant, Exs.A.1 to A.21 were marked. On behalf of the opposite party, Exs.B.1 to B.8 were marked.

8. The District Forum, after hearing both parties and considering the entire material available on record, dismissed C.C.No.595 of 2009 holding that the complainant could not make out any case of medical negligence *vide* order dated 30.12.2011.

9. Aggrieved by the said order dated 31.12.2011, the complainant filed an appeal *vide* First Appeal No.126 of 2012 before the State Commission. The State Commission, on re-appreciation of the entire evidence and perusal of the material available on record, *vide* order dated 04.06.2012 allowed the appeal directing the opposite party to pay an amount of Rs.5,00,000/- to the complainant towards compensation with interest @ 9% per annum from the date of complaint i.e., 13.06.2009 till the date of realisation, and Rs.10,000/- towards costs of litigation.

10. Aggrieved by the order dated 04.06.2012 passed by the State Commission, the opposite party filed a revision *vide*

Revision Petition No.2736 of 2012 before the National Commission. The National Commission, after hearing both sides and going through the entire material available on record, came to the conclusion that there was medical negligence and deficiency in services as well as unfair practice on the part of the opposite party and that after dental treatment, the complainant suffered facial disfigurement, and accordingly dismissed the Revision Petition upholding the compensation awarded by the State Commission, *vide* the impugned order dated 08.03.2022. However, as the rate of interest awarded by the State Commission was on higher side, the National Commission has reduced it to 6% per annum from the date of filing of the complaint. Hence, this writ petition.

11. The learned counsel for the petitioner contended that as per the standard operating procedure, before commencing treatment, pre-operative photographs were taken. The respondent No.2 was given all information as to the effects of the treatment including the fact that the teeth, which would undergo treatment, would become non-vital and her consent was also obtained. He further

stated that initially a Committee was constituted comprising of three expert doctors, and out of the three expert doctors of the said Committee, two expert doctors have given opinion that there was no negligence on the part of the petitioner in treating the respondent No.2. However, the third expert doctor, had given an adverse report stating that Root Canal Treatment was not necessary and there was medical negligence on the part of the petitioner, without verifying the documents submitted by the petitioner and gave her opinion purely on the basis of the statement made by the respondent No.2 before her.

12. The learned counsel for the petitioner further contended that based on the request made by the petitioner, the Director of Medical Education, Hyderabad, constituted another Committee comprising of four doctors and said Committee, after examining the report of the earlier Committee and other material, issued a report stating that there was no negligence on the part of the treating doctor. However, without considering the material available on record, the State Commission had erroneously awarded compensation of Rs.5,00,000/- to the respondent No.2,

that too based on Ex.A.7 i.e., the report given by the third expert doctor. The National Commission also not considered the material documents submitted by the petitioner and erroneously upheld the order passed by the State Commission. Therefore, prayed to set aside the impugned order.

13. On the other hand, the respondent No.2-party-in-person contended that Dr. Karthik Reddy, the Dentist of the petitioner hospital, is not a skilled professional in Prosthodontic, but he performed the Prosthodontic treatment and disfigured her five organs (teeth), without her consent. She also stated that the petitioner destroyed all the evidences and created, fabricated and tampered the evidence. The party-in-person further stated that the report secured by the petitioner from the Government Dental College and Hospital at Vijayawada, is not reliable, as the said report was issued without examining her physically. The party-in-person further stated that her teeth were grounded excessively beyond the requirement, and therefore, the crowns are not fixing properly. Therefore, prayed to dismiss the writ petition.

14. A perusal of the record discloses that a Committee was constituted comprising Dr.G.Hariprasad Rao, Professor and Head of the Department of Orthodontics, Dr.Sarjeev Singh Yadav, Associate Professor, Department of Conservative Dentistry and Dr.P.D. Annapurna, Professor and Head of the Department of Prosthodontics, to examine the respondent No.2 and submit a report. The two experts viz., Dr. G. Hariprasad Rao and Dr. Sarjeev Singh Yadav have examined the complainant and opined that there was no medical negligence and the Root Canal Treatment was done satisfactorily. However, the third expert viz., Dr.P.D. Annapurna opined that Root Canal Treatment was not necessary when the pre-treatment x-ray OPG was normal and thus, there was medical negligence.

15. The record also discloses that as per the Final Report issued by the Director of Medical Education, Government of Andhra Pradesh, Hyderabad, the Root Canal Treatment was done for three upper teeth (Nos.21, 22 and 23) and one lower tooth No.41. The crowns made were metal ceramic and not metal free ceramic and there was no retention capacity in the upper teeth or support.

16. It is apt to refer to the report given by Dr. P.D. Annapurna, the relevant portion of which reads as under:

"In case of M/s. Anitha (the present candidate under examination); all the five fundamentals are totally neglected by the doctor. The three teeth were ground beyond the requirement and the tooth structure was totally damaged. The three teeth were disfigured to such an extent that crowns cannot be placed on these teeth by conventional method (if that amount of tooth structure was not removed, the normal crown preparation must have been possible maintaining good stability-grip). The three teeth can give retention (grip) only by special technique by name post core crowns, a technique beyond conventional method of treatment. This is not done in the patients to improve the retention. The professor is also of the opinion that the above three teeth do not require any root canal treatment as per the x-rays, as there is no apical pathology and they can be crowned even without root canal treatment. In case of Ms. Anitha the teeth (organs) were unnecessarily killed and made non-vital by way of root canal treatment."

17. Thus, as per the report given by Dr.P.D. Annapurna, Root Canal Treatment is not necessary for respondent No.2. But, the findings of other two experts i.e., Dr. H.G. Hari Prasad Rao and Dr. Sarjeev Singh Yadav are silent on this aspect.

18. Admittedly, the petitioner has not obtained written consent from the respondent No.2 before commencing the Root Canal

Treatment, as required under Chapter 7 of the Indian Medical Council Act, 1956 (Professional Conduct & Ethics) Regulations 2002.

19. Therefore, from the material on record, it has to be construed that the petitioner has done Root Canal Treatment for respondent No.2 without there being any necessity and also her consent as required under the law, which amounts to medical negligence.

20. The National Commission, while dismissing the Revision Petition filed by the petitioner herein, has made the following observations:

“In the Appeal, the State Commission relied upon the expert opinion of Dr.P.D. Annapurna and held medical negligence of the OP. The State Commission observed as follows:

“Taking of X-ray before performing the root canal treatment is very important to know the internal structure of the organs. It appears that no pre operation X ray was taken by the opposite party or the Endodontist, who performed the root canal treatment. The failure to take pre operation X-ray of the teeth certainly amounts to gross negligence on the part of the opposite party.” “Further the opposite party has not adduced any evidence to show that root canal treatment can be performed on healthy teeth based on photograph”.

21. Thus, as per opinion of Dr.P.D. Annapurna, RCT was not necessary when the pre-treatment x-ray OPG was normal. RCT was done at the Opposite Party Hospital to four vital teeth (No.21, 22, 23 and 41) which became dead.

22. While referring to the opinions of two experts i.e., Dr. G. Hariprasad Rao and Dr. Sarjeev Singh Yadav, the National Commission observed that they were not aware about the conversation between the patient and doctor with regard to informed consent that the teeth will become non vital after the treatment, is not known.

23. The National Commission has also taken into consideration the Final Report issued by the Director of Medical Education, Government of Andhra Pradesh, Hyderabad, wherein it is stated that RCT was done in three upper teeth (Nos.21, 22, 23) and one lower tooth No.41. The crowns made were metal ceramic and not metal free ceramic. There was no retention capacity in the upper teeth or support. Based on the said opinion, a charge sheet was filed against the Opposite Party on 14.05.2010 for the offences under Sections 338, 430 and 506 I.P.C.

24. The National Commission has finally come to conclusion that on collective reading of Ex.A.7 and the final report issued by the Director of Medical Education, Government of Andhra Pradesh, Hyderabad, the Opposite Party is liable for deficiency in services and unfair practices on three counts. The complainant is young lady, who was M.Phil student during her dental treatment. Firstly, there was no grip/retention capacity of crowns in upper teeth, therefore more chances of falling of the crowns during talking, brushing etc. which certainly will create embarrassment. Secondly, it was unfair on the part of Opposite Party that the crowns are not metal free ceramic as promised and billed by the Opposite Party but they were metal ceramic and thirdly the complainant was not informed about the implications of RCT as to the teeth would be made non-vital. Thus, in our considered view, it was failure of duty of care and deficiency service as well unfair practice from the Opposite Party.

25. The scope and ambit while exercising the power of this Court under Article 227 of the Constitution of India, while

adjudicating the writ petition arising out of the order passed by the National Commission, is very limited.

26. In *Ibrat Faizan Versus Omaxe Buildhome Private Limited*¹, the Hon'ble Apex Court, while referring to its judgment in *Estralla Rubber v. Dass Estate (P) Ltd.*,² observed that while exercising the powers under Article 227 of the Constitution, the High Court has to act within the parameters to exercise the powers under Article 227 of the Constitution of India. It goes without saying that even while considering the grant of interim stay/relief in a writ petition under Article 227 of the Constitution of India, the High Court has to bear in mind the limited jurisdiction of superintendence under Article 227 of the Constitution of India.

27. In *Estralla Rubber's case*, the Hon'ble Apex Court held as under:

"The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in number of decisions of this Court. The exercise of power under this Article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that

¹ 2022 LiveLaw (SC) 481

² (2001) 8 SCC 97

they do duty expected or required by them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the courts subordinate or tribunals. Exercise of this power and interfering with the orders of the courts or tribunal is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or Tribunal has come to."

28. In *M/s. Garment Craft vs. Prakash Chand Goel*³, the Hon'ble Supreme Court held as under:

"15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such

³ (2022) 4 SCC 181

discretionary relief must be exercised to ensure there is no miscarriage of justice."

29. From the above decisions, it is clear that the scope and ambit of exercise of power of this Court under Article 227 of the Constitution of India is very limited. This Court, while exercising supervisory jurisdiction, cannot act as a court of first appeal to re-appreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction does not include correction of every error of fact or even a legal flaw when the final finding is justified or can be supported. This Court can exercise its power only to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

30. A perusal of the impugned order would disclose that the National Commission has considered the entire material available

on record in proper perspective and recorded its reasons while upholding the finding and the amount of compensation awarded by the State Commission.

31. In the light of the facts and circumstances of the case, the aforesaid discussion, and in view of the fact that this Court has very limited scope under Article 227 of the Constitution of India, this Court is of the considered view that there is no illegality or irregularity in the impugned order passed by the National Commission warranting interference by this Court.

32. The writ petition fails, and the same is, accordingly dismissed. There shall be no order as to costs.

Pending miscellaneous applications if any shall stand closed.

P.SAM KOSHY,J

LAXMI NARAYANA ALISHETTY,J

Date:

Note: L.R. copy to be marked

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**THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY**

WRIT PETITION No.25784 of 2022

Date: 01.2024

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