



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1656 OF 2024

Rajesh Vithal Gosavi

-Vs.-

District Consumer Dispute Redressal Commissioner, Nagpur and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.Akshay M. Sudame, counsel for the petitioner.

CORAM : B. P. DESHPANDE, J.

DATE : 8TH MARCH, 2024

P. C.

Heard Mr.Sudame, learned counsel for the petitioner.

2. The present petition is filed challenging the notice/ summons issued by the District Consumer Dispute Redressal Commission at Nagpur against the petitioner on a complaint filed by respondent No.2.

3. Mr.Sudame, learned counsel for the petitioner, would submit that first of all, there is no service provided by the present petitioner either to respondent No.2 or to his wife, who unfortunately succumbed after surgical operation was conducted by opposite party Nos.1 to 11 as shown in the said Consumer Case No.28 of 2024.

4. Mr.Sudame, learned counsel for the petitioner, would submit that the petitioner has only submitted an

enquiry report stating that there was no medical negligence on the part of treating doctors.

5. The provisions of Section 36 of the The Consumer Protection Act, 2019 deals with the provisions before the District Commission and reads thus -

Proceedings
before District
Commission.

“36 (1) Every proceeding before the District Commission shall be conducted by the President of that Commission and atleast one member thereof, sitting together:

Provided that where a member, for any reason, is unable to conduct a proceeding till it is completed, the President and the other member shall continue the proceeding from the stage at which it was last heard by the previous member.

(2) On receipt of a complaint made under section 35, the District Commission may, by order, admit the complaint for being proceeded with or reject the same:’

Provided that a complaint shall not be rejected under this section unless an opportunity of being heard has been given to the complainant:

Provided further that the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was filed.

(3) Where the District Commission does not decide the issue of admissibility of the complaint within the period so specified, it shall be deemed to have been admitted.”

6. On receipt of complaint, the Commission is required to examine the contents therein and may order to admit the said complaint or reject the same.

7. The said Act nowhere prohibits the person against whom such notice is issued from approaching said Authority

/Commission to point out that such notice has been wrongly issued and that there is no relationship of consumer and service provider between the complainant and the opponent.

8. In the present matter, on considering the report of the Expert Committee, it would be advisable to approach the concerned Authority by filing an application for recalling of the notice against the petitioner on the ground that there is no such relationship of consumer and service provider so as to entertain the complaint.

9. Mr.Sudame, learned counsel for the petitioner, would submit that the petitioner would approach the said Authority without prejudice to rights and without submitting to the jurisdiction of the said Commission, for the limited purpose to point out to the said Commission that the notice needs to be recalled.

10. The petitioner is therefore allowed to withdraw the present petition with liberty as prayed for. If such application is filed on the next date fixed, the Commission shall decide such application after hearing the petitioner and the complainant/respondent No.2 and other opponents, if any, and decide it in accordance with law.

11. The Commission shall dispose of such application as early as possible and communicate the decision of it to the petitioner.

12. With this liberty, the petition is allowed to be withdrawn.

13. It is made clear that this Court has not gone into the contentions raised by the petitioner in this petition. All contentions are kept open to be raised and argued before the Commission.

14. The parties to act upon authenticated copy of this order.

JUDGE