



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1754/2024

Tirthankar Superspeciality Hospital and others
Vs.
Manzoor Hussain Nadeem Gulbarg

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. M.G. Bhangde, Senior Advocate a/b Mr. P.A. Abhyankar,
Advocate for petitioners
Mr. P.N. Kothari, Advocate for Respondent

CORAM: N.R. BORKAR, J.

DATED : 23rd JULY, 2024

This petition is filed against the order dated 23.11.2023, passed by the National Consumer Disputes Redressal Commission in First Appeal No. 1951/2017.

2. The respondents herein had filed the consumer complaint before the State Commission Disputes Rederssal Commission against the present petitioners, who are medical practitioners, for compensation alleging that his daughter died due to medical negligence on the part of the petitioners. By order dated 08.08.2017, the State Commission has partly allowed the complaint filed by the respondent and directed the petitioners to pay compensation of Rs.20,00,000/-. By the order

impugned the National Commission has dismissed the appeal filed by the petitioners.

3. The learned Senior Counsel appearing for the petitioners submits that the Hon'ble Supreme Court in the case of **Bar of Indian Lawyers through its President Jasbir Singh Malik Vs. D.K. Gandhi PS National Institute of Communicable Diseases and Anr.** reported in 2024(6) Scale 176 has held that the very purpose and object of the Consumer Protection Act, 1986 as re-enacted in 2019 was to provide protection to the consumers from unfair trade practices and unethical business practices and the Legislature never intended to include either the professions or the services rendered by the professional within the purview of the said Act. It is submitted that the Hon'ble Supreme Court has observed that the decision in case of **Indian Medical Association Vs. V.P. Shantha & others** reported in [(1995) 6 SCC 651 in respect of medical practitioners deserves to be revisited and considered by a larger bench.

4. I have perused the judgment of the Hon'ble Supreme Court in **Bar of Indian Lawyers through its President Jasbir Singh Malik Vs. D.K. Gandhi PS National Institute of Communicable Diseases and Anr.** (supra). The Hon'ble Supreme Court in paragraph No. 21 has observed thus :

“21. Of course, we are conscious of the decision in *Indian Medical Association vs. V.P. Shantha & Others* (supra), in which a three-Judge Bench of this Court has held *inter alia* that the wide amplitude of the definition of ‘service’ in the main part of Section 2(1)(o). However, in our humble opinion, the said decision deserves to be revisited having regard to the history, object, purpose and the scheme of the CP Act and in view of the opinion expressed by us hereinabove to the effect that neither the “Profession” could be treated as “business” or “trade” nor the services provided by the “Professionals” could be treated at par with the services provided by the Businessmen or the Traders, so as to bring them within the purview of the CP Act.”

5. The Hon’ble Supreme Court has then held that the decision in case of **Indian Medical Association Vs. V.P. Shantha & others** (supra) deserves to be revisited and considered by a larger Bench and referred the matter to the Hon’ble Chief Justice of India for consideration

6. In view of the above, the present petition will have to be admitted. Hence, **RULE.**

7. Mr. Kothari, learned counsel waives notice for respondent on Rule.

8. The interim order passed by this Court dated 02.04.2024 shall remain in force till decision of the petition. However, considering the facts and circumstances, the State Consumer Disputes

Redressal Commission, shall permit the respondent to withdraw the amount of Rs.10,00,000/- (Rs. Ten Lakhs only) deposited by the petitioners with accrued interest, subject to furnishing solvent surety.

CIVIL APPLICATION (CAW) No. 1773/2024

For the reasons stated in the application, the same is allowed. Necessary amendment be carried out within four weeks.

2. Liberty to move for hearing of the present petition, if such eventuality arises.

JUDGE

MP Deshpande