

Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

“ An aware consumer is an asset to the nation”

Website : www.advantageconsumer.com

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Queries & Answers through the Web

(www.advantageconsumer.com) is the website of Consumer Protection Council, Rourkela. One of the major attractions of the website is that a visitor can ask queries on issues relating to consumer protection. Answers to these queries are made free of cost, by the Chief Mentor of the Council, Sri B. Vaidyanathan.)

CONSUMER PROTECTION COUNCIL, ROURKELA CELEBRATED “NATIONAL CONSUMER DAY – 2023”



The “National Consumer Day” was celebrated on the 24th December 2023 at our Consumer Protection Council office, (B-90, Sector-07) and Dr. D S Naik, former AGM, Rourkela Steel Plant, Rourkela was the Chief Guest on this occasion.

The programme was started with lighting up the ceremonial lamp by the Chief Guest, Council President, **Mr. A.K. Goswami** and other members present on this occasion. Mr Goswami delivered his welcome address and briefed about council’s objectives. While Jt. Secretary, **Mr. Rajib Kumar Nayak** presented detailed activities report of the council. **Chief Guest Dr. D.S. Naik** addressed the gathering consisting of Council members, newly enrolled members, press reporters and other invitees. He elaborated the consumer movement in the country and gave some tips about the new Consumer Protection activity. This year - 2023 theme is “**Consumer Protection in the era of E-Commerce and Digital Trade**”. Under this act every e-commerce entity is required to provide information relating to return, refund, exchange, warranty and guarantee, delivery and shipment, modes of payment, Grievance Redressal mechanism. Also, the e-commerce platforms have to acknowledge the receipt of any consumer complaint within forty-eight hours and redress the complaint within **one month** from the date of receipt under this Act. Later, members and audience participated in an open session for discussion and suggestion relating to solution of day to day activities against present advance technological challenges through CPC, Rourkela. At the end, Executive Member **Mr. Bharat Kumar Behera** proposed a formal Vote of Thanks. Our **Vice President Mr. P. Ravi Krishnan** and Executive Member **Mr. Amitav Thakur** were the masters of ceremony. Treasurer **Shri A. Samantray** and Executive Members **Mr. Banshi Dhar Tripathy, Mr. M.S. Mangar, Mr. Biswesh Chandra Mishra** and council staff **Mr. Sanjay Senapati** participated in the event. Approximately 50 persons including members and guests were present. Our special thanks to Our **Chief Mentor Shri Vaidyanathan**, and our Council Honorary **Secretary, Shri Bhimasesan Pradhan** for their kind guidance.

It is well settled that the methods of sterilization / tubectomy are not absolutely safe and secure and such failures does not conclude medical negligence.

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 146 OF 2018

(Against the Order dated 30/08/2017 in Appeal No. 40/2016 of the State Commission Rajasthan)

STATE OF RAJASTHAN & 2 ORS.
THROUGH DISTRICT COLLECTOR
KOTA
RAJASTHAN

.....Petitioner(s)

Versus

ROBINA
W/O. IQBAL HUSSAIN, R/O. KHEEMACH TEHSIL RAMGANJ
MANDI,
DISTRICT-KOTA
RAJASTHAN

.....Respondent(s)

BEFORE:

HON'BLE DR. S.M. KANTIKAR, PRESIDING MEMBER

ORDER

Pronounced on: 23rd January 2023

1. This Revision Petition has been filed under section 21(b) of the Consumer Protection Act, 1986 against the Order dated 30.08.2017 passed by State Consumer Dispute Redressal Commission, Rajasthan (for short "the State Commission") in Appeal No. 40/2016, wherein the State Commission dismissed the Appeal of the Petitioners and modified the Order of District Forum.
2. The issue relates to the failure of tubectomy operation, which resulted in the unwanted pregnancy, whether it was medical negligence.
3. Brief facts that the Complainant Robina underwent tubectomy operation in the Family Planning Camp organized by the State of Rajasthan. It was performed by the Medical Officer (OP-3) at Community Health Centre (CHC), Ramganj Mandi on 07.11.2005. However, subsequently, the Complainant once again conceived after two months of tubectomy and delivered a female child on 16.06.2006. Being aggrieved, the Complainant filed the Consumer Complaint before the District Forum.
4. The Petitioners/OPs denied the negligence and submitted that tubectomy operation was performed by qualified Surgeon at CHC. Several women also underwent the tubectomy operation successfully. The recanalization is known after tubectomy. Therefore, it cannot be said as negligence.
5. The District Forum allowed the Complaint and awarded compensation of Rs. 2,00,000/- along with litigation cost of Rs.5,000/- against the OPs to pay jointly and severally. The District Forum observed as below:

"After hearing the rival parties, so far as the question of committing negligence and carelessness in doing Nusbandi by Respondent NO.3 is concerned, in it there is no requirement of any Specialist Report, because when the Nusbandi of Complainant was done on dated 07.11.2005 then thereafter she ought not to give birth to any child,

but even then giving birth to a child by her, which proves that the operation remained unsuccessful and reason of failure of operation remained to be the negligence and, irresponsible act of the operator Doctor (Respondent NO.3). In it there is no need of any Specialist Report and there is no need to establish any negligence. The facts of failure of Nusbandi Operation of the Complainant and thereafter by her giving birth to a child, suo motu establishing the negligence and deficiency in service of the Respondent No.3. Since, Respondent No.3 and Respondent No.2 are under subordination of Respondent No. 1 therefore, for this negligence and deficiency in service all the three Respondents are responsible. On this point we receive light from the judicial citation CPJ 2000 Page-53 (SC) 'S. Sagir Ahmad V/s Smt. Santra' produced by the Complainant."

6. Dissatisfied with the Order of the District Forum, the Petitioners / OPs filed an Appeal before the State Commission. The Appeal was partly allowed with modification of the Order of the District Forum by reducing the compensation amount to Rs. 1,00,000/-.

7. Being aggrieved, the OPs filed this Revision Petition.

8. Heard the learned Counsel for both the sides and perused the material on record. The short delay of 41 days is condoned.

9. It is pertinent to note that both the fora had overlooked the fact that according to the Complainant, she conceived after 3 months of tubectomy operation i.e. around February, 2006, but surprisingly she delivered a baby in June, 2006. This proposition is unbelievable. Thus in my view, the pregnancy was already existing prior to tubectomy and it was unnoticed during tubectomy.

10. On careful analysis (calculation) of the period of pregnancy, it is strange to note that,

- On 07.11.2005, the Complainant underwent tubectomy operation.

- On 16.06.2006, she delivered female baby.

- According to the Complainant, she gave birth to a healthy matured baby, meaning thereby, she completed 9 months of pregnancy.

- Thus, it clearly indicates, in the month of September 2005, she conceived (became pregnant), which was earlier to tubectomy (07.11.2005).

- Thus, on 07.11.2005, she was in early pregnancy (in between 2 – 2 ½ months)

- **To conclude that, by any stretch of imagination, the alleged pregnancy was not due to failure of tubectomy.**

11. Both the fora have erred on the calculation of pregnancy period and arrived to erroneous finding that there was pregnancy due to tubectomy failure.

12. The learned Counsel for the Petitioner was kind enough to consider the peculiarity of this case and expressed that the Petitioner may consider and pay Rs. 30,000/- as under the Family Planning Insurance Scheme adopted as a National Policy. However, it is pertinent to note that the Scheme was implemented from 29.11.2005, therefore, it's a bad luck of the Complainant, who is not eligible to get the said benefit; as she underwent tubectomy on 07.11.2005.

13. On the basis of foregoing discussion, the instant case does not fall under failure of tubectomy operation. Even otherwise, it is well settled that the methods of sterilization / tubectomy are not absolutely safe and secure and such failures does not deserve compensation as held by the Hon'ble Supreme Court in the case of **State of Punjab Vs. Shiv Ram and Ors.**[\[1\]](#).

14. Based on the discussion above, the fora below have erred in holding the OPs liable for failure of tubectomy. The instant Revision Petition is allowed and the Order of the State Commission is set aside. Consequently, the Consumer Complaint No. 269 of 2008 filed before the District Forum stands dismissed.

15. The statutory amount, if any, deposited by the Petitioner before the State Commission or the District Forum, shall be released to the Petitioner. ■

Caterer penalised for not adhering to the agreed menu, for which order was placed for the wedding ceremony.

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 396 OF 2016

(Against the Order dated 06/10/2015 in Appeal No. 956/2013 of the State Commission, Punjab)

DHARAMPAL SABHARWAL

S/O LATE SHRI SANT RAM SABHARWAL, M.P. RAJYA
SABHA(NOW HAS COMPLETED HIS TENURE ON 10-04/2010)
R/O 53 A, BAHADURPUR

HOSHIARPUR

PUNAJB

.....Petitioner(s)

Versus

M/S. BOTTOMS UP PUB & RESTAURANT

THROUGH ITS PARTNER SHRI GUNRAJ SINGH VILLAGE &
POST OFFICE SHERGARH, CHANDIGARH ROAD,

HOSHIARPUR

PUNJAB

.....Respondent(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER

Dated : 04 Jan 2023

ORDER

PER MR SUBHASH CHANDRA

1. This revision petition filed under the Consumer Protection Act, 1986 (in short, the 'Act') assails the order of the State Consumer Dispute Redressal Commission, Punjab, Chandigarh (in short, 'State Commission') in First Appeal No. 956 of 2013 dated 06.10.2015 emerging from order in consumer complaint no. 80 of 2013 of the District Consumer Disputes Redressal Commission, Shaheed Bhagat Singh Nagar (in short, 'District Forum') dated 26.07.2013.

2. The brief facts of the case, as stated by the petitioner, are that he had booked Daulat Gardens, a marriage venue, on 16.10.2008 for the solemnization of his daughter's wedding on 23.11.2008 and paid an advance of Rs 50,000/- to the respondent. The respondent agreed to provide catering of Singh Caterer of Chandigarh for 500 persons at the rate of Rs 325/- per person. At the time of booking, it is stated that the respondent provided a Xeroxed copy of the menu of the said Singh Caterer. The soup, snacks and other items agreed to be served were marked in red and yellow colour on this menu and on the basis of this agreement the petitioner paid the balance amount to the respondent. However, on the day of the function, it was found that catering by Singh Caterer as agreed to was not provided and the items marked in red colour on the Menu were not served. The quality of food was not up to the desired expectancy of the petitioner too. The respondent also failed to provide a stage for the DJ as agreed earlier. The petitioner filed a consumer complaint before the District Forum, Hoshiarpur on the basis of deficiency in service and claimed Rs 10,00,000/- as compensation from the respondent.

3. The complaint was transferred to the District Forum, Shaheed Bhagat Singh Nagar (Nawanshahar) and was dismissed on 30.11.2010 directing that the complaint be filed before an appropriate Civil court. On appeal before the State Commission, however, the matter was remanded on 22.05.2013 to the District Forum to be decided on merits. The District Forum vide its order dated 26.07.2013 allowed the complaint and directed payment of compensation of Rs 1,50,000/- and Rs 3,000/- as cost of litigation. The respondent filed an appeal before the State Commission against this order. The appeal was allowed, and the order of the District Forum set aside. This order of the State Commission has been impugned before us.

4. It is stated by the revisionist/petitioner that the State Commission erred in concluding that there was no agreement in writing between the parties. It is submitted that agreements relating to marriage function locations are usually oral. However, evidence such as the master Menu booklet marked in red and yellow indicating items selected and the visiting card of the respondent were produced as evidence. It is averred by the petitioner that the respondent had not placed any document on record to support his contention that catering only by Singh Caterers was agreed to and that the items decided upon by marking them in red and yellow colours were served on the day of the function.

3. I have heard the learned counsels for the petitioner and the respondent and perused the material on record carefully.

4. The learned counsel for the petitioner argued that the District Forum had rightly given the finding that there was deficiency in service since it had failed to rebut the petitioner/complainant's averments and the affidavits filed. It is argued that there was no requirement for a written contract between the marriage hall and the hirer as the usual practice was to finalize menu and arrangements orally with payment of advance. Reliance was placed on this Commission's order in **Dr J J Merchant Vs. Srinath Chaturvedi** Civil Appeal no.7975 of 2001 decided on 12.08.2002 which had held that an affidavit was evidence enough under section 13 (4)(3) of the Act to prove that the *“Act specifically empowers the Consumer Forums to follow the procedure which may not require more time or delay the proceedings. Only caution required is to follow the said procedure strictly. Under the Act while trying a complaint, evidence could be taken on affidavits [under Section 13 (4) (iii)]. It also empowers such Forums to issue any Commission for examination of any witness [under Section 13 (4) (v)]. It is also to be stated that Rule 4 in Order XVIII of C.P.C. is substituted which inter alia provides that in every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence”*. He argued that 12 affidavits of guests present at the wedding been filed. The order of the State Commission is averred to be beyond the pleadings.

5. On behalf of the respondent it is denied that there was any agreement between the parties for catering by Singh Caterers. It is contended that the allegation of the petitioner is vague and the onus was on him to prove deficiency in service as per the judgments of the Hon'ble Supreme Court in **SGS India Vs. Dolphin India** in Civil Appeal 5759 of 2009 and **Ravneet Singh Bagga Vs. KLM Royal Dutch Airlines &Anr.** in CA No. 8701 of 1997 dated 02.11.1999. It is also contended that there was no agreement with regard to provision of a DJ floor as there is a permanent arrangement in existence at the venue and hence no separate arrangement was agreed to be provided. The State Commission order is stated to be in order as the District Forum's order was not a speaking order which did not record reasons. It is also contended that the affidavits filed by the petitioner need to be discounted as they are all worded in identical language.

6. From the record and submissions made by the parties, it is not in dispute that the petitioner engaged the marriage premises of the respondent for a wedding event by paying an advance followed by the balance payment. It is also apparent that the respondent agreed to provide catering services for the guests and a DJ floor for the celebrations. The petitioner has alleged deficiency in service in the serving of food which did not conform to the agreed menu as per the master menu discussed by the respondent with him and was marked in two different colours for the items selected. Deficiency in service has also been alleged in not providing a DJ floor. While the petitioner has submitted that the marked copy of the menu with the respondent's visiting card was evidence of the arrangement agreed upon, the respondent has denied any such agreement and argued that the onus of proving the same was on the petitioner which he has failed to discharge. The State Commission has concluded that there was no agreement between the parties that catering to be provided would be that of Singh Caterers on the day of the marriage.

7. The impugned order of the State Commission reads as under:

“14. While deciding the case District Forum observed that there is deficiency on the part of OPs without recording the reasons, whereas, the entire evidence produced by the OPs referred above showed that there was no agreement between the parties that on the day of marriage OPs will provide the catering of Singh catering, Chandigarh as well as DJ stage to complainant. As such finding of the District Forum regarding deficiency in services are not according to the evidence on the record. Therefore, the order of the District Forum is not legally sustainable and is liable to be set aside.

15. In view of the above discussion the appeal of the appellant/ opposite party is allowed and impugned order is set aside consequently, the complaint of the complainant is dismissed.”

8. From the record it is evident that there was an arrangement by which a menu had been determined by marking the selected items in different colours for the event for which a consideration had been accepted by the respondent. It is not denied by the respondent that all the items selected were not served on the day of the marriage. While the respondent denies that catering by Singh Caterers was agreed upon, he has not led any evidence to show who the agreed caterer was. Without going into issues of standard and taste, with regard to the food items served, which are subjective issues, there was, clearly, deficiency in the serving of the identified items on the menu on the day of the function for which a consideration had been accepted. The petition is liable to succeed on this ground.

9. In the light of the above, I find merit in the revision petition. The revision petition is accordingly allowed and the impugned order of the State Commission is set aside. Order of the District Forum is restored. ■

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Consumer Protection Council, Rourkela is a registered voluntary organization, espousing the cause of the consumer. To a great extent, for its sustenance it depends on the good will of its donors like you. We solicit your support for sustaining the multifarious activities of the council. Donation to the council is eligible for tax exemption under Section : 80-G(5) (iv) of the IT Act. Donation may please be contributed through cash or crossed cheque / DD, drawn in favour of "**Consumer Protection Council, Rourkela**".

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