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CASE COMMENTARY ON INDIAN MEDICAL ASSOCIATION vs. V.P SHANTHA

AYUSH RAJ*

INTRODUCTION

Indian judiciary has been overwhelmed with a wide variety of cases that have been instrumental in securing several rights to the citizens. Judicial decisions have proved to be very significant in establishing certain rights for the citizens and specific duties for the State and other authorities having state like powers and responsibilities, which were earlier not guaranteed by the law. The judgments of the Courts demonstrate the continuous effort of the judiciary in securing rights to the citizens and legal remedies and compensation, in cases where these rights are being violated.

The case of *Indian Medical Association vs. V. P. Shantha*[1] in the year 1995 is a landmark case which has been a milestone judgment in the history of Indian judiciary. It has brought the practice of medical professionals, hospitals, nursing homes etc. under the ambit of the Consumer Protection Act, 1986. There had been a widespread ambiguity over the application of the above stated Consumer Protection Act (hereafter referred to as "Act") in the field practice. This landmark judgment has re interpreted the definition of the 'consumer' and 'services' to include medical and its allies professions under the Act of 1986. This has been very significant because earlier the victims of medical negligence or the patients who were charged exorbitantly high by the doctors and hospitals where unable to claim their damages successfully and effectively due to lack of proper legislation, statute or judgment. It was a historic judgement which established a contractual relationship between patients and medical professionals which helped the former to enforce their rights to claim damages in case of any breach of contract, that means medical negligence and other issues.

* 2nd year student at Maharashtra National Law University, Nagpur

[1] *Indian Medical Association vs. V. P. Shantha* 1995 SCC (6) 651

RESEARCH METHEDOLOGY

The author has used doctrinal mode of research in writing the case commentary. Various other judgments on the related topics have been studied to understand the background of the matter of this case. The act and statutes referred in this case have studied properly to interpret the nuances of the judgment.

RESEARCH DESIGN

This case commentary tries to deal with every aspect related to this case. It seeks to cover all the areas of the case which has been used in the delivery of the judgment. The background of the case has been discussed at the very beginning that would help understand the context of the case. After that the facts of the case have been presented in brief, followed by the issues before the court. The arguments from both the petitioner's and the respondent's side have been explained. The legal aspects, laws, and statutes that are involved have also been defined in a precise manner. The case commentary ends with the observations and judgments of the Court and at last a brief analysis of the judgment.

RESEARCH QUESTIONS

This case commentary fundamentally tries to answer the following questions which appeared during the research of the subject topic and the case.

1. What is the relation between "services", "consumers" and an "effective contract" concerning the Consumer Protection Act, 1986?
2. How the judgment in this case: Indian Medical Association vs V. P. Shantha has changed the jurisprudence in medical negligence cases and its consequences?

SCOPE AND LIMITATIONS

The researcher emphasized the legal position before the judgment in this case and then discussed the case elaborately and discussed its usage and effects in a detailed manner. However, the project's scope and scope do not apply to the amendments in medical negligence provisions after this landmark judgment.

BACKGROUND OF THE CASE AND THE FACTS

The increasing number of medical negligence cases and the lack of a proper legislation to deal with those cases led to ambiguity over medical negligence issues.

In *Dr. A. S. Chandra vs Union Of India,*[2] Andhra Pradesh High Court ruled that medical professionals, nursing homes and private hospitals are 'services' under Section 2(1) (d) of the Consumer Protection Act,1986 and the persons availing those services are the 'consumers'. This judgement bought the medical professionals and organisations under the control of the Act.In the case of *Dr.C.S. Subramanian v. Kumarasami And Anr.*[3], however, the Madras High Court had a different view. This time, the Court held that a medical professional's functions, either medicinal treatment or surgical treatment, cannot be construed as a service under the Act and hence the patients cannot be designated as their consumers. However, the Court also held that the paramedical functions qualify to be called a 'service' under the same Act.Lastly, when the matter was brought before the National Commission, it held that the treatment in government run hospitals and medical facilities, cannot be regulated under the Act because it does not satisfy the criteria for being called as a 'service' under the Act, but in the circumstances where payment is involved for medical treatment, that would come under the 'service' and the patients shall be their 'consumers'. This ruling meant that the government hospitals are out of the ambit of the Consumer Protection Act whereas the private professionals and organisations come under the scope of the Act.

In order to create uniformity regarding these matters a series of Special Leave Petitions and Writ Petitions were filed in various High Courts and the Apex Court. All those petitions were heard collectively by the Supreme Court in this case.

ISSUES BEFORE THE COURT:

- Whether the hospitals, medical professionals and other medical facilities can be deemed as providing 'service' to the patient under Section 2(1) (o) of the Consumer Protection Act, 1986?
- What are the governing circumstances that would make the rendered service of medical professionals, to be covered under the above mentioned Section of the Act?

[2] *Dr. A. S. Chandra vs Union Of India* (1992) 1 Andhra Law Times 713.
[3] *Dr.C.S. Subramanian v. Kumarasami And Anr* (1994) 1 MLJ 438.

LEGAL CONCEPTS AND ACTS INVOLVED:

1. **Consumer:** Any person who uses, hires or avails any service by paying any certain amount of money, either wholly or partly, with regard to the enjoyment of that service, is said to be the consumer of that service. Beneficiaries are also considered as consumers.
2. **Medical Negligence:** A professional misconduct leading to damages, by a medical professional who has a duty of care towards his patients is termed as medical negligence. It arises when a medical professional fails to practice standard procedure during the treatment and as a result of this deviation from the standard process, the patient suffers damages. (Standard procedure refers to the process that a professional having the requisite skills is assumed to adopt during the treatment). Medical negligence arises in those cases as well in which the professional is lacking the required set of skills to perform his duty.
3. **Difference between occupation and profession:** It was also discussed in the case that while an occupation comes under a 'service', the profession does not.
4. **Acts Involved:** Consumer Protection Act, 1986. Passed by the Indian Parliament.

ARGUMENTS OF THE PETITIONER:

The counsel of the petitioner i.e The Indian Medical Association argued that the language of the Section 2(1) (o) of the Act "which is made available to potential users", does not contemplate the inclusion of medical professionals in the Act. The party demonstrated the meaning of use, avail and hire, as used in the definition of consumer and tried to convey to the Bench that the commercial transactions in this process cannot be termed as a service. Further, the counsel relied on the definition of 'deficiency' i.e any imperfection or fault with respect to the quality, nature and manner of the work as stated in the contract. It was argued that there is no fixed scale, as to determine was constituted a fault in medical treatment, hence it cannot be termed as a contract under the Act.

The test of deficiency was determined on the basis of *Bolam v Friern Hospital Management Committee*[4]. This case held that a medical practitioner must possess a requisite set of skill, failing which can lead to his liability in torts.

ARGUMENTS FROM THE RESPONDENT

[4] *Bolam v Friern Hospital Management Committee* (1957) 1 WLR 582.

The counsel of the respondent relied heavily on the expression "contract of personal advice". It was argued that personal advice is a well known legal term and it has been used to enforce contractual duties, earlier too. A few examples of notable case laws were stated in this regard such as *Dr. S. B. Dutt vs University of Delhi*[5]and *Ram Kissandas Dhanuka vs Satya Charan Law*[6]. Emphasis was laid on the doctor- patient relationship as a contract of personal advice, thereby urging it to include and cover the medical profession under the Act.

The instance of Dharangdhara Chemical Works Ltd. v State of Saurashtra[6] was refered to which recognised a 'agreement of administration' and a 'contract for administrations', holding that a 'agreement of administration' infers a relationship of master and slave and includes a commitment to obey orders in the work to be performed and concerning its mode and way of execution (contract of services and contract for services).

1. REASONING

The Court observed that the present case does not fit into the inclusive part of the 'service' and therefore the Court needs to deal with this in the exclusionary part of the definition of 'service'.

This interpretation via the exclusionary part lessens the burden on 'consideration' so that it can be easier to deal with whether it comes under the definition of contract or not. To determine whether the medical profession renders 'service' or not; the Court was of the view that emphasis must be laid on the judgment given in the case of *Lucknow Development Authority*[7].

2. JUDGMENT

After due argumentation and discussion, the Bench arrived at the judgment covering all the issues of the case. They have been stated below.

1. All the services rendered by any medical professional to his/her patient is adequately eligible to fit under the definition of 'service' as mentioned in Section 2(1) (a) of the Consumer Protection Act. However, any kind of free of charge diagnosis, consultation, and treatment is exempted from this. Those free services, won't qualify as "services" mentioned in the Act. This exemption shall also apply to the treatment or consultation under a contract of personal service.

[5] *Dr. S. B. Dutt vs University of Delhi* 1959 SCR 1236.
[6] *Ram Kissandas Dhanuka vs Satya Charan Law* AIR 1950 PC 81.
[7] *Lucknow Development Authority* 1994 (1) SCC 243.

2. “The concept that medical practitioners and doctors are associated with the medical profession and are subject to the disciplinary and authoritative control of the Medical Council of India and the State Medical Councils that are constituted under the same provisions of the Indian Medical Council Act would certainly not eliminate the services rendered by them from the scope and ambit of the Act in concern.”
3. A "contract for personal services" has to be distinguished and separated in a very precise manner from a "contract of personal service". In a scenario, where there is an absence or non applicability of the master and servant relationship between the doctor and the patient, in such cases, the services provided by the doctor cannot be regarded as "service" under the Act. Instead of that, they are included as "contract for personal services". which is not covered under the exclusionary definition of service under the Section 2(1) (o) of the Act.
4. “The concept of contract of personal service given in Section 2(1)(o) of the Act cannot be restricted to contracts for employment. This expression would inculcate the employment of a medical professional by the intension of rendering medical services to the employer. The service rendered by a medical professional to his employer under the contract of employment in the Act would not be counted under the scope of 'service' as defined in Section 2(1) (o) of the Act.”
5. “The judgment held regarding the service which is rendered free of cost by a medical practitioner associated to a nursing home, hospital or attached to a medical officer employed in a hospital or any other medical facility where such services are provided free of cost to everybody, cannot be termed as 'service' as stated in Section (2)(1) (o) of the Act. The payment of a nominal token amount for the purpose of registration at that medical facility would have no effect over the status.”
6. “This part of the judgment deals with services which are rendered at private or charitable hospital or nursing home where no charge whatsoever is taken from any individual availing the service and all patients irrespective of their economic status i.e rich and poor are given free service - is outside the ambit of the expression 'service' as defined in Section 2(1) (o) of the Act of 1986. The payment of a nominal token amount for registration purpose at the hospital/nursing home would not alter the position in this case also.”
7. Now coming to the private medical facilities where for availing the services which are provided, the person is needed to pay, the Court held that it establishes a contractual relationship between the patient and the organisation because a consideration has now moved on. It comes under the purview of the 'service' as described in Section 2(1) (o) of the CPA, 1986.

8. The last part of the judgment focuses on the service rendered at a non-government medical institution where a distinction is made on the basis of the financial capability of the individuals. The judgment mentioned that it is irrelevant that whether the individual is capable to pay or not for the services availed. It mentioned that irrespective whether a person is paying or not, capable to pay or not, would have no effect on the contract and every medical service offered here would be covered under the Section 2 (1) (o) of the Act. Free service, would also be 'service' and the recipient a 'consumer' under the Act.

CRITICAL ANALYSIS AND REVIEW

This landmark case added a new chapter in the cases related to medical negligence. It included medical negligence under the ambit of the Consumer Protection Act, 1986. But it has both positive and negative outcomes associated with it. On one side, where the aim of the judgment rightly empowers the sufferers and the victims to claim damages, which was very much required because it had double ill effects: Physical loss to the patient due to the doctor's negligence as well as it also added financial burden on the family of the patient.

But on the other side, this judgment is also attracting fraudulent cases of medical negligence against the doctors and the hospitals just for falsely claiming the compensation and harassing the medical practitioner. It had also led to false insurance claims by the family of the patients in the name of medical negligence.

CONCLUSION

Having being elaborated all the legal terminology associated with the case, the facts of the case and the essential socio legal background of the case, it is quite easy to understand the motive behind the judgment. The Court had effectively cleared all the conflicts that arose due to earlier verdicts announced in related cases. The Supreme Court through this judgment had helped lots of helpless victims of medical negligence who otherwise had no effective legal remedy for medical negligence. But it equally important to strike a balance between its use and misuse so that the medical fraternity may not get harassed just because of malicious intention of the patient.[8]

[8] *Paramananda Katara v. Union of India* (1989) 4 SCC 286.