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SLP(C)No. 4994 OF 2004

ITEM NO.33

COURT NO.4

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).4994/2004

(From the judgement and order dated 15/12/2003 in MP No. 17/2002 & FA No. 89/1998 of NATIONAL CONSUMERS DISPUTES REDRESSAL COMMISSION, NEW DELHI)

LAXMAN THAMAPPA KOTGIRI

Petitioner(s)

VERSUS

G.M., CENTRAL RAILWAY & ORS.

Respondent(s)

Date: 06/01/2005 This Petition was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE RUMA PAL

HON'BLE MR. JUSTICE C.K. THAKKER

For Petitioner(s)

Mr. Mahesh Agarwal,adv.

Mr.Rishi Agarwal,Adv.for

Mr. E.C.Agarwal,adv.

For Respondent(s)Mr. K.Radhakrishnan,Sr.adv.

Mr. S.W.A.Qadri,adv.

Mr. Shreekant N. Terdal,Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeal is allowed.

[SUMAN WADHWA]

[MADHU SAXENA]

COURT MASTER

COURT MASTER

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2004

(Arising out of SLP(C) No. 4994/2004)

Laxman Thamappa Kotgiri .. Appellant

vs.

G.M., Central

Railway & Ors... Respondents

O R D E R

Leave granted.

The appellant is an employee of the Railways. On the ground that his wife had been negligently treated in the B.R.Ambedkar Hospital of the Central Railway (referred to as 'the Hospital') as a result of which she died, he filed a complaint under the Consumer Protection Act, 1986 (hereinafter referred as 'the Act') before the State Commission in Bombay. The State Commission came to the conclusion that the Hospital had been set up to treat Railway employees and the

'predominant component' of the Railway Hospital was free service to the Railway employees and not paid service to outsiders. The charges taken from the Railway employees were nominal and were with reference to the maintenance charges of the Hospital. Relying upon the decision of this Court in Indian Medical Association vs.

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V.P.Shantha 1995(6) SCC 651, the State Commission came to the conclusion that even if these charges were taken into consideration, the services rendered at the Railway Hospital would not come within the definition of 'paid service' for the purposes of the Consumer Protection Act, 1986 and, therefore, the complaint of the appellant was not maintainable.

The National Commission upheld this view and rejected the appeal preferred by the appellant.

The appellant has submitted that the decision of the Commission was erroneous as it proceeded on a misunderstanding of the scope of the decision of this Court in V.P.Shantha's case (supra). It is submitted that V.P.Shantha's case was a clear authority for the proposition that where medical service was rendered as part of the terms and conditions of service this would not amount to free service and would constitute service for the purposes of the Act.

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Learned counsel for the respondents has argued in support of the opinion expressed by the court under the Act and in addition has relied upon the decision of this Court in State of Orissa vs. Divisional Manager, LIC and Another 1996 (8) SCC 655 to contend that a Government servant who was granted medical facilities was in fact enjoying free service. Thus, making of a complaint by such Government servant is outside the purview of the Act.

There is no dispute that the Hospital in question has been set up for the purpose of granting medical treatment to the Railway employees and their dependents. Apart from the nominal charges which are taken from such an employee, this facility is part of the service conditions of the Railway employees. V.P.Shantha's case has made a distinction between non-Governmental hospital/nursing home where no charge whatsoever was made from any person availing of the service and all patients are given free service (vide para 55(6) at page 681) and services rendered at Government Hospital/Health Center/Dispensary where no charge whatsoever is made from any person availing of the services and

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all patients are given free service (vide para 55(9)) on the one hand and service rendered to an employee and his family members by a medical practitioner or a hospital/nursing home which are given as part of the conditions of service to the employee and where the employer bears expenses of the medical treatment of the employee and his family members, (paragraph 55 (12) on the other. In the first two circumstances, it would not be free service within the definition of the Sec.2 (1)(O) of the Act. In the third circumstance it would be.

Since it is not in dispute that the medical treatment in the said Hospital is given to employees like the appellant and his family members as part of the conditions of service of the appellant and that the Hospital is run and subsidised by the appellants employer, namely, the Union of India, the appellant's case would fall within the parameters laid down in paragraph 55 (12) of the judgment in V.P.Shantha's case and not within the parameters of either para 55(6) or para 55 (9) of the said case.

It is true that the decision in State of Orissa vs. Divisional Manager LIC & Anr. (Supra) relied upon by the learned counsel for the respondents appears to hold to the contrary. However, since the decision is that of a smaller

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Bench and the decision in V.P.Shantha's case was rendered by a larger Bench, we are of the opinion that it is open to this Court to follow the larger Bench which we will accordingly do. The appeal is allowed and the impugned order is set aside. The matter is remanded back to the

National Commission for decision on merits.

.....J. (RUMA PAL)

.....J.

(C.K.THAKKER)

New Delhi;

January 6, 2005.