

## **CASE COMMENT ON BHANWAR KANWAR v. R.K. GUPTA AND ANOTHER [2013 4 SCC 252]**

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### **FACTS**

The respondent was a qualified practitioner of Ayurvedic Medication. In the present situation, the respondent had claimed that he had conjured up a reliable cure for epilepsy. In the instant case, the appellant went to this practitioner to get his 4-year-old child cured. The treatment was continued for 2 full years, but the appellant's daughter's condition, grew worse with several convulsions of epilepsy. The respondent claimed later, that the cure in Ayurveda would be slow and time-consuming. Upon referral to a qualified neurologist, Dr. Ashok Pangariya, it was told by the doctor that there could be no possible manner of the child growing back to its normal conditions. Later, on facts it was found that the respondent was administering Allopathic drugs in the guise of Ayurveda.

Thus a case was filed, seeking punitive damages, as the mother and the child had suffered from mental injury, due to the misrepresentation by the practitioner.

### **PROCEDURAL HISTORY**

#### NATIONAL CONSUMER COMMISSION-

The case had reached the National Commission. In the instant case, the National Commission held that the act of the respondent was both unfair trade practice and a serious case of medical negligence. The Commission thus, gave the quantum of punishment to be 5 lakh, to be given to the Consumer Legal Aid Account of the Commission.<sup>1</sup>

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<sup>1</sup> 2009 2 CPJ 193(NC)

## SUPREME COURT-

Both the appellant and her son *P* had suffered from serious mental injury due to the misleading advertisement in the newspapers. It was held that there is a clear instance of medical negligence and unfair trade practices resulting from the respondent's act. The court thus increased the compensation amount to 15 lakhs and thus, set aside the National Consumer Commission's order.<sup>2</sup>

## **ISSUES**

- Whether the act committed is that of medical negligence and the extent of damages.
- Whether the advertisement is misleading and constituted an unfair trade practice.
- Whether the respondent had the authority in administering the medicine to the child.

## **LAWS**

- Section 2(1) (r) of the Consumer Protection Act, 1986
- Section 2(1) (g) of the Consumer Protection Act, 1986
- Section 2(1) (o) of the Consumer Protection Act, 1986
- SECTION 14(1) of the Consumer Protection Act, 1986
- Section 22(2) of the Consumer Protection Act, 1986
- Section 15(2)(b) of the Indian Medical Councils Act, 1956
- Section 39(1) of the U.P Indian Medical Councils Act, 1939
- Section 41(2) of the U.P. Indian Medical Councils Act, 1939

## **ANALYSIS**

- a) The issue of medical negligence and the extent of damages:

In the instant case, the respondents have acted in a clearly negligent manner. In the case of medical negligence, there exists a liability of the medical practitioners, as there exists a

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<sup>2</sup> 2013 4 SCC 252

reasonable degree of care and skill, which is expected from a competent and rational medical professional. The degree of reasonability in medical cases can be the three following reasons-

- i) Whether to give treatment
- ii) The care under the treatment
- iii) Administration of the treatment

In the case, it must be noted that the practitioner respondent, is not an ascribed medical practitioner in allopathic medicine, and hence the very premise of reasonability in the act is dismissed, as per the test given in the *Bolam v. Friern Hospital Management Committee*<sup>3</sup> case. The act, in accordance to the Bolam's Test, is not committed in accordance to the procedure accepted by a reasonable and responsible body of medical practitioners.

b) Whether the advertisement is misleading and constituted an unfair trade practice:

In the instant case, it is humbly submitted that the advertisement made by the respondents is a case of unfair trade practice and deficiency in services, as defined under Section 2(1) (r) and Section 2(1)(g) of the Consumer Protection Act, 1986, wherein the services provided by the respondents are as under Section 2(1)(o) of the Consumer Protection Act.

The misleading advertisement in this case, was pointed out previously in the statement of facts, to have been published in a newspaper, *Jan Satta* on the 8<sup>th</sup> of August 1993 and offered treatment of patients with fits with Ayurvedic medicine by Dr. R.K. Gupta, who is respondent 1 to this case.

Under Section 2(1) (r) of the Consumer Protection Act, 1986, it is provided under Sub-section (vi) that, if a person makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services either in a written or oral form, it would constitute an unfair trade practice.

As the facts indicate, the act of the respondents is a deficiency in service as defined under Section 2(1)(g) of the Consumer Protection Act, 1986. As according to this Section, the respondent, in the instant case, has a fault and shortcoming of the service rendered by him, in the nature and manner in which the medicine was falsely administered.

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<sup>3</sup> (1957) 2 All ER 118

The respondents in this case, are as rightly pointed out by both the National Commission and the Supreme Court, with the reports by the laboratory and other evidence, liable for the said damages to the appellant and the child.

The compensation amount, thus given to the appellant by the National Commission, which is 5 lakhs, is a rather a minimalistic approach to meeting the ends of the damages that have occurred to both the appellant and the child. The Supreme Court, thus in its judgment, very rightly points out that there must be an increase in the compensation payable.

The court clearly highlights that the respondents must pay the compensation.

c) Whether the respondent had the authority in administering the medicine to the child:

The respondent, in the instant case, has a degree in Ayurvedic Medicine and is an Ayurvedacharya. This however, does not entitle him to seek registration or to practice in field of Allopathic medicine. But a glaring contradiction to this contention which comes into the instant case, would be the letter of the Secretary of the Medical Education Department of the Uttar Pradesh Government, which says that there would be a strict ombudsmen of the quacks and non-qualified doctors across the state, but however, it adds that as under Section 39(1) and 41(2) of the UP Indian Medical Councils Act, 1939, it is permitted by the State to use allopathic medicines in certain cases, by Ayurveda/Unani practitioners, subject to possession of qualification.

The respondent, Dr. R.K. Gupta, is not registered as under Section 15(2) of the Indian Medical Councils Act, 1956 for the purposes of practice and profession of allopathic medicines. It is humbly submitted that the respondent practitioner, as per the reading of the case, had not pleading even that he was a medical practitioner and was vaguely given the entitlement to practice and profess his Allopathic medicine.

## CONCLUSION

The judgment rendered by the Supreme Court is *per curium* as it adheres to the basic principles of justice. In the instant case, it can be inferred from the facts and issues that, the respondent's act, was a clear case of medical negligence and was not a reasonable act as per the directives

of the Bolam's Test, which was laid down in *Bolam v. Friern Hospital Management Committee* case.

The National Commission and the Supreme Court have very categorically held that there was a clear case of deficiency in services provided, in addition to which constitutes an unfair trade practice. It can thus, be inferred from this case, that the compensation given by the National Commission is a bare minimum and would defeat the very purpose of justice and its applications.

Lastly, it can be inferred with the given set of facts and circumstances that, the respondent in the instant case, was not competent to administer the medicine on the child. He, was not a registered practitioner, as under the law, and can be, in this case, proven to be a quack. The mere premise of not challenging the question of registration is evidence for the same. The letter of the Secretary only creates certain exceptions to the norms and rules, which are in place for the practice and profession of any Ayurveda/Unani medical practitioner.