

**(2003) 02 BOM CK 0082**

**Bombay High Court**

**Case No:** Writ Petition No. 1686 of 1998

Dr. Manmath S. Raut

APPELLANT

Vs

Shri Mallikarjun Laxman Babare  
and Medical Superintendent,  
E.S.I. Hospital

RESPONDENT

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**Date of Decision:** Feb. 27, 2003

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Consumer Protection (Amendment) Act, 1986 - Section 11
- Consumer Protection Act, 1986 - Section 14, 15

**Citation:** AIR 2003 Bom 262 : (2003) 2 ALLMR 477 : (2003) 4 BomCR 623

**Hon'ble Judges:** R.M. Lodha, J; A.S. Aguiar, J

**Bench:** Division Bench

**Advocate:** V.M. Thorat, for the Appellant; S.R. Nargolkar, A.G.P., for the Respondent

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**Judgement**

R.M. Lodha, J.

Dr. Manmath S. Raut - petitioner herein - has invoked the jurisdiction of this Court under Article 226 of the Constitution of India directly aggrieved by the directions given by the District Consumer Redressal Forum, Solapur, to the petitioners superiors to hold administrative enquiry about his misconduct and to inform the decision to the Forum and that the complainant Mallikarjun Laxman Babare should be reimbursed all the expenses incurred for the operation. The petitioner has directly approached this Court in writ petition as, in his view, the aforesaid directions given by the District Consumer Forum in its judgment dated 27.2.1998 is without jurisdiction.

2. Ordinarily, we would have relegated the petitioner to approach the Consumer District Redressal Commission established in the State in appeal u/s 15 of the Consumer Protection Act, 1956, but in view of the fact that writ petition was

admitted by this Court in the year 1998 and for almost 4 1/2 year the writ petition is pending before this Court and it may not be in the interest of justice now to ask the petitioner to pursue the remedy of appeal provided under the act of 1956.

3. In the circumstances, we consider the matter on merit only with regard to the aforesaid direction which is impugned before us.

4. The first respondent herein was original complainant before the District Consumer Forum. The present petitioner and the Medical Superintendent E.S. I. Hospital , Solapur were impleaded as opponent Nos. 1 and 2. According to the complainant, he was in service a worker in Yashwant Sahakari Soot Girni. He being member of E.S.I. Hospital, he is entitled to the facility of medical service in the E.S.I. Hospital. On 4.2.1995, the complaint went to the present petitioner, who was posted in the E.S.I.S.. Hospital, Solapur, for treatment. Initially some treatment was given to the complainant by the present petitioner and thereafter he was advised to undergo operation. The petitioner agreed for operation and on 10.5.1995 he was taken to the operation theatre. At that time, the present petitioner allegedly demanded a sum of Rs. 20,000/- from the complainant. The complainant expressed his inability to pay the said amount to the present petitioner. The present petition took the complainant out of the operation theatre and he was told that it was not necessary to perform the operation. The complainant approached Dr. Shekhar Shah in Wadia Hospital who told him that the treatment given to him was wrong and Dr. Shah advised the complainant to undergo operation immediately.

5. The present petitioner contested the complaint filed by the complainant and in his reply submitted that the complainant was advised to take injection first and pain killing drugs were prescribed by him. The first injection was given to the complainant on 2.3.1995 and thereafter on 10.5.1995 second injection was given. According to the petitioner, on 12.4.1995 x-ray was taken and then the complaint was advised operation. On 2.5.1995 the complainant was admitted, but as the operation programme was full, operation of the complainant could not be undertaken and he was given discharge from the hospital, on 5.5.1995, the complainant was admitted for examination and operation and as per the opinion of the surgeon, operation was not essential. At that time on 10.5.1995, the complainant was given third injection. According to the present petitioner, many times by giving injection the doctor decides to cure such patient without operation. The present petitioner denied the demand of Rs. 20,000/- in the operation theatre as alleged by the complainant. The present petitioner thus submitted that there was no deficiency in services and the complainant was liable to be dismissed.

6. The District Consumer Forum on the basis of the available material, including the affidavits of Dr. Shekhar Shah and Dr. Popatani held that it cannot be said that there was deficiency in services by the present petitioner by postponing the operation because at the time the operation was postponed on 10.5.1995, injection was given to the complainant. Having given this finding, however, the District Consumer

Forum went on to observe thus:

"The Applicant is a worker and illiterate. He has no knowledge about medical profession. This is admitted by the opponent. According to the opponent, opponent No. 1 is a well-known doctor. Though the opponent No. 1 has power to give what kind of treatment, it was necessary to give full idea about the change in treatment to that patient. In the instant case, the opponent had taken the Applicant in the operation theatre for performing operation and had sent him back that the operation was not to be done. It is the case of the Applicant that opponent No. 1 had demanded Rs 20,000/- to the Applicant. Even though the Applicant failed to prove this allegation, still the fact that the opponent No. 1 did not perform operation of the foot of the Applicant and gave injection and brought him out of the operation theatre creates doubt about the conduct of the opponent No. 1. Under such circumstances, at the particular time cancellation of treatment without giving any idea to the patient may be improper. Therefore, it would not be proper to award any costs to the opponent. Similarly, it is also necessary to hold an administrative inquiry about the misconduct of opponent No. 1 by the superior office of opponent No. 2. Accordingly, the officer of opponent No. 2 should hold inquiry against opponent No. 1 and inform accordingly to the Forum the expenses incurred by the Applicant for the operation should be reimbursed by the hospital."

7. On the basis of the aforesaid observations, the District Consumer Forum directed the superiors of the petitioner to hold administrative inquiry about the misconduct of the petitioner and for reimbursement of the expenses incurred by the complainant for the operation.

8. Having held that there was no deficiency in service by the petitioner by postponing the operation because at that time injection was already given to the complainant on 10.5.1995 and having also held that the complainant had failed to prove the allegation of demand of Rs. 20,000/-, we hardly find justification in the order of the District Consumer Forum in ordering administrative inquiry into the misconduct of the petitioner and further directing the employer of the petitioner to inform the decision of the Forum. The District Consumer Forum is a creature of the Consumer Protection Act, 1986 and it has jurisdiction and competence to deal with matters provided therein. Jurisdiction of the District Consumer Forum is provided in Section 11 of the Act of 1986. Section 13 of the Act deals with the procedure to be followed by the District Forum. After the proceedings are conducted u/s 13, the District Forum can direct one or more things as provided in Section 14 of the Act. The District Consumer Forum cannot act beyond the jurisdiction conferred on it under law. These directions are required to be confined to the limits provided under the Act of 1986. It cannot take upon itself the authority which has not been conferred by the Act. How can a District Forum order an administrative inquiry into misconduct of a doctor who is employed by the State Government. It has no business to do so. If an employee of the State Government has committed any

misconduct, it is for the State government to proceed against such an employee in accordance with the Disciplinary Rules. It does not need any guidance from the authority like the District Forum constituted under the Act of 1986. We are, therefore, of the view that the District Forum exceeded its jurisdiction in directing the superiors of the petitioner to hold administrative inquiry into the conduct of the petitioner concerning the treatment of the complainant. The directions, to say the least, lacks competence. The direction given in the impugned order that the complainant should be reimbursed all the expenses incurred for the operation are apparently without jurisdiction as the District Forum found as a fact that there was no deficiency in service by the present petitioner by postponing the operation. How can the District Forum fasten the liability of reimbursement of all the expenses incurred by the complainant when it held that there was no deficiency in the service and that the complainant failed to prove that the present petitioner demanded Rs. 20,000/- for operation.

9. The direction given by the District Forum in paragraph (2) of the operative order in the impugned judgment being without jurisdiction and competence is unsustainable and is set aside accordingly.

10. Rule is made absolute in the aforesaid terms. No costs.

11. Needless to say that this order will not preclude the State Government to hold a disciplinary inquiry into the conduct of the petitioner if it is of such opinion and such opinion shall not be guided by the impugned directions given by the District Forum which we have already quashed and set aside.