

**IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
AT NEW DELHI**

NC/FA/155/2022

(From the Order dated 08.10.2021 in CC No. 5/2020 of the
West Bengal State Consumer Disputes Redressal Commission)

Dr. S. K. Debnath ... Appellant

Versus

Samina Khatun & Ors. ... Respondents

BEFORE:

**HON'BLE MR. JUSTICE A.P. SAHI, PRESIDENT
HON'BLE MR. BHARATKUMAR PANDYA, MEMBER**

Appeared at the time of arguments:

For Appellant : Mr. Piyush Kanti Roy, Sr. Advocate
with Ms. Kakkali Roy, Advocate
Mr. Abhishek Kaushik, Advocate
Ms. Khushboo Sharma, Advocate

For Respondents : None for R-1
Dr. S. K. Khatri, Advocate
Ms. Aradhana Jain, Advocate for R-2 & 3

PRONOUNCED ON: 14th November 2025

ORDER

JUSTICE A. P. SAHI, PRESIDENT

1. This appeal has been filed assailing the order of West Bengal SCDRC dated 08.10.2021 in CC No. 5 of 2020 which was a complaint by the respondent no. 1 alleging deficiency and medical negligence as against the appellant for having failed to take due care in diagnosing the disease of the complainant and having administered medicines on the basis of an experimental treatment that severely and adversely affected the metabolism of

the complainant as a whole from which she suffered tremendously and suffered substantial physical damage.

2. The allegations are that the appellant had administered steroids that resulted in complications and apart from that prescribed immunosuppressant drugs in disproportionate overdoses which further aggravated the same and caused incalculable harm to the physique of the complainant. For this reliance was placed on the prescription given by the appellant and the inferences drawn from the treatment received by the complainant from other hospitals which complicated the ailment of the complainant.

3. The complaint was filed and according to the impugned orders, notices were issued. The other OPs were served, but the OP-1 refused to receive the notice which was returned back with the postal remark of refusal. Consequently, the complaint proceeded *ex-parte* to the appellant and was ultimately allowed by imposing damages to the tune of Rs. 5 lakhs on the appellant with Rs. 10,000/- as litigation cost to be paid within 45 days or else the same would invite interest at the rate of 8% per annum.

4. Simultaneously the other two OPs, where certain investigations had taken place, were absolved from any liability and the complaint against them was dismissed.

5. The complainant filed Execution E.A. No. 1 of 2022, and after the recovery certificate pursuant thereto was issued, the appellant woke up and has filed the present appeal contending that he had no knowledge of the proceedings prior to the steps taken in the Execution proceedings. Thus, the appeal was preferred assailing the order dated 08.10.2021 impugned herein,

passed by the SCDRC, West Bengal, which was entertained with an interim order dated 09.06.2022 extracted hereinunder:

Heard learned counsel for the Appellant. Perused the material on record.

Issue notice on the Memo of Appeal to the Respondents, subject to payment of Rs.20,000/- to the respondent no. 1 directly in her name by way of demand draft to cover travel and allied expenses within a period of four weeks.

Heard on the application for Stay.

The operation of the impugned Order of the State Commission is stayed, subject to deposit of 50% of the decretal amount before the State Commission within a period of six weeks from today, which shall be kept in the shape of an FDR initially for a period of one year to be renewed regularly.

It is made clear that the Stay on the operation of the State Commission's Order shall automatically stand vacated if both conditions, the condition attached with the issuance of notice i.e. payment of Rs.20,000/- to the respondent no. 1 within four weeks and the condition attached with the grant of Stay i.e. deposit of 50% of the decretal amount before the State Commission within six weeks, are not complied with within the respective stipulated time. In such contingency, the State Commission shall proceed for execution as per the law.

List the matter for hearing on 28.07.2022.

6. The respondent no. 1, 2 and 3 were all served as per the office report dated 26.07.2022. The respondents nos. 2 and 3, who had already been absolved by the State Commission were represented by Dr. S. K. Khatri, who have filed an affidavit stating that since no liability has been fixed against the said OPs / respondents, therefore the appeal may be dismissed against them. The parties were directed to proceed by filing the written submissions and from the order sheets, it appears that one Mr. Pritam Roy, Advocate appeared for the respondent no. 1 and took time to file the written synopsis.

7. On 27.02.2023, the appeal was dismissed for want of prosecution, as a result whereof the appellant filed M.A. No. 136 of 2023 praying for restoration. Notices were issued on the said application and according to the office report dated 20.07.2023 all the respondents stood served.
8. On 21.07.2023, the order dismissing in default was recalled and the matter was posted for hearing. The ordersheet dated 19.12.2023 records the presence of Mr. Pritam Roy, Advocate for the respondent no. 1 who had been called upon to file the written synopsis which was once again repeated by an order dated 08.05.2024 that was also passed in the presence of Mr. Pritam Roy.
9. Written arguments were filed by Mr. Pritam Roy, counsel for the OP-1, vide a Diary No. 34013 dated 07.10.2024, wherein four issues have been framed that are extracted hereinunder:

Identification of Issues

- i. **The treating doctor owed the patient a duty to conform to a particular standard of Medical Care:** *The Appellant administered extremely powerful medicines in high doses for mere skin diseases like Tinea Corporis and scabies, and he is not qualified and experienced too for administering such medicines.*
- ii. **The treating doctor (JDR) was derelict and committed a breach of duty:** *The real reason behind the discomfort the Opposite Party I was experiencing was not given any heed, rather experimenting with otherwise very powerful drug which should be used rarely by the experts of such drug administration under strict supervision and in low doses to control the toxicity are randomly prescribed in high doses by the Appellant who is not authorized to do so.*

*iii. **The patient suffered actual damage:** The Opposite Party 1 has lost her physical and mental health (detailed in the statements of fact) as a result of the medicines she took under the prescription by the Appellant.*

*iv. **The doctor's conduct was the direct or proximate cause of the damage:** The loss in health condition is due to the side effects of the medicines that was administered wrongly by the Appellant.*

10. Learned senior counsel for the appellant, Mr. Piyush Kanti Roy, has advanced his submissions contending that the findings recorded by the State Commission are perverse and against the weight of evidence on record that was filed by the complainant himself. It is also submitted that the inference drawn about the impact of the administration of the drug as prescribed is also perverse and is contrary to the literature on the subject. He further submits that the drugs which have been prescribed were in accordance with the medical protocol and after taking due care. It is urged that there is no expert evidence led by the complainant to demonstrate that there was any deficiency or negligence either in diagnosing or treating the disease as prescribed by the appellant. It is submitted that in the absence of any such expert evidence, the inferences drawn by the State Commission are based on some sort of a personal knowledge without there being any scientific basis for the same. Learned counsel further submits that the complainant had visited Narayana Super Speciality Hospital after the incident where also incorrect observations were made about the treatment in the discharge summary, which has been made the basis of the complaint and has been also translated into the impugned order. He therefore submits that the contentions are incorrect and so are the findings recorded in the impugned order. He submits that on the

showing of the evidence relied on by the complainant herself, no case of medical negligence is made out and hence the impugned order is vitiated.

11. As noted above, Mr. Pritam Roy, Advocate had appeared twice and had taken time to file written submissions that was done by him as noted above. He has however not filed his vakalatnama on record nor did he appear when the matter was finally heard on 13.10.2025. Dr. Khatri appearing for the respondents nos. 2 and 3 has been heard.

12. From a perusal of the facts as brought on record, we find that the first prescription is dated 05.01.2009 when the complainant went and got herself examined by the appellant. This hand written prescription records a doubt with a question mark of the disease Tinea Corporis also commonly known as “ring worm” which is a superficial fungal infection usually occurring on the arms and legs. It is also described as dermatophytosis.

13. Learned counsel for the appellant therefore submits that this was diagnosed and suspected on the very first day by the appellant.

14. The appellant also prescribed tests including IgE. The prescription also advised Eukart as one of the medicines. The patient was advised to take the medicine and then to come back again. The clinical chemistry of the IgE level was analysed at the respondent no. 2 Centre and the level reported was 1104 whereas the normal level of the same is 0-380. Thus, the IgE level was very high and it is in this background that the treatment had been advised. It may however be pointed out that this test is dated 10.01.2019 and the second visit made by the complainant after the other blood tests etc. were carried out was on 26.01.2019. After having noticed the high level of IgE, the appellant for the

first time prescribed injection Tenacort40. This is the only steroid injection which was prescribed by the appellant that too on 26.01.2019. The medicine Eukart was repeated with an advice to visit the doctor again.

15. The complainant arrived on 02.03.2019 and complained of eruption all over the skin. Blood samples were advised of IgE level once again and other blood tests including lipid profile, urea creatinine. Tenacort40 was again advised to be administered biweekly in the said prescription. The other laboratory reports of the blood tests including the IgE levels were once again reported and the report dated 29.03.2019 indicated IgE level as 1105 which was higher than the previous report.

16. It is pointed out by the learned counsel for the appellant that in spite of steroid having been administered, the level continued to rise and did not indicate any reduction.

17. The third time, the complainant came to the appellant was on 30.03.2019 when she was referred to the Dermatologist. The said prescription nowhere indicates any advice for administration of steroids, but Folitrex 2.5 mg tablet, and immunosuppressant, was prescribed one tablet three times in a week.

18. Learned counsel submits that Folitrex is of the generic medicine named Methotrexate which is an immunosuppressant and is also a chemo drug. Learned counsel submits that the said medicine is administered for a large number of diseases including Arthritis, cancer and other such diseases where immunosuppressants are required, including dermatitis that was also diagnosed in the prescription dated 30.03.2019.

19. The contention of the learned counsel for the complainant respondent therefore is that this continued administration of steroid and the immunosuppressant drugs led to the complication that was aggravated due to the administration of another medicine Furosemide. It is with these allegations that the complaint came to be filed before the West Bengal SCDRC and as noted above, the appellant did not appear there and the case was proceeded *ex-parte*.

20. It may be pointed out that immediately after the prescription dated 30.03.2019, the complainant seems to have shifted for treatment to the Narayana Hospital, where she was admitted on 03.04.2019 and discharged on the same date. The discharge summary also has relevance to the controversy and is therefore extracted hereinunder:

NH Narayana
Superspeciality Hospital
Unit of Narayana Health

Discharge Summary & Certificate

Patient: Miss Samina Khatun		Age/Sex: 16 Yrs/Female
Patient I.D. No.:	Ward BMT, Bed No. 1	
17650000103180		
Date of Admission: 03/04/2019		Address:
Doctor-in-Charge: Dr. Rajib De		
Date of Discharge:		Date of Operation

Diagnosis: Tinea Corporis (Leg Rash) with scabies whole body following systemic Steroid Intake.

Case History: 16 yrs. Old female, Pt. was admitted C/D extensive skin lesions (Scaly) all over body for 6 months, along with dry silvered scale lesions on the lower limbs with associated c/o. itching. There was c/o pain all over body with generalized weakness. There was no evening rise in temperature for 15 days prior to date of admission which used to subside without medication (temperature was not recorded at home). There was no swelling of whole body and face. She was initially being treated by a local doctor and was taking oral Methotraxate (Q-smg) thrice a day weekly for 3 months. Pt was on oral Frusemide for 3 months.

There was no h/o any bleeding manifestation.

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There was associated h/o secondary amenorrhea with LMP of Jan'2019

On examination at admission:-

- Pallor – absent, Icterus-absent, Edema- absent
- Skin- Patchy scaly lesions with itching all over body with silvered scales on the lower limbs.
- Oral cavity-healthy, No obvious bleeding.
- Lymph Node: not palpable
- Chest- B/L VBS clear, s1s2 audible
- P/A- Soft, non-tender, liver- spleen not “...illegible..”
- Vitals – CBC= 92 mg/dl
- Pulse- 80/mm, BP-110/80 mm Hg, Temp= 99/ , SPO2

Cont:-

-Review in Gynae OPD for secondary Amenorrhea

- Review in Skin OPD after 1 week

- Review in Psychiatric OPD for psychiatric

Opinion for emotional liabilities.

-ER-SOS

-Medications:-

(1) Tab- Rantac (150) 1 tab on daily before breakfast X15 days.

(2) Tab, Eukast FM (montelukast + fexofenadine) 1 tab at bedtime x 1 month

(3) Permite Creame (15 gm) apply topically over whole body below neck

(4) Tab Teczine (5 mg) 1 tab OO at bedtime X 20 days.

21. It is in this background that the complaint proceeded for consideration, and relying on the discharge summary of Narayana Hospital as well as the allegations in the complaint which went uncontroverted, the State Commission inferred medical negligence. It was held that with the aforesaid material on record, there was no need to further investigate the matter and from the symptoms on record, it was evident that long intake of steroid and oral methotrexate thrice a day, the complainant had suffered at the hands of the appellant. This was clear medical negligence and was an outcome of the inappropriate treatment and diagnosis on the part of the appellant.

22. Learned counsel for the appellant urged that the inference of long administration of steroids is absolutely wrong, in as much as, the injection was advised only on two occasions as noted above and so far as the inference drawn about the immunosuppressant drugs having been administered for three months, is patently perverse without there being any administration of the said medicine.

23. Learned senior counsel points out that it was for the first time that Methotrexate 2.5 mg (T. Folitrex 2.5mg) was advised on 30.03.2019. The complainant had not even taken it and she switched over to the treatment at the Narayana Hospital immediately thereafter. Thus, there was no

presumption available so as to assume that the complainant had been administered the immunosuppressant drug Folitrex for three months. It is urged that this inference is perverse and without any basis. It is further submitted that the allegation of Furosemide has not been established but the allegation of the complainant that the said medicine was prescribed and taken for three months was a totally false statement made in paragraph 9 of the complaint nor was there any evidence to that effect.

24. Learned senior counsel has then urged that the written submissions filed on behalf of the respondent no. 1 do not in any way make out a case in favour of the respondent and since the impugned order is based on erroneous facts and law, the impugned order deserves to be set aside.

25. We have considered the submissions raised and have perused the complaint, the allegations made and the evidence adduced. The findings recorded by the State Commission are undoubtedly based on the complaint allegations as the appellant did not contest the matter before the State Commission where it went *ex-parte*. We have however perused the complaint allegations and we commence with the allegations made in paragraph 9 of the complaint about the administration of Furosemide medicine. On record are the prescriptions as well as the discharge summary and certificates of the Narayana Hospital where the respondent no. 1 had been later on treated. Neither the prescriptions of the appellant indicate any advice to administer Furosemide nor is there any recital of the said medicine or its equivalent in any of the prescriptions issued by the appellant. The recital contained in the discharge summary of the Narayana Hospital that the patient was on oral

Furosemide for three months is nowhere substantiated by the prescriptions that were produced by the complainant herself. The recital therefore in the discharge summary also appears to be without any basis. Thus, paragraph 9 of the complaint referring to the said medicine being administered for months together is without any basis and it is because of this that the State Commission has not accepted the said allegation or even commented upon it. The said allegation therefore in the complaint seems to be false.

26. We have then examined the allegation about the administration of Tab. Folitrex (Methotrexate) medicine which we find was prescribed for the first time in the appellant's prescription dated 30.03.2019. This medicine had not been prescribed earlier. Thus, there was no occasion for the administration of Methotrexate medicine being taken by the complainant for three months. The complainant shortly thereafter shifted to the Narayana Hospital where she was admitted on 03.04.2019 and discharged on the same day. There is nothing to substantiate that Methotrexate was taken by the complainant for three months. Even otherwise if it was prescribed for the first time only on 30.03.2019, there was nothing to infer that she had been taking this medicine for the past three months. The Narayana Hospital discharge summary therefore once again recorded a wrong fact of taking Methotrexate for three months. As a matter of fact, the complainant does not seem to have taken the medicine at all, in as much as, immediately upon its prescriptions on 30.03.2019, she chose to switch over to Narayana Hospital on 03.04.2019 which is just three days after the prescription dated 30.03.2019. There was nothing to demonstrate that the medicine had been taken for three months or

for that matter even for three days. Accordingly, we find that the discharge summary and certificate of the Narayana Hospital mentions a replication of the allegations in the complaint without even looking into the prescriptions of the appellant.

27. We further find that the Narayana Hospital discharge summary records its diagnosis as “Tinea Corporis”. This diagnosis clearly matches with the same suspect diagnosis recorded by the appellant on the first occasion in his prescription dated 05.01.2019. It is therefore clear that there is no error in the diagnosis made by the appellant regarding the nature of the disease.

28. The only issue which now remains is that of the administration of steroids. The Narayana Hospital has indicated that the rashes followed a systematic steroids intake. This diagnosis was made on the same date when the patient was admitted and discharged. As noted above, the administration of Furosemide and Methotrexate for three months has been found to be false and based on no evidence. The discharge summary of the Narayana Hospital records these recitals which remain unsubstantiated. There is therefore every reason to assume that the discharge summary was prepared by the Narayana Hospital without looking into the documents.

29. Coming to the administration of steroids, we find that the Tenacort40 injection was first prescribed on 26.01.2019. It was almost after more than a month that it was again prescribed on 02.03.2019. In spite of the said administration, the IgE level of the complainant did not reduce and from 1104 on 10.01.2019, it rose to 1105 on 29.03.2019. It is therefore obvious that the administration of Tenacort40 which was a steroid did not have any impact

indicating any control over the infection. No further prescription demonstrates any infusion or injection of a steroid to the complainant. In such circumstances, the conclusion drawn in the diagnoses of Narayana Hospital that the rashes followed the steroid intake in a systematic way is not exactly established. To the contrary, Tinea Corporis already existed when the complainant was examined by the appellant on 05.01.2019.

30. However, the contention of the complainant is that this spread over the whole body, and for which negligence is attributed to the appellant for having administered steroids that obviously affected her health.

31. As already indicated above, neither Furosemide nor Folitrex was taken for three months as alleged. Folitrex was an immunosuppressant and according to the learned counsel and the literature relied on by him, it is a drug which is administered for multifarious symptoms and not only for one disease. He submits that Dermatitis is also treated with such immunosuppressant drugs and hence, no adverse inference could have been drawn by the administration of such medicines. In fact, the medicine was not taken at all and as indicated above, definitely not for three months.

32. We entirely agree with the submissions raised on behalf of the learned counsel for the appellant on this score on the basis of the discussion made hereinabove.

33. However, what we find is the appellant has not been able to explain as to how the rashes spread all over during the treatment administered by the complainant from 05.01.2019 till 30.03.2019. This was almost a period of close to three months and the complainant does not seem to have been cured

with the medicines that were prescribed by the appellant. We do not find any explanation coming forth on this count even if evidence was lacking with regard to the administration of Furosemide and Methotrexate for three months. We have also perused the written arguments of the respondent no. 1 and we find that the same is almost a copy reflection of the opinion expressed in the discharge summary of the Narayana Hospital extracted hereinabove. The allegations in the complaint and the written arguments are almost similar and they contain description about the symptoms and the impact of the medicines. The said assertions however did not make out any case of medical negligence regarding the allegation of administration of unnecessary medicines. The treatment advised by the complainant cannot be said to be experimental nor any expert opinion has been led before the State Commission to establish the same. In such matters, it will not be appropriate to apply the principles of *res ipsa loquitur*. It is true that expert opinions are not binding, but as noted above, we have derived our conclusions based on the prescription and the records filed by the complainant herself.

34. We find that the complainant had undertaken treatment at another hospital and had undergone the entire exercise of getting herself treated appropriately.

35. On 09.06.2022, an interim order was passed by this Commission which has already been quoted hereinabove. In the wake of the aforesaid facts, we find that the impugned order cannot be sustained for all the reasons stated hereinabove, but at the same time, we also do not find any valid explanation by the appellant as to why the rashes spread over the whole body in spite of

the treatment meted by the appellant for almost three months. There seems to be some deficit in the administration of corrective medicines. In this background, the amount deposited under the interim order dated 09.06.2022 deserves to be released to the complainant for meeting all the expenses borne for the treatment as also the sufferance of the respondent - complainant having not received the benefits of the treatment administered by the appellant. To the contrary, the rashes had spread all over the body, in these circumstances, the amount deposited before the State Commission under the interim order dated 09.06.2022 shall be released to the respondent no. 1. However, the rest of the amount as awarded by the State Commission is set aside and the appeal is partly allowed in view of the findings and the conclusions drawn hereinabove.

36. The appeal stands disposed of accordingly.

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(A.P. SAHI, J)
PRESIDENT

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(BHARATKUMAR PANDYA)
MEMBER

Pramod/Court-1/CAV