

Date of registration : 12.07.2018  
Date of order : 23.05.2022

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL  
COMMISSION NO.I, VISAKHAPATNAM : AP**

**PRESENT:** Smt.Gudla Tanuja, B.Com., M.A.(HRSA), LL.M., (Ph.D)  
President

Sri Varri Krishna Murthy, M.A., M.B.A., A.I.I.I.,  
(Associateship in Insurance Institute of India)  
Member

Ms.Rahimunnisa Begum, M.Com., LL.M., M.HRM(Ph.D)  
Woman Member

Monday the 23<sup>rd</sup> day of May, 2022

**Consumer Complaint No. 241/2018**

Between :

Consumer Rights Organisation, rep by its President Vikas Pandey, 302, Sundar  
Tower Veterinary Colony, Near Rama Talkies, Visakhapatnam-530040  
... Complainant

And

- (1) Authorised Signatory/In Charge Dr. Partha Dental Care India Pvt Ltd,  
201B, 1<sup>st</sup> Floor, Nandam Nirman Complex, Above Hyundai Car  
Showroom, Rama Talkies Centre, Visakhapatnam-530008
- (2) Dr Partha Sarathi PV Managing Director of Partha Dental Care India Pvt  
Ltd, D.No8-3-168/E/2/152, above HDFC Bank, Rajiv Nagar, Near Mothi  
Nagar, Hyderabad-500045.  
... Opposite Parties

This case came up for hearing on 11.05.2022 before the Commission in  
the presence of Complainant Vikas Pandey on behalf of the de-facto  
Complainant and Tatavarthy Law Chambers (TLC) and TVSK Kanaka Raju and  
Co., Counsels on behalf of the Opposite Parties and the Commission delivered  
the following :-

**: O R D E R :**

*(As per Sri Varri Krishna Murthy, Honourable Member on behalf of the Bench)*

1. The Complainant filed the complaint hitherto under section 12 (1) of  
Consumer Protection Act, 1986 against the Opposite Parties.
2. The Case of the Complainant was that the de facto Complainant Smt  
Thota Govinda Lakshmi was a house wife and a resident of Mutyalapalli Modi  
Village, Mogalthur Mandal, West Godavari Dist, A,P. She was suffering from  
tooth decay and to avoid further future complications and to have a permanent  
solution, she consulted the 1<sup>st</sup> Opposite Party in the month of October 2017

who have diagnosed the teeth of the Complainant, informed the patient that they would permanently cure and solve the problems of tooth decay by way of root canal and implantation of placing of crowns in place of decayed teeth and then the de facto Complainant facial appearance would become good and they would see that the implanted crowns would look just like original. Having believed the version of the doctors of the Opposite Parties, Complainant agreed and consented for the treatment. In the presence of Complainant's children, the 1<sup>st</sup> Opposite Party assured the de-facto Complainant that they would replace all the teeth and implant crowns in place of the decayed and spoiled teeth and also assured that they would see that the height of the teeth are also arranged beautifully and would see that would reduce size of the teeth of the patient unlike her original teeth. On the assurance of Opposite Parties that they would complete the treatment in 6 sittings in 3 months for which an amount of Rs,3,30,000/- is payable. On the 1st Opposite party's concurrence, the de-facto complainant paid the said amount in instalments (Ex.A3) by 17.03.2018. Initially the Opposite Parties had promised that they would remove and replace all the teeth of the Complainant. The 1st Opposite Party retained 6 original teeth stating that 6 of them were strong enough and the treatment started in the month of October, 2017 vide OP No.17VZA01618, by one Dr.Sneha who was in charge of the 1<sup>st</sup> Opposite Party and also one Dr.Latif. The services of opposite parties were very poor and rendered quite negligent service and instead of 6 sittings in 3 months they took 6 months. Though the treatment was delayed by 3 months the treatment was not up to her satisfaction and the teeth were detached and had fallen 3 times within 2 months. When the same was brought to the notice of the doctors of Opposite Party No.1, she was asked to attend for treatment again. She along with her children came number of times all the way from West Godavari for treatments when ever asked to attend. Huge amounts were spent for their conveyance, boarding and lodging. The de-facto complainant's children brought to the notice of the doctors about the worst treatment given to her and demanded for the refund of money paid to them. In order to avoid the refund they had sent a letter dated 08-06-2018 (Ex.A4) addressed to the de facto complainant stating that the Complainant was treated by their team of specialists at their clinic at Visakhapatnam for the placement of implants and crowns which were of high quality and due to certain reasons the crowns which were fixed temporarily had come out. Again on 16-6-2018 the 1st Opposite Party had sent the

de facto Complainant an SMS through Whats App requesting the patient to visit their clinic once again for the next sitting for her treatment and re-emphasised the fact that her case is unique and challenging one and needed a different approach and also that she needed some more sittings and that they had arranged some more specialist services to make her comfortable. The de-facto complainant and her children attended the 1<sup>st</sup> Opposite Party clinic and showed the position of her teeth directly. Instead of pacifying the issue they acted high handedly and vulgarly and went to the extent of calling the Police illegally so as to save their skin. Vexed with the Opposite Parties treatment then the patient had no other go but to visit another Dental Doctor Dr.B.Madhavi at Zilla Parishad, Visakhapatnam who observed that one piece implant was mobile, moving from its original position and there was a problem of another implant and the de-facto Complainant was advised 2 piece implants and that two piece implants were better for everlasting. But, the Opposite Party used one piece implant and hence, the crowns were not fixed properly without mobility. The patient was ready for the 2<sup>nd</sup> treatment which would cost her about Rs 1,40,000/-. In the mean while the de-facto complainant and her children requested the Opposite Parties many a time to refund their money which was unnecessarily collected from them but the Opposite Parties in turn threatened the de-facto complaint with dire consequences. Hence, the complaint by the Complainant. The Complainant prays for refund of the entire amount of (1) Rs.3,30,000/- with (2) 24% interest from 17.03.2018 to 17.06.2018 amounting to Rs 19,800/- (3) Compensation of Rs 10,00,000 and (4) costs Rs 2000/-.

### 3. Counter, Affidavit and Written Version on behalf of the Opposite Parties.

The Opposite Parties denied all the material allegations made in the complaint. That Smt.T.Govinda Lakshmi aged 50 years visited the Opposite Party's Dental Clinic for treatment of her dental problem. She was registered in the Opposite Parties Hospital on 12.09.2017 vide registration Number 17VZA01618. (Ex B1). The main complaint of the patient was missing teeth in Upper and Lower back tooth region since 10 years and with regard to the patient history, there was no relevant history of diabetes and hypertension. But has the history of Thyroid disorder and was under medication. On clinical examination of the teeth of the patient it was found that several decayed teeth were present and missing teeth were also seen in the posterior upper and lower region of the jaws. Initially investigation namely OPG (Ortho Pantemogram) was done which was full

mouth X-Ray for the patient, which clearly showed Root Stumps (Infection prone) in relation to teeth numbers 18,16,15,14,22,23,24,25,26,28,33,43,44 and multiple carious teeth in relation teeth Numbers 11,21,34,35 and 36. After evaluation thoroughly and after examining the results of the investigations done carefully, a treatment plan was made in consultation with the patient and attendants which consisted of (1) Full mouth rehabilitation (2) Placement of 14 implants and (3) Placement of 24 Metal Ceramic Crowns. That the Opposite Parties had thoroughly briefed and explained about the condition of her mouth and findings of the clinical examination and investigations and was brief on the different protocols for her problems. The patient opted for Implant placement and Metal Ceramic Crowns related to upper and lower jaws. The patient was thoroughly briefed and explained in detail on the tentative outcomes of the procedure and mandatory post treatment care and follow up, which was duly endorsed by the patient and her attendants. Consent signatures for the treatment were also given by the patient as well as her attended Sri. T. Mani Babu (Ex.B2) and the contents of the consent dated 13.10.2017 were explained in detail in both English and Telugu and that the patient paid a sum of Rs 3,30,000/- (Ex.B4) towards treatment costs based on the estimation arrived at by the Doctors at Partha Dental for which receipts were issued for every payment made by the patient during the course of her treatment. In her case, 6 teeth were retained as they were healthy and firm in her mouth the rest all the teeth that were decayed or spoilt beyond redemption were removed and that till date, her treatment has not been yet completed and therefore no conclusion could be drawn. However, the procedures done till then had been successful. Re-cementation had to be done as the crowns fixed were being dislodged due to the abnormal chewing habits of the patients which was explained to the patients and her attendants several times. Due to this problem the number of sittings had to be increased. Vide Opposite Parties communication dated 16.06.2018 (Ex.A5) mentioned that her case was unique and challenging one and that different approach and specialist services were arranged for next sittings. The fact was that the de-facto complaint and her associates threatened the Opposite Parties with grievous bodily harm and destruction of furniture, equipment and Glass fittings of the clinic which was the prime reason the Opposite Parties had to file a Complaint with the concerned Police Station (Ex.B6) to ensure protection to their staff and property and that an FIR was booked under sections 448, 506

r/w 34 IPC against the de facto complainant and her children. The Opposite Parties submitted that it was false and concocted that the staff at the Clinic was vulgar and high handed in their behaviour. As per the protocol the Clinics hand over a "Patient Treatment Summary" at the end of the treatment. The case sheet was stored at the clinic for future reference and to ensure continuity. The Opposite Parties submitted that they have collected fees as per the examination, investigations and evaluation of the case only with no other interests involved and that the Complaint did not fall within the ambit of the "Consumer". The de facto complainant is duty bound to prove the allegations of medical negligence by adducing and convincing expert evidence. That the de-facto complainant was impatient and had neither the tolerance nor the patience to await further treatment and that the complainant cannot unilaterally take a decision and withdraw in the middle of the treatment and the Opposite Parties once again extended the offer to treat the patient. Hence the complainant is liable to be dismissed.

**MARKING OF DOCUMENTS AS PER AVAILABLE RECORDS:-**

4. During the course of enquiry Exs.A1 to A13 are marked on behalf of Complainant and Exs.B1 to B7 are marked on behalf of Opposite Parties.

5. Heard both the parties and perused the documents submitted by them. Basing on the above facts of the case, the following issues are put forward before the Commission.

1. Whether the complaint falls under the ambit of consumer?
2. Whether any deficiency of service on the part of the Opposite Parties?
3. Whether the Complainant is entitled for the reliefs as prayed for?
4. Relief to what extent?

6. Point No1. As per Section 2 d(ii) under the repealed act and as per section 7 (ii) of the new Act. The Complainant falls under the ambit of a Consumer. This point is answered in favour of the Complainant.

7. Point No 2. Whether there was deficiency of service on the part of the Opposite Parties?

The de-facto Complainant consulted Opposite Party No.1 for problem of tooth decay. They have registered her case on 12.09.2017 under ID No 17VZA01618 (Ex.B1). As per the details submitted in the Complaint Opposite

Party No.1 assured the de facto Complainant that they are specialists in the dental field and would permanently cure and solve the problem of tooth decay by way of root canal and implantation and placing of crowns would look good as if they were original teeth. They also assured that the height of her teeth would be arranged beautifully and see that they would reduce the size of her teeth. Believing their version, she agreed to take the treatment in 6 sittings in 3 months for which an amount of Rs 3,30,000 was collected by the Opposite Parties (Ex B1) and a consent form was obtained by the de facto complainant which was witnessed by T. Mani Babu. (Ex B2).

8. Whereas the Opposite Parties mention that by giving written consent that the de facto complainant fully understood the procedure to undergo the Implant Placement Surgery and Post Implant treatment and that she understood that implant placement is a surgical procedure and could be associated with pain, swelling, infection, bleeding and numbness at the area of Surgery. Both Pros and Cons have been understood by her and that the success of the implants placed are influenced by several factors which include availability of the bone, her health condition, associated conditions like Diabities her habits and so on and that she was explained that for unknown reasons the implants can be rejected by the body and that the doctors are not responsible for the failure and rejection of the implant in any way and that there would not be any refunds or Claims that could be made to her and that she also understood the nature and purpose of Anesthesia, the possible risks and complications.

Summary findings:

9. In fact, as per the letter addressed to the de facto Complainant by the OP1 vide their letter dated 08.06.2018 (Ex.A4) stated that she was treated by their team of specialists at their Office at Visakhapatnam for the placements of implants and crowns which were of high quality. “That they have understood from their specialists that due to certain reasons the crowns which were fixed temporarily have come out and ensured that the crowns would be fixed again with proper care and concern and that the process could be completed without undue delay”, and as per the message received by the de facto complainant from OP1 through Whats App (Ex A5) stated “that they have re-emphasized the fact that her case was unique and challenging one, and needed a different

approach and more sittings and that they have made arrangements for more specialist services to make her comfortable.”.

10. On perusal of the contents of Ex.A4 and Ex.A5 and on observing the de facto complainant in person on 11.05.2022 who showed the Commission a set of teeth which have come out of her mouth and most of the teeth which are said to have fixed are not properly fixed and are shaky, and that as per their letter (Ex.A4) and Whats App message (Ex.A5) the OP has agreed in writing that due to certain reasons the crowns which were fixed have come out and wishes “to fix again with proper care and concern” and that they needed a different approach and more sittings and made arrangements for more specialist service to make her comfortable”. By this, it is understood that the Opposite Parties have admitted that initially they had not taken proper care and concern which was ought to be taken and the defacto Complainant was uncomfortable with their treatment and according to the What App message she needed some more sittings meant that they couldn't complete the treatment within the promised time. More over, Dr.Nirujogi SK Chaitanya, a Senior Dental Surgeon of Partha Dental Care India Pvt Ltd submitted an affidavit dated 14.12.2018 in which he categorically mentioned in page 4 para 12 the patient's chewing habits were abnormal and was the prime reason for the dislodging of the crowns which point was not consented by the de facto complainant.

11. The learned counsel for Opposite parties relied upon the following citations:

- Bolam Vs Friern Hospital management Committee-1957 (1) WLR 582;
- Vasant Mehta Vs Dr.Kullin J.Kothari Medical – 2007(2) CPC 53 (2007) (PJ 263 CNC)
- The New India Assurance Co.Ltd Vs Deepa maini and others
- Daljit Singh Gujral and Ors. Vs Jagjit Singh Arora and others
- Suresh Gupta Vs Govt of N.C.T. of Delhi and others
- Usum Sharma and Ors. Vs Batra Hospital and Medical Research Centre and others
- Martin F.D'souza Vs Mohd.Ishfaq – 2009 AIR (SC) 2049
- Dr.Akhil Kumar Jain Vs Lallan Prasad – 2004 (2) CPJ 504.
- Ghaziabad Development Authority etc Vs Union of India and another – AIR 2000 (SC) 2003.

12. Perused all the above citations filed by the Opposite Parties wherein held that in a case Bolam Vs Friern Hospital management Committee-1957 (1) WLR 582 that “a

*doctor who had acted in accordance with a practice accepted at the time as proper by a responsible body of medical opinion skilled in the particular form of treatment in question was not guilty or negligence merely because there was a body of competent professional opinion which might adopt a different technique”* here the Opposite Party is a Specialist Doctor who had treated the Complainant with their own opinion and applied skills of dental practice and failed to deliver the services as promised.

13. In another case relied by the OP i.e. Vasant Mehta Vs Dr.Kullin J.Kothari Medical, wherein the lower Forum judgement was set aside because of lack of cogent evidence. But here in the present case the evidence reveals that the Opposite parties utterly failed to put a crown on the teeth of the Complainant permanently even after several sittings. Hence there is deficiency of service on the part of the Opposite Parties.

14. Keeping in view of the above, the Commission concludes that the Opposite Parties have reneged their promise given to the de facto complaint and that she was quite uncomfortable with their treatment after having received an amount of Rs 3,30,000 as consideration for the treatment and that tantamount to deficiency of service on the part of Opposite Parties. Hence, point No.2 is answered in favour of the Complainant.

15. Point No 3 and 4. The Complainant is entitled in part of their prayer to the tune of Rs 3,30,000 with 9% interest from 17.03.2018 to 17.06.2018 and compensation for mental agony Rs 50,000/- and costs Rs 2000/-.

16. In the result the Complaint is allowed in part directing the Opposite Parties to pay a sum of Rs.3,30,000/- with 9% interest p.a. from 17.03.2018 to 17.06.2018 and compensation for mental agony of Rs.50,000/- besides costs Rs.2000/-. Time for compliance one month from the date of receipt of this Order.

*Dictated to the Shorthand Writer, transcribed by him, corrected and pronounced by us in the open Commission on this the 23<sup>rd</sup> day of May, 2022.*

Sd/-  
Woman Member

Sd/-  
President

Sd/-  
Member

#### **APPENDIX OF EVIDENCE**

##### **Exhibits Marked for the Complainant:**

<b>Doc.No.</b>	<b>Date</b>	<b>Description of Document</b>	<b>Remarks</b>
Ex.A1	07.04.2010	Certificate issued by Registrar of Societies	Photostat copy
Ex.A2	23.06.2018	Complaint given by the Defacto Complainant to	Original

		the Consumer Rights Organisation	
Ex.A3	17.03.2018	Payment Receipt issued by the 1 <sup>st</sup> Opposite Party for an amount of Rs.3,30,000/-	Original
Ex.A4	08.06.2018	Letter from the 1 <sup>st</sup> Opposite party to the Defacto complainant calling for retreatment	Downloaded copy from Whatsapp
Ex.A5	16.06.2018	Whatsapp request message issued to the Defacto Complainant calling for retreatment	Downloaded copy from Whatsapp
Ex.A6	--	Medical prescription given by Partha Dental Clinic during treatment	Original
Ex.A7	20.06.2018	Lab Receipt issued by Vijaya medical Centre stands in the name of the Defacto Complainant	Original
Ex.A8	20.06.2018	OPG (X-Ray)	Original
Ex.A9	20.06.2018	Prescription issued by Dr.B.Madhavi, Dental Surgeon stands in the name of the Defacto-Complainant	Original
Ex.A10	20.06.2018	Advice/Prescription issued by Dr.B.madhavi, Dental Surgeon stands in the name of the Complainant	Original
Ex.A11	21.06.2018	Medical Bill issued by Dr.B.madhavi, Dental Surgeon stands in the name of the Defacto Complainant for an amount of Rs.1,500/-	Original
Ex.A12	--	Photos of teeth of the Defacto complainant	Original
Ex.A13	--	Promotional Video pertains to Opposite party and also complainant's existence of teeth after treatment from the Opposite Party	Original

**Exhibits Marked for the Opposite Parties:**

<b>Doc.No.</b>	<b>Date</b>	<b>Description of Document</b>	<b>Remarks</b>
Ex.B1	12.09.2017	Authorisation for the treatment given by the defacto complainant	Original
Ex.B2	13.10.2017	Implant procedure consent form signed by the defacto complainant	Original
Ex.B3	--	Diagnosis and treatment plan for the defacto complainant	Original
Ex.B4	--	Estimations for the treatment and expenditure thereon	Originals
Ex.B5	--	Treatment details and x-rays of the defacto complainant	Originals
Ex.B6	11.06.2018	Complaint filed by the authorized signatory, Partha Dental care India Pvt Ltd., before the SHO, III Town Police Station, Visakhapatnam	True copy of the original
Ex.B7	11.06.2018	FIR lodged by the SHO, III Town Police Station, Visakhapatnam based on the complaint dt 11.06.2018	True copy of the Original

Sd/-

Woman Member

Sd/-

President

Sd/-

Member