

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 601 OF 2019

(Against the Order dated 23/11/2018 in Complaint No. 117/2018 of the State Commission
Kerala)

1. NISHA T.S.

W/O. VINAY S.G. CHAITHRAM, SRA -46C, K-LANE ,
ELIPPODE, VATTIYOORKAU P.O.

TRIVANDRUM

KERALA 695013

.....Appellant(s)

Versus

1. CRYOVIVA BIOTECH PVT. LTD. & 2 ORS.

REP BY ITS MANAGING DIRECTOR, 129, PACE CITY-1,
SECTOR 37

GURGAON

HARYANA 122001

2. MR. SOORAJ R. PILLAI

RELATIONSHIP EXECUTIVE, CRYOVIVA BIOTECH PVT
LTD, 141, 142, FIRST FLOOR, DD VYABHAR BHAVAN , K
VALLON ROAD , KADAVANTHRAM

COCHIN

KERALA 682 620

3. MR. SHINE P.C.

RELATIONSHIP SALES MANAGER, CRYOVIVA BIOTECH
PVT LTD, 141, 142, FIRST FLOOR, DD VYABHAR
BHAVAN , K VALLON ROAD , KADAVANTHRAM

COCHIN

KERALA 682 620

.....Respondent(s)

BEFORE:

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.), PRESIDING
MEMBER**

FOR THE APPELLANT :

FOR THE APPELLANT : MR. RAJENDRA BENIWAL,
ADVOCATE

FOR THE RESPONDENT :

FOR THE RESPONDENTS: MR. PRAVEEN MAHAJAN,
ADVOCATE (VC)
MS. VRINDA, ADVOCATE FOR R-1,2 AND 3

Dated : 07 November 2024

ORDER

1. The Appellant/Complainant filed the instant Appeal under section 19 of the Consumer Protection Act, 1986, (the Act”), against the Order dated 23.11.2018 passed by the learned State Consumer Disputes Redressal Commission, Kerala. (“State Commission”) in CC No. 117/2018, wherein the State Commission dismissed the Complaint.

2. As per report of the Registry, there is a delay of 41 days in filing the present Appeal. For the reasons stated in IA/5687/2019, the delay is condoned.
3. For convenience, the parties in the present matter are being referred to as per position held in the Consumer Complaint.
4. The brief facts, as per the complaint, are that she entered into an agreement with the OPs for collection and preservation of her new born child's stem cells during her pregnancy. She paid Rs. 15,000/- to the OPs for this service. The OPs provided a stem cell preservation kit to be handed over to the doctor at the hospital where she would deliver. After delivery at a hospital in Thiruvananthapuram, despite the special kit being given to the doctor with a request to collect the stem cells, the collection did not occur. Consequently, alleging deficiency in service against the OPs, she filed CC. No. 117/2018 seeking compensation.
5. There was no written statement filed by the OPs as the matter was dismissed by Ld. State Commission at the admission stage itself.
6. The learned State Commission vide order dated 23.11.2018 dismissed the complaint with the following observations:

“3. Learned counsel inviting our attention to clause 6.4 in the agreement forming part of a brochure published by opposite parties named as 'Gift your Baby The Power of Well Being' contended that the opposite party imposing an obligation on a third party namely hospital and physician who is attending the delivery has indulged in unfair trade practice. We do not find any substance in the allegation so set out to proceed against the opposite parties. Apparently, there is no privity of contract between the complainant and hospital or the doctor for collection of stem cells at the time of delivery of a new born child by the complainant. OPs who have undertaken to preserve special kit for stem cells for future use cannot supervise and exercise control over the doctors or technicians of every hospital in the nook and corner of the county simply because they have entered into an agreement with the complainant to preserve stem cells collected and handed over to them in the special kit. Complaint lacks merit and it is dismissed.”

7. Being aggrieved by the order dated 23.11.2018, the Complainant (Appellant herein) filed this present Appeal no. 601 of 2019 seeking to:

“(a) Call for the records of the Complaint filed before Kerala State Consumer Dispute Redressal Commission, Thiruvananthapuram and upon perusal, set aside the Impugned Order dated 23.11.2018 passed in CC No. 117 of 2018 "Mrs. Nisha TS Vs Cryoviva Biotech Pvt Ltd & Ors"; and

(b) Remand the matter to Kerala State Consumer Dispute Redressal Commission, Vazhuthacaud, Thiruvananthapuram decide the case on merits after hearing all the parties; and

(c) Make/Pass such other or further order/orders and/or give such further or other direction/s as this Commission may, in the facts and circumstances, deem fit and proper.”

8. In the grounds of the instant appeal, the Appellants have mainly contended the following:

A. The State Commission erred in dismissing the complaint at the admission stage without cogent reasons, violation of settled principles and natural justice. The order is without consideration, unjust and ignored key evidence, including the medical certificate proving OPs negligence and deficiency in service.

B. The State Commission failed to note the clear unfair trade practice, as OPs misled her about their service standards and did not disclose that stem cell collection during delivery was solely her responsibility.

C. The State Commission erred by focusing on control over doctors instead of OPs failure to fulfil its obligation to collect stem cells at delivery. It overlooked that OPs, while initially assuring comprehensive stem cell collection services, later limited its role to merely selling a kit and disguising a product as a service.

D. State Commission erred by dismissing the complaint *in limine* without addressing her contentions through evidence and failed to issue reasoned order. Thus, the complaint needs to be remanded to the State Commission for proper consideration.

9. In his arguments, the learned counsel for the complainant argued that she denied the existence of an agreement titled ‘Gift Your Baby The Power of Well Being’ and objected to charging Rs.15,000/- for services under the alleged agreement. He contended that despite payment, the promised service of stem cell collection was not provided, depriving her of the agreed benefit. Stem cell collection, being a medical procedure requiring licensed professionals, was not properly facilitated by the OPs, who failed to coordinate with the gynaecologist or nursing staff to demonstrate the collection and storage process. The Counsel further argued that as a licensed blood bank, the OPs had a statutory obligation to employ qualified medical personnel to oversee the collection, storage, and preservation of stem cells. He relied on Clause 5.2.2 of the Guidelines for Umbilical Cord Blood (UCB) Banking (covering Collection, Processing, Testing, Storage, Banking, and Release for Clinical Application), that the alleged document was subject to strict medical laws and regulations, and any clause in contradiction to these statutory guidelines was invalid and illegal. He emphasized that in 2016, stem cell collection and storage was a relatively new procedure, and medical practitioners, including gynaecologists, could not reasonably be expected to have knowledge of the process without a demonstration from OPs, who claimed expertise in the field. Reference was made to a certificate issued by Dr. Sushama Devi of KIMS Hospital,

dated 19.12.2016. The counsel for complainant asserted that the case involved mixed questions of fact and law, necessitating a thorough examination through evidence, including testimony from the doctor, hospital staff, complainant, representatives of OP Blood Bank etc. In support of his arguments, he relied upon **Anjaneya Jewellery Vs. New India Assurance Company Limited and Ors.** (2019) 4 SCC 337; **Gurbax Singh Bains Vs. Pearls Infrastructure Projects Ltd**, 2015 SCC Online NCDRC 1912; **V. N. Shrikhande (Dr.) Vs. Anita Sena Fernandes**, (2011)1 SCC 53; **Swarna Kataru Versus Life Cell International Pvt. Ltd.**, 2021 SCC OnLine NCDRC 188; and **Dr. Rajesh Jhorawat Versus Life Cell International Pvt. Ltd. and Another**, 2020 SCC OnLine NCDRC 93. He sought to set aside the order dated 23.11.2018 and remand the complaint back to the State Commission for proper and complete adjudication as per law after providing sufficient opportunity to the parties to lead the evidence.

10. In response, the learned counsel for OPs argued that the complainant had independently approached the OPs for cord blood and stem cell storage for their expected baby. Before entering into the contract, the OPs fully explained the concept of the product as well as their offerings. After understanding the product, benefits and limitations she agreed to enter into the contract with the OPs. OPs received a duly signed and completed Agreement wherein the complainant granted consent for medical professionals attending the birth to perform the collections and further undertook the responsibility of transporting the sample from the place of childbirth to the laboratory of OP's. It was asserted that, it was the complainant's responsibility to arrange for the collection of umbilical cord blood and stem cells from the new born and to preserve them in the kit provided by OPs through the medical professionals engaged by her for the delivery. The OP services were to commence only after receipt of the Maternal Blood, Cord Blood, and/or Umbilical Cord, which were to be provided to OPs by her as per the terms and of the Agreement. He referred to Clause 1.9, 5, and 6 of the said agreement and argued that it was only after the complainant procured the umbilical cord blood/blood stem cell through her physician as per the instructions available with collection kit and make ready for entrusting the same to OPs, did the role of OPs come in to picture. However, as the cord blood was not extracted by the physician appointed by the complainant, as admitted, there was no deficiency on part of the OPs. The agreement between them permitted the processing, testing, and storage of stem cells for the expected baby, specifying that sample collection would be undertaken by the Registered Medical Practitioners engaged by her. After signing the agreement and making payment, she received a storage kit to carry during delivery for the proper collection and transport of umbilical cord blood and stem cells, which reinforced the OP's position that she was responsible for the collection through her physician. OPs relied on **Export Credit Guarantee Corp of India Ltd. V/s Garg Sons International**, MANU/SC/0039/2013 and reiterated the finding of the Ld. State Commission. Holding, the same to be a correct application of law, it was prayed that the present Appeal be dismissed.

11. I have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by learned counsels for both the parties.

12. The learned State Commission vide order dated 23,11,2018 dismissed the complaint 30.11.2016 primarily based on the reasoning that the that there is no privity of contract between the complainant and the hospital where she underwent delivery or the doctor of the hospital for collection of the stem cell at the time of delivery. It is undisputed that the OPs

have issued the blood and stem cell collection kit in time to the complainant. As per Paras 6 and 7 of the terms of agreement entered into between the parties dated 30.11.2016, it is the role of the complainant to cause collection of the blood and stem cell during the course of delivery and cause it to be transported to the OPs facility. The role of OPs is with respect to receiving the specimen, processing, preservation and storage. While the complainant asserted that it is the role of OPs to collect the specimen, and relied on Guidelines for Umbilical Cord Blood Banking for Collection, Processing, Testing, Banking and release for Application, 2013 there is nothing on record to establish the same as per the terms of contract entered into between the parties. In any case, the hospital where the delivery was conducted, which constitutes the crucial stage with respect to the very purpose of the agreement in question or its doctors or staff have neither been made party to the agreement nor to the complaint.

13. In view of the foregoing deliberations, I have no reason to interfere with the order of the learned State Commission dated 23.11.2018. The F.A. No. 601 of 2019 is, therefore, dismissed.

14. There shall be no order as to costs and all pending Applications, if any, are also disposed of accordingly.

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AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER