

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

NEW DELHI

DIARY CASE NO. NC/DN/80/2025

SMT. SARABJEET KAUR W/o. nk paramjeet singh

PERMANENT ADDRESS - VILLAGE-GHATTIWAL, POST OFFICE AND TEHSIL- SRI
ANANDPUR SAHIB , FEROZEPUR, PUNJAB.

.....Complainant(s)

Versus

DIRECTOR GENERAL OF MEDICAL SERVICE ARMY C/o. ihq of mod (army), ag's branch
PERMANENT ADDRESS - DEFENCE OFFICE COMPLEX , NEW DELHI , A-BLOCK, 5TH
FLOOR, KG MARG , NEW DELHI, DELHI.

THE COMMANDANT Through its military hospital

PERMANENT ADDRESS - 56 APO PUNJAB JALANDHAR CANTT , JALANDHAR, PUNJAB.

LT COL SURABHI SHARMA C/o. radiologist

PERMANENT ADDRESS - MILITARY HOSPITAL, , C/O 56 APO , JALANDHAR CANTT ,
JALANDHAR, PUNJAB.

LT COL G.S. SAROHA C/o. radiologist

PERMANENT ADDRESS - MILITARY HOSPITAL , C/O 56 APO , JALANDHAR CANTT ,
JALANDHAR, PUNJAB.

.....Opposite Party(s)

BEFORE:

HON'BLE MR. JUSTICE A. P. SAHI , PRESIDENT

HON'BLE MR. BHARATKUMAR PANDYA , MEMBER

FOR THE COMPLAINANT:

MR. A.K. TIWARI, ADVOCATE LT. COL. VIJAY PADWAL (RETD.), ADVOCATE

DATED: 20/11/2025

ORDER

1. The present complaint has been filed by the dependent of a member of the armed forces alleging medical negligence in respect of the treatment rendered to her. She alleges that the sufferance caused was on account of the deficiencies and negligence of the hospital in treating her that resulted in the birth of a girl child with severe deformities. The allegation is that during the complainant's pregnancy period, the diagnosis and the tests as well as the procedures that were to be conducted during the respective trimesters of pregnancy, were overlooked by the opposite parties No.3 & 4, the Radiologists of the Military Hospital, Jalandhar Cantt.

2. Before proceeding with the complaint we had made an enquiry on 10.06.2025 from Mr. Tiwari, learned counsel about the maintainability of the complaint in the background of the three Judges Bench decision of the Apex Court in the case of **Indian Medical Association vs. V.P.**

Shantha, (1995) 6 SCC 651. In view of the said order the matter was taken up on 07.07.2025, and after appreciating the submissions raised, an order was passed which is extracted herein under: -

“Heard Mr. Tiwari, learned counsel who has appeared today on behalf of the complainant and he has cited the three Member decision of this Commission in CPL. Ashish Kumar Chauhan (Retd) v. Commanding Officer, 2021 SCC OnLine NCDRC 594C, decided on 27.08.2021 that has not been approved by the Apex Court in Ashish Kumar Chauhan Vs. Commanding Officers & Ors., (2023) 15 SCC 152, decided on 26.09.2023. The contention therefore raised is that the said decision proceeds to analyse the protection to armed forces personnel availing the medical benefits of army hospitals and it has been held that they are covered under the Consumer Protection Act. Paragraph 47 to 57 of the said order are extracted herein under:

“VI. Analysis

(i) Jurisdiction

(a) Is the appellant’s case covered under the CPA, 1986?

47. *The first question that the Court has to consider is whether the appellant's case is covered under the CPA, 1986. The respondents contend that the appellant cannot claim to be a consumer, and the medical facilities extended to him, through the IAF and army hospitals, do not fall within the ambit of the CPA, 1986, because all armed forces personnel are required, as part of their duties, to show fitness, and are subjected to periodic mandatory medical tests. The terms and conditions of engagement of armed forces personnel, and the army/IAF ecosystem are geared to ensure the fitness and sound medical shape of its personnel. Therefore, even the doctors and other personnel within the medical system are subjected to army/IAF discipline and rules and regulations. In these circumstances, Army hospitals and similar facilities cannot be considered as covered by the CPA, 1986.*

48. *It would be useful to extract the relevant regulation (applicable to Indian army personnel), which is contained in Regulation 173 of the Pension Regulations for the Army, 1961 (hereafter “the Army Pension Regulations”):*

“173. Primary Conditions for the grant of disability pension.—*Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over.”*

49. *Chapter III of the IAF Pension Regulations, 1961, applies to airmen i.e. non-commissioned personnel and officers, such as the appellant, which spells out its application by Rule 101. Rule 111 renders all service, rendered up to the date of discharge of the airman, eligible for counting of pensionary service. Rule 153 reads as follows:*

“153. *Unless otherwise specifically provided, a disability pension may be*

granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by air force service and is assessed at 20% or over.

The question whether a disability is attributable to or aggravated by air force service shall be determined under the regulations in Appendix II.”

Appendix II deals with the principles to be applied for deciding disability.

50. *In Pani Ram v. Union of India [Pani Ram v. Union of India, (2021) 19 SCC 234] , this Court, while upsetting a decision [Pani Ram v. Union of India, 2018 SCC OnLine AFT 7484] of the Armed Forces Tribunal rejecting a claim for disability pension, for an army personnel, held, inter alia, on a reading of the Army Pension Regulations that : (SCC p. 239, para 18)*

“18. The perusal thereof will reveal that an individual who is invalided out of service on account of disability, which is attributable or aggravated by Military Service in non-battle casualty and is assessed 20% or more, would be entitled to disability pension. The respondents are not in a position to point out any Rules or Regulations, which can be said to be inconsistent with Regulation No. 292 or 173, neither has any other Regulation been pointed out, which deals with the terms and conditions of service of ETF.”

Further, the Court had remarked, poignantly that : (Pani Ram case [Pani Ram v. Union of India, (2021) 19 SCC 234] , SCC pp. 240-41, para 23)

“23. As held by this Court, a right to equality guaranteed under Article 14 of the Constitution of India would also apply to a man who has no choice or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of Rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or Rules may be. We find that the said observations rightly apply to the facts of the present case. Can it be said that the mighty Union of India and an ordinary soldier, who having fought for the country and retired from Regular Army, seeking re-employment in the Territorial Army, have an equal bargaining power. We are therefore of the considered view that the reliance placed on the said document would also be of no assistance to the case of the respondents.”

51. *Certain decisions of this Court, in this regard, are illuminating. Savita Garg [Savita Garg v. National Heart Institute, (2004) 8 SCC 56] dealt with this aspect, and referred to the previous ruling in Indian Medical Assn. v. V.P. Shantha [Indian Medical Assn. v. V.P. Shantha, (1995) 6 SCC 651] (hereinafter “V.P. Shantha”) : (Savita Garg case [**Savita Garg v. National Heart Institute, (2004) 8 SCC 56**] , **SCC** pp. 67-68, para 15)*

“15. ... This Court has dealt with all aspects of the medical profession from every angle and has come to the conclusion that the doctors or the institutes owe a duty to the patients and they cannot get away in case of lack of care to the

patients. Their Lordships have gone to the extent that even if the doctors are rendering services free of charge to the patients in government hospitals, the provisions of the Consumer Protection Act will apply since the expenses of running the said hospitals are met by appropriation from the Consolidated Fund which is raised from taxes paid by the taxpayers. Their Lordships have dealt with the definition of "service" given in Section 2(1)(o) of the Consumer Protection Act, 1986, and have observed as follows : (SCC pp. 675-76, para 44)

'The services rendered free of charge to patients by doctors/hospitals, whether non-government or government, who render free service to poor patients but charge fees for services rendered to other patients would, even though it is free, not be excluded from definition of "service" in Section 2(1)(o). The Act seeks to protect the interests of consumers as a class. To hold otherwise would mean that the protection of the Act would be available to only those who can afford to pay and such protection would be denied to those who cannot so afford, though they are the people who need the protection more. It is difficult to conceive that the legislature intended to achieve such a result. Another consequence of adopting a construction, which would restrict the protection of the Act to persons who can afford to pay for the services availed by them and deny such protection to those who are not in a position to pay for such services, would be that the standard and quality of services rendered at an establishment would cease to be uniform. It would be of a higher standard and of better quality for persons who are in a position to pay for such service while the standard and quality of such service would be inferior for persons who cannot afford to pay for such service and who avail the service without payment. Such a consequence would defeat the object of the Act. All persons who avail the services by doctors and hospitals who give free service to poor patients but charge fee for others, are required to be treated on the same footing irrespective of the fact that some of them pay for the service and others avail the same free of charge. Most of the doctors and hospitals work on commercial lines and the expenses incurred for providing services free of charge to patients who are not in a position to bear the charges are met out of the income earned by such doctors and hospitals from services rendered to paying patients. The government hospitals may not be commercial in that sense but on the overall consideration of the objectives and the scheme of the Act it would not be possible to treat the government hospitals differently. In such a situation the persons belonging to "poor class" who are provided services free of charge are the beneficiaries of the service which is hired or availed of by the "paying class". Service rendered by the doctors and hospitals who render free service to poor patients and charge fees for others irrespective of the fact that part of the service is rendered free of charge, would nevertheless fall within the ambit of the expression "service" as defined in Section 2(1)(o) of the Act.' "

52.*Laxman Thamappa Kotgiri [Laxman Thamappa Kotgiri v. Central Railway, (2007) 4 SCC 596 : (2007) 2 SCC (L&S) 16] was a case where a railway employee was aggrieved by the negligent treatment of his wife, resulting in her death. His complaint was rejected, on the premise that the railway hospital where the treatment was given, was a part of his condition of service wherein he and his*

dependants were provided medical advice and treatment, free of charge. This Court upset those findings and held the complaint maintainable : (SCC p. 598, paras 6-8)

“6. There is no dispute that the hospital in question has been set up for the purpose of granting medical treatment to the railway employees and their dependants. Apart from the nominal charges which are taken from such an employee, this facility is part of the service conditions of the railway employees. V.P. Shantha case [Indian Medical Assn. v. V.P. Shantha, (1995) 6 SCC 651] has made a distinction between non-governmental hospital/nursing home where no charge whatsoever was made from any person availing of the service and all patients are given free service [vide para 55(6) at p. 681] and services rendered at government hospital/health centre/dispensary where no charge whatsoever is made from any person availing of the services and all patients are given free service [vide para 55(9)] on the one hand and service rendered to an employee and his family members by a medical practitioner or a hospital/nursing home which are given as part of the conditions of service to the employee and where the employer bears expenses of the medical treatment of the employee and his family members [para 55(12)] on the other. In the first two circumstances, it would not (sic) be free service within the definition of Section 2(1)(o) of the Act. In the third circumstance it would (sic not) be.

7. Since it is not in dispute that the medical treatment in the said hospital is given to employees like the appellant and his family members as part of the conditions of service of the appellant and that the hospital is run and subsidised by the appellant's employer, namely, the Union of India, the appellant's case would fall within the parameters laid down in para 55(12) of the judgment in V.P. Shantha case [Indian Medical Assn. v. V.P. Shantha, (1995) 6 SCC 651] and not within the parameters of either para 55(6) or para 55(9) of the said case.

8. It is true that the decision in State of Orissa v. LIC [State of Orissa v. LIC, (1996) 8 SCC 655] relied upon by the learned counsel for the respondents appears to hold to the contrary. However, since the decision is that of a smaller Bench and the decision in V.P. Shantha case [Indian Medical Assn. v. V.P. Shantha, (1995) 6 SCC 651] was rendered by a larger Bench, we are of the opinion that it is open to this Court to follow the larger Bench which we will accordingly do.”

53. *Even in the case of employees who had contributed in part, the other contributions being from employers, under the Employees State Insurance Corporation Scheme, this Court had held that the services rendered by ESI hospitals were not gratuitous and that the ESI doctors fell within the ambit of the CPA, 1986, in Kishore Lal [Kishore Lal v. ESI Corpn., (2007) 4 SCC 579 : (2007) 2 SCC (L&S) 1] : (SCC pp. 591-92, paras 13-14)*

“13. On a plain reading of the aforesaid provisions of the ESI Act, it is apparent that the Corporation is required to maintain and establish the hospitals and dispensaries and to provide medical and surgical services. Service rendered in the hospital to the insured person or his family members for medical treatment is not

free, in the sense that the expense incurred for the service rendered in the hospital would be borne from the contributions made to the insurance scheme by the employer and the employee and, therefore, the principle enunciated in Conclusion (11) in para 55 in *Indian Medical Assn. [Indian Medical Assn. v. V.P. Shantha, (1995) 6 SCC 651]* will squarely apply to the facts of the present case, where the appellant has availed the services under the insurance policy which is compulsory under the statute. Wherever the charges for medical treatment are borne under the insurance policy, it would be a service rendered within the ambit of Section 2(1)(o) of the Consumer Protection Act. It cannot be said to be a free service rendered by the ESI hospital/dispensary.

14. The service rendered by the medical practitioners of hospitals/nursing homes run by ESI Corporation cannot be regarded as a service rendered free of charge. The person availing of such service under an insurance scheme of medical care, whereunder the charges for consultation, diagnosis and medical treatment are borne by the insurer, such service would fall within the ambit of “service” as defined in Section 2(1)(o) of the Consumer Protection Act. We are of the opinion that the service provided by the ESI hospital/dispensary falls within the ambit of “service” as defined in Section 2(1)(o) of the Consumer Protection Act. ESI scheme is an insurance scheme and it contributes for the service rendered by the ESI hospitals/dispensaries, of medical care in its hospitals/dispensaries, and as such service given in the ESI hospitals/dispensaries to a member of the Scheme or his family cannot be treated as gratuitous.”

54. Section 1(4) of the CPA, 1986, (which was in force when the appellant preferred his complaint) reads as follows:

“1. Short title, extent, commencement and applications.—(1)-(3) ***

(4) Save as otherwise expressly provided by the Central Government by notifications, this Act shall apply to all goods and services.”

55. Earlier, keeping in line with the reasoning that furthered the objectives of the CPA, 1986, spelt out in *V.P. Shantha [Indian Medical Assn. v. V.P. Shantha, (1995) 6 SCC 651]* this Court had rejected, in *EPFO v. Shiv Kumar Joshi [EPFO v. Shiv Kumar Joshi, (2000) 1 SCC 98 : 2000 SCC (L&S) 37]* : (SCC p. 110, para 12)

“12. We cannot accept the argument that the Regional Provident Fund Commissioner, being Central Government, cannot be held to be rendering “service” within the meaning and scheme of the Act. The Regional Provident Fund Commissioner, under the Act and the Scheme discharges statutory functions for running the Scheme. It has not, in any way, been delegated with the sovereign powers of the State so as to hold it as a Central Government, being not the authority rendering the “service” under the Act. The Commissioner is a separate and distinct entity. It cannot legally claim that the facilities provided by the “Scheme” were not “service” or that the benefits under the Scheme being provided were free of charge. The definition of “consumer” under the Act includes not only

the person who hires the “services” for consideration but also the beneficiary, for whose benefit such services are hired. Even if it is held that administrative charges are paid by the Central Government and no part of it is paid by the employee, the services of the Provident Fund Commissioner in running the Scheme shall be deemed to have been availed of for consideration by the Central Government for the benefit of employees who would be treated as beneficiaries within the meaning of that word used in the definition of “consumer”.”

56. *In Punjab Urban Planning & Development Authority v. Vidya Chetal [Punjab Urban Planning & Development Authority v. Vidya Chetal, (2019) 9 SCC 83 : (2019) 4 SCC (Civ) 274] , this Court, speaking through a three-Judge Bench, held that : (SCC p. 91, para 17)*

“17. ... the statutory authority, other than the core sovereign duties, is providing service, which is encompassed under the Act, then, unless any statute exempts, or provides for immunity, for deficiency in service, or specifically provides for an alternative forum, the consumer forums would continue to have the jurisdiction to deal with the same. [Section 3 of the Act.] We need to caution against over-inclusivity and the tribunals need to satisfy the ingredients under Consumer Protection Laws, before exercising the jurisdiction.”

(emphasis in original)

57. *In the latest decision, Labour Commr. v. Kesar Lal [Labour Commr. v. Kesar Lal, (2023) 13 SCC 799] , this Court, dealt with the issue of whether a construction worker registered under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and a beneficiary of the scheme made under the rules framed under the enactment, is a “consumer” within the meaning of Section 2(1)(d) of the CPA, 1986. The Court rejected the statutory authority's appeal, after reviewing a host of precedents : (SCC p. 818, para 29)*

“29. ... Public authorities such as the appellants who have been constituted under an enactment of Parliament are entrusted with a solemn duty of providing welfare services to registered workers. The workers who are registered with the Board make contributions on the basis of which they are entitled to avail of the services provided in terms of the schemes notified by the Board. Public accountability is a significant consideration which underlies the provisions of the Consumer Protection Act, 1986. The evolution of jurisprudence in relation to the enactment reflects the need to ensure a sense of public accountability by allowing consumers a redressal in the context of the discharge of non-sovereign functions which are not rendered free of charge. This test is duly met in the present case.”

Learned counsel therefore submits that the aforesaid judgment has been delivered after taking into consideration the observations made by the Apex Court in the case of Indian Medical Assn. v. V.P. Shantha, (1995) 6 SCC 651.

The judgment relied on by the learned counsel proceeds to pronounce on an

alternative basis for exercising the jurisdiction by the Supreme Court under Section 32 and 142 of the Constitution of India that has been detailed in paragraph 58 to 62 thereof, which is extracted herein under:

“(b) Alternative basis for exercising jurisdiction

58. *There are several precedents of this Court, which justify the exercise of jurisdiction under Article 32 of the Constitution. The most celebrated decision is that of Nilabati Behera v. State of Orissa [Nilabati Behera v. State of Orissa, (1993) 2 SCC 746 : 1993 SCC (Cri) 527] , where the jurisdiction of the Court was highlighted in the following terms : (SCC pp. 762-63, para 17)*

“17. ... “a claim in public law for compensation” for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is “distinct from, and in addition to, the remedy in private law for damages for the tort” resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution.”

59. *This Court declared the importance of reaching out to injustice and using its powers, including under Article 142 of the Constitution, in the following terms, in DDA v. Skipper Construction Co. (P) Ltd. [DDA v. Skipper Construction Co. (P) Ltd., (1996) 4 SCC 622] : (SCC pp. 634-35, para 16)*

“16. ... It is conceived to meet situations which cannot be effectively and appropriately tackled by the existing provisions of law. As a matter of fact, we think it advisable to leave this power undefined and uncatalogued so that it remains elastic enough to be moulded to suit the given situation. The very fact that this power is conferred only upon this Court, and on no one else, is itself an assurance that it will be used with due restraint and circumspection, keeping in view the ultimate object of doing complete justice between the parties.”

60. *Earlier, in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani , (1989) 2 SCC 691] , this Court examined the development of the law of mandamus and held as under : (SCC p. 701, para 22)*

“22. ... mandamus cannot be denied on the ground that the duty to be

enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states: 'To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract.' [Judicial Review of Administrative Action, 4th Edn., p. 540.] We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available 'to reach injustice wherever it is found'. Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition."

61. This Court, very aptly expressed, in the larger Bench decision, reported as *P.S.R. Sadhanantham v. Arunachalam* [*P.S.R. Sadhanantham v. Arunachalam*, (1980) 3 SCC 141 : 1980 SCC (Cri) 649] , the jurisdiction of the Court, to entertain a criminal appeal by the informant, where the accused was acquitted, and no appeal had been entertained by the State (without any statutory basis or locus for such complainant/petitioner) alluding to considerations of justice : (SCC p. 145, para 6)

"6. The jural reach and plural range of the judicial process to remove injustice in a given society is a sure index of the versatile genius of law-in-action as a delivery system of social justice. By this standard, our constitutional order vests in the summit court of jurisdiction to do justice, at once omnipresent and omnipotent but controlled and guided by that refined yet flexible censor called judicial discretion. This nidus of power and process, which masterminds the broad observance throughout the Republic of justice according to law, is Article 136."

62. This Court is conscious that if there are any statutory conditions or limitations, its exercise of Article 142 jurisdiction would have to weigh that in; further, the kind of relief to be given in any one case is entirely fact dependent and involves taking into account all relevant factors, subjective to the record in that case."

The Apex Court then went on to allow the appeal and awarded the compensation as computed therein.

Prima facie what we find is that the above quoted decision in paragraph 51 thereof has extracted the order passed by the Apex Court in the case of Savita Garg v. National Heart Institute, (2004) 8 SCC 56, where the Apex Court went on to in turn refer to and quote para 44 of the three judges decision in the case of Indian Medical Assn. v. V.P. Shantha (Supra).

Learned counsel are requested to explain about there being a possible slight difference in the quotation extracted from paragraph 44 of the decision in the case of Indian Medical Assn. v. V.P. Shantha (Supra) and reproduced in paragraph 15 of the decision in the case of Savita Garg(Supra), as we find that the portion of paragraph 44

in the case of Indian Medical Assn. v. V.P. Shantha (Supra) as extracted in paragraph 15 of Savita Garg's case recites as under:

".....The government hospitals may not be commercial in that sense but on the overall consideration of the objectives and the scheme of the Act it would not be possible to treat the government hospitals differently. In such a situation the persons belonging to 'poor class' who are provided services free of charge are the beneficiaries of the service which is hired or availed of by the 'paying class'. Service rendered by the doctors and hospitals who render free service to poor patients and charge fees for others irrespective of the fact that part of the service is rendered free of charge, would nevertheless fall within the ambit of the expression 'service' as defined in Section 2(1)(o) of the Act."

However, from the original report in the Indian Medical Assn. v. V.P. Shantha (Supra), the same portion in paragraph 44 of the said decision recites as under:

"The government hospitals may not be commercial in that sense but on the overall consideration of the objectives and the scheme of the Act, it would not be possible to treat the government hospitals differently. We are of the view that in such a situation, the persons belonging to "poor class" who are provided services free of charge are the beneficiaries of the service which is hired or availed of by the "paying class". **We are, therefore, of the opinion that service rendered by the doctors and hospitals falling in category (iii) irrespective of the fact that part of the service is rendered free of charge, would nevertheless fall within the ambit of the expression 'service' as defined in Section 2(1)(o) of the Act. We are further of the view that persons who are rendered free service are the 'beneficiaries' and as such come within the definition of 'consumer' under Section 2(1)(d) of the Act.**"

A comparison of the portions extracted hereinabove prima facie indicates that there is a difference in the recitals, in as much as, the highlighted portion of paragraph 44 extracted hereinabove is not found in the same portion extracted in paragraph 15 of the Savita Garg(Supra) case.

The difference is clearly noticeable and we further find that the judgment in the case of Savita Garg(Supra) does not refer to the ratio culled out in paragraph 45 to 49 of the decision in the case of Indian Medical Assn. v. V.P. Shantha (Supra). The said paragraphs have also not been referred to in the above quoted decision of Ashish Kumar (Supra).

To appreciate the distinction it would be appropriate to refer to paragraph 43 of the judgment in the case of Indian Medical Assn. v. V.P. Shantha (Supra) that has spelt out the three categories of Hospitals including Government Hospitals and Medical Practitioners rendering service free of charge, where the Apex Court has categorically held as under:

".....Doctors and hospitals who render service without any charge whatsoever to every person availing of the service would not fall within the ambit of 'service' under Section 2(1)(o) of the Act. The payment of a token amount for registration purposes only would not alter the position in respect of such doctors and

hospitals.”

Apart from this paragraph 55 of the judgment in the case of Indian Medical Assn. v. V.P. Shantha (Supra), which crystallises the conclusions has also not been referred to particularly sub paragraphs 9 and 10 which are extracted herein under:

“(9) Service rendered at a government hospital/health centre/dispensary where no charge whatsoever is made from any person availing of the services and all patients (rich and poor) are given free service — is outside the purview of the expression ‘service’ as defined in Section 2(1)(o) of the Act. The payment of a token amount for registration purpose only at the hospital/nursing home would not alter the position.

(10) Service rendered at a government hospital/health centre/dispensary where services are rendered on payment of charges and also rendered free of charge to other persons availing of such services would fall within the ambit of the expression ‘service’ as defined in Section 2(1)(o) of the Act, irrespective of the fact that the service is rendered free of charge to persons who do not pay for such service. Free service would also be ‘service’ and the recipient a ‘consumer’ under the Act.”

Learned counsel may therefore take notice of the aforesaid facts while advancing their submissions.

Prima facie the judgment of the Apex Court in the case of Indian Medical Assn. v. V.P. Shantha (Supra) is a three Judges decision and therefore in order to appreciate the ratio of the judgment in the case of Ashish Kumar Chauhan (Supra), except the alternative adopted by the Apex Court under Article 32 and 142 of the Constitution of India, it would be appropriate that the complainant brings on record any material to demonstrate regarding any element of contribution by army personnel towards the availing of any medical facilities from the Military Hospitals or otherwise either under the service rules, circular, statute or even a practice which may have taken the shape of custom so as to treat it as law.

Mr. Tewari prays for four weeks’ time for the same. Let the affidavit be filed within the said period.

Let the matter be listed on 29.09.2025.”

3. We had directed the learned counsel to bring on record any material to establish through evidence of any element of contribution made by army personnel or their dependents for availing any medical facilities from the Military Hospital or any other service, rules, circulars or statutory provisions to appreciate the maintainability of the complaint, as the Military Hospitals render services to all military personnel and their dependents absolutely free of charge.

4. The matter was adjourned on 29.09.2025 on the request made by Mr. Tiwari as he was not available and accordingly we had adjourned the matter to a future date but an application Diary No.28565 was moved on 29.10.2025 for early hearing that was taken up by us on 10.11.2025 and we finally heard the matter on the question of maintainability.

5. Mr. Tiwari urged that he was unable to find any material to contradict or contest the status of the free services rendered by the Military Hospital and very frankly urged that the matter may be disposed of accordingly.

6. Having heard Mr. Tiwari, we are satisfied that Military Hospitals render services to all armed forces personnel and their dependents free of charges.

7. In the background above, we have mentioned the two judgments of the Apex Court, the decision in the case of **Savita Garg** (supra) as referred to by the Apex Court in the case of **Ashish Kumar Chauhan** (supra). In the order dated 07.07.2025 we have indicated the difference in the quotation in paragraph-15 of **Savita Garg's** case regarding the observations made in paragraph-44 in the case of **Indian Medical Association** (supra) to be not matching. The later decision in the case of **Ashish Kumar Chauhan** (supra) was also noticed and in paragraph-62 of the said judgment, the Apex Court observed as under: -

“62. This Court is conscious that if there are any statutory conditions or limitations, its exercise of Article 142 jurisdiction would have to weigh that in; further, the kind of relief to be given in any one case is entirely fact dependent and involves taking into account all relevant factors, subjective to the record in that case.”

8. Having regard to the above, Mr. Tiwari could not overcome the ratio of the decision in the case of **Indian Medical Association** (supra) where paragraphs-43 to 55 (9) of the said larger Bench decision have been extracted by us in the order dated 07.07.2025. Consequently in the light of the said legal position, it is not possible for this Commission to resolve the issue as the judgment of the three Judges decision clearly holds that where services are rendered free of charge, such government hospitals fall outside the purview of the expression “service” as defined under the Consumer Protection Act. We may point out that the said decision was interpreting the definition contained under Section 2 (1) (o) of the Consumer Protection Act, 1986 where the phrase used is “but does not include the rendering of any service free of charge.” The Consumer Protection Act, 2019 under Section 2 (42) incorporates the same provisions and is *pari material* to Section 2 (1) (o) of the 1986 Act. There is no distinction therefore no difference can be gathered so as to distinguish the ratio of the judgment in the case of **Indian Medical Association** (supra) that is squarely applicable herein.

9. Accordingly, since the services rendered by the opposite party – Military Hospital to the complainant were absolutely free of charges, we find it difficult to entertain this complaint in view of the specific exclusion of such hospitals from the definition of the C.P. Act, 2019 in view of the ratio enunciated in para 55 (9) of the Apex Court judgment in the case of **Indian Medical Association** (supra). The complaint is accordingly consigned.

.....J
A. P. SAHI
PRESIDENT

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BHARATKUMAR PANDYA
MEMBER