

CASE NO.:
Appeal (civil) 4641 of 1998

PETITIONER:
Mr. "X"

RESPONDENT:
Hospital "Z"

DATE OF JUDGMENT: 10/12/2002

BENCH:
S. RAJENDRA BABU, P. VENKATARAMA REDDI & ARUN KUMAR.

JUDGMENT:
J U D G M E N T

RAJENDRA BABU, J. :

Civil Appeal No. 4641 of 1998 arose out of an order made by the National Consumer Disputes Redressal Commission (for short 'the Commission') dismissing a petition and also an application for interim relief summarily by an order made on 3.7.1998 on the ground that the appellant should seek his remedy in a civil court.

The case that arose for consideration before this Court, in brief, is as follows.

The appellant completed his studies leading to Degree of MBBS from Jawaharlal Institute of Post Graduate Medical Education and Research, Chandigarh in the year 1988. In June 1990 he joined the Nagaland State Medical and Health Service as Assistant Surgeon Grade-I and thereafter he was selected for admission to MD Pharmacology. However, he was continued in service on the condition that he would join his duties after completing his studies. Later on, he was given admission in Diploma in Opthamalogy in September 1991 and he completed that course in April 1993 and rejoined his service in the Nagaland State as Assistant Surgeon Grade-I as Junior Specialist. He was deputed to accompany his uncle who was a Minister of Transport and Communication to the respondent hospital at Chennai and who was diagnosed as suffering from Aortic Anuerism. As the patient was anaemic, the surgery was postponed. The appellant and his driver offered to donate blood and blood samples of the appellant were sent for testing. In the meanwhile, the patient was operated upon for Aortic Anuerism and was discharged from the hospital on 10.6.1995 and the appellant and his driver took him to Dimapur. The appellant was engaged to be married which was scheduled to be held on 12.12.1995. The appellant, his fiancée and his mother-in-law left for Darjeeling and Kolkatta to do some shopping and thereafter on 18.10.1995 they returned to Kohima. On 12.11.1995 the Minister of Transport and Communication called the appellant's brother-in-law and sister to his residence and informed that the appellant's marriage was being called off; that the appellant's blood was tested at hospital; that it was found to be HIV positive; that this information had been furnished to him by a Doctor [who was impleaded as respondent No. 2]; that he had of his own accord re-confirmed the appellant's HIV status by personally calling the respondent No. 2 and was informed by him of the same. Therefore, the marriage of the appellant was called off on account of his HIV positive status by his brother-in-law. Next day the appellant went to the hospital for further confirmation and it was confirmed that he was HIV positive. The appellant tried to contact the Director of the Hospital to enquire about the unauthorised disclosure by the hospital about his HIV status as he was unable to obtain any information from the management regarding the said disclosure. As a result thereof, he was forced to leave Kohima as several people including the appellant's own family members and certain other members of the community were now aware of the appellant's HIV positive status and he was socially

ostracised. Aggrieved by the unauthorised disclosure and on the basis that the hospital had a duty to maintain the confidentiality of personal medical information of the appellant, he filed a petition before the Commission seeking compensation from the respondents for breach of their duty to maintain confidentiality and consequential discrimination, loss in earnings and social ostracism. For interim relief an interlocutory application was also filed. In those circumstances, the Commission dismissed the petition summarily and directed him to initiate civil proceeding for an appropriate relief.

A Special Leave Petition was filed before this Court. This Court made an order on 21.9.1988 dismissing the said petition. However, in the course of the order several findings have been given, particularly those relating to "suspended right to marry". In that proceeding, this court heard only the appellant and there was no issue of notice to any other person nor this Court had occasion to hear any of the persons representing the HIV or AIDS infected persons or their rights, much less any of the Non Government Organisations which are doing work in the field were heard. In those circumstances, a writ petition was filed under Article 32 of the Constitution before this Court for setting aside the said judgment. However, in the proceedings dated 7.2.2000 it was noted that prayer was deleted and the other prayer which indirectly concerned the correctness of the judgment already passed was also deleted. However, the petition was ordered to be treated as an application for clarification or directions in the case already decided by this Court. In the course of the order it was observed that :

"We direct the office shall not treat this as a writ petition filed under Article 32, but shall register it separately as an IA for clarification/directions in C.A. No. 4641/1998.

Notice of this IA returnable within two weeks shall be issued to National Aids Control Organisation, Union of India and Indian Medical Association which is already represented in IA Nos. 2-3. Notice shall also go to Medical Council of India. Dasti service is permitted in addition."

By an order dated 2.9.2001, it has been further directed that the I.As. should be listed before a three Judge Bench.

In I.A. 2/1999 filed by the impleaded petitioner, the petitioner has raised the question whether a person suffering from HIV (+) contracting marriage with a willing partner after disclosing the factum of disease to that partner will be committing an offence within the meaning of Section 269 and 270 IPC. In substance, the petitioner wants the Court to clarify that there is no bar for the marriage, if the healthy spouse consents to marry in spite of being made aware of the fact that the other spouse is suffering from the said disease.

The various organisations to which the notice was issued have also entered their appearance before this Court and filed plethora of material giving their respective stands. The practical difficulties in ensuring disclosure to the person proposed to be married or in monitoring such cases are pointed out. It is unnecessary to examine these matters in any detail inasmuch as in our view this Court had rested its decision on the facts of the case that it was open to the hospital or the Doctor concerned to reveal such information to persons related to the girl whom he intended to marry and she had a right to know about the HIV positive status of the appellant. If that was so, there was no need for this Court to go further and declare in general as to what rights and obligations arise in such context as to right to privacy or confidentiality or whether such persons are entitled to be married or not or in the event such persons marry they would commit an offence under law or whether such right is suspended during the period of illness. Therefore, all those observations made by this Court in the aforesaid matter were unnecessary, particularly when there was no consideration of the matter after notice to all the parties concerned.

In that view of the matter, we hold that the observations made by this Court, except to the extent of holding as stated earlier that the appellant's right was not affected in any manner in revealing his HIV positive status to the relatives of his fiancée, are uncalled for. We dispose of these applications with

these observations.

JUDIS