

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION  
THIRUVANANTHAPURAM**

**Complaint Case No. CC/15/16  
( Date of Filing : 26 Feb 2015 )**

1. SHAJI DAVID  
THEKKEDATHIL VEEDU, KUMMALLUR P.O,  
ADICHANALLOOR ,KOLLAM .....Complainant(s)

Versus

1. M/S ALFA SHAFI DIAGNOSTIC CENTRE  
VALLAKADAVU P.O, THIRUVANANTHAPURAM .....Opp.Party(s)

**BEFORE:**

**HON'BLE MR. SRI.AJITH KUMAR.D PRESIDING MEMBER  
SMT.BEENAKUMARIA MEMBER  
SRI.RADHAKRISHNAN.K.R MEMBER**

**PRESENT:****Dated : 26 Jul 2023**

**Final Order / Judgement**  
**KERALA STATE CONSUMER DISPUTES REDRESSAL COMMISSION,**  
**VAZHUTHACAUD, THIRUVANANTHAPURAM**

**C.C. No. 16/2015**

**JUDGMENT DATED: 26.07.2023**

**PRESENT:**

**SRI. AJITH KUMAR D. : JUDICIAL MEMBER**

**SMT. BEENA KUMARY. A : MEMBER**

**SRI. RADHAKRISHNAN K.R. : MEMBER**

**COMPLAINANT:**

Shagi David, S/o Samuvel Kutty, Thekkadathil Veedu, Kummalloor P.O., Adichanalloor, Kollam.

(By Advs. C.P. Bhadra Kumar & Sreegopal N.S)

Vs.

**OPPOSITE PARTY:**

M/s Al Shafa Diagnostic Centre, GCC Code 01.13.02, 1<sup>st</sup> Floor, Yatheemkana Shopping Complex, Vallakkadavu P.O., Thiruvananthapuram-695 008 represented by its Proprietor.

(By Adv. Vettoor S. Prakash)

**JUDGMENT****SRI. AJITH KUMAR D.: JUDICIAL MEMBER**

This is a complaint filed by Sri. Shagi David u/s 13 of the Consumer Protection Act, 1986 against M/s Al Shafa Diagnostic Centre claiming compensation of Rs. 25,00,000/- for issuance of a laboratory report that the complainant was tested positive to TPHA (ELISA) test. The case of the complainant is that he got Visa for job to Kuwait and the opposite party being the authorized laboratory of his employer, on 15.03.2014 the complainant approached the opposite party for conducting the necessary test for stamping the Visa and he underwent TPHA test. The opposite party issued a report showing that the complainant was positive to TPHA and therefore unfit to get the visa stamped. On receipt of the positive result, the family of the complainant got shattered and he had to suffer much mental agony. The result in the test was totally wrong. On persuasion by the friends, well wishers and relatives the complainant had underwent TPHA test in the Department Of Microbiology under the Directorate of Medical College, Trivandrum on 02.10.2014 and obtained a report dated 03.10.2014 revealing that the complainant is non reactive to TPHA. The complainant attributed unfair trade practice and deficiency of service against the opposite party in issuing a certificate with false result showing him as reactive to TPHA. As a result of the above act the complainant had suffered monetary loss also and he quantified the damages as Rs. 25,00,000/-.

2. On admitting the complaint, notice was issued to the opposite party. Opposite party filed a version with the following contentions:

It is admitted that the complainant had reached at the diagnostic centre and was subjected to TPHA test which was found positive. The opposite party had used high quality kits for conducting the test. It was instructed by the Kuwait Embassy to return the visa to the Consulate, Kuwait if the result in the test is positive. There is no deficiency of service or unfair trade practice and if the complainant had obtained a negative result on 02.10.2014 he might have undergone treatment within a period of six months and hence the complaint is sought to be dismissed.

3. On the side of the complainant PWs1&2 were examined and Exts. A1 to A8 marked. The opposite party had examined DW1 and Exts. B1& B2 marked.

4. Heard both sides. Perused the records.

5. Now the following points arise for determination.

- i. Is there any deficiency of service or unfair trade practice in the conduct of the opposite party as alleged?
- ii. Reliefs and costs?

6. Point No.(i) :- The complainant spoke before this Commission as PW1 in support of the complaint. The fact that the complainant had availed service from the opposite party Laboratory and the issuance of a positive result to ELISA test is not disputed by the Opposite party. Ext A1 is the laboratory investigation report dated 15.03.2014 by the opposite party which shows that the complainant was positive to ELISA and found as unfit. Ext. A2 is the Employment contract executed between KGL Stevedoring Company represented by Jafar Mohammad Haji and the complainant on 20.02.2014 employing the complainant as a heavy. E. Driver. Ext. A3 is the copy of the Visa for two months to Kuwait. Ext. A6 is the copy of the Driving licence of the complainant. The fact that the complainant had secured a visa to Kuwait is also not in dispute. But the entry to the foreign country is subject to the fitness after undergoing the test from the authorized laboratory.

5. The case of the complainant is that the positive result as shown in Ext. A1 is wrong. For proving this fact he caused production of Exts. A4 & A5. On 01.10.2014 the duty doctor of the Dermatology Department of the Medical College Hospital, Trivandrum had issued the outpatient record to undergo 4 tests including TPHA. Ext. A5 is the result which shows TPHA as negative to him. On the basis of these two documents the complainant had assailed the result in Ext. A1. Before filing the complaint a lawyer notice was issued to the opposite party. The copy of the said notice and the reply sent by the counsel for the opposite party are marked as Exts. A7&A8. Complainant had examined his friend as PW2 to prove the alleged mental agony suffered on account of the issuance of Ext. A1. The opposite party had examined their manager as DW1. Ext. B1 is the authorization letter dated 18.06.2018 to DW1 to tender evidence for and on behalf of the opposite party. Ext. B2 is the copy of communication issued by the Kuwait Embassy issued to the authorized medical centres to return the original visa to the Embassy if the candidate is found unfit.

6. The cause of action rests on the simple ground that the positive result as shown in Ext. A1 is not correct. So the initial burden is on the complainant to adduce evidence and prove that the result in Ext. A1 is faulty. The version of the complainant before the commission is that he was sad on receiving the report. He has no case that he never had sex with an outsider and hence there was no occasion for him to get an infection as shown in A1. The evidence let in by PW2 is to the effect that the wife and two children of the complainant had left home abandoning him on seeing the report. If the complainant was sure that he had no possibility in getting infection of sexually transmitting disease one would expect him to approach another laboratory at the earliest point of time and undergo a test and convince his wife and others that the result in Ext. A1 is faulty. The complainant had no satisfactory explanation in this regard. He had undergone the subsequent test only on 01.10.2014 i.e; after 6 months as evidenced in Ext. A4. The inordinate delay in conducting the subsequent test is a suspicious circumstance. There is merit in the stand taken by the opposite party that delay occurred in conducting the subsequent test points out towards the chance that the complainant was undergoing treatment in the meantime so as to get a negative result.

7. The Manager of the opposite party had tendered convincing evidence in respect of the test conducted. We could not find any reason to suspect the testimony of DW1 with regard to the

correctness of the test conducted. Having due regard to the entire facts and circumstances as discussed above the complainant has miserably failed to prove that the result in Ext. A1 was faulty. As long as there is no proof to treat Ext. A1 was faulty the complainant is not entitled to get any amount as compensation. It is seen that the complainant had filed a complaint without any bonafides and put hardships to the opposite party and hence the opposite party is entitled to get costs of Rs.5,000/-.

Points are found against the complainant.

In the result, the complaint is dismissed. Complainant shall pay a sum of Rs. 5,000/- as costs to the opposite party.

**AJITH KUMARD.: JUDICIAL MEMBER**

**BEENA KUMARY. A : MEMBER**

**RADHAKRISHNAN K.R. : MEMBER**

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## APPENDIX

### I. COMPLAINANT'S WITNESS

- PW1 • Shagi David
- PW2 • Sam Mathew

### II. COMPLAINANT'S DOCUMENTS

- A1 • Laboratory Investigation report dated 15.03.2014
- A2 • Employment contract letter dated 20.02.2014
- A3 • Copy of Visa letter dated 05.02.2014
- A4 • Reference letter dated 01.10.2014

- A5 • Test result dated 02.10.2014
- A6 • Attested copy of Indian Union Driving Licence
- A7 • Copy of lawyer's notice dated 20.10.2014.
- A8 • Reply notice dated 05.11.2014

### III. OPPOSITE PARTY'S WITNESS

- DW1 • Shakur Musa Patnakar.

### IV. OPPOSITE PARTY'S DOCUMENTS

- B1 • Authorization letter dated 18.06.2018
- B2 • Copy of notice to all GAMCA & Medical Centre dated 17.04.2012

**AJITH KUMARD.: JUDICIAL MEMBER**

**BEENA KUMARY. A : MEMBER**

**RADHAKRISHNAN K.R. : MEMBER**

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**[HON'BLE MR. SRI.AJITH KUMAR.D]  
PRESIDING MEMBER**

**[ SMT.BEENAKUMARI.A]  
MEMBER**

**[ SRI.RADHAKRISHNAN.K.R]  
MEMBER**