

CONSUMER DISPUTES REDRESSAL FORUM – X
GOVERNMENT OF N.C.T. OF DELHI
Udyog Sadan, C – 22 & 23, Institutional Area
(Behind Qutub Hotel)
New Delhi – 110 016

Case No.612/2009

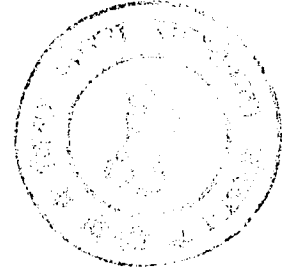
1. SH. DHARAMPAL SINGH
2. SMT. CHANDRO DEVI
W/O SH. DHARAMPAL SINGH

BOTH R/O VILLAGE KHALETA, PO - KHALETA,
VIA - KHOL, TEHSIL - REWARI,
DISTT. REWARI, HARYANA

..... COMPLAINANTS

VS.

1. AYUNA HERBAL HEALTHCARE
84-C, KHIZRABAD, NEAR LIONS HOSPITAL,
NEW FRIENDS COLONY, NEW DELHI-110065
2. DR. ASIAM JAVED
T/A 84-C, KHIZRABAD, NEAR LIONS HOSPITAL,
NEW FRIENDS COLONY, NEW DELHI-110065
3. HAKH MEDICAL FOUNDATION
(AKA HAKH RESEARCH AND MEDICAL FOUNDATION)
3B, PITRUCHAYA, BESIDE MEHBOOB FILM STUDIO,
23C, HILL ROAD, BANDRA (W), MUMBAI-50
4. HOOTONE REMEDIES
3B, PITRUCHAYA, BESIDE MEHBOOB FILM STUDIO,
23C, HILL ROAD, BANDRA (W), MUMBAI-50



.....RESPONDENTS

CDRFX/2018-09/11728-34
09/05/18

Date of Order:09.05.2018

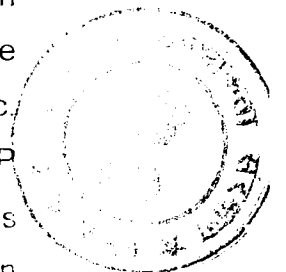
ORDER

H.C Suri- Member

This complaint has been filed under Section 12(a) of the Consumer Protection Act, 1986, by the complainants (1) Shri Dharampal Singh and his wife (2) Smt. Chandro Devi, against (1) Ayuna Herbal Healthcare (2) Dr. Aslam Javed (3) Hakh Medical Foundation and (4) Hootone Remedies, hereafter referred to as OP-1, OP-2, OP-3 and OP-4 respectively.

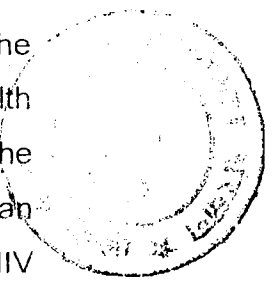
The facts as narrated in the complaint are that the complainants 1 and 2 are husband and wife and were not keeping well. Complainant no.1 was afraid that he might be HIV positive and it was causing him a great distress and thus he thought to get his HIV test done. OP-1 and OP-3 took money from the complainant for HIV tests which were allegedly not conducted or not conducted honestly, and OP-4 provided false test results declaring the complainants as HIV+. Based on these reports, OP-2 told the complainants to buy drugs which were unnecessary and incapable of curing the HIV, which OP-2 had caused the complainants to believe, they had. OP-2 then represented to the complainants that they had become HIV negative as a result of the drugs he had prescribed, when in fact, they were HIV negative all along. OP-1 and OP-2 refused to provide adequate receipts for the tests and drugs prescribed.

It is further submitted that OP-3 had placed an advertisement in a newspaper claiming that it offered treatment which could take someone "infected with HIV" and help them attain "Not Detected by HIV DNA PCR antigen test." OP-3 and 4 produced material in print and on their websites advertising treatment and a cure for HIV and AIDS, which is false advertisement and contrary to the provisions of the Drugs and Magic Remedies (Objectionable Advertisements) Rules, 1955 in respect of any advertisement for a drug for the "diagnosis, cure, mitigation, treatment or prevention of {AIDS} (Drug and Magic Remedies (Objectionable Advertisements) Rules, 1955, Rule 6. On seeing the advertisements, the complainant no.1 felt reassured that even if he was HIV positive, Hakh Medical Foundation would be able to cure him of it. He had also been concerned that if he were HIV positive, his wife could also be the same. He therefore took an appointment for his wife and for himself to attend the clinic. It is further submitted that in November 2007, the complainants met with OP no.2 Dr. Javed at the clinic, who gave his business card to the complainants which showed that Dr. Javed held himself as the Chief Consulting Physician as well as Founder and General Secretary of the Hakim Ajmal Khan Memorial Society. When the complainants explained their health concerns to OP no.2, they were advised to submit a blood sample for testing. OP-2 assured them that the clinic had a good testing facility in Mumbai to run tests for HIV and



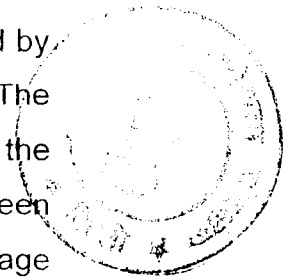
even if the results showed HIV, they could be cured. The complainants were asked to pay Rs.7000/- to the OP-2 for the same but no receipt was issued, and they were asked to visit again after one week for the results of the test. When they visited OP-2 again, OP-2 told them that the tests were conducted at SRL Ranbaxy Pathology Laboratory in Gurgaon for TB, Hepatitis B and liver function and the test results are on SRL Ranbaxy letter-headed notepaper and only the purported results for complainant no.2's HIV test are on the report paper of Hootones Life Science Molecular Research Lab. In Mumbai. The purported results for complainant no.1's HIV test were also on Hootones Life Sciences Molecular Research Lab. Rather than SRL Ranbaxy. OP-2 further told the complainants that they should come to the clinic for a follow-up appointment and that further tests would have to be conducted to find out whether the course of drugs had been successful. They were asked to pay Rs.15000/- (Rs.7500/- each) for these tests to be run which the complainants paid. It is further submitted that on 5.12.2007, OP-2 asked the complainants to pay Rs.10000/- for these drugs which they did. The complainants were each sold one box each of HOO-IMM PLUS drugs (A) to (E) at a cost of Rs.1000/- per box. Again on 8.1.2008, the complainants were asked to pay Rs.10000/- to obtain results, and the results in respect of both the complainants were HIV negative. The complainant thereafter got themselves investigated at various government hospital where it was confirmed that both the complainants were HIV negative. The test results by government laboratories and OPs are placed on record.

The complainant submitted that it is medically impossible that in December 2007, they were HIV positive but by June 2008, they became HIV negative as a result of drugs sold to them by the OPs, or otherwise. The information from the National AIDS Control Organization and the World Health Organization confirms that there is no cure for HIV. Once someone has the virus, they always have the virus although the amount of virus in the body can vary, meaning thereby that once someone is HIV positive, they are HIV positive for life. The complainant submits that the results provided by the OPs to the complainants must therefore have been fake, and goes to show that the tests for which the money was paid by the complainants were not conducted or negligently done, and that the tests results formed the basis of



OPs subsequent recommendations for the purchase of drugs by the complainants. The OPs avoided to issue receipts of the money received for the tests, tests results and the drugs sold to them since November 2007 on the pretext that they would issue the receipt of the full amount only if the complainants purchased further drugs from the clinic which the complainant no.1 refused to do. OP no.2 however issued two receipts dated 5.12.2007 one for the amount of Rs.6500/- and another for Rs.8000/- in the name of the complainants 1 and 2 respectively. The complainants further submitted that the total amount paid by them to the OPs between November 2007 and January 2008 was Rs.47000/-. It is submitted that the OPs have adopted an unfair trade practice. The complainants have prayed that Rs.47000/- paid by them to the OPs be directed to be refunded apart from Rs.4,53,000/- for the mental injuries and emotional distress suffered by them. In all, a compensation of Rs.5 lakhs has been demanded from the OPs.

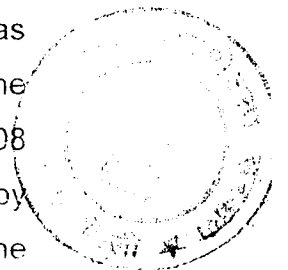
In reply to the complainant, OPs 1 & 2 have submitted that the complaint is not maintainable as it has been filed to harass them with a view to extort money. It is further denied that the OPs have dishonestly taken any money for the tests which were not conducted or that false results for declaring positive tests for HIV was give. It is further denied that the complainants were thereafter represented that they had become HIV negative because of the aforesaid drugs purchased. It is further denied that the complainants were HIV negative all along, as alleged by the complainant. The OPs further denied that the OPs had taken Rs.5000/- from each complainant and provided the results for further fee of Rs.5000/- showing that both the complainants were having HIV positive. The OPs however admit that so far as the result of HIV positive is concerned was due to false positive and that can be possible for various reasons. The course of medicine adopted by the complainants were being given to the patient for the said ailment. The OPs further denied that on 5.12.2007, complainant's paid Rs.10000/- to the OP-2, for which according to the OP, no receipt or documents have been placed on record. The complainants received the receipt at the initial stage and thereafter they did not ask for the receipt for the subsequent payment. All other averments and allegations of the complaint are denied by the OPs as wrong. It is submitted that the for various reasons, the positive results could



have come due to virus contamination and come in contact with the other samples, as regards test, there is no dispute. According to the OPs, the tests were conducted by due diligence and there was no negligence at all. The receipt of the amount of Rs.47000/- has been denied by the OPs

In the rejoinder and the evidence by way of affidavit filed on behalf of the complainants, all the contents, averments and allegations mentioned in the complaint have been reiterated and reaffirmed.

Similarly, OPs 3 and 4, also filed their reply and submitted that the complaint is wholly misconceived, groundless and unsustainable and is liable to be dismissed, and that the complaint has been filed to harass and blackmail the OPs. The OPs submitted in their reply that the material published in the newspaper depicting an HIV patient who had been infected with HIV in 1997 and undergone the treatment with HOO-IMM PLUS and after completing the course of the treatment for 2-1/2 years had recorded Not Detected by the Proviral HIV DNA PCR Test. The allegations of complainant for claiming cure is wholly misconceived and groundless since the published material clearly states that "The major aim of the treatment is to attain Not Detected by HIV DNA PCR antigen test. The treatment has been proved by DNA PCR Test. It is submitted that since the complainant had earlier exposure to extra marital sex, the doctor advised for the Proviral HIV DNA PCR Test, and the blood samples were received on 5.12.2007 for Proviral HIV DNA PCR Test and the result was released on 10.12.2007 AS "Detected" by HOOTONE Life Science. However due to non-correlating results, the lab had announced for repeat test to be performed for the whole batch of the samples received during this period for free of cost and consequently it was intimated to Dr. Aslam Javed to provide the fresh blood samples of the patients. And subsequently, the repeat samples were received on 8.1.2008 and the test results were released on 23.1.2008 as "Not Detected" by HOOTONE Life Science. It is further clarified by the OP that In the Conditions for reporting on the back of the results, it is very clearly mentioned that PCR is a technique used to amplify the number of copies of a specific region of DNA in order to produce enough DNA to be adequately tested. The PCR technology platform is prone to error due to the processivity of the DNA



Polymerase being used. This may lead to an occasional false positive and also due to presence of some PCR inhibitors may lead to false negative result for which Hootone Life Science will not be held responsible. Therefore, due to contamination during the processivity of the DNA Polymerase being used, the test results of the patients gave false positive results. The Ops further submitted that the allegations of the complainant for claim for cure is wholly misconceived, groundless, false, untenable in law besides being extraneous and irrelevant having regard to the facts and circumstances of the matter under reference. Finally, the OPs prayed that the complaint may kindly be dismissed with costs as the complainants are not entitled to any relief whatsoever.

In the evidence by way of affidavit filed by OPs 1, 2, 3 and 4, the OPs have precisely deposed all the facts mentioned in their respective replies.

We have carefully gone through all the documents placed on record by the parties.

It is admitted that the complainant took treatment from OP-2 doctor. Their blood samples were taken and sent to OP3 & 4 for investigation. The sample was simultaneously sent to SRL Ranbaxy Pathology in Gurgaon. Test report dated 10/12/2007 from OP-4 for complainants shows:-

*"Sample received on 5/02/2007
HIV Proviral DNA PCR-Detected"*

Subsequent report dated 23/01/2008 by OP4 by complainants shows:-

*"Sample received on 8/01/2008.
HIV proviral DNA PCR- Not Detected"*

Subsequent test by Delhi State AIDS Control Society (Government NCT of Delhi) dated 20/06/2008, 21/07/2008, 23/09/2008 shows:-

"HIV 1 and 2 : Non Reactive"



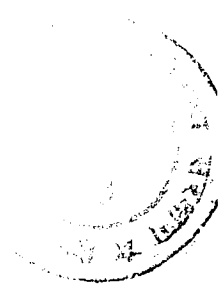
OP-3 and OP-4 in their reply has admitted the test result. It is stated that after test result dated 10/12/2007, repeat test were performed on all samples received in the laboratories during this period due to non correlating results. The repeated sample was received on 8/01/2008 and test results were given with remark 'not detected' on 23/01/2008. It is further specified that PCR technology is prone to error as mentioned in condition at the back of test result. Nonetheless OP-3 and OP-4 have not filed an iota of evidence or any correspondence with OP1 and 2 where they explained the need of repeat samples due to non correlating results. They have not filed any corroborating documents showing repeat tests were performed for whole batch of sample.

OP1 and 2 has specifically denied that false results declaring "positive test" for HIV was given. They have contradicted themselves in subsequent paragraph of their reply by stating that HIV positive result was due to false positive which can be attribute to a number of reasons. OP1 and 2 have not taken the trouble to elucidate the reasons. Vague conjectures without any substance will lead OPs nowhere. It is also admitted that medicines for same ailment were given to other patients. OPs have failed to explain the ailment for which medicines were prescribed, if result was false positive.

All OPs have admitted that the report showed false positive. The same was never conveyed to complainant through correspondence or prescripttion. It was natural for complainant to assume that the medicines were treatment of "HIV Positive Virus".

Website ***helpline.aidsvancouver.org***. runs as under:

- 1) *Which antigens are looked for in proviral DNA PCR test? Is it possible that over a period of time as the virus mutates these antigens change and hence proviral DNA PCR test comes negative even the virus is still there?*
- 2) *In India and In African countries like Malawi some people claim to cure HIV (in India medicine called Hoo imm plus and in Malawi medicine called Garani mw1) and proved by proviral DNA PCR test reports*

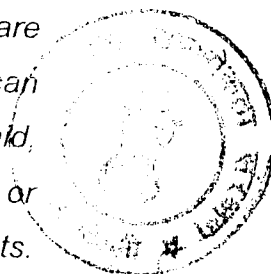


- coming negative after their treatment and even after stopping the treatment for years. Does this prove that it cures HIV infection?
- 3) In case of 'functional cure' will antibody test comes negative, since many believe that antibodies remain even after HIV is eliminated from the body?.

Answer:

Hello there and thank you for using the AIDS Vancouver Helpline as your source of HIV-related information.

- 1) PCR DNA (or RNA) test looks for the genetic materials of the virus itself whereas antigen is a protein portion of the virus which is called P24. The virus replicates so rapidly from the moment of infection, thus one can obtain an accurate test result with this test 2-3 weeks post possible exposure. PCR DNA is still accurate after 3 weeks post possible exposure. In other words, it will not give out false positive/negative because the virus is still there; however, the amount of antibodies becomes sufficiently in 21-25 days. Thus, one may want to go with an antibody test (i.e. Rapid test, 3rd generation ELISA test or 4th generation EIA test/Duo/ Combo), instead of paying a lot of money for PCR test. Just to note that PCR/ RNA test is not widely available, and in fact, it is not available in Canada.
- 2) There are no cure for HIV yet. You may have heard of 3 people who are "cured" from HIV due to bone marrow transfusion. These are extreme cases as they were suffering from cancer which required bone marrow transfusion. There are no treatments/ medications to cure HIV. However, there are medications to manage the virus. With antiretroviral treatments, one can manage the replication of the virus and further infection the cells. Thanks to the medical science and all the efforts from people of all levels, medications we have today are great; being on medication and keeps undetectable viral load can extremely reduce the chance of passing the virus. That being said, HIV is a manageable chronic illness congestive heart failure or diabetes. Those medication you referred to are herbal treatments. Although herbal medicines can be helpful to reduce side-effects and so on, it does not cure or treat certain illness like HIV. To manage HIV,



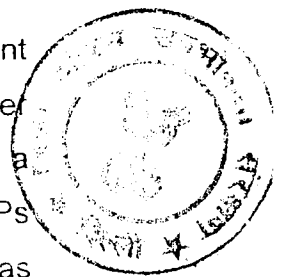
one needs to be on medication which is studied, researched and approved by medical science.

3) We never heard of 'functional cure' for HIV. Do you mean "undetectable", perhaps? With antiretroviral treatment, one can obtain undetectable viral load. This means there are no detectable amount of virus in a blood sample (less than 50 copies) and PCR DNA test is used to count the amount of virus; this test/ method is only used for people living with HIV as their routine check-up. People living with HIV need to be checked every 3-6 months to see their health status, including the viral load. Like any other blood test, a machine is counting the numbers of virus and if the mount is less than 50, it is determined undetectable. As it is mentioned having undetectable viral load significantly reduces the chance of passing the virus to someone via undetectable. As it is mentioned, having undetectable viral load significantly reduces the chance of passing the virus to someone via unprotected anal/ vaginal sex or sharing needles. However, this does not mean one is cured. Undetectable viral load means the virus is under control; the virus is not eliminated from the body. Antibodies are detectable until we die; our body produce antibodies for different infections (i.e. flu, Hepatitis A/B/C etc) and regardless of types antibodies, they are in the body and will disappear.

Website www.niaid.nih.gov. shows that "while there is currently no cure for HIV, advances in treatment have made it possible for people with HIV to live long and healthy lives".

It is clear that there is no cure for HIV. Antibodies for virus always remain in body.

It is established that the complainants test result in Government laboratory was non reactive or negative. The complainant have never suffered or were infected by HIV virus. OPs have misled them by promising a cure which has not been tested and endorsed by scientific community. OPs have further indulged in deliberated deception by first showing results as positive and after prescribing medicine showing results as negative.



Section 2 of Consumer Protection Act runs 1986 as under:

2(r) "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method of unfair or deceptive practice including any of the following practices, namely:-


- 1) The practice of making any statement, whether orally or in writing or by visible representation which-
- vi) Makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;

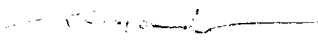
Hence we find OPs guilty of misleading advertisement and indulging in deceptive trade practice and unfair trade practice and direct OP-1 to OP-4 each to pay Rs.25,000/- to the complainants with interest @ 9% p.a. from the date of filing of the complaint.

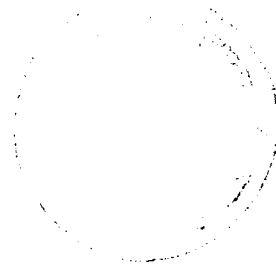
Let the order be complied with within one month of the receipt thereof. The complaint stands disposed of accordingly.

Copy of order be sent to the parties, free of cost, and thereafter file be consigned to record room.


(RITU GARODIA)
MEMBER


(H.C. SURI)
MEMBER


(A.S. YADAV)
PRESIDENT



CERTIFIED TRUE COPY


09/05/18
READER