



CENTRE FOR CONSUMER
RESEARCH AND POLICY
NUSRL RANCHI



Ministry of Consumer Affairs
Government of India

NATIONAL MOOT COURT COMPETITION ON
CONSUMER PROTECTION LAWS
2024

Organised by

CENTRE FOR CONSUMER RESEARCH AND POLICY, NUSRL, RANCHI

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**MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION,
GOVERNMENT OF INDIA, NEW DELHI**

MOOT PROPOSITION

22nd – 24th November, 2024

Somarajendran

.....Complainant

v.

Babysciences India Pvt. Ltd.

.....Opposite Party



1. Recent censuses indicates a diminishing sex ratio. To tackle this the Government of India has passed legislation to regulate diagnostic techniques which determine the sex of the baby to be born, in a bid to prevent sex selective abortions – known as the Pre-Conception and Pre-Natal Diagnostic Techniques Act (PCPNDT Act).

2. The PCPNDT Act not only prohibits all manner of sex selection techniques but also tightly regulates the use and sale of machines which can be used for sex selection. Further, the PCPNDT Act also prohibits the advertising of techniques which are used for sex selection.

3. A major neo-natal hospital chain named HappyBabies is run by a company named Babysciences India Pvt. Ltd. (BIPL). The chain of hospitals has a presence across India, including a large presence in regions with a low sex ratio.

4. HappyBabies issued a press release in 2017 stating that they have developed a new diagnostic technique which uses low doses of gamma radiation together with ultrasound to accurately diagnose and forecast possibility of a foetus developing congenital heart disease. This was offered as a package called GammaSound Test to be conducted on the expecting mothers. Expecting parents could either opt for this test separately or could opt for the entire delivery package known as the Stork Package which would include all the usual tests conducted on expecting mothers, multiple rounds of consultations, GammaSound Test, delivery of the baby, and neo-natalcare.

5. A short while later, BIPL setup a subsidiary company named BIP Sweets Pvt. Ltd. This company was seemingly in a very different industry, namely the production and sale of sweets and confectioneries.

6. HappyBabies started a new advertising campaign with the slogan – “Get your GammaSound and get a laddoo or pedha free”. Simultaneously, BIP Sweets Pvt. Ltd. launched an advertisement campaign for laddoos and pedhas. In the advertisement campaign, the laddoo was shown anthropomorphised as a



baby boy – i.e., wearing a shirt, bow tie, and shorts, and the pedha was anthropomorphised a baby girl, i.e., wearing a frock. While HappyBabies, run by BabySciences India Pvt. Ltd. was technically a different company from BIP Sweets Pvt. Ltd., they both had the same logo – i.e., the face of a laughing baby superimposed on the moon.

7. In 2020, after COVID hit, the hospital realized the need to move most of its administrative services to online mode to minimize the physical public contact within the hospital, and also so that the administrative work of the hospital could carry on though the administrative staff of the hospital could only work from home. So HappyBabies launched a website and an app on which expecting parents could book packages, appointments, and make payment for the services availed.

8. Somarajendran and his wife Uma Rajendran were excited to find out in June 2023 that they were about to become parents. Their local ObGyn told them that they could expect the addition to the family around new year time.

9. Though their small town had a reputed government hospital, they wanted the best for their coming child. They were taken in by the apparent luxury of the facilities offered in the local HappyBabies hospital and decided to check the options. Another worry at the back of their minds, though they did not talk much about it, was the fact that Somarajendran's family had a history of congenital heart disease with many of his immediate relatives having passed away at relatively young ages due to heart disease. In fact his brother's first child had been born with a hole in its heart. Somarajendran's mother had mentioned that his father had a younger brother who used to live with them whose heart defect had caused mental incapacity.

10. With this in mind, they thought they should check out the HappyBabies hospitals package for the congenital heart disease test. Somarajendran logged in to the HappyBabies hospital website, and upon selecting the branch of the hospital located in his town, he found that he had logged on at an opportune moment. The ticker on the website read – **“BOOK YOUR GAMMASOUND TEST NOW! ONLY THREE SLOTS REMAINING FOR AUGUST 2023!”**. Somarajendran thought that if he was



a little late, he would have missed the opportunity to book the test. He hurriedly called his wife, and said that they should decide on taking the test at HappyBabies hospital soon.

11. Though they were in two minds they decided that they should err on the side of caution and decided to go in for it anyway. They also saw that many happy parents had left positive reviews. So Somarajendran quickly entered the personal and medical details of himself and Uma Rajendran, and proceeded to the next steps for booking the GammaSound Test. When he quickly finished the payment, and saw the booking receipt, it appeared he had made a mistake in his hurry. Instead of booking only the GammaSound Test he had ended up booking the stork package which included a number of tests. He was flabbergasted, and wondered how he could have been so careless, though he felt that he had clearly clicked only on the GammaSound Test.

12. He discussed with Uma and they decided that anyway they needed some neonatal package and this would do. He told her that he was also fooled by the fact that the amounts to be paid for both packages seemed to be roughly the same – with one crucial difference. While the price for the GammaSound Test was Rs. 20,000/- , Rs. 20,000/- was the installment amount for the Stork Package if it was paid in 12 installments. He realized that he would be spending Rs. 2,40,000/- over the next one year. While this was a fairly heavy sum for Somarajendran and Uma Rajendran they rationalized it to themselves saying – “Only the best for the baby”.

13. All the receipts, webpages, and the even the details pages of the HappyBabies hospital said – “Surprise Laddoo or Pedha along with test results”.

14. Though Somarajendran had told his wife that they would go ahead with the stork package, he logged in to the website again to rectify the error. As there was no option on the website, he called the hospital. They said that they do not handle the website and only the headquarters would have control over it. The local hospital only perform tests and provide service as communicated by headquarters. He also called up the headquarters who placed him on hold for a long time and told him that the website and payment gateway is in fact managed by an external vendor to whom they have contracted out all IT



services. Frustrated by the effort involved, Somarajendran gave up the attempts to rectify errors and decided to go ahead with the Stork Package.

15. In late August 2023, Somarajendran and Uma Rajendran arrived at the hospital for their scheduled GammaSound test. A person who seemed to be from the hospital administration in casual conversation with Somarajendran told him – “So do you like Laddoo or do you like Pedha”. When Somarajendran seemed confused by his question he further said – “You haven’t had a laddoo or a pedha yet?”. Then he pointed towards a large hoarding of BIP Sweets in the hospital premises and said “look closely at the laddoo and pedha, and think about what you want. Anyway all are sweets and we have to accept what fate gives us.” Somarajendran looked at the hoarding and saw a laddoo dressed like a baby boy and a pedha dressed like a baby girl. He realized that though he had seen these laddoo-pedha advertisements all around town, and in media, he had never seen a BIP Sweets Laddoo in any sweet shop or bakery.

16. Looking around, he also saw hoardings that said that the GammaSound test is totally environment friendly as it uses less electricity than all alternate tests.

17. One of the drawbacks of the hospital was that it did not have proper canteen facilities. This meant that the persons who were admitted could not get proper food and when Somarajendran and Uma Rajendran went for their regular tests, they often were hungry throughout. A small tea shop served some fried foods which did not seem hygienic.

18. Two weeks after the GammaSound Test, when Somarajendran went to the hospital to collect the test results, a doctor came and handed him a box of BIP Sweets. This was the first and only time he saw a box of BIP Sweets. When he opened it, it had Pedhas. Somarajendran mentally associated the pedhas with a baby girl. The doctor told him – “If you are having second thoughts about anything, you let us know when you come with madam next time”. The test results were normal and said that there is no reason to anticipate any heart disease in the baby.



19. Somarajendran and Uma Rajendran went through with the delivery. Upon delivery, Somarajendran and Uma Rajendran became the proud parents of a lovely baby girl. The only dark lining to their silver cloud was that their daughter had an enlarged heart – which was exactly the sort of thing that Somarajendran had feared. Two days after discharge from the hospital, they had to get admitted to another hospital, as Uma had developed severe food poisoning. During the stay at the hospital, Uma's mother who had come over had given her some food from the tea stall as she could not find anything nearby.

20. In a month's time, the newborn baby lost her life. Somarajendran and Uma were devastated. On the back of this loss they were hit by another sad development. As a result of the medical complications faced by Uma shortly after childbirth, her uterine walls were severely damaged and all doctors confirmed that it was highly unlikely that she can have a safe pregnancy again. They warned that any attempt at having another child would be a risk to Uma's life.

21. Somarajendran started digging around the website and noticed something peculiar. When someone opted for the GammaSound package there was a small check box which said "I do not want the stork package". It was only if they ticked that box that they would get only the GammaSound package at the payment stage. If they didn't click on it, the payment page would show the Stork Package for subscription. Somarajendran understood how he ended up opting for the Stork Package. Further Somarajendran noticed that all the reviews of the hospital on the website seemed to have been uploaded from the same IP Address. The IP Address was found to be located in the same place where BabySciences India Pvt. Ltd. has its registered office.

22. Somarajendran filed a complaint to the Divisional Executive Magistrate who referred it to the Central Consumer Protection Authority (CCPA). CCPA referred it to the director general of their investigation wing. CCPA Investigation Wing carried out its investigation and submitted a report confirming the findings as alleged by Somarajendran. However, it was inconclusive on affixing any responsibility.



23. Somarajendran also found that there was a notice issued by the Ministry of Health and Family Welfare to HappyBabies Hospitals that the Gamma Radiators used in their GammaSound test was a radiation hazard and had caused severe injuries to the solid waste handlers who had opened it in the landfill site.

24. Somarajendran filed a complaint before the Jharkhand State Consumer Disputes Redressal Commission against BabySciences India Pvt. Ltd. and BIP Sweets alleging violations of the Dark Patterns Guidelines, Misleading Advertisement Guidelines, and many other rules and regulations including surrogate advertisement.

25. BabySciences India Pvt. Ltd., the Opposite Party No. 1 in the complaint, vehemently denied any wrongdoing on all counts. They contend that they are an entirely different company from BIP Sweets Pvt. Ltd. and any acts of BIP Sweets cannot be attributed to them. BIP Sweets Pvt. Ltd., the Opposite Party No. 2 did not enter appearance despite repeated service and are set *ex-parte*.

26. The Jharkhand State Consumer Disputes Redressal Commission is to now adjudicate upon the case.



ISSUES

1.	Whether the facts as narrated above make out a case of deficiency of service on the part of the hospital?
2.	Are one or more of the following dark patterns observed in the reported user experience of the hospital's website? a. Basket sneaking b. False urgency c. Forced action d. Subscription trap e. Bait and switch
3.	Can BabySciences India Pvt. Ltd. and BIP Sweets Pvt. Ltd. be considered as one entity or connected entities for the purpose of determining whether there has been surrogate advertising?
4.	Has BIPL indulged in surrogate advertising of its diagnostic methods?
5.	Has BIPL indulged in greenwashing?
6.	Is there contributory negligence on the part of the consumers at various stages?



DISCLAIMER

1. The Participants can add or modify the issues enumerated in the present moot proposition. However, participants cannot change the premise of these issues.
2. The complaint is being heard in November 2024.
3. The events and the characters depicted in the present moot proposition are purely a work of fiction and hypothetical. Any resemblance to actual persons, living or dead, is purely coincidental.
4. This moot proposition is purely intended for Moot Court Competition and educational purposes amongst law students.
5. The contents of the present moot proposition are not intended to defame/denigrate/hurt the feelings/sentiments of any individual(s)/class/classes of individuals, institution(s), community/communities, or organisation(s).

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