

STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND
DEHRADUN

FIRST APPEAL NO. 359 / 2019

Indian Maritime University, Kolkata Campus
Maritime Engineering and Research Institute
P-19, Taratala Road, Kolkata

..... Appellant / Opposite Party No. 1

Versus

1. Smt. Nimmi Kundlia W/o Sh. Arun Kundlia
R/o 111/1, Bell Road, Society Area
Clement Town, Dehradun

..... Respondent No. 1 / Complainant

2. Sh. M.K. Ghosh, Director (now Retired)
Indian Maritime University, Kolkata Campus
Maritime Engineering and Research Institute
P-19, Taratala Road, Kolkata
2nd Address: Eden Tolly Lake Side, Block – A
Flat No. 4D, 4th Floor, 319, Mahatma Gandhi Road
Ramchandrapur, P.S. Haridebpur, Kolkata – 700104

..... Respondent No. 2 / Opposite Party No. 2

Sh. Deepak Ahluwalia, Learned Counsel for the Appellant
Sh. Prateek Handa, Learned Counsel for Respondent No. 1
None for Respondent No. 2

Coram: Hon'ble Mr. Justice D.S. Tripathi, President
Mr. Udai Singh Tolia, Member-II

Dated: 26/07/2023

ORDER

(Per: Justice D.S. Tripathi, President):

This appeal under Section 15 of the Consumer Protection Act, 1986 has been preferred against the impugned judgment and order dated 26.08.2019 passed by the District Consumer Disputes Redressal Commission, Dehradun (in short "The District Commission") in consumer complaint No. 58 of 2015; Smt. Nimmi Kundlia Vs. Indian Maritime University and another, by which the consumer complaint was allowed and the appellant and respondent No. 2 (opposite parties

to the consumer complaint before the District Commission) were jointly and severally directed to refund sum of Rs. 1,33,500/- to respondent No. 1 – complainant, besides to pay Rs. 10,000/- towards mental agony and Rs. 3,000/- towards costs. The amount was directed to be paid within a period of 30 days’, failing which the respondent No. 1 – complainant was also held entitled to interest @9% p.a. on the aforesaid amount from the date of institution of the consumer complaint till payment.

2. Facts giving rise to this appeal, in brief, are that according to the consumer complaint, the respondent No. 1 – complainant got her son – Vaanchit Kundlia admitted in the appellant – University for B. Tech. course in Marine Engineering Program for the academic session 2013-14 and deposited an amount of Rs. 37,500/- at the time of counseling. The complainant’s son was allotted admit card for the entrance examination held by the University scheduled for 01.06.2013, which the complainant’s son cleared and thereafter was admitted in the University. The complainant paid further sum of Rs. 1,17,000/- at the time of admission of her son. This way, total sum of Rs. 1,54,500/- was paid to the University. The complainant’s son reached Chennai on 07.07.2013, where his medical examination was carried out and fitness certificate was issued. Thereafter, the complainant’s son reached Kolkata on 07.08.2013. At the time of counseling, it was assured that the University provides best facilities and is equipped with best equipments required for the course. When the complainant’s son reached University campus, he had to face ragging, which he informed to the faculty of the University, but no strict action was taken against the erring students. The complainant’s son was harassed and had to face mental stress for over a week. Eventually, the complainant’s son decided to withdraw himself from the course and boarded the train to Dehradun on 08.08.2013 and

reached Dehradun on 10.08.2013. Upon reaching Dehradun, the complainant's son informed the complainant about the ragging and other difficulties faced by him, whereupon the complainant spoke to the warden on 10.08.2013 and Sh. M.K. Ghosh – respondent No. 2 herein. The respondent No. 2 informed the complainant that a police case has been registered against the erring students and the complainant was asked to not to be worried. The complainant again contacted her son and came to know that the situation was getting worse day-by-day. Through fax dated 14.08.2013, the complainant withdrew her son from the appellant – University and demanded refund of fee. The complainant was assured by respondent No. 2 that the entire fee would be refunded within 30 days', but inspite of several letters, the fee was not refunded. Thus, alleging deficiency in service and unfair trade practice on the part of the appellant and respondent No. 2, the consumer complaint was instituted before the District Commission.

3. The appellant and respondent No. 2, who were opposite parties before the District Commission filed written statement, pleading therein that the present dispute has no connection with Dehradun. No cause of action, either in whole or in part, has arisen at Dehradun. The counseling took place at Chennai. The University has its Headquarter at Chennai, where the complainant's son had sought admission. The admission was taken at Kolkata and the fee was paid at Kolkata. The request for withdrawal was also made at Kolkata, hence the dispute can not be entertained by the District Commission, Dehradun for lack of territorial jurisdiction. The dispute raised does not fall with the definition of "consumer dispute", as provided under the Consumer Protection Act, 1986, as the demand for refund of fee does not fall within the ambit of "deficiency in service". The complainant's son has not filed any case of ragging. It was clearly

mentioned in the joining rules and instructions provided to Cadet Vaanchit Kundlia that fee once deposited by the Cadet, who has attended even a single class, shall not be refunded, on leaving the course midway, as the seat shall remain vacant for the entire course. The complainant's son was admitted in B. Tech. (M.E.) course and attended classes on 08.08.2013. On 14.08.2013, the complainant met respondent No. 2 and informed her decision regarding withdrawing her ward and she was informed that the semester fee shall not be refunded as per the Rules and Regulations of the University. The consumer complaint is liable to be dismissed.

4. After giving opportunity of hearing, the consumer complaint has been decided by learned District Commission vide impugned judgment and order dated 26.08.2019, thereby allowing the consumer complaint in the above terms. Feeling aggrieved, the appellant – University has preferred the instant appeal.

5. We have heard arguments advanced by learned counsel for the appellant & respondent No. 1 and perused the record. None appeared on behalf of respondent No. 2, although Vakalatnama of Sh. Sanat Kr. Dutta, Advocate along with written reply, were received on behalf of respondent No. 2 through post, which were taken on record on 01.04.2022. Later on, the supplementary written arguments were also filed on behalf of respondent No. 2, which were made part of the record per order dated 31.10.2022. We have also gone through the written reply as well as supplementary written arguments filed on behalf of respondent No. 2.

6. First of all, we will deal with territorial jurisdiction aspect of the matter in hand. The appellant and respondent No. 2 in their joint written statement filed before the District Commission have clearly pleaded that no cause of action, either wholly or in part, has arisen at

Dehradun, so as to file the consumer complaint before the District Commission, Dehradun.

7. Section 11(2) of the Consumer Protection Act, 1986 deals with the territorial jurisdiction of the District Forum (now District Commission). The said Section reads as under:

“11(2). A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction, –

- (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain, or
- (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or carry on business or have a branch office, or personally work for gain, as the case may be, acquiesce in such institution; or
- (c) the cause of action, wholly or in part, arises.”

8. The perusal of array of parties to the consumer complaint shows that none of the opposite parties to the consumer complaint actually reside or carry on business at Dehradun and both of them are placed at Kolkata, West Bengal. In the consumer complaint, there is no averment as to how the District Commission at Dehradun has

territorial jurisdiction in the matter. A perusal of the impugned judgment and order shows that the complainant has orally submitted that since the demand draft towards fee was got prepared at Dehradun, hence the District Commission, Dehradun, has territorial jurisdiction in the matter. The District Commission has opined that part cause of action has arisen at Dehradun. Such an observation on the part of the District Commission can not be legally sustained. Merely because the demand draft was got prepared at Dehradun and the common entrance test was held at Dehradun, it can not be held that part cause of action has arisen at Dehradun, particularly when admittedly, both the opposite parties to the consumer complaint belong to Kolkata.

9. Learned counsel for the appellant cited judgment of Hon'ble National Commission in the case of **Chandra Toyota Vs. Jain Builders and another** reported in **I (2015) CPJ 93 (NC)**, wherein it was held that merely by sending money by RTGS from Ajmer, District Forum, Ajmer does not get jurisdiction. The aforesaid judgment applies to the facts and circumstances of the present case with full force.

10. Considering the aforesaid provisions of Section 11(2) of the Consumer Protection Act, 1986 coupled with facts and circumstances of the case discussed above as well as case law cited above, it can safely be held that jurisdiction for hearing and deciding the consumer complaint was not lying before the District Commission, Dehradun.

11. On merit also, the perusal of record reveals that the matter relates to refund of fee. Thus, it is to be decided whether the respondent No. 1 – complainant falls under the definition of “consumer”, as defined under the Act and whether the appellant – University can be termed to be “service provider”. It is noteworthy that Hon'ble Apex Court in the case of **Bihar School Examination**

Board Vs. Suresh Prasad Sinha reported in **IV (2009) CPJ 34 (SC)**, has laid down that Bihar School Examination Board does not offer “service” to any candidate, nor does any student hires or avails of any “service” from the Board for a consideration. Paragraph No. 10 of the said decision is reproduced below:

“10. The Board is a statutory authority established under the Bihar School Examination Board Act, 1952. The function of the Board is to conduct school examinations. This statutory function involves holding periodical examinations, evaluating the answer scripts, declaring the results and issuing certificates. The process of holding examinations, evaluating answer scripts, declaring results and issuing certificates are different stages of a single statutory non-commercial function. It is not possible to divide this function as partly statutory and partly administrative. When the Examination Board conducts an examination in discharge of its statutory function, it does not offer its “services” to any candidate. Nor does a student who participates in the examination conducted by the Board, hires or avails of any service from the Board for a consideration. On the other hand, a candidate who participates in the examination conducted by the Board, is a person who has undergone a course of study and who requests the Board to test him as to whether he has imbibed sufficient knowledge to be fit to be declared as having competence vis-vis other examinees. The process is not therefore availment of a service by a student, but participation in a general examination conducted by the Board to ascertain whether he is eligible and fit to be considered as having

successfully completed the secondary education course. The examination fee paid by the student is not the consideration for availment of any service, but the charge paid for the privilege of participation in the examination.”

12. Hon’ble National Commission in its judgment dated 17.12.2017 rendered in **Revision Petition No. 3144 of 2016; Krishan Mohan Goyal Vs. St. Mary’s Academy and another**, has discussed the law laid down by Hon’ble Apex Court in **Maharshi Dayanand University Vs. Surjeet Kaur** reported in **(2010) 11 SCC 159**, in which it has been laid down by Hon’ble Apex Court that a student is neither a consumer, nor the University is rendering any service, relying on the decision given in the case of **Bihar School Examination Board** (supra). Relevant portion of the said decision is reproduced below:

“The respondent as a student is neither a consumer nor is the appellant rendering any service. The claim of the respondent to award B.Ed. degree was almost in the nature of a relief praying for a direction to the appellant to act contrary to its own rules. The National Commission, in our opinion, with the utmost respect to the reasoning given therein did not take into consideration the aforesaid aspect of the matter and thus, arrived at a wrong conclusion. The case decided by this Court in Bihar School Examination Board (supra) clearly lays down the law in this regard with which we find ourselves in full agreement with. Accordingly, the entire exercise of entertaining the complaint by the District Forum and the award of relief which has been approved by the National Commission do not conform to law and we, therefore, set aside the same.”

13. Hon'ble Apex Court in **Civil Appeal No. 17802 of 2017; Anupama College of Engineering Vs. Gulshan Kumar and others**, decided on 30.10.2017, has held that in view of the judgment of this Court in **Maharshi Dayanand University** (supra), wherein this Court placing reliance on all earlier judgments, has categorically held that educational institutions are not providing any kind of service, therefore, in matter of admission, fees etc., there can not be a question of deficiency in service and such matter can not be entertained by the Consumer Forum under the Consumer Protection Act, 1986.

14. Hon'ble National Commission in its judgment rendered in the case of **Director of Xavier Institute of Management & Entrepreneurship Kinfra Hi-Tech Park and others Vs. Sujay Ghose** reported in **III (2022) CPJ 6 (NC)**, has specifically held that the Educational Institute does not fall within purview of Consumer Protection Act, 1986, as it is not rendering any services. While coming to the above conclusion, Hon'ble National Commission has relied upon a decision of Larger Bench of three Members of Hon'ble National Commission in the case of **Manu Solanki and others Vs. Vinayak Mission University and other connected cases** reported in **I (2020) CPJ 210 (NC)**, wherein the Larger Bench has held that educational matters do not come within the purview of the Consumer Protection Act, 1986 and, therefore, the complaint is not maintainable.

15. Learned counsel for respondent No. 1 – complainant cited judgment and order dated 09.09.2015 passed by Hon'ble Apex Court in **Civil Appeal Nos. 7003-7004 of 2015; P. Sreenivasulu and another Vs. P.J. Alexander and another**, wherein it was held that an educational institution would come within the purview of the Consumer Protection Act, 1986. The aforesaid judgment does not provide any help to respondent No. 1 – complainant, in view of latest law on the subject, referred above.

16. Considering the aforesaid facts and circumstances of this case as well as the law laid down in the case of **Bihar School Examination Board** (supra); **Maharshi Dayanand University** (supra); **Anupama College of Engineering** (supra) and **Director of Xavier Institute of Management & Entrepreneurship Kinfra Hi-Tech Park and others** (supra), it is crystal clear that the appellant – University is neither “service provider”, nor the respondent No. 1 – complainant being a student is a “consumer”. Accordingly, we are of the view that the matter in question can not be brought before the Consumer Fora.

17. For the foregoing reasons, we are of the considered opinion that impugned judgment and order passed by learned District Commission suffers from material illegality and the same is erroneous. The appeal deserves to be allowed and impugned judgment and order passed by learned District Commission is liable to be set aside.

18. Consequently, the appeal is allowed. Impugned judgment and order dated 26.08.2019 passed by the District Commission is set aside and consumer complaint No. 58 of 2015 is dismissed. No order as to costs. The amount deposited by the appellant with this Commission, be released in its favour.

19. A copy of this Order be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986 / 2019. The Order be uploaded forthwith on the website of the Commission for the perusal of the parties.

(U.S. TOLIA)
Member-II

(JUSTICE D.S. TRIPATHI)
President

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