

(2013) 04 NCDRC CK 0063

In the National Consumer Disputes Redressal Commission

Birla Institute Of Technology And Science Pilani

APPELLANT

Vs

Abhishek Mengi

RESPONDENT

Date of Decision : 23-04-2013

Acts Referred:

Citation : 2013 0 NCDRC 295 : 2013 2 CPJ 681

Hon'ble Judges : V.B.GUPTA , Rekha Gupta J.

Advocate : GEETA HANDA KHANUJA

Judgement

1. BEING aggrieved by order dated 24.1..2012, passed by State Consumer Disputes Redressal Commission, UT,Chandigarh (short, "State Commission ") petitioners/opposite parties have filed the present revision petition.

2. BRIEF facts are that respondent/complainant after depositing requisite entrance fee and qualifying the examination, was selected for admission to M.Sc. (Tech) General Studies, with petitioners/opposite parties. Respondent also deposited Rs.55,000/-, as advance fee. Thereafter, respondent got admission in the Punjab Engineering College, Chandigarh. Respondent, immediately on 2.8.2009 made a request to the petitioners to refund the admission fee and give the original certificates. After number of requests, respondent received letter dated 8.10.2009 from petitioners, intimating therein that fees had been forfeited, as he had not submitted the withdrawal form. However, respondent was only refunded Rs.8,000/-, as mess advance and caution deposit, out of Rs.55,000/-. The aforesaid acts of the petitioners, in not refunding the full amount of fees, deposited by respondent, amount to deficiency in rendering service, as also indulgence into unfair trade practice. Thereafter, complaint under Section 12 of the Consumer Protection Act, 1986 (short, "State Commission ") was filed. Petitioners in its written version while admitting the factual matrix of the case pleaded, that District Forum at Chandigarh had no territorial jurisdiction as no cause of action arose to respondent at Chandigarh. The entire cause of action arose at Pilani, Rajasthan. It was further stated that petitioners does not fall within the category of a service provider, qua the respondent. It was admitted

that one of the Centers of the petitioners had been designated at Chandigarh, for conducting competitive examination for admission. It was further stated that tuition fee was paid by the respondent at Pilani through Bankers " cheque. It was denied that on 2.8.2009, respondent made any written request to the petitioners to refund the admission fee and return the original certificates. It was further stated that respondent for the first time, applied for withdrawal of admission and refund of the deposited fee on 5.10.2009. It was further stated that respondent was not entitled to any refund, except an amount of Rs.8,000/- as mess advance, caution deposit etc., which amount was refunded to him. It was further stated that by withdrawing at a later stage, respondent had caused a considerable loss to the petitioners. It was further stated that by not refunding the entire fee to the respondent, petitioners were neither deficient in rendering service nor it indulged into unfair trade practice.

3. DISTRICT Consumer Disputes Redressal Forum- I, UT, Chandigarh (short, "District Forum "), allowed the complaint of respondent, vide order dated 1.12.2011. Operative portion of the order states ; "18. In view of above discussion and findings, we are of the opinion that the OP was deficient and unjustified in its act and has also indulged in an unfair trade practice. Accordingly, it is our considered view that the present case has a lot of merit, substance and weight and it deserves acceptance. Therefore, we accept the complaint and decide the same in favour of the Complainant and against the OP. The OP is directed to refund to the complainant the balance amount of Rs.47,000/-, after deducting Rs.1000/- as service/ processing/ administrative charges, besides costs of litigation assessed at Rs.10,000/-, within 30 days from the date of receipt of certified copy of this order, failing which the OP would be liable to pay the sum of Rs.46,000/-, alongwith penal interest @ 12% p.a. from the date of filing the present complaint i.e. 27.10.2010, till the amount is actually paid to the complainant, besides paying the litigation cost of Rs.10,000/-."

4. AGGRIEVED by order of the District Forum, petitioner filed appeal before the State Commission which dismissed the same, vide impugned order. Hence, this present revision petition.

5. IT has been contended by learned counsel for the petitioner that District Forum has no territorial jurisdiction to entertain the complaint of the respondent. Secondly, respondent was not entitled to any refund, except an amount of Rs.8,000/- as mess advance, caution money, which was refunded to him since withdrawal by respondent at a later stage, had caused considerable loss to the petitioners. The non-refund of entire fee of the respondent is not deficient in rendering service. Moreover, as per guidelines of the U.G.C., respondent is not entitled for refund of the fees.

6. DISTRICT Forum in its order has observed ; "10. When confronted, learned counsel for the OP raised a defence that the seat left by the Complainant remained vacant and for that reason, the Complainant is not entitled for the

refund. We do not find any merit in the contention of the Learned Counsel for OP. The onus to prove this assertion was certainly on the OP. However, the OP has not been able to prove it and has not produced an iota of evidence or document to show that the seat vacated by the complainant is still lying vacant, thereby causing loss to them. Therefore, this bald assertion of OP cannot be accepted as such, and believed, in the absence of any cogent and convincing evidence.

11. To further reinforce his stand, learned counsel for the OP placed reliance on instructions regarding payment of Fees, Refund and Forfeiture of Fees and argued that in view of the said instructions, the Complainant is not entitled at all for the refund of the fee deposited by him. Relevant extract of the said instructions are reproduced below, for the sake of convenience:- "5. Instructions regarding payment of fees, refund and forfeiture of fees:- (a) If a candidate, who is offered admission, accepts the offer by remitting the above fees but fails to report at the Institute on the date specified above, he/ she will forfeit Rs.11,000/- which is 20% of total fees (Admission and one Semester Fee) and his/ her admission will automatically stand cancelled. The balance amount would be refunded to him/ her in due course of time. However, if a candidate reports on the specified date and submits originals, but subsequently withdraw either before or after registration, he/ she will forfeit the total fees (admission and semester fees) paid by him/her. "

12. The aforesaid contention of the learned counsel for the OP does not hold any water and is devoid of any substance. In our view, the service provider cannot forfeit the fees (in full or in part) for the services, which it has neither provided, nor the student has received such services and as such, the forfeiture of such fees is not only a deficiency in service but also an unfair trade practice and if there is any such term of the contract, to the contrary, the same is surely an unconscionable contract and therefore, void and not binding on the complainant.

13. Moreover, as regards the rules contained in instructions [Annexure R-2] for Admissions to Integrated First Degree Programmes, we are of the firm view that the same cannot override/overrule the guidelines of the University Grant Commission, which is the sole Governing Body for all Universities and Colleges and the OP College too falls under its purview. 14. It is pertinent to mention here that the University Grant Commission (U.G.C.) had issued a Public Notice, which has been thoroughly dealt with by the Hon "ble National Commission in case Nipun Nagar Vs. Symbiosis Institute of International Business, I (2009) CPJ 3 (NC), wherein it has been categorically held that the institutions are not entitled to retain the entire fees and if at all they can deduct some amount that is not more than Rs.1000/- and the balance should be refunded. 15. The Id.Counsel for the OP has also placed on record Annexure R-3 as additional evidence, showing the number of filled-up seats against total available seats, in each category, whereas the complainant, in rebuttal to this document of OP, produced Annexure A-17 as additional evidence, proving that 29.7.2009 was not the actual cut of date, there exists iteration on 9.8.2009 to fill all seats. We are of the view that the OP should have produced on record the Attendance Register to prove that

the seat vacated by the complainant has been filled-up by another student in the relevant sessions or not. But the OP has not done so. Therefore, in our opinion, this document Ann.R-3 is of no help to the Opposite Party. 16. In this backdrop, we are of the view that OP was unfair and unjustified in their act by retaining the fees of Rs.47,000/- of the complainant. The OP should have, at the most, deducted a sum of Rs.1000/- only, towards processing fee/Administrative charges etc. in view of the guidelines of U.G.C., as well as the law settled by the Hon "ble National Commission, referred to above ".

State Commission, while up-holding the order of District Forum observed ; "8. The counsel for appellants, assailed the order of the District Forum, on the sole ground, that it had no jurisdiction, to entertain and decide the complaint, as no cause of action, whatsoever, arose to the complainant, at Chandigarh. He further submitted, that since the District Forum, had no jurisdiction, it fell into a grave error, in accepting the complaint. He further submitted, that the order of the District Forum, being without jurisdiction, is liable to be set aside. 9. After giving our thoughtful consideration to the contentions advanced by the counsel for the appellants and the evidence on record, we are of the considered opinion, that the appeal is liable to be dismissed at the preliminary stage, for the reasons to be recorded hereinafter. Undisputedly, the complainant applied for admission to the M.Sc.(Tech.) General Studies Course being run by the appellants/ opposite party. It is evident from Annexure A-2 dated 17.1.2009, that the complainant deposited Rs.1,000/-, in the account of the appellants/opposite party maintained with the ICICI Bank, Sector-35, Chandigarh. Not only this, the opposite party/appellants in its written reply in clear-cut terms stated that the complainant had been allotted, one of its Centres at "BITSAT Centre, C/o University Institute of Engineering and Technology, South Campus, CAD Lab, Punjab University, Sector 25, Chandigarh ". It was, in this Centre, which was allotted to the complainant vide Annexure C-3, that the complainant appeared for the competitive examination, for admission to the course, in question, of the appellants. When the test held on 15.5.2009 was cleared by the complainant, a demand of Rs.225/-, was made by the appellants/opposite party, on account of the application form. It is evident from Annexure A-5 dated 17.6.2009, that a sum of Rs.225/- on the demand of the appellant/opposite party was deposited by the complainant, in its account, in ICICI Bank, Sector 35, Chandigarh. Annexure A-6, is the letter dated 1.7.2009, written by the appellants/opposite party to the complainant at his Chandigarh address, informing him that he was selected for admission to M.Sc. (Tech.) General Studies Course at Pilani Campus. He was further directed to pay advance fees of Rs.55,000/-. The complainant sent the fees, through Bank Draft, against which a certificate dated 2.8.2010, Annexure A-7 was issued by the ICICI Bank, Sector 35-C, Chandigarh. From the aforesaid facts, it is evident that a part of cause of action, arose to the complainant, within the territorial jurisdiction of Chandigarh. According to Section 11 (c) of the Act, a consumer complaint can be filed, at a place, where even a part of cause of action, arose to the complainant. Since, a part of cause of action, arose to the

complainant, in the territorial jurisdiction of Chandigarh, the District Forum at Chandigarh, had the jurisdiction to entertain and decide the complaint. The submission of the counsel for the appellants to the effect, that the District Forum at Chandigarh, had no jurisdiction to entertain and decide the complaint, therefore, being without merit, must fail and the same stands rejected. "

7. ON 15.5.2012, this Commission had passed following directions ; "After arguing the matter for some time, learned counsel for the petitioner seeks four weeks to demonstrate that as a result of the respondent withdrawing from the course to which he was finally admitted the resultant vacancy could not be filled in at all. Secondly, learned counsel for the petitioner shall also produce within the same period copies of circular instructions of the University Grants Commission as well as All India Council of Technical Education regarding refund of fees in such situations ".

8. ABOVE directions of this Commission have not been complied with till date. Instead, petitioners have filed affidavit of Shri Manmohan Singh Anand, its Registrar. It is an admitted fact that on 29.7.2009, respondent appeared before the Admission Counseling Committee. At that time, respondent told the Counseling Committee that he is not interested in admission in the petitioner 's institute because, he has to attend counseling at PEC, University of Technology on 31.7.2009. Consequently, respondent got admission in PEC, University of Technology and asked for refund of the advance fee. It is also the case of respondent, that he never attended classes in the petitioner 's Institute except on 31.7.2009. As already observed, petitioners have not placed any document to show that seat vacated by the respondent was not filled up at all. There is no evidence to this effect.

9. IT is well settled that under Section 21 (b) of the Consumer Protection Act, 1986 (for short "Act "), the scope of revisional jurisdiction is very limited. Under Section 21 of the Act, this Commission can interfere with the order of the State Commission where such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

10. HON 'ble Supreme Court in Mrs. Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd. 2011 (3) Scale 654 has observed ; "Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter,

we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two fora. "

Thus, no jurisdictional or legal error has been shown to us to call for interference in the exercise of powers under Section 21 (b) of the Act. Since, two Fora below have given detailed and reasoned order which does not call for any interference nor they suffer from any infirmity or erroneous exercise of jurisdiction. Thus, present petition is hereby dismissed with cost of Rs.10,000/- (Rupees Ten Thousand only).

11. PETITIONERS are directed to deposit the cost, by way of demand draft in the name of "Consumer Welfare Fund " as per Rule 10A of Consumer Protection Rules, 1987, within four weeks from today. In case, petitioners fail to deposit the said cost within the prescribed period, then they shall also be liable to pay interest @ 9% p.a., till realization.

12. LIST on 24.5.2013 for compliance.