
(1996) 08 NCDRC CK 0052

In the National Consumer Disputes Redressal Commission

Board of Secondary Education

APPELLANT

Vs

NAVNEET KUMAR

RESPONDENT

Date of Decision : 20-08-1996

Acts Referred:

Citation : 1996 3 CPJ 466 : 1997 1 CLT 162 : 1997 1 CPC 367

Hon'ble Judges : A.L.Bahri , R.L.Gupta , Gurkanwal Kaur J.

Final Decision : Order set aside

Judgement

1. VIDE this order two appeals being F.A. No. 61/96 and F.A. No. 215 of 1996 are for disposal. Both these appeals have been filed by the Board of Secondary Education, Madhya Pradesh Bhopal and the respondent is Navneet Kumar, the complainant. Appeal No. 61 of 1996 has been filed against the order of the District Forum dated 9.1.96 whereby the application filed by the Board for setting aside the ex parte order was dismissed. Appeal No. 215/96 has been filed by the Board against order dated August 1, 1995 whereby the District Forum granted relief to the complainant directing the appellant-board to pay sum of Rs. 10,000/- as damages and a sum of Rs. 1,000/- as costs.

2. NAVNEET Kumar filed the complaint before the District Forum against the Board as well as the Principal Government Boys Higher Secondary School, Bairagarh, Bhopal. Earlier NAVNEET Kumar appeared in 10+2 examination conducted by the Board but failed. He applied for re-evaluation/re-counting of the marks. Finding no response, he approached the High Court of Madhya Pradesh at Jabalpur in 1992. The writ petition was ultimately dismissed. Subsequently, he submitted an application for appearing as regular student in 10+2 examination to be conducted by the Board during the session 1992-93. Since he did not receive the roll number, the complaint was filed. He claimed a sum of Rs. 90,000/- as damages as his one academic session was wasted. He also claimed Rs. 5000/- towards litigation expenses. He also suffered loss on account of his visits from Muktsar, his place of residence, the Bairagarh, Bhopal, on different occasions. The Board inspite of service did not put in appearance and

was proceeded ex-parte and on behalf of the complainant his attorney Sh. M.R. Batra submitted his affidavit. The complainant also produced his own evidence. Some documents were also produced. Accepting the version of the complainant and evidence produced the impugned order was passed holding that there was deficiency in rendering service on the part of the Board in not sending the roll number to the complainant. On perusal of the records of the District Forum and the assertion made in the complaint, we are of the view that we should exercise revisional jurisdiction apart from appellate jurisdiction which has been invoked by the appellant, challenging the original order passed by District Forum. We are conscious of the fact that once an order has been passed by the District Forum under Section 14 of the Consumer Protection Act, the same could not be reviewed or set-aside by moving an application for doing so ex-parte. Present is a case where the District Forum lacked inherent jurisdiction to entertain the complaint. No cause of action much less part thereof accrued at Muktsar where the complainant is residing. He submitted his admission form through the school-opposite party No. 2 which is also in Bhopal to the Board. The assertion that the Board was required to send the Roll No. at Muktsar address and thus cause of action or part thereof accrued at Muktsar is devoid of merit. The complainant as regular student of school at Bhopal, submitted the application to the Board for taking 10+2 examination which was to be conducted at Bhopal. Mere sending of roll number, even if the version of the complainant is admitted, would not indicate accrual of cause of action at Muktsar. Thus the District Forum, Faridkot could not entertain the complaint.

The dispute sought to be raised by the complainant could otherwise be not treated as a "consumer" dispute. The board was taking 10+2 examination and the complainant had not hired the services of the Board on payment of fees to render service to the complainant in any manner. Non-submission of the roll number thus could not amount to deficiency in the matter of rendering service. In the grounds of appeal, the Board has taken up the stand that the roll number was sent to the school as the complainant wanted to appear as a regular student of that school in the examination. Be that as it may, such a dispute could not be treated as a "consumer" dispute. In this respect reference be made to the decision of National Commission in Joint Secretary, Gujarat Secondary Education Board v. Bharat Narottom Thakkar, 1994 CCJ 977 (NC). The National Commission observed that the Board was taking examinations, evaluating answer papers, announcing the results thereof and was not performing any service for hire and there was no arrangement of hiring of any service involved in such a situation as contemplated by Section 2(1)(o) of the Consumer Protection Act. The complainant thus could be treated as a "consumer". This decision was followed by the Haryana State Commission in Board of School Education, Haryana v. Darshan Kumari, 1996 CCJ 111. The facts of that case are akin to the facts of the present case. The allegation made therein was that the roll number was not sent to the complainant. The District Forum allowed the complainant to appear in the examination. However, the order of the District Forum was set aside

by the Commission holding that the complainant could not be treated as a "consumer" and the opposite party was not rendering any service in conducting the examinations.

3. LEARNED Counsel for the complainant - respondent argued that the Appeal No. 215 of 1996 filed against the original order dated August 1, 1995 is clearly barred by time and the ground take up that the complainant was prosecuting an application for setting aside the ex parte order before the District Forum cannot be treated as sufficient cause to condone the delay. As briefly noticed, above, the other appeal is against the order of District Forum declining to accept the application for setting aside the ex parte order. In view of the fact that there was inherent lack of jurisdiction in the District Forum to entertain the complainant, much importance cannot be given to the ground taken up for condoning delay in filing the appeal. The delay in such circumstances has to be condoned and appeal is to be allowed. The other appeal would obviously become infructuous and is to be disposed of as such. For the reasons recorded above, the order dated August 1, 1995 passed by the District Forum, allowing the complaint is set-aside and the complaint is dismissed. There will be no order as to costs in these appeals. Order set aside.