

(2011) 03 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

Brilliant Classes

APPELLANT

Vs

B M Gupta

RESPONDENT

Date of Decision : 07-03-2011

Acts Referred:

Citation : 2011 0 CTJ 508 : 2011 2 CPJ 1 : 2011 2 CPR 94

Hon'ble Judges : Ashok Bhan , Suresh Chandra J.

Final Decision : Revision Petition dismissed.

Judgement

1. THE complaint before the District Forum was filed by B.M. Gupta, guardian of Ms. Preeti, student of class 11th who had taken up preparatory course of Engineering/Medical-2006-2007, against the Petitioner and its branch at Dwarka, Opposite Party No. 2 (before the District Forum). According to the allegation made in the complaint the preparatory course was proposed to be conducted by the Petitioner at Dwarka and was to be managed by OP No. 2. The location of the Dwarka institute was suited to the Respondent being close to their residence. Allured by the misleading advertisement and prospectus marked as Annexures P-2 and P-1 with the complaint and information given, ward of respondent took admission in the Petitioner's institute and paid a sum of Rs. 20,000. Study Centre at Dwarka was not opened by the Petitioner. Respondent's ward had to travel from her place of residence to Janakpuri where Petitioner was running the course. Mathematics teacher was not available as he had gone out of country. Respondent's ward, after attending the class for some time, withdrew herself and requested Petitioner to refund the sum of Rs. 20,000. It was alleged that the Petitioner was deficient in service in not opening its branch at Dwarka and also the teacher for mathematics was not available.

2. PETITIONER and Opposite Party No. 2, on being served entered appearance and filed a common reply. They denied averments made in the complaint. It was stated therein that the ward of the respondent having taken admission and attended classes for some time, could not claim refund of the fee which was paid to them. Other objection taken was that the complaint was not maintainable as

the same had been filed by the guardian of the complainant and not the complainant herself. District Forum after taking into consideration the pleadings as well as evidence led by the parties allowed the complaint and directed the Petitioner to refund the sum of Rs. 20,000 to the Respondent along with Rs. 5,000 towards compensation and costs. District Forum recorded the following findings in support of its conclusion: "We have perused the material on record and have heard Mr. J.C. Vashista, Advocate for complainant and Mr. Ashutosh Sharma, Counsel for OPs. The first contention of the complainant is with regard to opening of study centre at Dwarka which was promised as per pamphlet P-2 but was not started by O.P. as promised. In the reply the O.P. has stated that their Dawarka Centre is functional but no date of commencement is indicated and complainant in his rejoinder has clearly stated that Dawarka Cenre has not been yet started by OPs. We are of the view that claiming in the Pamphlet P-2 "now study centre also at Dwarka" at the time of taking admission and factually not starting the centre at Dwarka in time amounts to deficiency in service by both O.P.-1 and O.P.-2. The second contention of the complainant is with regard to requirement of appearing for screening test and making payment of Rs. 3,507 for that purpoe. On the basis of mark sheet of 9th standard of the student, we find that student was not eligible for direct admission without screening test and therefore student was required to undergo screening test before selection for admission became necessary and hence OPs conducting a screening test for that purpose is not wrong. A difficulty in pursuing the course for the student started with O.P.-1 and O.P.-2 not opening the Dwarka Center as promised and advertised. The young girl was required to travel to Janak Puri and back in buses spending time and feeling fatigue due to such travel. The student had to leave her studies in between when she could not cope up with the schedule at Janak Puri, which is not in dispute between the parties. The difficulty also arose for the student because of study level much higher than that of a senior secondary standard prescribed by NCERT and not availability of Mathematics teacher, as alleged by the complainant. We, therefore, hold both the OP-1 and OP-2 deficient in providing services as detailed above and that this deficiency in service resulted in harassmment and mental agony and undue stress for the student."

3. AGGRIEVED by the order of the District Forum, petitioner filed the Appeal before the State Commission, which has been dismissed by the impugned order with the modification that the amount of compensation has been reduced to Rs. 2,500 from Rs. 5,000. We have heard the Counsel for the parties.

4. WE agree with the findings recorded by the Fora below that the complaint filed by the respondent as the guardian of his ward, namely, Miss Preeti was maintainable. Insofar as deficiency in service is concerned, it is writ large. In para 5 of the complaint it was specifically stated that the mathematics teacher was not available and the class of mathematics had not been started. Petitioner had not specifically denied the averments. Moreover, the Petitioner had assured the Respondent that it would start study centre at Dwarka which it did not do. Respondent's ward had taken admission in the Petitioner's institute on the

assurance that Petitioner would open a study center at Dwarka, which Petitioner did not do. As the Petitioner had failed to start the study centre at Dwarka and also to provide mathematics teacher, Petitioner had committed deficiency in service. The Fora below have rightly directed the Petitioner to refund the fee collected by it from the Respondent.

5. FOR the reasons stated above, we do not find any merit in this Revision Petition and affirm the Order passed by the State Commission. Revision Petition is dismissed with no order as to costs. Revision Petition dismissed.