

(2005) 07 NCDRC CK 0048

In the National Consumer Disputes Redressal Commission

CHETAN PRAKASH RAJPUROHIT

APPELLANT

Vs

JAIN VISHVA BHARTI INSTITUTE

RESPONDENT

Date of Decision : 07-07-2005

Acts Referred:

Citation : 2006 1 CLT 415 : 2006 1 CPC 336 : 2006 1 CPJ 33

Hon'ble Judges : Sunil Kumar Garg , Sushma Tanwar , T.P.Gupta J.

Final Decision : Appeal allowed

Judgement

1. MEMBER-This appeal has been filed by the appellant under Section 15 of the Consumer Protection Act, 1986 (hereinafter referred to as "1986 Act") against the orders dated 31.3.2004 passed by the learned District Forum, Nagaur whereby the complaint of the complainant-appellant was disallowed.

2. THE brief facts giving rise to this appeal are that the appellant had filled up a form for examination to the B.A. (First Year) with the respondent and had deposited prescribed fee for it. THE respondent, however, failed to send him the admission card for the examination. THEREfore, the appellant approached the local contact person of the respondent and took permission to take the examination on the basis of his enrolment. Later, the respondent informed the appellant that as his examination form was not received in time, his answer books cannot be evaluated. THE appellant filed a complaint in the Forum below for getting his answer book checked and for damages. The respondent replied that the appellant had not submitted the form for admission to the examination and as such his admission card was not sent. The respondent also stated that the appellant is not a "consumer".

After hearing both the parties and receiving their evidence, the learned District Forum disallowed the complaint. Aggrieved by the said order dated 31.3.2004 passed by the learned District Forum, this appeal has been filed by the appellant.

3. WE have heard the arguments and submissions made by the learned Counsel for the appellant and have considered the materials on record. None appeared on

behalf of the respondent. The first question is whether the complainant was not a consumer. In this connection, it is pointed out that the complainant had definitely deposited the examination fees and has appeared in the examination. Therefore, if there is any negligence or failure on the part of the respondent, that can be examined by the Consumer Fora. A student has been held to be a "consumer" within the meaning of Section 2(1)(d) of the 1986 Act in the case of Sreedharan Nair v. Registrar, University of Kerala, I (2004) CPJ 27 (NC)=2001 (3) CPR 27. Again, in Controller of Exam., Himachal Pradesh University v. Sanjay Kumar, I (2003) CPJ 273 (NC), the National Commission has very clearly held that it is not the intention of the Commission to exclude even the administrative aspects relating to education from the definition of service. This aspect has to be seen to be falling within the definition of service. In that case, it was held that non-supply of Roll Number to the complainant is deficiency in service. Therefore, the objection taken by the respondent is not maintainable and the appellant is a "consumer".

4. IN this case, it is not in dispute that the appellant was informed on 4.3.2003 by the respondent that he should deposit the examination fee of Rs. 75 and sent T.C./Migration Certificate and that the communication relating to shortcoming in the admission for the examination is final. It is also not in dispute that the last date for receipt of the fee, without late fee, was 29.3.2003. It is also not in dispute that the appellant had sent the fee by M.O. which was received by the respondent on 29.3.2003. It is also not in dispute that the appellant had completed the other formalities also before that date. It is clear from this that the appellant had complied with all the requirements for taking the B.A. (First Year) examination. The amount of examination fee is directly related to the date of receipt of examination form by the respondent because if the form is not received by a particular date, the respondent would have insisted on payment of examination fee, with late fee. The fact that the respondent had not asked for examination fee, with late fee, shows that the respondent had completed the formalities. The respondent has not produced any evidence which could show that the examination form was not received in time. IN this way, the appellant has proved that he had submitted the examination form and completed the other formalities in time. In such circumstances, the respondent was under an obligation to send admission card to the respondent so that he could sit at the examination. The respondent failed to do so without any just or reasonable cause. We have nothing to say that the appellant should have been declared successful but at least his examination copies should have been examined and his result should have been declared. As such, there is deficiency in service on the part of the respondent. In our considered opinion, the learned District Forum without adverting to the legal position disallowed the complaint. Such an order is legally not sustainable. As such, we are of the opinion that the impugned order deserves to be set aside.

5. ACCORDINGLY this appeal is allowed and the order dated 31.3.2004 passed by the learned District Forum, Nagaur is hereby set aside. The respondent is

directed to get the answer books of the appellant evaluated within a period of two months and declare his result soon thereafter.

6. IN this case, the appellant has requested for compensation of Rs. 3,000 for mental agony. Keeping in view the mental and physical harassment of the complainant during the past one year, we direct the respondent deemed university to pay a sum of Rs. 3,000 by way of compensation which in our view will meet the ends of justice. This amount should be paid to the appellant within one month from the date of the receipt/production of a copy of this judgment failing which the appellant will be entitled to interest @ 12% p.a. from the date of this order till the date of realisation. There shall be no order as to costs. Appeal allowed.