

(2006) 07 NCDRC CK 0009

In the National Consumer Disputes Redressal Commission

DEPUTY REGISTRAR (COLLEGES)

APPELLANT

Vs

RUCHIKA JAIN

RESPONDENT

Date of Decision : 04-07-2006

Acts Referred:

Citation : 2006 0 NCDRC 86

Hon'ble Judges : M.B.SHAH , RAJYALAKSHMI RAO J.

Final Decision : petitions are allowed

Judgement

1. AT the outset, we would make it clear that on several occasions the Apex Court has deprecated the practice of permitting the students to pursue their studies and/or to appear in the examination under the interim orders (fiat as observed by the Apex Court) passed in the petitions which were filed before the High Court/Courts. If the High Court is not permitted to pass such orders, it is to be held without any hesitation or reservation that Consumer Fora have no jurisdiction to pass such orders. Hence, we hereby direct that in future no such interim order permitting the students either to pursue the study or to appear in the examination, shall be passed by the Consumer Fora. That is not the function of the Consumer Fora and, hence, granting of such interim orders would amount to misconduct. (a) Revision Petition No.1121 of 2005: Undisputedly, the Complainant, Ruchika Jain, was admitted against management quota even though she has not obtained requisite marks in Physics as per the rules prescribed for getting admission to BDS Course. As she was not permitted to appear in the examination of BDS course which was to be held on 2nd August, 2004, she filed complaint No.536 of 2004 on 2nd August, 2004 before the District Consumer Disputes Redressal Forum, Faridabad with a prayer that she might be permitted to appear in the examination which was to be held on the same day. Surprisingly, on the same date, the District Forum, Faridabad, Haryana, passed an order directing the University to allow the Complainant to sit in the examination which was to take place on the same date.

The District Forum, inter alia, observed: Without going into the merit of the case,

the Forum is of the opinion that at this stage if any controversy is tried to resolve in between the parties, the same will take more time and the future of the Complainant who has to appear in BDS exam would be spoiled ultimately. The Respondents are, therefore, ordered to allow the Complainant to sit in the examination of BDS which have to take place today itself. The Respondents are, therefore, ordered to issue the regular roll number to the Complainant for appearing in BDS exam which are to be conducted by the Respondent and in case regular roll number issued to the Complainant. Copy of this order be given to the Complainant "Dasti". The court fee has not been placed on the file through challan so far. The exemption is granted considering the matter is of an urgent nature for today. (b). Revision Petition No. 1122 of 2005: Thereafter, on 4.10.2004, without going into the merits of the case, by interim order the District Forum directed grant of provisional admission to the next class and the University was directed to declare the result within 7 days from the date of the order, in case she was found eligible as per the result to be declared by the Respondent, by making it clear that the impugned order passed by it should not be deemed as impression of the final order of the Forum. (c). Revision Petition No.1123 of 2005: Again, the District Forum, by order dated 21.12.2004 observed that without going into the merits of the application, the Complainant should be permitted to re-appear in the examination of the subject "Anatomy" which was to be conducted by the Petitioner on 27.12.2004 and the operation of the cancellation letter sent by the University was stayed and it was ordered that she be treated as a regular student of BDS, even though the validity of cancellation letter still to be decided. (d). Against those interim orders, the Petitioner, had preferred Revision Petition Nos. 156/04, 157/04 and 189/04 before the State Commission, Haryana. Surprisingly, on 17th March, 2005, the State Commission dismissed the three Revision Petitions filed by the University challenging the interim and arbitrary orders passed by the District Forum, by only observing that there was no ambiguity in the impugned directions issued by the District Forum.

2. HENCE , the aforesaid three Revision Petitions. Now, we would refer to the law settled by the Apex Court in various judgments to the effect that such interim orders are detrimental to education and its efficient management. As a matter of course, such interim orders should not be passed, as they are aberrations and it is subversive of academic discipline. In *Regional Officer, CBSE v. Sheena Pethambaran*, (2003) 7 SCC 719, at page 725. The Supreme Court has observed This Court has on several occasions earlier deprecated the practice of permitting the students to pursue their studies and to appear in the examination under the interim orders passed in the petitions. In most of such cases it is ultimately pleaded that since the course was over or the result had been declared, the matter deserves to be considered sympathetically. It results in very awkward and difficult situations. Rules stare straight into the face of the plea of sympathy and concessions, against the legal provisions. In the case of *C.B.S.E. & Anr. v. P. Sunil Kumar & Ors.* " (1998) 5 SCC 377, the institutions whose students were permitted to undertake the examination of the Central Board of Secondary

Education were not affiliated to the Board, hence the students were not entitled to appear in the examination. They were, however, allowed to appear in the examination under the interim orders granted by the High Court in contravention of the rules and regulations of the Board. The High Court while considering the matter sympathetically had not interfered. In that context the Supreme Court observed: But to permit students of an unaffiliated institution to appear at the examination conducted by the Board under orders of the Court and then to compel the Board to issue certificates in favour of those who have undertaken examination would tantamount to subversion of law and this Court will not be justified to sustain the orders issued by the High Court on misplaced sympathy in favour of the students. In the case of *Guru Nanak Dev University v. Parminder Kr. Bansal* " (1993) 4 SCC 401 the Supreme Court observed that such interim order is subversive of academic discipline. The relevant observations are as under: We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. The courts should not embarrass academic authorities by themselves taking over their functions.

3. YET in another case i.e. in the case of *A.P. Christians Medical Educational Society vs. Govt. of A.P.* "(1986) 2 SCC 667 the Supreme Court held that: 10. We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws. The above-referred matters relate to the admission and examination of B.D.S. or MBBS courses. In the case of *State of Tamil Nadu vs. St. Joseph Teacher's Training Institute* (1991) 3 SCC 87 the Supreme Court observed that the direction of admitting the students of unauthorised educational institutions and permitting them to appear at the examination has been looked on with disfavour and the students of unrecognised institutions who are not legally entitled to appear at the examination conducted by the Educational Department of the Government cannot be allowed to sit at the examination and the High Court committed an error in granting permission to such students to appear at the public examination.

In the case of *Central Board of Secondary Education vs. Nikhil Gulati* (1998) 3 SCC 5, the Apex Court deprecated the practice followed by the High Court to issue direction and also observed that such aberrations should not be treated as a precedent in future.

4. IN *Krishna Priya Ganguly v. University of Lucknow* " (1984) 1 SCC 307, the Supreme Court observed: whenever a writ petition is filed provisional admission

should not be given as a matter of course on the petition being admitted unless the court is fully satisfied that the petitioner has a cast-iron case which is bound to succeed or the error is so gross or apparent that no other conclusion is possible. In *State of Maharashtra v. Vikas Sahebrao Roundale* - (1992) 4 SCC 435, it was held that the students of unrecognized and unauthorized educational institutions could not have been permitted by the High Court on a writ petition being filed to appear in the examination and to be accommodated in recognized institutions. The Court observed: 12. Slackening the standard and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the education. In view of the aforesaid settled law, the Revision Petition are allowed. The impugned orders dated 2.8.2004, 4.10.2004, 21.12.2004 passed by the District Forum which are confirmed by the State Commission in Revision Petition No. 156 of 2004, 157 of 2004 and 189 of 2004 are set aside by holding that those orders are on the face of it illegal and arbitrary. Revision Petitions are disposed of accordingly. There shall be no order as to costs.

Firstly, the District Forum on 29th March, 2005 allowed the complaint No. 536/04 by holding that a sympathetic view was needed in the matter, particularly, when the Complainant is a woman who has a long future before her. The Petitioners were directed to treat the Complainant as a regular student of the B.D.S.; they were also directed to pay a compensation of Rs.50,000/- and costs of Rs.5,000/- on account of litigation expenses. That order was challenged by the Petitioners before the State Commission by filing appeal No 743/05. Again, by order dated 30th May, 2005, the State Commission, Haryana, observed that no ground was made out for granting stay, hence the application for interim relief was rejected. That order is challenged by the Petitioner by filing Revision Petition No. 2140 of 2005 and operation of that order was stayed.

5. THEREAFTER , the appeal was heard on merits by the State Commission and the State Commission negated the contention of the Petitioner " University that in such circumstances Complainant was not a consumer within the meaning of the Consumer Protection Act. The State Commission held that the "Complainant could be held to be a "consumer" as she has hired services of the University for consideration. For this, the State Commission placed reliance upon the decision of the National Commission in the case of *Bhupesh Khurana and Ors. Vs. Vishwa Budha Parishad and Ors.*, 2001 JRC 240 wherein it was held that imparting of education by an educational institution for consideration falls within the ambit of service as defined in the Consumer Protection Act. Fees are paid for services to be rendered by way of imparting education by the educational institutions. If there is no rendering of service, question of payment of fee would not arise. The complainants had hired the services of the respondents for consideration so they are consumers as defined in the Consumer Protection Act. In that case reliance was placed upon the observation of the Apex Court in *Bangalore Water Supply and Sewerage Board v. A. Rajappa and Others* (AIR 1978 SC 548 at page 583): "In the case of the University or an educational institution, the nature of

activity is, exhypothesis, education which is a service to the community. Ergo, the University is an industry".

Hence, the Commission held that imparting of education by an educational institution for consideration falls within the ambit of "Service" as defined in the Consumer Protection Act. Fees are paid for services to be rendered by way of imparting education by the educational Institutions. If there is no rendering of service, question of payment of fee would not arise. The Complainants had hired the services of the Respondent for consideration so they are consumers as defined in the Consumer Protection Act.

6. THEREAFTER , the State Commission discussed the eligibility condition for seeking admission to BDS course for the session 2003-04, which is as under: a) Senior School Certificate Examination (10 + 2) of Board of School Education, Haryana or an examination recognized as equivalent thereto with at least 50% marks in English and 50% marks in Physics, Chemistry and Biology taken together in qualifying examination On the basis of the said condition, the State Commission dismissed the complaint on the ground that the Complainant has not fulfilled the eligibility criteria laid down in the prospectus provided for the admission to the BDS course for the session 2003-04. The State Commission arrived at the conclusion that certificate issued by the CBSE dated 30th May, 2003 reveals that Complainant has been declared successful in Senior Secondary School examination held in the year 2003, but the subject physics is not mentioned which indicates that she has failed in the said subject. Against the finding recorded by the State Commission that the Complainant was a consumer, this Revision Petition is filed. A. Whether rendering of education can be held as service for consideration? This question is to be answered by deciding two parts, namely: (i) Whether performance of statutory duties by a University or College in laying down criteria/rules/regulations for conducting examinations, eligibility criteria for permitting the student to appear in the examination or declaration of the results of a student who appeared in the examination and such other activities, can be considered to be rendering of service for fees? AND (II) Secondly, whether giving of admissions to the students in a school/college/institution/University by recovering fees and in such cases if there is any dispute with regard to the validity of such admission or illegality, irregularity committed by such institution in giving admissions, on the part of the school/college/institution/University can be considered to be rendering of service? B. The aforesaid questions are to be decided in the context of definition of the words "consumer", "service" and "deficiency" under the Consumer Protection Act, 1986. Under the Consumer Protection Act, 1986, the word "consumer", is inter alia, defined under Section (2)(1)(d) (ii) to mean a person who hires or avails of any service for consideration which has been paid or partly paid and partly promised, etc. Thereafter, Sec.2(1)(o) defines the meaning of the word "service" to mean a service of any description which is made available to potential users. The next relevant definition is meaning of the word "deficiency" as defined in Sec.2(1)(g), which means, "any fault, imperfection, shortcoming or inadequacy in the quality,

nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service".

The aforesaid expressions are in wide terms and are also interpreted in the same way so as to render justice to the consumers. Undisputedly, a University or College is required to carry out number of activities for its administration and such activities are severable from its activity of imparting education by recovering fees. The recovery of fees for granting admission is an accepted reality. For this purpose, we would refer to a few leading judgments on this aspect: In the case of *Unni Krishnan, J.P. & Ors. Vs. State of Andhra Pradesh & Ors.* " (1993) 1 SCC 645 while interpreting Article 19(1)(g) of the Constitution, which provides that citizens have right to practice any profession, or to carry on any occupation, trade or business observed (pr.196, 197 and 204) thus: The cost of education may vary, even within the same faculty, from institution to institution. The facilities provided, equipment, infrastructure, standard and quality of education obtaining may vary from institution to institution. The court cannot certainly do this. It must be done by Government or University or such other authority as may be designated in that behalf. Even so, some questions do arise " whether cost-based education only means running charges or can it take in capital outlay? Who pays or who can be made to pay for establishment, expansion and improvement/diversification of private educational institutions? Can an individual or body of persons first collect amounts (by whatever name called) from the intending students and with those monies establish an institution " an activity similar to builders of apartments in the cities? How much should the students coming in later years pay? Who should work out the economics of each institution? Any solution evolved has to take into account all these variable factors. But one thing is clear: commercialisation of education cannot and should not be permitted. The Parliament as well as State Legislatures have expressed this intention in unmistakable terms. Both in the light of our tradition and from the standpoint of interest of general public, commercialisation is positively harmful; it is opposed to public policy. As we shall presently point out, this is one of the reasons for holding that imparting education cannot be trade, business or profession. 197. While we do not wish to express any opinion on the question whether the right to establish an educational institution can be said to be carrying on any occupation within the meaning of Article 19(1)(g), " perhaps, it is " we are certainly of the opinion that such activity can neither be a trade or business nor can it be a profession within the meaning of Article 19(1) (g). Trade or business normally connotes an activity carried on with a profit motive. Education has never been commerce in this country. Making it one is opposed to the ethos, tradition and sensibilities of this nation. The argument to the contrary has an unholy ring to it. Imparting of education has never been treated as a trade or business in this country since time immemorial. It has been treated as a religious duty. It has been treated as a charitable activity. But never

as trade or business. We agree with Gajendragadkar, J. that education in its true aspect is more a mission and a vocation rather than a profession or trade or business, however wide may be the denotation of the two latter words (See University of Delhi.- AIR 1963 SC 1873)

204. We must, however, make it clear, and which is of crucial importance herein, that the right to establish an educational institution does not carry with it the right to recognition or the right to affiliation. In Ahmedabad St. Xaviers College Society v. State of Gujarat [(1974) 1 SCC 717] it has been held uniformly by all the nine learned Judges that there is no fundamental right to affiliation. Ray, C.J., stated that this has been the consistent view of this Court. They also recognised that recognition or affiliation is essential for a meaningful exercise of the right to establish and administer educational institutions. Recognition may be granted either by the Government or any other authority or body empowered to accord recognition. Similarly, affiliation may be granted either by the University or any other academic or other body empowered to grant affiliation to other educational institutions. In other words, it is open to a person to establish an educational institution, admit students, impart education, conduct examination and award certificates to them. But he, or the educational institution has no right to insist that the certificates or degrees (if they can be called as such) awarded by such institution should be recognised by the State " much less have they the right to say that the students trained by the institution should be admitted to examinations conducted by the University or by the Government or any other authority, as the case may be. The institution has to seek such recognition or affiliation from the appropriate agency. Grant of recognition and/or affiliation is not a matter of course nor is it a formality. Admission to the privileges of a University is a power to be exercised with great care, keeping in view the interest of the general public and the nation. It is a matter of substantial significance " the very life-blood of a private educational institution. Ordinarily speaking, no educational institution can run or survive unless it is recognised by the Government or the appropriate authority and/or is affiliated to one or the other Universities in the country. Unless it is recognised and/or affiliated as stated above, it's certificates will be of no use. No one would join such educational institution. As a matter of fact, by virtue of the provisions of the U.G.C. Act, noticed hereinabove, no educational institution in this country except a University is entitled to award degrees. It is for this reason that all the private educational institutions seek recognition and/or affiliation with a view to enable them to send the students trained by them to appear at the examinations conducted by the Government/University. The idea is that if such students pass the said examination, the Government/University will award its degree/diploma/certificate to them. These educational institutions follow the syllabus prescribed by the Government/University, have the same courses of study, follow the same method of teaching and training. They do not award their own degrees/qualifications. They prepare their students for University/Government examinations, request the University/Government to permit them to appear at the examinations

conducted by them and to award the appropriate degrees to them. Clearly and indubitably, the recognised/affiliated private educational institutions, supplement the function performed by the institutions of the State. Theirs is not an independent activity but one closely allied to and supplemental to the activity of the State. In the above circumstances, it is idle to contend that imparting of education is a business like any other business or that it is an activity akin to any other activity like building of roads, bridges etc. In short, the position is this: No educational institution except a University can award degrees (Sections 22 and 23 of the U.G.C. Act). The private educational institutions cannot award their own degrees. Even if they award any certificates or other testimonials they have no practical value inasmuch as they are not good for obtaining any employment under the State or for admission into higher courses of study. The private educational institutions merely supplement the effort of the State in educating the people, as explained above. It is not an independent activity. It is an activity supplemental to the principal activity carried on by the State. No private educational institution can survive or subsist without recognition and/or affiliation. The bodies which grant recognition and/or affiliation are the authorities of the State. In such a situation, it is obligatory " in the interest of general public " upon the authority granting recognition or affiliation to insist upon such conditions as are appropriate to ensure not only education of requisite standard but also fairness and equal treatment in the matter of admission of students. Since the recognising/affiliating authority is the State, it is under an obligation to impose such conditions as part of its duty enjoined upon it by Article 14 of the Constitution. It cannot allow itself or its power and privilege to be used unfairly. The incidents attaching to the main activity attach to supplemental activity as well. Affiliation/recognition is not there for anybody to get it gratis or unconditionally. In our opinion, no Government, authority or University is justified or is entitled to grant recognition/affiliation without imposing such conditions. Doing so would amount to abdicating its obligations enjoined upon it by Part III; its activity is bound to be characterised as unconstitutional and illegal. To reiterate, what applies to the main activity applies equally to supplemental activity. The State cannot claim immunity from the obligations arising from Articles 14 and 15. If so, it cannot confer such immunity upon its affiliates. Accordingly, we have evolved " with the help of the counsel appearing before us and keeping in view the positive features of the several Central and State enactments referred to hereinbefore " the following scheme which every authority granting recognition/affiliation shall impose upon the institutions seeking such recognition/affiliation.

7. FROM the aforesaid paragraphs, it is clear that a person has a right to establish an educational institution but such institution does not carry with it the right to recognition or right to affiliation. That is to say that it is open to a person to establish an educational institution, admit students, impart education, conduct examination and award certificates to them. However, the recognition or affiliation is essential for a meaningful exercise of the right to establish and

administer educational institutions. The institution has to seek recognition or affiliation from the appropriate agency. Grant of such recognition or affiliation from the appropriate agency is not a matter of course nor is it a formality. If the institution is recognized and its student pass the examination the Government/University will award its degree/diploma certificate to them. Such educational institutions have to follow the syllabus prescribed by the Government/University and follow the same method of teaching and training as prescribed. On the request of such institutions, the University/Government may permit the students trained in such institutions, to appear in the examination conducted by them and to award appropriate degrees to them. For this purpose, the Government or University has to administer such functions on the basis of the statutory rules or regulations framed by it. By discharging such function, it cannot be said that the said functions are discharged by the Government/university or institutions by charging fees.

8. IN our view, a student who appears in the examination conducted by the University cannot be held to be a consumer as defined under Section 2(1)(b) read with Section 2(1)(o). Such a person does not hire or avail of the services of University or the Board for consideration. On the contrary, he appears in the examination voluntarily for the purpose of getting degree or diploma and for evaluation of his merit with regard to his studies during the course of a year or years. The law on the subject is settled by the decisions of this Commission. In the case of *Chairman, Board of Examination Vs. Mohideen Abdul Kader, II* (1997) CPJ 49 (NC), this Commission dealing with the same contention observed thus: What the Commission has held in the earlier cases is that a University or the Board in conducting public examination, evaluating answer papers, announcing the results thereof and thereafter conducting re-checking of the marks of any candidate on the application made by the concerned candidate is not performing any service for hire and there is no agreement of hiring of any service involved in such a situation as contemplated by Sec.2(1)(o) of the Act. A candidate who appears for examination cannot be regarded as a person who had hired or availed of the services of the University or Board for consideration. That judgment was followed by this Commission in *Praveen Rani Vs. Punjab School Education Board* (Revision Petition No. 2268 of 2000, reported as III (2004) CPJ 70 (NC), and the complaint was dismissed by holding that the Complainant was not the consumer within the meaning of Consumer Protection Act, 1986. The Commission also relied upon the following observation made by the Apex Court in *Unnikrishnan Vs. State of A.P.* (1993) 1 SCC 645: Education has never been commerce in this country. Making it one is opposed to the ethos and traditions and sensibilities of this nation. The argument to the contrary has an unholy ring to it. Imparting of education has never been treated as a trade or business in this country since time immemorial. It has been treated as a religious duty. Similarly, in the case of *Registrar, University of Bombay Vs. Mumbai Grahak Panchayat* (First Appeal No. 284 of 1992,) reported as I(1994) CPJ 146 (NC), this Commission observed that consistently the National Commission has taken the view that a University while

valuing the answer papers or undertaking the re-valuation of answer papers or the re-checking of marks awarded to a candidate at the instance of a candidate who has appeared for examination is not performing a "service" which had been hired or availed of for consideration. Further, in the case of *Ex.Sub.Sachida Nand Sharma Vs. Chairman, C.B.S.E.*, reported as 2004 CTJ 39 (CP) (NCDRC), after considering various judgments this Commission observed that the pith and substance of the judgments rendered by the Commission was that the institutions holding examinations are not rendering any service as contemplated under the Consumer Protection Act, 1986. Similar view is taken in *Alex J. Rebello Vs. Vice-Chancellor, Bangalore University & Ors.* I(2003) CPJ 7 (NC). From the aforesaid discussion, it is to be held that a University while conducting examination, decide the eligibility criteria of the student who appear in the examination, evaluating the answer papers or re-checking of the marks awarded to the student is performing a statutory duty and is not rendering service on hire for a consideration of fees.

9. HOWEVER , other part of education is, namely, running/managing of schools/ colleges/institutions by recovering fees is, at present, undoubtedly for commercial purpose. On occasions lakhs of Rupees are recovered from the students before granting admission to a particular course, even though, the Course is not recognised by the University or by the authority giving such recognition. For illustration: Medical Council of India has not recognised a medical course run by a particular institution. Yet, such institution gives admission by recovering large amount of fees. This would be trade, commerce or business. In context of the aforesaid aspect, we would now consider the decision rendered in *Bhupesh Khurana & Ors. Vs. Vishwa Buddha Parishad & Ors.*, Original Petition No.168 of 1994 decided in 29.9.2000 reported as 2001 (2) CPJ 72 = (2001) JRC 240. In that case, 11 students who have passed 12th standard examination filed complaints contending that they on the basis of the advertisement in the name of Buddhist Mission Dental College and Hospital established by Vishwa Buddha Parishad, applied for admission to the Dental College. In the advertisement issued it was categorically and clearly written that the College is under Magadh University, Bihar and the Dental Council of India, New Delhi has recognised the same. This was a false averment. In that set of circumstances, the Commission held that imparting of education by an educational institution for consideration falls within the ambit of "Service" as defined in the Consumer Protection Act. Fees are paid for services to be rendered by way of imparting education by the educational Institutions. If there is no rendering of service, question of payment of fee would not arise. The Complainants had hired the services of the Respondent for consideration so they are consumers as defined in the Consumer Protection Act. For this, the Commission relied upon the observation of the Apex Court in *Bangalore Water Supply and Sewerage Board v. A. Rajappa and Others* (AIR 1978 SC 548 at page 583): "In the case of the University or an educational institution, the nature of activity is, exhypothesis, education which is a service to

the community. Ergo, the University is an industry".

10. HENCE , the Commission held that imparting of education by an educational institution for consideration falls within the ambit of "Service" as defined in the Consumer Protection Act. Fees are paid for services to be rendered by way of imparting education by the educational Institutions. If there is no rendering of service, question of payment of fee would not arise. The Complainants had hired the services of the Respondent for consideration so they are consumers as defined in the Consumer Protection Act. Thereafter, this Commission held that it was a case of obvious misrepresentation on behalf of the Respondents and it tantamounts to unfair trade practice. The Commission also observed that as the institution was not recognised, the Complainants lost their two years of study, they have incurred expenses by staying in the hostel, for purchase of books and other miscellaneous expenses. Therefore, it directed the College to refund the amount of expenses and fees received by it with interest. We agree with the ratio laid down in the aforesaid judgment. However, it is to be stated that observations made in Bangalore Water Supply and Sewerage Board (Supra) is solely on the basis of meaning of the expression "industry" under the Industrial Disputes Act as observed in the case of Unni Krishnan (paragraph 200) (Supra). We have also to accept the reality that some of the private educational institutions are commercialised. They charge heavy fees and also there is a prevalent practice of recovering donations on one or other pretext. On occasions, even though the institutions are not recognised or a particular course is not recognised by the University/Government, yet, they start recovering fees by false representation and/or by misleading advertisements. Thereafter, when the students are not permitted to appear in the examination dispute arises. Those students who suffer are entitled to refund of fees paid along with compensation from such institution. Further, when the students are not permitted to appear in the examination on the ground that the institution was not recognised or that the students were declared ineligible to be admitted to the course, in such cases it would amount to unfair trade practice by the institution/college. Such students suffer heavy loss in terms of money and precious period of their study and years of youth. For this such institutions should be held liable to pay punitive damages. However, certain services rendered by an educational institution by receiving fees are totally different in nature from the statutory functions which are to be discharged by the University, such as, conducting examination; checking of the answer books; evaluation of the marks or declaring of results; with regard to deciding of eligibility criteria or for admission in the classes or appearing to the examination, etc. Hence (i) the first part of the services in granting admission by recovering fees is on the basis of the contract of getting education in an institution or college by payment of fees, and (ii) the second part is the function of the University which is a statutory duty and does not depend upon the contract or of hiring of services of educational institutions.

11. THE aforesaid finding is also supported by the decision of the Apex Court in P.A. Inamdar Vs. State of Maharashtra (2005) 6 SCC 537 wherein the Court has

observed that one cannot shut eyes to the hard realities of commercialization of education and evil practice being adopted by many institutions to earn large amounts for their private or selfish ends. In paragraph 6 and 140, the Court held as under: 6. Education used to be charity or philanthropy in the good old times. Gradually it became an occupation. Some of the judicial dicta go on to hold it as an industry. Whether to receive education is a fundamental right or not has been debated for quite some time. But it is settled that establishing and administering of an educational institution for imparting knowledge to students is an occupation, protected by Article 19(1)(g) and additionally by Article 26(a), if there is no element of profit generation. As of now, imparting education has come to be a means of livelihood for some professionals and a mission in life for some altruists.

140. Capitation fee cannot be permitted to be charged and no seat can be permitted to be appropriated by payment of capitation fee. Profession has to be distinguished from business or a mere occupation. While in business, and to a certain extent in occupation, there is a profit motive, profession is primarily a service to society wherein earning is secondary or incidental. A student who gets a professional degree by payment of capitation fee, once qualified as a professional, is likely to aim more at earning rather than serving and that becomes a bane to society. The charging of capitation fee by unaided minority and non-minority institutions for professional courses is just not permissible. Similarly, profiteering is also not permissible. Despite the legal position, this Court cannot shut its eyes to the hard realities of commercialisation of education and evil practices being adopted by many institutions to earn large amounts for their private or selfish ends. If capitation fee and profiteering is to be checked, the method of admission has to be regulated so that the admissions are based on merit and transparency and the students are not exploited. It is permissible to regulate admission and fee structure for achieving the purpose just stated.

12. HENCE , we arrive at the conclusion that: (i). Performance of statutory duties by a University or College in laying down criteria/rules/regulations for conducting examinations, eligibility criteria for permitting the student to appear in the examination or declaration of the results of a student who appeared in the examination and such other activities, cannot be considered to be hiring of service for fees. Those are statutory functions not depending upon the contract between the parties. The services which are to be rendered on the basis of the statutory provisions by the University/educational institution cannot be construed as rendering of service for consideration in the form of fees. (ii). Giving of admissions to the students in a school/college/institution/University by recovering fees and in such cases if there is any dispute with regard to the validity of such admission or illegality, irregularity committed by such institution in giving admissions, such dispute would be covered under the Consumer Protection Act, 1986. This is on the basis of contract between the parties, i.e. students and the institution, and is based on the consideration (fees) for rendering education. Such students on the basis of Section 2(1)(d)(ii) read with

Section 2(1)(o) would be hirer of service for consideration and hence would be consumer. Further, deficiency as defined under Section 2(1)(g) would be apparent as this would be a fault/shortcoming in nature and manner of performance which is required to be maintained by or under any law.

In the result, the Revision Petition Nos. 2140/05 and 614/06 are disposed of accordingly. There shall be no order as to costs. Revision Petition No.1933-34 of 2005: Parul Midha, the complainant (Respondent herein) filed complaint No.466/03 before the District Forum, Rohtak contending that the petitioner-University be directed to grant her admission in B.Ed (Regular) Course. The District Forum by its interim order dated 14.10.2003 directed the University to grant admission to the Complainant in B.Ed (Regular) Course. That interim order was challenged by the Petitioner before the State Commission by filing Revision Petition No. 203/2003. While confirming the interim order passed by the District Forum the State Commission in its order dated 6.4.2005 observed: We hardly find any ambiguity in the impugned order vide which the District Forum had issued interim direction to grant admission to the complainant in B.Ed (Regular) Course after completing the required formalities, subject to the final decision of the complaint. Against this order of the State Commission, the Petitioner has filed Revision Petition No.1933/2005 before this Commission. Again on an application filed by the Complainant, the District Forum by its order dated 16.7.2004 directed the Petitioner to declare the result of the complainant provisionally and further to issue provisional migration Certificate and to deliver the original certificates deposited with it to the complainant. The Petitioner filed Revision Petition No.105/2004 against the order of the District Forum before the State Commission. The State Commission confirmed the order of the District Forum by its order dated 6.4.2004 and dismissed the revision petition filed by the Petitioner. Hence the Petitioner filed Revision Petition No.1934/2005 before this Commission.

13. FOR the reasons recorded in the case of Ruchika Jain in the above Revision Petitions, (a) the impugned interim orders dated 14.10.2003 passed by the District Forum in complaint No.466/03 and confirmed by the State Commissions in R.P. No. 2003 by its order dated 6.4.2005, directing the University to grant admission to the complainant in B.Ed. (Regular) Course after completing the required formalities, subject to the final decision of the complaint, and (ii) impugned interim orders dated 16.7.2004 passed by the District Forum in complaint No.466/03 and upheld by the State Commission by its Order dated 6.4.2005 in Revision Petition No.105/2004 directing the University to declare the result of the complainant provisionally and further to issue provisional Migration Certificate and to deliver the original certificates deposited with the University at the time of taking admission, are set aside. The Revisions petitions are allowed accordingly. There shall be no order as to costs.