

(2005) 09 NCDRC CK 0057

In the National Consumer Disputes Redressal Commission

Deputy Registrar Colleges

APPELLANT

Vs

RUCHIKA JAIN

RESPONDENT

Date of Decision : 07-09-2005

Acts Referred:

Citation : 2005 2 CPC 450 : 2005 4 CPJ 240 : 2006 1 CLT 148

Hon'ble Judges : R.C.KATHURIA , BANARSI DAS , SHAKUNTLA YADAV J.

Judgement

1. DEPUTY Registrar (Colleges), M.D. University and Controller of Examinations, M.D. University, Rohtak appellants -opposite parties Nos. 2 and 4 have filed the present appeal under Section 15 of the Consumer Protection Act, 1986 (hereinafter referred to as the Act, 1986) against the order dated 29.3.2005 passed by District Forum, Faridabad in Complaint No. 536 of 2004, whereby while accepting the complaint filed by the respondent -complainant, the following directions have been issued to the appellant -opposite parties. "(1) The respondents are ordered to withdraw the letter by which they have cancelled the admission of the complainant to the B.D.S. class. This letter is declared to be null, void and invalid. The respondents are further ordered to treat the complainant as regular student of B.D.S. class from the date of her admission treating her to be a regular student to B.D.S. class as the other qualified candidates of B.D.S. class are being treated. The respondents are also ordered to pay Rs. 50,000 on account of mental agony, harassment to the complainant. The respondents are also ordered to pay Rs. 5,000 on account of litigation expenses. The respondents are also ordered to comply with the order of the Forum within 30 days after the receipt of the copy of the present order. Copy of the present order be sent to the parties concerned free of costs."

2. THE essential facts for deciding the present appeal need to be focused briefly. Ruchika Jain complainant had taken admission in B.D.S. course for the first year against the management quota in Sudha Rustogi Dental Science Research, Kheri Modh, Village Bhopani, Faridabad which is recognized and affiliated by M.D. University. The criteria for admission to the B.D.S. course as well as other

courses of M.B.B.S. and BAMS has been prescribed for common entrance examination for the session 2003 -04 in the prospectus issued by the M.D. University. The case of the complainant is that she secured 60% marks in English whereas her total aggregated marks in Chemistry, Physics and Biology were 50% of the total aggregated and in this manner she fulfilled all the terms and conditions of the admission to the B.D.S. course for the first year as laid down in the prospectus. She was accordingly given admission in the said course for the session 2003 -04 by the college. Thereafter, she attended the College and her attendance was complete in all respect and for that reason opposite party No. 3 was required to send her name to the opposite party No. 2 for lodging the roll number so as to enable her to take the examination which was to commence on 2.8.2004 and paper of Anatomy was to be held at 2.00 p.m. on that day at the examination centre of the aforesaid Sudha College. However, the complainant did not receive the roll number for the said examination, rather, she came to know from the letter received from the college wherein it was maintained that the college has made admission in accordance with the rules contained in the prospectus and were under obligation to inform the university in this regard and it had received a letter bearing endorsement No. 3207 -9 dated 19.7.2004 from the university regarding her ineligibility to take the examination in B.D.S. course for the first year. Claiming that her career could not be put to loss at the hands of the college as the college has failed to inform the university in time and she could not be made to suffer on this account. Alleging that there was a deficiency in service on the part of the opposite parties and she being a consumer filed the present complaint on 2.8.2004 with the prayer that the opposite parties be directed to allow her to appear in the examination of B.D.S. course for the first year for the session 2003 -04 which was to be commenced at 2.00 p.m. on that day at the examination centre located at the college aforesaid. The District Forum on the same day without going to the merits of the controversy raised, directed the appellants to provisionally allow the complaint to sit in the examination of B.D.S. course for the first year which was to be held on that day after issuing the roll number. It appears that during the pendency of the complaint a letter bearing No. R & S/R - 21/6920 dated 9.12.2004 was communicated to the complainant whereby her admission to the B.D.S. course was cancelled. Accordingly, she prayed that cancellation of the admission being illegal, arbitrary, unconstitutional, without jurisdiction and against the public policy, the same be declared illegal and null and void. She also claimed damages to the extent of Rs. 11 lacs against the appellants. In pursuance of the notice served, opposite party Nos. 1, 2 and

3. FILED their joint written reply wherein they refuted the stand of the complainant. It was pleaded by them that the complainant has not passed the paper of Physics and had been declared failed in the theory and for that reason she was ineligible to take entrance examination for the session 2003 -04 for the B.D.S. first year course as detailed in the prospectus and the conditions laid down for eligibility of the admission are binding on all the parties concerned. The

admission has been granted to her illegally by the college under the management quota which is not binding on the university. They justified the action of the university for not issuing roll number to the complainant for taking first year B.D.S. examination. It was further stated that they informed the college about the ineligibility of the complainant before the commencement of the examination vide letter Nos. R & S/R -21/2004/1610 dated 20.3.2004 and R & S/R -21/2004/2202 dated 29.4.2004. They also supported the cancellation of the admission of B.D.S. first year course granted by opposite party No. 3 to the complainant. They further challenged the maintainability of the complaint on the ground that the complainant was not a consumer and the university has not hired any service to the complainant and for that reason the District Forum has no jurisdiction to entertain the complaint. Additionally, it was pleaded that the complaint is bad for non -joinder and mis -joinder of parties as no relief can be claimed without impleading the university as party to the complaint. It was further stated that the university could be sued through its Registrar/Vice Chancellor and Centre Superintendent Examination, Deputy Registrar and Controller of Examinations of M.D. University are not juristic persons and have wrongly been arrayed as opposite parties. 4. On the appraisal of the pleadings and documents produced by the parties, the District Forum accepted the complaint and issued the directions as noticed in the earlier part of the order. Aggrieved by the said order the present appeal has been filed by the appellants.

4. WE have heard Dr. Balram Gupta, learned Counsel representing the appellants and Mr. P.K. Srivastava, learned Counsel representing the respondent No. 1 at length. The sole question to be decided is whether the complainant fulfilled the eligibility condition for seeking admission in BDS course for the first year for the session 2003 -04. As per Clause B (ii) of Chapter -II "Eligibility Condition" of the prospectus. The relevant Clause reads as under: (ii) The candidate must have passed both the following examinations: (a) Senior School Certificate examination (10+2) of Board of School Education, Haryana or an examination recognized as equivalent thereto with atleast 50% marks in English and 50% marks in Physics, Chemistry and Biology taken together in qualifying examination." (b) xxx xxx xxx For fulfilling the above requirements it is a pre -requisite that the candidate should not only qualify the examination for the subjects mentioned above but also secured 50% marks in each subject. This is manifest from the scheme of the examination of C.B.S.E. as printed on the back side of the certificate Annexure A1. It has been provided therein that a candidate is required to secure 33% marks in theory and practical separately in order to pass the subject as a whole, which is further endorsed by the Grade -E given against the additional subject Physics which has been clarified vide instructions contained on the back side of the certificate as for "failed candidates". The certificate A1 further depicts that the complainant has not passed the subject Physics as she has been shown failed in theory part by writing words "FT". There is an apparent illegality in the approach of the District Forum as it has treated the complainant to have passed the subject Physics on the ground that the

marks 15, as against the secured 24 of the failed part of the theory has been added to the passed practical part of 29 marks and thus totalling the same as 44 marks. The District Forum has gone against the result declared by the Board and on this short ground, finding of the District Forum in this regard are not sustainable. Net result would be 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. It is well settled that the terms and conditions of the eligibility contained in the prospectus have to be construed strictly and is binding on all the parties.

5. DURING the course of arguments, the learned Counsel representing the respondent -complaint tried to come out of the above stated position by showing us the photo copy of the certificate issued by the C.B.S.E. dated 30.5.2003 wherein the complainant has been declared to have been passed in the Senior School Examination held in the year 2003. While making the submission, it has been totally ignored that it is shown that she has passed in the subjects English, Mathematics, Chemistry, Biology, Informatics Practical, Work Experience, Physical Health Education and General Studies. There is a conspicuous omission of the subject Physics. This certificate further strengthen the conclusion that she has failed in subject Physics in the examination held in March, 2003. Here a fact also needs to be noticed to the another certificate A2, which was produced from the side of the complainant, which shows that on 5.7.2004 the complainant had been declared as passed in the PUC (Senior Secondary) Examination held in 2004 included the subject Physics by the Directorate of Secondary Education, Doon International University, Raipur Chhattisgarh (India). This document clearly shows that the complainant was aware that she has not passed in the paper Physics held by the C.B.S.E. in the year 2003 and for that reason she again appeared in the examination conducted by the Doon International University, Raipur, Chhattisgarh. Thus, this document also falsified her stand. Therefore, the college should not have granted admission on 30.9.2003 to the complainant in BDS course as the complainant did not fulfil the above stated eligibility condition. In this regard, reference may be made to the observations made by the Apex Court in *Saroj Rani and Others v. State of Haryana and Others*, 1993 (3) SLR 257, wherein it has been laid down that anything done or permitted to be done in detriment to the Acts, Rules, Regulations and terms and conditions of Brochure will not only be prejudicial to the interest of students so admitted but would adversely affect the requisite standard of higher education and training. It would prove counter productive and would not be in the interest of the society at large and frustrate the very purpose of the Act and the rules. It was further stated that the Court would not endorse illegal action of the authorities on compassionate ground alone. The ratio of the above mentioned case would fully apply to the facts of the present case as illegal action of the college in granting admission if upheld would have larger ramifications in the society as a whole.

6. THE learned Counsel representing the appellant has also pointedly urged before us that the District Forum should not have entertained the complaint as

this was not a consumer dispute which was required to be decided by the District Forum. Strength was sought from the observation made in the case. The Secretary, Madhyamik Shiksha Parishad, U.P. v. Km. Satya Roopa & Another, III (2000) CPJ 337=2000 (2) CPC 708. On the other hand, the learned Counsel representing the complainant has referred to the case Bhupesh Khurana and Others v. Voshwa Budha Parishad and Others, II (2001) CPJ 74 (NC)=2001 JRC 240 wherein the National Commission has held that "Imparting of education by an educational institution for consideration falls with 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 consumer as defined in the Consumer Protection Act. The above observation does not support the stand of the appellants and for that reason the submission so made in this regard has to be rejected. During the course of arguments, the objections were also taken to the filing of the complaint against the Deputy Registrar (Colleges) and Controller of Examinations, M.D. University. It was contended by the learned Counsel representing the appellant that the university can be sued through its Registrar / Vice Chancellor under the regulations of the university and as the Registrar and the Vice Chancellor have not been impleaded as party to the complaint, the complaint should have been rejected out -rightly on this ground. This submission could not be faulted during the course of arguments from the side of the complainant rather our attention was drawn to the written statement which was filed by the Registrar in answer to the amended complaint before the District Forum. Thus, it was the duty of the District Forum to have taken notice of the fact that the complaint was properly instituted against the necessary parties and for that reason it could not have proceeded with the complaint as the Registrar and the Vice Chancellor have not been impleaded as parties to the complaint.

7. LASTLY , it appears from the impugned order that the District Forum was influenced by the fact that the career of the student was involved and the university has taken a period of 10 months in cancelling the admission of the complainant. Needless to say an admission which is granted illegally and against the eligibility criteria laid down in the prospectus cannot be allowed to be upheld on the ground of sympathy.

8. FROM what ever angle the question is examined, the impugned order is not sustainable because of the patent illegality committed by the District Forum. Accordingly, we set aside the order dated 29.3.2005. While accepting the appeal, we dismiss the complaint. Appeal allowed.