

(2011) 02 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

Gandhi Vocational College

APPELLANT

Vs

Himanshi Jain

RESPONDENT

Date of Decision : 28-02-2011

Acts Referred:

Citation : 2011 0 NCDRC 109 : 2011 2 CPJ 23

Hon'ble Judges : Suresh Chandra J.

Final Decision : Petitions stand allowed

Judgement

1. THE challenge in this revision petition is to the common order dated 22.05.2010 passed by the M.P. State Consumer Disputes Redressal Commission, Bhopal (State Commission for short) dismissing the four separate appeals filed by the two OPs, (OPs 1 & 2) against the respective orders of the District Forum whereby the District Forum had directed both the OPs, petitioners herein, to pay compensation as well as cost in each case for the OPs having disallowed the concerned complainants to appear in the examination.

2. FOR the sake of convenience, the facts have been taken from the consumer complaint no.273 of 2008 which have been referred to by the State Commission as well in its impugned order. Other complaints are also on similar facts and circumstances. It is stated that the complainants got admission for the academic year 2007-2008 for the first semester for BCA in the OPs College as regular students. The examination was scheduled to be held on 14.02.2008 in which the students were to appear but since the OP-2 had not given the roll numbers on the ground that roll numbers were not sent by the OP-3 University, the students could not be admitted to the examination. However, on undertaking by the students, they were permitted to appear in the examination but their result was not declared. FOR this reason, the students approached the Collector and with his intervention, the College promised to give the results but still the results were not received. The students, therefore, filed a Writ Petition no.913 of 2008 before the High Court which directed the OP-3 University to declare the results of the petitioners and if they clear the examination, they should also be given benefit of

admission for further course. It was also clarified that for such of the students who had not appeared in the examination, the University may arrange special examination within a period of one month. Resultantly, the students were permitted to take the examination and were declared pass. Alleging deficiency in service and having suffered unnecessary harassment, the students/complainants filed their complaints before the District FORum for getting compensation. It was in the context of such complaints that the District FORum accepted the complaint against OPs -1 & 2 for deficiency in service and consequently awarded compensation jointly and severally against the two OPs along with cost. When the orders of the District FORum were carried in appeal before the State Commission by the OPs/petitioners herein, the same came to be dismissed and the orders of the District FORum were confirmed by the common impugned order. Learned counsel for the petitioners would assail the impugned order mainly on the strength of ratio laid down by the Honble Supreme Court in the case of Bihar School Examination Board Vs. Suresh Prasad Sinha [(2009) 8 Supreme Court Cases 483]. He submitted that a number of similar matters have been decided by the National Commission based on the celebrated ruling given by the Apex Court. Relying on this judgement, learned counsel referred to the following ratio laid down by the Honble Supreme Court:- Process of holding examinations, evaluating answer scripts, declaring results and issuing certificates are different stages of a single statutory non-commercial function. It is not possible to divide this function as partly statutory and partly administrative. When Examination Board conducts an examination in discharge of its statutory function, it does not offer its "services" to any candidate. Nor does a student who participates in examination conducted by Board, hire or avail of any service from the Board for a consideration. On the other hand, a candidate who participates in examination conducted by Board, is a person who has undergone a course of study and who requests the Board to test him as to whether he has imbibed sufficient knowledge to be fit to be declared as having successfully completed the said course of education; and if so, determine his position or rank or competence vis-`a-vis other examinees. The process is not therefore avilment of a service by a student, but participation in a general examination conducted by Board to ascertain whether he is eligible and fit to be considered as having successfully completed secondary education course. The examination fee paid by student is not the consideration for avilment of any service, but the charge paid for privilege of participation in the examination. The Act does not intend to cover discharge of a statutory function of examining whether a candidate is fit to be declared as having successfully completed a course by passing the examination. The fact that in the course of conducting of examination, or evaluation of answer scripts, or furnishing of marksheets or certificates, there may be some negligence, omission or deficiency, does not convert the Board into a service-provider for a consideration, nor convert the examinee into a consumer who can make a complaint under the Act. The Board is not a service provider and a student who takes an examination is not a consumer and consequently, complaint under the Act will not be maintainable against the Board.

Continuing his arguments, the counsel submitted that even though the students took admission in the OP College, the process of filling up of the forms, depositing of fees, allotment of roll numbers, holding of examinations, evaluation of answer sheets, declaration of results, issuance of certificates etc., are the stages which are necessarily controlled by the regulations of the university/statutory board. In this view of the matter, it would not be correct to say that while the consumer complaint is not maintainable against a university/statutory board, the same can be maintained against the OP College by holding it liable in respect of the statutory functions of the OP-7 University. In the circumstances, the counsel pleaded that the impugned order cannot be sustained in the eyes of law since it goes contrary to the ratio laid by the Apex Court.

3. JUSTIFYING and supporting the concurrent orders of the fora below accepting the complaint in question, learned counsel for respondents - 2, 4, 5 & 6 submitted that the compensation and the cost have been awarded against only the OP College because the ratio of the case relied upon by the petitioners covers non-maintainability of a consumer complaint against a statutory board/university and hence the same cannot be made applicable to the present petitions. The revision petitions filed by the petitioners are, therefore, liable for dismissal. Having heard the counsels for the parties and perused the record, we find that the present disputes are squarely covered by the ruling given by the Apex Court in S.P. Sinhas case (supra). There is no doubt in our mind that the OP College cannot be held liable in respect of alleged acts of omission or commission in regard to the discharge of statutory functions of the OP University which have been held to be not falling within the definition of consumer services. Applying the ratio of S.P. Sinhas case to the facts and circumstances of the present petition, the impugned orders of the fora below cannot be sustained in the eyes of law. Consequently, the revision petitions stand allowed and the impugned orders of the State Commission are hereby set aside with the parties bearing their own costs.