

(2007) 02 NCDRC CK 0043

In the National Consumer Disputes Redressal Commission

GUJRANWALA GURU NANAK INSTITUTE OF MANAGEMENT
AND TECHNOLOGY

APPELLANT

Vs

GITIKA KAPOOR

RESPONDENT

Date of Decision : 13-02-2007

Acts Referred:

Citation : 2008 3 CPJ 238

Hon'ble Judges : S.N.Aggarwal , Jasbir Kapoor J.

Final Decision : Appeal allowed

Judgement

1. -GITIKA Kapoor respondent was granted admission in the appellant College for MBA First Year in August 2005. She deposited a sum of Rs. 10,000 on 3. 8. 2005 and another amount of Rs. 20,700 on 10. 8. 2005. Due to family circumstances and medical reasons she could not attend the classes for which she gave information to the appellant College and surrendered the seat. She also filed an application for refund of this amount. The seat vacated by the respondent was filled by the appellant College by calling the candidate next in the merit below the respondent. The appellant College, however, did not refund the amount deposited by the respondent in spite of repeated requests. Hence she filed a complaint in the learned District Consumer Disputes Redressal Forum, Ropar (in short "district Forum").

2. THE appellants filed the written statement. Preliminary objections were pleaded and the case was also contested on merits. It was admitted that the respondent had sought admission in the appellant College in August 2005 in MBA First Year and that she had deposited a sum of Rs. 10,000 on 3. 8. 2005 and Rs. 20,700 on 10. 8. 2005. However, it was denied if she had given any intimation to the appellant College about her inability to attend the classes or if the seat vacated by the respondent was filled by the appellant College. Therefore, the respondent was not entitled to the refund of the amount as not only the appellant College has suffered but even the candidate next in the merit has also suffered for the seat. Hence dismissal of the complaint was prayed. The

respondent tendered her own affidavit Ex. CWI/a and the documents Ex. C-1 to Ex. C-10. The appellant College tendered affidavit Ex. RW-1 and documents Ex. R-1 and Ex. R-2.

On the basis of this evidence, learned District Forum vide impugned order dated 12. 9. 2006 accepted the complaint with costs of Rs. 2,000 and directed the appellant College to refund the amount deposited by the respondent.

3. HENCE the appeal. The record has been perused and the submissions have been considered.

4. THE factual position has not been denied that the respondent had sought admission in the appellant College and had deposited a sum of Rs. 10,000 on 3. 8. 2005 and Rs. 20,700 on 10. 8. 2005 as the admission fee. It may be that the respondent did not attend any class but the question is when the respondent informed the appellant College that she would not be attending the College and she was surrendering the seat to the appellant College for being filled by a candidate next in the merit below the respondent. The first letter placed on the file is dated 10. 11. 2005 (Ex. C-2) by which the father of the respondent informed the appellant College about the inability of his daughter Gitika Kapoor to attend the classes. The next letter is dated 5. 12. 2005 (Ex. C-3) and thereafter the letters dated 16. 12. 2005 (Ex. C-4), 27. 1. 2006 (Ex. C-5) and 17. 3. 2006 (Ex. C-6). In all these letters the father of the respondent had been making the earnest request to the appellant College for the refund of the amount deposited on behalf of the respondent with the appellant College. Although in the letter dated 10. 11. 2005 (Ex. C-2) it was stated by the father of the respondent that he had requested the Director of the appellant College personally many times on the subject and had also sent written request about two months ago but no such letter has been proved nor any date has been specified on which he orally requested the appellant College about the surrendering of seat by his daughter Gitika Kapoor respondent. Therefore, the assertion made in the letter dated 10. 11. 2005 (Ex. C-2) about the information given by the father of the respondent earlier to that to the Director of the appellant College is unbelievable and is a fictitious story. The respondent and her father have not alleged in any of these letters if the seat was filled by the appellant College out of any candidate lower in merit than the respondent after the said seat was vacated by the respondent. The appellant College has specifically denied if any timely information was given by the respondent to the appellant College about the surrendering of her seat or if the seat vacated by the respondent was ever filled by them.

5. IT means, therefore, that Gitika Kapoor respondent intentionally failed to attend the classes of the appellant College without giving any information to it. As a result, the seat occupied by the respondent remained vacant for whole of the academic session. Not only the appellant College suffered but including the candidate who was lower in merit than the respondent also suffered as he or she could not get admission in the appellant College.

6. IN this context, reference may be made to the judgment of Hon''ble National Commission reported as Ramdeobaba Engineering College v. Sushant Yuvraj Rode and Anr. , III (1994) CPJ 160 (NC), in which it was held by the Hon''ble National Commission as under: "3. This is a case where there has been no deficiency of service on the part of the revision petitioner Engineering College. The respondent complainant Shri Rode withdrew from the College to join another institute voluntarily and as such there was no deficiency in service on the part of the revision petitioner Engineering College. Non-refund of admission fee is not a deficiency in service. Admission fee is a consideration for admission and the service which the Engineering College was to render to the student in the matter of his pursuing studies in the college after admission. It is a quid pro quo for such service. "

Another judgment on the subject is of Hon''ble Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad reported as Pydah College v. E. Mohan Rao and Anr. , III (1998) CPJ 339, in which it was held by the Hon''ble Andhra Pradesh Commission as under: "16. From the rulings of the National Commission it follows that when a student voluntarily leaves an educational institution, there is no deficiency in service on the part of that educational institution so as to entitle that student for refund of fees already paid for the period he did not receive instruction because of his leaving the institution on his own volition. The rationale for this is that the educational institution is willing and ready to impart education but it is the student who is responsible for not receiving the service by leaving the institution abruptly. No equitable considerations weigh, under those circumstances, when in fact there is no deficiency in service. It is a fortiorari case when the prospectus of the educational institution places the position beyond doubt. The State Commissions are bound by the rulings of the National Commission in Chairman, Board of Examinations, Madras v. Mohideen Abdul Kader. "

It is, therefore, held that there was no deficiency in service on the part of the appellant College and the respondent is not entitled to the refund of the fee deposited by her. Accordingly this appeal is accepted and the impugned judgment dated 12. 9. 2006 is set aside.

7. THE arguments of learned Counsel for the parties in this case were heard on 8. 2. 2008 and the orders were reserved. Now, the orders be communicated to the parties. The appeal could not be decided within the statutory period because of heavy pendency and non-availability of the requisite Benches and infrastructure in the State Commission, for which the State Government has already been requested. Appeal allowed.