

(2008) 03 NCDRC CK 0006

In the National Consumer Disputes Redressal Commission

ICFAI UNIVERSITY

APPELLANT

Vs

SHAILENDRA LODHA

RESPONDENT

Date of Decision : 27-03-2008

Acts Referred:

Citation : 2008 2 CPJ 356

Hon'ble Judges : N.K.Jain , Neerja Singh J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal under Section 15 of the Consumer Protection Act, 1986 is filed by opposite party-University which has been directed to pay to the respondent-complainant the entire amount of Rs. 48,000 paid by the latter to the former for 18 months" MS (Finance) Course.

2. APPELLANT-"the Institute of Chartered Financial Analysts of India (for short "icfai") is a Hyderabad based centre for distant education and part of multi-State network of Universities registered under various State Legislations. The appellant is also having its study centre at Indore (M. P.). They are offering, amongst others, the MS (Finance) Programmes (leading to CFA Charter). It is no more in dispute that respondent-complainant while already registered as Article with the Institute of Chartered Accountants of India (for short "icai"), in January 2005 was allowed by the appellant-University to join the said MS (Finance) Course. Total fee prescribed for the course was Rs. 48,000 of which Rs. 10,000 were paid in cash by the respondent at the time of admission and for the remaining amount of Rs. 38,000 a few post-dated cheques were obtained from him. However, the respondent-complainant withdrew from the course in February 2005 i. e. within one month of his admission as he was informed by the ICAI that the students of CA Course are not allowed to pursue ICFAI course. Not only his request for refund of the fees was turned down by the appellant-University, proceedings under Section 138 of the Negotiable Instruments Act were also initiated against him as he had stopped payment of the cheques. The said proceedings were withdrawn only on his making cash payment of Rs. 38,000 to the appellant.

Respondent approached the Forum below claiming refund of his fee of Rs. 48,000 and also for damages. His complaint was resisted by the appellants on the ground that as per their rules the fees was not refundable. The appellant also challenged the territorial jurisdiction of the District Forum, Indore and it was contended that as per agreement between the parties all disputes were triable exclusively by Courts/forums at Hyderabad (A. P.). The Forum below negated both the contentions of the appellant and ordered for refund of the fees as aforesaid.

Taking the second objection (regarding jurisdiction) first, it may be noted at the outset that Section 11 of the Consumer Protection Act clearly provides that a complaint can be instituted in a District Forum within the local limits of whose jurisdiction the opposite party resides or carries on business or has a branch office or where the cause of action wholly or in part arises. In the case in hand not only the appellants are having their branch office/study centre at Indore, but the cause of action has also arisen wholly at Indore. So notwithstanding the said clause in the rules of the appellant-University, the respondent was entitled to institute his complaint in District Forum, Indore. The ratio of the decision of the Supreme Court in the case of *New Moga Transport Co. v. United India Insurance Co. Ltd. and Ors.*, III (2004) SLT 240=ii (2004) ACC 19 (SC)=ii (2004) CLT 203 (SC)=2005 (1) TAC 897 (SC), relied upon by the appellant is not available to the appellants in the instant case. The decision turns on interpretation of Sections 10 and 20 of the Code of Civil Procedure while the jurisdiction of the District Forum in the instant case, is to be determined under Section 11 of the Consumer Protection Act. The Forum below was, thus right in rejecting the appellants' objection and we see no reason to take different view of the matter.

3. COMING to the merits of the case as already stated the admission to the respondent in MS (Finance) Course was granted by the appellants even when the respondent has clearly disclosed in his admission form that he is registered as Article with the ICAI. Needless to say that the appellant-University must have been aware of the rules that a person already registered as Article is not allowed to pursue ICFAI Course. The deficiency on the part of appellant-University was, therefore, writ large and it was liable to refund the fees on respondent withdrawing from the said course. Even otherwise no service provider like the appellants can be allowed to forfeit the fees or consideration received in advance in case the student has not availed the service. As observed by this Commission in Appeal No. 707/2007 (*Professional Tutorial Education and training Services Limited v. Ku. Lagan Verma*) decided on 12. 10. 2007, "the term "fees once paid not refundable" is unconscionable and the appellant cannot be allowed to take aid of the said term to forfeit the entire fees. In the case in hand also, the appellant-Institute cannot be allowed to take advantage of its own wrong (by giving admission to an ineligible candidate) and is, therefore, bound to refund the fees charged by it from the respondent. The order passed by the District Forum, therefore, calls for no interference. In the result, the appeal fails and is dismissed with cost Rs. 1,000. Appeal dismissed.