

(2006) 03 NCDRC CK 0116

In the National Consumer Disputes Redressal Commission

INDIRA GANDHI NATIONAL OPEN UNIVERSITY

APPELLANT

Vs

INDRAJEET DEVNATH

RESPONDENT

Date of Decision : 01-03-2006

Acts Referred:

Citation : 2006 4 CPJ 13 : 2007 1 CLT 168

Hon'ble Judges : Sunil Kumar Garg , Sushma Tanwar , T.P.Gupta J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal under Section 15 of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act" of 1986") has been filed by the appellants-opposite party against the order dated 1.2.2003 passed by the learned District Forum, Jaipur-II, Jaipur in Case No. 1272/1999 by which the complaint filed by the complainant-respondent under Section 12 of the Act of 1986 was allowed in the manner that the appellants were directed to pay to the complainant respondent a sum of Rs. 25,000 as compensation for the deficiency in service in supplying course material in English instead of Hindi for Diploma in Computers in Office Management (D.C.O.) Course.

2. THE necessary facts giving rise to this appeal are as follows : THE complainant respondent had filed a complaint under Section 12 of the Act of 1986 before the District Forum, Jaipur-II, Jaipur on 7.10.1999 stating inter alia that he sought admission to the course of "Diploma In Computers in Office Management" (DCO) conducted by the appellants and deposited a sum of Rs. 2,800 as fee including registration fee. It was further stated in the complaint that the appellants were under the duty to make available the "course material" printed for DCO programme in Hindi medium and after holding an examination of the "Course" a certificate of "Diploma in Computers in Office Management" was to be awarded to him. It was further stated in the complaint by the complainant respondent that it was informed to him by the appellants that the "course material" for DCO was available in Hindi medium and, therefore, he sought admission and got registration No. 983460634 of the year 1998. It was further stated in the

complaint by the complainant respondent that the "course material made available to him was in English medium and inspite of his insistence for supply of the "course material" in Hindi medium it was not made available to him in Hindi medium and, therefore, he suffered mental and physical agony and thus, he claimed compensation under the following heads : A reply was filed by the appellants and their case was : (i) That the complainant respondent was not a consumer as defined in Section 2(1)(d) of the Act of 1986. (ii) That the terms and conditions as mentioend in the prospectus could not be binding on the parties as the information incorporated therein was an indication of the University's plans on the date of publication of the document (prospecs). Hence, it was submitted that no interference is called for and the present complaint deserves to be dismissed. After hearing both the parties, the learned District Forum, Jaipur-II, Jaipur through order dated 1.2.2003 allowed the complaint of the complainant respondent in the manner as indicated above holding inter alia: (i) That the complainant respondent was a consumer within the menaing of Section 2(1)(d) of the Act of 1986. (ii) That since in the prospectus it was specifically mentioned that the course would be available in Hindi also apart from English, therefore, by not making available the course material in Hindi, there was deficiency in service on the part of the appellants. Aggrieved from the said order dated 1.2.2003 passed by the learned District Forum, Jaipur-II, Jaipur this appeal has been filed by the appellants opposite party.

In this appeal, the following submissions have been made by the learned Counsel appearing for the appellants: (i) That the complainant respondent was not a consumer within the meaning of Section 2(1)(d) of the Act of 1986. (ii) That the terms and conditions of the prospectus are not binding and, therefore, if there was any deviation from the terms and conditions incorporated in the prospectus, that would not amount to deficiency in service on the part of the appellants. (iii) That the amount of compensation awarded by the District Forum to the complainant respondent was not just, proper and reasonable one.

On the other hand, the learned Counsel appearing for the complainant respondent has supported the impugned order of the learned District Forum.

3. WE have heard the learned Counsel for the appellants and the learned Counsel for the respondent and gone through the entire materials available on record. In this case, there is no dispute on the point that the complainant respondent had sought admission to the Diploma in Computers. in Office Management (DCO) "Course" conducted by the appellants for the session 1998-99 and for that, Rs. 2,800 were deposited by the complainant respondent.

4. THERE is also no dispute on the point that in the prospectus available on recod, there is a note in the manner "Also available in Hindi medium" and under the heading "Medium of Instruction", the following two conditions were incorporated : "(i) The medium of instruction that is followed when a programme is initially developed is English. However, IGNOU is working towards greater use of Hindi. (iii) The course material for the CIC and DCO programme is available in

English and Hindi medium."

Thus, from the prospectus, it is very much clear that the course of DCO was to be conducted by the appellants in Hindi also for those students who wanted Hindi medium. There is also no dispute on the point that the appellants had not conducted the course of DCO in Hindi medium for which the complainant respondent had grievances. The question for consideration is whether in the facts and circumstances just narrated above, the findings of the learned District Forum could be sustained or not. On point No. 1 whether complainant respondent was a consumer or not.

5. ON point whether the Complainant respondent would be treated as consumer or not, it may be stated that imparting of education by an Educational Institution for consideration falls within the ambit of "service" as defined under Section 2(1)(o) of the Act of 1986 and the students admitted for being imparted education for consideration could claim themselves to be consumers of the services of education as defined in Section 2(1)(d) of the Act of 1986 and in this respect, the decision of the National Commission in *Bhupesh Khurana & Ors. v. Vishwa Buddha Parishad & Ors.*, II (2001) CPJ 74 (NC)=2000 CTJ 801 (CP)(NCDRC) may be referred to.

6. THUS, it is held that the complainant respondent was a consumer as defined in Section 2(1)(d) of the Act of 1986 and the findings of the learned District Forum in this respect are liable to be confirmed one. On Point No. 2 with regard to prospectus The State Commission, Chandigarh in Case No. I (2004) CPJ 522 , has observed that the terms and conditions of brochure (prospectus) are binding on candidates and institutions.

In *Homeopathic Medical College and Hospital, Chandigarh v. M. Guntia Virk*, I (1996) CPJ 37 (NC)], the National Commission has observed that provisions made in prospectus to make fees non-refundable should never be questioned by the District Fora. In other words, it is held that terms and conditions mentioned in the prospectus are binding on the students as well as on the institutions.

7. THUS, the argument of the learned Counsel for the appellants that the terms and conditions incorporated in the prospectus are not binding could not be accepted. In the prospectus, it was clearly mentioned that the course of DCO for which the complainant respondent had sought admission would be made available in Hindi medium also, but it was not made available in Hindi medium by the appellants and they have supplied the course materials to the complainant respondent in English medium instead of Hindi medium, making departure from the terms and conditions of the prospectus. Thus, the learned District Forum was right in holding that there was deficiency in service on the part of the appellants in supplying course materials to the complainant respondent in English medium instead of Hindi medium. On point of compensation

8. THE argument of the learned Counsel for the appellants is that the compensation awarded by the District Forum to the complainant respondent is

not just, proper and reasonable one and in this respect, he has placed reliance on two decisions of the National Commission: (i) General Manager, Mahanagar Telephone Nigam Ltd. v. Mauli Chand Sharma, II (1995) CPJ 183 (NC). (ii) Mahanagar Telephone Nigam Ltd. v. Raja's Bhosale, II (1993) CPJ 222 (NC). On the other hand, it has been submitted by the learned Counsel for the respondent that the compensation to the tune of Rs. 25,000 awarded by the District Forum was just, proper and reasonable one as no interest has been awarded and further, the whole academic year of the complainant respondent had gone in waste. The "compensation" as stated in Oxford Dictinoary signifies that which is given in recompense, is equivalent rendered. It is different from "damages."

9. THE compensation to be given must be just, fair and reasonable. Technicality of law should not be permitted to stand in the way in directing to pay fair compensation. "Fairness" is a rule to ensure that the vast power in the modern state is not abused but properly exercised. Fairness is also a principle to ensure that statutory authority arrived at a just decision either in promoting the interest or affecting the rights of persons.

10. IN our considered opinion, looking to the entire facts and circumstances of the case, the amount of compensation to the tune of Rs. 25,000 awarded by the learned District Forum to the complainant respondent appears to be just, proper, reasonable and fair one, as imparting education by the appellants in English instead of Hindi, had caused inconvenience, hardship, discomfort, disappointment, frustration and mental stress to the complainant respondent. Therefore, in view of this, the above rulings relied upon by the learned Counsel for the appellants would not come to help to the appellants. For the reasons stated above, no interference is called for with the impugned order of the learned District Forum, Jaipur-II, Jaipur dated 1.2.2003, as it does not suffer from any basic infirmity, illegality or perversity and this appeal deserves to be dismissed. Accordingly, this appeal filed by the appellants is dismissed. Appeal dismissed.