

(2015) 08 NCDRC CK 0042

In the National Consumer Disputes Redressal Commission

Case No : 97 of 2013

KAMLESH W/O L D SAINI

APPELLANT

Vs

DIRECTOR, DISTANCE EDUCATION JNR & ORS

RESPONDENT

Date of Decision : 10-08-2015

Acts Referred:

Citation : (2015) 08 NCDRC CK 0042

Hon'ble Judges : K S Chaudhari

Advocate : Bharat Bhushan, Sanjeev Nirwani

Final Decision : Petition dismissed

Judgement

K.S. Chaudhari, Presiding Member

[1] This revision petition has been filed by the petitioner against the order dated 23.8.2012 passed by the Haryana State Consumer Disputes Redressal Commission, Panchkula (in short, "the State Commission") in Appeal No. 340/2009 Baljeet Singh, Administrator Vs. Smt. Kamlesh by which, while allowing appeal, order of District forum allowing complaint was set aside.

[2] Brief facts of the case are that complainant/Petitioner was enrolled for distance education course of M.A. English by OP No. 1 & 2/Respondent No. 1 & 2 through OP No. 4/Respondent No. 4 in the year, 2004. Complainant appeared in M.A. English first year examination in January-February, 2006 in all the papers and examination was conducted at Jamalpur Tohana (Sirsa) Centre of OP No. 3/Respondent No.3. It was further submitted that on receipt of mark sheet, it was observed that complainant was shown absent in four subjects whereas she appeared in all subjects. It was further submitted that complainant appeared in M.A. English second year in January, 2007, at the same Centre, but her result was not declared inspite of notice. Alleging deficiency on the part of OPs, complainant filed complaint before District forum. OP No. 1 & 2 resisted complaint and submitted that by mistake complainant was shown absent in papers, but later on mistake was rectified in June, 2006. It was further submitted

that complaint was not maintainable before District forum and consumer fora had no jurisdiction to entertain complaint and prayed for dismissal of complaint. OP No. 4 resisted complaint and submitted that out of full course fees of Rs.14,000/- complainant made payment of only Rs.3,500/- and balance has been paid on 17.4.2008 by order of District forum and denied any deficiency on his part and prayed for dismissal of complaint.

[3] None appeared for Respondent No. 3 & 5 and they were proceeded ex parte.

[4] Learned District forum after hearing parties allowed complaint and directed OP No. 1, 2 & 4 to pay Rs.20,000/- as damages to the complainant. Appeal filed by OP No. 4 was allowed by learned State Commission vide impugned order against which this revision petition has been filed.

[5] Respondent No. 3 & 5 were deleted.

[6] Heard learned Counsel for the parties finally at admission stage and perused record.

[7] Learned Counsel for petitioner submitted that inspite of proof of deficiency on the part of OPs and inspite of the fact that consumer fora had jurisdiction to entertain complaint and District forum had territorial jurisdiction, learned State Commission committed error in allowing appeal; hence, revision petition be allowed and impugned order be set aside. On the other hand, learned Counsel for the respondent submitted that order passed by learned State Commission is in accordance with law; hence, revision petition be dismissed.

[8] Learned Counsel for the petitioner submitted that consumer fora had jurisdiction to entertain complaint, but learned Counsel for the respondents submitted that complaint against University is not maintainable before consumer fora. Learned State Commission after discussing judgment of Hon"ble Apex Court in Bihar School Examination Board Vs. Suresh Prasad Sinha, 2009 4 CPJ 34 and judgment of Hon"ble Apex Court in Civil Appeal No. 6807 of 2008 Maharashtra Dayanand University Vs. Surjeet Kaur rightly held that complainant student is not a consumer under C.P. Act in respect of statutory duties performed by University. In such circumstances, it becomes clear that complaint was not maintainable against OP No. 1 & 2.

[9] In the complaint no deficiency has been pleaded against OP No. 3 & 5. Deficiency has been pleaded against OP No. 4 for not handing over mark sheet and OP NO. 4 apprised that due to non-payment of dues, mark sheet was not supplied. Perusal of order sheet dated 17.4.2008 of District Forum reveals that OP No. 4 handed over mark sheet after receiving dues of Rs.10,500/-. In such circumstances, there was no deficiency on the part of OP No. 4 because OP No. 4 was not under any obligation to give mark sheet without receiving dues.

[10] As there was no deficiency on the part of OP No. 4, strictly speaking complaint stood only against OP No. 1 & 2 against which, in the light of aforesaid discussion, complaint was not maintainable before consumer fora and learned

State Commission rightly dismissed complaint on this count.

[11] As far territorial jurisdiction is concerned, complainant claimed territorial jurisdiction as office of Respondent No. 4 was situated at Rewari. When there was no deficiency on the part of OP no. 4 and deficiency was only against OP No. 1 & 2, complaint was not maintainable at Rewari and learned State Commission rightly observed that District forum had no territorial jurisdiction.

[12] Consequently, revision petition filed by the petitioner is dismissed at admission stage with no order as to costs.