

(1991) 09 NCDRC CK 0030

In the National Consumer Disputes Redressal Commission

Maharshi Dayanand University, Rohtak

APPELLANT

Vs

SHUKANTALA CHAUDHARY

RESPONDENT

Date of Decision : 10-09-1991

Acts Referred:

Citation : 1991 0 CPC 41 : 1992 1 CPJ 33 : 1993 1 CPR 274 : 1993 2 CLT 224

Hon'ble Judges : S.S.Sandhawalia , Basanti Devi , Tikka Singh J.

Final Decision : Appeal partly allowed

Judgement

1. WHETHER Section 27 of the Maharshi Dayanand University Act provides a blanket immunity to the University itself against all legal proceedings including those under the Consumer Protection Act is one of the significant issues arising in this case.

2. THE appellant University, Rohtak has preferred the appeal against the order of the District Forum, Hisar awarding Rs. 1,000/- to the respondent Shukantla Chaudhary as compensation for publishing the result of the later with materially incorrect particulars. The facts lie in a narrow compass and indeed are not in serious dispute. The complainant/respondent had appeared in the 1990B.(Part I) supplementary examination (conducted by the University) in the paper of Geography Vide Roll No. 41516. When the result was later declared on 4.2.1991 in the University Gazette, the particulars of the respondent against the aforesaid Roll Number were incorrectly recorded. Her own surname Chaudhary was omitted and instead of her father's name Sh. Ram Phal More the name of Des Raj was printed and the marks 167 shown against her name were also incorrect. Aggrieved thereby the complaint was preferred on 8.2.1991 wherein the primal grievance was that this declaration of her result with materially wrong particulars was of no use or value for securing admission etc. in any Institution and otherwise caused great mental shock and inconvenience to her apart from financial loss. The correction of the result and awarding of compensation was thus prayed for.

In their reply the appellant University conceded all or most of the allegations. It

was stated that through an oversight the particulars of the complainant namely the Surname and father's name were printed wrongly. However, this clerical mistake was expeditiously rectified and her result was declared with correct particulars which were published vide notification No. 14, dated 19th of February, 1991. The fresh detailed marks card was also undertaken to be issued to her after she had returned the old one for which the complainant was being advised separately. The inconvenience caused to the complainant was regretted.

3. THE District Forum has noticed that even though the University has tendered regrets, the complainant was adamant to relent on the ground that the officials of the University deliberately indulge in mal-practices by withholding or declaring incorrect result of young students as a modus- operandi. THE District Forum took the view that the material errors and omission in the declaration of the complainant's result were of a serious nature which could mar the career of a young student. Consequently, it awarded compensation to the tune of Rs. 1,000/- on pain of invoking Section 27 of the Act in the event of default in the payment thereof. Mr. R.M. Hooda, the learned counsel for the appellant in a impassioned argument had first attempted to take shelter under Section 27 of the Maharshi Dayanand University Act. It was submitted that the said provision provided complete immunity to the University including any redress being granted under the Consumer Protection Act (hereinafter called the Act).

4. WE regret our inability to agreed to the aforesaid submission. Section 27 of the University Act aforementioned is in the terms following :- "No suit or other legal proceedings shall lie against any officer or employee of the University for anything which is in goodfaith done or intended to be done in pursuance of any provision of this Act the statutes or ordinance."

Even a plain reading of the aforesaid provision would show that it is intended to safeguard the interests of the Officers or employees of the University for acts done in the course of their duty in goodfaith. It is not and cannot provide any blanket or absolute bar against any suit or legal proceedings against the University itself. Herein the complaint and proceedings have been preferred not against any particular Officer or employee of the University. Indeed no individual employee or Officer of the University either by name or designation has been made a party to the proceedings. The Registrar of the University wherever mentioned is only in the representative capacity through whom the University was sought to be sued. We are, therefore, clearly of the view that Section 27 of the University Act is not intended to provide any total immunity against legal action to the University itself. Apart from the above, reference may also to be made to Section 3 of the Act which provides in general terms that the provisions of the Act shall be an addition to and not in derogation of the provisions of any other law for the time being inforce. It is thus manifest that the remedies under the Act are additional and supplemental remedies designed to provide summary and expeditious relief to the harassed class of consumers. In addition to what has been said above, the jurisdiction under the Act cannot possibly be barred or

blocked against the University itself by the provisions of the Section 27 afore quoted.

5. IN the light of the above the answer to the legal question posed at the out-set is rendered in the negative. Consequently, what appears to us as the somewhat hyper technical plea of immunity sought to be raised on behalf of the University must be rejected.

6. ON merits the learned counsel for the appellant contended that the University has to deal with lacs of students which further multiplies its work by the number of papers the candidates are required to appear in and consequently typographical mistakes or totalling errors cannot be ruled out inspite of diligent precautions. Somewhat ingeniously, it was argued that even the order of the District Forum in paras 5 and 6 bore typographical errors while awarding heavy compensation against the University for an identical default. On the other hand the learned counsel for the respondent had with equally vehemence contended that patently erroneous and incorrect declaration of result was a matter so grave that it could mar the future educational career of the candidate forever. It was pointed out that in view of the incorrect particulars in the complainant's case, she could not possibly seek admission in any Institution for the prosecution of higher studies till the same was corrected. Somewhat forcefully, it was contended that in the narrow time frame within which admission has now to be secured in prestigious institutions, the complainant would certainly have missed the chance thereof for the current academic year and perhaps for all time. Indeed it was submitted that the award of Rs. 1,000/- was somewhat paltry when measured against the threat of jeopardising the educational career of a student. In the present case, it was highlighted that the respondent had also to go through the process and expense of first prosecuting the complaint and now further by defending the present appeal.

We are not unmindful of the somewhat well matching rival stands of the parties. One cannot be possibly oblivious of the fact that the appellant University has to deal with lacs of examinees and the consequent work load of compiling and publishing their result That is a task not entirely free from difficulty. Nevertheless the University having once undertaken the service of conducting the examination for prescribed fees is obviously under a duty of care to perform the said task efficiently. An incorrect declaration or publication of a candidate's result would obviously be an imperfection or shortcoming in the performance of the duty which the University has undertaken. Whenever it thus fails or defaults in the said duty of care, it cannot escape the consequences thereof on the mere general plea of the large number of examinees and inevitable quantum of paper-work involved.

7. EQUALLY we cannot lose sight of the fact of the grave consequences to the examination which inevitably ensue in the mis-declaration of their result. It is somewhat disturbing to note that herein even allegations of deliberate mal-practices and mischief by lower University officials have been made with regard

to the publication of wrong results, as a *mondu-operandi*. If at all it is so the University would obviously leave no stone unturned to wipe away such an evil. There is however, not the least proof of any such thing in the present case. Nevertheless, even non deliberate error in the publication of a result may some times mar the educational career of a student. It is Common place that the declaration of the result is the end product of the labours of the examinees over the academic session and often is the culmination of the educational career of a student. As in the present case, it deserves emphasis that in the highly competitive climate of seeking admission in the more prestigious professional or academic Institutions (some time within a very narrow time frame), a student may well miss for ever the chance of joining the same and thus be put to an irretrievable loss by a mis-declaration of his result. Therefore, whenever the University defaults from its primal duty of care in this context, the examinees would clearly be entitled to compensation under the Act for the deficiency in the services rendered. Herein it is well established and indeed the appellant University has very fairly admitted the wrong declaration of the respondent's result and its subsequent rectification. The issue is thus confined to the quantum of compensation. We would have been very reluctant to interfere with the same, but for the fact that in the present case substantial mitigating circumstances has been forcefully pointed out by Mr. Hooda on behalf of the appellant. Patently enough it is not a case of deliberate or mischevious mis-declaration of the result. A mere reference to the relevant extract of the result Gazette would show that it is more of a printing error than any deliberate or grievous default. It would seem that by a printers devil the name of the respondent's father (Ram Phal More) has been shown against that of the proceeding candidate having the Roll No. 41516. Equally the Surname Chaudhary of ,the respondent has been shown against the same candidate. What next merits notice is the fact that immediately the default was brought to the notice of the University, it proceeded with commendable efficiency in rectifying the error. Intact it was pointed out that the respondent's father had given a legal notice to the University on 13th of February, 1991 claiming the only relief that the discrepancies in the declaration of the result and the mistake in the marksheet should be corrected within 15 days of the said notice. The appellant promptly complied well within the said time frame by publishing the supplementary notification on the 19th of February, 1991 correctly describing the particulars of the respondent and also rectifying the discrepancy in her marks. On the other hand no evidence has been led to prove any disastrous consequence or any special financial loss to the respondent ensuing from the misdeclaration of her result. We would also notice the fact that the respondent's father Sh. Ram Phal More is an Advocate and the conduct of the summary proceedings before the District Forum and the subsequently representation in the present appeal would not have entailed any heavy financial burden. In these peculiar circumstances alone we can visualise a reduction in the compensation. Taking an over all view of the matter we are inclined to hold that an award of Rs. 500/- only would amply meet the ends of justice in the present case.

8. TO conclude this appeal is allowed in part only. Whilst the order of the District Forum on merits is upheld the quantum of compensation is modified to Rs. 500/- only which shall be paid to the complainant within one month, failing which as already noticed by the District Forum, resort to Section 27 shall have to be made. Appeal partly allowed.