
(1994) 07 NCDRC CK 0041

In the National Consumer Disputes Redressal Commission

P.M.NOUSHAD And ANOTHER-s

APPELLANT

Vs

UNIVERSITY OF KERALA And OTHERS

RESPONDENT

Date of Decision : 19-07-1994

Acts Referred:

Citation : 1995 2 CPJ 334 : 1995 3 CPR 13

Hon'ble Judges : P.K.Shamsuddin , C.G.Sethu Lakshmi , K.Balakrishnan Nair J.

Final Decision : Complaint dismissed

Judgement

1. THE facts leading to this complaint are as follows: THE complainants submitted applications to the Department of Commerce, University of Kerala, for admission to M.Phil Degree Course for the year 1988-89. But overlooking the claims of the complainants, persons who were ranked lower in the select list were admitted to the course. This serious irregularity was brought to the notice of the University by the complainants, and on the basis of that, the syndicate of the University deputed one of its members Prof. George M. Varghese to enquire into the matter. On enquiry it was found that there was irregularity in the admissions, made at the instance of the Head of Department. In accordance with the decision of the syndicate, the complainants were admitted to the course. THE syndicate also took a specific decision and directed the complainants to take their 1st Semester Examination and dissertation along with the next batch of students admitted on June-July 1989 and to take their 2nd Semester written examination along with the present batch in which they are getting admissions. In accordance with the decision of the syndicate the complainants joined the course and appeared in the II Semester written Examination in June 1959. But in the results of the II Semester Examination published on 22.8.89, it was specified that the results satisfactory on completion of the 1st Semester.

2. ACCORDINGLY the complainants took their 1st Semester Examination in December, 1989 along with the subsequent batch of students as directed by the syndicate. The results were published on 12.1.90 and the 1st complainant got the highest marks in the 1st Semester Examination. As directed by the

University's Communication dated 9.12.88, the complainants submitted their desertations and appeared for the Viva-Voce Examination. While they were awaiting their final result, they got a communication dated 23.7.90 from the Controller of Examinations, directing them to appear again for the II Semester written examination which they have already written after remitting the fees. Vide representation dated 25.7.90, the complainants requested the Controller of Examinations that since they had already taken their II semester written examination in August 1989, their results may be finalised on that basis and the memo directing the complainants to appear for the 2nd Semester examination be withdrawn. As the complainants did not get justice from the University Authorities they approached the Honourable High Court vide O.P. No. 7088/90 to quash the memo of the Controller of Examinations dated 23.7.90 and to release the results of the II Semester Examination written by the complainants, along with the results of the other candidates admitted to the course during 1989-90. In C.M.P. No. 14276/90 in O.P. No. 7088/90, the High Court passed an order directing the 1+3 respondents to publish the results of the II Semester Examination of the M.Phil course taken by the complainants along with the results of other candidates who have taken the same examination during 1989-90. The opposite parties, instead of complying with the directions of the High Court, wilfully and deliberately flouted the direction and published the results of other candidates, without declaring the results of the complainants.

It is alleged by the complainants that on the very next day of the High Court's order, the Board of Examiners under the Chairmanship of the Head of the Department, the 3rd opposite party met and finalised the results of eight candidates and declined to accept the previous appearance of the complainants in the examination and thus openly discarded the Orders of the High Court. Therefore the complainants again approached the High Court on 3.1.91 vide C.M.P. No. 225/91 in C.M.P. No. 12476 in O.P. No. 7088/90. After hearing both sides the High Court advised the Complainants on 31.1.91 to move the Court for contempt proceedings against the opposite parties. On 15.2.91, the complainants moved the High Court for contempt proceedings vide C.C. No. 18/91 and as a result, the result were released and the complainants were declared as passed in A grade.

3. IT is further submitted in the complaint that both the complainants have excellent academic record, that the 1st complainant was the 1st rank holder for the M.Com. Degree Examination held in 1986, that both the complainants lost two academic years for no fault of theirs, that from the very moment they secured admission to the M.Phil Course, the Head of the Department had adopted a hostile and inimical attitude towards the complainants, that due to the irresponsible attitude of the University and its officials the complainants lost two academic years, were subjected to humiliation, mental agony tension, worry and suffered much financial loss due to the prolonged and continuous legal proceedings and were denied opportunities of higher studies and employment because of delay in publication of result and that there is deficiency in the service

rendered by the opposite parties. As the officials of the University ignored the representations of the complainants, they had to approach the High Court of Kerala to establish their rights and for that they had to spend Rs. 20000/-. IT is also alleged that the results of the complainants, when finally published by the University were not in accordance with the provisions relating to the classification of the successful candidates prescribed in the regulations. Normally, the complainants could have completed the course in June 1989. But due to the negligence of the opposite parties results were published only in March 1991, and the complainants have lost 21 months. On those allegations they filed this complaint claiming a total compensation of Rs. 2,70,000/- for the loss, injury, mental agony etc. suffered due to the negligence of the opposite parties. The Kerala University represented by the Registrar filed version contending that the complainants are not consumers as there is no sale of any goods or hiring of any service for consideration in order to attract a consumer dispute, that Sri. P.M. Noushad and Smt. Nirmala Mabel were 6th and 5th rank holders in the rank list for admission to M. Phil course in the Department of Commerce during the academic year 1988-89, that there were only three seats in the merit quota; that the Head of the Department of Commerce had admitted a candidate Smt. S. Sunanda, 7th rank holder in the rank list by converting one of the F.I.P. seats into merit quota and by overlooking the seniority of other candidates; that on the basis of the complaints of Sri P.M. Noushad and Nirmala Mabel the matter was placed before the syndicate held on 2.11.88, that the Syndicate authorised Sri George M. Varghese to conduct an enquiry in the matter; that on the basis of the enquiry report of Sri George M. Varghese the Syndicate resolved that the complainants be admitted to the M.Phil course against the two exist vacant F.I.P. seats by converting them temporarily in favour of non-teaching applicants during that year and that the complainants will take their first Semester examinations and dissertation along with the next batch of students admitted in June/July 1989 and they can take their 2nd Semester written examination along with the present batch in which they are getting admission; that in accordance with the aforesaid decision, the Head of the Department admitted the complainants for M. Phil course during 1988-89; that these students had taken their 2nd Semester written examination in August 1989 along with 88-89 batch and had taken their 1st Semester examination with 89-90 batch, that they had submitted application for dissertation and Viva alone, alongwith the 2nd Semester examination of 89-90 batch in August 90, that as the 2nd Semester examination consists of Part I Paper III Research Methodology Paper II, Part II Dissertation and Part III Viva-Voce these students were directed to write the whole parts of 2nd Semester examination as per regulations and after obtaining the order of the Controller of Examinations, that the request dated 20.7.90 of the complainants for exemption from appearing in the written examination a second time was placed before the Standing Committee, and that the Standing Committee at its meeting held on 31.7.90 recommended that the complainants may be permitted to submitted their Dissertation and to attend the Viva-Voce along with the students of 89-90 batch as a special case and finalise their results by carrying over the marks

which they had obtained at the examination held on August 89.

4. WHILE publishing the results of M.Phil 1980-90 batch, the meeting of Board of Examiners held on 4.5.90 resolved to publish the results of only eight candidates excluding the complainants. Considering the petition filed by the complainants the High Court of Kerala ordered to publish the result of II Semester M.Phil examination taken by the complainants along with the candidates admitted to the M.Phil Course during 1989-90. On the basis of the Court decision, the Committee recommended to convene the meeting of Board of Examiners again and finalise the results of the complainants. At the meeting of the Board of Examiners held on 27.9.90, the Board declined to accept the previous appearance of the complainants in the examination and resolved to declare that the results are incomplete as per regulations in respect of complainants. As per the orders of the Vice Chancellor the matter was placed before the Syndicate on 17.11.90 which referred it to Standing Committee and it met on 28.11.90 and considered the direction of the High Court to publish the results and recommended that the result of the candidate of II Semester, M.Phil degree 1989-90 may be finalised and released as per the decision of the concerned Board of Examiners alongwith the results of the complainants. On the recommendation of the Standing Committee and the orders of the Controller of Examinations, the result of the candidates with Regn. Nos. 9 and 10 was declared as incomplete as per regulation. The complainants in their representation dated 7.1.91 requested that the result of M.Phil declared on 28.12.90 by which the result of the complainants were published as incomplete may be reviewed since they have already appeared for all the examinations as directed by the University. The Syndicate held on 14.3.91 considered the representation of the complainants and resolved that the marks obtained by the complainants at the written examination of the Second Semester held in August 1989 be carried over and their results of M. Phil degree examination held in August 1990 be published. It was further contended that there is no wilful negligence on the part of the University, that it had been proceeding as per regulations and that the allegation that the complainant had to suffer mental strain and agony are nothing but figment of imagination. The 3rd opposite party filed a detailed version contending that the complaint is not maintainable as the complainants are not consumers u/Sec. 2(d) of the Consumer Protection Act, there is no existence of Consumer Dispute, no deficiency as provided u/Sec. 2(g) of the Act and that a student who appears for the examinations does not expect services from the 1st opposite party for a consideration that the fee collected by the University is not a consideration for permitting a student to appear for the examination, that for the M.Phil Course there are three seats for the regular students and 6 seats for teachers, that complainants one and two were the 6th and 5th rank wilders respectively in the merit list, that all the three seats for regular students were filled and therefore the allegation that overlooking the claims of the complainants, candidates who are ranked in the selection list were admitted to the course are incorrect and denied, that a candidate named Smt. S.

Sunanda who was the 7th in the waiting list under regular students quota approached the University and obtained an admission order by getting one of the vacancies in the FIP quota converted into merit quota, that she was given admission by the 1st opposite party on the condition that she could take examinations only along with the next batch of students, that during December 1988, after about 4% months after the commencement of course the complainants obtained admission in the M.Phil Course through a decision of the Syndicate, that the candidates under which the complainants were admitted by the Syndicate are against the regulations for M.Phil programme in Commerce, that the promotions to the Second Semester shall be allowed only after satisfactory completion of the 1st Semester, that the complainants were admitted to the 2nd Semester without compliance of the regulations, that the allegations that the Syndicate warned the opposite party No. 3 is incorrect and hence denied, that results of the Second Semester were not published by the Board of Examiners because it was incomplete as per regulations and therefore the University is not liable to declare it, that the University has no power to declare a result which was not passed by the Board of Examinations, that the opposite parties did not disregard the directions of the High Court, that after the order of the High Court, the Board of Examiners met and the result of the complainants were examined in detail and results were passed as incomplete and accordingly the University declared the results of the complainants as incomplete which was the correct approach, that there was no deliberate or inordinate delay in publishing the results of the second semester examination, that there was no intention for the opposite party No. 3 to harass the complainants, and he did not want to put any bindrawns to the complainants claiming the benefits of exemption from appearing for the U.G.C. eligibility test, that inspite of the alleged delay in declaring the results, the complainants got the M.Phil degree from the University along with the candidates who were admitted during June-July 1991, that their results were declared by the University with retrospective effect so as to get the exemption benefit under U.G.C. notification, that if the 3rd opposite party was inimical or hostile towards the complainant No. 1 he would not have become the first among the candidates appeared for the 1st Semester examinations that the allegation that the complainants have lost two academic years for no fault of theirs is incorrect that the allegation that the 3rd opposite party made every attempt to see that results of the complainants were not published is denied, that when the contempt of Court proceedings were initiated the University declared the complainants as having passed in grade A and in that process the 3rd opposite party had no role to play, that the allegation that the complainants were subjected to humiliation, mental agony, tension, financial loss etc. are denied, that they were not denied any opportunity to higher studies and employment, that the 1st complainant is a full time research scholar in the department and the 3rd opposite party was the Chairman of the Directoral Committee which selected the complainant No. 1 full time Ph.D. Programme, that on 8.8.90 the 1st complainant trespassed into the office of the opposite party No. 3 and abused and threatened him that the matter was reported to the University

and it enquired the matter through a Committee, that when the Committee submitted its report the 1st complainant apologised to the University, that on 15.1.91, the 1st complainant telephoned the 3rd opposite party at his residence and warned and threatened his wife who attended the telephone and that incident was reported to the Vice-Chancellor by letter dated 16.1.91 and that the complainants are not entitled to any reliefs and the complaint is liable through their Counsels. The complainant Sri P.M. Naushad examined as PW1. The documents produced by the complainants were marked as Exhibits PI to P24. Smt. P. Valsalakumari Section Officer, University of Kerala was examined as PW1. The 3rd opposite party produced Exhibits R1 to R19. The following points arise for our consideration : (1) Whether the complainants are consumers as defined in the Consumer Protection and whether the complaint is maintainable ? (2) Whether there is any deficiency in the service rendered by the opposite parties ? (3) If to whether the complainants are entitled to any compensation ? (4) What will be the orders as to costs ? 11. The first point to be decided is whether the complaint is maintainable before this Commission. The opposite parties raised a preliminary question regarding the maintainability of the complaint. The learned Counsel for the 1st opposite party argued that the complainants are not consumers as defined in the Consumer Protection Act as there is no sale of goods or hiring of any service to attract the provisions of Consumer Protection Act, that a student who appears for the examination does not expect any services from the 1st opposite party for consideration and that the fee collected by the University is not consideration. 12. We feel that there is substance in these contentions. The position has been made clear by the National Commission in Registrar, University of Bombay v. Mutnbai Grahak Panchayat, (First Appeal No. 204/92) and in several other cases. In the light of the decision of the National Commission we are inclined to accept the contentions raised in the preliminary objection. In the aforesaid case the National Commission had taken the view that a University while valuing the answer papers or undertaking the revaluation of the answer papers or rechecking the marks awarded to a candidate at the instance of a candidate who had appeared for the examination is not performing a "service" which had been hired or availed of for consideration and that no consumer disputes can therefore be said to arise when a complaint made by the concerned candidate that the valuation, revaluation or re-checking had not been properly done. 13. In the light of the aforesaid decision of the National Commission we hold that the University while valuing the answer papers or undertaking the revaluation or rechecking of the marks is not performing a "service" which had been hired or availed of for consideration and that no consumer dispute can be said to arise. A student who appears for the examination does not expect any services from the University or from its officials for a consideration and the fee collected by the University is not a consideration for any service. 14. In the circumstances the complaint fails against the opposite parties and it is accordingly dismissed as not maintainable before the Consumer Forum. This will not preclude the complainants from seeking remedy if any before any other appropriate authority. The parties shall bear their respective

costs.

Complaint dismissed. _____