

(2012) 09 NCDRC CK 0048

In the National Consumer Disputes Redressal Commission

RAI UNIVERSITY

APPELLANT

Vs

Prapti Poddar

RESPONDENT

Date of Decision : 10-09-2012

Acts Referred:

Citation : 2012 0 NCDRC 560

Hon'ble Judges : R.C.Jain , V.B.Gupta J.

Advocate : Saurabh Sharma , Prapti Poddar , Anil Tomar , Gautam Raria

Judgement

1. BY this common order we shall dispose of above noted petitions as question of law and facts involved in these cases are identical.

2. BRIEF facts are that Petitioners University/O.Ps was established as a deemed university under the Chattisgarh Niji Kshetra Vishvavidhayalaya Adhiniyam No. 2 of 2002 vide notification No. F.73-64/2003/HE38, issued on 30.5.2003 under sub-section (1) of Section 5 of the Act. This university offered 340 courses in 15 disciplines at 21 centres across the country. Petitioner No. 1 is one of such campuses. After coming across the advertisement put in by the petitioners, respondents took admissions in MBA and B.Tech.(Biotechnology) courses at Dwarka Campus(Petitioner No.1) in the year 2004 and paid the various fees. At the time of the admission a PIL being Writ Petition(Civil) No. 19 of 2004 alongwith a bunch of other such petitions was pending before the Supreme Court for adjudication on the point whether various Universities including the University in question were validly constituted or not. Pendency of such litigation was never disclosed by the petitioners to the respondents and other students. These Writ Petitions were decided by the Supreme Court vide judgment dated 11.2.2005, which declared sections 5 and 6 of Chattisgarh Niji Kshetra Vishvavidhayalaya Adhiniyam No. 2 of 2002 as ultra vires and hence the Universities including the University herein ceased to exist. In order to protect the interest of students Supreme Court ordered as under:- " In order to protect the interest of the students, who may be actually studying in the institutions established by such private Universities, it is directed that the State Government may take

appropriate measures to have such institutions affiliated to the already existing State Universities in Chhattisgarh. We are issuing this direction keeping in mind the interest of the students and also Sections 33 and 34 of the Act, which contemplate dissolution of the sponsoring body and liquidation of University whereunder responsibility, has to be assumed by the State Government. It is, however, made clear that the benefit of affiliation of an institution shall be extended only if it fulfills the requisite norms and standard laid down for such purpose and not to every kind of institution. Regarding Technical, Medical or Dental Colleges etc. affiliation may be accorded if they have been established after fulfilling the prescribed criteria laid down by the All India Council of Technical Education, Medical Council of India, Dental Council of India or any other statutory authority and with their approval or sanction as prescribed by law. "

Consequently, petitioners issued a circular dated 17.02.2005 assuring the students that they would get themselves affiliated with Ravi Shanker University, Chattisgarh. Having failed in this effort, petitioners issued more circulars assuring affiliation with other Universities. According to the respondents/complainants, they were left in lurch because the Rai University Could not get valid affiliation for their courses from any University. Other grouse of respondents was that the petitioners decided to shift the Dwarka campus to Gurgaon causing a huge inconvenience and financial loss to the students.

The defence taken by the petitioners was that they took reasonable steps to protect the interests of the students and succeeded in taking viability certificate from Maharishi Dayana University, Rohtak and one time approval from AICTE and that degrees from the recognized university would be available to the respondents.

District Forum, vide its order dated 31.01.2007 allowed the complaints of the respondents holding that petitioners are guilty of unfair trade practice. Aggrieved by the order of District Forum, petitioners filed appeals before the State Commission, which vide impugned order dated 08.01.2008, dismissed all the appeals holding that the petitioners are guilty of unfair trade practice as well as deficiency in service.

3. WE have heard learned counsel for the petitioners as well as those respondents who have appeared in person. It has been contended by learned counsel for the petitioners that petitioners have taken reasonable steps to protect the interest of the students and have succeeded in taking viability certificate from Maharishi Dayanand University, Rohtak and one time approval from AICTE and degrees from this recognized university would be available to the respondents and there has been no deficiency on the part of the petitioners in taking the necessary steps for one time approval. On the other hand, It has been stated by the respondents that no approval for Dwarka Campus has been obtained by the petitioners.

4. DISTRICT Forum in its order has held ; " The admitted facts are that the OP had ceased to exist as a university following the Hon "ble Supreme Court "s Judgment in the PIL Writ Petition no. 19 of 2004 in the case of Professor Yashpal Sharma Vs. State of Chhatisgarh. It is also admitted by the parties that the complainant had taken admission for 4 years. B-Tech.(Biotechnology) course at Dwarka. It is also admitted that the Dwarka Study Centre has been shifted to Gurgaon. The OP had promised to impart global quality education with innovative learning teaching pedagogy, which is student centric, inculcating in the students the ability to think and self learning and had advertised themselves to be a university viz. Rai University. OP had misled the prospective students claiming itself to be a university and had issued slips on 07.06.2004 with the nomenclature of Rai University whereas its status as a university was under challenge in a writ petition pending before the Hon "ble Supreme Court. Thus the OP had created a rosy picture in the minds of the complainant that she will have a bright future after graduating from the said university and the same has been shattered. Following Hon "ble Supreme Court "s decision the OP assured the students that they will be affiliated with Ravi Shankar State University of Chhatisgarh followed by the circular dt. 04.06.2005 assuring affiliation with IASE whereas IASE as per UGC notice dt. 23.08.2005 is not permitted to affiliate any college/ institution. The OP "s move to get one time approval from Maharishi Dayanand University and All India Council of Technical Education and also shifting of the study center from Dwarka to Gurgaon may be the genuine efforts to carry on the education of the students who had been admitted by them but as far as the complainant is concerned the complainant felt her future prospects uncertain and was compelled to discontinue with the classes after having completed three semesters. The OP had created an impression of high quality global education which unfortunately it did not provide. The OP by their action has caused a lot of tension and misery to the young students who may have to seek admission elsewhere. The Hon "ble State Commission has also held in the case of Principal Integrity Truth Learning Public School, Dwarka V/s Rohit Bahl that if a student is compelled to leave in the mid-stream such a student is entitle to refund of the full fee. Such an act of the OP is clearly an act of unfair trade practice and we hold the OP guilty of unfair trade practice. We direct OP to refund the fee charged by them from the complainant viz. Rs. 88,100/-.

State Commission affirming the order of District Forum, in its impugned order has observed ; "7. We have examined the One time Approval " dated 19.02.2007 granted by the AICTE in respect of the technical courses mentioned therein which include the B.Tech and M.Tech Biotechnology courses. We find that the approval is only in respect of the Rai Foundation Engineering College, Faridabad (Haryana) which was earlier an off campus centre. This institution was visited by an Expert Committee constituted by AICTE and only on recommendation of the Committee. One Time Approval was granted to this College. Hence, by no stretch of imagination this approval can apply to the Dwarka Campus of the erstwhile Rai University, appellant No. 1 herein. "One Time Approval " in respect of the MBA

course is dated 14.7.2006. This approval also relates to "Rai Foundation Colleges, Raipur " of the erstwhile Rai University. Hence, the apprehension of the respondents/ complainants regarding their future was justified. Assuming that these approvals were applicable to the Dwarka campus as well, these require the appellants to do certain things for such affiliation to a University. Copy of the "One Time Approval " granting affiliation to MDU is dated 31.7.2007. That is to say, it was not in existence when the complaints were filed before the District Forum and also on the date of decision of the complaints. Further this approval is subject to the conditions like recruitment of faculties in respect of all the courses to meet the AICTE/MDU norms, recruitment of technical staff, upgradation and setting up of new labs as per curriculum of the MDU, besides payment of affiliation fee etc. The respondents/complainants can not be sure of adherence to these stringent conditions by the appellants. The judgment of the Supreme Court declaring sections 5 and 6 of the Chhatisgarh Nijikshetra Vishvavidyalayas, 2002 ultra-vires came in February, 2005 and the appellants took three and half years to obtain one time conditional approval for the MDU. All along the students remained in suspense. These facts and circumstances constitute deficiency in service which means "any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service ". 8. Besides the above facts and circumstances of the case, the factum of pendency of litigation regarding the validity of the establishment of the appellant university was not disclosed to the students. Had such a disclosure been made, the respondents and other such students would have thought twice before seeking admission in the courses run by the appellant university. This disclosure was apparently not made by the appellants to promote their business. Hence, the appellants are definitely guilty of unfair trade practice as well within the ambit of sub-section (1) (r) of section 2 of the Consumer Protection Act, 1986. 9. Thirdly, the appellants shifted the campus from Dwarka to Gurgaon which caused inconvenience to the respondents. For this reasons also the respondents were entitled to discontinue their study and to ask for the refund of their fee. 10. Viewed from any angle, the appellants are guilty of unfair trade practice as well as deficiency in service. Hence, there is no reason to interfere with the impugned orders passed by the District Forum which are upheld. All these appeals are dismissed "

11. Short question which arise for consideration is as to whether the petitioners had informed the respondents at the time of their admission that Dwarka Campus will be shifted either to Faridabad or Gurgaon. In this regard, it would be fruitful to quote relevant averments made by the respondent in her complaint and corresponding reply of the petitioners. In para No. 7 of the complaint it has been pleaded ; "That complainant taken the admission in B.Tech+ M.Tech(Biotechnology) on 26.08.2004 as Dwarka Centre after paying Rs.10,600/- ".

In response to the above averments, petitioners in para No. 7 of their reply states ; "That the contents of para 7 are matter of record therefore needs no reply ".

Similarly, in para No. 9 of the complaint, it has also been averred by the respondents ; " It is also understood that Dwarka Campus of the Ops was housed in a disputed building; because of that the Ops decided to shift the Dwarka Campus to their so called Gurgaon Campus, causing a huge inconvenience and financial loss to the students of the Dwarka Campus. They forced the students to put their signatures on a pre-typed consent letter agreeing their shifting to Gurgaon ".

5. IN response to para No. 9 of the complaint, petitioners in their reply have stated ; " That the contents of para 9 are wrong and denied. It is wrong and denied that the complainant obtained loan from Bank. Complainant has merely filed an application form for obtaining loan. The complainant be put to strict proof that she finally got loan sanctioned from the Bank @ 10.5% ".

Thus, it stands proved from the record that complainants were never informed about the shifting of the Campus from " Dwarka " to "Gurgaon " when they sought admission in the University of the petitioners in the year 2004.

6. MOREOVER, as per Notification dated 31.7.2007(page 88 of the paper book) Maharishi Dayanand University, Rohtak had granted "One Time Approval " for Faridabad and Gurgaon Centres only. Relevant portion of this Notification read as under; "I have been directed to convey that the University grants "One time Approval " to the Institute named "Rai Foundation Engineering College at Faridabad " (combined strength of students admitted at Faridabad and Gurgaon centers earlier affiliated to Rai University, Chhattisgarh) for the following technical courses with immediate effect :- PART-A -AICTE related courses 1. B. Tech.(ECE) 2. B.Tech.(ME) 3. B. Tech.(CSE/IT) 4. B.Tech.(Bio.Tech) 5. M. Tech. (Information and Technology) 6. M. Tech. (Bio-Technology) 7. MBA and MCA ".

Thus, as per above Notification approval is only for Faridabad and Gurgaon and not for Dwarka. The Fora below have also held that the respondents were never told about the shifting of Dwarka Campus to Gurgaon in Haryana and as such this shifting amounts to deficiency in service. We find no reason to disagree with these findings given by the Fora below as it is apparent from record that the respondents were never told by the petitioners for shifting of Dwarka Campus to Gurgaon in Haryana, when respondents had sought admission with the Petitioners University. Present revision petitions have been filed under Section 21(b) of the Consumer Protection Act,1986. It is well settled that the powers of this Commission as a Revisional Court are very limited and have to be exercised only, if there is some prima facie jurisdictional error in the impugned order.

Hon "ble Supreme Court in Mrs. Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd. 2011 (3) Scale 654 has observed ; "Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21

(b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two Fora ".

7. THUS, no jurisdiction or legal error has been shown to us to call for interference in the exercise of power under section 21 (b) of the Act, since two Fora below have given cogent reasons in their order, which does not call for any interference nor they suffer from any infirmity or revisional exercise of jurisdiction. It is not that every order passed by the Fora below is to be challenged by a litigant even when the same is based on sound reasoning.

Under these circumstances, the present petitions are without any legal basis and same are hereby dismissed with cost of Rs.10,000/-.(Rupees Ten Thousand Only) each.

8. PETITIONER are directed to pay the cost of Rs.10,000/- (Rupees Ten Thousand Only) to each of the respondents, by way of demand draft in their respective name, within four weeks from today. In case, petitioners fail to pay the said cost to the respondents within the prescribed period, then petitioners shall also be liable to pay interest @ 9% p.a., till realization. List on 19.10.2012 for compliance.