
(1997) 07 NCDRC CK 0074

In the National Consumer Disputes Redressal Commission

S.AJIT

APPELLANT

Vs

M.R.SREEDHARAN NAIR

RESPONDENT

Date of Decision : 11-07-1997

Acts Referred:

Citation : 1998 1 CPJ 644

Hon'ble Judges : P.K.Shamsuddin , K.Balakrishnan Nair , K.M.Latha J.

Final Decision : Complaints allowed

Judgement

1. THESE complaints are filed by students of M.Tech., in Environmental Engineering at Government Engineering College, Thrissur attributing deficiencies and unfair trade practice on the part of the opposite parties and claiming compensation.

2. AS a common question arises in all these complaints they are disposed of by a common order. For convenience sake we treat O.P, No. 36/96 as the main case. The facts are similar in all cases. The material allegations in all the complaints are as follows : The complainants are candidates with very high "Gate" Score (an examination conducted by the Government of India for preparing rank list for admission to Post Graduate Courses in Engineering and they could have selected any Post Graduate Course anywhere in India. All the complainants applied for M. Tech. in Environmental Engineering Course pursuant to an advertisement appeared in "Mathrubhoomi" in its issue dated 20th January, 1990 stating that five candidates will be admitted to the M. Tech. which was to be started in February, 1990 at Thrissur Engineering College, because the Course is Environmental Engineering and that Course had a better career prospects. Ext. P1 is the advertisement. All the complainants were accordingly admitted to the course in March, 1990. Ext. P2 is the prospectus issued by the Government Engineering College, Thrissur. Ext. P2 states that this course of M. Tech. was for a period of semesters consisting of the first and second semesters for course work and the third semester for thesis/dissertation work. The course work shall be taken in two consecutive semesters conducted from July to October and

December to March for first and second semesters respectively and for thesis/ dissertation based on a research/industrial project worked out for a period of not less than four months in the third semester. Ext. P3 series are the memos issued to the complainants informing that they were provisionally elected for admission to M. Tech. Degree Course 1 Environmental Engineering 1989-90. Ext. P4 series are fee receipts and identity cards issued to the complainants. It is also stated in the identity card issued that the probable date of completion is 1991. The complainants also have produced Gate Score reports, Ext. P5 series, issued to the complainants which would show all the candidates could have got admission based on this report to various other important courses but as indicated above, since all the complainants thought that the course proposed to be started by the first opposite party had better carrier prospects they all joined that course. Ext. P6 also shows that all the complainants submitted thesis for different subjects in December, 1991 itself except T.R. Girija the complainant in O.P. No. 39/96 who submitted the thesis only on 30.3.1992. Ext. P7 is the communication sent by the Principal Government Engineering College, Thrissur dated 2.11.1990 stating that application has been already forwarded as per letter dated 14.5.1990 to the Registrar, University of Calicut for affiliation to start a P.G. Course in Environmental Engineering at Engineering College, Thrissur and the affiliation for the above course was not obtained so far and the Registrar of University of Calicut was requested to look into the matter urgently. It is also stated therein that the selection to M.Tech. course in Environmental Engineering was conducted on 16.2.1990 and classes for first semester started on 5th March, 1990. It is also pointed out since probable date of completion of second semester will be in December, 1990 sanction may be issued on an early date. Again on 11.12.1990, the Principal Government Engineering College, Thrissur sent another communication dated 11.12.1990 addressed to the Vice Chancellor, University of Calicut bringing to his notice the request sent for affiliation for the course in Environmental Engineering. It was also stated therein that the course was started on 5.3.1993 with an intake of five students in anticipation of affiliation. It is further stated that the Registrar in his letter has written that the request for affiliation should have reached one year before starting the course and the application for affiliation was sent to the Syndicate for consideration. It is further stated that the Vice Chancellor may take steps for granting affiliation to the course and the delay in submitting for affiliation may be excused and the procedural delays were there and for this the students should not be made to suffer. It is also pointed out that the first batch of students will be completing their second semester by 21st December, 1990 and are to appear for a University Examination thereafter which can be possible only after getting affiliation. Again we find Ext. P9 communication was sent by the Principal Government Engineering College, Thrissur, to the Principal, Regional Engineering College, Calicut stating that the Registrar of the University has called for the details of the order of the Board of Studies regarding the approval of the syllabus of the M. Tech. course in Environmental Engineering and that order was not seen communicated to the Principal, Government Engineering College, Thrissur. But it

is understood that the syllabus for the M. Tech. course in Environmental Engineering of the College has already been approved by the Board of Studies of Calicut University chaired by him about one year back and in the circumstances a copy of the above order may be forwarded to the Government Engineering College, Thrissur. Ext. P10 dated 18th May, 1991 is the reply sent by the Principal of the Regional Engineering College who is the Dean of Faculty of Calicut University. It is stated therein that the Environmental Engineering (PG) Programme submitted by the Government Engineering College, Thrissur, was considered at the combined meeting of the Board of Studies in Engineering and Faculty of Engineering held on 25th August, 1989 and an extract of the decision of the combined meeting with the relevant appendix was sent alongwith the letter. Ext. P10 also contains the minutes of the combined meeting. It was observed in the minutes that Environmental Impact Analysis is becoming mandatory for all major projects and hence must be included as a compulsory course and not as an elective and that the members felt that this can be achieved by making the course "Advanced Hydrology" and Ground Water Engineering as an elective and that accordingly to curriculam and scheme of examinations were amended as is given in Appendix B. It is also stated that in view of the changes it was recommended that the Principal, Government Engineering College, Thrissur be requested to prepare a revised syllabus in accordance with the approved curriculam and a scheme of examination given in Appendix B. It is also observed that the regulations for this programme will be the same as the existing regulations for other M. Tech. programmes. Curriculam and Scheme of Examination were also appended to Ext. P10. It is seen that the Principal, Government Engineering College, Thrissur, sent a revised syllabus along with a covering letter on 21.5.1991.

In the meanwhile complainants were making various representations to the Authorities. Ex. P12 is the representation dated 31.5.1991 made by all the complainants to the Registrar of University of Calicut finding that the affiliation was not obtained. It has been pointed out therein that they are the 1st batch of M. Tech. students in Environmental Engineering the first semester classes started on 5th March, 1990 and that the semester examinations were conducted by the College in accordance with the curriculam and scheme approved by the concerned academic bodies which met on 25th August, 1989 at the Senate Hall of the University of Calicut that the second semester classes were completed in December, 1990 that they were presently continuing with their third semester thesis work that the second semester examination were not conducted by the University so far and that their third semester thesis will be over by August, 1991. They requested to help them in the matter and take immediate steps for affiliation. Ext. P13 is a report published by Malayala Manorema in its issue dated 22.7.1991 highlighting the defects faced by the complainants on account of the inordinate delay in giving affiliation to the course. The complainants also sent a detailed letter on 23.7.1991 to the Hon'ble Minister for Education which also highlighted the problems faced by the complainants. Ext. P15 to another

representation submitted by the complainant to the Vice Chancellor of the University of Calicut bringing to his notice the difficulties faced by them and also the news items published in leading papers regarding the matter and requesting him to do the needful. Ext. P16 is another representation made by them to Prof. Narayanan, Syndicate Member of the Calicut University. Ext. P17 is another representation dated 23.3.1992 sent by the complainants to the Hon''ble Minister for Education. Ultimately affiliation was given by the University of Calicut as per Ext. P1 8 dated 19.9.1992.

3. THE complainant alleged that the opposite parties 1 to 3 and 8 being the Government agencies have a primary duty to comply with the Scheme approved by the concerned academic bodies which met on 5th August, 1989. THEir second semester classes were completed in December, 1990 and they were continuing with their third semester thesis work and the second semester examination was not conducted by the University though their third semester will be over by August, 1991. It is also stated that on enquiry it was known that the course is not affiliated to the University. THEy also requested the Registrar to help them in this matter. For getting the affiliation for the course an application from the concerned College should be received in the University at least one year prior to the commencement of a particular course. According to the fourth opposite party even the syllabus of the said course was not approved by the University. THE syllabus was not approved due to the failure on the part of the first opposite party who was directed to submit a revised syllabus in accordance with the approved curriculam and scheme. Finally the revised syllabus was submitted to the University for approval by the end of May, 1991. THE complainants also alleged that they represented to the 3rd and 8th opposite parties their problems but the Government also did not intervene to redress their grievance. After running from pillar to post for one and half years their course was affiliated by order dated 19.9.1992 of the 4th opposite party. Even though they completed the course and prepared their thesis they were unable to appear for the qualifying examination in time because of lapses on the part of the opposite parties. The complainants alleged opposite parties 1 to 3 and 8 had a primary duty to comply with the relevant provisions in the University Act and Statutes for starting the course. The first opposite party failed to take the matter with the 4th opposite party in time. The complainants alleged that when they approached the first opposite party in the matter, the first opposite party repeatedly told them that it was not their work and they should not come again with this request. The complainants also alleged that there was a running feud among the 6th opposite party, 5th opposite party and the first opposite party in the crucial time when the approval had to be sought for affiliation and they became unfortunate victims of this feud during the period of the course. They also alleged being the Head of the Department, the second opposite party had the responsibility to see that such feuds among the Faculty Members should not affect future of the students as has happened in this case. The second opposite party failed to discharge his duties in this matter. The complainants also got a grievance with the University also as

they did not help them though several representations were made to them to highlight the difficulties faced by them. Ultimately the complainants sent a notice to the 7th opposite party on 11.2.1992 seeking compensation for the loss sustained by them. But he rejected the claim and has justified the actions of the concerned functionaries in this matter. The complainants alleged that their valuable future was severely jeopardised due to the indifference, carelessness, callousness and insensitivity of the opposite parties. It is also alleged that had they gone for M. Tech. in any other discipline, they would have come out successful by September, 1991. They could write the second semester examination only by 1993, February alongwith two other junior batches and even if the results were published at the earliest they could have submitted their thesis and obtained their degree only by October, 1994. It is also alleged they lost precious chance to get gainful employment. They produced documents to show that had they completed the course and passed the examination earlier they could have got better employments and because of the delay in obtaining affiliation and conducting the examinations at appropriate time not only they lost 2 years but also sustained pecuniary loss and chance for employment which are coverable.

4. INITIALLY this complaint was filed in 1993. An objection was raised as to the maintainability of one complaint by all the complainants and on the direction of this Commission the complainants filed separate complaints. The first opposite party retired from service and notice was served on him but he has not filed any version. However on behalf of the 7th opposite party who is the present Principal of the Government Engineering College, Thrissur a written objection has been filed by the Administrative Assistant where it is stated that the complaint is not maintainable and the complainant is not a consumer and there is no deficiency in service. It is stated in para 7 of the affidavit that the opposite parties 1,5 and 6 are not responsible for not arranging adequate faculty members for teaching various subjects. The complainants never represented their difficulties to the College or any other responsible Authorities during their course of study at the College. The Registrar of the University of Calicut was addressed by the Director of Technical Education and a subsequent reminder was also sent on 2.11.1990 and the reply received from the University and the order of the University dated 19.9.1992 would clearly show that there was no laches or negligence in getting syllabi approved by the University. None of the opposite parties have done anything deliberately to put the complainants to sufferings. The Government of Kerala has paid the complainants the stipend of Rs. 1.800/- per men sum to continue their studies even without getting amounts from Central Government and this shows the interest of the Government of Kerala in this regard to get the M. Tech. Course approved by the University and to award the Masters Degree to the complainants. No feud existed between the opposite parties as alleged in the complaints. The complainants joined the course knowing fully well that it has got only provisional approval. Averments in para 13 of the petition are denied. The amounts of loss worked out the imaginary and without any basis. The opposite

parties 1 to 8 are not liable to compensate the complainants. The 4th opposite party also filed a version stating that the dispute raised does not fall within the purview of the Consumer Protection Act and the complainant had no cause of action against the University. It is also stated that application for affiliation of M. Tech. (Environmental Engineering) in the Government Engineering College, Thrissur, was received in their office on 27.6.1990 from the Director of Technical Education who is the Head of the Department in respect of the Technical Institutions. As per provisions in Statute 1 of the Calicut University Statutes, 1977 Chapter 23 for affiliation of College Statute 1 an application for affiliation of a professional college or an application in additional subjects shall be forwarded to the Registrar not later than 30th June of the preceding academic year in which the courses are proposed to be started. Accordingly the applications from Director of Technical Education for affiliation of M. Tech. (Environmental Engineering) could be considered by the University for starting the course during the year 1991-92 only. While applying for the affiliation neither the Director of Technical Education nor the College Authorities specified whether the affiliation requested for 1990-91 or even for 1989-90 nor had they noted as such on the application. It is stated that there was no M. Tech. course in Environmental Engineering under this University and therefore, an approved syllabus in the subject was not available. The combined meeting of the Board of Studies and Faculty of Engineering which met on 25.8.1989 had authorised the Principal, Government Engineering College, Thrissur to present the copies of the syllabus incorporating the modifications suggested for approval by the University. A draft copy of the syllabus was submitted by the Principal for consideration and approval by the Board of Studies and Academic Council and this was received in the office of the University only on 3.6.1991. The Chairman, Board of Studies in Engineering (PC) requested to convene a meeting of the Board on 21.8.1991 and it was held on the same date. The Board could not approve the syllabus on that day for want of quorum. Therefore, the syllabus was circulated among the Members of the Board of Studies for their comments, if any, as per the provisions contained in the statutes. The Faculty of Engineering which met on 20.9.1991 recommended to approve the syllabus and the academic Council in its meeting held on 14.5.1992 approved the syllabus and order to this effect was issued on 18.7.1992. In the circumstances they alleged that there is no deficiency on their part.

5. ALL the complainants were examined in this case as PW 1 in each of these complaints. Exts. P1 to P19 were marked on behalf of the complainants. They filed affidavits in lieu of chief examination. They were also subjected to cross-examination by the opposite party. Dr. K. Neelakantan, Principal, Government Engineering College filed an affidavit reiterating the contentions raised in the objection. However, he was not made available for cross-examination.

6. THE following points arise for consideration : (1) Whether the complainants are consumers within the meaning of Consumer Protection Act ? (2) Whether the opposite parties or any of them committed deficiency in service or unfair trade

practice in admitting the complainants to M. Tech. course and arranging examinations ? (3) If so, what is the relief to which they are entitled ? (4) What is the order as to cost ?

The first question to be considered is whether the complainant is a consumer. It is pursuant to the advertisement Ext. P1 the complainants applied for admission to Post Graduate Course of M. Tech. Environmental Engineering College. The complainants joined the course on payment of fee in the belief that the opposite parties had obtained necessary affiliation to the course from the University. As they joined the course on payment of fees they have to be treated as consumers.

The next question to be considered is whether there is deficiency on the part of all or any of the opposite parties. In that context it would be profitable to refer to a decision of the National Commission in *Akhil Bharatiya Grahak Panchayat and Another v. Secretary, Sharda Bhavan Educational Society and Others*, II (1994) CPJ 15 (NC). The registration as duly qualified pharmacists was essential to enable a student to undergo three months practical training and to practice as a pharmacist. Because of the delay in getting the registration the candidates remained unemployed after passing the diploma in Pharmacy examination in May, 1989. Thus they had to suffer for two years for being unable to do pharmacy work and this was due to the fact that this Pharmacy College had admitted students in excess of 30, the authorised maximum number of admissions. The complainants alleged there was deficiency in service on the part of the management of the Pharmacy College and they claimed compensation. The National Commission held under those circumstances it is established that there was unfair trade practice as well as deficiency in service on the part of the private college Authorities towards the students who were deliberately admitted to the course in violation of the law and the regulations and who in consequence suffered considerable delay in obtaining the registration. In that view a compensation of Rs. 10,000/- to each of the two complainants was allowed by the National Commission besides cost of Rs. 2,000/-. We feel that the facts in this case are more or less similar to the facts in that case. Of course the institution which invited admission in this case is a Government Institution and not a private institution but that does not make any difference so far as the question whether there is any hiring of service for consideration. If fee paid by a student of a Private Institution can be considered as a consumer, we do not find any reason why a student of a Government College cannot be considered differently and denied the status of a consumer within the meaning of Section 2(d) of the Consumer Protection Act. We, therefore, hold that the complainants are consumers.

7. IN the prospectus Ext. P2, under the heading Civil Engineering Branch, Environmental Engineering course is offered. It is stated in Ext. P2 that there shall be University Examination at the end of the first and second semesters in subjects as prescribed under the respective scheme to examinations and there will be also a viva voce examination based on the thesis/dissertation submitted.

IN the circumstances it is clear that the candidates were given the impression that the course is a recognised course affiliated to the University of Calicut and they would be able to appear for examination as per the scheme at the end of respective semesters. There is a clear representation to this effect in Ext. P2. IN the objection filed by the 7th opposite party and the affidavit filed by the Principal of the Government Engineering College, Thrissur it has been stated that there was a provisional affiliation from the University. However, no document has been produced to show that there was such provisional affiliation. The University of Calicut is the 4th opposite party and the fourth opposite party has also no case that any provisional affiliation was granted by them. An identity card was issued by the Government Engineering College, Thrissur which is evidenced by Ext. P4 series. Ext. P4 series also evidenced payment of fee by the complainants. It is also clear from what transpired after admission that neither the Director of Technical Education nor the opposite parties made serious efforts to see that affiliation is obtained sufficiently early so as to enable students to appear for the examinations, without losing their years in accordance with the scheme. It is seen from the identity cards that probable date of completion is described as 31.8.1991. It has also come out that the complainants could appear for the first semester examination conducted in July, 1990 which is an international assessment and not an examination held by the University. They could not appear for subsequent second semester examinations in time and ultimately all the complainants could appear for it only in January, 1993 alongwith two subsequent batches. The results came in December, 1993. The thesis could have been submitted only after second semester examination and the complainant could appear for final examination only in July, 1994 and final results came in October, 1994. The University cannot be considered to have committed any deficiency as there was no hiring of service of the University and the facts narrated above would clearly show that no deficiency was committed by the University. The application for affiliation was not given sufficiently early as prescribed by the statutes. Of course there is some delay in convening the academic Council meeting but so long as service of the University was not hired by complainants and the other opposite parties have not made application for affiliation as required by statute of the University it is not possible to hold that the University has committed any deficiency. Therefore, we hold that the 4th opposite party, the University of Calicut, is not liable to pay any compensation.

8. THE main contention taken by opposite parties 7 and 8 is that the collection of fee cannot be considered to be a consideration for hiring of service. In this connection the Government Pleader has vehemently relied on the decision of the National Commission in *Chairman, Board of Examinations, Madras v. Mohideen Abdul Kader*, 1996 (4) CTJ 966, where the National Commission held that a University or a Board of Examination in conducting public examinations, evaluating answer papers, announcing the results thereof and thereafter rechecking of the marks on an application of the student does not perform any service for hire nor there is any arrangement of hiring of any service as

contemplated in Section 2(1)(o) of the Act of the Consumer Protection Act. We are not satisfied that the above decision will be applicable to this case. THE question raised in this case is not relating to deficiency in conduct of examination or valuing answer paper or re-checking of answer papers. What is alleged is that without affiliation the Principal Regional Engineering College, Trivandrum, called applications and admitted students after advertising about the course giving impression the course had affiliation to the University and the candidates would be in a position to appear for examinations. The foregoing discussion would show that there is deficiency in service and unfair trade practice on the part of the opposite parties 7 and 8 since these students were admitted to the course without getting affiliation from the University of Calicut giving the impression that the course had necessary affiliation. No proper steps were also taken by them to enable them to appear for examinations at appropriate and complete the course within the stipulated period. It has been contended in the objection filed by the State and also objections filed by the 7th opposite party, the Principal that these students are given stipend. That is hardly a reason to hold that they are not consumers or to condone the deficiency committed by opposite parties 7 and 8.

9. THE next question to be considered is the quantum of compensation. THE loss of complainants cannot be assessed in terms of money. THEy lost 2 years and they also lost opportunities to take up gainful employment. Taking into account all the circumstances we feel that an award of Rs. 10,000/- to each of the complainant will meet the ends of justice. THEy will also be entitled to cost of Rs. 1,000/- each. Opposite parties 7 and 8 will pay this amount within one month. Complaints allowed.