

**(2010) 07 SC CK 0102**

**In the Supreme Court Of India**

**Case No :** Civil Appeal No. 4967 of 2010 (Arising out of SLP (C) No. 13872 of 2009)

Secretary, Board of Secondary Education, Orissa

APPELLANT

Vs

Santosh Kumar Sahoo and Another

RESPONDENT

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**Date of Decision :** 07-07-2010

**Acts Referred:**

Consumer Protection Act, 1986 — Section 12

**Citation :** AIR 2010 SC 3553 : (2010) 6 ALD 58 : (2010) 5 AWC 5265 Supp : (2010) 6 JT 459 : (2010) 2 OLR 763 : (2010) 8 SCC 353

**Hon'ble Judges :** G. S. Singhvi, J;Asok Kumar Ganguly, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

G.S. Singhvi, J.—Leave granted.

2. Whether the District Consumer Disputes Redressal Forum, Phulbani (for short, 'the District Forum') had the jurisdiction to entertain and allow the complaint filed by respondent No. 1 for correction of his date of birth recorded in the matriculation certificate and whether the National Consumer Disputes Redressal Commission (for short, 'the National Commission') committed an error by refusing to consider report dated 31.10.1995 submitted by Deputy Secretary of the appellant Board on the issue of eligibility of respondent No. 1 to take supplementary examination are the questions which arise for consideration in this appeal.

3. Respondent No. 1 appeared in the supplementary examination conducted by the appellant in 1983 as an Ex-student of G. Udayagiri Hubback High School. In the Admission Card and Provisional Certificate issued by the appellant, the date of birth of respondent No. 1 was shown as 10.05.1964. However, in the matriculation certificate his date of birth came to be recorded as 10.05.1961. Upon receipt of the matriculation certificate, respondent No. 1 contacted Headmaster of the school (respondent No. 2) who is said to have assured him

that he will write to the appellant for making necessary correction. Thereafter, respondent No. 1 met the concerned officers of the appellant and handed over the matriculation certificate and letter written by respondent No. 2. Respondent No. 2 is said to have written another letter dated 19.8.1998 to the appellant for making necessary correction in the date of birth recorded in the matriculation certificate of respondent No. 1, but without any result. On its part, the appellant is said to have sent 2-3 communications to respondent No. 2 between 1988 and 1991 requiring him to furnish the admission register and copy of the cancelled transfer certificate for the purpose of verification of the date of birth of respondent No. 1 but the latter did not respond. On 30.6.1992, the appellant returned original certificate of respondent No. 1 without making correction and directed respondent No. 2 to submit the relevant records at the certificate distribution camp for checking the date of birth of respondent No. 1.

4. After 12 years of his appearing in the examination and more than 3 years of the return of original certificate to respondent No. 2, respondent No. 1 filed complaint u/s 12 of the Consumer Protection Act, 1986 (for short, 'the Act') for issue of a direction to the appellant to correct his date of birth recorded in the matriculation certificate and also pay compensation for mental and physical agony and loss of his employment prospects by claiming that he was a consumer and there was deficiency of service on the appellant's part. Respondent No. 1 pleaded that he had suffered incalculable loss because his candidature was rejected by various recruiting agencies/authorities on the ground of non-production of original matriculation certificate.

5. In the counter filed on behalf of the appellant, it was averred that instructions were issued to respondent No. 2 vide letter No. 7279 dated 27.11.1988 to attend document distribution centre at Phulbani but he did not comply with the same. It was further averred that vide letter dated 27.07.1989 respondent No. 2 was asked to submit the admission register for the purpose of verification of the exact date of birth of respondent No. 1 but he did not do the needful and did not attend the camp organized for the purpose of checking the original documents. According to the appellant, the same story was repeated when the camp was held in July 1992 in the premises of Balliguda High School and AJO High School, Phulbani.

6. In his counter, respondent No. 2 shifted the entire blame on the appellant by stating that he had forwarded the original certificate for correction of the date of birth along with the relevant papers but necessary action was not taken by the appellant. Respondent No. 2 also denied the receipt of the communications sent by the appellant.

7. By an order dated 15.09.1995, the District Forum allowed the complaint and directed the appellant and respondent No. 2 to carry out necessary correction in the date of birth recorded in the matriculation certificate of respondent No. 1 and issue revised certificate within 45 days. The District Forum also awarded compensation of Rs. 10,000 against the appellant and Rs. 2,000 against

respondent No. 2 apart from the cost of Rs. 1,000.

8. After the decision of the District Forum, Deputy Secretary of the Board conducted an inquiry to verify the correct date of birth of respondent No. 1 and submitted report dated 31.10.1995 to the Secretary of the Board with the finding that respondent No. 1 had taken admission in Class X at Hubback High School, Udayagiri on the basis of fake transfer certificate which was issued in favour of Santosh Kumar Pradhan s/o Appa Rao Pradhan of Sujeli, G. Udayagiri, who had studied upto IX Class at Government High School Balliguda. The conclusion recorded by Deputy Secretary of the Board reads as under:

From the annexure 4 & 1 it is ascertained that TC No. 63/24.6.78 had been issued in favour of Santosh Kumar Pradhan, S/o. Appa Rao Pradhan of Sujeli, G. Udayagiri in class IX from Govt. High School, Balliguda, whereas Annexure-2 reveals that Santosh Kumar Sahoo, S/o. Appa Rao Sahu of Sujeli, G. Udayagiri was admitted at Hubback High School, G. Udayagiri on 14.7.78 in class X which totally differs from Annexure-4 & 1.

It clearly indicates that Santosh Kumar Sahoo, S/o. Appa Rao Sahoo who took admission vide TC No. 63/dt.24.6.78 of Govt. High School, Balliguda is a forged candidate at Hubback High School, G. Udayagiri on 14.7.78 is a forged candidate.

Further Santosh Kumar Pradhan was issued TC in class IX, where as Santosh Kumar Sahoo took admission at Hubback High School, G. Udayagiri in Class IX.

So, the admission of Santosh Kumar Sahu at Hubback High School, G. Udayagiri is completely illegal and forged and so, the original pass certificate issued to him may please be cancelled and necessary steps in the matter please be taken. Further as ascertained Prafulla Kumar Das, in-charge headmaster, issued TC at Govt. High School, Balliguda vide TC No. 63/24.6.78 on the basis of which Santosh Kumar Sahu took admission at G. Udayagiri. So necessary disciplinary measures please be taken against Sir P.K. Das under intimation to higher authorities.

9. In the appeal filed against the order of the District Forum, the appellant made specific mention of the enquiry report and pleaded that in view of the finding recorded by the Deputy Secretary that the very admission of respondent No. 1 was based on a fake document, his prayer for correction of the recorded date of birth should be rejected. This is clearly borne out from paragraph 'g' of the memo of appeal, which is reproduced below:

g) For that in absence of a finding by the learned Forum below that the real date of birth of the complainant-respondent No. 1 was 10.5.1964 and not 10.5.1961, the finding that the complainant suffered for non-correction of the said certificate is illegal and arbitrary and thus liable to be set aside.

It may incidently been mentioned that in view of the controversy, the Secretary of the Board requested the Deputy Secretary of the Berhampur Zone for conducting a thorough enquiry in the matter and find out the truth or otherwise

with regard to the exact date of birth of the complainant. In course of enquiry made by the Deputy Secretary many interesting facts have come to the light which is felt necessary to be brought the notice of the Hon. Commission. It is found from the spot enquiry that:

a) It is revealed from the T.C. No. 63 dated 24.6.1978 that it has been issued in favour of Santosh Kumar Pradhan S/o. Aprarao, Pradhan of Sujeli in Class-IX from Govt. Boys High School, G. Udayagiri on 14.7.1978 in Class-X. On the basis of the T.C. issued to one Santosh Kumar Pradhan, one Satosh Kumar Sahoo could not have taken admission. The circumstances under which the admission was made and the complainant took admission in the said school is mysterious. A copy of the report furnished by the Deputy Secretary of Berhampur Zone is annexed hereto as Annexure-B.

10. The State Commission did not advert to the report of the Deputy Secretary and dismissed the appeal by observing that respondent No. 1 had been subjected to unwarranted harassment. The State Commission also enhanced the compensation awarded by the District Forum from Rs. 10,000 to Rs. 20,000 so far as the appellant is concerned and from Rs. 2,000 to Rs. 5,000 qua respondent No. 2.

11. The National Commission overruled the objection taken by the appellant that the complaint filed by respondent No. 1 was not maintainable by observing that the counsel who appeared on its behalf before the District Forum had agreed for disposal of the complaint on merits. The National Commission rejected the report of the Deputy Secretary by making the following observations:

Counsel for the petitioner then referred to a Report of the Deputy Secretary of the Board of Secondary Education, Orissa to contend that Transfer Certificate No. 63 dated 24.06.1971 had been issued in favour of one Santosh Kumar Pradhan s/o Appa Rao Pradhan of Sujeli in G. Udayagiri in Class IX from Government High School Balliguda whereas the respondent/complainant is Santosh Kumar Sahoo s/o Appa Rao Sahu of Sujeli was admitted in Hubback High School, G. Udayagiri on 14.07.1978. According to him, the respondent got admission in Hubback High School, G. Udayagiri fraudulently on the basis of the Transfer Certificate issued to Santosh Kumar Pradhan. This report is of the year 1995. No such defense was taken by the petitioner-Board in its written statement. Petitioner cannot be permitted to plead a new fact, which was not taken by it either in the written statement or before the District Forum or before the State Commission. Moreover, as stated above, this is a Report of 1995 whereas the original certificate was issued in the year 1985. This seems to be clearly an afterthought to cover up deficiency committed by the petitioner in showing an incorrect date of birth of the respondent, which has resulted in miscarriage of justice.

12. Learned Counsel for the appellant assailed the impugned order and argued that the complaint filed by respondent No. 1 should have been dismissed at the threshold because there was no deficiency of service on the appellant's part. He

further argued that the complaint filed in 1999 with the prayer for issue of a direction to the appellant to correct the date of birth recorded in the matriculation certificate issued in 1983 was hopelessly barred by time and the District Forum committed a jurisdictional error by entertaining the same and granting relief to respondent No. 1. Learned Counsel then referred to the report submitted by the Deputy Secretary of the Board to show that respondent No. 1 had secured admission by playing fraud and argued that the State Commission and the National Commission committed serious error by ignoring the findings recorded by the Deputy Secretary on the issue of entitlement of respondent No. 1 to take the supplementary examination. Learned Counsel for respondent No. 1 argued that the District Forum did not commit any error by entertaining the complaint because the appellant was guilty of gross deficiency of service. Learned Counsel laid considerable emphasis on the fact that respondent No. 2 had supported the cause of respondent No. 1 by writing letters to the appellant for making correction in his recorded date of birth and argued that the failure of the appellant to carry out necessary correction was per se illegal and unjustified necessitating an order to this effect by the District Forum which was affirmed and upheld by the State Commission and the National Commission.

13. We have considered the respective submissions. In our view, the impugned order is liable to be set aside because all the consumer forums failed to consider the issue of maintainability of the complaint in a correct perspective. Before the District Forum could go into the issue of correctness of the date of birth recorded in the matriculation certificate of respondent No. 1, it ought to have considered whether the so called failure of the appellant to make correction in terms of the prayer made by respondent No. 1 amounted to deficiency of service. The District Forum, the State Commission and the National Commission also overlooked that despite repeated communications sent to him, respondent No. 2 did not produce the original documents including the admission register so as to enable the appellant to verify the correctness and genuineness of the assertions made by respondent No. 1 regarding his correct date of birth. In our view, the District Forum should have taken cognizance of the communications sent by the appellant to respondent No. 2 requiring him to produce the original records and called upon him to explain his position in the backdrop of the fact that on the one hand, he was writing letters to the appellant for correcting the date of birth recorded in the matriculation certificate of respondent No. 1 and, on the other hand, he resolutely avoided production of the original records. The report of the Deputy Secretary substantially aggravates the suspicion that respondent No. 1 and respondent No. 2 were hand in gloves in allowing the former to take the supplementary examination on the basis of the documents which belonged to someone else. In the memo of appeal filed against the order of the District Forum, the appellant has made a specific mention of the report of the Deputy Secretary but the State Commission ignored the same. The National Commission brushed aside the report of the Deputy Secretary by describing it as an after thought ignoring that the same was based on a comprehensive analysis and

evaluation of the documents made available by the authorities of the concerned schools. We have no doubt that if the National Commission had carefully examined the report, it would have certainly called upon respondent No. 1 to explain his position on the issue of obtaining admission on the strength of fake documents and then decided whether the direction given by the District Forum, which was upheld by the State Commission was legally sustainable. Its failure to do so has resulted in miscarriage of justice.

14. In the result, the appeal is allowed. The impugned order of the National Commission as also the orders passed by the District Forum and State Commission are set aside and the matter is remitted to the District Forum for fresh adjudication of the complaint filed by respondent No. 1. The District Forum shall decide the objection raised on behalf of the appellant to the very maintainability of the complaint as also the issue of limitation. The District Forum shall also consider the report of the Deputy Secretary of the Board after giving an opportunity to respondent No. 1 to submit his reply in the context of the findings and conclusion recorded therein and then pass appropriate order. The parties are left to bear their own costs.