
(1993) 10 NCDRC CK 0041

In the National Consumer Disputes Redressal Commission

UNIVERSITY OF AJMER, M.D. UNIVERSITY

APPELLANT

Vs

SNEH PRABHA GOYAL

RESPONDENT

Date of Decision : 05-10-1993

Acts Referred:

Citation : 1994 3 CPJ 185

Hon'ble Judges : S.K.Mal Lodha , Damodar Thanvi J.

Final Decision : Revision allowed

Judgement

1. OPPOSITE Party No. 3 before the District Forum, Sri Ganganagar has filed this revision under Section 17(2)(b) of the Consumer Protection Act, 1986 ("the Act" herein) against the order dated 15.6.92 passed by the District Forum, Sri Ganganagar in Complaint Case No. 182/92. By the order under revision the District Forum overruled the preliminary objections submitted on behalf of the petitioner. It opined that the complaint should be decided on merits. In the complaint before the District Forum non-petitioner No. 1 was the complainant, non-petitioner No. 3 was OPPOSITE Party No. 2 and nonpetitioner No. 4 was OPPOSITE Party No. 4. Non-petitioner No. 2 is a proforma party as it is District Forum, Sri Ganganagar. Non-petitioners Nos. 3 and 4 are also proforma parties to the revision petition. The complainant/non-petitioner filed a complaint claiming the following reliefs:- xx Xx xx

2. THE petitioner filed the reply stating preliminary objections against the maintainability of the complaint and reserved its right to file reply on merits, if necessary. THE reply was in the form of application. THE preliminary objections pertained to the maintainability of the complaint under the Act. THE District Forum by the impugned order dismissed the application filed by the petitioner stating that it will be better to decide the complaint on merits. Against that the petitioner has filed the revision. As stated above non-petitioner No. 2 is a proforma party. Non-petitioner No. 1 was served. Presumption of service was raised against non-petitioners Nos. 3 and 4. THE revision is fixed for arguments today. Mr. Dharmendra Agarwal, Advocate has appeared on behalf of Mr. Virendra

Agarwal, learned Counsel for the petitioner. No appearance has been put on behalf of the nonpetitioners. We heard Mr. Dharmendra Agarwal and carefully considered the order under revision. The following question is involved in the revision:- (1) Whether the complainant has hired the services of the petitioner for revaluation or conducting the examination ? "Complainant", "complaint", "consumer", "consumer dispute", "deficiency", and "service" have been defined in Section 2(1)(b), (c), (d), (e), (g) and (o) of the Act respectively. A somewhat similar question involved in the present revision arose before us in *University of Ajmer v. Hanuman Dutta and Another* (1991 Consumer Cases 328). After taking into consideration the definitions it was held as under:- "In our opinion, conducting of examination evaluation of answer books and declaration of the results, according to the results or according to the evaluation do not constitute "service" within the meaning of Sec. 2(1)(o) of the Act and further that paying the examination fee by the candidate to the University for the aforesaid purposes, does not mean that the candidate has hired the services of the complainant (sic. opp. party)."

In *Seema Bhatia v. Registrar, Rajasthan University* (II (1992) CPJ 899) the State Commission observed as under:- "The question is whether the complainant can be said to be a consumer and further that conducting of the examination and declaration of the result thereof after reevaluation of the answer books the Opposite Party is said to have rendered deficient of service when the re-evaluation fee is charged from the candidate who applies for re-evaluation. Having considered the definition of service which is inclusive one also contained in Section 2(1)(o) of the Act, we are of opinion that examination, reevaluation of answer books, declaration of result and re-evaluation of answer books do not constitute "service" within the meaning of Section 2(1)(o) of the Act. Payment of the re-evaluation fee by a candidate for the purpose of re-evaluation of answer books does not mean that the candidate has hired the service of the Opposite Party. It has been observed by the National Commission in *Society for Civil Rights v. Union of India and Others*, reported in I (1991) CPJ 199 (NC)=(1991 CSMR.CAS 12) that consumer must be one who has hired a service for consideration and to be a consumer the nexus of hiring of service must be established. So payment of the examination fee by the candidate for re-evaluation of the answer books to the University does not mean that the candidate had hired the service of the Opposite Party. Here means payment of contract for the use of thing or for personal service, the engagement on these terms. It is not necessary to notice the authorities bearing on the difference between "Tax" and "Fee".

The order of the State Commission was affirmed by the National Commission.

In *Seema Bhatia v. Registrar, Rajasthan University* (First Appeal No. 133/92 decided on 12.4.93) wherein it was observed as under:- "...We are in complete agreement with the view expressed by the State Commission that in conducting the re-evaluation of the answer papers of a candidate who had appeared for an

examination held by the respondent University, the respondent was not rendering any service as defined in the Act for consideration nor there was any arrangement of hiring of service for consideration as contemplated by the Act. The approach made by the complainant to the State Commission seeking relief under the Consumer Protection Act was totally misconceived. The dismissal of the complaint/petition by the State Commission on the said ground was absolutely correct..."

3. IN view of the authoritative pronouncement of the National Commission, the complainant cannot get relief on the ground that the service rendered by Opposite Party No. 1 suffered from deficiency for there was no hiring of service of the University. The District Forum, Ajmer has exceeded its jurisdiction when it dismissed the application of the petitioner raising preliminary objections regarding the maintainability of the complaint when it observed that it would be better to try the complaint on merits. The District Forum has exercised jurisdiction not vested in it by law when it ordered to try the complaint on merits. For the aforesaid reason the order dated 15.6.92 is set aside. The revision petition is accepted and the order dated 15.6.92 is set aside. The District Forum, Sri Ganganagar is directed to pass appropriate orders in the complaint in the light of the above order. As nobody has appeared on behalf of the complainant/non-petitioner, there will be no order as to costs. Revision allowed.