

(2012) 08 NCDRC CK 0097

In the National Consumer Disputes Redressal Commission

UNIVERSITY OF DELHI

APPELLANT

Vs

Mohd A M Abel Karim , S.P. Arya , V.P. Srivastava

RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Citation : 2012 0 NCDRC 426 : 2012 3 CPJ 713 : 2012 3 CPR 567

Hon'ble Judges : Anupam Dasgupta , Suresh Chandra J.

Advocate : Beenashaw Soni , Ram Singh Choudhary

Judgement

1. FOR reasons stated in the application filed by the petitioner for condonation of delay, delay of 87 days in filing this revision petition is condoned.
2. THIS revision petition has been filed by University of Delhi (through its Registrar) against the order dated 8.3.2007 passed by the Delhi State Consumer Disputes Redressal Commission Delhi ("State Commission" for short) by which the State Commission allowed the appeal of the complainant, respondent No.1 herein and set aside the order dated 6.11.2006 passed by the District Forum, North Tis Hazari, Delhi dismissing the complaint of the complainant.
3. RESPONDENT No.1/ complainant, Mohd. A.M. Abel Karim, was registered for Ph. D. Degree Course at the Mathematics Department, University of Delhi since 6.7.1999 for the period of the course which was three years. It is the grievance of the complainant that in spite of submitting his thesis papers to his research professor i.e. OP No.2/Respondent No.2, she never informed the complainant to collect his Ph. D. Degree. According to him, there was unexplained delay on the part of the opposite parties in the issue of the Ph. D. Degree to the complainant. The OPs including the petitioner-University also cancelled his registration for Ph. D. Course on 13.10.2003 without any just or sufficient cause or even informing him about the fate of his Ph. D. Course. Alleging this as deficiency in service on the part of the OPs, the complainant lodged a complaint before the District Forum for compensation/damages to the tune of Rs.10 lakh. Because of certain defects in the complaint filed by the complainant, the District Forum dismissed the complaint in terms of the following order: - "We have heard the parties at

length and have also carefully scrutinized the relevant material/documents placed on record. The present complaint filed by the complainant is not even signed by the complainant and the special attorney given by the complainant was not notarized. The said authority is neither legal nor authentic as per requirements of law. The attorney of the complainant has filed the affidavit by way of evidence on behalf of the complainant which is neither maintainable nor sustainable in law. The attorney is not competent to depose on the facts which are in the personal knowledge of the complainant. Without going into the merits of the complaint, we hereby dismiss the present complaint of the complainant. Parties are left to bear their own costs."

4. AGGRIEVED by the aforesaid order of the District Forum, the complainant/respondent No.1 challenged the same by filing an appeal before the State Commission which allowed the same and after setting aside the order of the District Forum remitted it back to the District Forum for deciding it afresh on merits because in its opinion the District Forum did not touch upon the merits or the facts of the case.

5. WE have heard Ms. Beenashaw Soni, Advocate for the petitioner and Mr. Ram Singh Choudhary, Advocate for respondent No.1. None has appeared for other respondents.

6. WHILE denying any deficiency in service on the part of the petitioner University, learned counsel has submitted that the present complaint is not maintainable since the complainant is not a consumer nor the petitioner University renders service for consideration as envisaged under the Consumer Protection Act. In view of this, the complaint is not maintainable before the Consumer Forum and as such is liable for dismissal on the ground of non-maintainability. In this context, our attention has been drawn to the celebrated ruling given by their Lordships of the Apex Court in the case of Bihar School Examination Board vs. Suresh Prasad Sinha (2009) 8 SCC 483, in which allowing the appeal, the Apex Court held as under: - "The process of holding examinations, evaluating answer scripts, declaring results and issuing certificates are different stages of a single statutory non-commercial function. It is not possible to divide this function as partly statutory and partly administrative. When the Examination Board conducts an examination in discharge of its statutory function, it does not offer its "services" to any candidate. Nor does a student who participates in the examination conducted by the Board, hires or avails of any service from the Board for a consideration. On the other hand, a candidate who participates in the examination conducted by the Board, is a person who has undergone a course of study and who requests the Board to test him as to whether he has imbibed sufficient knowledge to be fit to be declared as having successfully completed the said course of education; and if so, determine his position or rank or competence vis-à-vis other examinees. The process is not therefore availment of a service by a student, but participation in a general examination conducted by the Board to ascertain whether he is eligible and fit to

be considered as having successfully completed the secondary education course. The examination fee paid by the student is not the consideration for availment of any service, but the charge paid for the privilege of participation in the examination. The Act does not intend to cover discharge of a statutory function of examining whether a candidate is fit to be declared as having successfully completed a course by passing the examination. The fact that in the course of conduct of the examination, or evaluation of answer-scripts, or furnishing of mark-sheets or certificates, there may be some negligence, omission or deficiency, does not convert the Board into a service-provider for a consideration, nor convert the examinee into a consumer who can make a complaint under the Act. The Board is not a "service provider" and a student who takes an examination is not a "consumer" and consequently, complaint under the Act will not be maintainable against the Board."

7. APPLYING the ratio of this judgment, learned counsel for the petitioner University submitted that the University cannot be regarded as a service provider in relation to the dispute raised through the present complaint and hence the complainant cannot be treated as a consumer. The impugned order is, therefore, liable to be set aside. While on the subject, learned counsel also pointed out that the State Commission passed the impugned order in appeal filed by the complainant without issuing notice to the petitioner and in that view also the impugned order could not be sustained and is liable to be set aside.

8. WE have considered the submissions of the parties and perused the record. Keeping in view the ratio laid by the Apex Court in Suresh Prasad Sinha (supra), which we find is fully applicable to the present case, we hold that the complainant cannot be regarded as a consumer qua the dispute in question regarding evaluation of his thesis and award of Ph.D. degree and hence the complaint is not maintainable under the Consumer Protection Act, 1986. The impugned order, therefore, is set aside and the revision petition disposed of accordingly with no order as to costs.