

(2024) 07 NCDRC CK 0055

National Consumer Disputes Redressal Commission

Case No: Revision Petition No. 346, 347, 2082 Of 2019

New Delhi Institute Of
Management Studies

APPELLANT

Vs

Shamaneshwaram & 2 Ors

RESPONDENT

Date of Decision: July 23, 2024

Acts Referred:

- Consumer Protection Act, 1986 - Section 21(b)
- University Grants Commission Act, 1956 - Section 22

Hon'ble Judges: Dr. Inder Jit Singh, Presiding Member

Bench: Single Bench

Advocate: Dr. Bipin K Dwivedi, Ankit Aakash, Sunil Kumar

Final Decision: Dismissed

Judgement

Dr. Inder Jit Singh, Presiding Member

1. The Revision Petitions (RP) No. 346-347 of 2019 have been filed by the Petitioner against Respondents as detailed above, under section 21 (b) of Consumer Protection Act 1986, against the order dated 15.10.2018 of the State Consumer Disputes Redressal Commission Bihar (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 267 and 276 of 2017 in which order dated 31.05.2017 of Patna District Consumer Disputes Redressal Forum (hereinafter referred to as District Forum) in Consumer Complaint (CC) no. 144 of 2010 was challenged, inter alia praying for setting aside the order of the State Commission and District Forum dated 15.10.2018 and 31.05.2017.

2. The Revision Petition (RP) No. 2082 of 2019 has been filed by the Petitioner (Shamaneshwaram) against Respondents as detailed above, under section 21 (b) of

Consumer Protection Act 1986, against the order dated 15.10.2018 of the State Consumer Disputes Redressal Commission Bihar (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 267 of 2017 in which order dated 31.05.2017 of Patna District Consumer Disputes Redressal Forum (hereinafter referred to as District Forum) in Consumer Complaint (CC) no. 144 of 2010 was challenged, inter alia praying for :

- a. Modifying the order dated 15.10.2018 of the State commission
- b. Direct the respondent no.1 to return the deposited fee of Rs.1,55,000/- with 15% interest per annum from 09.06.2008 (date of deposit) till its payments.
- c. Direct the respondent no.1 to give the Petitioner Rs.70,000/- with interest @ 15% p.a. from January 2009 which he spent on stay in Delhi, Management books etc.
- d. Enhance compensation to the tune of the Rs.2,00,000/- and litigation cost of Rs.50,000/-.

3. The Revision Petitioner (in RP No. 346-347 of 2019) (hereinafter also referred to as OP No.1) was Respondent in FA No. 267 of 2017 and Appellant in Appeal No. 276 of 2017 before the State Commission and OP No.1 before the District Forum. The respondent no.1 (in RP No. 346-347 of 2019) (hereinafter also referred to as Complainant) was Appellant in Appeal No. 267 of 2017 and Respondent in Appeal No. 276 of 2017 before the State Commission and Complainant before the District Forum.

In RP No. 2082 of 2019, the Petitioner was Appellant before the State Commission in Appeal No. 267 of 2017 and Respondent before the State Commission in Appeal No. 276 of 2017 and Complainant before the District Forum. While Respondents No.1 herein was Respondent before the State Commission in Appeal No. 267 of 2017 and Appellant before the State Commission in Appeal No. 276 of 2017 and OP No.1 before the District Forum.

4. Maduraj Kamraj University and Arcade Business College did not file any appeal before the State Commission against the order of the District Forum.

5. Notice was issued to the Respondents, Complainant filed Written Arguments/Synopsis dated 03.01.2024. Shamaneshwaram (Complainant), Maduraj Kamraj University and Arcade Business College did not appear despite service (substituted service) and were proceeded ex parte.

6. Brief facts of the case as presented by the Complainant and as emerged from the RP, Order of the State Commission, Order of the District Forum and other case records are that OP Institute and its admission in charge officer falsely informed the Complainant that the MBA course in which the complainant wanted to take admission is a regular course of two years associated with the Madhuraj Kamraj University and is approved by

the University Grants Commission. The Complainant relying on the information given by the institute and given in the brochure took admission in the Institute but complainant was not provided job training during the course. Being agitated, Complainant filed RTI and got reply from University Grants Commission dated 12.09.2009 that Madhuraj Kamraj University was not authorized to open study centre off campus beyond territorial jurisdiction of the State. Being aggrieved, the Complainant filed CC before the District Forum and District Forum vide order dated 31.05.2017 directed OP No.1 to refund the fee deposited for the first year i.e. Rs.1,55,000/- and Rs.25,000/- for compensation and litigation cost. Being aggrieved of the said order of the District Forum, both OP No.1 and Complainant filed Appeal before the State Commission and State Commission vide order dated 15.10.2018 partly allowed the Appeal filed by the Complainant and dismissed the appeal of the OP No.1. Therefore, the Petitioner / OP No.1 is before this Commission now in the present RP.

7. Petitioner has challenged the Order dated 15.10.2018 of the State Commission in RP No. 346-347 of 2019 mainly on following grounds:

i. The Fora Below failed to appreciate that they have no territorial jurisdiction and relied upon the order of Hon'ble Supreme Court / National Commission in Kiran Singh and Ors. Vs. Chaman Paswan and Ors. AIR 1954 SC 340 and Haryana Urban Development Authority Vs. Vipin Kumar Kohli I (1995) CPJ 235 (NC) and Indian Airlines Corporation Vs. Patel Remubhai Shankar Lal and Anr. III (193) CPJ 2005.

ii. The Fora Below ignored the approval letter dated 06.12.2007 issued by respondent no.1 addressed to Petitioner granting approval to the Petitioner Institute as learning centre of the university to offer MBA (Industry Integrated) course of the university for the academic year 2008-09.

iii. Both the Fora below failed to appreciate that complainant attended classes for first semester and afterwards he did not attend the classes. That seat remained vacant for the next year and as per University Rule, no admission was allowed in the 2nd year and the Institute did not get fee for the next year and other needy student was deprived of opportunity to pursue the study in the said stream and it is settled law that fee once paid, is not refundable. Even otherwise, after starting of the session, no fee is refundable as decided by the Hon'ble High Court in Ms. Neha Sharma Vs. I.P. University (W.P (C) No. 3039 of 2002.

iv. Both the fora below failed to appreciate that respondent no.2 only stopped the programme from 2009 session onwards but those students who got admission in 2008-10 session were allowed to continue the classes and the students who took admission completed their studies. The Fora below erred in taking the stand that petitioner was not allowed to conduct the course for 2008-10 session.

v. Both the Fora below failed to appreciate that University Enrolment Form was issued by the University and after receiving the same, Petitioner issued it to every student since University Enrolment Form is filled up only after joining the course.

vi. Both the Fora below erroneously took the view that respondent no.1 was consumer, as education is not a service and this Commission vide order dated 20.10.2020 decided by three members Bench in Manu Solanki and Ors. Vs. Vinayaka Mission University - CC No. 261 of 2012 and connected matters held that educational institutes while imparting education do not provide any service and will be out of ambit of the Consumer Protection Act.

vii. Reliance is also placed on the order of National Commission / Supreme Court in Homeopathic Medical College and Hospital, Chandigarh Vs. Miss. Gunika Virk 1 (1996) CPJ 37 (NC), Unni Krishnan J.P. and Ors. Vs. State of Andhra Pradesh and Ors. JT 1993 (1) SC 474, R.M.D.C. Vs. State of Bombay (1957 SCR 874).

8. Petitioner has challenged the Order dated 15.10.2018 of the State Commission in RP No. 2082 of 2019 mainly on following grounds:

(i) The Fora below did not award interest @ 15% p.a. on the deposited fee of Rs.1,55,000/- from 09.06.2008 till its payment, for which the Petitioner is entitled. Petitioner is also entitled for compensation of Rs.2,00,000/- on account of physical harassment in pursuing a prolonged legal battle and mental agony for not obtaining his management degree though he was selected in Lalit Narayan Mishra Institute of Management, Patna. Further, the Fora Below had not adopted the settled principle of law while awarding compensation.

9. Heard counsel for New Delhi Institute of Management Studies (Petitioner in RP No. 346-347 of 2019 and respondent in RP No. 2082 of 2019).

9.1. Learned counsel for the Petitioner apart from arguing the points which have been stated in para 7, argued that Petitioner has raised the objection of territorial jurisdiction from the very beginning and that Petitioner has not any branch at Patna and at no point of time, it ever had dealing with respondent no.3. i.e. Arcade Business College, Patna. Arcade Business College, Patna is just a coaching centre and it has no connection with Madurai Kamraj University i.e. respondent no.2. In the complaint itself, respondent no.1 stated below name of respondent no.3 that he had made Arcade Business College as party to file the suit at Patna, which is not the law governing territorial jurisdiction. No where in the complaint, respondent no.1 has stated that respondent no.3 is official branch of respondent no.2. i.e. Maduraj Kamraj University and Petitioner had any link with respondent no.2. As a matter of fact, respondent no.3 is just a coaching centre. Further, it is argued that it has also not been mentioned in the complaint that respondent no.1 got admission to Institute through respondent

no.3 and as a matter of fact, Maduraj Kamraj University has no branch at Patna with the name of Arcade Business College.

9.2. Stand taken by State Commission regarding territorial jurisdiction is in total disregard of the judgment of Hon'ble Supreme Court in Soni Surgical Vs. National Insurance Co. Ltd.

9.3. It is further argued that Fora below failed to appreciate that Maduraj Kamraj University is a 100% Government owned University and approved by UGC and the said university is conducting the MBA (Industry Integrated) for the last many years and thousand of students have passed from its MBA (Industry Integrated) and BBA (Industry Integrated) programmes from various centres spread all over India and in 2009 after the UGC notification, they stopped the same. Students admitted till session 2008-09 got their degrees.

9.4. Reliance has been placed by the learned counsel on the following judgments of Hon'ble Supreme Court / High Court / national Commission :

a. Manu Solanki and Ors. Vs. Vinayaka Mission University – CC No. 260 of 2012.

b. Homeopathic Medical College and Hospital, Chandigarh Vs. Miss Gunita Virka – I (1996) CPJ 37 (NC)

c. K.V. Bharati Vs. the Vice Chancellor and Ors. W.P. (Civil) 3039 of 2002

d. Soni Surgical Vs. National Insurance Co. Ltd decided on 20.10.2009

e. HUDA Vs. Vipin Kumar Kohli – RP No. 317 of 1999.

9.5. Complainant in this written arguments stated that he is solely relying upon the judgment / order of Hon'ble Supreme Court in Buddhist Mission Dental College and Hospital Vs. Bhupesh Kurana and Ors. – Civil Appeal No. 1135 of 2001 wherein the Hon'ble Supreme Court directed the Institute to refund the admission expenses paid at the time of admission along with interest @ 12%.

10. We have carefully gone through the order of the State Commission, District Forum, other relevant records and relevant contentions of the parties. Main contention of OP No.1 (Petitioner in RP No. 346-347 of 2019) is that they had the approval dated 06.12.2007 to run the MBA course as learning centre of the University (R-2) and that R-2 only stopped the programme from 2009 session onwards, but those students who got admission in 2008-10 session were allowed to continue the classes and students who took admission completed their studies. Further, the OP No.1 has raised objection regarding territorial jurisdiction and that Complainant was not a Consumer under Consumer Protection Act as education is not covered as Service under the Act.

11. In this regard, extract of relevant paras of orders of the District Forum is reproduced below :

So far maintainability of this case is concerned it is crystal clear that opposite party no.2 has a branch office in Patna as opposite party no.3. Hence this form has jurisdiction to hear this case because no any cogent documents has been submitted by opposite party no.1 to show that opposite party no.2 is not the branch of Madurai Kamraj University.

The opposite party no.1 has asserted that institute in question has been duly approved but from the letter dated 12.08.2009 of UGC (i.e. annexure-D). It is crystal clear that Madurai Kamraj University is not authorized to open study center off campus center and the university cannot run distance education programme. Thus, it is crystal clear that institute of opposite party no.1 which is running in New Delhi as a branch of Madurai Kamraj University had no right to run the course after taking admission. This act is clearly against the judgment of Hon'ble Supreme Court of India as will appear from annexure-D.

12. Extract of relevant para of orders of State Commission is also reproduced below :

We have considered the matter, material on record as well as the impugned order. We do not find any material on record to support the stand of the institute that the MBA course in question had approval of the university grants commission vide letter dated 06.12.207 is letter according to the permission to the institute. The primary question is course in question must be approval of university grant commission not such the approval letter have been brought on record by the institute. The District Forum has considered the matter in correct perspective directing for refund of the deposited amount of Rs.1,55,000/-. As regards to compensation and litigation cost, the institute to pay a compensation of Rs.35,000/- instead of Rs.25,000/- as awarded by the District Forum we further direct the litigation cost of Rs.10,000/-. The above amount shall be paid with interest directed by the District Forum.

13. OP No.1 has drawn our attention to letter dated 06.12.2007 from OP No.2 to OP No.1 Institute conveying the permission to OP No.1 Institute to function as learning Centre to offer MBA (Industry Integrated) course of OP no.2 University for the Academic Year 2008-09. It is not clear from this letter as to what exactly will the role of learning centre, their duties and obligation etc. As per letter dated 02.06.2008, OP No.1 has informed the Complainant that he has qualified for admission of MBA (Industry Integrated) alongwith PGDBM Programme at NDIMS (OP No.1) Institute. This letter gives an impression as if OP No.1 is itself authorized to run the course, while as per letter dated 06.12.2007, it is only a learning Centre. It is true that Complainant has filled Registration Form as well as Enrolment Form of OP No.2 of 2008-09 academic

session. OP No.1 Institute has also issued an information brochure 2008-10 for MBA (Industry Integrated) from OP No.2 University alongwith PGBDM Programme. Fees and said charges etc have been paid by complainant to OP No.1 Institute which include University Fee to OP No.2. With all these documents, OP No.1 has given an impression to the complainant as if OP No.1 is an off-campus centre of OP No.2 to conduct such classes. However, Complainant has drawn our attention to RTI Reply dated 12.08.2009 from University Grants Commission (UGC) in which in response to the applicant's (complainant's) query, UGC has stated that OP no.2 University has been established by an Act of State Legislature of Tamil Nadu as a State University and is empowered to award degrees as specified under Section 22 of the UGC Act through its main campus with the approval of Statutory Councils. However, this reply of UGC states that OP no.2 University is not authorized to open study centre / off campus centre beyond the territorial jurisdiction of the state as per the decision of the Hon'ble Supreme Court of India in case of Prof. Yashpal Vs. Government of Chhattisgarh and University cannot open its centre without the approval of UGC even within the State as per the provision of UGC Regulations, 2003. The letter further states that University cannot run distance education program without the approval of Joint Committee of UFC – AICTE-DEC. This letter further states that OP No.2 can award regular MBA degree only to those students who pursue their MBA degree at its main campus in regular mode. In view of this categorical reply by UGC, we are of the considered view that complainant was misled to believe that OP No.1 Centre is authorized to conduct MBA course on behalf of OPNo.2 University at its off campus outside the territorial jurisdiction of OP No.2 University. Hence, this amounts to deficiency in service on the part of OP no.1 Institute. Here the issue is not with regard to the quality / contents of education imparted but with respect to the unfair trade practice on the part of OP No.1 to mislead the students like the complainant in question to believe as if OP No.1 was an authorized off campus centre of OP No.2 Centre to impart regular MBA degrees. Hence, the complainant is covered under the definition of 'Consumer' under the Act and OP No.1 is liable for deficiency in service.

14. As regards the revision petition filed by the complainant for enhancement of compensation, State Commission in Appeal filed by the Complainant has ordered OP No.1 to pay compensation of Rs.35,000/- instead of Rs.25,000/- as awarded by the District Forum and further directed litigation cost of Rs.10,000-/. Hence, we are of the view that State Commission has awarded a fair amount of compensation and litigation cost and no further enhancement in this regard is required. It has been held by Hon'ble Supreme Court in catena of judgments[Ruby (Chandra) Dutta vs. United India Insurance Co. Ltd. [(2011) 11 SCC 269, Sunil Kumar Maity vs. State Bank of India and Ors. (2022) SCC OnLine SC 77, Lourdes Society Snehanjali Girls Hostel and Another Vs. H & R Johnson (India) Limited and Ors, (2016) 8 SCC 286, T. Ramalingeswara Rao (Dead) Through Legal Representatives and Anr. Vs. N. Madhava Rao and Ors. (2019) 4 SCC 608,

Rajiv Shukla Vs. Gold Rush Sales and Services Limited and Anr. (2022) 9 SCC 31] that revisional jurisdiction of the National Commission is extremely limited, it should be exercised only in case as contemplated within the parameters specified in the provision i.e. when State Commission had exercised a jurisdiction not vested in it by law or had failed to exercise jurisdiction so vested or had acted in the exercise of its jurisdiction so vested or had acted in the exercise of its jurisdiction illegally or with material irregularity. It is only when such findings are found to be against any provisions of law or against the pleadings or evidence or are found to be wholly perverse, a case for interference may call for at the second appellate (revisional) jurisdiction. In exercising of revisional jurisdiction, the National Commission has no jurisdiction to interfere with concurrent findings recorded by the District Forum and the State Commission, which are on appreciation of evidence on record.

15. Both the State Commission and District Forum have given a well reasoned orders. There is no illegality or material irregularity or jurisdictional error in the order of the State Commission, both with respect to Appeal No. 267 of 2017 and Appeal No. 276 of 2017. Hence, the order of State Commission in both the above stated Appeals is upheld. Accordingly, RP Nos. 346, 347 and 2082 of 2019 are dismissed.

16. The pending IAs in the case, if any, also stand disposed off.