

(2009) 04 NCDRC CK 0039

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Sehgal School Of Competition

APPELLANT

Vs

DALBIR SINGH

RESPONDENT

Date of Decision: April 30, 2009

Citation: 2009 3 CPJ 33

Hon'ble Judges: B.N.P.SINGH , P.D.SHENOY J.

Advocate: SANJEEV KUMAR

Judgement

1. THE respondent was the complainant before the District Forum. The facts of the case in brief are that the complainant took admission in the Sehgal School of Competition (for short the School") of the petitioner to get coaching for Medical Entrance Examination, which was for duration of two years. Though the fee for two years was deposited, the complainant discontinued the studies after a year on the ground that coaching was not up to the mark. Further the complainant stated that though he had taken admission for coaching in the medical entrance test, the institute faculty members were mostly teaching Engineering subjects and giving preference to Engineering students. With a view not to waste one more year, he withdrew from the institute and asked for refund of the balance fee, which was declined. Therefore, he filed a complaint before the District Forum.

2. THE District Forum directed the petitioner to refund part of the fees to the tune of Rs. 18,734 without any further compensation for mental agony, etc. The State Commission observed as follows:

" We have already taken a view which has been upheld by the National Commission and the same view was also taken by the Supreme Court that no institute or coaching centre shall charge lump sum fees for the whole duration or should refund the fees if there is deficiency in service in the quality or coaching, etc. or for which period the student does not attend coaching as any clause saying that fees once paid shall not be refunded are unconscionable and unfair and therefore not enforceable."

3. ADOPTING this principle, the State Commission did not find any merit in the appeal and dismissed the same.

Aggrieved by the order of the State Commission, the petitioner has filed this Revision Petition before us.

4. WE have heard the learned Counsel for the petitioner. He submitted that the student had withdrawn voluntarily and, therefore, there was no deficiency of service. The petitioner's school has shown excellent results. Hence it is wrong to observe that their coaching was not upto the mark. He also submitted that one of the conditions imposed by their school which accepting lump sum fees for two years is that refundability/transferability of seat/fee is not possible under any circumstances".

5. THE above condition is one sided and biased totally in favour of the petitioner and against the principle of equity and natural justice and it is not a fair trade practice. The learned Counsel quoted the judgment of this Commission in Homoeopathic Medical College and Hospital, Chandigarh v. Miss Gunita Virk, I (1996) CPJ 37 (NC), wherein it is held that Fora constituted under the Consumer Protection Act have no jurisdiction to declare any rule in the prospectus of any institution as unconscionable or illegal.

6. THIS judgment is 13 years old. Subsequent to this judgment this Commission in a catena of judgments has held that it is unjust to collect the fees for the total period of the course. In *Nipun Nagar v . Symbiosis Institute of International Business, I* (2009) CPJ 3 (NC), Revision Petition No. 1336 of 2008, decided by this Commission on 7th November, 2008, after quoting the public notice issued by the University Grants Commission, it was held that the Institute was unfair and unjust in retaining the tuition fee of Rs. 1 lakh even after the student withdrew from their institute. Further if a student leaves before attending a single day of the college or school, he is entitled for total refund except for a small registration fee, say Rs. 1,000. Even the University Grants Commission had issued a public notice directing all the institutions to refund the money of the students for the period, they have not attended the college/institution, the extracts of the public notice is reproduced in extenso:

"It has come to the notice of the University Grants Commission (UGC) that institutions and Universities including institutions deemed to be Universities are admitting students to various programmes of studies long before the actual starting of academic session, collecting full fee from the admitted students, and retaining their schools/institutions leaving certificate in original. The institutions and Universities are also reportedly confiscating the fee paid if a student fails to join by such dates.

The Commission is of the view that the Institutions/ Universities, by way of retaining the certificate in original, force retention of admitted students, which limits the opportunities for the candidates from exercising other options of joining other institutions of their choice. However, it would not be permissible for institutions and Universities to retain the school/institution leaving certificate, mark sheets, caste certificate and other documents in original.

The Ministry of Human Resource Development and University Grants Commission have considered the issue and decided that the institutions and Universities, in the public interest, shall maintain a waiting list of students/candidates. In the event of a student/candidate withdrawing before the starting of the course, the wait -listed candidate should be given admission against the vacant seat. The entire fee collected from the student, after a deduction of the processing fee of not more than Rs. 1,000 (one thousand only) shall be refunded and returned by the institution/University to the student/candidate withdrawing from the programme. Should a student leave after joining the course and if the seat consequently falling vacant has been filled by another candidate by the last date of admission, the institution must return the fee collected with proportionate deductions of monthly fee and proportionate hostel rent, where applicable.

The Universities/institutions are requested to abide by the instructions issued by the UGC. The UGC shall on its own or on receipt of specific complaints from those affected, take all such steps as may be necessary to enforce these directions.

Institutions/Universities are also required to convey these instructions to the colleges affiliated to them.

This notice has been reiterated subsequently also."

7. THEREFORE , we do not see any material irregularity or jurisdictional error in the order passed by the State Commission. Accordingly, this Revision Petition is dismissed. There shall be no order as to cost. R.P. dismissed.