Indian Institute of Professional Studies Through Mr. Anuj Kumar Goyal Assistant Director Vs Rekha Sharma

None

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: Dec. 16, 2011

Citation: 2011 0 NCDRC 783 : 2012 1 CPJ 417 : 2012 1 CPR 42

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

Final Decision: petition is accordingly dismissed

Judgement

1. THE facts leading to filing of the complaint under the Consumer Protection Act, 1986 in the present case are that the opposite party/petitioner

had published an advertisement on 5.6.2009 in ?Dainik Bhaskar? newspaper wherein it had asked for applications for fresh admission in the

M.P.Ed. (Master of Physical Education) course for the calendar year 2009-2010. THE respondent/complainant herein sent a demand draft dated

8.6.2009 for Rs.200/- from State Bank of India, Kota asking for application form for admission to the M.P.Ed. course. THE demand draft (DD)

was sent by speed post on 9.6.2009 which involved a further expenditure of Rs.25/- in addition to Rs.30/- spent by the respondent as DD

charges. THE opposite party sent a prospectus to the complainant but in the prospectus no information was given about M.P.Ed. course. Treating

this as an instance of false advertisement and an unfair business transaction on the part of the OP, the complainant sent a letter on 30.6.2009

through registered post requesting for refund of Rs.275/-. THE OP, however, did not refund the money. Aggrieved by this and also alleging that

she lost her one (academic) year in the process, the complainant filed a consumer complaint with the District Forum praying for compensation from

the OP. Complainant filed her affidavit in support of her claim along with eight other pieces of documentary evidence. THE OP contested the

complaint and submitted that the M.P.Ed. course in question had been started in that year itself but the new prospectus had been sent for printing

and hence the OP had sent old prospectus which also contained information about the M.P.Ed. course. It was claimed by the OP that the

complainant either could not see or misplaced the same deliberately. THE OP, therefore, after receiving the letter from the complainant sent the

new prospectus through post and hence there was no deficiency on the part of the OP and hence the complaint should be dismissed.

2. WHILE the OP had filed its reply in the matter yet no affidavit in support of the submissions made was filed nor the contents of the reply were

verified due to which the same could not be treated as evidence. After appraisal of the issues, evidence adduced by the complainant and supported

by documents, the District Forum held that there was deficiency in the matter on the part of the OP. WHILE accepting the complaint, the District

Forum passed the following order:-

The complaint of the complainant is decided ex-parte against the opposite party and ordered that the opposite party shall pay the complainant

Rs.280/- for DD amount, Rs.10,000/- towards mental agony and Rs.2000/- for litigation expenditure within two months from the date of order.

Due to act of the opposite party, complainant lost her one year for which the opposite party shall pay Rs.25,000/- to the complainant. If the

payment is not made in stipulated period then the complainant shall be entitled to get interest @ 9% P.A. on the decreed amount.

Aggrieved by the order of the District Forum, the OP filed an appeal against the same before the State Commission. This, however, came to be

dismissed by the State Commission vide its impugned order dated 31.5.2011 because of non-filing of the receipt for the statutory deposit by the

petitioner. The petitioner has now filed the present revision petition challenging the aforesaid order of the State Commission.

We have heard the learned counsel for the petitioner. It is contended by him that first and foremost the respondent is not a consumer since she had

only purchased application form including prospectus but had not been admitted to the course in question. His second contention is that in

response to the request of the complainant, a copy of the new prospectus which was earlier under print was sent to the complainant and hence no

deficiency could be held on the part of the petitioner/OP. He has, therefore, submitted that order dated 28.4.2010 passed by the District Forum,

Kota accepting the complaint of the respondent and upholding thereof by the State Commission by dismissing the appeal of the petitioner are

arbitrary, illegal and against the mandatory provisions of law and hence are liable to be set aside.

3. WE have gone through the orders of the Fora below and perused the record before us. It is to be noted that the State Commission has

summarily dismissed the appeal of the petitioner for not filing the deposit receipt. No evidence has been filed before us through this revision petition

to rebut the ground on which the appeal came to be dismissed by the State Commission vide its impugned order. Coming to the merits, so far as

the order of the District Forum is concerned, we find that as per the well-established procedure the District Forum has to settle the consumer

disputes on the basis of evidence brought to its notice by the complainant and the opposite party, where the opposite party denies or disputes the

allegations contained in the complaint. Since the petitioner failed to prove its submissions through affidavit in evidence, the same could not be

accepted by the District Forum. It is seen from the order of the District Forum that after filing its reply containing submissions not supported by any

affidavit, the petitioner also chose to remain absent and was proceeded against ex parte. In the circumstances, we do not find any irregularity,

illegality or jurisdictional error in the order passed by the District Forum or dismissal of the appeal of the petitioner by the State Commission

through the impugned order. There is, therefore, no case for our intervention with the orders of the Fora below. The revision petition is accordingly

dismissed at the threshold, with no order as to costs.