Heading1
Heading2

Complaint Case No. CC/101/2020
(Date of Filing : 10 Nov 2020)

1. SNEHPAL SINGH
CHUHAR CHAK, DINANAGAR GURDASPUR, PUNJAB-143531
GURDASPUR
PUNJAB .....Complainant(s)

Versus

1. DELHI ACADEMY OF MEDICAL SCIENCES PVT. LTD THROUGH ITS MANAGER
205, SECOND FLOOR, GROVERS CHAMBER, PUSA ROAD, NEAR KAROL BAGH STATION
NEW DELHI
DELHI .....Opp.Party(s)

BEFORE:
HON'BLE MR. INDER JEET SINGH PRESIDENT
HON'BLE MRS. SHAHINA MEMBER
HON'BLE MR. VYAS MUNI RAI MEMBER

PRESENT:

Dated : 02 Feb 2023

Final Order / Judgement

Before the District Consumer Dispute Redressal Commission [Central], 5th Floor ISBT Building, Kashmere Gate, Delhi

Complaint Case No.-101/2020

Snehpal Singh s/o Mukhtiar Singh

r/o Chuhar Chak, Dinanagar

Gurdaspur, Punjab-143531 ...Complainant

Versus

Delhi Academy of Medical Sciences Pvt. Ltd

Through its Manager

205, 2nd floor, 4-B, Grover's Chamber,

Pusa Road, near Karol Bagh Metro Station,

New Delhi-110005 ...Opposite Party

Date of filing: 19.11.2020

Order Reserved on: 17.12.2022

Date of Order: 02.02.2023

Coram: Shri Inder Jeet Singh, President

Shri Vyas Muni Rai, Member

Ms. Shahina, Member -Female

Vyas Muni Rai

ORDER

1. In the instant case, one Shri Snehpal Singh (in short complainant) has filed the complaint against Delhi Academy of Medical Science Private Ltd. through its Manager (in short the OP). The complaint has been filed under Consumer Protection Act, 2019 with submissions, inter alia, that OP is a private company engaged in the business of providing coaching in the field of entrance examinations meant for post-graduate medical degrees like M.D./M.S. from its registered office at Pusa Road, Karol Bagh, New Delhi.

2. During the month of February, 2020 complainant approached to the OP for taking coaching classes (**physical classes**) for post-graduate Medical Entrance Examination, 2021. OP discussed with the complainant, all the relevant details like duration of the course, mode of conducting classes, fees etc. It was also promised by the OP to the complainant that it will conduct only physical classes (face to face), as it has been conducting in the past. On aforesaid assurances given by the OP, complainant made immediately payment of Rs. 60,000/- (Sixty thousands rupees only) through demand draft dated 13.02.2020 and Rs. 56,820/- (Fifty six thousand eight hundred twenty rupees only) through NEFT dated 13.03.2020 to the OP. The total fee paid by the complainant to the OP comes to Rs. 1,16,820/- (One lakh sixteen thousand eight hundred twenty rupees only). True copies of fees receipts dated 13.02.2020 and 13.03.2020 are also enclosed with the complaint at page 12 and 13 as Annexure- 2 (Colly).

3. It is also the case of the complainant that the entire course was for seven months and the classes had begun from 14.02.2020 which was supposed to be completed by end of the October 2020. The OP discontinued its classes from 15.03.2020 due to Covid-19. Considering the Covid-

19 pandemic, complainant requested the OP to refund his fees as he would not be able to attend the classes physically. Thereafter, OP insisted the complainant that he should return back to his home immediately and the OP will refund his complete fee in his bank account.

4. Complainant has further submitted that after a gap of few days, when the complainant did not get refund of fee, he made a call to the OP, whereby, the OP gave an alternative to the complainant for attending the classes through online mode and if the complainant does not show interest in the online classes, in such a circumstances, OP will refund the complete fee. However, after attending few classes, the complainant intimated to the OP that he is not able to understand anything in the online classes due to the technical glitches, poor connectivity of internet in his home town (Gurudaspur, Punjab) and poor quality of teaching. In these circumstances, the complainant made clear to the OP that he cannot attend the online classes and wants refund of his fee. The complainant made repeated calls to OP for claiming refund of his fee but the OP did not pay any heed to the genuine calls of the complainant as OP has acquired a dominant position over the complainant by taking full fee in advance. Not only this, the complainant vide e-mail dated 14.05.2020 to the OP, made request for refund his fee as he had paid fee for physical classes and not for online classes. In response to his request/ email, OP vide its mail dated 14.05.2020 asked the complainant to provide his Roll number for information and complainant vide email dated 15.05.2020 provided his Roll No. DAMS0020785 to the OP. After a gap of almost two months, OP vide email dated 14.07.2020 intimated to the complainant that:

"*I hope this email finds you well.*

We received your request for a refund and will get back to you on this with an update in regard to payment/ query if any after approval of the management in 8-10 days.

Meanwhile, please share a SCAN copy of your bank account cheque folio so that we will make the cheque in your name or do online transfer.

Details needed such as bank account name, account number, ifsc code and bank branch

I hope you understand the current pandemic situation, things are being delayed and we all are not working fully because of that.

With thanks.

DAMSDelhi." (Annexure-3 with the complaint)

5. After the aforementioned exchanges and emails, the complainant vide e-mail dated 18.07.2020 provided his bank details to the OP but OP did not refund the fee to the complainant. The complainant has pleaded unfair trade practice and deficiency in service against the OP. Complainant also sent a legal notice dated 11.09.2020 to OP but no response to the legal notice was received by the complainant

6. In the aforesaid circumstances, the present complaint has been filed with the following prayer:

A. Pass an order directing the Opposite Party to refund the fee of Rs. 1,16,820/- (Rupees One Lac Sixteen Thousand Eight Hundred Twenty) along with penal interest

@ 18 % p.a. from the date of payment of fee to the date of actual refund to the complainant on account of deficiency in service;

B. Pass an order directing the Opposite Party to pay the litigation expenses of Rs. 50,000/- (Rupees Fifty Thousand) to the Complainant;

C. Pass an order directing the Opposite Party to pay the punitive damages of Rs. 3,00,000/- (Rupee Three Lac) to the Complainant under proviso to Section -39(1)(d) for causing mental harassment to the Complainant.

7. In response to the complaint filed by the complainant, Shri Ayush Sharma working as Senior Manager with the OP and stated to be authorized signatory has filed the reply. In its reply, at the outset, OP has submitted that the consumer complaint is wholly misconceived and based on erroneous facts and submissions. OP in its reply has admitted that the complainant had approached the OP with intention to seek admission in the institute run by OP for preparation of MD/MS entrance examination and OP agreed to admit the complainant in their institute subject to the terms and conditions of the admission policy in the MD/MS, the details of the course including the fee structure and the refund policy were duly explained to the complainant at the time of the admission. Even website of OP is explicitly mentions a 'no refund policy'. It is also the case of the OP that the complainant was satisfied with the said terms and conditions of the admission and refund policy with respect to the said course and he made the payment for admission fee voluntarily. On the fee receipt issued to the complainant by the OP clearly mentioned that fee was non-refundable.(Copy of terms and conditions is Annexure-3 with reply)

8: OP has further pleaded in its reply that in March 2020, due to outbreak of pandemic Covid-19, the Government of India declared a nationwide lockdown w.e.f. 25.03.2020, due to which OP was forced to shut down its physical centres/ branches of the institute immediately, however, in order to fulfill its obligations towards its student, including the complainant, the OP started offering online classes to all students from 1st week of April, 2020 in order to avoid any delay and to aid and support the students in their preparation, OP assured all students including the complainant herein, that they will resume physical classes as soon as it was declared safe to do so and online classes were only temporary arrangement till physical classes could be resumed.

9: To add further, OP in its reply has also submitted that in the month of May, 2020 the complainant, vide email dated 14.05.2020 suddenly, in a whimsical manner and after attending the online classes for around two months, demanded refund of the fee paid by him on account of not being able to complete the regular course in the stipulated time-frame due to unavoidable circumstances. It is also the submissions of OP that it has a strict no refund policy, as a gesture of goodwill they decided to consider the request of the complainant for refund. Being that so, OP has pleaded for dismissal of the complaint. The digital records maintained by OP clearly shows that despite allegedly not finding the studies on the online application of the OP satisfactory, the complainant was continuing to use the services of OP till late May, 2020. Thus, it is clear that the refund sought was done after reaping the benefit of the course offered by the OP and blocking the seat nearly for three months causing loss of OP.

10: In his parawise reply to the complaint, the submissions made aforementioned, more or less has been repeated and it has been denied that OP will refund fee paid by the complainant in his bank account. OP in its parawise reply has admitted that the request of the complainant for refund of the fee was duly considered by the OP and the issue was referred to the higher

management for consideration if it is qualified as extraordinary circumstances and the same was also communicated to the complainant vide email dated 14.07.2020. OP has further taken the stand in its parawise reply that the request/ representation made by the complainant was duly considered by it, however, case of the complainant was not considered fit for refund, the allegation of unfair trade practice adopted by the OP has been denied. OP has also submitted that legal notice dated 11.09.2020 based on the mala fide and baseless allegations, did not merit a reply.

11: The complainant in his rejoinder has repeatedly taken the stand about unfair trade practice on the part of the OP being in dominant position over innocent students by charging lump sum fees for the entire duration of the course and did not impart quality education thereafter. He has also expressed his dissatisfaction about the quality of coaching and has also relied upon judgment of Hon'ble State Commission in FIITJEE Ltd. vs. Minathi Rath, Appeal No. 830/2006 Order dated 04.10.2006, finding in brief in the aforesaid cited judgment shall be referred at appropriate stage in this order. It is his further submission in the rejoinder that parties agree to a terms and conditions does not make a valid agreement unless it is lawful in accordance with the laws of the land and the judgments passed by the Court/ Commission. It is also the stand of the complainant that mere downloading of the content should not be taken as proof that the complainant, and for that matter only one is satisfied with the material, rest of the contents of the reply of the OP has been denied except for those which are matter of record.

12: Both the parties have filed their respective affidavits of evidence. The complainant has filed the affidavit of evidence for himself and Shri Ayush Sharma, Senior Manager with the OP has filed affidavit for evidence. Perusal of the affidavits of evidence of both the parties shows that the contents of the affidavits for evidence are narration/ representation of the contents given in the body of the complaint by the complainant and in the written statements of the OP respectively.

13: Both the parties have also filed their written arguments, contents of which are more or less the same as given by them in their other documents on the record.

14.1: The contents of the complaint, reply filed by OP, affidavits for evidence of both the parties including their written arguments and other documents submitted on record in addition to the oral submissions of both sides have been taken into account carefully before travelling further. It is admitted facts by the parties that the complainant took admission in the institute of the OP for entrance examinations meant for post-graduate medical degree like MD/MS. It is also undisputed that said coaching was to be imparted by mode of physical classes. There are further admission on behalf of both the parties so far payment of fee is concerned. The complainant made payment in two installments of Rs. 60,000/- which was paid by him vide cheque no. 047704, drawn on Canara Bank on 13.02.2020 vide receipt no. 105325 in favour of OP followed by Rs. 56,820/- vide NEFT transaction mode no. AXMB200722960238 dated 13.03.2020 in favour of the academy of the OP (both the receipts of payment have been annexed at page no. 12 and 13 of the complaint as Annexure-2).

14.2: In para 7 of the complaint, the complainant has mentioned that the duration of the entire course was seven months but in response to reply of para 7, OP's reply is silent about the duration of the course. At this place it is important and relevant to mention that in the terms and conditions of the OP, it is mentioned, inter alia, that:

"No refund shall be made under any circumstances for joining the Short Term Course like Crash Course/ test series course/ postal course/ CBT/DVT etc.

It is also in terms and conditions that if any student joins for course other than Short Term Courses and claims refund(subject to genuine reason) before the commencement of the classess/ course in the institute:-

a. Admission fee paid (with GST) shall be deducted;

b. Admission charge of Rs. 5,000/- shall be deducted;

c. Student must not have taken/ avail any books/ online service/e-medicos etc;

d. Only the PDC's, (if any) which have not been encashed on the date of refund application shall be cancelled/retruned…."

If that is so, what prevented OP to mention in its parawise reply no. 7 about nature of the course i.e. Short Term Course/ test series course etc. as pleaded by the complainant in para 7 of his complaint that the duration of the course was seven months (copy of terms and conditions devised by OP has been filed at page no. 14, 15 and 16 of the reply as Annexure-R-3).

14.3: In para 3 of its reply, OP has mentioned that they have ' no refund policy' but no such reference is found to this effect in the emails sent to the complainant on behalf of OP while dealing with the refund request of the complainant. OP has further pleaded in its reply that it was forced to shut down institute due to Covid-19 but OP has not mentioned in its reply as to what will happen in event of such happening of such unforeseen eventualities nor there is any clear indication with regard to the such event and outcome of the same in the terms and conditions submitted by the OP on record. In para 7 of parawise reply OP has, inter alia, stated that "question of complete refund of complainant's fee does not arise", meaning thereby, OP does not deny the issue of refund in strict sense. If there was no refund policy, as is the stand of OP, then series of emails exchanged between both the sides which have also been annexed with the complaint are material and important to refer. In one such email dated 14.07.2020, OP responded that "We received our request for a refund and will get back to you on this with up-to-date in regard to payment/ query if any after approval of the management in 8-10 days, meanwhile, please share a scan copy of your bank account cheque folio so that we will make the cheque in your name or do online transfer. Details needed such as bank account name, account number, ifsc code and Bank Branch…….. and after receiving the mail for submissions of details asked for from the complainant which complainant complied, there is a further email dated 14.05.2020 from the OP to the effect that "we are forwarding your query to the concerned department. You will get an up-to-date as soon as possible."

14.4: From the different emails, it is evident that request of the complainant for refund were sent to the concerned department/ officer for consideration. In this context, OP in para 10 of his reply has mentioned that, though, it has 'no refund policy' but as a goodwill gesture, OP agreed to consider the request of the complainant for refund in extraordinary circumstances, in his written reply OP has also admitted that representation made by the complainant was duly considered by the OP, however, case was not considered one fit for refund as the complainant had already made extensive use of services provided by the OP but this decision of OP that case of the

complainant for refund was not found fit but no such document have been submitted on record by the OP nor it was communicated to complaint.

14.5: The OP refers 'terms and conditions' (supra) but whether its copy was supplied to the complainant or not and agreed by complainant, the same has neither been mentioned in the written reply.

14.6: At page 16 of terms and conditions annexed with the reply of OP it has also been mentioned that "Student shall not be entitled to claim any refund of the course fee/ attending classes, if any student is found guilty of prohibited act. Students are prohibited from filming/ voice recording/ copying any class-room lectures/ notes/ study material/ interactions by using mobile phone/ camera/ or any other manual/ digital regarding device for any purposes whatsoever under any circumstances, DAMS reserves its rights to terminate such student with immediate effect and initiate legal action against him. Such a student shall also be liable indemnify the DAMS to the extent that damage incurred due to the fault/ action of student." From this condition it is evident that there is a clause with regard to the claim of refund with some riders as mentioned herein but in no circumstances, OP has taken the stand of any such violations on the part of the complainant nor it was done so at any point of time as is reflected from the record by the complainant. In nutshell, the terms and conditions under reference of the opposite side supports the claim of the complainant for the refund of fee.

14.7: It is undisputed facts between the parties that coaching to be imparted to the students admitted in the institute of the OP side was undoubtedly for the 'physical classes' and not through the online mode. The pleadings of the complainant in his defence carries weight that the online classes was having disruption and not in continuity due to the technical glitches and net problem which was common at that time as smooth services were affected due to Covid-19. More so, the complainant was not in Delhi, as he had returned to his home town, Dina Nagar, Gurudaspur, Punjab, as advised by the OP after the outbreak of pandemic Covid-19. The outbreak of pandemic covid-19 was unprecedented. To impact online coaching was unilateral decision of OP, no option/ consent was sought by OP from complainant. Thus, OP cannot forced online classes in place of physical classes, except consent of complainant.

14.8: The complainant fortifies his case while placing reliance on the judgment titled **FIITJEE Ltd. vs. Minathi Rath decided on 04.10.2006 by the Hon'ble State Commission, Delhi,** relevant part of the said judgment is reproduced here under:

> "11. By this order, we are giving following directions to the educational Institutes, coaching centres who are imparting any kind of training and coaching and charge lump sum fee in advance for the whole duration of the course and thereby bind the candidates for the whole duration even if they are not satisfied with the quality for standard of service or training:
>
> > 'All the training imparting Institutes, educational centres preparing the students for Entrance Examination or imparting any other kind of training including the computer training or any other kind of coaching, etc. are hereby directed not to charge the fee for the whole duration of the course in advance by way of lump sum payment. They may at the most charge tuition fees of three months in advance in case of a course/ training for one year and six months period for a course/ traning of more than one year as no service provider can be allowed to charge the consideration for such a long period say one to three years for which service is yet to be provided. Such a practice

> is adopted only to collect huge amount of money and thereby making themselves unjustly enriched and binding a candidate for the whole duration even if service is later on found to be highly deficient and substandard. Such a practice has also an abominable ingredient of exploitation of student community as for few seats thousands apply."

Any violation of this order shall be visited with heavy punitive damages and sentence of imprisonment or fine as provided by Section 27 of the Consumer Protection Act, 1986."

Although, the OP contended that ratio of FIITJEE… (supra) does not apply, but it failed to show how it does not apply. It would not help OP, and it had started online coaching, when it did not said, however, complainant availed physical coaching service for period 14.02.2020 to 15.03.2020, however, excluding that period, one month for Rs. 16,688/- the complainant deserves to be refunded Rs. 1,00,132/- being proportionate period 14.02.2020 to 15.03.2020 out of 7 months course.

14.9: In view of the aforementioned facts, discussions/ deliberations OP is found to be engaged in unfair trade practice and also deficient in service. We allow the complaint of the complainant with following directions:

a. OP shall refund the fee of Rs. 1,00,132/- within 30 days from the receipt of order to the complainant failing which the awarded amount will carry interest at the rate of 6% p.a. (complainant has asked for the interest at the rate of 18% p.a. from the date of payment of fee to the date of actual refund but no justification has been given). The request for interest is disallowed.

b. OP to pay Rs. 5,000/- as damages/ compensation for causing mental harassment to the complainant.

15. Announced on this 02nd day of February, 2023. Copy of this order be sent/provided to the parties free of cost as per Regulations.

[HON'BLE MR. INDER JEET SINGH]
PRESIDENT

[HON'BLE MRS. SHAHINA]
MEMBER

[HON'BLE MR. VYAS MUNI RAI]
MEMBER