

Before District Consumer Disputes Redressal Commission, Mumbai
Suburban, New Administrative Building, Third floor, Opp. Dr.
Babasaheb Ambedkar Garden, Bandra (East), District Mumbai
Suburban – 400051.

DCDRC/MS/ CC/27/2016
Date of Admission - 08/02/2016
Judgement Dated –14/05/2024

1. Mr. Sandeep S. Kadam,
2. Miss Varsha S. Kadam (Minor),
Parshanath Niwas, Vijay Nagar,
Near Kohinoor Ind. Estate, Aarey Road,
Goregaon (East), Mumbai – 400063. Complainant

V/s.

RAO IIT Academy,
302, Centre Square Building,
S. V. Road, Opp. Andheri Station,
Andheri (West), Mumbai – 400058. Opposite Party

Before : - Hon'ble Smt. Samindara R. Surve , President
Hon'ble Shri. Sanjay S. Jagdale, Member,
Hon'ble Shri. Sameer S. Kamble, Member

Complainant - In person
Opposite Party – Adv. Hegde

JUDGMENT**PER : Hon. Smt. Samindara R. Surve, President**

1. The present Complaint has been filed by the Complainants against the Opposite Party Coaching class under section 11, 13, and 14 of the Consumer Protection Act, 1986 seeking refund of the fees deposited with it, interest and cost.

2. The brief facts of the present case are as under;

The Complainant No.1 is the father of the Complainant No.2, who is a minor daughter at the relevant time ("Complainants"). In the year May, 2014, the Complainant No.1 enrolled name of his daughter, the Complainant No.2 with the Opposite Party for coaching for Boards + JEE (Mains) + JEE Advanced at Andheri (East) Branch for academic year 2014-2016. The Complainant has paid Rs.50,000/- by Cheque as tuition classes fees for coaching of his daughter, the Complainant No.2. The Complainants were not aware that the said admission was given on the scholarship basis.

3. The case of the Complainants that the Complainant No.2 attended 2/3 lectures of the coaching only. The Complainant No.2 was not comfortable with their teaching so they decided to cancel the admission. This information was given to one Dixit Sir of the Opposite Party by the Complainants, and requested for refund of fees. The said sir asked Complainants to submit a written application for refund. Accordingly, the Complainants forwarded an application to the Opposite Party on 10th June, 2014. The Opposite Party promised to refund the said amount, however, despite regular following up with the Opposite Party, it did not

pay the same, hence, the present Complaint has been filed by the Complainants.

4. On admission of the present Complaint by this Commission and after issuance of the notice to the Opposite Party, it has appeared before this Commission and resisted the claim of the Complainants by filing its Written Statement, inter alia sought to contend that the total fees of the said course for which the admission was opted by the Complainants was Rs.2,25,000/- and the since the Complainant No.2 was entitled for deduction of 32.75% as a scholarship fees and after deducting the same a sum of Rs.1,52,189/- was payable by the Complainants, hence a sum of Rs.50,000/- has been paid as a part payment by the Complainants to it. The Opposite Party has also contended that relied upon the terms and conditions annexed to the admission form, which has stipulated that all the refund rules are applicable only for admission done on full payment. Admission done on scholarship basis, no refund will be applicable. The Opposite Party has also contended that the Complainants have taken contrary and cryptic view, as in his letter dated 10th June. 2014, they have mentioned that the Complainant No.2 has changed the stream and hence refund of the amount was sought by them. However, in the Complaint, the stand taken by the Complainants is that the Complainant No.2 did not understand the teachings. Therefore, the admission was cancelled. The Opposite Party has contended that therefore, the Complainants should not be allowed to take contrary stands and Complaint ought to be dismissed. The opposite party has also contended that the Complainants have not produced any evidence to show that the Complainant No.2 has persuade her education in Commerce stream as alleged. The Opposite Party has

also contended that, since the Complainants have not come before this Commission with clean hands, hence they are not entitled for any relief.

5. The parties have filed their respective affidavit of evidences, written arguments and oral argument advanced by the Complainants. This Commission has considered the pleadings and the evidence and the arguments and framed the following points for determination:

Sr. No.	Points	Answer
1.	Whether the Complainant is a Consumer ?	Yes
2.	Whether Opposite Party is held guilty for deficiency in service and for unfair trade practice rendered to the Complainants by not refunding fees ?	Yes
3.	Whether Complainant is entitled for reliefs as prayed ?	Yes Partly
4.	What Order ?	as per final order.

Findings

6. As to the point no.1 & 2 -

Admittedly, the Complainant No.1

has enrolled his daughter, the Complainant No.2 for coaching for Boards + JEE (Mains) + JEE Advanced for academic year 2014-2016 with the Opposite Party. The Complainants have produced the admission form with the Complaint. Admittedly, the Complainant No.1 has paid a sum of Rs.50,000/- to the Opposite Party on 2nd June, 2014 by Cheque towards tuition /classes fees for coaching/education of his daughter. Imparting of education by an educational institution for consideration falls within the ambit of 'service' as defined in the Consumer Protection Act. Fees are paid for services to be rendered by way of imparting education by the

educational institutions. The Complainants had hired the services of the Opposite Party for consideration so they are consumers as defined in the Consumer Protection Act.

7. The Complainants' case that since the Complainant No.2 did not understand the teaching of the Opposite Party, hence, the Complainants decided to cancel the admission and sought refund of the amount paid by them to the Opposite Party. However, despite regular follow ups, since the Opposite Party did not pay the said amount, on the instructions of one Mr. Rahul Dixit, of the Opposite Party, the Complainant No.1 issued the letter stating cancellation of admission is sought on the ground of change in the stream by the Complainant No.2, this statement of the Complainant made in the affidavit of evidence has not been denied by the Opposite Party. The Opposite party failed to disprove the Complainant's case that the Complainant No.2 has not given the scholarship test during the admission process and that her admission is not on the basis of the scholarship test. The Complainant's case that the terms and conditions mentioned on the admission form of the Opposite party were not explained to them, the Opposite Party has also not denied the fact that the terms and conditions of the admission for the coaching class was explained to the Complainants. Not Informing the Complainants that the admission has been allotted on the basis of scholarship test as well as not explaining the terms in related thereof before accepting the advance amount and Non refunding the amount of fees amounts to unfair trade practise on part of the opposite party.

8. The reliance of the Opposite party on 2 judgments, one of which is of the Hon'ble National Consumer Dispute Redressal

Commission, New Delhi, in Revision Petition No. 27 of 2006, in the case of M/s. Brilliant Classes v/s. Mrs. Ashbel Sam, the facts of the said case are distinguished with the facts of the present case as in the present case the cancellation of the admission sought within a period 3 days on the ground that the student was not able to understand the teaching, as against this in the said case the refund was sought mid-stream and due to holding irregular and rendering sub-standard classes. The Opposite Party has placed its reliance on the Judgement of the Hon'ble Supreme Court in the case of P. T. Koshy and Anr. v/s. Ellen Charitable Trust and Ors., which is relating to the status of the educational institution, which is not the case in the present case. The Opposite Party Institute is not a statutory body and is mere business establishment, imparting educational services to the students by charging hefty fees. Therefore, the case of the Opposite Party that the coaching classes are not providing any kind of services and education is not a commodity is not covered under the Consumer Protection Act. And that the student cannot withdraw from the course arbitrarily and claim refund, the said submissions sought to be made by the Opposite Party is bereft of merits and stands rejected. The Opposite Party cannot be allowed to be on an advantageous position, keeping in mind the interest of poor consumer.

9. When a student or his/her parents signs the admission form, they have no bargaining power to negotiate, or refuse to sign any particular clause in the admission form. Hence, such clauses should not be held against the student. From the record it is observed that the Complainants have paid a sum of Rs.50,000/-, however, the Complainant No.2 has attended the said coaching only for 2/3 days. Hence the demand

of the Complainants for refund of the said amount is justified. And non refund of the said amount despite agreeing to it amounts to guilty and the Opposite Party is responsible for deficiency in service and unfair trade practice.

10. The Complainant submitted the letter dated 10th June, 2014 to the Opposite Party. The Opposite party failed to reply and/or to communicate with Complainant. Due to the said act of Opposite party, the Complainant must have gone through the mental, physical harassment, which cannot be denied. Since there was no proper reply and response from Opposite Party, the Complainant has approached this Commission. Hence, Opposite Party is liable to pay interest/compensation towards mental agony and physical harassment along with cost to the Complainant.

11. The pleadings of the present Complaint have been filed in English language, hence the present judgement is made in English. The same is made after discussion and unanimously. Hence we pass Order accordingly that –

ORDER

1. The Complaint No. CC/27/2016 partly allowed.
2. It is declared that the Opposite Party is guilty for deficiency in service and responsible for unfair trade practice rendered to the Complainants.
3. The Opposite Party is ordered and directed to pay Rs. 50,000/- (Rupees Fifty thousand Only) towards refund of fees along with the interest at the rate of 6% p.a. from the date of filing of Complaint i.e. from

08.01.2016 to till the payment and/or realization, to the Complainants within 60 days from the date of receipt of this order.

4. The Opposite Party shall pay Rs. 10,000/- (Rupees Ten Thousand Only) to the Complainant towards the physical harassments, mental agony along with cost, within 60 days from the date of receipt of this order.

5. Certified copies of this order be sent to the parties free of cost as per rule.

Date :- 14/05/2024

Place :- Bandra – Mumbai.

Sd/-

(Sameer S. Kamble)

Member

Sd/-

(Sanjay S. Jagdale)

Member

Sd/-

(Samindara R. Surve)

President