

**BEFORE THE CONSUMER DISPUTES REDRESSAL FORUM
ERNAKULAM**

**Complaint Case No. CC/19/458
(Date of Filing : 25 Nov 2019)**

1. ROSHNA K V

MURIYANGARA HOUSE P O COCHIN SPECIAL
ECONOMIC ZONE PIN-682307

.....Complainant(s)

Versus

1. SYED BAKIR

DOOR No, CC 39/6719-A/1, LEVEL-6, BAB TOWERS, OPP
COCHIN SHIPYARD, ATLANTIS, MG ROAD, COCHIN-
682015

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. D.B BINU PRESIDENT
HON'BLE MR. RAMACHANDRAN .V MEMBER
HON'BLE MRS. SREEVIDHIA T.N MEMBER**

PRESENT:

Dated : 29 Sep 2023

Final Order / Judgement

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ERNAKULAM

Dated this the 29th day of September, 2023.

Filed on: 25.11.2019

PRESENT

Shri.D.B.Binu

President

Shri.V.Ramachandran

Member

Smt.Sreevidhia.T.N

Member

C.C No. 458/2019

COMPLAINANT

Roshna K.V. , D/o Abdul Rasheed E.K., C1, Muriyangara House, P.O. Cochin Special Economic Zone, Pin 680037

VS.

OPPOSITE PARTIES

1. Sayed Bakir, AIVES IMMIGRATION LLP Door No. C-C 39/6719-A/1. Level 6, BAB Towers, Opp. Cochin Shipyard, Atlantis, MG Road Cochin, PIN 682015.
2. Rasheed Bakir, AIVES IMMIGRATION LLP Door No. C-C 39/6719-A/1. Level 6, BAB Towers, Opp. Cochin Shipyard, Atlantis, MG Road Cochin, PIN 682015.
3. Jafrin Mahmood (Adv.), AIVES IMMIGRATION LLP Door No. C-C 39/6719-A/1. Level 6, BAB Towers, Opp. Cochin Shipyard, Atlantis, MG Road Cochin, PIN 682015.

FINAL ORDER**D.B.Binu, President****1. A brief statement of facts of this complaint is as stated below:**

The complaint was filed under section 12 (1) of the Consumer Protection Act, 1986. The brief facts, as averred in the complaint, are that the complainant in this case planned to migrate to Australia and contacted the opposite parties in Australia for assistance. They received an initial mail asking for their CV and were provided with an occupation list to select from. They chose the University Lecturer code for the complainant and Developer Programmer and Software Engineer for the complainant's husband. The opposite parties assured the complainant that their education and experience would lead to a positive skill assessment and advised them to focus on achieving a high score in the PTE English exam.

The complainant had concerns about the skill assessment due to the lack of research publications, but Mr. Syed from the opposite party reassured them that it was not necessary. The complainant signed a contract with the opposite parties, paid an initial fee, and started the migration process. They went through a struggle to gather all the required documents, including bank statements and employment proof. They also joined a PTE coaching class and cleared the exam with high scores.

Later, the complainant discovered that research publications were indeed required for the University Lecturer skill assessment. When they raised this concern with the opposite parties, they were assured by Mr. Rasheed Backer, the CEO, that research publications were not necessary. The complainant proceeded with the process and paid a skill assessment fee. However, both the complainant's and their husband's skill assessments were rejected due to the lack of research publications.

The complainant denies the allegation of plagiarism made against them and provides evidence of their original work. They argue that the opposite parties should have verified the content before submission to prevent such issues. The opposite parties offered a refund of Rs. 10,000 in exchange for signing an agreement to drop the complaint, which the complainant found unfair and threatening.

The complainant alleges the opposite parties deceived them with false assurances, leading to financial loss, wasted time, and mental distress, and seeks compensation of Rs. 1,30,953 for

refund, along with Rs. 48,000 for PTE exam expenses, Rs. 5,000 for bank statement costs, Rs. 10,000 for document procurement, and Rs. 3,00,000 for mental agony and efforts.

In summary, the complainant accuses the opposite parties of providing misleading information, mishandling documents, making false promises, and causing significant financial and emotional harm during their migration process to Australia.

2). Notice

The Commission sent notices to the opposite parties, and they were acknowledged as received. The opposite parties have submitted their version in response to the notices.

3). THE VERSION OF THE OPPOSITE PARTIES

The opposite parties claim that the complaint is baseless, frivolous, and lacks legal merit. The opposite parties assert that they are a registered immigration agent with a legal obligation to provide ethical services under the Australian government's code of conduct. They submitted that the complainant signed a contract with them, acknowledging that false information could lead to application rejection and no refund of fees. According to the opposite parties, the complainant only paid the initial instalment as per the contract.

The terms and conditions of the contract are based on regulations from the Migration Agents Registration Authority, aimed at protecting consumers from immigration fraud. The opposite parties allege that the complaint is an abusive and malicious attempt to harass and blackmail them. The opposite parties claim that the complainant breached the contract by committing plagiarism and caused significant damage to their reputation.

The opposite parties contend that they provided services and advice based on the regulations at the time of the application. They state that the complainant and her husband appeared qualified, pending approval from the Skills Assessment Authority. The opposite parties highlight that the complainant signed a "No Win, No Fee" policy contract, where the remaining payment was to be made only if the skills assessment application was successful.

The opposite parties stated that the complainant was responsible for paying additional fees directly to the appropriate government authorities. However, due to the complainant's lack of a credit card, they used the opposite party's credit to make the required payments. The opposite parties claim to have invested significant time, money, and effort to assist the complainant.

Regarding the husband's skills assessment, the application was rejected due to plagiarism, resulting in a 12-month ban. The opposite parties state that this breach of the contract led to the termination of services and rendered the complainant ineligible for any refund. The opposite parties provided the agreed-upon services to the complainant while facing the challenges imposed by changing criteria.

The opposite parties allege that the complaint is an exaggerated attempt to defame them, despite the complainant's own breaches of the contract and misuse of the system. The opposite parties stated that the allegations of service defects or deficiencies are unfounded and irrelevant. The opposite parties claim to have suffered reputational and financial damage amounting to INR 5,000,000.

In conclusion, the opposite parties deny the prayer clause and assert that the complainant is not entitled to any relief or costs. They seek the dismissal of the complaint under Section 26 of the relevant Act.

4) . Evidence

The complainant had filed a proof affidavit and 25 documents that were marked Exhibits A-1 to A-25.

Exhibit A 1: Copies of the emails exchanged between the complainant and the opposite parties.

Exhibit A2: A copy of the contract between the complainant and the opposite parties dated May 21, 2019.

Exhibit A3: The complainant made an initial payment of Rs. 47,200/- towards the opposite party's fee, dated May 21, 2019.

Exhibit A4: The complainant lodged a complaint with the Registrar of Kannur University.

Exhibit A5: Copies of the fee receipts dated May 18, 2019, where the complainant paid Rs. 22,000 to join a PTE coaching class.

Exhibits A6 and A7: Both the complainant and their spouse cleared the PTE exam with the highest score band by September 2019, costing Rs. 13,000/- per head.

Exhibit A8: The complainant sent emails to the third opposite party on June 12, 2019.

Exhibit A9: A copy of the document that shows the complainant proceeded with the migration process and paid Rs. 83,753/- as the skill assessment fee on July 27, 2019.

Exhibit A10: Engineers Australia requested additional documents from the complainant on July 30, 2019.

Exhibit A11: The complainant submitted the requested documents on October 3, 2019.

Exhibit A12: A copy of the email dated November 2, 2019, received by the complainants, stating that their skill assessments were negative, citing a lack of research publications as the reason.

Exhibit A13: A copy of the letter dated 24th October 2019

Exhibit A14: A copy of the letter stating that Appu's skill assessments were negative.

Exhibits A15 and 16: A copy of the duty list from May 2019 clearly mentions the requirement of research publications for the University Lecturer skill assessment.

Exhibits A17,18, 19, and 20: Mr. Appu V's papers were presented in various seminars, underwent plagiarism checks, and received the best paper award.

Exhibit A21: A copy of the email dated November 2, 2019, sent by the complainant.

Exhibits A22: A copy of the email dated November 21, 2019, sent by the complainant.

Exhibit A23: A copy of the refund offer made by the opposite parties to the complainant.

Exhibit A24: A copy of the test-taker score report of Mr. Appu Venugopal.

Exhibit A 25: A copy of the test-taker score report of Smt.Roshna. K.V.

5) The main points to be analysed in this case are as follows:

- i) Whether the complaint is maintainable or not?
 - ii) Whether there is any deficiency in service or unfair trade practice from the side of the opposite parties to the complainant?
 - iii) If so, whether the complainant is entitled to get any relief from the side of the opposite parties?
- iv) Costs of the proceedings if any?

6) The issues mentioned above are considered together and are answered as follows:

As per Section 2 (1) (d) of the Consumer Protection Act, 1986, a consumer is a person who buys any goods or hires or avails of any services for a consideration that has been paid or promised or partly paid and partly promised, or under any system of deferred payment. The complainant made an initial payment of Rs. 47,200/- towards the opposite parties' fee. **(Exhibit A-3)**. Hence, the complainant is a consumer as defined under the Consumer Protection Act, 1986 (Point No. i) goes against the opposite parties.

The complainant has filed this case seeking compensation for the opposite parties' deficiency in service. They claim that the opposite parties provided misleading information, mishandled documents, made false promises, and caused substantial financial and emotional harm during their migration process to Australia.

The complainant submitted that she contacted the opposite parties for assistance with their migration to Australia. They selected occupation codes and were assured by the opposite parties that their education and experience would lead to a positive skill assessment. Concerns about research publications were dismissed by the opposite parties. The complainant signed a contract, paid a fee, and went through the document collection process, including joining a PTE coaching class to pass the English exam.

Later, the complainant discovered that research publications were indeed required for their chosen occupation. Despite raising concerns, the opposite parties assured them that publications were unnecessary. However, both the complainant's and their husband's skill assessments were rejected due to the lack of research publications. The complainant also produced exhibits A15 and A16 including a copy of the duty list from May 2019, which clearly mentions the requirement of research publications for the University Lecturer skill assessment.

The complainant denies plagiarism allegations and provides evidence of their original work. They claim that the opposite parties should have verified the content before submission. The

opposite parties offered a partial refund in exchange for dropping the complaint, which the complainant found unfair (**Exhibit A23**).

The complainant accuses the opposite parties of cheating, providing false promises, mishandling documents, and causing financial loss, wasted time and effort, and mental distress. They seek compensation and a favorable decision against the opposite parties.

The learned counsel for the opposite parties submitted that their status as registered immigration agents was bound by ethical obligations. The complainant signed a contract acknowledging the consequences of providing false information and paid only the initial instalment. The terms and conditions of the contract align with regulations aimed at preventing immigration fraud. The opposite parties argue that the complaint is an abusive attempt to harass and blackmail them. They claim the complainant breached the contract through plagiarism, damaging their reputation. The opposite parties provided services based on applicable regulations and asserted that the complainant appeared qualified pending skills assessment approval. They highlight the "No Win, No Fee" policy and the complainant's responsibility for additional fees. The husband's skills assessment was rejected for plagiarism, leading to the termination of services and rendering the complainant ineligible for a refund. The opposite parties claim to have invested significant resources to assist the complainant despite changing criteria. They assert the complaint is exaggerated and defamatory, pointing out the complainant's own breaches. The opposite parties seek dismissal of the complaint and deny the complainant's entitlement to relief or costs.

The complainant's contentions are based on substantial evidence, including email correspondence, contract documentation, fee receipts (**Exhibits A2, A3, and A5**), and test score reports (**Exhibits A24 and A25**). The opposite parties, registered immigration agents, held a duty of care and ethical responsibility to provide accurate information and guidance to the complainant, who sought their expertise for migration assistance. The complainant also submitted **Exhibits A17, A18, A19, and A20**, which highlight Mr. Appu Venugopal's papers. These papers were presented in various seminars, underwent plagiarism checks, and received the Best Paper award. The complainant also produced **exhibits A15 and A16** including a copy of the duty list from May 2019, which clearly mentions the requirement of research publications for the University Lecturer skill assessment.

It is evident from the records that the opposite parties assured the complainant that their chosen occupations would result in positive skill assessments, downplaying the significance of research publications, which were later found to be necessary for the University Lecturer skill assessment (**Exhibits A17,18, 19, and 20**). Such assurances created false expectations and misled the complainant. Additionally, the opposite parties' contradictory statements regarding research publications further compounded the complainant's predicament.

The complainant's diligent efforts in clearing the PTE exam and adhering to the migration process are clearly demonstrated through the exhibits. However, the opposite parties' misguidance and lack of transparency regarding the skill assessment requirements caused the complainant substantial financial loss, mental distress, and wastage of time and effort.

This case aligns with the principles established by the Hon'ble National Commission in the case of **Amberish Kumar Shukla & 21 Ors. v Ferrous Infrastructure Pvt. Ltd., 2017 CPJ 1 (NC)**, where the consumer's reliance on the opposite party's representations led to financial loss and mental distress, warranting compensation.

The opposite parties' attempt to offer a partial refund while coercing the complainant to withdraw the complaint is an undue practice, further illustrating their disregard for ethical standards and consumer rights.

In conclusion, the complainant's claims of false assurances, misleading guidance, and financial and emotional harm have been substantiated through the evidence. The Consumer Protection Act, 1986, seeks to safeguard consumers from such unscrupulous practices. Hence, the opposite parties are held liable for their deficient service and false representations.

In conclusion, the complaint is deemed maintainable, and the opposite parties are found to have engaged in unfair trade practices and deficient services.

We find the issue Nos. (II) to (IV) are also in favour of the complainant for the serious deficiency in service that happened on the side of the opposite parties. Naturally, the complainant had suffered a lot of inconvenience, mental agony, hardships, financial loss, etc. due to the negligence on the part of the opposite parties.

In view of the above facts and circumstances of the case, we are of the opinion that the opposite parties are liable to Hence the prayer is partly allowed as follows:

- I. The Opposite Parties shall refund Rs. 1,30,953 to the complainant.
- II. The Opposite Parties shall pay Rs 1,00,000/- towards compensation for the deficiency of service committed by the opposite parties and for the mental agony and physical hardships sustained by the complainant.
- III. The Opposite Parties shall also pay the complainant Rs. 10, 000/- towards the cost of the proceedings.

The Opposite Parties are jointly and severally liable for the above-mentioned directions, which shall be complied with by the Opposite Parties within 30 days from the date of receipt of a copy of this order, failing which the amount ordered vide (i) and (ii) above shall attract interest at 9% from the date of receipt of the amount until the date of realization.

Pronounced in the Open Commission on this the 29th day of September, 2023

Sd/-

D.B.Binu, President

Sd/-

V. Ramachandran, Member

Sd/-

Sreevidhia.T.N, Member

Forwarded/By Order

Appendix

Complainant's evidence

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Opposite parties' evidence

Nil

Despatch date:

By hand: By post

kp/

CC No. 458/2019

Order Date: 29/09/2023

**[HON'BLE MR. D.B BINU]
PRESIDENT**

**[HON'BLE MR. RAMACHANDRAN .V]
MEMBER**

**[HON'BLE MRS. SREEVIDHIA T.N]
MEMBER**