

Devinder Chopra Vs. Jagriti Devi

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Court : Union Territory Consumer Disputes Redressal Commission SCDRC UT Chandigarh

Decided On : May-07-2014

Judge : Sham Sunder (Retd.), President, the Honourable Mr. Dev Raj, Member & the Honourable Mrs. Padma Pandey, Member

Appeal No. : First Appeal No. 50 of 2014

Appellant : Devinder Chopra

Respondent : Jagriti Devi

Judgement :

Dev Raj, Member:

1. This appeal is directed against the order dated 03.12.2013, rendered by the District Consumer Disputes Redressal Forum-II, UT, Chandigarh (hereinafter to be called as the District Forum only) vide which it allowed the complaint filed by the complainant and directed the Opposite Party (now appellant) as under:-

œ21. In the light of above observations, we are of the concerted view that the Opposite Party is found deficient in giving proper service to the complainant. Hence, the present complaint of the Complainant deserves to succeed against the Opposite Party, and the same is allowed, qua it. The Opposite Party is directed to :-

[a] To Refund the fee of Rs.45,000/- to the Complainant;

[b] To pay Rs.1.00 lac on account of deficiency in service and causing mental and harassment to the Complainant;

[c] To pay Rs.10,000/- as cost of litigation;

22. The above said order shall be complied within 45 days of its receipt by the Opposite Party; thereafter, it shall be liable for an interest @18% per annum on the amount mentioned in per sub-para [a] and [b] of para 21 above, apart from cost of litigation of Rs.10,000/- from the date of institution of this complaint, till it is paid.?

2. The facts, in brief, are that the Opposite Party was the Proprietor of an Institute, which awarded Diploma in Nursing Assistant and other Courses after imparting two years training. It was stated that as per the prospectus of the Opposite Party “Institute, the students would be given training in a 20 bedded hospital with facilities like X-ray machine, lecture room, library, hostel etc., which, in fact, was far from reality. It was further stated that based on various representations, made by the Opposite Party, in its Prospectus (Annexure C-1), and in view of the fact that it was recognized by the Govt. of India, the complainant took admission in the Institute and got herself enrolled in the course of Nursing Assistant on 12.09.2002 by depositing total fee of Rs.45,000/- vide receipts(Annexure C-2). It was further stated that in the 1st year, the marks sheet was issued by Para Medical Board of India on 22.7.2003, but for the 2nd year, no marks sheet was delivered and after dilly-dallying the matter, the same was issued only in November 2007 by Doon University, Raipur Chattisgarh, Annexure C-3 [colly.]. It was further stated that in the year 2008, a Charitable Institute in Himachal Pradesh near Renuka Ji advertised certain Posts of Nursing Assistants. It was further stated that the complainant intended to apply for the said Posts, but she was informed that prior registration for one year with Nursing Council and Para Medical Board of Govt. of Himachal Pradesh, was required before applying for any post in Himachal Pradesh. It was further stated that the application form of the complainant was not accepted by the concerned authorities, on the ground, that her certificates were issued by fake institutes/boards/ universities. It was further stated that the

Opposite Party kept assuring the complainant that her certificates were genuine and it would make arrangements for her employment. It was further stated that in the year 2011, once again, the complainant had an opportunity to get employment in a Private Hospital at Chandigarh, and she submitted her certificates to the said Hospital, for getting employment. It was further stated that the Opposite Party also issued a certificate dated 14.2.2011 re-affirming the fact that the Institute was affiliated with Para Medical Board of India, which was duly recognized by the Govt. of India (Certificate Annexure C-4). It was further stated that the complainant contacted the Opposite Party, but every time her inquiries were put off by the Opposite Party on one pretext or the other. It was further stated that later on, after due inquiries, it transpired that no statutory body by the name of Para Medical Board of India was in existence or recognized by the Govt. of India, as claimed by the Opposite Party, and even Doon University was also not in existence. It was further stated that no such course of Nursing Assistant, as offered by Opposite Party, was considered valid. It was further stated that a legal notice dated 01.03.2011 was served upon the Opposite Party, seeking refund of the fees paid, but to no avail. It was further stated that the Opposite Party was deficient, in rendering service, and also indulged into unfair trade practice. When the grievance of the complainant was not redressed, left with no alternative, a complaint under Section 12 of the Consumer Protection Act, 1986 (hereinafter to be called as the 'Act' only), was filed seeking direction to the Opposite Party to refund Rs.45,000/- charged as course fee alongwith interest @18% per annum, from the date of receipt; pay Rs.2,00,000/- as compensation for mental agony and physical harassment and Rs.10,000/- as cost of litigation.

3. Opposite Party, in its written statement, filed by way of his own affidavit, took up a preliminary objection that the cause of action arose to her in 2004 but she filed the complaint in 2011, and, as such, the same was barred by time. On merits, the Opposite Party admitted the factum of admission as well as fee paid by the complainant. It was stated that no fraud was ever committed by the Opposite Party. It was further stated that the Opposite Party was affiliated to Para Medical Board, which was recognized by the Govt. of India and all the facilities, mentioned in the Prospectus, were provided to the students. It was further stated that marks sheet for 2nd year was issued on 5.7.2004 by the Controller of Examination and

there had been no delay in issuing the same by the Opposite Party. It was further stated that the Opposite Party issued genuine certificates and had never assured the complainant for making arrangements for her employment. It was further stated that the complainant had paid the consideration for awarding her the Diploma of Nursing, which was awarded to her. It was further stated that no consideration was given for providing employment, so the Opposite Party was not consumer qua grievance made by her. It was further stated that the complainant voluntarily took the admission and also signed an undertaking (Annexure R-5). It was denied that the Opposite Party ever evaded the queries of the complainant. It was further stated that the Opposite Party was affiliated with Para Medical Board, which was recognized by the Govt. Doon International University was associated with Para Medical Board for awarding diplomas (Annexure R-6 to R-8). It was further stated that the Opposite Party was neither deficient, in rendering service nor indulged into unfair trade practice. The remaining allegations, being false, were denied.

4. The complainant filed replication, wherein she reiterated all the averments, contained in the complaint, and repudiated those, contained in the written version of the Opposite Party.

5. The Parties led evidence, in support of their case.

6. After hearing the Counsel for the parties, and, on going through the evidence and record of the case, the District Forum, allowed the complaint, as stated above.

7. Feeling aggrieved, the instant appeal, has been filed by the appellant/Opposite Party.

8. We have heard the Counsel for the parties, and have gone through the evidence and record of the case, carefully.

9. The Counsel for the appellant/Opposite Party submitted that the complaint filed by the respondent/complainant, before the District Forum, was palpably barred by time, as the Diploma Course of the respondent/complainant, finished in the year 2004 and, as alleged, she came to know that University from which, the said

diploma was granted was fake one in the year 2008, when she applied for some Posts in Himachal Pradesh. It was further submitted that the cause of action for filing the complaint accrued to the complainant in the year 2004 or at best in the year 2008. It was further submitted that the respondent/complainant did not file any claim or complaint and kept on waiting. It was further submitted that although due service of providing certificate, Annexure C-4, was rendered to the respondent/complainant by the appellant/Opposite Party, but she never applied for any job till 2011.

10. The Counsel for the respondent/complainant submitted that it was clear from the evidence, which came, on record, that the appellant/Opposite Party indulged into unfair trade practice. It was further submitted that the District Forum, after detailed discussion, rightly held that the complaint was within limitation and directed the appellant/Opposite Party to refund the amount alongwith interest, and, also rightly awarded compensation for physical harassment and mental agony, faced by the respondent/complainant apart from awarding cost of litigation. It was further submitted that the order of the District Forum, being just and correct, deserves to be upheld.

11. The first question, that falls for consideration, is, as to whether, the complaint was filed within the period of limitation of two years, as prescribed under Section 24-A of the Act. We have carefully considered the rival contentions of the parties, and evidence, on record. The Counsel for the appellant, submitted that the complainant averred in para 6 of the complaint, that the application form of the complainant, when she applied for the post of a Nurse in Himachal Pradesh Government, was not accepted by the concerned authorities citing the reason, that her certificates had been issued by fake Institutes/Boards/Universities, and, thus cause of action accrued to her in 2008 and the instant complaint, having been filed on 21.07.2011, was barred by limitation. In fact, in para 5 of the complaint, the complainant had also stated that prior registration for one year, with the Nursing Council and the Para Medical Board of Government of Himachal Pradesh, was required, for applying for any post in Himachal Pradesh in 2008. At that time, the complainant was not eligible due to her being not registered with the above Institutes of Himachal Pradesh, and, thus, this fact/condition had nothing to do,

whether the certificates issued were by a fake Institute. Subsequently, since the certificates issued/Institute were found to be fake, the respondent/complainant approached the appellant/ Opposite Party. It is, in evidence, that the appellant/Opposite Party gave, in writing, on 14.02.2011 that it had affiliation for Diploma in Nursing, which in fact, proved to be wrong. Thus, in our opinion, the cause of action, could arise only when the appellant/Opposite Party either admitted or denied the allegation of the respondent/complainant. When the appellant/Opposite Party issued a certificate dated 14.2.2011 (Exhibit C-4) on its letter head that Diploma in Nursing Assistant was affiliated with Para Medical Board of India, Delhi despite the fact that it was not affiliated, the cause of action arose to the complainant on 14.2.2011. The complaint filed by the respondent/complainant before the District Forum on 21.07.2011 was, thus, within limitation. The District Forum rightly held that the complaint was within limitation.

12. The next question which falls for consideration, is, as to whether, the Institute of the appellant/Opposite Party was genuine, registered and recognized by the Government, as claimed by it, in the Brochure/ Prospectus and whether the certificates, issued by the said Institute, were genuine and valid. A perusal of the contents of the prospectus (Annexure C-1) issued by the appellant/Opposite Party reveals that it claimed that Shivalik Institute of Para-medical Technology was duly registered with the Para Medical Board of India, registered with the Government of India and that registration and approval meant recommended by the State Government. The appellant/Opposite Party had further claimed, in the prospectus, that the courses mentioned therein, would confer eligibility upon diploma holders, so as to secure government/semi government job and at certain places, words, "Government of India" were used, as is evident from the opening page of the prospectus viz. "Affiliated to Para Medical Board of India (Govt. of India)". These words were also mentioned on the fee receipts (Annexure C-2 Copy) also. Shri D.K. Jain, Chairman, Para Medical Board of India, in his deposition before the District Forum, admitted that Para Medical Board of India is only a private organization and is at the most only a registered society under the Societies Registration Act, 1956 and further admitted that vocational courses are meant only for securing private jobs. Dr. D. K. Jain, during his examination before the District Forum, also stated that they did not authorize Shivalik Institute of Para-Medical

Technology, to right the words 'Government of India' on the fee receipts. This witness during his deposition further admitted that there was no record with Para Medical Board of India to show that the appellant/Opposite Party ever applied for affiliation for Diploma in Nursing Assistant. The District Forum was, thus, right in holding that, even if, Para Medical Board of India had authority to run Para Medical Courses, the information provided in the Prospectus (Annexure C-1) was false and misleading. Thus, by incorporating highly exaggerated, incorrect, false and misleading information, appellant/Opposite Party gave an impression, as if the Courses offered were being run after obtaining prior approval/permission of Government of India. No evidence has come, on record, that the appellant/Opposite Party ever applied to Para Medical Board of India for grant of affiliation for Diploma in Nursing Assistant. The assertion of Sh. D. K. Jain, to the effect 'My organization (as given Annexure R-1) is duly registered with Government of India as per Societies Registration Act, 1956', apparently shows that Para Medical Board is registered under the Societies Registration Act. In fact, the societies are registered under the Societies Registration Act, 1860 (Act 21 of 1860) read with amendments carried out by various State Governments. Mere alleged registration as a Society under the Societies Registration Act, 1956, did not mean that the Institute had all legal permissions, affiliation and recognition to run the courses especially when its claim that it (Institute) was registered with the Govt. of India, had been proved to be wholly and completely incorrect and false. When the basic claim of the appellant/Opposite party, as submitted above, was found to be incorrect and false, letter dated 28.11.2011 (Annexure R-2) written to the C.M.O, Distt. Chandigarh Health Deptt., Chandigarh (U.T.) by the Secretary, Para Medical Board of India, is of no significance, and the same also does not, in any way, establish that the Institute was affiliated with the Para Medical Board of India or that the Para Medical Board of India was a Government Organization, as claimed by the appellant/ Opposite Party in the prospectus. The mere registration of the Para Medical Board of India under the Societies Registration Act, could not be treated as a permission by the Government for conducting the courses.

13. The next specific allegation of the respondent/complainant was that 'Doon International University' is not in the list of genuine Universities declared by the University Grants Commission. The District Forum, referring to Annexure C-7, in

the absence of any denial by the appellant/Opposite Party, to this effect, rightly held that no such University was in the list of recognized list of Universities as published by the University Grants Commission.

14. It is evident from the statement of marks, for the examination of 2002-03, Exhibit C-3 Colly, that the respondent/complainant was awarded the certificate by the Para Medical Board of India. The statement of marks for D.N.A (IVth Semester) for the examination 2004 of the respondent/complainant, was issued by Doon International University. It, therefore, implies that the Para Medical Board had no authority to award the marks-sheet. The District Forum has, in Para 16 of its order, dealing with the issue, has held that as admitted by Dr. D. K. Jain, the Para Medical Board of India was only a private Organization and was at the most only a registered Society under the Societies Registration Act, 1956. Dr. D. K. Jain further admitted that Para Medical Board of India did not have any statutory recognition to run Para Medical Courses and there was no record available with Para Medical Board of India to show that the Opposite Party ever applied for affiliation for Diploma in Nursing Assistant. In the absence of any record to suggest that the appellant/Opposite Party ever applied to the Para Medical Board of India for grant of affiliation for the course, namely, Diploma in Nursing Assistant, it was proved, on record, that the appellant/Opposite Party advertised seats for an unauthorized course viz. Diploma in Nursing Assistant.

15. Undoubtedly, the appellant/Opposite Party indulged into unfair trade practice by offering admission to the respondent/complainant, without having the requisite affiliation, for the course viz. Diploma in Nursing Assistant and duped the innocent respondent/complainant by advertising seats for an unauthorized course. The ratio of the law settled by the Honble Supreme Court of India in Buddhist Mission Dental College and Hospital Vs. Bhupesh Khurana and other, 2009 (4) SCC 484, is fully applicable in the instant case, as the Honble Apex Court, while dealing with the similar question, held that œReading the advertisement and prospectus as a whole, there is no manner of doubt that the impression given was that the College was affiliated with the Magadh University and was recognized by the Dental Council of India. If the College has not been affiliated and recognized, there was no occasion in admitting the students and wasting their valuable academic years.

Moreover, the opposite parties have been admitting the students right from the year 1991-92 upto the year 1995 on this representation that the College was affiliated and recognized by the Dental Council of India. It cannot be denied that without affiliation to the Magadh University and recognition granted by the V, the so-called dental degree of BDS is just a useless piece of paper. The representation given in the advertisement that the College was under Magadh University and by the Dental Council of India could be taken by a common person to mean that the college had been given recognition by the Dental Council of India and was affiliated to the Magadh University.?

16. The District Forum, thus, rightly allowed the complaint and ordered for refund of the fee deposited by the respondent/complainant. However, the amount of compensation awarded by it (District Forum) seems to be on the higher side and the same requires to be reduced suitably so as to make the same commensurate with the mental agony and physical harassment suffered by the respondent/complainant. The amount of Rs.40,000/-, if awarded as compensation, instead of Rs.1 Lac, as awarded by the District Forum, for mental agony and physical harassment, would meet the ends of justice. The interest awarded by the District Forum, in failure to comply with the order passed by it (District Forum) within the stipulated period to comply the same, at the rate of 18% per annum also seems to be on the higher side. The same also needs to be reduced to 12% per annum. Therefore, the order impugned, needs to be modified to the extent, indicated above.

17. No other point, was urged, by the Counsel for the parties.

18. For the reasons recorded above, the appeal filed by the appellant/Opposite Party, is partly accepted, with no orders as to costs. The impugned order, passed by the District Forum, is modified, to the extent, indicated hereunder;

(i) The appellant/Opposite Party is directed to refund the amount of Rs.45,000/- to the respondent/complainant, as directed by the District Forum, in Para 21[a] of the impugned order.

(ii) The appellant/Opposite Party is directed to pay a sum of Rs.40,000/-, as compensation, for mental agony and physical harassment, caused to respondent/complainant, instead of Rs.1 Lac, as awarded by the District Forum.

(iii) The appellant/Opposite Party is further directed to pay Rs.10,000/-, as cost of litigation, to respondent/complainant, as awarded by the District Forum.

(iv) The amounts mentioned in Clauses (i) and (ii) shall be paid by the appellant/Opposite Party, to the respondent/complainant, within a period of 45 days, from the date of receipt of certified copy of this order, failing which, the same shall carry interest @12% per annum, from the date of filing the complaint i.e. 21.07.2011, till realization, besides payment of costs aforesaid, instead of @18% per annum, as awarded by the District Forum, in Para 22 of the order impugned.

(v) All other directions given, and reliefs granted by the District Forum, in the impugned order, subject to the modification, aforesaid, which are contrary to and, in variance of this order, shall stand set aside.

19. Certified Copies of this order be sent to the parties, free of charge.

20. The file be consigned to Record Room, after completion.

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