

CONTROLLER, VINAYAK MISSION DEN. COL.& ANR.

v.

GEETIKA KHARE

(Civil Appeal No. 5213-5214 of 2010)

JULY 9, 2010

[MARKANDEY KATJU AND T.S. THAKUR, JJ.]

CONSUMER PROTECTION ACT, 1986:

Complaint by a BDS student against a BDS College—Alleging that student had to withdraw from the college for lack of recognition and other deficiencies, which caused inconvenience, mental harassment and loss of an academic year—State Commission, directing refund of fee amounting to Rs. 5,15,000/- with 12% interest and also awarding Rs. 6,15,000/- as compensation—National Commission upholding the order of refund of fee with interest, but reducing the compensation amount to Rs. 2,50,000/— HELD: Refund of the amount of fee deposited by the student with interest @ 12% p.a. w.e.f. 31st July, 2000 till the date of payment meets the ends of justice—Since the said amount has already been paid, there is no reason to award any further amount to the respondent—The directions issued by the State Commission and modified by the National Commission for payment of further amount of compensation set aside – Medical Education.

CIVIL APPELLATE JURISDICTION : Civil Appeal No(s). 5213-5214 of 2010.

From the Judgment & Order dated 14.07.2009 of the National Consumer Disputes Redressal Commission, New Delhi in First Appeal No. 340 of 2004 and Dated 20.08.2009 in Review Application No. 238 of 2009 in First Appeal No. 340 of 2004.

A G. Umapathy, M.M. Manivel, Rakesh K. Sharma for the Appellants.

Vikram Singh Gulia, Umed Singh Gulia, Nikhil Jain for the Respondent.

B The following order of the Court were delivered

O R D E R

1. Leave granted

C 2. National Consumer Disputes Redressal Commission, New Delhi, has by the order impugned in these appeals upheld an ex parte order passed by the State Commission directing refund of a sum of Rs.5,15,000/- to the respondent with interest @ 12% p.a. but reduced the amount of compensation awarded
D to the respondent to Rs.2,50,000/- only as against Rs.6,15,000/- awarded by the State Commission.

3. The facts giving rise to the appeals have been set out in the orders passed by the State Commission and that passed
E by the National Consumer Disputes Redressal Commission, New Delhi. We need not, therefore, repeat the same here again. Suffice it to say that the respondent had filed a complaint against the appellant herein alleging deficiency in service and seeking not only refund of Rs.5,15,000/- paid by her towards
F fee but also compensation for the loss of an academic year and mental harassment etc. The respondent's case as set out in the complaint was that she had secured admission to a BDS college established and run by the appellant but had to withdraw from the same on account of lack of recognition of the said college and also other deficiencies, which not only caused
G inconvenience and mental harassment but also resulted in the loss of an academic year. The State Commission passed an ex parte order on 25th March, 2004 granting the following reliefs to the respondent:

H "In the result the complaint succeeds and is allowed. The

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compensations claimed are hereby decreed. The opposite parties 01 and 02 are hereby directed to pay Rs.5,15,000/- with 24% interest with effect from 11-08-1998 till the date of payment. The opposite parties 01 and 02 are further directed to pay Rs.5,00,000/- as damages for spoiling the good academic years of the complainant with another sum of Rs.1,00,000/- as compensation for the mental agony, harassment and torture. The complainant is entitled to cost of Rs.5,000/- only."

4. Aggrieved by the above order, the appellant appealed to the National Commission which appeal has been partly allowed by the latter reducing the amount of compensation payable to the respondent to Rs.2,50,000/- only.

5. Heard learned counsel for the parties. A reading of the order passed by the National Commission shows that during the pendency of the appeal before it the appellant had been directed to deposit an amount of Rs.5,15,000/- received by it towards fee from the respondent with interest @ 9% w.e.f. 31st July, 2000, and the respondent given liberty to withdraw the same. It is not in dispute that the said amount was deposited by the appellant and has been disbursed to the respondent. The only question that remains is whether any further amount is payable to the respondent, in the facts and circumstances of the case.

6. It is argued on behalf of the appellant that order passed by the State Commission was an ex parte order and that there was no evidence whatsoever on record to suggest that the respondent had suffered any prejudice or inconvenience on account of her having taken admission in the dental college of the appellant. It is also pointed out that the father of the respondent had in terms of his letter dated 30th July, 2000 withdrawn the respondent from the college because of his own problems. This is evident from a reading of the letter, relevant portion whereof is hereunder:

A "Sir,

I am herewith informing that I am withdrawing my daughter Ku. Geetika Khare from 1st Professional B.D.S. Course because of my own problems and for her admission in other college."

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7. It was contended that although the rules and regulations governing the admission of students to B.D.S. course did not permit the candidate to seek refund in the above circumstances the amount of fee paid to the college together with interest @ 12% and been deposited by the appellant and withdrawn by the respondent.]

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8. On behalf of the respondent, it was on the other hand, contended that the commission was justified in holding that there was a deficiency in the service provided by the appellant which finding did not call for any interference from this Court.

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9. Having carefully considered the rival submissions made at the bar and the material placed on record we are of the opinion that refund of the amount of fee deposited by the respondent with interest @ 12% p.a. w.e.f 31st July, 2000 till the date of payment meets the ends of justice. Since the said amount has already been paid to the respondent, we see no reason to award any further amount to the respondent. We accordingly allow these appeals and direct that the claim made by the respondent in her complaint filed before the State Commission shall stand settled with the payment of Rs.5,15,000/- with interest @ 12% already received by the respondent. The directions issued by the State Commission and modified by the National Commission for payment of further amount of compensation fixed at Rs.2,50,000/- by the National Commission shall accordingly stand set aside. No costs.

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R.P.

Appeals allowed.