

LAKHINDER SINGH SAMBYAL V/S ACHARYA INSTITUTE OF TECHNOLOGY & ORS

**J&K STATE CONSUMER DISPUTES REDRESSAL COMMISSION
JAMMU**

C.C. 3004 OF 2008, DT. OF INSTITUTION:20/10/2008, DT OF DISPOSAL 14/08/2026

CASE TITLE:

1. LAKHINDER SINGH SAMBYAL, S/O LATE SH. KARAN SINGH, R/O EXT 1, TRIKUTA NAGAR, JAMMU
2. DHANANJAY SINGH S/O SH. LAKHINDER SINGH R/O EXT 1, TRIKUTA NAGAR, JAMMU

---COMPLAINANTS

VERSUS

1. ACHARYA INSTITUTE OF TECHNOLOGY, SOLDEVANHALLI HASANGHATTA, MAIN ROAD, CHIKKABANWARA POST, BANGALORE – 560090 THROUGH ITS CHAIRMAN SH. P.R. REDDY.
2. SUBHASH CHANDER S/O NOT KNOWN R/O 50, DURGA NAGAR, JAMMU.
3. SANDEEP BHAT S/O SUBHASH CHANDER, R/O 50, DURGA NAGAR, JAMMU AT PRESENT C/O ACHARYA INSTITUTE OF TECHNOLOGY, SOLDEVANHALLI HASANGHATTA, MAIN ROAD, CHIKKABANWARA POST, BANGALORE – 560090

---OPPOSITE PARTIES

CORAM:

SMT. NIGHAT SULTANA, PRESIDENT (O)

SH. MAHEEP GUPTA, MEMBER

PARTIES REPRESENTED BY:

SH. RAMESHWAR SINGH JAMWAL, LD. COUNSEL FOR THE COMPLAINANTS.

SH. J.P. SHARMA, LD. COUNSEL FOR O.P. NO. 1

O.P. 2 [Reportedly dead and disarrayed from the list of O.P.s vide order dated 21/05/2025]

NONE FOR O.P. 3. [Ex-parte]

ORDER DT. 14/08/2026 – PER SH. MAHEEP GUPTA, MEMBER

1. The gist of the complaint is as under:

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- i. That the Complainants had paid a total amount of Rs. 2.80 Lakhs to O.P. 3 towards the admission fee for securing the admission in "Acharya Institute of Technology" (hereinafter referred to as Institute). Besides this a Commission of Rs.10,000/- was also paid to O.P. 2 & 3 for the purpose. The total payment thus made by the Complainants to O.P. 2 & O.P. 3 comes to Rs.2.90 Lakhs.
 - ii. That the complainant had further paid Rs.1,03,350/- & Rs.25,000/- to the institute towards the tuition fee & hostel expenses respectively for which proper receipts issued by the institute.
 - iii. That the O.P. 2 & 3 pocketed the entire amount of Rs.2.90 Lakhs and did not deposit the admission fee to the institute as a result of which the complainant number 2 had to withdraw from the institute.
 - iv. With the intervention of the police the complainants were able to recover Rs. 2.00 Lakhs from O.P.2 & 3 out of the total 2.90 Lakhs paid to them and Rs.90,000/- still remains outstanding.
 - v. The Complainant had lodged the complaint with this commission seeking direction to the O.P.s to pay him a total of Rs.8,08,350/- plus interest under various heads as under:
 - a. Rs. 90,000/- O/S with O.P. 2 & O.P. 3
 - b. Rs. 1,28,350/- paid to the institute. (Tuition fee of Rs.1,03,350/- plus hostel fee of Rs.25,000/-)
 - c. Rs.90,000/- towards the expenses incurred towards visiting Bangalore time and again.
 - d. Rs. 5,00,000/- towards mental agony & harassment.
 - e. Interest @ 12% p.a. from August 2006 on Rs. 3,08,850/- (sum total of the amount claimed under a, b & c heads above)
2. The case was earlier decided by this Commission on 18/06/2019 whereby the complaint was partially allowed and the O.P. No. 1 was directed to pay Rs.1,53,000/- to the complainant.

The text of order dated 18/06/2019 is reproduced below:

"1. Grievance projected by complainants is that for securing second complainants' admission in 1st respondent institute they paid an amount of Rs.2.80 lac to respondent No.3 who contacted them at Jammu as a franchise of 1st respondent and after some time informed him to report at Bangalore for

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getting admission, where they were asked to pay further amount of Rs.1,03,350/- to 1st respondent as tuition fee besides hostel and other expenses of around Rs.30,000/-. After some time, 1st respondent expressed his reluctance to allow the 2nd complainant take examination of the 1st term for not having paid the requisite admission fee, which they had already paid through 3rd respondent; who threatened complainants with the result that they were compelled to withdraw from admission. Alleging the same to be deficiency in service on part of respondents the complainants have sued them for rectification of their grievance which is resisted by respondents No.2 and 3 on the plea that they were strangers to transaction and knew nothing about payments whatever. The 1st respondent however did not choose to appear whereupon he was proceeded against in exparte under order dated 5.6.2009. During course of trial appearing parties have furnished their evidence on affidavits and also written arguments.

2. We have gone through records and considered the matter. Before proceeding ahead, it would be appropriate to notice that during proceedings respondents No.2 and 3 have 2 admitted receipt of and with intervention of police paid back an amount of Rs.2.00 lac to complainants against whom their grievance as such survives only in respect of remaining amount of Rs.80,000/, not received despite promise. That concludes complainants cause against respondent No.2 and 3. Regarding 1st who as already said has not chosen to appear the case of complainants is totally un rebutted and nothing obtains on records to contradict any of the pleas they have taken, particularly those pertaining to payments of tuition fee and hostel expenses etc. which are duly documented by receipts purported to have been issued by the 1st respondent. Out of these amounts however, we feel that hostel/mess expenses cannot be claimed because the 2nd respondent has admittedly availed all these facilities during stay at the 1st respondent's institute, who as per complainant's pleadings assured that they would recover admission fee themselves from the 3rd respondent, with whom as suggested by circumstances of the case they appear to have some sort of tie-up. Obviously, they would not have admitted the 2nd complainant to their institute by charging tuition fee without being assured about receipt of admission fee which had admittedly been paid through 3rd respondent. In conclusion therefore, we feel that while the part of controversy obtaining between complainants and respondents No. 2nd and 3rd stands already settled elsewhere, the surviving part as between complainants and 1st respondent definitely entitles complainants to relief.

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3 Accordingly the complaint is partially allowed and an award for Rs.1,03,350/-, the amount of tuition fee received by 1st respondent from complainants is passed in their favour together with a cumulative compensation of Rs.50,000/- for agony, harassment, legal and incidental charges suffered by them, bringing total liability of 1st respondent towards complainant to Rs. 1,53,350/- (say Rs.1,53,000/-), which be paid or deposited in this Commission within a period of eight weeks from now. Complaint stands accordingly disposed of. Office to follow up.

It is pertinent to note that O.P. 1 never caused his appearance before this commission and the aforesaid order was passed in ex-parte.

3. The Complainant, however, was not satisfied with the quantum of award and filed an appeal with the Hon'ble High Court of Jammu And Kashmir & Ladakh. [CIMA No. 206/2015]

The said appeal was decided by the Hon'ble High Court on 22/01/2016 and the case was remanded back to this Commission.

The order passed by the Hon'ble High Court is reproduced below:

"1. This appeal is fled against the order made in Complaint No.3004 of 2008 dated 20.10.2008 by the J&K State Consumer Disputes Redressal Commission, Jammu.

2. The grievance of the appellant is that while passing an award for Rs.1,53,000/-, the state Commission has considered the matter on the assumption that part of the controversy arose between the appellants and respondent Nos. 2 and 3 stands settled elsewhere.

3. Learned counsel appearing for the appellants, states that the matter has not been settled, hence the statement is wrongly mentioned by the Commission in its order i.e., rest of the claim including whether interest is to be paid on the amount deposited by the appellants has not been decided.

4. As far as respondents are concerned, they have accepted the award and deposited the amount of Rs.1,53,000/-

5. In such circumstances, the appellants are permitted to withdraw the amount of Rs.1,53,000/- deposited by the respondents and for remaining claims the matter is remitted to the J&K State Consumer Disputes Redressal Commission, Jammu to decide the matter after hearing the appellants as well as the respondents.

6. It is made clear that since amount of Rs.1,53,000/- deposited by the respondents is allowed to be withdrawn, the said withdrawal would be subject

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to further orders to be passed by the State Commission and the appellants shall undertake to refund the amount in case the dispute is decided against them by filing an affidavit. The State Commission is directed to consider the claims and pass orders on merits within a period of six months.

7. Appeal is disposed of with above directions No costs."

Pertinently this time only O.P. 1 caused appearance before the Hon'ble High Court and none appeared on behalf of O.P. 1 & 2

4. A careful reading of the aforesaid orders would reveal as under:
 - i. That the complainants were not satisfied with the award dated 20/10/2018 passed by this Commission and filed an appeal before the Hon'ble High Court.
 - ii. That the respondent, on the contrary, was satisfied with the award and deposited the total award amount of Rs.1,53,000/- with the Hon'ble High Court. (Para 4 of the order passed by Hon'ble High Court).
 - iii. That the Complainants succeeded in convincing the Hon'ble High Court that his claim against O.P. 2 & O.P. 3 has not been settled fully and the interest part has also not been touched upon by the State Commission and accordingly the case was remanded back by the Hon'ble High Court to this Commission to decide on the remaining claims of the complainants. (Para 5 read with Para 3 of the order passed by Hon'ble High Court.)
5. Before the remaining claims of the Complainants could be adjudicated the State Commission was winded up in the month of October 2019.
6. Consequent to revival of the Commission the case was taken up for resumption in proceedings and the parties were served afresh to cause their presence.
7. Whilst the counsels for Complainant & O.P. 1 caused their presence, the notices sent of rest of the O.P.s were received back as undelivered.
8. During the course of proceedings, it was revealed that the O.P. 2 has already died and the counsel for the complainant filed an application for disarraying O.P. 2 from the list of O.P.s and also agreed to relinquish his claim against O.P. 2.

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From the perusal of para 4 of the Complaint Memo, we find that only a claim of Rs.10,000/- lied against O.P. 2 in his individual capacity.

Rest of the claim for Rs.80,000/- (Total 90,000/- minus 10,000/-) still remains against O.P. 3 who in fact is the son of deceased O.P. 2.

9. Since it was not possible to serve the notice to O.P. 3 through normal mode, a notice was got published in "Daily Observer" a local English daily Newspaper on 06/12/2023.

Since the O.P. 3 failed to cause appearance despite the publication, he was set ex-parte on 06/02/2024.

10. Heard the Ld. Counsels for the Complainant & O.P. 1, perused the records.

11. Ld. Counsel for O.P. 1 chose to file the written statement on behalf of O.P. 1 on 13/08/2024 and followed it up by supplementary objections filed on 06/09/2024.

It is a settled legal position that it is impermissible to take cognizance of the written statements filed by O.P.s after the expiry of the statutory limitation period.

When confronted, the Ld. Counsel for the O.P. 1 tried to justify the filing of written statements on the ground that it was not served properly by this Commission when the case was decided first in ex-parte as such, he has a right to file his written statement.

He further contended that the Hon'ble High Court had remanded back the case to this Commission for deciding the same on merits and even though the Hon'ble High court permitted the complainants herein to withdraw the amount of Rs.1,53,000/-, the said withdrawal was subject to furnishing an undertaking that the complainants shall be liable to refund back the entire amount in case the dispute is decided against them.

He, therefore, contends that the Commission is bound to decide the case on merits and is, therefore, bound to take his written statement on records.

- 12. The contentions made by the Ld. Counsel for O.P. 1 were duly considered and turned down on the following grounds:**

- i. **It is a settled legal preposition that the scope for adjudication in case of remand gets narrowed down to the issues left open by the higher court either expressly or impliedly.**

We are of the considered opinion that the Hon'ble High Court had remanded back the case to us for the limited purpose of adjudication

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on the remaining claims of the complainants viz., the differential amount of Rs.90,000/- and the interest component.

It is not permissible to restart the trial by according an opportunity to the O.P. to file fresh written statement. Definitely, the O.P. reserves a right to make his independent arguments on the basis of the material already lying in the file but in no case can he be allowed to file fresh written statement &/or plead anything beyond the material already lying in the file.

- ii. The submission that the O.P. was not served properly at the time of initial trial also does not hold any weight as the O.P. caused presence before the Hon'ble High Court and not only expressed his satisfaction to the award but also deposited the entire award amount of Rs.1,53,000/- out of his own volition.**

It will not be out of context to mention here that the O.P. was granted enough opportunities to place on records any interlocutory order/directions passed by the Hon'ble High Court directing it to deposit the award amount in order to prove that the aforesaid amount was deposited on the directions of the Hon'ble High Court and was not deposited on his volition, but he failed to provide any such directions.

By unconditionally accepting the award and depositing the entire award amount with the High Court is a sufficient to construe that the O.P. had foreclosed his rights to reagitate the matter.

The only right available to him is to argue on the issue of the pending claims.

- 13. The Ld. Counsel for the O.P. 1, vehemently argued that he had no relation with the rest of the O.P.s.**

We, however, are not keen on accepting this contention of the learned counsel for O.P. and would like to go with the logic given by our predecessors to establish the relationship between O.P. 1 & rest of the O.P.s

For the sake of clarity, we would like to reproduce the relevant extract of the order dated 18/06/2019 as under:

"Obviously, they would not have admitted the 2nd complainant to their institute by charging tuition fee without being assured about receipt of admission fee which had admittedly been paid through 3rd respondent."

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We, therefore, have no hesitation in concluding that the O.P. 1 & rest of the O.P.s were definitely having some type of tie-up arrangement amongst themselves wherein O.P. 2 & O.P. 3 were acting as agents of O.P. 1.

14. It is also not under dispute that there was still an Outstanding Amount of Rs.90,000/- against the O.P. No. 1 & 2 that needs to be settled/ adjudicated besides the question of interest payable on the delayed payment.

We are also of the considered opinion that the O.P. 1 is vicariously liable for any recovery to be made from rest of O.P.s and therefore direct O.P. 1 to pay Rs. 2,27,965/- to the complainants, calculated as under:

Particulars	Amount
Differential Claim against O.P. 2 & O.P. 3	90,000/-
Less: Individual Claim against O.P. 2	10,000/-
Balance	80,000/-
Add: Compensation for delay calculated @ 6% on Rs.80,000/- calculated from the date of institution of complaint, i.e., 20/10/2008 to the date of the instant order, i.e., 14/08/2026 – total 6507 days	85,572/-
Add: Compensation for delay on payment of Rs.1,03,000/- (base award amount as per order dated 18/06/2019) calculated @ 6% from 20/10/2008 to the date of order by Hon'ble High Court, i.e., 22/11/2016 – total	62,393/-
Total	2,27,965/-

Judgment:

- A. Complaint is allowed and the O.P. 1 is directed to pay an additional sum of Rs.2,27,965/- to the Complainants within 30 days of this order, failing which it shall be liable to pay an additional interest @6% p.a. on the total amount of Rs.2,27,965/- to be calculated from 15/08/2026 till the deposition of the entire amount.**
- B. O.P. 1 is at liberty to recover Rs.1,65,572/- along with accrued interest from O.P. 3**

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- C. Complainant is at liberty to withdraw the earlier deposit made by O.P. 1 for Rs.1,53,000/- along with accrued interest, if any, if not withdrawn so far.**
- D. Parties to bear their own costs.**
- E. Office is directed to provide a certified copy of this order to all the stakeholders & consign the file to records after due compilation.**

Announced on 14/08/2026.

(Maheep Gupta)
Member

(Nighat Sultana)
President (O)