

STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND
DEHRADUN

FIRST APPEAL NO. 20 / 2022

Hemvati Nandan Bahuguna Garhwal University
Srinagar, Pauri Garhwal, Uttarakhand through its Deputy Registrar
Dr. Sanjay Dhyani aged 46 years S/o late R.D. Dhyani
..... Appellant / Opposite Party No. 1

Versus

1. Sh. Sudhanshu Sain S/o Sh. Kawer Sain
R/o H.I.G. 3-A, Shivlok Colony
Haridwar, Uttarakhand
..... Respondent No. 1 / Complainant

2. B.S.M. College of Law, Roorkee
BSM Chowk, Roorkee, Haridwar, Uttarakhand
through its Authorised Signatory
..... Respondent No. 2 / Opposite Party No. 2

Sh. Chitradeep Rana, Learned Counsel for the Appellant
None for Respondents

Coram: Hon'ble Mr. Justice D.S. Tripathi, President
Mr. B.S. Manral, Member-I

Dated: 22/11/2023

ORDER

(Per: Justice D.S. Tripathi, President):

This appeal under Section 41 of the Consumer Protection Act, 2019 has been preferred against the impugned judgment and order dated 30.12.2021 passed by the District Consumer Disputes Redressal Commission, Haridwar (in short "The District Commission") in consumer complaint No. 298 of 2018; Sh. Sudhanshu Sain Vs. Hemvati Nandan Bahuguna Garhwal University and another, by which the consumer complaint was allowed, directing the appellant and respondent No. 2 (opposite parties before the District Commission) to pay compensation of Rs. 50,000/- to respondent No. 1 – complainant, besides not to appoint Examiner, who had

examined the answer book of respondent No. 1 – complainant, in future for examining answer book of any student. It was also ordered that copy of the judgment be kept on the personal file of the concerned Examiner. It was further ordered that one copy each of the judgment be sent to the Chief Secretary and Secretary (Education), Govt. of Uttarakhand, for necessary action.

2. Facts giving rise to this appeal, in brief, relevant for the disposal of the present appeal, are that the respondent No. 1 – complainant took admission in respondent No. 2 – College, which is affiliated with appellant – University, in LL.B. three years' regular course for the academic session 2015-18 and deposited required fees. The course was a six semester course. The complainant regularly attended the College and appeared in all the semester examinations. The result of the final semester was declared on 29.10.2018 on the official website of the University. The marks scored by the complainant in all the subjects have been mentioned in para 11 of the consumer complaint. The complainant was surprised to see that he has been awarded Grade Point in Paper Code – 106111 (Interpretation of Statutes & Principles of Legislation) and was shown as fail and asked to appear in compartment examination. The complainant had been a very bright student and secured good rank in all the semester examinations. There has been gross error on the part of the University in awarding grade point to the complainant in the aforesaid subject, which has caused mental harassment to the complainant. With the aforesaid allegations, the consumer complaint was filed by the complainant before the District Commission.

3. The appellant – University filed written statement before the District Commission, wherein it was pleaded that from the answer book of the complainant, it is evident that the answers given by the

complainant were found to be incorrect by the Examiner, as such, the Examiner had given 0 (zero) marks to the complainant.

4. The respondent No. 2 – College did not file any written statement before the District Commission and vide order dated 08.08.2019, their opportunity of filing the written statement was closed by the District Commission and ex-parte proceedings were initiated against the College.

5. After giving opportunity of hearing to the parties, the consumer complaint has been decided by learned District Commission vide impugned judgment and order dated 30.12.2021, thereby allowing the same in the above terms. Feeling aggrieved, the appellant has preferred the instant appeal.

6. We have heard learned counsel for the appellant and perused the record. None appeared on behalf of respondents, although service of notice upon respondents has already been held to be sufficient vide order dated 08.09.2022.

7. The perusal of impugned judgment and order passed by the District Commission will show that the same has been passed by the Members of the District Commission and the President of the District Commission was not a part of the proceedings. Learned counsel for the appellant submitted that Section 36(1) of the Consumer Protection Act, 2019 provides that every proceeding before the District Commission shall be conducted by the President of that Commission and at least one member thereof, sitting together and, as such, the impugned judgment and order passed by the District Commission is non-est in the eyes of law. Learned counsel further submitted that the complainant before the District Commission was Sh. Sudhanshu Sain,

who is the son of the then learned President of the District Commission, as would be evident from his particulars given in the consumer complaint and who on the date of passing of the impugned order, was holding the said post, hence the Members of the District Commission should not have proceeded with the proceedings of the consumer complaint.

8. We find substance in the submission made by learned counsel for the appellant. Relevant provision of Section 36(1) of the Consumer Protection Act, 2019 is reproduced below:

“36. Proceedings before District Commission. – (1) Every proceeding before the District Commission shall be conducted by the President of that Commission and at least one member thereof, sitting together:
Provided that where a member, for any reason, is unable to conduct a proceeding till it is completed, the President and the other member shall continue the proceeding from the stage at which it was last heard by the previous member.....”

9. From the above quoted Section of the Act, it is amply clear that in every proceeding before the District Commission, the presence of President of the District Commission is must and the Members sitting together are not authorised to undertake the proceedings filed before the District Commission and decide the same. As is stated above, it is apparently clear that the President of the District Commission was not a part of the proceedings before the District Commission and the consumer complaint was decided by the Members of the District Commission, in complete disregards of the above provisions of the Act. Thus, the impugned judgment and order passed by the District

Commission can not legally be sustained and is liable to be set aside on the above ground alone, without entering into the merits of the case. There shall be no gain saying that the impugned judgment and order passed by the District Commission being against the provisions of the Act, is a nullity and can not be enforced. The matter needs to be remanded to the District Commission for decision afresh as per law.

10. For the reasons aforesaid, this appeal succeeds and is to be allowed and the impugned judgment and order passed by the District Commission is liable to be set aside.

11. Appeal is allowed. Impugned judgment and order dated 30.12.2021 passed by the District Commission, Haridwar is set aside. The matter is remanded back to the District Commission for deciding the consumer complaint on its merit. The parties are directed to appear before the District Commission on 21.12.2023. The District Commission shall provide proper opportunity of hearing to the parties and proceed to decide the consumer complaint expeditiously according to law. The amount deposited by the appellant with this Commission, be released in its favour. No order as to costs. Copy of the order be sent to the District Commission forthwith.

12. A copy of this Order be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986 / 2019. The Order be uploaded forthwith on the website of the Commission for the perusal of the parties.

(B.S. MANRAL)
Member-I

(JUSTICE D.S. TRIPATHI)
President

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