

BEFORE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
SHIMLA (H.P.)

Complaint No.: 310/2018
Presented on: 12.11.2018
Decided on : 20.01.2024

Shri Anil Thakur, Son of Shri B.R. Thakur,
Resident of Sunny Cottage, BCS, New Shimla-9, H.P.

...Complainant

Versus

1. The Principal St. Edward's School,
Milsington, Shimla-171001, H.P.
2. The Regional Officer,
Central Board of Secondary Education,
Sector -5, Panchkula, Haryana.

....Opposite Parties

Coram :

Dr. Baldev Singh, President.
Mr. Jagdev Singh Raitka, Member.

For the Complainant: Mr. Rajiv Sirkek, Advocate.
For Opposite Party No.1: Mr. Mukul Sood, Advocate.
For Opposite Party No.2: Ms. Rekha Thakur, Advocate, vice
Ms. Ritta Goswami, Advocate.

ORDER:

Present complaint has been filed by Shri Anil Thakur (hereinafter referred to as the complainant) under Section 12 of the Consumer Protection Act 1986 (hereinafter referred to as the Act) against The Principle St. Edward's School (hereinafter referred to as the OP No.1) and The Regional Officer, Central Board of Secondary Education (hereinafter referred to as the OP No.2), on account of deficiency in service and unfair trade practice, seeking relief therein that the OPs be directed to pay a sum of Rs.5,00,000/- alongwith interest, to pay Rs.25,000/- as litigation costs etc.

2. The case of the complainant in brief is that Master Panav Thakur, the wards of aforementioned complainant, was students of St. Edward's School, Milsington, Shimla-171001, H.P. till the academic year 2016-17 and appeared in Class X

Examination. It is stated that since the ward of complainant could not cleared/passed all the subject and has failed in Maths and Science, therefore he has to appear again in the Maths and Science exams as per the CBSE Circular dated 31 June, but surprisingly, the information was regarding Maths Exams only and there was nothing regarding Science Exams. It is stated that it was also informed that Rs. 120/- is required to be deposited by 23rd June. It is stated that complainant intimated OP No.1 regarding Science subject also but he was informed that separate date will be fixed for Science Exams and thereafter ward of the complainant only appeared in Maths Exam on 15th July as per the date sheet. It is stated that the Complainant again telephonically as well as personally reminded the OP No.1 regarding Science Exams, but he was assured by OP No.1 that separate date would be scheduled for same. It is stated that complainant again visited the OP No.1 on 23.8.2017 and requested to give the information regarding Science Exams and he was assured that the science exams would be conducted very shortly, but on 24.08.2017 he was intimated by Mr. Ashish, who is dealing in Examination branch of the OP No.1, telephonically that the Science exams are scheduled on 26.08.2017. It is stated that the ward of the complainant sat in the said exams but he was shocked to see the Grade Sheet cum Certificate of Performance, which was supplied to him in the end of August, in which his ward was not qualified for admission to higher classes. It is stated that Grade Sheet cum Certificate of Performance was issued on 17.8.2017 by OP No.2, however, the Science exam was taken by OP No.1 on 26.8.2017, meaning thereby that the OP No.1 has cheated the complainant to cover up his misdeeds. It is stated that due to negligence of OP No.1 and his careless attitude, one valuable year of the ward of the complainant has spoiled. It is stated that the complainant was left with no other option, save and except, to make the request to the OP No.2 to allow him to sit in the Exams by considering it as a special case. It is stated

that the OP No.1 did not admit the ward of the complainant in its school and he has to shift him to another School. It is stated that due to acts of omission and commission of OP No.1 the complainant and his ward are still in depression since they have spent huge amount on education which includes school fees, Books and School Dresses, transportation etc. It is stated that thereafter the complainant lodged a complaint before OP No.2, but nothing was done. It is stated that the complainant also issued the legal notice to the OPs, but in vain. It is stated that aforesaid acts on the part of OPs, amount to deficiency in service and unfair trade practice. It is prayed that the complaint may be allowed.

3. After admission of complaint, notices were issued to the OPs. The complaint so filed has been opposed by the OP No.1 by filing reply taking preliminary objections therein regarding maintainability, complainant not being consumer, etc. It is stated that the son of the complainant Master Panav Thakur was a student of St. Edward's School and he appeared in the S.A 2 exam in Mathematics and Science conducted in December 2016, however he did not pass the same and he failed in both the examination of Mathematics and Science subjects. It is stated that the ward of the complainant did not perform well and failed despite that school has taken a compassionate view in the matter so that his one year is not spoil and a chance was given to him to improve his performance. It is stated that rather than making him to repeat the said class once again, he was put in EIOP (Eligible for improvement of performance) category. It is stated that Central Board of School Education (CBSE) has Issued a circular No.CBSE/ASC/X/2017/112520 dated 21.06.2017 according to which the students whose examination has been declared as EIOP may approach their School and SA2 will be conducted by the School in July 2017. It is stated that the copy of the said circular dated 21.06.2017 was also displayed on the school notice board on 22.06.2017 and the complainant was aware of the

circular as mentioned in their complaint letter. It is stated that the candidates placed in the EIOP (Eligible for Improvement of performance) and their parents were present during the registration process, however neither ward of the complainant Master Panav nor complainant or his wife remained present for the same. It is stated that the school however did the needful and the information regarding students appearing for Improvement of performance was sent to CBSE on 24.06.2017. It is stated that the schedule with respect to revision dates alongwith the examination dates were displayed on the school notice board. It is stated that the revision/clarification dates were announced as 12, 13 and 14 July and examination dates were also displayed as 14 July and 15 July 2017. It is stated that thereafter a reminder was then again sent through school sms system and the school acknowledges that due to a technical error the message sent to Master Panav Thakur did not reflect Science, but the message was clear that the student was supposed to be present for revision, however the student Master Pranav Thakur failed to be present for the same. It is stated that entire case as set up by the complainant is based on a sms that did not mention Science. It is stated that the school notice board, the examination department and the school office cleared all doubts expressed by the parents and students on 12th and 13th July 2017 and above all the student who was to appear in the said examination was aware that in addition to the Mathematics subject he had also to appear in the Science examination. It is stated that according to Master Panav's parents, the student was studying in a boarding school and was unable to reach for revision on the mentioned dates and also for the exam on 14 July 2017. It is stated that on repeated requests by parents and an assurance that the candidate is well prepared for both the exams, the examination department on compassionate grounds held the exams on 15th July 2017. It is stated that the candidate (master Pranav) appeared in Improvement Examination of Mathematics and Science and

passed in Mathematics, however he did not pass in Science Examination. It is stated that the school received a legal notice from the CBSE dated 26.12.2017. It is stated that the candidate's father has been threatening the school in many and various ways and pressurizing the school to promote the candidate. It is stated that there is no deficiency in service on the part of the replying OP. It is prayed that the complaint may be dismissed.

4. The complaint so filed has been opposed by the OP No.2 by filing reply taking preliminary objections therein regarding maintainability, suppression of facts etc. It is stated that the replying OP has performed its duty with utmost sincerity as after receiving the legal notice dated 07.12.2017 on behalf of the complainant through Advocate, the OP No.2 immediately looked into the seriousness of the matter and directed the OP No.1 to furnish a detailed explanation in this regard. It is stated that after receiving the reply alongwith documents from the school, the replying OP sent the reply to the legal notice of the complainant through their Advocate vide letter dated 03.02.2018 alongwith all the relevant documents as furnished by the School. It is stated that replying OP vide circular dated 21.06.2017 instructed the concerned schools to conduct the summative exam in July 2017, the question paper/mark sheet will also be prepared by school itself, therefore, all the process qua conducting the examination was to be taken by the school itself. It is stated that there is no deficiency in service on the part of the replying OP. It is prayed that the complaint may be dismissed.

5. Rejoinders to the replies of OPs were filed on behalf of the complainant and the allegations as contained in the complaint were reasserted after refuting those of replies filed by OPs contrary to the complaint.

6. The parties adduced evidence in support of their contentions. On behalf of complainant affidavit of complainant was tendered in evidence. Complainant has also filed documents in support of his contentions. On behalf of OP No.1 affidavit of

Anil Wilson Sequeira was tendered in evidence. OP No.1 has also filed documents in support of its contentions. On behalf of OP No.2 affidavit of Shanta Rani was tendered in evidence. OP No.2 has also filed documents in support of its contentions.

7. We have heard learned counsels for the parties and have also gone through the entire record carefully.

8. At the outset, it is pertinent to mention here that the first and foremost issue for consideration in this matter is that whether the complainant is consumer and this Commission has jurisdiction to entertain and decide the controversy involved in the present complaint. Reason being that the OPs have taken specific objection that the complainant is not a consumer and subject matter involved in the controversy does not fall within the jurisdiction of this commission. The plea of the complainant is that Master Panav Thakur, the wards of complainant, was students of St. Edward's School, Milsington, Shimla-171001, H.P. till the academic year 2016-17 and appeared in Class X Examination and since the ward of complainant could not cleared/passed all the subject and has failed in Maths and Science, therefore he has to appear again in the Maths and Science exams as per the CBSE Circular dated 31 June, but surprisingly, the information was regarding Maths Exams only and there was nothing regarding Science Exams. It is further plea of the complainant that he intimated OP No.1 regarding Science subject also but he was informed that separate date will be fixed for Science Exams and thereafter ward of the complainant only appeared in Maths Exam on 15th July as per the date sheet. It is stated that the complainant again visited the OP No.1 on 23.8.2017 and requested to give the information regarding Science Exams and he was assured that the science exams would be conducted very shortly, but on 24.08.2017 he was intimated by Mr. Ashish that the Science exams are scheduled on 26.08.2017. It is the plea of the complainant that the ward of the complainant sat in the said exams but he was shocked to see the

Grade Sheet cum Certificate of Performance, which was supplied to him in the end of August, in which his ward was not qualified for admission to higher classes. It is further plea of the complainant that Grade Sheet cum Certificate of Performance was issued on 17.8.2017 by OP No.2, however, the Science exam was taken by OP No.1 on 26.8.2017, meaning thereby that the OP No.1 has cheated the complainant to cover up his misdeeds. It is stated that due to acts of omission and commission of OP No.1 the complainant and his ward are still in depression since they have spent huge amount on education which includes school fees, Books and School Dresses, transportation etc. It is further plea of the complainant that thereafter the complainant lodged a complaint before OP No.2, but nothing was done. Hence, it is to be seen whether in respect of education the complaint is maintainable against the educational institution or not. The present complaint has been filed by the complainant against the OPs, which is an educational institution imparting education. The pronouncements of Hon'ble Supreme Court of India and Hon'ble NCDRC in cases P.T. Koshy & Anr. v. Ellen Charitable Trust & Ors. 2012 (3) CPC 615 (SC); Anupama College of Engineering vs. Gulshan Kumar and Ors. Civil Appeal Nos. 17802 and 17803 of 2017 decided on 30.10.2017; Maharshi Dayanand University v. Surjeet Kaur (2010) 11 SCC 159; Manu Solanki and Others Vs. Vinayak Mission University I (2020) CPJ 210 (NC); Rajendrakumar Gupta vs. Swarup Public School 2021 (1) CPJ (NC) 368; are relevant regarding issue whether the complaint against the educational institution can be entertained by the consumer commission or not. The perusal of above judgments clearly goes to show that it has been held in said judgments that education is not commodity and service imparting education institution cannot be held to be service provider and student cannot be said to be a consumer. Therefore, consumer court has no jurisdiction to deal with the matter pertaining to the deficiency of service in

education. The complainant is at liberty to file appropriate proceeding before the Civil court. It has further been held that when Examination Board conducts an examination in discharge of its statutory function, it does not offer its services to any candidate nor does a student who participates in the examination conducted by the Board, hires or avails of any service from the Board for a consideration. A candidate, who participates in the examination conducted by the Board, is a person who has undergone a course of study and who requests the Board to test him as to whether he has imbibed sufficient knowledge to be fit to be declared as having successfully completed the said course of education.

9. It is very much clear as per the ratio of law laid down in the above referred judgments of the Hon'ble Supreme Court and Hon'ble NCDRC that the education is not a commodity and service imparting education institution cannot be held to be service provider and student cannot be said to be a consumer. Therefore, this Commission has no jurisdiction to deal with the matter pertaining to deficiency in service in education, as alleged in the complaint. Hence, we are of the considered opinion that the present complaint is not maintainable and deserves to be dismissed on the ground of lack of jurisdiction only, without entering into the merits of the case.

10. In view of the foregoing discussion, reasons assigned therein and well settled legal position regarding dispute involved in this complaint, the present complaint is ordered to be dismissed, leaving the parties to bear their own costs. Pending application(s), if any, shall also stands disposed of. The complainant is at liberty to approach appropriate forum/court of law for redressal of her grievance, as per law, if so advised. Copy of this order be supplied to the parties free of cost as per rule. The file after its due completion be consigned to the Record Room.

Announced on this the 20th day of January, 2024.

(Dr. Baldev Singh)
President

(Jagdev Singh Raitka)
Member

GUPTA