

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
ERNAKULAM**

Dated this the 15th day of November, 2023.

Filed on:

PRESENT

Shri.D.B.Binu
Shri.V.Ramachandran
Smt.Sreevidhia.T.N

President
Member
Member

C.C. No. 365/2022

COMPLAINANT

Zeba Salim,

(Rep. by Adv. U. Jayakrishnan, Sooraj,
North End, Ernakulam 682031)

VS

OPPOSITE PARTIES

1. M/s VLCC Health Care Limited, Corporate Office 64, HSIDC, Sector 18, Maruti Industrial Area, Gurgaon, Haryana (India), Pin:122015. through its Chairman/Authorized Person
2. VLCC Health Care Ltd.Represented by Mrs.Rajalakshmi, Regional Head Door No 53/3957B, First Floor, Artax, Subhash Chandra Bose Rd, Ponnuruni, Kochi, Kerala 682019.
(Rep. by Adv. Muhammed Musthafa, Firm JusLex & Associates, B-F6, Mather Square, Opp. North Railway Station, Ernakulam, Kochi 682018)

FINAL ORDER

D.B. Binu, President:

1. A brief statement of facts of this complaint is as stated below:

The complaint was filed under Section 35 of the Consumer Protection Act, 2019. The brief facts, as averred in the complaint, are that the complainant was a former student at VLCC Institute, Kochi, known for weight loss and beauty solutions. The complainant enrolled in a course on 18.01.2021, paying a total of Rs. 1,17,329/ in fees. Later, on 09.03.2021, the complainant enrolled in another course, paying a total of Rs. 1,62,000/ as fees. Due to COVID-19, the complainant couldn't attend physical classes but attended online. When the institution closed due to the pandemic, the complainant decided to cancel her admission due to delays in classes and her weak health.

She requested a refund from the institution but faced delays and false information. The institution offered alternatives, but the complainant refused due to incomplete classes within the prescribed time. The complainant alleges unfair trade practices, seeks a refund of Rs. 2,79,329/, Rs. 2,00,000/ as compensation for mental agony, and the entire cost of proceedings.

2) Notice

The notices to the opposite parties were sent by the commission. The opposite parties filed a "vakkalath." However, the opposite parties did not file their versions, and as a result, they have been set ex-parte.

3) Evidence

The complainant had filed an ex-parte proof affidavit and 4 documents that was marked as **Exhibits-A-1 to A-4.**

Exhibit-A-1: A true copy of the Fee receipt paid by the complainant dated 19.01.2021.

Exhibit-A-2: A true copy of the Fee receipt paid by the complainant dated 09.03.2021.

Exhibit-A-3: A true copy of the Copy of the email sent to the opposite party.

Exhibit-A-4: A true copy of the petition filed before the Legal Service Authority.

4) The main points to be analysed in this case are as follows:

- i) Whether the complaint is maintainable or not?
- ii) Whether there is any deficiency in service or unfair trade practice from the side of the opposite party to the complainant?
- iii) If so, whether the complainant is entitled to get any relief from the side of the opposite party?
- iv) Costs of the proceedings if any?

5) The issues mentioned above are considered together and are answered as follows:

In the present case in hand, as per Section 2(7) of the Consumer Protection Act, 2019, a consumer is a person who buys any goods or hires or avails of any services for a consideration that has been paid or promised or partly paid and partly promised, or under any system of deferred payment A true copies of the fee receipts issued by the opposite party to the complainant, dated 19.01.2021 and 09.03.2021 (**Exhibits A-1 and A-2**), which serve as evidence of

payment to the opposite party. Hence, the complainant is a consumer as defined under the Consumer Protection Act, 2019.

The complainant in this case is seeking redress from the opposite parties, for a refund of Rs. 2,79,329/-, which she paid as course fees, along with other reliefs. She initially enrolled in a cosmetology course in January 2021 and later an advanced course in March 2021. Due to COVID-19, she couldn't attend physical classes and opted to cancel her admission, requesting a refund. Despite multiple attempts, the institute delayed and provided false information about the refund process. The institute offered alternatives, which she declined due to incomplete classes within the stipulated time. She filed a petition with the Legal Service ^{S. Anwarik} Society, which was forwarded to the Pre-litigation Adalat, but the institute did not participate. The complainant alleges unfair trade practices and seeks a refund, compensation for mental distress, legal costs, and any other appropriate relief from the commission.

The learned counsel appearing for the complainant, submitted that on January 18, 2021, the complainant enrolled in a six-month "Diploma in Cosmetology" course offered by the second opposite party, and she paid the full course fee of Rs. 1,17,329/- on January 19, 2021. She attended physical classes regularly until she tested positive for COVID-19 on April 6, 2021. Following her diagnosis, she continued her education through online classes. However, by the end of March 2021, the opposite parties ceased offering even online classes, citing a lack of faculty due to COVID-19. The course was originally supposed to conclude on July 18, 2021.

During this period, the Regional Head, Rajalakshmi, persuaded the complainant to enroll in two additional courses, namely "Advanced Diploma in Laser Aesthetics" and "Diploma in Beauty Culture." The total fee of Rs. 1,62,000/- was collected on March 9, 2021, for these two courses. Despite collecting the fees, the opposite parties did not provide a single class for these

courses. Consequently, the complainant decided to cancel her enrollment in these two courses.

Following the second opposite party's guidance, the complainant sent an email requesting the cancellation of the courses and a refund. However, instead of issuing a refund, the opposite parties suggested purchasing VLCC products of equivalent value to the fees paid. The receipts for the course fees paid by the complainant on January 19, 2021, and March 9, 2021, are presented as **Exhibits A-1 and A-2**, respectively. Snapshots of the email communications between the complainant and the opposite parties are provided as Exhibit A-3, and a true copy of the petition filed before the Legal Service Society is marked as **Exhibit A-4**.

The key issues for consideration are as follows:

1. Whether there is a deficiency of service on the part of the first opposite party for not conducting the course after accepting fees from the complainant.
2. Whether the opposite party is liable to refund the fees collected from the complainant following the cancellation of courses by the complainant.

Regarding these issues:

- The complainant canceled all three courses due to the opposite party's failure to provide classes as promised, both in the physical and online formats.
- The suggestion made by the opposite party to adjust the course fees against the enrollment of a relative or sibling is deemed unfair and illegal. Additionally, it is established that fees, once paid, are not refundable, which is deemed unconscionable and voidable.
- The precedent set **in the case of Flit Jee Ltd. v/s Dr. (Mrs.) Minathi Rath & Others by the Hon'ble NCDRC** establishes that coaching institutions providing educational services for consideration fall under the purview of the Consumer Protection Act. It was ruled that fees once paid could be refunded after deducting non-refundable service charges for the unattended portion of the course.
- There is a clear deficiency of service on the part of the opposite parties for failing to provide timely classes, even though online mode.

In light of these facts, evidence, and legal precedents, the complainant seeks a refund of fees based on her withdrawal of admission and compensation as requested.

The evidence presented included an ex-parte proof affidavit filed by the complainant, and it was unchallenged by the opposite parties. Therefore, the complainant's claims were considered credible and supported by the evidence. Therefore, the complainant requests the commission to grant the relief sought, including compensation for mental agony and unfair trade practices.

The opposite parties' conscious failure to file their written version in spite of having received the Commission's notice to that effect amounts to an admission of the allegations leveled against them. Here, the case of the complainant stands unchallenged by the opposite parties. We have no reason to disbelieve the words of the complainant as against the opposite parties. **The Hon'ble National Commission held a similar stance in its order dated 2017 (4) CPR page 590 (NC).**

In the present case, the complainant has invoked Section 35 of the Consumer Protection Act, 2019, seeking redress for the deficiency in service and unfair trade practices allegedly committed by the opposite parties. The complainant's claims are well-substantiated by the evidence presented, including fee receipts (**Exhibits A-1 and A-2**), email communications (**Exhibit A-3**), and the petition filed before the Legal Services Authority (Exhibit A-4). Furthermore, the opposite parties have been set ex-parte due to their failure to file their written version in response to the commission's notice.

Upon careful consideration of the facts and legal precedents, this commission is inclined to rule in favor of the complainant for the following reasons:

- A. Complainant's Status as a Consumer:** As per Section 2(7) of the Consumer Protection Act, 2019, the complainant qualifies as a consumer since she paid a considerable sum as course fees to the opposite parties, as evidenced by the fee receipts (**Exhibits A-1 and A-2**).

Whether the opposite parties come under the purview of the consumer commission?

In the case of PRINCIPLE, L.D.R.P. INSTITUTE OF TECHNOLOGY AND RESEARCH versus APOORV SHARMA (REVISION PETITION NO. 2006 OF 2019), the Hon'ble National Consumer Disputes Redressal Commission (NCDRC) made the following observation:

"45. We are of the considered view that conduction of Coaching Classes does not fall within the ambit of definition of 'Education' as defined by the Hon'ble Seven Judge Bench of the Supreme Court in P.A. Inamdar (Supra). Coaching Centres cannot be equated to regular schools or colleges which are regulated by a Regulatory Authority and also confer a Degree/Diploma on the student who has passed in the examinations conducted as per the Rules and norms specified in the statute and also by the concerned Universities. Therefore, strictly speaking Coaching Centres cannot fall within the definition of 'Educational Institutions'. We refrain from making any comments on the submissions of the learned Counsel for the Complainants with respect of Coaching Institutions indulging only in 'rote learning'.

46. For all the afore-noted reasons, we are of the opinion that any defect or deficiency or unfair trade practice pertaining to a service provider like 'Coaching Centres' does fall within the jurisdiction of the Consumer Fora."

It's obvious that the beauty coaching institute in question, which runs on its own without any control from a university or particular educational rules, is indeed a type of coaching center. Therefore, it comes under the jurisdiction of this commission.

- B. Deficiency in Service:** The complainant enrolled in courses offered by the opposite parties with a legitimate expectation of receiving quality Coaching. However, the opposite parties failed to deliver on their promise by not conducting the courses as per the agreed terms. This failure amounts to a deficiency in service, as established by the evidence and the complainant's unchallenged assertions.
- C. Unfair Trade Practices:** The opposite parties' suggestion to adjust the course fees against the enrolment of a relative or sibling is not only unfair but also contrary to consumer protection principles. Fees paid by the complainant should not be rendered non-refundable in such a manner.

Such practices are deemed unconscionable and voidable, as highlighted by legal precedents.

D. Precedent: The decision in the case of *Flit Jee Ltd. v/s Dr. (Mrs.) Minathi Rath & Others* by the Hon'ble National Consumer Disputes Redressal Commission (NCDRC) establishes that educational institutions providing services for consideration fall under the purview of the Consumer Protection Act. In that case, it was held that fees once paid could be refunded after deducting non-refundable service charges for the unattended portion of the course.

E. Ex-parte Proceedings: The opposite parties' failure to participate in the proceedings and file a written version indicates their inability to contest the allegations leveled against them. As a result, the complainant's claims remain uncontested and credible.

In the case of Flit Jee Ltd, & Others v/s Dr. (Mrs.) Minathi Rath & Others, on 14 November, 2011, the Honb'e NCDRC further held that:

"Coaching institutions may not be conventional educational institutions but since they provide coaching and training to students of an educational nature to equip them for higher studies in specialized educational institutions, the same principles that apply to educational institutions would also apply to these institutions in respect of the fees charged by them including advance fees. In any case, Respondents are consumers and the Petitioners are the service providers. Petitioners are rendering service for consideration and fall within the purview of Consumer Protection Act, 1986. The judgment of the Supreme Court would, thus, override any bilateral agreement between the parties. We are, therefore, of the considered view that respectfully following the judgment of the Hon'ble Supreme Court, the Petitioner/Institute could not have charged full advance fees for two years and could have charged prescribed fees for one semester/year. In the instant cases, since Petitioner/Institutes do not follow the semester system, they could only have charged advance fees for one year. In view of these facts, the Respondents are entitled to get refund of the fees after deducting the non-refundable service tax for the unattended second year of the G course. Regarding the contention of the Petitioners that these cases do not fall within the ambit and scope of the Consumer Protection Act, 1986 because these complaints have not been" made on grounds of deficiency in service before the District Forum, we find that this

contention is not sustainable. In the first place, the complaints were made on specific grounds of deficiency in service before the District Forum and secondly as stated in the above para, as per Section 2(d)(ii) of the Consumer Protection Act, 1986, the Respondents are consumers who sought to avail of services for a consideration and the Petitioner/Institute is very much a provider of these services and thus these cases are consumer disputes within the meaning of the Consumer Protection Act, 1986."

In the field of education, while many coaching institutions offer valuable services to prepare students for higher education, there unfortunately exists a presence of unscrupulous coaching institutions engaging in unethical practices, exploiting students and their families. These institutions should not have the right to retain the fees of students who choose to leave a course midway due to dissatisfaction with the services provided. It is essential to ensure fairness and prevent these institutions from imposing unfair terms and conditions. Protecting consumers, particularly in the education sector, is of utmost importance to guarantee that students and parents are treated with the respect and honesty they deserve.

We found that the issues numbered (I) to (IV) are in favour of the complainant due to the serious deficiency in service and unfair trade practices on the part of the opposite parties. Naturally, the complainant has suffered a great deal of inconvenience, mental anguish, hardships, and financial loss, etc., as a result of the negligence on the part of the opposite parties.

In view of the above facts and circumstances of the case, we are of the opinion that the opposite parties are liable to compensate the complainant.

Hence the prayer is partly allowed as follows:

- I. The Opposite Parties shall refund Rs.2,79,329/- to the complainant ^{being} ~~for~~ the course fees ~~she paid.~~ ^{paid by her Complainant.}
- II. The Opposite Parties shall pay Rs.50,000/- to the complainant as compensation for the mental agony, inconvenience, physical hardships,

and deficiency of service caused by their actions and Unfair Trade Practices.

- III. The Opposite Parties shall also pay the complainant Rs. 10,000 towards the cost of the proceedings.

The Opposite Parties shall be held jointly and severally liable for the aforementioned directives. These directives must be adhered to by the Opposite Parties within 30 days from the date they receive a copy of this order. Failure to comply with the directives outlined in (i) and (ii) above will result in the accrual of interest at a rate of 9%, starting from the date of the filing of this complaint on 02.18.2022, until the amount is fully realized.

Pronounced in the Open Commission on this 15th day of November, 2023

D.B.Binu, President

V.Ramachandran, Member

Sreevidhya.T.N, Member