IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Institution: 22.08.2022

Date of Hearing: 24.07.2024

Date of Decision: 22.11.2024

FIRST APPEAL NO.-141/2022

IN THE MATTER OF

FIITJEE LTD.,
29-A, KALU SARAI, SARVPRIYA VIHAR,
NEW DELHI – 110016
THROUGH IT'S A.R.
SH. SHIV CHARAN

…Appellant

(Through: RG LAWZ, Advocates & Consultants)

VERSUS

SMT. SANGEETA GOYAL
W/o SH. SUNIL GOYAL,
R/o B-50, SECTOR-14,
NOIDA - 201301

….Respondent

(Through: Ms. Tanya Raizada, Advocate)

CORAM:

HON'BLE JUSTICE SANGITA DHINGRA SEHGAL, PRESIDENT
HON'BLE Ms. PINKI, MEMBER (JUDICIAL)
HON'BLE Mr. J.P. AGRAWAL, MEMBER (GENERAL)

Present: Ms. Musarrat, Counsel for Appellant (Enrl. No. D-9452/2023, Email : officecofrqlaws@gmail.com, Mob No. 9810910312).
Ms. Tanya Raizada, Counsel for Respondent (Ph. No. 8376899834, email ID: tanyaraizada1994@gmail.com & Enrl. No. D/5986/2017).

PER: MR. J.P. AGRAWAL, MEMBER (GENERAL)

JUDGMENT

1. The facts of the case as per the District Commission record are:

"1.Facts of the Case as pleaded by Complainant are:-

Complainant's daughter got enrolled in a 02 year programme with FIITJEE(OP-1) on 29.01.2008, while she was preparing for her Class X Board Exam.

2. It is stated that at the time of taking of admission OP charged fee for entire two years duration from the Complainant. Complainant made the entire payment through Demand Draft of Rs.14,889/- and gave three post dated cheques of Rs.11,000/-, Rs. 24,213/- and Rs.30,786/- all drawn on and payable to OP-1. It is next stated that OP-1 obtained the Declaration from the Complainant on an already printed form. The Complainant, like other parents, was required to sign the declarations. In such cases, the parents have no choice except to sign on the dotted lines and therefore, their signing such documents does not amount to any valid agreement.

3. It is further stated that the Complainant vide letter dated 30.06.2008 intimated OP that although her daughter was enrolled for a 02 year programme while she was still preparing for her Board examination, after the results were declared she decided to take commerce for her further studies. She wanted to pursue a career in finance *or management. Since, the child had changed her stream, Complainant requested OP vide letter dated 30.06.2008, to refund the fees paid by her but to no avail.*

4. The fee was not refunded but the Complainant was assured by OP that the matter would be looked into, if a letter was submitted from Delhi Public School, Noida (where the child was studying) stating that her daughter was now a student of commerce in their school. Accordingly, such a certificate from the school was furnished to OP along with a letter of Complainant's husband for refund dated 23.07.2008, however, no favourable response was received from OP.

5. Thus aggrieved, Complainant approached this Commission with prayer to direct OP to refund the amount of Rs.80,888/-paid by the Complainant with interest @10% per annum. Additionally, it is prayed that OP be directed to compensate the Complainant by paying Rs.15,000/- towards mental agony and harassment along with cost of litigation

6. OP resisted the complaint raising preliminary objection that Complainant and her daughter agreed and accepted the Arbitration Clause forming part of the declaration attached to the enrollment form. Hence, the instant complaint is barred by the arbitration agreement and the matter shall be referred to an arbitrator.

7. Another objection raised by OP is that while seeking admission the Complainant and her daughter have understood and thereafter accorded their consent to the terms & conditions laid down in the Declaration, without any coercion or undue influence. Thus by signing those declarations, both of them have accorded their unconditional and free consent and are thus bound by them, as per law.

8. It is stated that Complainant's daughter voluntarily left the course midway and as per the policy of OP no new student was admitted in the batch in place of

Complainant's daughter, who left the course midway. Therefore, refunding the fee would cost OP a huge financial loss. It is also stated that OP to ensure quality education and uniform teaching standard and also keeping in mind the students interest does not fill the vacancy created against any student who leaves the course midway.

9. It is next stated that OP is a self financed and self managed institute and most of it's expenditure is incurred in advance and is also of fixed nature. OP has to bear expenditures like lease rent of the premises, salary of faculty members and non-faculty staff, electricity and other allied expenditures, preparation and printing of study material etc. irrespective of number of students and batches. Further total fee includes taxes as applicable and costs of study materials supplied to the students.

10. In the aforesaid premises, it is prayed that complaint be dismissed, the same being not maintainable.

11. Complainant has filed rejoinder wherein averments made in the complaint are reiterated. Parties have led evidence in support of their contentions. Written Arguments are filed on behalf of parties. Submission made on behalf of OP are heard and material placed on record is perused."

2. The District Commission after taking into consideration the material available on record passed the order dated 06.07.2022, whereby it has held as under:

> *"12. Preliminary objection raised by OP regarding the Arbitration Clause forming part of the Declaration attached to the enrollment form is not sustainable. As per Section 100 of Consumer Protection Act ,2019-*
>
> *'The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force'.*

Therefore, availability of arbitration as a remedy does not debar the Complainant from approaching the Consumer Commission, in case of deficiency rendered to her.

13. The bone of contention between the parties is whether the fee/consideration paid by the Complainant towards the 02 year programme for her daughter should be refunded by OP or not.

14. OP in his defence has stated that as the Complainant and her daughter had accorded their consent to the terms & conditions contained in the Enrollment Form without any coercion or undue influence, they are bound by those terms & conditions as per law. The said objection is rejected as it is settled position of law that terms & conditions of an agreement are not invincible or indestructible, if the same are unreasonable or unfair. It is apposite to take note of Para 4 of the enrollment form, the same reading thus:-

"Para 4: I understand that if I leave the institute before completing the full course for ***any reason whatsoever, including transfer of parents/guardians/ill health of self or any other member of the family*** *or my admission in any institute/engineering college etc., or my studentship is cancelled because of misconduct etc. I or my parents/guardian."*

15. Mere reading of the paragraph above shows that Para 4 of the Enrollment Form is arbitrary and unreasonable.

16. The following extracts from the judgement of Hon'ble Supreme Court in the matter of LIC of India Vs Consumer Educational & Research Centre (1995) 5 SCC 482 are worthy of consideration:-

"47. It is, therefore, the settled law that if a contract or a clause in a contract is found unreasonable or unfair or irrational one must look to the relative bargaining power of the contracting parties. In dotted line contracts there would be no occasion for a weaker party to bargain or to assume to have equal bargaining power. He has either to accept or leave the services or goods in terms of the dotted line contract. His

option would be either to accept the unreasonable or unfair terms or forego the service forever. With a view to have the services of the goods, the party enters into a contract with unreasonable or unfair terms contained therein and he would be left with no option but to sign the contract."

17. OP by asking the parents to sign on the dotted lines of the declaration form meant "take it or leave it". The bargaining power of the consumers in such cases is unequal, we are therefore of the view that any unjust condition thrust upon the consumers is arbitrary and unconscionable. It is also noticed that option of Exit clause has not been provided in the agreement in case the students finds the services of OP unsatisfactory and wishes to withdraw from the institute. Absence of the exit clause also makes the agreement unconscionable as it is one sided.

18. In this respect we are further guided by view taken by the Hon'ble State Commission in Brilliant Tutorial Vs Rahul Das reported as Appeal No. 509/2006, decided on 09.01.2017, wherein it was held that:-

12.1 Any such term of contract between the parties, which allows the provider of service to forfeit the amount of service, which he has not provided is against the public policy and good conscious, unjust and unconscionable as the provider of service has the right to charge consideration only if it provides the services.

19. Therefore, we are of the considered view that OP cannot draw any benefit from the consent of the Complainant as the terms of the enrolment form are arbitrary, unreasonable and one sided.

20. OP has contended that Complainant's daughter voluntarily left the course midway and the vacancy created by her was not filled. The said argument is not well founded as we are all aware that when the student is in Class X there is lot of uncertainty and ambiguity regarding the career prospects. Therefore, if the student after the board exam results thought to change the stream, she cannot be penalized for doing so.

Even if, we consider the fact that OP is a self-financed and self-managed institute wherein it has to incur costs prior to commencement of classes it will not be fair and justified for OP to retain full fee of 02 years especially if the services availed by the Complainant are only for 01 Month and 10 Days. This situation would clearly amount to undue enrichment.

*For refund of fee, we are guided by **FIITJEE Ltd. Vs Minathi Rath and anr 2012 (1) CPJ 194 (NC) and Islamic Academy of Education V/s State of Karnataka (2003) 6 SCC 696**, wherein inter-alia it is observed as follows:*

"In our view an educational institutional can only charge prescribed fees for one semester/year, if an institutional feels that any particular student may leave in midstream then, at the highest, it may require that student to give a bond/bank guarantee that the balance fees for the whole course would be received by the institute even if the student left in midstream. If any educational institution has collected fees in advance, only the fees of that semester/year can be used by the institution. The balance fees must be kept invested in fixed deposits in a nationalized bank (emphasis supplied). As and when fees fall due for a semester/year can be withdrawn by the institution. The rest must continue to remain deposited till such time that they fall due. At the end of the course the interest earned on these deposits must be paid to the student from whom the fees were collected in advance."

21. Thus, this Commission is of the opinion that OP is entitled to deduct fee for the period services were availed and proportionate reasonable fee for the costs incurred by OP. Rest of the fee should be refunded to the Complainant. Accordingly, after deducting the costs of books, material provided to the students and 01 Month 10 Days period of attending the classes i.e Rs.15,000/-approximately and the advance service tax of Rs9,888/-,OP is directed to refund rest of the amount.

22. In view of the discussion above we allow the complaint and direct OP to refund Rs.56,000/-@ 6% per annum from the date of filing of the complaint within 03 months from the date of order. OP is allowed to retain the balance amount of Rs.24,888/-towards service tax, costs on books, study material and for the services rendered. Additionally, OP is directed to pay Rs.5,000/- towards litigation, failing which OP shall pay Rs.56,000/-@ 10% per annum from the date of filing of the complaint till realization."

3. Aggrieved by the aforesaid order of the District Commission, Appellant has preferred the present appeal, contending that there is no bar against the Institute to charge advance fees or liability to refund the same in case student leave the course in between and daughter of the respondent voluntarily withdrew herself from classes run by appellant on her own accord and therefore, no fault could be attributed to appellant.

4. The Respondent, on the other hand, has filed the reply to the present appeal wherein, she has submitted that her daughter was enrolled for two years coaching programme for engineering course, while she was preparing for class 10^{th} board vide enrolment dated 29.01.2008. At the time of admission, the Appellant charged fees for entire two years duration and also obtained a declaration to the effect that the fee charged in advance for the entire session shall not be refunded (Clause 5 in the enrollment Form). The appellant has wrongly stated that there had never been any intimation or information from the Respondent with regard to her daughter changing her stream to Commerce in 11^{th} Class and the same was duly intimated to the Appellant vide letter dated 21.07.2008 from the school. Respondent has reiterated the detailed order of the

District Commission and submitted that the appeal being devoid of substance, be dismissed with heavy costs.

5. The Appellant has filed written synopsis along with the judgments in support his case which are as follows:

   i. **Islamic Academy of Education vs. State of Karnataka**, (2003) 6 SCC 697.
   ii. **Fiitjee Ltd. Vs. Harish Soni** RP No. 2054/2013 decided on 08.10.2015.
   iii. **FIITJEE Ltd. Vs. Sajjan Kumar Gupta** RP No. 4476/2013.
   iv. **Fiitjee Ltd. Vs. S. Balavignesh** RP No. 2684/2014 decided on 09.01.2015.
   v. **Globsyn Business School vs. Mayuri Ghosh** III (2013) CPJ 118 (NC).
   vi. **Shri Ashbel Sam Vs. Brilliant Classes** RP No. 270/2006 decided on 29.01.2010.
   vii. **Appellay Institute of Management and Information Technoloy Vs. Prashant Ashok** I(2009) CPJ 10 (NC).

6. It is the case of Appellant that terms and conditions incorporated in the enrollment form specifically provide that :-

> "Once a class starts FIITJEE does not admit any students. Therefore, any vacancy created by a student having cannot be filled up. Since FIITJEE has to source infrastructure, faculty etc. in advance, loss of fees of students leaving after taking admission will compel the institute to enhance fees for next batch of students which is unfair to them. Therefore, students/parents must clearly understand this important aspect and take admissions only if they are fully satisfied."

7. Appellant has relied on the judgment of Hon'ble Apex Court in **Islamic Academy of Education v. State of Karnataka, (2003) 6 SCC 697**. Hon'ble Apex Court held as follows:

> "*It must be mentioned that during arguments it was pointed out to us that some educational institutions are collecting, in advance, the fees for the entire course i.e. for all the years. It was submitted that this was done because the institute was not sure whether the student would leave the institute midstream. It was submitted that if the student left the course in midstream then for the remaining years the seat would lie vacant and the institute would suffer. In our view an educational institution can only charge prescribed fees for one semester/year, if any institution feels that any particular student may leave in midstream then, at the highest, it may require that student to give a bond/bank guarantee that the balance fees for the whole course would be received by the institute even if the student left in midstream. If any educational institute has collected fees in advance, only the fees of that semester/year can be used by the institution. The balance fees must be kept invested in fixed deposits in a nationalized bank (emphasis supplied). As and when fees falls due for a semester/year only the fees falling due for that semester/ year can be withdrawn by the institution. The rest must continue to remain deposited till such time that they fall due. At the end of the course the interest earned on these deposits must be paid to the student from whom the fees were collected in advance.*"

8. Appellant has further relied on the order dated 29.01.2010 of Hon'ble National Consumer Disputes Redressal Commission in the

matter of "Brilliant Classes Vs. Shri Ashbel Sam" in RP No. 270/2006, wherein it has been held that once the candidate has entered into an agreement to abide by the rules and regulations and has voluntarily deposited the course fee, he cannot at his sweet will withdraw from the course and then demand the refund of the fee on the plea of the institute holding irregular classes or rendering sub-standard lessons. It was his responsibility to has ascertained the details with regard to running of the course by the institute before depositing the course fee for being enrolled.

9. Appellant has stated that the allegation of deficiency in service against the Institute lacks even iota of evidence and has prayed to quash impugned order as the same is not legally sustainable.

10. The first question for consideration before us is whether the Appellant admitted any other student in place of the daughter of the Respondent, after her withdrawl from the coaching just after a period of one month and ten days as she opted for Commerce Stream after class X.

We do not find any evidence on behalf of the Appellant, in support of this contention that no student was admitted to the vacancy caused due to withdrawl of the daughter of the Respondent. **Thus**, **as no evidence has been brought on record in support of their contention, Appellant has failed to substantiate that no other student was admitted during the entire period of two years of the coaching programme, in place of the daughter of Respondent, who withdrew only after a period of one month and ten days.**

11. We further find that Hon'ble Supreme Court in the matter of Islamic Academy of Education v. State of Karnataka, (2003) 6 SCC 697 has held that – "……*If any educational institute has collected*

fees in advance, only the fees of that semester/year can be used by the institution. The balance fees must be kept invested in fixed deposits in a nationalized bank (emphasis supplied). As and when fees falls due for a semester/year only the fees falling due for that semester/ year can be withdrawn by the institution. The rest must continue to remain deposited till such time that they fall due. At the end of the course the interest earned on these deposits must be paid to the student from whom the fees were collected in advance.”.

During proceedings, Appellant has failed to file evidence to substantiate that the above directions of Hon’ble Apex Court have been complied in the case of the Respondent i.e. the balance fee was kept invested in fixed deposit in a nationalized bank and the interest earned on the deposit was paid back to the student/Respondent herein, from whom the fees was collected in advance. Thus, we find that the Appellant has rather collected the advance fee for two years of coaching from the student without complying the directions of the Hon’ble Apex Court of investing the balance fee in fixed deposits in a nationalized bank and pay the interest earned on such deposit after the end of the course.

12. Appellant has contended that the District Commission has committed a grave error of law while passing the impugned order and has prayed to set aside the same and dismiss the complaint filed by the Respondent.

13. We have perused the appeal, impugned judgment and material available on record including the reply of the Respondent. On perusal of record before us, it is noted that all the contentions which have been raised by the Appellant and Respondent in the present appeal have duly been taken into consideration by the

District Commission before passing the impugned judgment. The District Commission has thoroughly answered all the contentions raised by both parties. After having gone through the facts of the case, our findings as discussed above and after examining the detailed order passed by the District Commission, we do not find any irregularity in the findings arrived at by the District Commission.

14. From the aforesaid discussion, it is clear that the District Commission has rightly passed the impugned order against the Appellant. Otherwise also, there is nothing in favour of the Appellant to interfere with the orders of the District Commission-II. The appeal is dismissed.
15. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment.
16. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
17. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
MEMBER (JUDICIAL)

(J.P. AGRAWAL)
MEMBER (GENERAL)

Pronounced On :

22.11.2024