

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION
THIRUVANANTHAPURAM**

**First Appeal No. A/814/2017
(Date of Filing : 20 Dec 2017)
(Arisen out of Order Dated in Case No. CC/886/14 of District Ernakulam)**

1. FIIT JEE LTD

29-A, KALU SARAI, SARVPRIYA VIHAR, NEW DELHI-
110016

.....Appellant(s)

Versus

1. MASTER GEORGE JOSEPH PYNADATH

JOSE BANGLOW, KARUKUTTY.P.O, ERANAKULAM.

.....Respondent(s)

BEFORE:

**HON'BLE MR. JUSTICE SRI.B.SUDHEENDRA KUMAR PRESIDENT
HON'BLE MR. SRI.AJITH KUMAR.D JUDICIAL MEMBER
SRI.RADHAKRISHNAN.K.R MEMBER**

PRESENT:

Dated : 22 Nov 2024

Final Order / Judgement

KERALA STATE CONSUMER DISPUTES REDRESSAL COMMISSION,

VAZHUTHACAUD, THIRUVANANTHAPURAM

APPEAL No. 814/2017

JUDGMENT DATED: 22.11.2024

(Against the Order in C.C.886/2014 of DCDRC, Ernakulam).

PRESENT:

SRI. AJITH KUMAR D.

: JUDICIAL MEMBER

SRI. RADHAKRISHNAN K.R.

: MEMBER

APPELLANT:

FIITJEE Ltd., 29-A, Kalu Sarai, Sarvpriya Vihar, New Delhi-110 016 through its A.R.
Sh. Ashish Kr. Aggarwal

Also at

Lakshmi Bhai Towers, TD Road, North End, Kochi.

(By Advs. Das &Associate and Adv. Vipin Das)

1.

RESPONDENTS:

1. Master George Joseph Pynadath, S/o Jo George, through his father and next friend Jo George, Jose Bunglow, Karukutty P.O.,Ernakulam-683 576.

2. Jo George, S/o P.J. George, Jose Bunglow, Karukutty P.O., Ernakulam-683 576.

(By Adv. S. Reghukumar and Adv. George Cherian)

JUDGMENT

SRI. RADHAKRISHNAN K.R.: MEMBER

This is an appeal filed under Sec. 15 of the Consumer Protection Act, 1986 against the order in C.C. No. 886/2014 on the files of the District Consumer Disputes Redressal Commission, Ernakulam ('District Commission' for short). As per the order dated 28.11.2014 the District Commission partly allowed the complaint and directed as under:

- i. The 1st and 2nd opposite parties shall jointly and severally refund an amount of Rs. 3,55,201/- to the complainants, which was collected from the complainant as per Ext. A1.
- ii. The 1st and 2nd opposite parties shall also pay an amount of Rs. 1,00,000/- towards compensation and Rs. 10,000/- towards costs of the proceedings to the complainant.

2. The 1st complainant/1st respondent is the son of the 2nd complainant/2nd respondent. The appellants and respondents are referred as per their original status in the complaint.

3. Brief details of the complaint are as follows: The 1st complainant had taken admission for the two years integrated school programme called 'Pinnacle' of the opposite parties for coaching for the All India Common Entrance Examination which is conducted for admission in various engineering courses like NIT and IIT. He got admission in the coaching centre after having passed the entrance examination held on 08.08.2013. The opposite parties had an arrangement with M/s Saraswathy Vidya Nikathen, Senior Public School, Elamakkara, for imparting CBSE Plus two course along with IIT, JEE entrance course. The course was for the academic year for plus one started in June 2014. Even before announcement of the 10th class result of the 1st complainant, the opposite parties collected Rs. 3,55,201/- from him and a receipt was issued on 20.12.2013. Provisional admission for entrance course was given vide enrolment No 1110 6514 60014. The 1st complainant took provisional admission in Saraswathy Vidya Nikathen for Plus one. He was admitted to the hostel of the opposite parties situated at the 5th floor of the office

where the 2nd opposite party is situated. At the time of admission, it was promised that a bath attached double room will be provided to the students. However, the hostel accommodation provided was only a dormitory wherein 16 students were accommodated in two tier berthing system in around 300 sq. ft area with common toilets. There was no proper infrastructure facility as promised at the time of admission. The 1st complainant stayed there only for three days from 07.04.2014 to 09.04.2014. He also came to know that the faculty members in the institution are not properly qualified and some of them are not having B.Ed qualification. As the atmosphere in the hostel and in the class room caused undue psychological stress for the complainant, he was constrained to abandon the entrance course, much before its commencement. Thereafter, he continued his studies in his existing school CMI Public School, Chalakudy for the academic years 2014-15 which commenced during June 2014. The complainant also learnt that the opposite parties are having the required strength of 40 students for the course commenced for the relevant academic year. As he decided to discontinue the training programme, the complainants demanded refund of the fee of Rs. 3,34,797/- from the opposite parties. Despite repeated requests they did not make any payment. As the complainants did not get the refund, they filed the complaint praying for refund of Rs. 3,34,797/- with 12% interest from the date of payment till realization with compensation of Rs. 1,00,000/- and costs of Rs. 25,000/-.

4. The opposite parties entered appearance and filed their version. According to the opposite parties, the complainant is not a consumer within the purview of the Consumer Protection Act, 1986 and hence the complaint is not maintainable. They also relied on the decision in P.T. Koshy Vs. Ellen Charitable Trust in support of their contention. They also cited various other decisions of the National Commission to support that the educational institutions do not come under the purview of the Consumer Protection Act. They also submitted that fee once paid is not refundable as per the undertaking given by the complainant at the time of admission. Hence they prayed for dismissal of the complaint.

5. Evidence in the case consists of the oral evidence of the second complainant as PW1 and Exhibit A1 was marked on his side. There was no oral evidence on the side of the opposite parties. Ext. B1 was marked on their side. On the basis of the evidence adduced by both parties, the District Commission passed the impugned order. Aggrieved by the said order, the opposite parties have filed this appeal.

6. We have heard the learned counsel on both sides. The learned counsel for the appellants submitted that the first complainant was given admission for the course 'Pinnacle two year integrated school program' on submitting the enrolment form dated 20.12.2013 (Ext B1). According to him the respondents/complainants are not consumers as per the provisions of the Consumer Protection Act, 1986. The learned counsel also submitted that the District Commission erred in finding that there was deficiency in service on the part of the appellants as the 1st complainant/respondent is not a consumer within the purview of the Consumer Protection Act. They also relied on the decision of the Hon'ble National Commission in FIITJEE Ltd. Vs. Mayank Tiwari (R P No. 4335 of 2014) in which it was held that education did not come under the purview of the Act. It was observed that educational institutions are not providing any service and education is not a commodity. The learned counsel contented that as per the clause 10 of the undertaking in the enrolment form, fee once paid is not refundable under any circumstances. The argument that the faculty is not qualified is not correct as B.Ed is not a mandatory qualification for the faculty. The claim of the 1st complainant that he has not attended the class is not correct as he has attended the classes for three days.

7. The learned counsel further argued that the complainant claimed Rs. 3,34,797/- whereas the District Commission directed the opposite parties to pay an amount of Rs. 3,55,291/- even without asking for any proof of payment. They also submitted that the post dated cheques for Rs. 1,07,304/- were bounced when presented for encashment and it was never paid by the respondent/complainant. The District Commission passed the order without considering these facts. Hence the learned counsel for the appellants prayed for allowing the appeal and dismissing the order of the District Commission.

8. The learned counsel for the respondents submitted that the District Commission has rightly allowed the complaint and ordered for refund of the entire fee paid by the 1st complainant to the opposite parties. The coaching classes were scheduled to commence in June 2014 whereas the respondent/complainant decided not to continue the course much before the date of commencement of the course. Hence their condition that the fee once paid will not be refunded is not applicable in the case as the course was not commenced at the time of requesting for the refund. Moreover, the infrastructure facilities are very much relevant for the course for which he was admitted. The first respondent/first complainant was under severe psychological stress because of the congested accommodation given to him which was not at all convenient for his studies. Hence, he decided to discontinue the studies and requested for refund of the amount paid. The appellant is bound to refund the amount as they miserably failed to honour the promise given at the time of admission. The irresponsible action of the appellant caused financial loss and severe mental agony to the complainants. Hence the learned counsel for the respondents prayed to dismiss the appeal and confirm order of the District Commission.

9. We have considered the submissions on both sides and perused the records. This is a case in which the student/1st complainant was admitted for coaching classes for IIT/JEE entrance examination in the coaching institute run by the opposite parties. The student/first complainant left the course even before it was commenced. But the course fee collected was not refunded. The issue in the complaint is whether he is entitled for the refund of the fees paid.

10. Admittedly the first complainant/first respondent had joined the course in the institution of the appellant and paid the fee as per the schedule of the Institute. The contention of the learned Counsel for the appellant is that the complainants/respondents are not consumers within the purview of the Consumer Protection Act. The decision of the Hon'ble National Consumer Disputes Redressal Commission (NCDRC) in *Manu Solanki Vs Vinayaka Mission University (2020 SCC online 7 decided 20.01.2020)* is relevant in this case. It was held that coaching centres do fall within the purview of the Act. Observations of the NCDRC are reproduced below:

“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."

In view of the above decision of the National Commission we do not find any merit in the contention of the appellants that the respondents/complainants are not consumers within the purview of the Act. We concur with the finding of the District Commission that the complainants are 'consumers' and the opposite party is the 'service provider' and hence the complaints are maintainable.

11. Ext. A1 is the acknowledgement dated 20.12.2013 in respect of the payment of Rs. 3,55,201/-. It pertains to the fee collected for the next two years' course. Ext B1 enrolment form was produced by the opposite party. Clause 10 of the undertaking in the form is regarding 'no refund of fee' under any circumstances. Evidently this is a unilateral and arbitrary condition. As is evidenced from the facts, the coaching classes were commenced from June 2014 whereas the student/1st complainant decided not to continue the course even before commencement of the course. Hence the condition in the enrolment form dated 20.12.2013 (Ext B1) that the fee once paid is not refundable is not applicable in this case. We observe that unit head and coordinator of the course were informed about the inadequate facilities in the coaching centre and hostel. The grievances of the student/first complainant is proved by the deposition of his father, second complainant. The appellants submitted that certain cheques given by the Respondent/complainant were bounced for which no evidence is produced. Hence payment of the fee as per Ext. A1 acknowledgement is accepted and we find that it is refundable.

12. The respondents/complainants joined the course in the opposite party institution with high expectations. They were under the belief that the appellant will provide all the required facilities expected from a reputed coaching centre providing classes for a popular course for entrance coaching. The learned counsel for the respondents argued that the appellant failed to honour the various promises and commitments made at the time of admission.

13. Needless to mention that choice of an institution by a student primarily depends on its standing by way of the quality of education provided and the conducive atmosphere and facilities for studies. The first respondent/first complainant had a different experience than what was promised by the appellants. He was worried about loss of his precious days in an Institution which was not bothered about proper infrastructure facilities for conducive educational environment and also for not conducting the classes with properly qualified staff.. There was no action on the part of the appellants to redress the grievances of the student. We have to take into account the anxiety and concerns of the young student about his future education. Hence it is right on his part to ask for refund of the amount paid to the appellant and choose a different institution for further studies considering his future.

14. On the basis of the foregoing discussions, we do not find any error in the finding of the District Commission that there was deficiency in service and unfair trade practice on the part of the appellants/opposite parties. There is no valid ground to interfere with the order of the District Commission and therefore their order is liable to be confirmed. However, it is observed that the amount claimed as per the complaint is Rs. 3,34,797/- towards refund of the fee, whereas the District Commission has allowed an amount of Rs. 3,55,201/- which is not correct. Hence the order of the District Commission is to be modified to the effect that the amount payable is reduced from 3,55,201/- to 3,34,797/-. We have also examined the fairness of the amount of compensation and costs awarded. We are of the view that it is just and reasonable.

15. In the result, this appeal is partly allowed and the order dated 30.06.2017 of the District Commission is modified to the extent that the amount ordered to be refunded is reduced from Rs. 3,55,201/- (Rupees Three Lakh Fifty Five Thousand Two Hundred and One only) to Rs. 3,34,797/- (Rupees Three Lakh Thirty Four Thousand Seven Hundred and Ninety Seven only). All other terms in the order of the District Commission will remain intact. There shall be no order as to costs.

The statutory deposit made by the appellant shall be given to the respondent to be adjusted/credited towards the amount ordered by the District Commission, on proper acknowledgement.

AJITH KUMAR D.: JUDICIAL MEMBER

RADHAKRISHNAN K.R. : MEMBER

Jb

**[HON'BLE MR. JUSTICE SRI.B.SUDHEENDRA KUMAR]
PRESIDENT**

**[HON'BLE MR. SRI.AJITH KUMAR.D]
JUDICIAL MEMBER**

**[SRI.RADHAKRISHNAN.K.R]
MEMBER**