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First Appeal No.1645 of 2007
Date of Institution: 27.7.2006
Date of Decision: 6.10.2010

REDRESSAL COMMISSION HARYANA

National Institute of Open Schooling, B-31B Kailash Colony, New Delhi through its

Director.

.....Appellant/Opp. Party

Versus

Sandeep Kumar son of Chandgi Ram R/o Govt. Quarer, D.C. Office, Sirsa.

.....Respondent-Complainant

**BEFORE**:

Hon'ble Mr.Justice R.S.Madan, President.

Dr.Rekha Sharma, Member.

Sh.Diwan Singh Chauhan, Member.

Present:

Mr. Rohit Goswami, Advocate for the appellant.

Mr. K.K. Doda, Advocate for the respondent.

ORDER Very

JUSTICE R.S.MADAN PRESIDENT:

This appeal is preferred against the order dated 27.4.2007 passed by the District Consumer Disputes Redressal Forum, Sirsa whereby complaint No.352 of 2005 filed by respondent-complainant against the appellant-opposite party with respect to conducting of Senior Secondary examination in April-May 2004 and declaring the complainant absent in the paper of Chemistry (Code-313), has been accepted by granting

following relief:-

"...we direct the Op to pay a sum of Rs.15,000/- as compensation on account of physical and mental harassment etc, and on account of financial loss and loss of one academic year, with cost of proceedings to the tune of Rs.2500/-. We further direct the OP to implement the present order within a period of six weeks, failing which the complainant shall be entitled to invoke the jurisdiction of the Consumer Forum under section 25& 27 of the Act. We order accordingly."

Heard.

It is the case of the appellant-opposite party that the respondent-complainant had not appeared in Chemistry Paper and was rightly shown absent.

At the very outset the question for consideration before us is whether the complaint of the complainant before the District Forum is maintainable or not?

Admittedly, the National Institute of Open Schooling is discharging its statutory functions and does not render services for consideration as contemplated under the Consumer Protection Act, 1986. The National Open School is run by the National Open School Society, which was created pursuant to the Notification by the Central Government. The National Open School can sue or be used through its Secretary. The society was created for proper development of Distance and Open Learning System at the School Level throughout in India. The National Open School is authorized to conduct examination and impart education for open learning. It can prescribe Rules and Conditions for Registration of students, for eligibility for appearing at the examination, for its conduct, and for all other Rules consonant with the necessary for proper fulfillment of teaching candidate and as certifying authority and for these purposes enumerated in the Rules and Regulations of the National Open School. The National Open School can conduct re-examination and take such other steps as may be necessary in the facts and circumstances. The National Open School is discharging statutory functions to advise the sovernment of India and the States regarding the proper development of distance and per learning system at the school level; to development and prescribe or offer a wide spectrum of course of study for the purpose of general and continuing education either leading to certification at the school stage (Secondary and Senior Secondary) or for life and job enrichment without certification; to development study material, using print,

audio and video aids; to publish or cause to be published and to print learning and other

material developed by the National Open School; to prescribe Rules and Conditions for

the Registration of Students, for eligibility for appearing at the examination, for its

conduct, and for all other rules consonant with and necessary for proper fulfillment of

teaching candidate and as certifying authority and for the purpose enumerated in the Rules and Regulations of the National Open School. The National Open School is conducting examination in discharge of its Public functions.

In view of the above, it is not disputable that the functions of the appellant-opposite party are the same such like as Board and Universities.

The Hon'ble Supreme Court in case titled as Bihar School Examination Board Versus Suresh Prasad Sinha, IV (2009) C.P.J. 34 has held that the Education Boards & Universities are not 'Service Provider' and the complaints against them are not maintainable. In the said judgment the Hon'ble Supreme Court has held as under:-

"11. The Board is a statutory authority established under the Bihar School Examination Board Act, 1952. The function of the Board is to conduct school examinations. This statutory function involves holdind periodical examinations evaluating the answer scripts, declaring the results and issuing certificates. The process of holding examinations, evaluating answering scripts, declaring results and issuing certificates are different stages of a single statutory non-commercial function. It is not possible to divide this function, as partly statutory and partly administrative.



- 12. When the 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. On the other hand, 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 and if so, determine his position or rank or competence vis-à-vis other examinees. The process is not therefore availment of a service by a student but participation in a general examination conducted by the Board to ascertain whether he is eligible and fit to be considered as having successfully completed the secondary education course. The examination fee paid by the student is not the consideration for availment of any service but the charge paid for the privilege of participation in the examination.
- 13. The object of the Act is to cover in its net, services offered or rendered for a consideration. Any service rendered for a consideration is presumed to be a commercial activity in its broadest sense (including professional activity or quasi-commercial activity). But the Act does not intended to cover discharge of a statutory function of examining whether a candidate is fit to be declared as having successfully completed a course by passing the examination. The fact that in the course of conduct of the

examination, or evaluation of answer-scripts, or furnishing of mark-sheets or certificates, there may be some negligence, omission or deficiency, does not convert the Board into a service-provider for a consideration, nor convert the examinee into a consumer who can make a complaint under the Act. We are clearly of the view that the Board is not a 'Service provider' and a student who takes an examination is not a 'Consumer' and consequently, complaint under the Act will not be maintainable against the Board."

"21. In view of the order passed in Civil Appeal No.3911/2003, these appeals stand allowed in terms of the said decision. The impugned orders of the Consumer Fora are set aside and the complaints filed by the respondents against the Boards or Universities are held to be not maintainable. No costs."

In a recent judgment the Hon'ble Supreme Court followed the judgment of Bihar School Examination Board Versus Suresh Prasad Sinha (Supra) in case titled Maharishi Dayanand University Versus Surject Kaur, Civil Appeal No.6807 of 2008 decided on 19.07.2010 wherein it has been observed that:-

"The appellant is an autonomous body and the decision of the appellant and the statutory provisions have to be implemented through its officers. This also includes the implementation of all such measures, which have a statutory backing, and if they are implemented honestly through a correct interpretation, the same in our opinion cannot extend to the degree of torture or harassment. The appellant had to be battle out this litigation upto this Court to establish the very fundamental of the case that the District Forum had no jurisdiction to entertain any such complaint and in our opinion they have done so successfully."

The appeal is accordingly allowed. The judgment and order of the District Forum and the National Commission are set aside. No costs."

In view of the aforesaid judgment of Hon'ble Apex Court, we feel that once it is observed that the complainant-student is not a 'Consumer' under the "Consumer Protection Act, 1986". Thus the Consumer Fora has no jurisdiction to entertain the complaint.

Accordingly, this appeal is accepted, the impugned order is set aside and the complaint is dismissed.

In terms of judgment of the Hon'ble Supreme Court in Laxmi Engineering Works Versus PSG Industries Institute (1995) 3 SCC 583, the petitioner/complainant may seek exemption/condonation of the time spent before the Consumer Fora to seek remedy before the Civil Court, if so advised.

The statutory amount of Rs.8750/- deposited by the appellant at the time of filing of the appeal is ordered to be refunded to the appellant after expiry of period of

 Sd/Justice R.S. Madan
President.

Sd/-Dr. Rekha Sharma Member

5. Date of issue of duplicate copy \_\_\_\_\_\_

Sd/-Diwan Singh Chauhan Member