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IN THE HIGH COURT OF DELHI AT NEW DELHI

Pronounced on : 30.04.2009

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W.P. (C) 7490/2007

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY

..... Petitioner

Through: Mr. Sanjiv Goel with Mr. Praveen Kumar, Advocates.

versus

ANISH SHARMA & ORS.

..... Respondents

Through: Dr. Praveen Kumar Sharma, Advocate for
Respondent No.1.

Mr. D.S. Adel, Advocat for Respondent No.2.

Mr. Sushil Kumar Dubey for Ms. Sonia Mathur for
Respondent No.3.

CORAM:

Mr. Justice S.Ravindra Bhat

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|----|--|-----|
| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be
reported in the Digest? | Yes |

Mr. Justice S.Ravindra Bhat :

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1. The writ petitioner, Guru Gobind Singh Indraprastha University challenges an order of the State Consumer Redressal Commission dated 19.07.2007 in appeal No.367/2002. The State Commission directed the payment of difference between the fee structure, for paid seats and free seats from the date of commencement of the course undertaken by the first respondent from his admission till completion of its course i.e. Rs.140,000/-. It also directed payment of Rs.10,000/- towards costs.

2. Briefly the facts are that the petitioner University conducted a common entrance test for its B.Arch programme for 2000-2001 for the purpose of admission in its affiliating institution including the second respondent (hereinafter called "the College"). The first respondent (hereinafter called "the complainant") participated in the process and was admitted in the College on 18.08.2000. He was ranked 923 in the merit list. The first counseling for admission to the course was held on 13.07.2000 when candidates ranking upto 400 were called for admission. A second cancellation session was undertaken on 16.08.2000 to fill up the vacant seats. The complainant was admitted in this session, towards a seat earmarked as "Paid" category.

3. Alleging that the college as well as the petitioner had acted irregularly and were therefore guilty of deficiency of service, the complainant approached the District Consumer Redressal Forum (hereinafter called "The District Forum") preferring complaint No.783/2001 on 05.10.2001. He sought for his transfer to the category of free seats and a further direction to refund the entire amount paid by him in the "Paid Seat" category. The District Forum after considering the materials and pleadings of the parties including explanation of the present complainant dismissed the complaint on 08.01.2002.

4. The complainant thereafter appealed to the State Commission. His appeal was numbered as 46/2002. On 16.01.2002 the complainant's counsel recorded withdrawal of the appeal, in the following terms

"16/01/02

Present : Dr. Pawan Kumar Sharma, Counsel for the appellant.

A-46/2002

The learned counsel for the appellant wants to make a statement. Let the statement of the learned counsel for the appellant be recorded.

Sd/-

(JUSTICE LOKESHWAR PRASAD)

President

Sd/-

(RUMNITA MITTAL)

Member

Sd/-

(S.P. SABERWAL)

Member

Statement of Dr. Pawan Kumar Sharma, learned counsel for the appellant (without oath)

Under instructions from my client, the appellant, I have to state that the present appeal, filed by the appellant, be dismissed as withdrawn. However, the appellant be given the liberty to approach forum/Court for redressal of his grievances, being raised by the appellant in the present appeal, is so advised.

Sd/-

(JUSTICE LOKESHWAR PRASAD)

President

Sd/-

(RUMNITA MITTAL)

Member

Sd/-

(S.P. SABERWAL)

Member

RO & AC

ORDER

In view of the above statement made by the learned counsel for the appellant, the present appeal, filed by the appellant, is dismissed as withdrawn with liberty aforesaid. No order as to costs.

A copy of this order, as per statutory requirements, be forwarded to the parties free of charge and also to the concerned District Forum and thereafter the file be consigned to the Record Room.

*Sd/-
(JUSTICE LOKESHWAR PRASAD)
President*

*Sd/-
(RUMNITA MITTAL)
Member*

*Sd/-
(S.P. SABERWAL)
Member”*

5. The complainant was apparently dis-satisfied and approached this Court by filing writ Petition No.702/2002. The learned Single Judge heard the arguments, considered the pleadings of the writ petitioner (i.e. the present complainant) and dismissed his petition in the following terms :

“I have heard the learned counsel for the petitioner at length. Learned counsel for the petitioner submitted that the petitioner had been assigned enrollment No.20 by respondent No.2 as it appears at page 17 of the paper book. Petitioner contends that a nominated member Ms. Smriti Sood was at number 19. She was the candidate for a nominated seat of Himachal Pradesh. Petitioner submits that he was entitled to be upgraded to the free seat from paid seat. However, the nominated seat was over and above to the quota. It may be noted that the petitioner earlier filed a complaint under the Consumer Protection Act before the Consumer Disputes Redressal Forum, Tis Hazari. District Forum considered the matter at length and in its detailed judgment dated 8.1.2002 dismissed the complaint of the petitioner, the District Forum took note of the fact that the petitioner had been admitted in the academic year in a paid seat and with an undertaking that the upgradation to the free seat could only be there, if the paid seats get filled on the basis of merit, the petitioner could be upgraded. The Consumer Disputes Redressal Forum examined the records also. If opined that if there is a vacancy in the free seats, it will go to one Mr. Santosh Kumar, whose rank number is 882 over and above that of the complainant/petitioner who had been admitted against a paid seat. Petitioner also raise the grievance with regard to allotment of seat to Ms. Smriti Sood as not been on merit. Consumer Redressal Forum clarified that Ms. Smriti Sood has been allotted a seat under the nominated quota of the State, which was over and above the

sanctioned seats namely free seats or the paid seats. The case of Ms. Smriti Sood would therefore not materially affect the petitioner. Counsel for the petitioner attempted to urge before me that respondent No.2 had given an enrolment showing 20 as per seniority. Learned counsel for the respondent has clarified that the said number was allotted by the respondent No.2/ college and not by respondent No.10. It was not in accordance with seniority as per merit.

In these circumstances, I find no merit in the writ petition or ground to interfere in the exercise of writ jurisdiction.

Writ petition is dismissed.

*Sd/-
Manmohan Sarin
Judge*

January 31, 2002”

6. The complainant further felt aggrieved and approached the Division Bench through Letters Patent Appeal. The Division Bench by an elaborate order dated 06.03.2002 took note of and even extracted the District Consumer Forum's order and further that he had preferred a writ petition before the Court which was dismissed as unmerited. The order of the Division Bench which has an important bearing on the present case dated 06.03.2002 is in the following terms :

“On 16th January, 2002, the appellant withdrew the appeal and accordingly the appeal before the State Consumer Disputes Redressal Commission was dismissed as withdrawn.

Thereafter, the appellant filed a writ petition before this Court. The learned Single Judge found no merit in the writ petition and, accordingly, the writ petition was dismissed. The learned counsel appearing for the appellant submits that the appellant was entitled to a free seat as he had attained 20th position in the Common Entrance Examination conducted by the first respondent. We have considered the submission of the learned counsel. We are of the view that the appellant having withdrawn the appeal which was filed before the State Consumer Disputes Redressal Commission cannot urge before us that the appellant was entitled to a free seat. The District Forum which the appellant selected, came to the conclusion that the appellant was not entitled to free seat. The appellant cannot rake up the controversy afresh by invoking Article 226 of the Constitution. In case the appellant was confident of the merit of his case, he

should have pursued the remedy of appeal before the State Consumer Disputes Redressal Commission. Once the appellant withdrew the appeal he was not entitled to invoke the writ jurisdiction of this Court, accordingly, the appeal fails and is hereby dismissed.

CM No.477/2002

Since the appeal has been dismissed, no further orders are required to be passed on this application.

The application stands disposed of. “

7. On 17.04.2002, the complainant filed the following pleading/letter before the State Consumer Disputes Redressal Commission, contending that it was with reference to Case No.A-46/2002 (the previously filed appeal which was permitted to be withdrawn by the State Commission):

*“Before the State Consumer Disputes Redressal Commission :
New Delhi*

In the matter of :

*Shri Anish Sharma
Vice Chancellor*

..... Appellant

V/s

*Guru Govind Singh, Indraprastha University
Delhi and Another*

..... Respondents

Sir,

Most respectfully showth

Sir,

That with reference to case No.A-46/2002 dated 16/01/2002 the appellant was given the liberty to approach the appropriate forum/Court for redressal of his grievance.

*Therefore may I take this privilege/liberty again to file an appeal before
The State Consumer Disputes Redressal Commission : New Delhi.*

Delhi

Appellant

Dated :17/4/02

Through:

Dr. Praveen Kumar Sharma

8. Apparently the complainant's submission was that he had the liberty to approach the State Commission again. He filed (what was termed as additional necessary legal information pertaining to the abovementioned matter) disclosing that writ petition was filed before this Court which was disposed of on 31.01.2002 as well as the disposal of the Letters Patent Appeal.

9. The response of the college clearly mentioned that the complainant had withdrawn the appeal before the State Commission and that it formed the ground for rejection of his subsequent appeal to the Division Bench. It was contended that the second attempt before the State Commission constituted abuse of the process of Court. The petitioner University also disclosed the full facts including the orders of the District Forum, this Court and the Division Bench and stated that once the matter had been heard and decided on merits, the State Commission ought not to entertain and decide the appeal against the District Forum's order.

10. The State Commission in the impugned order proceeds to discuss the merits of the case and accepted the complainant's contention that a verbal assurance had been held out that he would be adjusted against a "Free Seat" in his turn. The State Commission concluded that the petitioner University did not honour such verbal assurance which constituted unfair trade practice.

11. The petitioner challenges the impugned order as having been made beyond jurisdiction. It contends that having exhausted the remedy through complaint – which was dismissed by the District Forum, and later withdrawn the appeal, the complainant abused the judicial process

earlier too when he approached the High Court. The Division Bench noted this aspect, while dismissing his appeal against the learned Single Judge's order. In these circumstances, the State Commission could not have entertained the matter much less adjudicated upon it and rendered findings. Learned counsel submitted that apart from abuse of the process, by the complainant, the State Commission's order amounted to over-reaching the judgment of the Division Bench, which was binding on the parties as well as on the said commission.

12. The complainant, through his counsel, contends that the present writ petition should not be entertained, as the writ petitioner had not exhausted its remedy provided under the Consumer Protection Act, 1986, by way of revision to the National Consumer Disputes Redressal Commission. It was submitted besides that the State Commission was made aware of the previous litigation and there the complaint's grievance against the earlier District Forum's order was un-redressed. The dismissal of the writ petition, it was contended, did not preclude the State Commission from entertaining and considering the appeal on merits, since in the earlier order, the rival merits were not examined. Terming the writ petition as a gross abuse of process, the complainant contends that the University instead of complying with the State Commission's order, is raising technical pleas of lack of jurisdiction, which is without substance or merit.

13. The above discussion would reveal that the complainant had approached the District forum, complaining of actionable wrong, in the form of deficiency of service, by the petitioner in 2001. That complaint was dismissed on merits, after due consideration of all the materials and pleadings. For reasons best known, the complainant withdrew his appeal filed earlier

before the State Commission. His writ petition was heard and dismissed by this Court on the merits. Not content, he appealed to the Division Bench, which rejected his appeal in no uncertain terms. The Division Bench's ruling – affirming the Single Judge's order, on its merits, became final, and bound the parties. This alone precluded the complainant from approaching any other forum in a third inning, as it were. Yet he did so, and the State Commission not only entertained the appeal afresh, but decided it on the merits.

14. The petitioner argues – justifiably that this third attempt at having the matter adjudicated, after repeated rejection on merits, constituted an abuse of process of court. The writ petition filed earlier had complained against findings of the District Forum; an order on merits was recorded by this court and affirmed by the Division Bench. The principle of finality precluded the complainant approaching any forum – much less the State Commission, on the subject matter. Even in a case where a complaint under the Consumer Protection Act, is dismissed for non-prosecution, a subsequent complaint, for the same cause (if shown to be motivated to harass) has been held to be barred in law (See *New India Assurance Co. Ltd. Vs. R.Srinivasan* 2000 (3) SCC 242). In these circumstances, the complainant could not have agitated the matter at all.

15. Apart from the above circumstance, once the High Court, in exercise of jurisdiction lawfully vested in it, rules on any cause or lis, unless its decision is upset in a manner known to law – i.e. by an appellate ruling, or by an overriding legislation, the determination – of the issues and causes are binding on courts and tribunals, over which it can exercise jurisdiction, through corrective orders, under Article 226 and 227 of the Constitution.

16. There is one more, substantial reason why the petition has to succeed. As held in *Cassel Vs. Broome*, 1972 (1) All ER 01, where a hierarchical system of courts and tribunals exists, the decision of the higher courts are to prevail, and be accepted loyally by Courts and Tribunals in the lower tiers. This decision was approved in *Tirupati Balaji Developers (P) Ltd. Vs. State of Bihar* 2004 (5) SCC 1. Regrettably, the State Commission in this case completely disregarded the previous ruling of this Court, which bound it to refrain exercising any kind of jurisdiction over the complainant's particular grievance. By doing precisely that, and encouraging the complainant's litigative proclivities, the State Commission clearly overstepped the bounds of its jurisdiction. The impugned order virtually sets itself above this Court's determination of the cause, on the merits.

17. The writ petition has to, for the above reasons, succeed. It is therefore allowed. The State Commission's impugned order is hereby quashed. The respondent complainant shall bear the costs of these proceedings, quantified at Rs.25,000/-; it shall be paid to the petitioner, within six weeks.

(S. RAVINDRA BHAT)
JUDGE

APRIL 30, 2009