

Court No. - 3

Case :- WRIT - C No. - 2007 of 2005

Petitioner :- C.S.M.University Thru Registrar And Anr.

Respondent :- District Redressal Consumer Forum Lakhimpur Kheri And Anr.

Counsel for Petitioner :- Shashi Prakash Singh

Counsel for Respondent :- C.S.C.

Hon'ble Vivek Chaudhary,J.

Hon'ble Manish Kumar,J.

1. By means of this writ petition, the petitioners have sought for quashing of impugned complaint registered as Case No.91 of 2004 (contained in Annexure No.-1 to this writ petition) by means of writ of certiorari.

2. Heard Sri Savitra Vardhan Singh. learned counsel for the petitioner as well as learned counsel for the respondents and gone through the records.

3. Brief facts for the purpose of deciding this writ petition is that the respondent No.2 filed a complaint before the respondent No.1 claiming damages of Rs.50,000/- as according to him, he had passed B.Sc. Examination from the petitioner-University in 2003 with 54.83% marks. After declaration of result, he applied for admission in Y.D. College, Lakhimpur Khiri in M.A. and as per the complaint, he was selected admission in M.A. and also deposited fee in College and submitted examination form in the College. However, he was not issued the Admit Card for M.A. Examination and it was informed by College that his admission has been cancelled on account of the fact that he has obtained less than 55% marks in B.Sc. examination and therefore, he was not eligible for admission in M.A. classes. Accordingly, he could not appear in the examination. The complaint was registered as Case No.91 of 2004.

4. Normally, this Court does not interfere in matters where legal recourse is available under a particular statute but where there is blatant breach of law in exercising a jurisdiction not vested in a particular authority, the Court exercises such powers. In *Bihar School Examination Board Vs. Suresh Prasad Sinha reported in (2009) 8 SCC 483*, the Hon'ble Apex Court has held as under:

"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 intend 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. The Board is not a 'service provider' and a student who takes an examination is not a 'consumer' and consequently, complaint under the Act is not maintainable against the Board."

5. Recently in *Maharshi Dayanand University vs. Surjeet Kaur*, Civil appeal no. 6807/08, the Hon'ble Apex Court has held that, even when the entire exercise of entertaining the complaint by the District Forum and the award of relief, which has been approved by the National Commission do not conform to law and we, therefore, set aside the same. It was further held as under:

"We wish to make it clear that the National Commission felt that the respondent had been "harassed" and has also gone to the extent of using the word "torture" against an officer of the appellant. 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 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."

6. In view of the present legal position, as set forth by the Hon'ble Apex Court, the writ petition deserves to be allowed and the impugned complaint registered as Case No.91 of 2004 deserves to be quashed.

7. While holding this, we hasten to add that the principles of "rule of law" and "due process" are closely linked with Human Rights protection. Due administration of justice has always been viewed as a continuous process, not confined to

determination of the particular case, protecting its ability to function as a Court of law in the future as in the case before it.

8. In result, the writ petition is allowed without any order as to costs.

9. Let a writ be issued in the nature of certiorari quashing the impugned complaint registered as Case No.91 of 2004 contained in Annexure No.1 to this writ petition.

(Manish Kumar,J.) (Vivek Chaudhary,J.)

Order Date :- 19.12.2023

Manoj K.