

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Writ Petition No.11226 of 2005

Date of decision: 1.8.2016

Ankit Sharma

...Petitioner

Versus

Punjab Technical University, Jalandhar and another **...Respondents**

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Ms. Narender Kaur, Advocate and
Ms. Jigyasa Tanwar, Advocate for petitioner.

None for respondents.

G.S.SANDHAWALIA, J. (Oral)

The petitioner seeks quashing of order dated 16.5.2005 (Annexure P/4) passed by the Punjab State Consumer Disputes Redressal Commission, Chandigarh (hereinafter referred to “the Commission”) vide which the appeal of the petitioner has been dismissed while upholding order dated 16.3.2005 (Annexure P/3) passed by the District Consumer Disputes Redressal Forum, Ludhiana (hereinafter referred to “the Forum”).

The Commission came to the conclusion that in view of Regulation 9(iii) of Prospectus issued by the respondent-University, the petitioner was not entitled for the refund of fee of ₹ 10,000/-. It was accordingly held that since the candidate having been admitted in first round of counselling had not reported to the college and therefore, initial deposit stands forfeited as per the above said Regulation.

Counsel for the petitioner has vehemently submitted that

in view of Clause 7.3 (a) of the Prospectus every candidate selected for admission was required to deposit the said amount which had been duly deposited. Thereafter after deducting the processing fee the balance amount was to be remitted to the institution and to be refunded finally to the candidate in question. The Clause 7.3 (a) of the Prospectus reads as under:-

“Each candidate selected for admission, after counselling, will be required to deposit a sum of ₹ 10,000/- failing which the admission shall stand cancelled. After deducting the processing fee of Rs.2500/-, the balance amount shall be remitted to the institution to which the candidate is admitted finally for refund to the candidate.”

A complaint before the Forum was thus filed on the ground of deficiency of service under the Consumer Protection Act, 1986 (hereinafter referred to as “the Act”). The said complaint was dismissed by the Forum on the ground that the petitioner had voluntarily decided not to join the college and there was no evidence that the seat had been filled up. The amount stood forfeited and therefore in view of the specific clause in the Prospectus, the complainant was not entitled for the refund of fee.

Even otherwise a perusal of Clause 7.3 (a) which has been reproduced above would go on to show that refund would only be made in case the candidate was admitted and the amount had to be remitted to the institution to which the candidate was admitted finally for refund to the candidate. It is not disputed that the petitioner himself had written to the University that he did not wish to take admission, therefore, amount be refunded. The above clause only

pertains to refund where the person had been admitted and refund is through the said institute. The petitioner at his own wish chose not to take admission. Reliance upon Clause 9 (iii) was thus well justified by the Commission in the facts and circumstances of the case which provide for forfeiture. The same reads as under:-

“A candidate who was admitted in the first counselling and did not report to the college, his/her initial deposit shall stand forfeited.”

In similar circumstances, a Division Bench in **Civil Writ Petition No.3808 of 2002-Ritima Birla Vs. Punjab Technical University, Jalandhar** decided on 12.5.2003 rejected the claim of refund on account of the fact that the said clause is only meant to dissuade the students to seek admission in more than one institution thereby wasting seats depriving other students from admission. Relevant portion of the judgment reads as under:-

“We have heard the learned counsel for the parties. The claim of the petitioner is based on Clause 4.5 of the Prospectus issued by the University which reads as under:-

“4.5 a) Each candidate selected for admission, after counselling, will be required to deposit a sum of Rs.10000/- failing which the admission shall stand cancelled. After deducting the processing fee of Rs.2500/- the balance amount shall be remitted to the Institution to which the candidate is admitted finally, for refund to the candidate.

b) The candidate admitted to a particular institute shall deposit full fee to the respective institution not later than three days after the start of session, failing which the admission shall automatically stand cancelled.

c) xxx xxx xxx.”

A bare reading of the aforesaid clause makes it clear that a candidate who is selected for admission after counselling is required to deposit a sum of Rs.10,000/- as fee failing which the admission would stand cancelled. After the candidate is admitted the University will deduct a sum of Rs.2500/- as processing fee and refund the balance amount to the candidate through the institution where he/she has been admitted. In the instant case, the petitioner never got admitted and the offer of admission was declined by her. Having deposited the fee, she is not entitled to the refund as per the aforesaid clause. As already observed, only candidates who actually get admitted are entitled to the refund. There is good reason for the University to make such a provision. This is only meant to dissuade the students to seek admission in more than one institution thereby wasting seats depriving other students from admission. In the result, it must be held that the petitioner is not entitled to the refund of the amount claimed by her.

Consequently, the writ petition is dismissed with no order as to costs."

Accordingly, respondents cannot be held liable for any deficiency in service and the petitioner was not entitled for refund in terms of the above Clause of Prospectus. It has time and again been held by six Full Bench decisions of this Court that admission brochure or the prospectus has a force of law which is to be strictly followed. Reference can be made to **Amardeep Singh Sahota Vs. State of Punjab** 1993(4) S.C.T. 328, **Raj Singh Vs. Maharishi Dayanand University** 1994(2) S.C.T. 766, **Sachin Gaur Vs. Punjabi University** 1996(1) S.C.T. 837 **Rahul Prabhakar Vs. Punjab Technical University, Jalandhar** 1997(3) S.C.T. 526, **Indu Gupta Vs. Director of Sports, Punjab** 1999(4) S.C.T. 1113 and

Rupinder Singh and others Vs. The Punjab State Board of Technical Education & Industrial Training, Chandigarh and others 2001(2) S.C.T. 726. The relevant observations made in **Rahul Prabhakar's** case (supra) read as under:-

“7. A Full Bench of this Court in [Amardeep Singh Sahota v. State of Punjab](#), (1993) 4 SLR 673 : 1993 (4) SCT 328 (P&H) (FB) had to consider the scope and binding force of the provisions contained in the prospectus. The Bench took the view that the prospectus issued for admission to a course, has the force of law and it was not open to alteration. In [Raj Singh v. Maharshi Dayanand University](#), 1994 (4) RSJ 289 : 1994(2) SCT 766 (P&H) (FB) another Full Bench of this Court took the view that a candidate will have to be taken to be bound by the information supplied in the admission form and cannot be allowed to take a stand that suits him at a given time. The Full Bench approved the view expressed in earlier Full Bench that eligibility for admission to a Course has to be seen according to the prospectus issued before the Entrance Examination and that the admission has to be made on the basis of instructions given in the prospectus, having the force of law. Again Full Bench of this Court in [Sachin Gaur v. Punjabi University](#), 1996 (1) RSJ 1 : 1996 (1) SCT 837 (P&H) (FB) took the view that there has to be a cut off date provided for admission and the same cannot be changed afterwards. These views expressed by earlier Full Benches have been followed in CWP No. 6756 of 1996 by the three of us constituting another Full Bench. Thus, it is settled law that the provisions contained in the information brochure for the Common Entrance Test 1997 have the force of law and have to be strictly complied with. No modification can be made by the Court in exercise of powers under [Article 226](#) of the Constitution

India.”

Even otherwise, the present writ petition would not be maintainable in view of alternative remedy which was available to the petitioner under the provisions of the Consumer Protection Act, 1986 where under Section 19, the appeal would lie to the National Consumer Disputes Redressal Commission. The Apex Court in **Cicily Kallarackal Vs. Vehcile Factory 2012 (7) JT 426** has held to this effect and it depreciated the fact that the writ petition was entertained where the remedy is provided under the Act. Relevant portion of judgment in **Cicily Kallarackal's case (supra)** reads as under:-

“In view of the above, it is not always necessary to set aside an order if found to have been passed by an authority/court having no jurisdiction.

Despite this, we cannot help but to state in absolute terms that it is not appropriate for the High Courts to entertain writ petitions under [Article 226](#) of the Constitution of India against the orders passed by the Commission, as a statutory appeal is provided and lies to this Court under the provisions of the [Consumer Protection Act](#), 1986. Once the legislature has provided for a statutory appeal to a higher court, it cannot be proper exercise of jurisdiction to permit the parties to bypass the statutory appeal to such higher court and entertain petitions in exercise of its powers under [Article 226](#) of the Constitution of India. Even in the present case, the High Court has not exercised its jurisdiction in accordance with law. The case is one of improper exercise of jurisdiction. It is not expected of us to deal with this issue at any greater length as we are dismissing this petition on other grounds.”

Resultantly, even on this account, the present writ petition is not maintainable.

Accordingly, the impugned order dated 16.5.2005 (Annexure P/4) passed by the Commission and order dated 16.3.2005 (Annexure P/3) passed by the Forum are upheld and the present writ is dismissed.

August 01, 2016
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(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No