

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.25969 OF 2007

ORDER:

1. This writ petition is filed by the petitioner seeking to issue a writ of Certiorari calling for the records relating to and connected with the order dated 30.10.2007 passed in C.C.No.90 of 2007 on the file of the 1st respondent, as illegal and arbitrary, and consequently, to set aside the same.

2. Heard Sri Taddi Nageswara Rao, learned Standing Counsel for the petitioner and the learned Government Pleader for Civil Supplies, Andhra Pradesh.

3. The case of the petitioner in brief is as follows:

The 2nd respondent is a student studying MBBS Course in Sri Venkatasai Medical College, Mahaboobnagar, which is one of the affiliated colleges of the petitioner-University, and he appeared for 3rd MBBS examination held in the month of October, 2006 and failed in Social Preventive Medicine (SPM) and Ophthalmology as he secured 62 marks out of 130 marks, whereas the pass mark is 65. He made an application for recounting. Two examiners checked the answer sheet and submitted report stating that the marks given earlier are correct. Not being satisfied with the same, the 2nd respondent filed W.P.No.9825 of 2007 before this Court seeking to declare the action of the petitioner-University in not evaluating the paper of the 2nd respondent as illegal. This Court dismissed the said writ petition. The 2nd respondent also raised a consumer dispute in C.C.No.90 of 2007 before the 1st respondent under Section 9(a) of the Consumer Protection Act, in which, the petitioner herein filed a memo stating about the dismissal of the writ petition filed by the 2nd respondent.

In spite of the same, the 1st respondent proceeded with the matter and passed orders on 30.10.2007 directing the petitioner herein to remove the deficiency in valuing the disputed answer sheet of the 2nd respondent herein or alternatively to pay Rs.1,00,000/- to the 2nd respondent herein as compensation. Aggrieved by the said order, the present writ petition is filed.

4. The learned Counsel for the petitioner contends that the 1st respondent has no power to proceed with the C.C. in view of the dismissal of W.P.No.9825 of 2007 filed by the 2nd respondent. Relying upon the judgment of the Apex Court in **Maharshi Dayanand University Vs. Surjeet Kaur¹**, the learned Counsel for the petitioner contends that the complaint under Consumer Protection Act is not maintainable in view of the fact that negligence, omission or deficiency in conducting the examination/evaluating answer sheets do not convert the petitioner-University into a service provider nor convert the student into a consumer. He further submits that the University does not have the provision for revaluation of the answer scripts and that the Courts normally do not interfere with the domain of the University in that regard and therefore, the order passed by the 1st respondent is not sustainable. The learned Counsel for the petitioner also relied upon the judgment of the Apex Court in **Bihar School Examination Board Vs. Suresh Prasad Sinha²** and **Nivedita Sharma Vs. Cellular Operators Association of India and others³**.

5. Having considered the rival submissions made by the parties, this Court came to a conclusion that the complaint filed by the 2nd respondent

¹ (2010) 11 SCC 159

² (2009) 8 SCC 483

³ (2011) 14 SCC 337

before the 1st respondent-District Consumer Forum-II is not maintainable in view of the law laid down in **Maharshi Dayanand University's** case (1st cited supra). Though there is a judgment of the Apex Court in **Nivedita Sharma's** case (3rd cited supra), which states that there is alternative remedy for the petitioners-University to approach the State Commission instead of straight away approaching the Court by way of this writ petition under Article 226 of the Constitution of India, but at this length of time i.e., after a decade, it is not just and proper to direct the petitioner to avail the alternative remedy inasmuch as it would not serve the purpose on either side.

6. However, the fact remains that the District Forum passed the orders in C.C.No:90/2007 directing the petitioner-University to remove the deficiency in valuing the disputed answer sheet of the 2nd respondent or alternatively to pay Rs.1,00,000/- to the 2nd respondent herein as compensation besides Rs.2,000/- towards costs, without any jurisdiction, that too, after dismissal of W.P.No:9825/2007, which was filed before this Court for the very same relief. On this count alone, the order dated 30.10.2007 passed by the 1st respondent in C.C.No.90 of 2007 is liable to be set aside.

7. Accordingly, the Writ Petition is allowed setting aside the order dated 30.10.2007 passed in C.C.No.90 of 2007 by the 1st respondent. No costs. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 23rd April, 2018.
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23/04/2018

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