



WEB COPY



W.P(MD)Nos.1631, 2972 & 16137 to 16140 of
2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.11.2022 & 18.11.2022
DELIVERED ON : 29.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)Nos.1631, 2972 & 16137 to 16140 of 2014

and

M.P(MD)Nos.1, 1 & 2 of 2014

and

W.M.P(MD)No.6695 of 2016

and

M.P(MD)Nos.1, 1, 1 & 1 of 2014

(W.P(MD)No.1631 of 2014)

SASTRA University,
(Shanmuga Arts Science & Technology Research Academy),
A Deemed University,
Tirumalaisamudram,
Thanjavur District-613 401,
Represented by its Registrar,
Dr.Balachandran

... Petitioner

Vs.

1.The District Consumer Disputes Redressal Forum,
Thanjavur-613 002.

2.A.Johan Peter Leonard

3.University Grants Commission,
Through its Under Secretary,
New Delhi.

... Respondents



W.P(MD)Nos.1631, 2972 & 16137 to 16140 of
2014

WEB COPY

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to C.C.75 of 2013 on the file of the District Consumer Disputes Redressal Forum, Thanjavur and quash the same.

(In W.P(MD)No.1631 of 2014)

For Petitioner : M/s.K.K.Senthil

For R-1 : Court

For R-2 & R-3 : No appearance

(In W.P(MD)No.2972 of 2014)

For Petitioner : M/s.K.K.Senthil

For R-1 : Court

For R-2 & R-3 : M/s.S.Pushpavanam

(In W.P(MD)No.16137 of 2014)

For Petitioner : M/s.K.K.Senthil

For R-1 : Court

For R-2 : M/s.G.Sridharan

(In W.P(MD)Nos.16138 to 16140 of 2014)

For Petitioner : M/s.K.K.Senthil

For R-1 : Court

For R-2 & R-3 : M/s.S.Pushpavanam



W.P(MD)Nos.1631, 2972 & 16137 to 16140 of
2014

COMMON ORDER

The present Writ Petitions have been filed challenging the entertainment of consumer complaint by the first respondent Forum as against the writ petitioner University for the alleged deficiency in service, in view of non-refund of the fees to the students, who had left mid-stream of the course.

2. In W.P(MD)No.1631 of 2014, the student had attended two months classes and he left the College on the ground that, he got admission in a Dental College, Coimbatore. Since the student had left the course after attending two months, the seat remained vacant throughout the entire programme of four years.

3. In W.P(MD)No.2972 of 2014, it is alleged that after attending the entire first year course, namely, for 86 working days out of 90 in the third semester, the student had withdrawn from the ECE course.



W.P(MD)Nos.1631, 2972 & 16137 to 16140 of
2014

WEB COPY

4. In W.P(MD)No.2972 of 2014, the student got admitted through lateral entry and she attended free bridge course coaching classes from 24.04.2012 to 23.06.2012 conducted by the petitioner University before they are admitted to the Engineering programme. After attending the said course, the student was admitted to third semester in B.Tech., (ECE) through lateral entry scheme. Towards the end semester Practical Examination, the student had given a letter on 19.11.2002, that she got admission in Singapore Institute of Management, Singapore. Only one semester fee of Rs.55,000/- was paid at the time of admission, no further fee was collected.

5. In W.P(MD)No.16137 of 2014, the student had joined B.A., L.L.B Course and she attended classes from 29.07.2013 to 16.08.2013. The student left the course by paying the second semester fee of Rs.40,000/-.

6. In W.P(MD)No.16138 of 2014, the student had attended the entire first year programme and also for 23 days in third semester and he left the



W.P(MD)Nos.1631, 2972 & 16137 to 16140 of
2014

College on the ground that, he got admission in I.I.T., Bangalore. Hence, no student could be admitted in the lateral entry in the third semester.

7. In W.P(MD)No.16139 of 2014, the student had attended classes for 22 days and on his own volition had left the College on 24.08.2012. Since the said student was admitted under the 'NRI Quota', the vacancy could not be filled up for the entire four year period. As per the conditions, the candidate has to pay the remaining three year fees. However, on humanitarian grounds, the balance three year NRI fees was not collected and his certificates were returned.

8. In W.P(MD)No.16140 of 2014, the son of the third respondent had joined B.Tech., (ECE) Course on 22.06.2012, by paying the initial fees. On 20.08.2013, the third respondent had written a letter that his son had secured seat in N.I.T., Jamshedpur and he wanted to discontinue the course. At that point of time, the third respondent had voluntarily remitted the balance course fee for the entire programme, since the student is leaving the Institution after attending classes from 18.07.2012 to 20.08.2012. According



W.P(MD)Nos.1631, 2972 & 16137 to 16140 of
2014

WEB COPY

to the petitioner University, the third respondent and his son had given an undertaking letter on 08.07.2012, agreeing to remit the entire course fee, if they opt for withdrawal after the commencement of the programme, accepting the refund policy of the College. As per the refund policy, the University had returned the 2nd 3rd and 4th year fees collected from the third respondent's son, which is around Rs.2,40,000/-. The University had just retained the first year fee alone, since the third respondent son had opted for withdrawal from the course after the commencement of the classes.

9. According to the learned Counsel for the petitioner, as per the brochure, which was counter signed by the students and their parents, it has been categorically instructed that the said student should pay the entire programme fee, when he / she opts for withdrawal after the commencement of the programme. The learned Counsel for the petitioner further pointed out that as per the brochure, fees once paid will not be refunded under any circumstances after the start of classes. The candidate should pay the entire programme fee minus whatever has already been paid, if he / she



W.P(MD)Nos.1631, 2972 & 16137 to 16140 of
2014

discontinues the programme any time after its commencement. The learned Counsel for the petitioner also relied upon the UGC instructions, dated 22.06.2011 to the effect that, if a student had left after joining the course and if the seat consequently falling vacant has been filled up by another candidate by the last date of admission, the institution, deemed to be university, must return the fee collected with proportionate deductions of monthly fee and proportionate hostel rent, wherever applicable. Hence, according to the learned Counsel for the petitioner, only if the vacancy was filled up by another candidate by the last date of admission, the question of returning the fees collected from the student would arise. In all the above said cases, the candidates have left the course mid-stream and the said vacancy could not be filled up by another candidate by the last date of admission. Hence, even as per the UGC regulations, the refund of fees to the student concerned would not arise.

10. The learned Counsel for the petitioner University had relied upon a judgment of the Hon'ble Supreme Court in ***Civil Appeal No.17802 of 2017, dated 30.10.2017, (Anupama College of Engineering Vs. Gulshan***



W.P(MD)Nos.1631, 2972 & 16137 to 16140 of
2014

Kumar and Others). The learned Counsel for the petitioner further relied upon a judgment of the Hon'ble Supreme Court reported in **2010 (11) SCC page 159 (Maharshi Dayanand University Vs. Surjeet Kaur)**. The learned Counsel for the petitioner further relied upon a judgment of the Hon'ble Supreme Court in **Special Leave to Appeal (Civil) No.22532 of 2012, dated 09.08.2012, (P.T.Koshy and Others Vs. Ellen Charitable Trust and Others)**. The learned Counsel for the petitioner further relied upon a judgment of the Hon'ble Supreme Court in **Special Leave to Appeal (Civil) No.3789 of 2012, dated 29.04.2013, (Prof. K.K.Ramachandran Vs. S.Krishnaswamy and Another)**. The learned Counsel for the petitioner further relied upon the judgment of the National Consumer Disputes Redressal Commission reported in **2020 SCC Online NCDRC page 7 (Manu Solanki and Others Vs. Vinayaka Mission University)**.

11. Relying the above said judgments, the learned Counsel for the petitioner had contended that the present complaints have been lodged before the District Consumer Disputes Redressal Forum. In view of the above cited judgments of the Hon'ble Supreme Court and the National



W.P(MD)Nos.1631, 2972 & 16137 to 16140 of
2014

WEB COPY

Consumer Disputes Redressal Commission, the first respondent Forum does not have any jurisdiction to entertain any complaint relating to non-refund of any fees by an Educational Institution. The Hon'ble Supreme Court has categorically held that such matters cannot be entertained by the Consumer Forum under the Consumer Protection Act, 1986. He further contended that the Education is not a 'commodity' and the said Institutions are not providing any kind of service. Therefore, in the matter of admission, fees etc., there cannot be a question of deficiency of service. The learned Counsel for the petitioner had further contended that all the above said judgments of the Hon'ble Supreme Court were referred to and a decision was arrived at by the three member bench of the National Consumer Disputes Redressal Commission to the effect that the Institutions rendering education, including vocational courses and activities except coaching centers will not be covered under the provisions of the Consumer Protection Act, 1986. Therefore, the learned Counsel for the petitioner University had contended that even as per the brochure, counter signed by the students and the parents, the Institution is not liable to refund of the fees, which is in consonance with the UGC regulations. That apart, the Educational



W.P(MD)Nos.1631, 2972 & 16137 to 16140 of
2014

WEB COPY

Institution is not providing any kind of service and hence, there cannot be a question of deficiency of service. Unless there is an allegation of deficiency of service, the question of a complaint being entertained by the District Consumer Disputes Redressal Forum under the Consumer Protection Act does not arise at all. Hence, he prayed for allowing the writ petition and to quash the consumer complaints that are pending before the District Consumer Disputes Redressal Forum, namely, the first respondent herein.

12. In all the cases, the Consumer Protection of Tamil Nadu, who have filed the consumer complaint on behalf of the students, had defended the writ petition through Mr.S.Pushpavanam, who appeared party in person.

13. According to the party in person, the same University had suffered various orders before the National Consumer Disputes Redressal Commission. One of them is the order, dated 13.11.2014, made in revision petition Nos.4489 to 4493, 4495 & 4496 of 2013. The said revision petitions have arisen out of non-refund of tuition fees, when the students have left mid-stream in the course. The National Commission had upheld



W.P(MD)Nos.1631, 2972 & 16137 to 16140 of
2014

WEB COPY

the maintainability of a consumer complaint and had dismissed the revision petitions filed by the writ petitioner University. The said order of National Consumer Disputes Redressal Commission was challenged by the writ petitioner University in Special Leave to Appeal (C) No.983 of 2015. The said SLP was dismissed by the Hon'ble Supreme Court by an order, dated 16.02.2015. Hence, the issue of a maintainability of a consumer complaint as against the Educational Institution has attained finality and therefore, the said issue cannot be raised again and again by the petitioner University.

14. The party in person had further contended that the petitioner University had relied upon the order passed by the National Consumer Disputes Redressal Commission in ***Manu Solanki and Others Vs. Vinayaka Mission University*** reported in ***2020 SCC Online NCDRC page 7***. The said order had been challenged by the complainant before the Hon'ble Supreme Court and SLP has been admitted by the Hon'ble Supreme Court by an order, dated 15.10.2020, and the same is pending. Hence, according to the party in person, the order of the National Consumer Disputes Redressal Commission, in ***Manu Solanki's case***, has not attained



W.P(MD)Nos.1631, 2972 & 16137 to 16140 of
2014

finality and the same is pending before the Hon'ble Supreme Court.

15. The party in person had also relied upon the Hon'ble Division Bench judgment of this Court reported in a batch of W.A.(MD)Nos.426 of 2016, dated 21.09.2017, filed by the Consumer Protection Council Tamilnadu. According to the party in person, the order of the learned Single Judge allowing the writ petition filed by the University, challenging the consumer complaint was set aside by the Hon'ble Division Bench. The Hon'ble Division Bench was pleased to direct the District Consumer Disputes Redressal Forum to consider the complaint. Hence, according to the party in person representing the Consumer Protection Council Tamilnadu, the Hon'ble Division Bench of this Court has already held that a consumer complaint is maintainable as against the same petitioner University and has directed the District Consumer Disputes Redressal Forum to entertain the complaint and decide the same on merits and in accordance with law. In view of the above said position, he contended that the present writ petition, challenging the jurisdiction of the District Consumer Disputes Redressal Forum to entertain a consumer complaint as



W.P(MD)Nos.1631, 2972 & 16137 to 16140 of
2014

against the Educational Institution for non-refund of fees has already been settled and the same cannot be re-agitated by the writ petitioner University. Hence, he prayed for dismissing the writ petition.

16. I have carefully considered the submissions made on either side and perused the records placed before me.

17. The present writ petitions have been filed challenging the jurisdiction of the District Consumer Disputes Redressal Forum in entertaining a complaint lodged by the second respondent herein on behalf of the third respondent students, alleging deficiency in service for non-refund of tuition fees and other fees, while the student had left the course mid-stream.

18. The only question that has to be decided by this Court is, the jurisdiction of the Consumer Forums to entertain a complaint under the Consumer Protection Act as against the Educational Institutions relating to issues arising out of non-refund of fees. Let us consider the judgments of



W.P(MD)Nos.1631, 2972 & 16137 to 16140 of
2014

the Hon'ble Supreme Court relating to the jurisdiction of the Consumer Forums.

19. The Hon'ble Supreme Court in a judgment reported in **2010 (11) SCC page 159 (Maharshi Dayanand University Vs. Surjeet Kaur)** in paragraph Nos. 22 and 23 has held as follows:

“22. The National Commission appears to have been swayed by the observations made in Bangalore Water Supply case. The respondent as a student is neither a consumer nor is the appellant rendering any service. The claim of the respondent to award B.Ed., degree was almost in the nature of a relief praying for a direction to the appellant to act contrary to its own rules. The National Commission, in our opinion, with the utmost respect to the reasoning given therein did not take into consideration the aforesaid aspect of the matter and thus, arrived at a wrong conclusion.

23. The case decided by this Court in Bihar School Examination Board clearly lays down the law in this regard with which we find ourselves in full agreement with. Accordingly, the entire exercise of entertaining the complaint by the District Forum and the award of relief which has been approved by the National



W.P(MD)Nos.1631, 2972 & 16137 to 16140 of
2014

WEB COPY

Commission do not conform to law and we, therefore, set aside the same.....”

20. The Hon'ble Supreme Court in ***P.T.Koshy and Others Vs. Ellen Charitable Trust and Others in Special Leave to Appeal (Civil) No.22532 of 2012, dated 09.08.2012***, has held as follows:

"1. In view of the judgment of this Court in Maharshi Dayanand University Vs. Surjeet Kaur MANU/SC/0485/2010: 2010 (11) SCC 159: 2010(2) Code of Civil Procedure 696 S.C. wherein this Court placing reliance on all earlier judgments has categorically held that education is not a commodity. Educational institutions are not providing any kind of service, therefore, in matter of admission, fees etc., there cannot be a question of deficiency of service. Such matters cannot be entertained by the Consumer Forum under the Consumer Protection Act, 1986. In view of the above, we are not inclined to entertain the special leave petition. Thus, the Special Leave Petition is dismissed."

21. The Hon'ble Supreme Court in ***Prof. K.K.Ramachabdran Vs. S.Krishnaswamy and Another in Special Leave to Appeal (Civil) No.3789 of 2012, dated 29.04.2013***, has held as follows:



W.P(MD)Nos.1631, 2972 & 16137 to 16140 of
2014

WEB COPY

“In view of the judgment of this Court in Maharshi Dayanand University Vs. Surjeet Kaur (2010) 11 SCC 159 wherein all earlier judgment of this Court has been considered and wherein it has been consistently held that imparting education is not rendering service and therefore these matters cannot be subject matters under the Consumer Protection Act, 1986.

In view of the aforesaid judgment, the appeal is allowed, the judgments and orders of the Courts below are set aside with the liberty to the respondent to approach the appropriate forum.....”

22. The Hon'ble Supreme Court in ***Anupama College of Engineering Vs. Gulshan Kumar & Others in Civil Appeal No.17802 of 2017, dated 30.10.2017***, has held as follows:

“The only question raised in this case is whether a college is a service provider for the purposes of the Consumer Protection Act, 1986.

Learned Counsel for the appellant has placed the decision of this Court in Maharshi Dayanand University Vs. Surjeet Kaur [(2010) 11 SCC 159]. The aforesaid decision was followed by this Court in SLP (C) No.22532/2012 titled as P.T.Koshy & Anr. Vs.



W.P(MD)Nos.1631, 2972 & 16137 to 16140 of
2014

Ellen Charitable Trust & Ors. The order reads as follows:

“In view of the judgment of this Court in Maharshi Dayanand University Vs. Surjeet Kaur [(2010) 11 SCC 159] wherein this Court placing reliance on all earlier judgments has categorically held that education is not a Signature Not Verified commodity. Educational institutions are not providing Digitally signed by MEENAKSHI KOHLI Date: 2017.11.02 any kind of service, therefore, in matter of admission, 16:56:02 IST Reason: fees etc., there cannot be a question of deficiency of service. Such matters cannot be entertained by the Consumer Forum under the Consumer Protection Act, 1986.”

In view of the above, we are not inclined to entertain the special leave petition. Thus, the special leave petition is dismissed.” In view of the consistent opinion expressed by this Court, the orders passed by the National Consumer Disputes Redressal Commission in Revision Petition No.3571/2013 and Revision Petition No.807/2017 are not in accordance with the decision of this Court and are therefore set aside. The civil appeals are allowed.”

23. After referring to the above said Supreme Court judgments, the National Consumer Disputes Redressal Commission in their judgment



W.P(MD)Nos.1631, 2972 & 16137 to 16140 of
2014

reported in **2020 SCC Online NCDRC page 7 (Manu Solanki and Others**

WEB COPY

Vs. Vinayaka Mission University) in paragraph No.51 has held as follows:

“51. In view of the foregoing discussion, we are of the considered opinion that the Institutions rendering Education including Vocational courses and activities undertaken during the process of pre-admission as well as post-admission and also imparting excursion tours, picnics, extra co-curricular activities, swimming, sport, etc., except Coaching Institutions, will, therefore, not be covered under the provisions of the Consumer Protection Act, 1986.”

24. A combined reading of the judgments of the Hon'ble Supreme Court cited supra make it clear that, the Hon'ble Supreme Court has held that education is not a 'commodity' and Educational Institutions are not providing any kind of service and therefore, the matter of admission, fees etc., there cannot be a question of deficiency of service. Based on the said findings, the Hon'ble Supreme Court has categorically held that such matters cannot be entertained by the Consumer Forum under the Consumer Protection Act, 1986. It is also brought to the notice of the Court that the order of the National Consumer Disputes Redressal Commission in **Manu**



W.P(MD)Nos.1631, 2972 & 16137 to 16140 of
2014

Solanki's case has been challenged before the Hon'ble Supreme Court and the same has been admitted by an order, dated 15.10.2020. A perusal of the said order indicates that no interim order has been passed by the Hon'ble Supreme Court.

25. The second respondent represented through party in person has relied upon an order passed by the National Consumer Disputes Redressal Commission in revision petition Nos.4489 to 4493, 4495 & 4496 of 2013, in which, there was a direction for refund of fees as against the same petitioner University. It is also placed on record that the said order has been confirmed by the Hon'ble Supreme Court in Civil Appeal No.983 of 2015, dated 16.02.2015. However, a perusal of the said order indicates that the question of law has been left open by the Hon'ble Supreme Court. Hence, the contention of the party in person that order passed against the petitioner University by the National Consumer Forum has been confirmed by the Hon'ble Supreme Court is not legally correct.

26. The second respondent had also relied upon by a Division Bench



W.P(MD)Nos.1631, 2972 & 16137 to 16140 of
2014

of this Court in W.A(MD)No.426 of 2016, dated 21.09.2017, filed by the second respondent as against the writ petitioner University. Though the Hon'ble Division Bench was pleased to allow the writ appeals and remit the matter back to the Consumer Forums, the Hon'ble Division Bench in paragraph No.6 has made it clear that the issues are left open including the question of maintainability of the complaint. Therefore, the contention of the party in person that all the proceedings initiated as against the petitioner University had went against the University and they have reached finality is not factually correct. The judgments of the Hon'ble Supreme Court cited supra will clearly point out that the Hon'ble Supreme Court has taken a categorical view that the Educational Institutions are not offering any service, so as to attract deficiency of service. When the issue of deficiency of service cannot be attributed to an Educational Institution, especially with regard to admission, fees, non-refund of fees etc., the question of invoking the provisions of Consumer Protection Act, 1986 would not arise. When the Consumer Protection Act is not applicable to the Educational Institutions in relation to the above said factors, the authorities constituted under the Consumer Protection Act would not have any jurisdiction to entertain such



W.P(MD)Nos.1631, 2972 & 16137 to 16140 of
2014

kind of complaints. Therefore, the contention of the learned Counsel for the petitioner that the Consumer Forums lacks jurisdiction to entertain such complaints is having substance. Therefore, the consumer complaints entertained by the first respondent Forum are not maintainable in view of lack of jurisdiction and hence, they are liable to be quashed.

27. In view of the above said facts, all the writ petitions are allowed, quashing the consumer complaints lodged against the writ petitioner University before the first respondent Forum. However, the second respondent Consumer Protection Council or the student concerned are at liberty to approach the appropriate Forum for refund of the fees, if there is any violation of UGC regulations, relating to refund of fees for the students, who had left mid-stream of the course.

28. With the above said observations, all the writ petitions stand allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.



WEB COPY



W.P(MD)Nos.1631, 2972 & 16137 to 16140 of
2014

29.11.2022

Index : Yes / No
Internet : Yes / No
btr

To

The District Consumer Disputes Redressal Forum,
Thanjavur-613 002.

R.VIJAYAKUMAR, J.

btr

22/23



WEB COPY



W.P(MD)Nos.1631, 2972 & 16137 to 16140 of
2014

Order made in
W.P(MD)Nos.1631, 2972 & 16137 to 16140 of 2014

29.11.2022

23/23