



C.R.P.(MD)Nos.996 of 2019 and 3324 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 14.02.2024

PRONOUNCED ON: 26.02.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)Nos.996 of 2019 and 3324 of 2023

and

C.M.P.(MD)Nos.5554 of 2019 and 17167 of 2023

C.R.P.(MD)No.996 of 2019:

1. The Director,
Distance Education Centre,
Bharathidasan University,
Tiruchirappalli.

2.The Registrar,
Bharathidasan University,
Tiruchirappalli. : Revision Petitioners / Respondents 2 & 3

Vs.

1.R.Srinivasan : 1st Respondent / Petitioner

2.Selvi : 1st Respondent/3rd Respondent

PRAYER:- Civil Revision Petition is filed under Article 227 of the
Constitution of India against the order dated 26.02.2019 in C.C.No.12 of



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2018, on the file of the District Consumer Disputes Redressal Forum,
Sivagangai District.

For Petitioners : Mr.V.R.Shanmuganathan

For Respondents : No Appearance

C.R.P.(MD)No.3324 of 2023:

1. The Director,
Distance Education Centre,
Bharathidasan University,
Tiruchirappalli.

2.The Registrar,
Bharathidasan University,
Tiruchirappalli. : Revision Petitioners / Appellants

Vs.

1.R.Srinivasan : 1st Respondent / 1st Respondent

2.Selvi : 2nd Respondent/2nd Respondent

PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 31.07.2023 in F.A.No.153 of 2019, on the file of the Circuit Bench of State Consumer Disputes Redressal Commission, Madurai.



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For Petitioners : Mr.V.R.Shanmuganathan

For Respondents : No Appearance

COMMON ORDER

The Civil Revision Petition in C.R.P.(MD)No.996 of 2019 is directed against the order passed in C.C.No.12 of 2018, dated 26.02.2019, on the file of the District Consumer Disputes Redressal Forum, Sivagangai District.

2. The Civil Revision Petition in C.R.P.(MD)No.3324 of 2023 is directed against the order passed in F.A.No153 of 2019, dated 31.07.2023, on the file of the Circuit Bench of State Consumer Disputes Redressal Commission, Madurai.

3. The first respondent is the complainant and he filed a complaint against the second respondent and the revision petitioners before the



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District Consumer Redressal Forum, Sivagangai District claiming compensation for the deficiency in service. The case of the complainant is that he has completed 10th std., and pre-degree course offered by Annamalai University, which is equivalent to 12th std., as per G.O.Ms.No. 219 issued by the State Government, that after coming to know about the advertisement given by the Distance Education Centre, he applied to the course of B.Sc., Hospital Management and was given admission for the academic year 2017, for which he had paid a sum of Rs.9,500/- as first year Course fee and he had also be given study materials, that the complainant has applied for hall ticket on 19.04.2018, but the same was not furnished, that on enquiry with the second respondent, he was informed that there was confusion in his admission, that the first revision petitioner, vide letter dated 14.05.2019, has informed that the complainant is not eligible for pursuing the said Course and in spite of the explanation given by the complainant, the first revision petitioner refused to accept his admission, that the above action has caused mental agony and that since they have committed deficiency of service, he was forced to file a complaint claiming Rs.2,00,000/- as compensation for mental agony caused to him.



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4. It is evident from the records that the second respondent herein who is the first respondent in the main complaint has filed a counter statement. But since she has not participated in the trial, she was set exparte. The revision petitioners who are the respondents 2 and 3 in the main complaint have remained exparte and hence, the District Consumer Forum has passed an exparte award dated 26.02.2019 directing the respondents 1 to 3 in the main complaint to pay Rs.9,500/- with interest at 9%p.a., from the date of complaint till the date of award and also to pay the compensation at Rs.10,000/- and costs of Rs.5,000/-, all within six weeks, failing which they are liable to pay interest at 9.5%p.a.

5. The revision petitioners, aggrieved by the impugned award, have filed the present revision mainly contending that the District Forum has no jurisdiction, that the complaint filed before the District Forum is not maintainable and as such, the award passed by the District Forum, dated 26.02.2019 is a nullity.

6. It is also not in dispute that the revision petitioners have preferred an appeal challenging the exparte award dated 26.02.2019 before the Tamil Nadu State Consumer Disputes Redressal Commission



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in F.A.No.153 of 2019. When the appeal was posted for orders on 05.04.2022, the revision petitioners, by alleging that they have not submitted their arguments, filed an application in C.M.P.No.76/2022 to re-open the appeal along with their side written arguments. But subsequently, the application for re-opening was dismissed for non-prosecution and consequently, the appeal was dismissed for default. Challenging the dismissal of the appeal, the revision in C.R.P.(MD)No. 3324 of 2023 came to be filed.

7. Despite the receipt of Court notice, the second respondent has not turned up. Though the first respondent has entered into appearance through his Counsel, there was no representation.

8. Heard the learned Counsel appearing for the revision petitioners and perused the materials placed on record.

9. The only and main contention of the revision petitioners is that the Education Institutions are not service providers and are not rendering any service, that a student cannot be considered as a consumer and that therefore, the very complaint filed before the District Forum is legally



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not maintainable. The learned Counsel has relied on the judgment of the Hon'ble Supreme Court in ***Maharshi Dayanan University Vs. Surjeet Kaur*** reported in ***(2010)5 SCC 665***, wherein the Hon'ble Apex Court has specifically held that the University is not a service provider and a student taking examination is not a consumer and the relevant passage is extracted hereunder:

“13. 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. We are clearly of the view that the Board is not a 'service provider' and a student who takes an examination is not a 'consumer' and



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consequently, complaint under the Act will not be maintainable against the Board." (Emphasis added)"

10. The learned Counsel for the revision petitioners would also submit that the Circuit Bench of State Consumer Disputes Redressal Commission, Madurai in another appeal in F.A.No.136 of 2018, which was filed by the Registrar, Bharathidasan University along with the Controller of Examinations, Bharathidasan University, taking note of the judgment of the Hon'ble Supreme Court in ***Maharshi Dayanand University's case*** above referred and also the judgment of the National Consumer Disputes Redressal Commission in the case of ***C.Deepak Tyagi and 14 others Vs. Shree Chhatrapati Shivaji***, has specifically observed that the consumer complaint itself is not maintainable and allowed the appeal and thereby set aside the order passed by the District Forum and the relevant passages are extracted hereunder:

"8. The counsel for the appellant relied upon the Judgment of our Apex Court reported in (2010) Supreme Court Cases 159; Maharshi Dayanand University Vs. Surjeet Kaur. The Apex Court clearly held student is not a consumer as well as Educational Institutions are not rendering any service.



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9. *In a recent Judgment, the National Consumer Disputes Redressal Commission passed a detailed order after consolidating many cases in this regard. It addressed many issues and answered them in detail. Finally it concluded that the Educational Institutions are not service provider and importing education is not a service. The relevant portion is reproduced hereunder.*

C.Deepak Tyagi & 14 others – Vs- Shree Chhatrapati Shivaji

on 20 January, 2020.

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION, NEW DELHI.

In view of 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.

Hence, as per the existing legal principle the consumer complaint itself is not maintainable as such we allowed the appeal and set aside the award passed by the District Forum and answered accordingly.”



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11. Considering the legal position above referred, this Court has no hesitation to hold that the very complaint filed before the District Forum, Sivagangai against the revision petitioners is not maintainable and that therefore, the award passed by the District Forum cannot be sustained. But at the same time, the second respondent is a private party and was running a study centre and also the fact that she has not turned up before this Court, this Court is not inclined to give the benefit of this order to the said respondent. Since the award passed by the District Consumer Disputes Redressal Forum, Sivagangai itself is set aside, the other Civil Revision Petition in C.R.P.(MD)No.3324 of 2023 which was filed challenging the dismissal of the appeal in F.A.No.153 of 2019, which was filed challenging the award passed in C.C.No.12 of 2018, has become infructuous.

12. In the result, the Civil Revision Petition in C.R.P.(MD)No.996 of 2019 is allowed and the impugned award passed in C.C.No.12 of 2019, dated 26.02.2019, on the file of the District Consumer Disputes Redressal Forum, Sivagangai is set aside and the Civil Revision Petition in C.R.P.(MD)No.3324 of 2023 is dismissed as infructuous.



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Consequently, the connected Miscellaneous Petitions are closed. There shall be no order as to costs.

26 .02.2024

NCC : Yes : No

Index : Yes : No

Internet : Yes : No

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To

1. The District Consumer Disputes Redressal Forum,
Sivagangai District.
2. The Circuit Bench of State Consumer Disputes Redressal Commission,
Madurai.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN
C.R.P.(MD)Nos.996 of 2019 and 3324 of 2023

26.02.2024