

**BEFORE THE DISTRICT CONSUMER DISPUTES
REDRESSAL COMMISSION AT BANGALORE URBAN**

12th DAY OF JANUARY 2021

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| PRESENT:- SRI. S.L.PATIL | PRESIDENT |
| SMT. P.K.SHANTHA | MEMBER |
| SMT. RENUKADEVI DESHPANDE | MEMBER |

COMPLAINT No.242/2020

Complainant/s: -

Sri.Trilok Chand Gupta
Aged about 42 years
ETA Garden, B-1606,
#9, Magadi Road,
Bengaluru-23.

Inperson

V/s

Opposite party/s:-

1. Sri.J.C.Chaudhry
Managing Director
Akash Institute
Akash Tower,
8, Pusa Road,
New Delhi – 110005.
2. Ms.Lavanya
Branch Head,
Akash Institute,
Rajajinagar Centre,
2nd & 3rd Floor of 49,
VLVC Plaza, 19th Main
Road, 1st Block, Behind
Rajajinagar Metro Station,
Near to Canara Bank,
Rajajinagar, Bengaluru-10.

By Adv.Sri.Naman Saraswat

ORDER**SRI. S.L PATIL, PRESIDENT**

The Complainant has filed this complaint U/s.12 of Consumer Protection Act 1986, seeking direction against the Opposite Party No.1 & 2 (herein after called as OPs) to refund an amount of Rs.69,408/- with interest at 18%; to pay Rs.3 lakhs for causing mental agony. The Complainant prays this forum to hold the OP responsible for the deficiency of service and allow the complaint in full; to grant such other reliefs as this forum deem fit in the interest of justice and equity.

2. The brief facts of the complaint are as under:

The Complainant submits that, relying on the assurances and promises made by OP team, by paying Rs.69,408/-, he made admission of his daughter who is studying in class 9 in OP's institute. OP promised that special focus will be laid on subjects like physics, chemistry, maths and biology in addition to the ICSE course subjects as a part of the curriculum. But thereafter, there service not at all good as promised. Such as 'no additional classes and even regular classes were conducted properly which resulted in scoring bad marks and failing in all the subjects by her daughter in the unit test held at the school' and 'before conducting weekly test, the answers were provided in advance so that the students could score more marks'. These issues were brought in to the notice during the parent-teacher meeting. Except giving assurances no fruitful

action were taken by the OPs. Hence, he decided to withdraw her daughter from the OP institute and sought for refund of the entire amount. Branch head of OP accepted their mistake and informed that it would settle the matter by refunding an amount of Rs.26,014/- only. Hence, he issued legal notice dtd.19.12.19. To which OP replied on 27.12.19 denying to refund entire amount and informed that it shall refund Rs.26,014/- as per their standard contract. Hence this complaint.

3. After issuance of notice, OPs did appear and filed version. OPs in their version submit that, they have disclosed every material fact to the Complainant at the time of the admission. OPs functions and operates with object to create an environment for better learning and facilitating the learning process of the students. It keeps on its pay-roll full time teachers for all relevant subjects at the respective branches/centers thereby making it a fully functional institute imparting competitive training in the fields of medical entrance exams and IIT-JEE. The students rely on consistency and the teaching standards of the organization. After commencement of the classes, the Complainant's daughter continued attending classes for more than five months as per records of institute. His daughter withdrew from the course due to her personal problems as she was unable to cope up. The Complainant has not produced any documents or evidence to prove deficiency on the part of OPs. Anyhow, upon receipt of the refund application, OP vide email dtd.04.11.19 confirmed the refund of amount of Rs.26,014/- as goodwill gesture. However, as per the

calculation based on the refund policy the Complainant is supposed to get Rs.5,119/- only. OP relying on the decision of Hon'ble National Commission in the case of Manu Solanki & Ors., Vs. Vinayaka Mission University submits that, it is a well settled law that education is not a commodity and educational and coaching institutions are providing any kind of service and imparting of education by the educational institutions for consideration doesn't fall within the ambit of service as defined under the Consumer Protection Act. Hence submits that, there is no deficiency of service on their part. Hence prays for dismissal of the complaint.

4. The Complainant to substantiate his case filed affidavit evidence and produced the documents which are marked. OPs produced the documents along with version. Both filed written arguments. Heard. We have gone through the available materials on record.

5. The points that arise for our consideration are:

- 1) Whether the Complainant is a consumer comes within the purview of Sec.2(7) of new CP Act, 2019 (Sec.2(1)(d) of old CP Act, 1986) ?
- 2) Whether the Complainant proves the deficiency of service on the part of OPs, if so, entitled for the relief sought for ?
- 3) What order ?

6. Our answer to the above points is as under:

Point No.1:- In the affirmative

Point No.2:- Partly in the affirmative

Point No.3:- As per final order

REASONS

7. **Point No.1:** We have briefly stated the contents of the complaint as well as the version filed by OPs. The issue in question is in respect of seeking refund of the amount paid towards fee is not in dispute. However, the question that crops up for consideration is, does this forum has any jurisdiction to entertain this complaint as against OPs ? since it is an institution/coaching centre. In this context, we placed reliance on the largest bench decision of Hon'ble National Commission in the case of **Manu Solanki & Ors. Vs. Vinayaka Mission University reported in 2020 (1) CPR 773 (NC)**, wherein it referred as many as 16 decisions including Hon'ble Supreme Court which are:

1. P.T.Koshy & Anr. Vs. Ellen Charitable Trust and Ors. 2012 (3) CPC 615 (SC), para 3
2. Bihar School Examination Board vs Suresh Prasad Sinha, (2009) 8 SCC 483, para 7
3. Punjab Urban Planning and Development Authority (Now GLADA) vs. Vidya Chetal, (2019) 9 SCC 83, para 8
4. Lucknow Development Authority vs. M.K.Gupta, (1994) I SCC 243, para 8
5. Ghaziabad Development Authority vs. Balbir Singh (2004) 5 SCC 65, Para 8
6. Om Prakash Vs. Reliance General Insurance Company and Anr (2017) 9 SCC 724, para 8
7. Commissioner of Customs (import), Mumbai vs. Dilip Kumar and Ors (2018) 9 SCC 40, para 8

8. Maharshi Dayanand University vs. Surjeet Kaur, 2010 (11) SCC 159, para 10
9. BWSSB vs. A Rajappa (1978) 2 SCC 2013, para 10
10. Unni Krishnan, JP & anr vs. State of Andhra Pradesh & Ors., (1993) 1 SCC 645, para 17
11. Smt.Taneja and Anr vs. Calcutta District Forum & Ors., (AIR 1992 Cal 95), para 18
12. State of Tamil Nadu vs. K.Shyam Sunder & ors., (2011) 8 SCC 737, para 20
13. Buddhist Mission Dental College & hospital vs. Bhupesh Khurana & ors.,(2009) 4 SCC 473, para 22
14. Amar Singh Yadav & ors Vs. Shanta Devi & ors. AIR 1987 Patna 191, para 32
15. Fitzee ltd., vs Minathi Rath 1 (2012) CPJ 194 NC, para 43
16. State of Punjab & Ors., vs. Senior Vocational Staff Masters Association & ors., 2017 (9) SCC 379, para 48

8. Referring to the said decisions, finally Hon'ble National Commission held at para 45 & 51 reads as:

46. For all the afore-noted reasons, we are of the opinion that any defect or deficiency or unfair trade practice pertaining to a service provider like 'Coaching Centres' does fall within the jurisdiction of the Consumer Fora.

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.

9. Further we also relied on one more decision of **Hon'ble National Commission in the case of Pinnacle Institute Engineering & Management vs. Biswajit Santra & 3 Ors., wherein the important point held as 'Consumer Protection Act, 1986 is fully applicable on a coaching centre.'**

10. In the light of the decisions cited supra, we are of the opinion that, any defect or deficiency or unfair trade practice pertaining to a service provider like 'Coaching Centres' i.e. OPs herein does fall within the jurisdiction of the Consumer Forum. Hence, complaint filed by the Complainant is maintainable before this forum holding that the Complainant is a consumer comes within the purview of Sec.2(7) of new CP Act, 2019 (Sec.2(1)(d) of old CP Act, 1986). Accordingly, we answered point no.1 in the affirmative.

11. **Point No.2:** The Complainant by filing this complaint sought for refund of Rs.69,408/- paid towards fee with interest at 18%. But OPs have disagreed to refund the said claim. OPs have calculated on its own way by giving illustration in its written arguments at para 10 reads thus:

Illustration: Where a course commences on 04.07.19 but a student attends the first class on 16.07.19 and continues to attend classes till 14.11.19 but he/she has submitted an application for withdrawal of admission and refund on 13.12.19 then the number of days to be considered for refund calculation shall

be from 04.07.19 and not 16th July till 13th December 2019 and not 14.11.19. The number of classes attended by such student shall have no bearing on the pro-rata calculation. The number of days thus calculated is then multiplied by fee from one day, which in turn is calculated by dividing the course tuition fee (without any scholarship concession) by number of days from the starting of course to the ending date of course as per prospectus of the appropriate branch/centre.

12. Referring to the same, OPs submit that, upon receipt of the refund application from the Complainant on 22.10.19, the OP vide email dtd.04.11.19 confirmed the Complainant the refund of amount of Rs.26,014/- upon calculation of the amount as per the refund policy signed and agreed by the Complainant and his daughter. As per the calculation, the Complainant is supposed to get an amount of Rs.5,119/- only. However, the OP as a good will gesture and without admitting any liability agreed to refund for an amount of Rs.26,014/- by a taking a lenient approach.

13. According to us, the stand taken by the OPs in respect of refund of the amount of Rs.26,014/- is appears to be inconosence with the allegations made in para 15 of the complaint which reads thus:

15. In the month of August 2019, the second installment of Rs.26,250/- was due for payment. Since the Complainant was facing the challenges mentioned in paragraph 8 to 16 above, the Complainant decided not to make the payment of second installment and to withdraw her daughter from the Akash Institute. The Complainant met with

the Councilor, Karishma to discontinue with the coaching classes with immediate effect and not to make the payment of second installment. However, the Complainant was introduced to Ms.Lavanya, who had recently joined as the new Branch head of the Akash Institute for Rajajinagar. Ms.Lavanya promised and assured that all the concerns of the Complainant will be addressed and she will support in all ways like providing special classes for Maths and Physics and she also assured that in the first term examination at my daughter's school to be held in the school in the month of September 2019, the child shall score 80% in all her subjects. Ms.Lavanya convinced the Complainant not to withdraw from the coaching classes and to continue by paying the second installment of Rs.26,250/-. On the assurances by Ms.Lavanya, the Complainant made the payment of second installment of Rs.26,250/- on 08.08.19.

14. From the above said fact, it is evident that, the Complainant's daughter intends to discontinue with coaching classes in the OP's institution for the second term. But one Ms.Lavanya who is the OP.2 promised and assured that all the concerns of the Complainant will be addressed and she will support in all ways like providing special classes for Maths and Physics and she also assured that in the first term examination at his daughter's school to be held in the school in the month of September 2019, the child shall score 80% in all her subjects. Ms.Lavanya convinced the Complainant not to withdraw from the coaching classes and made him to pay the second installment of Rs.26,250/-. On the assurances by Ms.Lavanya, the Complainant made the payment of second installment of Rs.26,250/- on 08.08.19.

This fact clearly evident that, Complainant's daughter was attended the classes of the first term, but after making payment for the 2nd installment, she did not continue. In this context, OPs have calculated as per their norms and agreed to refund Rs.26,014/- but we rounded up this amount to Rs.26,250/- which is the second term fee. Accordingly, the Complainant is entitled for refund of Rs.26,250/- with litigation cost of Rs.5,000/-. Accordingly, we answered point no.2 partly in the affirmative.

15. **Point No.3:** In the result, we passed the following:

ORDER

The complaint filed by the Complainant is allowed in part.

2. The OP.1 & 2 are jointly and severally liable to refund Rs.26,250/- with litigation cost of Rs.5,000/- to the Complainant within six weeks from the date of receipt of this order, failing which, the amount of Rs.26,250/- shall carry interest at 6% p.a. from the date of this complaint till the date of realization.

Supply free copy of this order to both the parties.

(Dictated to the Stenographer, got it transcribed and corrected, pronounced in the Commission on this 12th day of January 2021)

(P.K SHANTHA)
MEMBER

(RENUKADEVI DESHPANDE)
MEMBER

(S.L PATIL)
PRESIDENT

Witnesses examined on behalf of the Complainant dated.06.07.2020

Sri.Trilok Chand Gupa, the Complainant

Copies of Documents produced by the Complainant:

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| Ex.A1 | Visiting cards of OP |
| Ex.A2 | Course fee summary - Rs.74,525/-, fee details |
| Ex.A3 | Student performance report of OP |
| Ex.A4 | Report card of Baldwins School |
| Ex.A5 | Parents teacher meeting - 27.07.19 |
| Ex.A6 | Email dtd.03.11.19 - Records showing - OP is focusing on money |
| Ex.A7 | Screen shot - documents signed by the Complainant and was taken back by OP |
| Ex.A8 | Refund Cheque receipt - Form - OP try to settle with more money |
| Ex.A9 | Legal notice dtd.19.12.19 |
| Ex.A10 | Reply to legal notice |

Witnesses examined on behalf of the OP dated.

- NIL -

Copies of Documents produced by OPs

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|---------|---|
| Annex.1 | Board Resolution/Authorization letter dtd.03.07.20 |
| Annex.2 | Admission form along with terms and conditions, report card, fee details |
| Annex.3 | Email dtd.04.11.19 |
| Annex.4 | Student performance enhancement tracker, doubt class records and test results |
| Annex.5 | Reply to legal notice dtd.22.12.19 |

(P.K SHANTHA)
MEMBER

(RENUKADEVI DESHPANDE)
MEMBER

(S.L PATIL)
PRESIDENT