

BUDDHIST MISSION DENTAL COLLEGE & HOSPITAL

V.

BHUPESH KHURANA & OTHERS

Civil Appeal No.1135 Of 2001

FEBRUARY 13, 2009

(DALVEER BHANDARI AND HARJIT SINGH BEDI, JJ)

Consumer Protection Act, 1986:

“Deficiency in service – Dental College, on mis-representation about its affiliation and recognition, admitting students to four years BDS course – Allegation of charging capitation fee – HELD: Institute was neither affiliated to the University nor recognized by Dental Council of India as was claimed in the advertisement – National Commission rightly held that there was total misrepresentation tantamounting to unfair trade practice and there was deficiency in service – Complainants would be entitled to compensation as awarded by National Commission as also Rs.1 lakh each additionally – They would further be paid Rs. 1 lakh each by Institute as litigation costs.

The respondents filed complaints before the National Consumer Disputes Redressal Commission stating that pursuant to an advertisement dated 25.7.1993 issued by the appellant Dental College and Hospital inviting application for admission in four years Degree Course of Bachelor of Dental Surgery relying on the representation made in the said advertisement that the appellant College was an institution under Magadh University, Bodh Gaya and Dental Council of India, New Delhi and Patna, they applied for and were given admission after charging Rs. 1,00,000/- capitation fee/donation from each of them besides other admission and connected expenses. However, when at the end of the academic session no examinations were conducted, it was found that the appellant

A College was not affiliated to any University nor was it recognized by the Dental Council of India. The Commission held that there was insufficiency of service on the part of the appellant and the respondents were entitled to the claims made in the petition. However, since there was no receipt of the capitation fee/donation charged to the tune of Rs.1,00,000/- each, the Commission declined to grant relief in that regard. Aggrieved, the College filed the appeal and the respondents filed the cross-objections.

C Disposing of the appeal and the cross-objections, the Court

D HELD: 1.1 This is an admitted position that the appellant institute is neither affiliated with the Magadh University nor recognized by the Dental Council of India. In absence of affiliation to and recognition by the institution concerned, the appellant college could not have started admissions in the four years degree course of BDS. [para 31] [287-D, E]

E *Bangalore Water Supply and Sewerage Board v. A. Rajappa & Others* AIR 1978 SC 548

F 1.2 The Commission rightly came to the conclusion that this was a case of total misrepresentation on behalf of the institute which tantamounts to unfair trade practice. The respondents were admitted to the BDS Course for receiving education for consideration by the appellant college which was neither affiliated to Magadh University nor recognized by Dental Council of India for imparting education. This clearly falls within the purview of deficiency as defined in the Consumer Protection Act. G Therefore, the Commission rightly held that there was 'deficiency' in service on the part of the institute and the claimants respondents were entitled to claim the relief as prayed in the plaint. [para 33-34] [288-G, H; 289-A, B, C]

H 2.1 As far as the cross objections filed by the respon-

dents are concerned, the appellant institute by giving to- A
tally misleading and false advertisement clearly misled the
respondents that the institute was affiliated to the Magadh
University and recognized by the Dental Council of India.
Though the respondents have clearly stated in the affida- B
vit that they had paid capitation fee/donation of Rs. one
lakh each and despite repeated requests, receipts were
not given, which fact has been denied by the appellant. In
view of the disputed question of fact, it is difficult for the
Court to give any specific finding allowing the contention C
of the respondents and to give direction to refund this
amount with interest to them. However, the appellant in-
stitute has played with the career of the students and vir-
tually ruined their career and the respondents have lost
two valuable academic years. [para 35] [289-D, E, F, G]

2.2 On consideration of the totality of the facts and D
circumstances of the case and in the interest of justice, it
is directed that (i) the respondents-complainants would
be entitled to the compensation as directed by the Na-
tional Consumer Disputes Redressal Commission; (ii) the
appellant institute would additionally pay compensation E
of Rs. one lakh to each of the respondents-complainants;
(iii) the appellant institute would also pay cost of litigation
which is quantified at Rs. one lakh to each of the respon-
dents-complainants; and (iv) the payments would be
made within two months. [para 36] [289-H; 290-A, B, C] F

Case Law Reference

AIR 1978 SC 548

para 32

CIVIL APPELATE JURISDICTION : Civil Appeal No.1135
of 2001 G

From the Judgement and Order dated 29.09.2000 passed
by the National Consumer Disputes Redressal Commission,
New Delhi in O.P. No. 168 of 1994

H

A Vijay Kumar, C. Jay Raj, Pankaj Kumar, Vishwajit Singh
for the Appellant.

Sunil Kumar, Awanish Sinha, S.K. Mohanty, C.S. Yadav,
Himanshu Shekhar, Irshad Ahmad (N.P.) for the Respondent.

B The Judgement of the Court was delivered by

DALVEER BHANDARI, J.

1. This appeal is directed against the judgment dated
29.9.2000 passed by the National Consumer Disputes
C Redressal Commission, New Delhi (for short 'the Commission')
in Original Petition No. 168 of 1994.

2. Eleven complaints were filed before the Commission
against the appellant herein, viz. Buddhist Mission Dental Col-
D lege and Hospital through its Secretary Shri R.A. Vatsayayan.

3. The appellant published an advertisement in the
Hindustan Times, an English national daily, on 25.7.1993 invit-
ing applications for admission in the Degree Course of Bach-
E elor of Dental Surgery (for short, BDS). In the said advertise-
ment, it was specifically highlighted that the appellant college is
a premier dental college of Bihar established and managed by
the Vishwa Buddha Parishad under Article 30 of the Constitu-
tion of India. It was also mentioned right under the name of the
F appellant's college that the said institution is "The Buddhist Mis-
sion Dental College and Hospital" under Magadh University,
Bodh Gaya and Dental Council of India, New Delhi, Siddharth
Nagar, New Bailey Road, Patna. The said advertisement is
reproduced as under:

G "THE BUDDHIST MISSION DENTAL COLLEGE &
HOSPITAL"

(Under Magadh University, Bodh Gaya, and Dental Council
of India, New Delhi, Siddharth Nagar, New Bailey Road,
Patna-801305)

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A
A premier Dental College of Bihar, established and managed by VISHWA BUDDHA PARISHAD, under Article 30(1) of the Constitution of India, fulfilling all the criterion and conditions of Dental Council of India.

ADMISSION NOTICE FOR BDS COURSE 1993-94

B
Applications are invited for admission in 1st year (B.D.S.) Course.

C
Eligibility:- S.S.C. Or Equivalent degree with a minimum 50% marks (40% in case of reserved candidates) in Physics, Chemistry, Biology Group.

Application form and prospectus can be had from the office on payment of Rs.100/- (or Rs.110/- by DD in the name of the college if requested by post).

D
Last date for submission of application is 30.08.1993. Separate hostel facility for boys and girls in the campus, preference to Buddhist and other minority candidates.

NO CAPITATION FEE

(R.S. Vatsyayan)

Secretary”

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G
H
4. The complainants, respondents herein, who have all passed 12th standard examination with Physics, Chemistry and Biology and have secured good marks and were in search of brighter career prospects, believing the facts incorporated in the advertisement of the appellant to be true, applied for admission to the appellant's college in the academic session 1992-93. In the complaint, it was stated that in the advertisement it was specifically mentioned “No Capitation Fee”. This obviously gave the impression that no capitation fee would be charged from the students. But in fact, at the time of admission, Rs.1,00,000/- was taken in cash from each of the respondents and despite repeated requests made by the respondents, no receipt for the amount paid by them was given. When the re-

A spondents insisted upon the receipts of the said amount paid, they were threatened that if they persisted on the demand of getting the receipts, their admission would be cancelled. It is further alleged in the complaint that the respondents had paid a substantial amount under various heads viz., admission fee, B tuition fee, development charges, charges of consumables, house-in-practicals, sports, magazines, library etc.

C 5. The respondents also started attending classes after joining the appellant college. The respondents after several months came to know that the claim made by the appellant to the respondents in the advertisement as well as in the prospectus was false, because the appellant college was neither affiliated to the Magadh University nor it was recognized by the Dental Council of India.

D 6. In the complaint, the respondents also mentioned that they were informed by the appellant that the college is well equipped with library, laboratories, anatomy museum, medical appliances and instruments, hostel accommodation duly furnished and well qualified teaching staff. But, in fact, there was E no regular qualified staff, no anatomy museum, library had hardly any relevant books, laboratory was ill-equipped, as most of the necessary instruments/equipments were either not available and those which were available were very few in number and were grossly inadequate for the students who were admitted in each F session.

G 7. The respondents had spent a huge amount for admission and, moreover, they were also given all sorts of assurances that soon everything would be made available to the students and all facilities would be provided immediately after getting the affiliation by the Magadh University and recognition by the Dental Council of India. The respondents also alleged that usually in the aforesaid course of four years, at the end of each year, the examination is supposed to be conducted, but the appellant did not conduct any examination at all by the end of H

1994 and there was no hope of examination being conducted in the near future. A

8. It was also alleged that no efforts had been made. There was no development in connection with the affiliation or recognition of the appellant college and no efforts were being made to improve the standard of the said institution by appointing regular teaching staff with proper qualification, providing sufficient number of relevant books in the library and for providing other facilities to the students for which all sort of assurances were made to them. B

9. The respondents were deeply frustrated because their entire academic career was ruined. Therefore, they preferred claim petitions before the Commission. The Commission by its order dated 29.9.2000 found merit and substance in the complaints filed by the respondents and categorically held that there was insufficiency of services on the part of the appellant and that the respondents were legitimately entitled to the claims made in the petition. C D

10. The Commission directed the appellant to refund the admission expenses paid at the time of admission along with interest at the rate of 12% per annum from the date of receipt of the amount till the date of payment and also Rs.20,000/- to each of the respondents by way of compensation for the expenses defrayed on purchase of books, mess expenses, hostel expenses for two years and for the loss of two valuable academic years. Since there was no receipt of capitation fee/donation paid by the respondents, the Commission inter alia did not grant any relief to the respondents in that regard. However, the Commission directed that the appellant shall pay Rs.10,000/- by way of costs of the petition. E F

11. The appellant, aggrieved by the impugned order of the Commission dated 29.9.2000, preferred this appeal under Section 33 of the Consumer Protection Act, 1986 read with Order XX-F of the Supreme Court Rules, 1966. G

A 12. This Court admitted the appeal and issued notice and directed vide order dated 23.2.2001 that "there shall be interim stay of the operation of the judgment/order under challenge subject to the condition that the appellant deposits the sum as directed therein with the National Commission within four weeks".

B 13. The respondents filed cross objection and prayed that the appellant be directed to - (a) allow this cross objection and direct the appellant to pay Rs.1,00,000/- which was charged as capitation fee, with interest, at the rate of 15% from the date of admission till the date of payment; (b) direct the appellant to pay Rs.1,25,000/- as compensation instead of Rs.20,000/- only; and (c) direct the appellant to pay cost for the present proceedings.

D 14. We have heard the learned counsel for the parties at length. The learned counsel appearing for the respondents brought to our notice that the appellant had not complied with the order passed by this Court on 23.2.2001. After hearing learned counsel for the parties, this Court passed the following order dated 26.11.2008:

E "The National Consumer Disputes Redressal Commission, New Delhi in the impugned order, directed respondent Nos. 1 to 4 to refund the admission expenses paid by the complainants at the time of admission with interest calculated at the rate of 12% p.a. from the date of receipt of the amount till date of payment and also

F Rs.20,000/- to each of the complainants by way of compensation for the expenses defrayed on purchase of books, mess expenses, hostel expenses for two years and for the loss of two valuable academic years.

G This Court while admitting appeal on 23.2.2001 directed that there shall be interim stay of the operation of the judgment/order under challenge subject to the condition that the appellant deposits the sum as directed therein with the National Commission within four weeks.

H

It is not disputed by learned counsel appearing for the appellant that neither the interest nor the payment of Rs.20,000/- each has been deposited or paid to the complainants despite clear orders of the Commission. A

According to the complainants, the appellant is clearly in breach of the order of this Court. Learned counsel appearing for the appellant fairly submitted that the interest amount and the payment of Rs.20,000/- each to the complainants by way of compensation would be deposited before the National Commission within one week from today. B C

In view of this undertaking, we are not taking any action against the appellants (who were respondent nos. 1 to 4 before the National Commission). Let this amount be deposited within one week from today before the National Commission. It is made clear that the interest amount would be paid from the date of receipt of the amount till the date of payment (as directed by the Commission). D

List this matter again on 3.12.2008 as part-heard.

The parties are permitted to file written submissions by Monday, i.e. 1st December, 2008." E

15. When the matter again came up on 3.12.2008, learned counsel appearing for the appellant fairly submitted that despite his clear advice to the appellant to comply with the order passed by this Court on 26.11.2008, the same has not been complied with. The respondents prayed that the contempt notices be issued to the appellant. At that stage, we deemed it appropriate to hear the appeal and pass the final order. F

16. It was submitted that the appellant started this college and wanted to impart high quality education; in right earnest and immediately after establishing the college wrote a letter on 23.6.1989 to the Dental Council of India informing it about the establishment of the appellant's college and sought approval for it. It was also mentioned that the Union Ministry of Health G H

A and Family Welfare also wrote to the Dental Council of India
vide its letter dated 5.9.1991 recommending inspection of the
college as a part of process of seeking approval. It was also
mentioned that the Officer on Special Duty, Governor Secre-
tariat, Bihar wrote to the Vice Chancellor of Magadh University
B for taking immediate action in respect of grant of affiliation. It
was also mentioned that the appellant had made efforts to get
approval from the Dental Council of India and affiliation from
the Magadh University, but the desired affiliation and approval
were not received.

C 17. The learned counsel for the appellant argued that in
unmistakable terms it was mentioned that "the academic sylla-
bus of the college meets the standard as per the Dental Coun-
cil of India Rules and as prescribed by the faculty of Dental Sci-
ence, Magadh University, Bodh Gaya, Bihar to which this insti-
D tution seeks affiliation for award of Bachelor of Dental Science
(BDS) degree." It was submitted that if the prospectus is read
as a whole it conveyed the information in no uncertain terms
that the infrastructure available with the appellant institution and
the integral reading of the prospectus did not even remotely
E indicate that the information concerning the approval of the
Dental Council of India and affiliation with the Magadh Univer-
sity was tried to be conveyed.

18. It was submitted that the appellant's Institute was anx-
ious to hold the examination. The management of the appellant
F institute was deeply concerned about their handicapped in re-
spect of holding examination as the students including respon-
dent nos.1 to 12 were being deprived from appearing in the
examination even after receiving high quality education. It is also
mentioned by the appellant that they made all efforts to get the
G recognition and affiliation.

19. The appellant again tried to canvass that the appellant's
institute is an industry and the service rendered by the appel-
lant institute amounts to deficiency in service within the mean-
ing of section 2(1)(g) of the Consumer Protection Act. Apart
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from this, the allegation of unfair trade practice within the meaning of section 2(1)(r) of the Act against the appellant are without any merit. A

20. The respondents also filed cross objections in this court stating that the respondents had paid donation/capitation fee of Rs.1 lakh in cash at the time of admission. The appellant institute did not issue any receipt of donation/capitation fee despite repeated requests. B

21. Mr. Bhupesh Khurana, respondent no.1, filed an affidavit before the National Commission in which it was clearly mentioned that on the demand of the appellant institute, the parents of the complainants/respondents paid capitation fee/donation of Rs.1 lakh per student to the institute for which no receipt was issued despite insistence. C

22. The appellant also mentioned that it has made huge investment and they have legitimate expectation that affiliation and recognition would be granted to them by the Magadh University and the Dental Council of India. D

23. The respondent in the cross objections denied the claim of the appellant and submitted that there was no regular qualified teaching staff. There was no anatomy museum, library had no relevant book, laboratory was ill-equipped as most of the necessary instruments/equipments were either not available and those which were available were very few in numbers and were not sufficient for the students who were admitted in each session. E F

24. The respondents also submitted that they had spent huge amount for admissions and were given all sorts of assurances that soon everything would be made available to the students and all facilities would be provided immediately after getting the affiliation by the Magadh University and recognition by the Dental Council of India. G

25. The respondents also complained that in the course of four years, at the end of each year the examination must be H

A held but no examination was held till the end of 1994 and there
was no hope of examination being held in the near future be-
cause the appellant did not get either affiliation or recognition.
The respondents also mentioned in the cross objection that
charges of hostel/private accommodation were nearly
B Rs.15000/-, mess charges more than Rs.500/- per month and
miscellaneous expenses including pocket money for two years
were around Rs.10000/- to Rs.15000/-. Apart from that, each
student had spent more than Rs.6000/- to Rs.7000/- as travel-
ing expenses and around Rs.8000/- to Rs.10000/- on books.
C Thus, it is obvious that actual expenses of each student were
more than Rs.60000/- to 70000/-.

26. The respondents claimed that the Commission failed
to appreciate that at the time of admission, each student had
paid a sum of Rs.1,00,000/- as donation/capitation fee. Each
D student has lost two academic years by taking admission in
this institute which was neither recognized nor affiliated. The
entire educational career of the respondents has been ruined.

27. The learned counsel for the appellant reiterated the
submissions made before the Commission. The appellant sub-
E mitted that it was its earnest desire to impart high quality edu-
cation and it has spent enormous amount on infrastructure and
despite their best efforts they have not been able to get affilia-
tion from the Magadh University or the recognition from the
Dental Council of India. The appellant also submitted that look-
F ing to the infrastructure available, the Magadh University must
grant affiliation and the Dental Council of India must grant rec-
ognition.

28. The appellant submitted that imparting education can-
not amount to trade and, therefore, the Consumer Forum lacks
G jurisdiction to deal with the complaint filed by the respondent
and the reliance placed in the case of *Bangalore Water Sup-
ply and Sewerage Board v. A. Rajappa & Others* AIR 1978
SC 548 was not correct.

H 29. The respondents alleged that they have been misled

by the advertisement published in "The Hindustan Times" dated 25.07.1993 inviting application for admission in the four years degree course of BDS. In the said advertisement, it was clearly mentioned that Buddhist Mission Dental College and Hospital is a premier Dental College of Bihar established and managed by Vishwa Buddha Parishad under Article 30 of the Constitution of India. It was also mentioned right under the name of the College that the said institution is "The Buddhist Mission Dental College and Hospital" under Magadh University, Bodh Gaya and Dental Council of India. Because of this misleading advertisement, the students were misled and after paying huge capitation fee took admission in the appellant institute. The said advertisement was repeated in the next academic year. The respondents made serious grievance that because of misleading advertisement, their academic career has been totally ruined. They have lost their two valuable academic years and huge amount of money which their parents had paid with great difficulty.

30. We have considered the rival contentions of the parties.

31. This is an admitted position that the appellant institute is neither affiliated with the Magadh University nor recognized by the Dental Council of India. In absence of affiliation by the Magadh University and recognized by the Dental Council of India, the appellant institute could not have started admissions in the four years degree course of BDS. The Commission after hearing the learned counsel for the parties rightly came to the conclusion as under:

"To our mind, the contention is unfounded. Reading the advertisement and prospectus as a whole, there is no manner of doubt that the impression given was that the College was affiliated with the Magadh University and was recognized by the Dental Council of India. If the College has not been affiliated and recognized, there was no occasion in admitting the students and wasting their

A valuable academic years. Moreover, the opposite parties
have been admitting the students right from the year 1991-
92 upto the year 1995 on this representation that the
College was affiliated and recognized by the Dental
Council of India. It cannot be denied that without affiliation
B to the Magadh University and recognition granted by the
V, the so-called dental degree of BDS is just a useless
piece of paper. The representation given in the
advertisement that the College was under Magadh
University and by the Dental Council of India could be
C taken by a common person to mean that the college had
been given recognition by the Dental Council of India and
was affiliated to the Magadh University."

32. The Commission also held that this Court in *Bangalore Water Supply and Sewerage Board (supra)* held as
D under: [para 118 at page 583]:-

"...In the case of the University or an educational institution,
the nature of the activity is, ex hypothesi, education which
is a service to the community. Ergo, the University is an
industry..."

E The Commission further held as under:

"Imparting of education by an educational institution for
consideration falls within the ambit of 'service' as defined
in the Consumer Protection Act. Fees are paid for services
F to be rendered by way of imparting education by the
educational institutions. If there is no rendering of service,
question of payment of fee would not arise. The
complainants had hired the services of the respondent for
consideration so they are consumers as defined in the
G Consumer Protection Act."

33. The Commission rightly came to the conclusion that
this was a case of total misrepresentation on behalf of the insti-
tute which tantamounts to unfair trade practice. The respondents
were admitted to the BDS Course for receiving education for
H

consideration by the appellant college which was neither affiliated nor recognized for imparting education. This clearly falls within the purview of deficiency as defined in the Consumer Protection Act, which defines the 'deficiency' as under: A

"Deficiency' means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service." B

34. Therefore, the Commission rightly held that there was deficiency in service on the part of the institute and the claimants respondents are entitled to claim the relief as prayed in the plaint. The appeal filed by the appellant is devoid of any merit and deserves to be dismissed. C

35. As far as the cross objections filed by the respondents are concerned, we are of the opinion that the appellant institute by giving totally misleading and false advertisement clearly misled the respondents that the institute is affiliated by the Magadh University and recognized by the Dental Council of India. The respondents have lost their two valuable academic years which would have tremendous impact on their future career. Though the respondents have clearly stated in the affidavit that they had paid capitation fee/donation of Rs. one lakh each and despite repeated requests, receipts were not given, which fact has been denied by the appellant. In view of the disputed question of fact, it is difficult for us to give any specific finding allowing the contention of the respondents and to give direction to refund this amount with interest to them. However, we strongly feel that the appellant institute has played with the career of the students and virtually ruined their career and the respondents have lost two valuable academic years. D, E F G

36. In our considered view, on consideration of the totality of the facts and circumstances of the case and in the interest of justice, we deem it appropriate to pass the following directions: H

A (i) The respondents (complainants) would be entitled to the compensation as directed by the National Consumer Disputes Redressal Commission. In case the amount has been deposited, the respondents would be entitled to withdraw the same.

B (ii) We further direct the appellant institute to additionally pay compensation of Rs. one lakh to each of the respondents (complainants).

C (iii) We also direct the appellant institute to pay cost of litigation which is quantified at Rs. one lakh to each of the respondents (complainants).

(iv) The appellant institute is directed to pay the amount of compensation and costs within a period of two months.

D 37. The appeal filed by the appellant is accordingly dismissed with costs and the cross-objections filed by the respondents are allowed with costs in terms indicated in the preceding paragraphs.

E 38. Consequently, the appeal and cross objections stand disposed of.

R.P.

Appeal and cross objection disposed by.