

Date of Filing: 15.06.2023

Date of Order: 01.03.2024

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION-III,
At HYDERABAD.

Present

SRI. M. RAM GOPAL REDDY, PRESIDENT
SRI R. NARAYAN REDDY, MEMBER

Friday, the 1st day of March, 2024

C.C. No 89 of 2023

Between:

Miss. Sripaadaarchitha Tadepalli,
D/o. Sri Tadepalli Sunil, Age: 14 years, Occ: Student,
Rep. by her father Sri Tadepalli Sunil,
S/o. TSVS Sarma, Aged : 43 years, Occ: Business,
R/o. 401, Nithya Homes, Road No.1,
Street No.9, Sector 2 A Alkapur Township,
Puppalaguda, Hyderabad -500089.
Cell 9396610111.

....Complainant

AND

M/s. Akash Institute,
Rep. by it's Authorised Signatory,
Door No.3-6-660, HC Bhawan, Street Number 9,
Behind Shanti TVS Showroom,
Himayathnagar,
Hyderabad, Telangana – 500029.

.... Opposite party

Counsel for the complainant : M/s. V.V.N.K. Sarath Saran &
Associates, Advocates

Counsel for the opposite Party : Sri G. Nagesh, Advocate.

ORDER

**(PER HON'BLE SRI M. RAMGOPAL REDDY, PRESIDENT ON BEHALF
OF THE BENCH)**

1. This complaint is filed by the complainant under Section 35 of Consumer Protection Act, 2019 praying to direct the Opposite Party:

1. To refund the entire amount paid by the complainant (on behalf of the complainant) towards the course fee, i.e., Rs.43,338/-.
2. To award an interest on the amount Rs.43,358/- from the date of the amount had been transferred to till the payment of the amount.
3. To award Rs.5,00,000/- towards mental agony and damages and to pass such other relief or reliefs as this Hon'ble Commission may deem fit and proper in the circumstances of the case in the interest of justice.

Brief Facts of the Case:

2. The complainant is a student, she wanted to join Olympiad Integrated Course in the opposite party institute of Akash Institute at Himayatnagar. The father of the complainant was contacted one Mr. Sai Kumar from the Opposite Party's Institute through WhatsApp and discuss the program available enrolment fee details and negotiated the program and offered fee of Rs.43,358/- and he paid the entire amount in two parts on the same day through UPI and provide the student details and information. On 29.06.2022 he requested to change the track of the student from CBSE to ICSE the required details were shared through WhatsApp (no change of fee). Mr. Sai Kumar has assured that, the track will be changed to ICSE and the changing process will be taken up to 3-4 days and joined the classes in the following week. She stopped attending the CBSE track classes was expecting to join ICSE track batch, but there was no update. The father of the complainant started following up about the change of the ICSE track right from the date of request but there was no progress. On 12.08.2022, he contacted the customer Care raised a complaint about the issue and received acknowledgment mail from the Opposite Party. On 13.08.2022,19.08.2022 again the father of complainant contacted one Mr. Sai Kumar through calls and message but he did not respond to either of those, the father of complainant again visited the Customer Care team and escalated the complainant and the Customer Care team but the issue unsolved even until 25.08.2022, on 26.08.2022 and on 04.10.2022. Finally the study material was given to the Complainant on 27.10.2022. On 02.11.2022 to the utter shock of the complainant that, the access of MS team was cut off by the opposite party and the complainant was unable to join the classes for un known reason and the father of complainant immediately spoken to Mr. Satya, Himayatnagar Branch and informed that, the access was cut off as the tuition fee was due. For which the father of the Complainant immediately sent proof of the payment and informed that he paid the entire tuition fee. Mr. Satya looked into the matter and restored the access on 03.12.2022 and an acknowledgment mail was received from the opposite party stating that as the pending dues were cleared but due to this non-access, the complainant could not attend two classes. On 03.12.2022, the father of complainant again received a message from the Opposite Party that they have to pay Rs.21,498/- and another message on 06.12.2022 stating that there is a due of Rs.4,927/- and the same were immediately forwarded to Mr. Satya but there was no respond.

2a). On 28.12.2022 the father of complainant again received a message stating arrears of fee and classes were pending. Mr. Satya could not resolve the issue again on customer care on 03.01.2023 and highlighted the whole issue to respond that their systems shows that Rs.2,000/- is pending and he received different messages with a different pending amount. That on 06.01.2023 he contacted to customer care and insisted to be connected to the manager and a person who introduced himself as a manager spoke and gave his personal number and asked the father of the complainant to share details, which he did not no respond. During this time the complainant was missing classes as she was unable to access. On 28.01.2023, the father of complainant again received a message stating about the withdrawal from the course due to non-payment of fee due at 23-40 PM and the same was again forwarded to Mr. Satya with request to that the same may be looked into so the complainant can attend the class the next day.

2b). On 29.01.2022 two messages were received from Mr. Satya informing that he was asked by one Mr. Nishant to remove the students who have not paid the fee from attending the classes. Later, he deleted to put him across to Nishant so that he can talk to him regarding the issue. The father of complainant called with Mr. Satya who could not resolve the problem and on 02.02.2022 the father of complainant sent another email to the customer care team received from the Opposite Party team asking them to re-open that was raised earlier that month as the same issue is being faced again but the father of complainant received a message from a different executive stating that the account is locked due to pending fee.

2c). The father of the complainant ran from pillar to post to resolve the issue and had attempted to talk to the customer care / support and management but of no avail. The complainant and the father of the complainant have been put through severe mental and physical agony, distress and trauma due to the deficiency of services of the opposite party and also pertinent to note that she could not continue the course which hampered her education, disturbing her career goals. Vexed with the attitude of the opposite party the complainant has no other option except to file this complaint and prays that, to refund the entire amount towards the course fee, i.e., Rs.43,338/- and to award an interest on the amount Rs.43,358/- from the date of the amount and to award Rs.5,00,000/- towards mental agony. Hence, the complaint.

3. The written version filed by the Opposite Party stating that, the contents of the complaint are false hence it is denied in toto. The officials of the opposite party have approached the father of the complainant for enrolment in the course and mentioned that the complainant and her parents have taken admission on the basis of the Terms and Conditions of the Admission Form and Refund Policy. Hence, the complainant is bound by the terms of the said policy. The Officers of the customer care of the Opposite Party are very quick and prudent in replying and solving the problems raised. Thus, the allegations raised by the complainant are totally denied. The complainant is not liable to pay the accrued fees. As per the terms of the payment, the complainant is bound to make payment as and when required or when it comes due. The complainant is not entitled to the relief claimed. In the light of the aforesaid submissions made, the Opposite Party respectfully prayed that this Commission may be pleased to dismiss the complaint and award exemplary costs.

4. During the course of trial, the complainant filed evidence affidavit examined as PW1 and got marked Exs.A1 & A10. Sri Kamilla Abhishek filed evidence affidavit examined as Dw1 and got marked Exs.B1 to B4 Complainant and Opposite Party filed their written arguments.

5. After perusal of pleadings, the following points are raised for consideration:

1. Whether there is any deficiency in service on the part of the Opposite Party?
2. Whether this commission has jurisdiction to entertain this complaint?
3. Whether the complainant is entitled for the reliefs prayed as for?
4. To what extent?

6. **POINT Nos. 1, 2 & 3:** Heard both sides. As per the material available in this case the complainant wanted to join her Olympiad Integrated Course provided by Opposite Party. On 22.06.2022 one Mr. Sai Kumar from the Opposite Party's Institute contacted the father of the Complainant through WhatsApp to discuss the program available enrolment fee details and negotiated the program, offered fee of Rs.43,358/-. On WhatsApp conversation regarding negotiations final fee fixed at above amount and paid the above said amount the receipt was marked as Ex.A1.

6a). On 29.06.2022 the father of the complainant requested Mr. Sai Kumar from the opposite party's institute to change the track of the

student from CBSE to ICSE the required details were shared through WhatsApp (no change of fee). Mr. Sai Kumar has assured that, the track will be changed to ICSE and the changing process will be taken upto 3-4 days and the complainant joined the classes in the following week. The complainant stopped attending the CBSE track classes was expecting to join ICSE track batch, but there was no update for the same. The father of the complainant started following up about the change of the ICSE track right from the date of request but there was no progress. On 12.08.2022, the father of complainant contacted the customer Care raised a complaint about the issue and received acknowledgment mail from the Opposite Party which was marked as Ex.A2. On 13.08.2022 the father of complainant visited the branch in person to resolve the complaint and look into the progress as the complainant was unable to join the ICSE track classes. On 19.08.2022 again the father of complainant contacted one Mr. Sai Kumar through calls and message but he did not respond to either of those, the father of complainant again visited the Customer Care team and escalated the complainant and the Customer Care team but the issue unsolved even until 25.08.2022, the emails dated 19.08.2022 to 25.08.2022 which is marked Ex.A2. On 26.08.2022 but track change from CBSE to ICSE resolved and the access to attend classes by this time the complainant had already missed nearly one-month classes. Even, though the track was changed, the complainant did not receive any material and Opposite Party despite of requests made to them two to three times. The Complainant father again contacted with the customer care on 04.10.2022 and finally the study material was given to the Complainant on 27.10.2022 which was marked as Ex.A3. On 02.11.2022 to the utter shock of the complainant that, the access of MS team was cut off by the opposite party assured and the complainant was unable to join the classes for un-known reason and the father of complainant immediately spoken to Mr. Satya, Himayatnagar Branch and informed that, the online access was cut off as the tuition fee was due to which the father of the Complainant immediately sent proof of the payment and informed that he paid the entire tuition fee.

The conversion of the Mr. Satya is marked Ex.A9. Mr. Satya looked into the matter and restored the access on 03.12.2022 and an acknowledgment mail was received from the opposite party stating that as the pending dues were cleared but due to this non-access, the complainant could not attend two classes. The mail on 03.12.2022 which is marked as Ex.A3. On 03.12.2022, the father of complainant again received a message from the Opposite Party that they have to pay Rs.21,498/- and

another message on 06.12.2022 stating that there is a due of Rs.4,927/- and the same were immediately forwarded to Mr. Satya but there was no response. These messages received from the Opposite Party marked as Ex.A7.

6b). The counsel for complainant further noticed to this Commission that, on 28.12.2022 the father of complainant again received a message stating arrears of fee and classes were terminated this message is part and parcel of the Ex.A7. Mr. Satya could not resolve the issue again on customer care on 03.01.2023 and highlighted the whole issue to responded that their systems shows that Rs.2,000/- is pending and the father of complainant received different messages with a different pending amounts under the Ex.A7. That on 06.01.2023 the father of complainant contacted to customer care and insisted to be connected to the manager and a person who introduced himself as a manager spoke and gave his personal number and asked the father of the complainant to share details, which he did not responded. During this time the complainant was missing classes as she was unable to access, the mail dated 06.01.2023 is marked as Ex.A4. On 28.01.2023, the father of complainant again received a message stating about the withdrawal from the course due to non-payment of fee due at 23-40 PM and the same was again forwarded to Mr. Satya with request to that the same may be looked into as the complainant can attend the class the next day, the message dated 28.01.2023 is marked as Ex.A7.

6c). It is further noticed by the counsel for the complainant on 29.01.2022 two messages were received from Mr. Satya informing that he was asked by one Mr. Nishant to remove the students who have not paid the fee from attending the classes. Later, he deleted to put him across to Nishant so that he can talk to him regarding the issue. The father of complainant called with Mr. Satya who could not resolve the problem which is marked as ex.A9 and on 02.02.2022 the father of complainant sent another email to the customer care team received from the Opposite Party team asking them to re-open that was raised earlier that month as the same issue is being faced again but the father of complainant received a message from a different executive stating that the account is locked due to pending fees.

6d). As seen from the record the stand of the Opposite Party that the complaint ought not to have file against the Opposite Party, the complainant shall bound by the terms and conditions of admission form which is marked as Ex. B2, as such the complaint is not maintainable before this Commission and this Commission has no jurisdiction to adjudicating this case. There is no deficiency of service rendered by the Opposite Party and the complaint is suppression of material facts and approached to this Commission to gaining the amount from the Opposite Party. The Opposite Party contended that as per the Ex. B4 which is the attendance sheet the reason best known that the complainant has not attended classes regularly, and now the burden shift on the Opposite party on the ground that the opposite party wantendly with hold the shifting track and non-supply of study material which is baseless and it cannot be taken into consideration by this commission.

6e). The opposite party further contended that as per the judgements of the APEX Court and National commission are binding precedent while deciding the cases the present case is also similar in nature. The Hon'ble Supreme Court and National Commission held that, the Consumer Commissions have no jurisdiction to deal relating the education matters as such, the service of education will not fall within the ambiguity of Consumer Protection Act, as such the Opposite Party is relying the following citations held by the Hon'ble Supreme Court in :

- *Cox and Kings Limited & Ors., Vs V.Mukt Anand,*
- *BHARAT Knitting Company Vs. DHL Worldwide Express Courier Division of Air-freight Ltd., reported in AIR 1996 SC 2508.*

And other citations filed by opposite party this Commission have carefully gone through the judgments of Apex Courts and came to conclusion that the Law laid down in the referred case and the present case is different one. This Opposite Party is running a coaching institute for the preparation of competitive tests of aspirants who needed to attend tests for higher classes for securing seats but not giving coaching for free of service, or neither registered under the Societies Act. As such, the above citations are not applicable to the present case. And this Commission also gone through another judgment of the Hon'ble Supreme Court held in: ***Rajendra Kumar Gupta Vs. Veerendra Swarup Public School***, in this judgement the Hon'ble Supreme Court referred judgment of ***Anupama***

College of Engineering Vs. Gulshan Kumar, the facts of the relied cases are entered different to the present case, so the above judgements are not relevant to this case.

6f). The discussions and facts circumstances of the case and upon relying above judgments, this Commission came to a conclusion that, the Opposite Party have rendered deficiency in service and they are liable to refund the fee of Rs.43,358/- (Rupees Forty-three thousand three hundred and fifty-eight Only) along with interest @ 12% p.a., from 03.12.2022 and also pay compensation of Rs.10,000/- (Rupees ten thousand only), Rs. 10,000/- (Rupees ten thousand only) payable to consumer legal laid account towards punitive damages and costs of Rs.5,000/- (Rupees five thousand only). Accordingly, these points are answered in favour of the complainant against the Opposite Party.

7. **Point No.3:** In the result, the complaint is allowed in part directing the Opposite Party:

- i) To refund the fee of Rs.43,353/- (Rupees Forty-three thousand Three hundred and fifty-three only) along with interest @12% p.a., from 03.12.2022 till realization.
- ii) To pay compensation of Rs.10,000/- (Rupees Ten Thousand only).
- iii) To pay Rs.10,000/- (Rupees ten thousand only) to consumer Legal Aid account towards punitive damages.
- iv) To pay costs of Rs.5,000/- (Rupees Five Thousand only).

Time for compliance is 45 days from the date of receipt of this order.

Typed to my dictation and pronounced in the Open court on this the 1st day of March' 2024.

Sd/-
MEMBER

Sd/-
PRESIDENT

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Complainant:

PW1 - Sri Tadepalli Sunil.

For Opposite Party:

Dw1 - Sri Kamilla Abhishek.

DOCUMENTS MARKED**For complainant:**

Ex.A1: is the copy of Fee Payment Receipts, dt.23.06.2022.

Ex.A2: is the copy of Mail – shifting of the course -grievance, dt.12.08.2022.

Ex.A3: is the copy of Grievance raised regarding material, dt.04.10.2022.

Ex.A4: is the copy of Grievance raised regarding due fee - SMS,
dt.06.01.2023.

Ex.A5: is the copy of Reopening grievance ticket, dt.02.02.2023.

Ex.A6: is the copy of Grievance sent to the opposite party, dt.14.02.2023.

Ex.A7: is the copy of Communications received via SMS.

Ex.A8: is the copy of WhatsApp conversations with Mr. Sai Kumar.

Ex.A9: is the copy of WhatsApp conversations with Mr. Satya.

Ex.A10: is the copy of WhatsApp conversations with Mr. Aakash,
Customer Care.

For Opposite Party:

Ex.B1: is the copy of Letter of Authority, dt.18.08.2023.

Ex.B2: is the copy of Application form along with terms and conditions.

Ex.B3: is the copy of Student Dashboard.

Ex.B4: is the copy of Attendance Record.

Sd/-
MEMBER
KPS

Sd/-
PRESIDENT

//CERTIFIED TRUE FREE COPY//