

**IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL
COMMISSION**

Date of Institution: 11.03.2014

Date of Hearing: 18.09.2024

Date of Decision: 19.12.2024

FIRST APPEAL NO. 249/2014

IN THE MATTER OF

FIITJEE LTD.,

Through its A.R.

Mr. Ashish Kumar Aggarwal,

29-A, Kalu Sarai,

Sarvpriya Vihar,

New Delhi-110016.

(Through: Mukesh M. Goel, Advocate)

...Appellant

VERSUS

MR. RAJEEV LUTHRA,

R/o C-5/C/19A,

Janakpuri, Delhi-110058.

(Through: Mukesh M. Goel, Advocate)

.... Respondent

CORAM:**HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)****HON'BLE MS. PINKI, MEMBER (JUDICIAL)****HON'BLE MR. J.P. AGRAWAL, MEMBER (GENERAL)**

Present: Mr. Mukesh Goyal, counsel for the appellant through VC.
Mr. Sarthak Ahuja, counsel for the respondent. (e-mail id –
ahuja.sarthak04@gmail.com).

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL
(PRESIDENT)

JUDGMENT

1. The facts of the case as per the District Commission record are:

“Briefly stated the case of the complainant is that his daughter Ms. Aishwarya Luthra joined the institute for a two year classroom program for preparation of CAT. At that time she was a student of CJM, Connaught Place. She used to come back home at 2:30 pm from the school and thereafter immediately she had to leave for coaching classes at Punjabi Bagh from Janakpuri and after attending the classes sometimes she used to return back at 8:30 or 9:00pm. She was not finding sufficient time even to do her homework assignment given by the school and was unable to cope up with this pressure. Hence after attending the classes for two months only she decided to discontinue the classes. Complainant made a written request to the OP about his daughter's intention to discontinue the course and made a request for refund of the fee of Rs. 1,34,015/- already paid by him. But inspite of his repeated visits and reminder nothing was refunded to him hence he approached this forum.

On notice complaint contested was by the respondent. Preliminary objection was raised that the present complaint was not maintainable as there was an Arbitration Clause in the enrollment form which was duly signed by the complainant and his son. Para 16 of the Enrollment Form provided

"Para 16: In the event of any dispute regarding the interpretation of clauses of enrolment form or any claim etc. arising out of taking the admission in FIITJEE Ltd.,

the matter shall be referred to the Sole Arbitrator appointed by the Management of FIITJEE Ltd. The decision of the arbitrator shall be final and binding on both parties. The arbitrator so appointed shall not be incapacitated for reasons of their being the employee or an associate of FIITJEE Ltd. Or its sister concern, and for reasons of having any prior linkage with the company. The venue of Arbitration shall be at Delhi/New Delhi only."

Reliance was placed on para 4,5,9,12 and 13 of the Enrollment Form which read as under:

Para 4: I understand that if I leave the institute before completing the full course whatsoever, for any reason including transfer of parents/guardians/ill health of self or any other member of the family or my admission in any institute/engineering college etc., or my studentship is cancelled because of misconduct etc. I or my parents/guardian shall have no claim or refund of fees.

Para 5: In addition to the above, I understand without any ambiguity that the fee once paid is not refundable at all, whatever the reasons be nor is it adjustable towards any other existing courses at FIITJEE or any yet to be launched nor towards any other existing or prospective student.

Para 9 : I promise to abide by all rules and regulations of FIITJEE declaration, in letter and spirit.

Para 12: I/we, the parent/guardian and/or the student, severally and jointly declare that I/we have read and understood at all clauses contained in the Declaration on Enrolment Form and agree to abide by them without any reservation or ambiguity.

Para 13 : I/we further declare that the above named student is taking admission in the FIITJEE having considered everything material, on his own sweet will after giving due consideration to rigours of time, distance and studies ahead and with the permission of the parent/guardian without any coercion from any side.

Further I/we understand that the student is required to work hard to attain the average standard of the batch allotted in order to cope up with studies and put in extra efforts if lagging behind in any subject/topic."

On merits same was the defence that fees once paid was not refundable and there was an arbitration clause and one seat remained vacant for two years. Any liability to refund the course fee was denied."

2. The District Commission after taking into consideration the material available on record passed the judgment dated **03.02.2014**, whereby it held as under:

"There is no dispute so far as the facts are concerned. It is also an admitted fact that the complainant's daughter discontinued the course not due to any deficiency of service on the part of the respondent but due to her inability to cope up with these pressure of studies. The question is whether OP adopted unfair trade practice and whether it was deficient in service in charging two years course fee in advance.

*Now there are catena of judgements that the coaching institutions cannot charge advance fees for two years. Reliance can be placed on the judgement of **MD FIIT JEE Ltd. Vs. Mr. Parmod Panwar, Appeal No. A- 07/552** before State Commission, Delhi wherein State Commission vide its order dated 23.10.07 held:*

"1. In identical cases we have come very upon such a practice by the educational institutions, education centers, schools, universities, of charging..... Lump sum fees for 2-3 years duration in one go to charge consideration for the period for which it is yet to provide the service the institutes force the students to go on attending their institutes inspite of the quality of teaching and jeopardize the career prospectus of the students.

2. We have also taken a view that any term of the contract which is unconscionable or voidable is enforceable. No service provider like training institutes or coaching centers

or educational centers can be allowed to forfeit the fees or consideration for the service which it neither provided nor availed. Thus the term that "fees once paid is not refundable" is unconscionable as well as voidable and therefore not actionable particularly when such fees is charged for the whole duration of the course in advance.

3. A student trainee may leave in the midstream if he finds the service deficient and sub-standard and non-standard and non-yielding and to tell him that fees once paid is not refundable is uncalled for and unfair trade practice as no service which it has either not given or has not availed or is yet to be provided.

4. No service provider can retain the consideration for the service which he was not provided or is yet to provide by incorporating a term in the Bulletin or in the Brochure that 'the fees once paid shall not be refundable.' Such term is not only advance to the interest of consumer but tantamount to becoming unjustly rich.

5. It is only after attending the classes that students or the aspirants come to know about the quality of education, coaching or training being imparted by the institute. In the instant case when the respondent came to know may be after one year that the course was being taught in such a manner where teachers were rushing to finish the course before the scheduled time without any personal attention. He was justified to leave such an institute as further delay of one year of training would have served no useful purpose and at least not the desired purpose."

It was held by the Hon'ble Supreme Court in the case of Islamic Academy of Education and another versus State of Karnataka 2003(6) Supreme Court cases (SCC) 697 the Hon'ble Supreme Court held that an educational institute could only charge the prescribed fee for one Semester/year and not for the entire course. The Apex Court observed as follows:-

"It must be mentioned that during arguments it was pointed out to us that some educational institutions are collecting, in advance, the fees for the entire course i.e. for all the years. It was submitted that this was done because

the institute was not sure whether the student would leave the institute midstream. It was submitted that if the student left the course in midstream then for the remaining years the seat would lie vacant and the institute would suffer. In our view an educational institution can only charge prescribed fees for one semester/year, if an institution feels that any particular student may leave in midstream then, at the highest, it may require that student to give a bond/bank guarantee that the balance fees for the whole course would be received by the institute even if the student left in midstream. If any educational institution has collected fees in advance, only the fees of that semester/year can be used by the institution. The balance fees must be kept invested in fixed deposits in a nationalized bank. As and when fees fall due for a semester/year only the fees falling due for that semester/year can be withdrawn by the institution. The rest must continue to remain deposited till such time that they fall due. At the end of the course the interest earned on these deposits must be paid to the student from whom the fees were collected in advance.”

In this case the respondent charged two years course fees amounting to Rs.1,34,015/ which it should not have done. If it had already received advance fee for two years, at least one year fee should have been refunded immediately on request made by the complainant for refund of the course fee after discontinuation of the course.

Hence we hold that OP was deficient in service. It entitled to retain one year's course fee only. We direct OP to refund a sum of Rs.60,750/- (50% of course fee after deducting service tax) to the complainant alongwith interest @ 6% per annum from the date of filing of the complaint till realization of the amount. Complainant is further awarded Rs.20,000/- as compensation for the inconvenience and hardship caused to him.”

3. Aggrieved by the aforesaid order of the District Commission, the Appellant/Opposite Party has preferred the present appeal on the ground that the District Commission has failed to appreciate that there was a written agreement between the Appellant and the father of the Respondent, wherein he had agreed that he shall not be entitled for any refund in case his son

leaves the course in between for any reason whatsoever. The Appellant further relied upon the following judgment in support of his case:

A. RP No. 270/2006 decided on 29.01.2010 titled as "Brilliant Classes Vs. Shri Ashbel Sam

B. Islamic Academy of Education vs. State of Karnataka, (2003) 6 SCC 697.

C. T.V. Sundaram Iyengar & Sons. Pvt. Ltd. vs. Muthuswamy Duraiswamy reported as II (2003) CPJ 176 (NC).

4. The Respondent, on the other hand, denied all the allegations of the Appellant and submitted that there is no error in the impugned order as the entire material available on record was properly scrutinized before passing the said order.
5. We have perused the material available on record and heard the counsel who appeared on behalf of the Appellant and Respondent.
6. The *main question* for consideration before us is *whether the District Commission was right in holding that the Appellant can charge for fees only for one semester or one year in advance from the Respondent and resultantly awarding refund of the non-availed classes to the Respondent.*
7. On perusal of record, we find that the Respondent enrolled his daughter in a two-year classroom program offered by the Appellant for CAT entrance exam preparation. However, after attending classes for two months, the daughter of the Respondent decided to discontinue due to time constraints and an inability to manage school assignments alongside the program. Consequently, the Respondent requested a refund of the advance payment made for the entire course at the time of admission. However, the Appellant denied the request, citing a policy that fees once paid are non-refundable under any circumstances.
8. At this point, we also deem it appropriate to refer to the landmark precedent on the issue which has been relied upon by the Appellant, titled as *Islamic*

Academy of Education v. State of Karnataka, reported in (2003) 6 SCC 697, wherein the Hon'ble Supreme Court has held that:

“214. It must be mentioned that during arguments it was pointed out to us that some educational institutions are collecting, in advance, the fees for the entire course i.e. for all the years. It was submitted that this was done because the institute was not sure whether the student would leave the institute midstream. It was submitted that if the student left the course in midstream then for the remaining years the seat would lie vacant and the institute would suffer. In our view an educational institution can only charge prescribed fees for one semester/year, if an institution feels that any particular student may leave in midstream then, at the highest, it may require that student to give a bond/bank guarantee that the balance fees for the whole course would be received by the institute even if the student left in midstream. If any educational institution has collected fees in advance, only the fees of that semester/year can be used by the institution. The balance fees must be kept invested in fixed deposits in a nationalised bank. As and when fees fall due for a semester/year only the fees falling due for that semester/year can be withdrawn by the institution. The rest must continue to remain deposited till such time that they fall due. At the end of the course the interest earned on these deposits must be paid to the student from whom the fees were collected in advance.”

9. From the abovementioned precedent, it is clear that if the educational institution had collected the fees for the entire course in advance from the students, the educational institute can use the fees of the particular semester/year for its administration and the balance fees should be kept deposited in the nationalized bank until that fee falls due for the particular semester/year.
10. However, in the present case, the Appellant has failed to file any evidence to substantiate that the above directions of Hon'ble Apex Court have been complied in the case of the Respondent, therefore, no inference can be drawn

in this regard. Thus, we find that the Appellant has rather collected the advance fee for two years of coaching from the daughter of the Respondent without complying the directions of the Hon'ble Apex Court.

11. Therefore, we find that the District Commission has rightly relied upon the abovementioned dicta and observed that the Appellant was deficient in providing its services to the Respondent. We are in agreement with the reason stated by the District Commission and fail to find any reasons to reverse the findings of the District Commission. Consequently, *we uphold the order dated 03.02.2014, passed by the District Consumer Disputes Redressal Commission III, 150-151, Community Centre, C-Block, Janakpuri, New Delhi-110058.*
12. *Consequently, the present Appeal stands dismissed with no order as to costs.*
13. Application(s) pending, if any, stands disposed of in terms of the aforesaid judgment.
14. The judgment be uploaded forthwith on the website of the Commission for the perusal of the parties.
15. File be consigned to record room along with a copy of this Judgment.

**JUSTICE SANGITA DHINGRA SEHGAL
(PRESIDENT)**

**PINKI
MEMBER (JUDICIAL)**

**J.P. AGRAWAL
MEMBER (GENERAL)**

Pronounced on: 19.12.2024

LR-AJ