

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 852 OF 2016

(Against the Order dated 03/06/2016 in Complaint No. 29/2006 of the State Commission Uttar Pradesh)

1. RAJENDRA KUMAR GUPTA
S/O. LATE R.G. GUPTA, R/O. 61, TRIVENI NAGAR,
KANPUR
UTTAR PRADESH

.....Appellant(s)

Versus

1. DR. VIRENDRA SWARUP PUBLIC SCHOOL &
ANR.
THROUGH ITS MANAGER/ PROPRIETOR, R/O. 75,
CANTONMENT,
KANPUR
UTTAR PRADESH

2. MRS. G. JYOTI
PRINCIPAL, VIRENDRA SWARUP PUBLIC
SCHOOL, R/O. 75, CANTONMENT,
KANPUR
UTTAR PRADESH

.....Respondent(s)

BEFORE:

HON'BLE MR. C. VISWANATH, PRESIDING MEMBER

For the Appellant : Mr. Pawan Kumar Ray, Advocate

For the Respondent : Mr. Murari Kumar, Advocate

Dated : 02 Feb 2021

ORDER

1. The present Appeal, under Section 19 of the Consumer Protection Act, 1986 has been filed by the Appellant-Complainant against the order dated 03.06.2016 of the Uttar Pradesh State Consumer Disputes Redressal Commission, Lucknow (hereinafter referred to as "the State Commission) in CC/29/2009.

2. Along with the Appeal, IA7250/2019, has also been filed by the Complainant seeking condonation of delay of 180 days. However, as per computation done by the Registry, delay is of one day. Since the delay is of one day, therefore, in the interest of justice, delay is condoned.

3. The Appellant is the father of Late Master Raunak Gupta, who was studying in the Respondent School, i.e., Dr. Virendra Swarup Public School. In 2007, the School offered various

Summer Camp activities including swimming, and invited students to participate by paying Rs.1,000/-. The Appellant paid a sum of Rs.1000/- to the School, so that his son could participate in the said Summer Camp. On 28.05.2007 at about 9.30 A.M., the Appellant received an urgent call from the School requesting him to come immediately as his son was unwell. The Appellant, upon reaching the School, was informed that his son had been taken to O.E.F. Hospital as he had drowned in the swimming pool of the School. The Complainant then rushed to O.E.F. Hospital where he saw the dead body of his son and learnt that his son was brought dead to the Hospital. Thereafter, Appellant filed a Consumer Complaint in the State Commission alleging negligence and deficiency in service on part of the School and claimed Rs.20,00,000/- as compensation for the death of his son as well as Rs.2,00,000/- on account of mental agony suffered by him and Rs.55,000 towards the cost of litigation.

4. The Complaint was contested by the Respondents-Opposite Parties. Opposite Parties took a preliminary objection as to the maintainability of the Consumer Complaint. It was stated that the Complainant was not a Consumer as the Educational Institutions are not covered under the ambit of Consumer Protection Act. Factum of death of Complainant's son due to drowning in the swimming pool was admitted by the Opposite Parties. It was stated that the incident of drowning was not attributable to the negligence of the School as all necessary services and equipment was duly provided by them and the Swimming Pool was under strict supervision. Therefore, there was no deficiency in service on the part of the Opposite Parties.

5. The State Commission after hearing both the Parties and perusing the record of the case, passed the following directions, vide order dated 03.06.2016:-

“In the above-mentioned circumstances, we reach at this conclusion that clearly, the Complainant is not a consumer of the defendants and the complaint in question, being not covered under the Consumer Protection Act, is not maintainable. Therefore, the Complaint is liable to be dismissed. This complaint is hereby dismissed.

ORDER

No order is being passed with regard to costs of this complaint.

Attested copy of this Judgment be provided to both the parties as per rules.”

6. Aggrieved by the State Commission's order dated 03.06.2016, the Appellant preferred the present Appeal before this Commission with the following prayer: -

“ i. allow the present Appeal and set aside the final judgment and order dated 03.06.2016 passed by the Hon'ble State Consumer Dispute Redressal Commission, Uttarpradesh at Lucknow in Consumer Complaint No. 29 of 2006;

ii. allow the cost of the litigation;

iii. Pass such and other further orders as this Hon'ble Commission may deems fit and proper in the facts and circumstances of the present case.”

7. Heard the Learned Counsels for both the Parties and carefully perused the record. Brief facts of the case are that the Appellant's son namely, Raunak Gupta, was studying in the Opposite Party-School. In 2007, the School offered various Summer Camp activities including swimming, and invited students to participate in it for which the students were required to pay a sum of Rs.1,000/-. The Appellant paid a sum of Rs.1000/- to the School for participation of his son in the Summer Camp. On 28.05.2007 at about 9.30 A.M., the Appellant received a call from the School requesting him to come immediately as his son was unwell. The Appellant, upon reaching the School, was informed that his son had been taken to the O.E.F. Hospital as he had drowned in the swimming pool of the School. The Complainant then rushed to the Hospital where he learnt that his son was brought dead.

8. The Learned Counsel for the Appellant contended that the child died due to drowning in the swimming pool due to negligence of the School. He also stated that the Appellant was a 'Consumer' and that the case was a consumer dispute, as the Summer Camp conducted by the School was a commercial purpose and not covered under imparting of education. Swimming training was optional in nature and therefore did not fall within the ambit of basic education. Learned Counsel for the Respondent-School, on the other hand, contended that the incident of drowning was not attributable to the negligence of the School as all necessary services and equipment were duly provided by them and the Swimming Pool was under strict supervision. It was also pleaded that this Case is not covered under the Consumer Protection Act, 1986, apart from there being no deficiency in service.

9. In **Anupama College of Engineering v. Gulshan Kumar and Anr.** the Hon'ble Supreme Court has held:

“Leave granted. The only question raised in this case is whether a college is a service provider for the purposes of the Consumer Protection Act, 1986. Learned Counsel for the appellant has placed the decision of this Court in Maharshi Dayanand University v. Surjeet Kaur. (2010) 11 SCC 159. The aforesaid decision was followed by this Court in SLP (C) No. 22532/2012 titled as P.T. Koshy & Anr. v. Ellen Charitable Trust & Ors. The order reads as follows: “In view of the judgment of this Court in Maharshi Dayanand University v. Surjeet Kaur, (2010) 11 SCC 159, wherein this Court placing reliance on all earlier judgments has categorically held that education is not a commodity. Educational institutions are not providing any kind of service, therefore, in matter of admission, fees etc., there cannot be a question of deficiency of service. Such matters cannot be entertained by the Consumer Forum under the Consumer Protection Act, 1986. In view of the above, we are not inclined to entertain the special leave petition. Thus, the special leave petition is dismissed”. In view of the consistent opinion expressed by this Court, the orders passed by the National Consumer Disputes Redressal Commission in Revision Petition No. 3571/2013 and Revision Petition No. 807/2017 are not in accordance with the decision of this Court and are therefore set aside. The civil appeals are allowed.”

10. In the case titled *Manu Solanki and Ors. v Vinayaka Mission University I (2020) CPJ 210 (NC)*, while addressing the issue whether an Educational Institution is a 'Service Provider' for the purpose of Consumer Protection Act, 1986, Larger Bench of this Commission held: -

“33. Keeping in view Maharshi Dayanand University (supra) has addressed on merits and the question of law in detail and the same has been consistently followed by the Hon’ble Supreme Court in P.T. Koshy & Anr. (supra), Prof. K.K. Ramachandran (supra) and the latest decision of Anupama College of Engineering (supra), we are of the considered view that the ratio laid down by the Hon’ble Supreme Court in the last judgment that is Anupama College of Engineering (supra) has to be followed.”

11. In the aforementioned case, this Commission also considered the issue of whether extra-curricular activities such as swimming would fall within the purview of the Consumer Protection Act, 1986 and has held :-

“41. Learned Counsel for the Educational Institution in Revision Petition Nos. 1731 to 1733 of 2017 argued that imparting education in a school is not limited to teaching in a class room and involves within its ambit other co-curricular activities including taking out the students for educational trips etc., for their overall growth and development and improvement of their faculties. In that matter, the children were taken by the Respondents for an “educational excursion trip” to a place of historical importance, and it was contended that, any shortcoming or negligence during the course of such an act falls within the definition of imparting education and therefore shall not fall within the domain of the Consumer Protection Act, 1986. Another issue which was raised is with respect to any defect or deficiency which may arise on account of a student drowning in a swimming pool maintained by the Educational Institution. We are of the considered opinion that such incidental activities of an Educational Institution while imparting education would also not amount to rendering any service under the provisions of the Consumer Protection Act, 1986.”

12. It is settled law, as stated in the aforementioned precedents set by the Hon’ble Supreme Court as well as this Commission, that Educational Institutions do not fall within the ambit of the Consumer Protection Act, 1986 and education which includes co-curricular activities such as swimming, is not a “service” within the meaning of the Consumer Protection Act, 1986. I, therefore, concur with the view of the State Commission that the Complainant is not a consumer and the Complaint not being covered under the Consumer Protection Act, 1986 is not maintainable.

13. I find no infirmity in the impugned order of the State Commission. The present Appeal is dismissed. Appellant is at liberty to file Consumer Complaint before the appropriate Forum having jurisdiction.

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C. VISWANATH
PRESIDING MEMBER