



**IS STUDENT ‘CONSUMER’ AND EDUCATION
‘SERVICE’ UNDER THE CONSUMER
PROTECTION ACT, 1986?**

THERE IS a conflict of opinion in case law on the question whether student is a ‘consumer’ and education a ‘service’ under the Consumer Protection Act, 1986. The object of this paper is to reconcile that conflict for the benefit of legal profession and student community.

In a recent decision of the National Consumer Disputes Redressal Commission, New Delhi in *Ruchika Jain*¹ it was held that consumer fora have no jurisdiction to pass an interim order permitting a student to appear in examination who is not eligible to appear according to prescribed cut off marks. The complainant Ruchika Jain was admitted in BDS course against management quota even though she had not obtained prescribed marks for admission in that course. Later she was not permitted to appear in the examination. She filed a complaint before the District Forum, Faridabad which passed an interim order directing the university to allow the complainant to sit in the examination which was to take place on the same day and the same was confirmed by Haryana State Commission in revision. In a further revision to the National Commission by the educational institution it was held that passing of such an interim order was not the function of consumer fora and thus it set aside the orders of district forum and state commission by holding that such interim orders would amount to misconduct and were on the face of it illegal and arbitrary. It further directed that in future no such interim order shall be passed by the consumer fora.

Though the above was sufficient to dispose of the revision petition, the National Commission went into the questions whether a student was a consumer and whether rendering of education by university/college could be held as service for consideration under the Consumer Protection Act. The state commission had in another similar case linked with *Ruchika Jain*, answered these questions in the affirmative relying on a case decided by the National Commission.²

1. *Deputy Registrar (Colleges) and Another v. Ruchika Jain and others*, 2006 (3) CPR 18 (NC) following (2003), 7 SCC 119, (1988) 5 SCC 377, (1993) 4 SCC 401, (1986) 2 SCC 667, (1991) 1 SCC 87, (1998) 3 SCC 5, (1984) 1 SCC 307 and (1992) 4 SCC 4.

2. *Bhupesh Khurana and Ors. v. Vishwa Budhu Parishad and Ors.*, 2000 (3) CPR 49 (NC) relying on *Bangalore Water Supply v. A. Rajappa*, AIR 1978 SC 548, a case decided under the Industrial Dispute Act, 1947 holding university to be an



However, the National Commission had, in a catena of cases³ decided by it held that giving admission to the students in university/college by charging fees did not make them consumers of education service under section 2(1)(d)(ii) read with section 2(1)(o) of the Consumer Protection Act. In *Ruchika Jain* it has again held that a hirer of education service for consideration and performance of statutory duties by a university or college in laying down rules etc for conducting examinations, fixing eligibility criteria for permitting the student to appear in the examination or declaration of the results cannot be considered to be rendering education service for fees and, no complaint can be made for deficiency in service before the consumer fora.⁴ But this holding is in ignorance of a contrary view expressed in an earlier decision *Sekar v. Registrar, Madurai Kamarajar University*,⁵ wherein the National Commission had opined:⁶

The fact that the Universities are statutory bodies does not in the least render their services any less than the 'Service' as defined in the Act. Nor does it go outside the pale of the Act in the absence of any Notification issued by the Central Government exempting the services of Universities from the purview of the Act under Section 1(4). A student who appears for the University examination and pays necessary fees thereof certainly hires the services of the University for consideration and is a consumer within the meaning of section 2(1)(d)(ii) of the Act.

Two streams of divergent views

There are, thus, two streams of divergent views in case law under Consumer Protection Act as regards giving of admission and nature of functions of our educational institutions. In *Secretary, Board of Secondary Education, Orissa & others v. Ms. Sasmita Moharana*,⁷ it was held that "No doubt earlier the view was that the educational institutions were not rendering services as they were performing the statutory duty while holding examination." However, the Supreme

3. *Chairman, Board of Examination v. Mohideam Abdul Kader*, 1997 (II) CPJ 49 (NC) followed in *Praveen Rani v. Punjab School Education Board*, 2004 (III) CPJ 70 (NC), relying on (1993) 1 SCC 645. Similar view was taken in *Registrar, University of Bombay v. Chairman, CBSE*, 2004 CTJ 39 (CP) (NC) and *Alex J. Rebels v. Vice Chancellor, Bangalore University and Ors.*, 2003 (1) CPJ 7 (NC).

4. *Supra* note 1 at 33-34.

5. A.P. 92/91.

6. Cited in Justice V. Balakrishna Eradi, *Consumer Protection Jurisprudence* 316(2005).

7. 2007 (2) CPR 129 (NC).



Court's judgments in *M.K. Gupta v. Lucknow. Development Authority*⁸ and *GDA v. Balbir Singh*⁹ have changed the view. Now, "Holding examination may be statutory duty, but administrative functions connected with such duty e.g. issuing correct marks sheets and certificates in time etc. is a part of service covered under Consumer Protection Act under the garb of non- statutory function." In *Ms. Sushmita Maharana* case¹⁰ there was issuance of incorrect marks sheet by the Board of Secondary Education, Orissa. The state commission held it amounted to negligence of the staff of the educational institution and thus a deficiency in education service for which compensation of Rs. 10,000/- was awarded to the complainant. In appeal to the National Commission, two contentions were raised. Firstly, the consumer fora did not have any jurisdiction to entertain the complainant, for, holding examination was statutory duty. Secondly, there was no negligence as 54 lakh answer sheets were to be examined and there was possibility of some human error in some marks sheet that could not be treated as negligence or termed as deficiency in service on the part of the educational institution. The first contention was rejected distinguishing statutory function from administrative or non-statutory functions as stated above. The second was rejected as similar contention was rejected by the Supreme Court in the *President, Board of Secondary Education, Orissa and Others v. D. Surankar and another*.¹¹ It was held that issuance of an incorrect marks sheet, even where large member of students appeared in the examination, amounted to negligence. It was further held that award of Rs. 10,000/- as compensation was not excessive but was on a lower side and dismissed the appeal.

Thus, the rulings in *Sushmita Maharana*¹² and *Sekar*¹³ are in conflict with *Ruchika Jain*.¹⁴ Not only these but there are also other cases having divergent views as to giving of admission etc.

There are ample propositions in case law to show that a student is a 'consumer' and education is 'service' under the Consumer Protection Act:

- (a) A candidate who pays fees to a university for appearing in examination is a consumer. Examination and publication of result is a service.¹⁵

8. 1994 (1) SCC 243.

9. 2004 (5) SCC 65.

10. *Supra* note 7 at 137.

11. 2006 (12) SCALE 24.

12. *Supra* note 7.

13. *Supra* notes 5 and 6.

14. *Supra* note 1.

15. *Manisha Samuel v. Sambalpur University*, 1992 (1) CPR 215 (NC).



- (b) Failure to issue roll number in time is a deficiency in administrative aspect relating to education service.¹⁶
- (c) Though students of an educational institution paying fees are consumers but consumers fora, like civil courts, have no jurisdiction to declare a rule in the prospectus on non – refund of fees as illegal.¹⁷
- (d) For deficiency of service on the part of the examination hall supervisor/invigilator who mistakenly did not allow a student to take examination, the employer board is vicariously liable for compensation.¹⁸
- (e) The imparting of education by an educational institution for a consideration falls within the ambit of ‘service’ under the Consumer Protection Act and if there is a deficiency in service or an unfair trade practice, the institution shall be liable to compensate loss to the consumer (student).¹⁹

However, there are case law on the contra showing that a student is neither a consumer nor education a service:

- (a) A candidate applying for a degree certificate is not a consumer.²⁰
- (b) Education as such does not come within the purview of (service) under the Consumer Protection Act.²¹

16. *Controller of Examinations, Himachal Pradesh University and Anr. v. Sanjay Kumar*, 2003 (1) CPJ 273 (NC).

17. *S. Venkata Pathy v. The Principal, Adhiyaman College of Engineering*, 1993 (1) CPR 595 (Mad.) But see also *Adhiyanam College v. S.Venkatapatty*, 1995 (2) CPR 544 (NC) and *Homoeopathic Medical College and Hospital, Chandigarh v. Gunita Virk*, 1995 (3) CPR 467 (NC).

18. *Chairman, Board of Examinations, Madras v. M. Abdul Kader*, 1996 (4) CTJ 966 (CP) (NC).

19. *M. Ravindranath and other v. The Principal, Mercy College, Plakkad*, 1986-2002 Consumer 5818 (NS). *Sonal Matapurkar v. Sri S. Nijalingappa Institue of Dental Service and another*, 1997 (2) CPR 12; *K.S. Satheesan v. A. Shanmuga Sundaram*, 1998 (1) CPR 470. *N. Sreedharan Nair v. Registrar, University of Kerala*, 2002 NCJ 28. In *N. Sreedharan Nair v. Registrar, University of Kerala*, the appellants had completed three years LL.B. course in Thiruvananthapuram in 1990 and was declared passed by the University of Kerala but was not supplied provisional degree certificates on the ground that the qualifying examination on the basis of which he had undergone the LL.B. course was not recognized by Kerala University. The National Commission held it to be a deficiency in service as the complainant appellant was allowed to complete the 3 years LL.B. course and then he was not supplied with the certificate. So, it awarded a compensation of Rs. 50,000 with the cost of Rs. 2000.

20. *Sri K. Ravi v. The Vice Chancellor, Mysore University*, 1994 (1) CPR 894. But See *N. Sreedharan Nair's case* to the contrary *ibid*.

21. *N. Taneja v. Calcutta District Forum*, AIR 1992 Cal. 95.



- (c) A university or board in conducting public examination, evaluating answers papers, announcing the results thereof and thereafter rechecking of the marks of any candidate on application made by the concerned candidate is not performing any service for hire as they were performing their statutory duty while holding examinations.²²

The holding of the National Commission in *Ruchika Jain* that the relationship of teacher and student in an educational institution does not mean the hire of service because a student is not such a consumer which is linked in any way with the buyer of any economic goods and hiring of service cannot be linked with education, teacher and student seems to be erroneous.

Reconciliation of conflict

1. Under the Consumer Protection Act though consumer fora can pass an interim order on a complaint²³ but that is only in relation to relief that it can grant.²⁴ So it has been rightly held²⁵ that consumer fora cannot pass interim order to give provisional admission to candidates who are below prescribed cut off for admission in that course as it is beyond its functions and would be illegal.
2. There is an ambiguous conflict in case law on the nature and scope of various functions of the educational institutions for the applicability of the Consumer Protection Act, 1986. A student is neither a 'consumer' nor education service rendered by university etc. a 'service' when the university/college is performing its "Statutory duty" while holding examinations.²⁶
3. But a student is a 'consumer' and education is also 'service' when educational institutions are performing administrative functions of issuing marks sheets, certificates etc. 'connected' with such 'statutory duty'.²⁷

22. *The Registrar, University of Bombay v. Mumbai Grahak Panchayat, Bombay*, 1994 (2) CTJ 357 (CP) (NC). Reversing *Mumbai Grahak Panchayat, Bombay v. Registrar, University of Bombay*, 1993 (1) CPJ 37 (Mah. SC); *Joint Secretary, Gujarati Secondary Education Board v. Bharat Narottam Thakkar*, 1994 (2) CTJ 963 (CP) (NC); *Panjab University and Anr. v. Inder Mohan*, 1999 (II) CPJ 386 (NC).

23. See Consumer Protection Act, 1986, s.13 (3B) inserted in 2002 in the Act.

24. *Id.*, under s. 14 read with s. 13.

25. *Supra* note 1, *Ruchika Jain's* case.

26. *Supra* notes 1 and 22.



4. Clarification, however, in this field by a Supreme Court judgment in an appropriate case will be of immense help to the students consumer community and legal fraternity because of the apparent conflict²⁸ regarding statutory and non-statutory functions of the educational institutions.

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28. The author of present paper had already stated this in his earlier article, "Working of the Consumer Protection Act, 1986 in the field of services" *XXI Delhi Law Review* 106 at 109(1997) for services in the field of "Education".

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