

IN THE DELHI STATE CONSUMER DISPUTES

REDRESSAL COMMISSION

Date of Institution:28.03.2023

Date of Hearing:29.10.2025

Date of Decision:17.11.2025

FIRST APPEAL NO.-129/2023

IN THE MATTER OF

FITJEE LTD.,

29-A, KALU SARAI,
SARVPRIYA VIHAR,
NEW DELHI-110016.

(Through: Mr. Mukesh M. Goyal, Advocate)

...Appellant

VERSUS

MR. MANAS MEHRA,

ACTING THROUGH HIS FATHER AND
NATURAL GUARDIAN

GP. CAPT. MANOJ MEHRA,
RESIDENT OF OLD WILLINGDON CAMP,
INDIAN AIR FORCE, RACE COURSE,
NEW DELHI-110003.

(Through: Mr. G.L.N. Murthy, Advocate)

...Respondent

CORAM:**HON'BLE JUSTICE SANGITA DHINGRA SEHGAL
(PRESIDENT)****HON'BLE MS. BIMLA KUMARI, MEMBER (FEMALE)**

Present: Mr. Sukhbir Sheoran, proxy counsel for Mr. Mukesh Mohan Goel, counsel for the Appellant.
Mr. G.L.N. Murthy, counsel for the Respondent.

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL,**PRESIDENT****JUDGMENT**

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

"...2. The complainant took admission in FIITJEE (OP) for a two year weekend class programme for JEE advance 2021, which was to commence from April, 2019. Complainant paid fees of Rs. 4,01,493/- on 29.10.2018 for the same. Receipt of the same is annexed as Annexure-C/2.

3. It is stated that the complainant attended two weekend classes and after attending the same, found the coaching to be unsatisfactory. Therefore he desired to discontinue the coaching and sent a withdrawal letter through his father on 21.05.2019. It was informed through the said letter that the complainant would be withdrawing from the aforesaid course w.e.f. 25.05.2019. Refund of the fee paid i.e Rs. 4,01,493/- was sought after proportion deduction for two weekend classes which the complainant had attended.

4. Complainant was surprised to receive reply dated 31.05.2019 from OP denying refund of the fees after relying upon the declaration made in the enrollment form.

5. It is next stated by the complainant that after sending the legal notice dated 25.06.2019, OP vide email dated 19.07.2019 informed the father of the complainant that payment of Rs. 24,780/- was credited to his bank account through NEFT without giving any details. Complainant's father sent another letter dated 03.09.2019 seeking details as to why only part payment was refunded. Balance amount was sought to be refunded however OP neither responded nor refunded the balance amount to the complainant. Hence the instant complaint.

6. Alleging deficiency of service and unfair trade practice complainant prays for direction to OP to refund Rs.

4,01,493/- after making deduction of the proportionate amount of two weekend classes and further deduction of Rs. 24,780/- paid by OP to the complainant. Additionally, compensation of 2 lac is sought, for harassment and mental agony. It is further prayed that OP be directed to pay interest @ 18% p.a. on the monetary relief sought for and Rs. 22,000/- towards the litigation cost.”

2. The District Commission after taking into consideration the material available on record passed the order dated **10.02.2023**, whereby it held as under:

“12. The first objection raised by OP that complainant is not a consumer in view of the observation of Hon'ble Supreme Court taken in case title as *PT Koshi Vs L.N. Charitable Trust* wherein it has been held that education is not a commodity, is not maintainable. Distinguishing the above law laid, a three judge bench of Hon'ble National Commission in **Deepak Tyagi and others v/s Sh. Chatrapati Shivaji** pronounced on 20.01.2020, in para 46 held:

“We are of the opinion that any defect or deficiency or unfair trade practice pertaining to a service provider like coaching centres does fall within the jurisdiction of the Consumer Forum.”

13. Therefore, in view of the law laid down in the case (*supra*) the institute of OP, does fall within the jurisdiction of this commission and complainant does fall within the definition of consumer.

14. The next objection raised by OP is that the Consumer Commission cannot go behind the terms of the contract. As complainant and his son had accorded their consent to the terms and conditions contained in the enrollment form without any coercion or undue influence therefore, they cannot agitate the same now. Regarding this, we feel it is pertinent to look into the clauses mentioned in the enrollment form. A clause in the Enrollment Form is reproduced as under for perusal -

Para 8: “I understand that if I leave the institute before completing the full course for any reason whatsoever, 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 for refund of fees.”

15. Mere reading of the Paragraph above shows that agreement clause is arbitrary and unreasonable. We do not find any merit in the above assertion of OP, as the contract is evidently one sided and Complainant was not in position to negotiate the terms. We are of the view that the terms of the agreement are not invincible or indestructible, if the same are unreasonable or unfair.

16. The following extracts from the judgment of Hon'ble Supreme Court in the matter of LIC of India Vs Consumer Educational & Research Centre (1995) 5 SCC 482 are worthy of consideration:-

“It is, therefore, the settled law that if a contract or a clause in a contract is found unreasonable or unfair or irrational one must look to the relative bargaining power of the contracting parties. In dotted line contracts there would be no occasion for a weaker party to bargain or to assume to have equal bargaining power. He has either to accept or leave the services or goods in terms of the dotted line contract. His option would be either to accept the unreasonable or unfair terms or forego the service forever. With a view to have the services of the goods, the party enters into a contract with unreasonable or unfair terms contained therein and he would be left with no option but to sign the contract.”

17. Further it is noticed that no exit clause has been provided in the agreement in case the students finds the services of OP unsatisfactory and wishes to withdraw from the Institute. Absence of the exit clause makes the agreement unconscionable as it is one sided.

18. Similar, view has been taken in **Brilliant Tutorial Vs Rahul Das** reported as Appeal no. 509/2006 decided on 09.01.2017 wherein the view of the Hon'ble State Commission, Delhi was that:-

“any such term of contract between the parties, which allows the provider of service to forfeit the amount of service, which he has not provided is against the public policy and good conscious, unjust and unconscionable as

the provider of service has the right to charge consideration only if it provides the service.”

19. *Therefore, we are of the opinion that OP cannot draw any benefit from the consent of the Complainant as the terms of the contract are arbitrary, unreasonable and one sided.*

20. *As regards OP not filling the vacancy, nothing has been placed on record by OP to substantiate the same. Even if we consider the fact that OP must have incurred costs prior to commencement of the said course, OP cannot forfeit the full fee of the complainant on the pretext of financial loss when the student has attended only two weekend classes. It would not be just and proper for OP to retain the full two years course fee from the student/complainant's son who attended only two weekend classes.*

For refund of fee, we are guided by FIITJEE Ltd. V/s Minathi Rath and anr 2012 (1) CPJ 194 (NC) and Islamic Academy of Education V/s State of Karnataka (2003) 6 SCC 696, wherein inter alia it is observed as follows:

“16.1 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 (emphasis supplied). 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”

21. *Therefore, we are of the considered view that OP is entitled to deduct fee for the period, services of OP were availed and proportionate reasonable fee from the advance fee collected, for the cost incurred by them and refund the remaining amount to the complainant. As per the 'Instrument Acknowledgement' issued by OP, appended at Page 14 of the complaint, Complainant had paid total amount of Rs*

4,01,493/-. OP in their pleadings have nowhere stated that the said instruments have not been encashed therefore it is assumed that OP has received the said amount.

22. In view of the above, OP is directed to refund the above stated amount after deducting the amount paid by OP towards tax i.e. Rs. 52,993/-, amount already paid to the complainant i.e. Rs. 24,780/- and proportionate deduction for the two weekend classes. Therefore OP is directed to pay Rs 3,20,000/- with interest @ 6% p.a. from the date of filing of complaint within three months from the date of order. Failing which OP shall pay the above stated amount @ 9%p.a. Additionally OP is directed to pay Rs 25,000/- compensation for harassment and litigation charges.”

3. Aggrieved by the aforesaid impugned order of the District Commission, the Appellant/Opposite Party has challenged the aforesaid order on the ground that the District Commission has failed to consider the latest pronouncement of the Hon'ble National Commission. The Appellant further submitted that the District Commission has failed to consider the terms and conditions of the enrolment form wherein it is clearly mentioned that the Respondents shall not be entitled for fees refund in case the Respondent leaves the course in between for any reason whatsoever. Lastly, the counsel submitted that there was no deficiency of service on the part of Appellant as the Respondents failed to prove any deficiency of service on the part of the Appellant. Pressing the aforesaid submissions, the Appellant prayed for setting aside the impugned order passed by the District Commission.
4. The Respondent, on the other hand, filed the reply to the present appeal wherein, they 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. Both parties were directed to file their respective Written submissions along with the judgments if any upon which the either party relied. The written submissions were duly filed by the Appellant & the Respondent

and the same have been considered during the final arguments of the present case.

6. Through written submissions, the Appellant has relied upon the following judgments in support of his case:

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

b) FIITJEE Ltd. Vs. Harish Soni RP No. 2054/2013 decided on 08.10.2015

c) FIITJEE Ltd. Vs. Sajjan Kumar Gupta RP No. 4476/2013.

d) FIITJEE Ltd. Vs. S. Balavignesh RP No. 2684/2014 decided on 09.01.2015.

e) Globsyn Business School vs. Mayuri Ghosh III (2013) CPJ 118 (NC)

f) Brilliant Classes Vs. Shri Ashbel Sam RP NO. 270/2006 decided on 29.01.2010

g) Apeelay Institute of Management and Information Technology Vs. Prashant Ashok I (2009) CPJ10(NC)

7. We have perused the material available on record and heard the counsel appeared on behalf of the contesting parties.

8. The *main question* for consideration before us is *whether the District Commission was right in holding the deficiency of service on the part of the Appellant and awarding the refund to the Respondent.*

9. Perusal of the records reflects that the Respondent had enrolled in a two-year weekend coaching programme for JEE (Advanced) 2021 with the Appellant, for which a substantial fee of Rs. 4,01,493/- was deposited in October 2018. After attending only two weekend classes, the Respondent found the quality of coaching unsatisfactory and, accordingly, submitted a written withdrawal request on 21.05.2019 through his father, seeking discontinuation of the course with effect from 25.05.2019. The Respondent also sought a refund of the fee paid, after proportionate deduction for the

limited classes attended. However, the Appellant denied the request, citing the policy that fees once paid are non-refundable under any circumstances.

10. 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.”

11. 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.

12. 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 Respondent without complying the directions of the Hon'ble Apex Court.
13. 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.
14. *Consequently, we uphold the order dated 10.02.2023 passed by the District Consumer Dispute Redressal Commission-II, Udyog Sadan, C-22 & 23, Qutub Institutional Area, New Delhi-110016.*
15. *Consequently, the present Appeal stands dismissed with no order as to costs.*
16. Application(s) pending, if any, stands disposed of in terms of the aforesaid judgment.
17. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
18. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(BIMLA KUMARI)
MEMBER (FEMALE)

Pronounced On:
17.11.2025

LR-AJ