

S U P R E M E            C O U R T   O F   I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).29700/2009

(From the judgement and order dated 20/08/2009 in RP No.2259/2005 of The NATIONAL CONSUMERS DISPUTES REDRESSAL COMMISSION, NEW DELHI)

VICE-CHANCELLOR,  
TILKA MANJHI BHAGALPUR UNIVERSITY & ORS.

Petitioner(s)

VERSUS

ABINASH PANDEY

Respondent(s)

(With prayer for interim relief and office report)

Date: 26/11/2010      This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.V. RAVEENDRAN  
HON'BLE MR. JUSTICE A.K. PATNAIK

For Petitioner(s)

Mr. Atul Jha,Adv.  
Mr. Dharmendra Kumar Sinha,Adv.

For Respondent(s)

UPON hearing counsel the Court made the following  
O R D E R

Leave granted.

In terms of the signed order, the appeal is allowed and the orders of the National Commission, State Commission and the District Forum are set aside and the complaint of the respondent is dismissed.

(O.P. Sharma)  
Court Master

(J.P. Sharma)  
Court Master

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(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.10062 OF 2010  
(Arising out of SLP(C)No.29700/2009)

VICE-CHANCELLOR,  
TILKA MANJHI BHAGALPUR UNIVERSITY & ORS.

Appellants

VERSUS

ABINASH PANDEY

Respondent

O R D E R

Leave granted. Heard.

2. The respondent appeared for the B.Sc. (I year) examination conducted by the appellant-University. He was declared failed on 26.6.1995. He applied for revaluation in 1996 and the appellant did not comply. In the circumstances, the respondent approached the District Consumer Forum, Bhagalpur under the Consumer Protection Act, 1986 ('Act' for short) for relief. The District Forum by order dated 30.6.2004 allowed the complaint and directed the appellant to re-evaluate the answer scripts of the respondent and also awarded Rs.20,000/- (Rupees Twenty Thousand) to the respondent as compensation. The State Commission dismissed the appeal filed by the appellant on 23.6.2005 and the National Consumer Disputes Redressal Commission dismissed the revision petition filed

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by the appellant on 20/08/2009. The order of the National Commission is challenged in this appeal by special leave.

3. The question that arise for consideration is

(i) Whether students who participate in the examinations could be termed as 'consumers' and the University which conducts the examination as a 'service provider'?

(ii) Whether refusal to re-evaluate the papers would amount to deficiency in service?

3. The issue is covered by the decision of this court

in Bihar School Examination Board vs. Suresh Prasad Sinha

2009 (8) SCC 483 wherein this Court has held that the

statutory Board or University conducting academic examination is not a service provider and therefore a

student who participates in the examination cannot be construed as a consumer under the provisions of the Consumer Protection Act. This Court in Bihar School Examination Board has categorically held:

"Process of holding examination, evaluating answer scripts, declaring results and issuing certificate are different stages of a single statutory non-commercial function...

When Examination Board conducts an examination in discharge of its statutory function, it does not offer its "services" to any candidate.....

The object of the Act is to cover in its net, services offered or rendered for a consideration. Any service rendered for a consideration is presumed to be a commercial

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activity in its broadest sense (including professional activity or quasi-commercial activity). But the Act does not intend to cover discharge of a statutory function of examining whether a candidate is fit to be declared as having successfully completed a course by passing the examination. The fact that in the course of conduct of the examination, or evaluation of answer scripts, or furnishing of marksheets or certificates, there may be some negligence, omission or deficiency, does not convert the Board into a service provider for a consideration, nor convert the examinee into a consumer who can make a complaint under the Act. We are clearly of the view that the Board is not a "service provider" and a student who taken an examination is not a "service provider" and a student who takes an examination is not a "consumer" and consequently, complaint under the Act will not be maintainable against the Board."

4. In view of the above, the appeal is allowed and the orders of the National Commission, State Commission and the District Forum are set aside and the complaint of the respondent is dismissed.

.....J.  
[ R.V. RAVEENDRAN ]