

# Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

“ An aware consumer is an asset to the nation”

Website : [www.advantageconsumer.com](http://www.advantageconsumer.com)

VOLUME – XXXVI

APRIL 2024

ADVANTAGE - IV

## Queries & Answers through the Web

([www.advantageconsumer.com](http://www.advantageconsumer.com) is the website of Consumer Protection Council, Rourkela. One of the major attractions of the website is that a visitor can ask queries on issues relating to consumer protection. Answers to these queries are made free of cost, by the Chief Mentor of the Council, Sri B. Vaidyanathan.)

### NOTIFICATION FOR ELECTING EXECUTIVE COMMITTEE 2024-26

Ref. No: CPC/2024-25/

Date: 14.04.2024

- 1.0 The elections for the executive committee of the council for the period 2024-26 will be held on Sunday, the **5<sup>th</sup> May 2024**.at B/90, Sector-7, Rourkela-3. The executive committee has appointed the undersigned as Returning officer to conduct the election.
- 2.0 Nominations are invited from the members of the council for the election of 12 (Twelve) executive committee members. Subsequently the office bearers, namely, President, Vice President, Secretary, Jt. Secretary and Treasurer, will be elected from amongst the elected committee members, as per the constitution of the council.
- 3.0 The detailed Calendar for the election is as follows.
  - a. Nomination form shall be available from 22<sup>nd</sup> - 29<sup>th</sup> April 2024 at the council office (B/90, Sector-7, Rourkela-769003) between 7.00 PM to 8.00 PM.
  - b. Last date for submission of nomination forms duly proposed and seconded 30-04-2024 (8.00PM)
  - c. Notification of valid nominations after scrutiny 01-05-2024 (9.00PM)
  - d. Last Date of withdrawal of nominations 02-05-2024 (8.00PM)
  - e. Notification of final list of nominations 03-05-2024 (8.00PM)
  - f. Date of Polling (if required) 05-05-2024 (9.30 AM)
- 4.0 General Rules and Regulations to be followed for elections:
  - a. Eligibility:- All the members are eligible for contest and vote.
  - b. One member can either propose or second one candidate only.
  - c. A candidate can not propose or second his own candidature
  - d. The proposer or the seconder should be a bonafide voter.
  - e. The nominations are to be submitted in closed envelopes, addressed to the Returning officer, CPC elections 2024.
  - f. The election will be conducted, if required, on secret ballot system.
  - g. The detailed process of election will be notified during the meeting to be held on **5<sup>th</sup> May 2024**.
  - h. In case of dispute, whatsoever, the decision of the returning officer will be final and binding on all concerned.
- 5.0 The voters list is available with the returning officer. Omissions, if any, may be brought to the notice of the undersigned so that necessary action can be taken at the earliest. For further details the undersigned may be contacted.

(Ashish Kumar)  
Returning Officer, LM - 1225  
Mob: 8895501247

**Consumers beware!! When there is suppression of material facts by the Insured, denial of claims by the Insurance Company is justified.**

7. Heard learned Counsel for Parties and gone through the material on record, including the medical papers relating to the Insured.
8. Learned Counsel for the Complainant/Petitioner stated that the State Commission did not consider that the Insured was hale and hearty and was subjected to a detailed medical examination and pathological tests etc. by the Doctors of the Insurance Company and only thereafter he was enrolled for the insurance scheme and the insurance cover was given to him. The State Commission was, therefore, not justified in holding that there was suppression of material facts on the part of the Insured. An application, being IA No. 3653 of 2018 has also been filed by the Complainant/Petitioner, seeking a direction to the Insurance Company to produce the pathological lab reports and diagnostic test reports of the Insured.
9. Learned Counsel for the Bank stated that in any case the Bank was not liable to pay any compensation to the Complainant/Petitioner. The insurance cover was given by the Insurance Company and for any claim in pursuance thereof the Complainant/Petitioner was required to approach the Insurance Company.
10. Learned Counsel for the Insurance Company reiterated the stand taken before the State Commission that the Insured had suppressed the past medical history and had submitted a false declaration at the time of obtaining the insurance cover of life. The State Commission was, therefore, justified in dismissing the Complaint and the Impugned Order passed by it needs no interference.
11. The question to be decided in this matter is as to whether there is suppression of material facts or not. It is not in dispute that the Insured had taken a housing loan from the Bank. Being a Borrower, he had applied for Group Insurance Scheme under the Master Policy, issued to the Bank, through Membership Form dated 12.07.2010. The risk commenced from 17.08.2010 for sum assured of Rs.15,85,300/- at inception and as per Clause-C, the death benefit of schedule-1 of the Master Policy, in the event of death of a member, the sum assured, which is equal to the loan amount outstanding for the month during which the death occurs, is payable. In the present case, the said amount comes to Rs.14,46,314/- since the Insured had died on 24.11.2012. It is true that before enrolling the Insured under the Group Insurance Scheme, taken by the Bank, he was subjected to thorough medical examination and pathological/diagnostic tests by the Doctors of the Insurance Company, wherein he was found to be in good health and accordingly the insurance cover was given and the Certificate of Insurance was issued to him. But the said examination and tests do not ipso facto absolve a person, taking insurance, from making a true and correct declaration regarding his health habits, whether he suffered with the specified diseases/ailments and whether he had undergone any treatment therefor during the period specified, if any. In view of the insurance coverage to be extended by the Insurance Company to the Insured, the questions, reproduced by the State Commission in Para-15 of the Impugned Order, were indeed relevant/material, in respect of which the Insured had answered in negative whereas he was required to correctly state about the diseases/ailments specified in the said questions and the treatment, if any, taken therefor as also health habits vis-à-vis consumption of alcohol. As per investigation carried out, information gathered by the Insurance Company and from a perusal of medical record of the Insured, it is evident that he was suffering with Liver Cirrhosis. Cirrhosis is usually a result of liver damage from conditions such as Hepatitis-B or C or chronic alcohol use. In other words, constant consumption of alcohol is directly connected with the said disease/ailment. This fact is fortified from the “personal history”, as reflected in the death summary of the Insured prepared by Yashoda Hospital (page 144 of the paper-book), wherein the word “alcohol” has been written. In this view of the matter, there is possibility of a close nexus between chronic use of alcohol and the death of the Insured.
12. In **Satwant Kaur Sandhu vs. New India Assurance Company Ltd. (2009) 8 SCC 316**, it has been observed by the Supreme Court that the expression “material fact” is to be understood in general terms to mean as any fact which would influence the judgment of a prudent Insurer, in deciding whether to accept the risk or not. If the proposer has knowledge of such fact, he is obliged to disclose it, particularly while answering questions in the proposal form. Any inaccurate answer will entitle the Insurer to repudiate their liability because there is clear presumption that any information sought for in the proposal form is material for the purpose of entering into a contract of insurance, which is based on the principle of utmost faith – *uberrima fides*. Good faith forbids either party from non-disclosure of the facts which the party privately knows, to draw the other into a bargain, from his ignorance of that fact and his believing the contrary. (See: **United India Insurance Co. Ltd. Vs. M.K.J. Corporation [(1996) 6 SCC 428]**).

It has also been emphasized that it is not for the proposer to determine whether the information sought for is material for the purpose of the policy or not. Of course, obligation to disclose extends only to facts which are known to the applicant and not to what he ought to have known. Coming to the facts at hand, it cannot be said that at the time of taking the insurance coverage, the Insured was not aware about his diseases. It is evident from the material on record that the Insured was suffering with the aforesaid disease and was also taking treatment therefor before taking the insurance cover and, therefore, the contention of the Complainant/Petitioner that the Insured was hale and hearty at the time of taking the insurance cover is of no significance. Had the Insured given correct declaration or answers to the aforesaid questions, the Insurance Company may have taken an informed decision as to whether he should be enrolled as a Member under the Group Insurance Scheme of the Master Policy, taken by the Bank, or not and if he has to be enrolled what should be the altered terms and premium therefor. However, in the present Case, on account of suppression of material information by the Insured, the Insurance Company has been deprived from taking an informed decision.

13. Once we have held so, it is not necessary for us to consider the aforesaid Application, filed by the Complainant/Petitioner, seeking a direction to the Insurance Company to produce the pathological lab reports and diagnostic test reports of the Insured, and the same stands disposed of.

14. In view of the aforesaid discussion and respectfully applying the law laid down by the Hon'ble Supreme Court in the Case of **Satwant Kaur Sandhu (Supra)**, we are of the opinion that there is suppression of material facts by the Insured and, for the reasons recorded in the Impugned Order, the State Commission is justified in holding that the Insurance Company is not liable to pay the sum assured to the Complainant/Petitioner. Accordingly, the Revision Petition fails and is dismissed. ■

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## **Educational matters do not come within the purview of the Consumer Protection Act, 1986**

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**REVISION PETITION NO. 1151 OF 2022**

(Against the Order dated 11/02/2022 in Appeal No. 179/2019 of the State Commission Karnataka)

NEW HORIZON COLLEGE OF ENGINEERING

.....Petitioner(s)

Versus

KUM. SANDHYA K R

.....Respondent(s)

**BEFORE:**

**HON'BLE MR. JUSTICE R.K. AGRAWAL, PRESIDENT**

**Dated : 01 Mar 2023**

**ORDER**

This Revision Petition has been filed by New Horizon College of Engineering, the Petitioner herein against the Order dated 11.02.2022 passed by Karnataka State Consumer Disputes Redressal Commission, Bengaluru (Principal Bench) (hereinafter referred to as 'the State Commission') in Appeal No.179/2019 whereby the State Commission had partly allowed the Appeal filed by the Appellant and also against the Order dated 15.11.2018 passed by the District Consumer Disputes Redressal Forum, Shanthinagar Bangalore-27 (hereinafter referred to as 'the District Forum') in Complaint No.991/2016 whereby the District Forum had partly allowed the Complaint filed by the Respondent/Complainant.

From the perusal of the Impugned Order dated 11.02.2022 passed by the State Commission and the Order dated 15.11.2018 passed by the District Forum, I find that the Respondent/Complainant before the District Forum had grievance about refund of college fee taken by the Appellant which is an Educational Institution. In view of the law laid down by a Larger Bench of three Members of this Commission in the case of **Manu Solanki and Others Vs. Vinayak Mission University and other connected cases, 1(2020) CPJ, 2010**, wherein the larger Bench had held that Educational matters do not come within the purview of the Consumer Protection Act, 1986 and therefore the Complaint is not maintainable. Relevant portion of the Order is reproduced below for ready reference :-

**"37. The following legal issues arise from the submissions made by the rival parties and the aforesaid decisions of the Hon'ble Supreme Court:**

- *Would any defects/ deficiency/ unfair trade practice indulged by the Educational Institutions post admission, which does not fall within the ‘course of imparting knowledge’ till the degree is conferred, falls within the ambit of the definition of Education?*
- *If we apply the definition of Education, imparting knowledge for full potential, will that criterion apply to the admission stage, when the foundation for admission itself is deficient?*
- *Would preferential activities for extracurricular activities, which do not have a direct nexus with admission fees, syllabus etc. be defined as Core Education? For Example, if students go for a picnic and a mishap happens, does it fall within the definition of deficiency of service and is it part of Core Education? Do educational tours fall within the ambit of the definition of ‘Education’.*
- *Another example, if a school has a swimming pool and students of that institution drown on account of some deficiency or negligence of the authorities, would swimming in the school campus fall within the ambit of Core Education? Does maintaining a swimming pool and teaching swimming be considered as a part of Core Education?*
- *Does defect/ deficiency in service of any boarding/ hostel facilities rendered fall within the umbrella of ‘Education’?*
- *Do coaching centres/ institutions fall within the ambit of the Definition of ‘Educational Institutions’.*
- *Do institutions involved in vocational training like, nursing, designing etc. strictly fall within the definition of ‘Educational Institutions’.*

38. *Learned Counsel appearing for the Petitioners in Revision Petition Nos. 2955 to 2963 of 2018 submitted that once the University is declared as ‘Deemed University’ all functions and activities governed by the University Grants Commission Act (UGC Act), fall within the definition of ‘Authority’ within the meaning of Article 12 of the Constitution and would be amenable only to the jurisdiction of the High Court. It is contended that even if the Education Institutions do not have a proper affiliation, Consumer Fora do not have jurisdiction to entertain the same. In our view even if an Institution imparting education does not have a proper affiliation in imparting education, it is not rendering any service and, therefore, will be out of the purview of the Consumer Protection Act, 1986.*

39. *Learned Counsel appearing for the Petitioner in Revision Petition No. 222 of 2015 vehemently contended that the Complainant had taken admission in B. Ed. course of the Opposite Party on the assurance that the said college was recognized by National Council of Technical Education (NCTE) and affiliated with the Opposite Party No. 2, Uttarakhand Technical University, who subsequently came to know that the Institute was not recognized by NCTE and therefore sought for refund of the fees. Whether such an unfair trade practice post admission would fall within the ambit of the Act needs to be seen. As the Institution is imparting education though it has been not recognized by the National Council of Technical Education, it would not make any difference because it will be covered under the education. Thus, the said Institute would not be rendering any service as defined in the provisions of the Consumer Protection Act, 1986.*

40. *There may be instances where there may be defect/deficiency of service in pre-admission stages by an educational Institution but as the educational Institutions are not rendering any service by imparting education, these instances will also not give any right for a person to approach the Consumer Fora under the provisions of the Consumer Protection Act, 1986.*

41. *Learned Counsel for the Educational Institution in Revision Petition No. 1731 to 1733 of 2017 argued that imparting education in a school is not limited to teaching in a classroom 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.*

42. *Another relevant issue which was raised during the course of arguments was with respect to any defect or deficiency in the transportation which is provided by the schools/colleges. School buses are vehicles hired by the Institutions and in most schools is made compulsory with, the prescribed*

fees including the cost of transportation. Children come in their own vehicles also and we are of the view that any defect or deficiency in transporting the children to the school does fall within the definition of 'imparting knowledge' and, therefore, the Consumer Fora has no jurisdiction to entertain such Complaints arising out of these issues.

43. Now we address ourselves to the submissions made by the Learned Counsels in Revision Petition No. 462 of 2013 with respect to Coaching Institutions. The question which arises here is whether the Coaching Institutions fall within the definition of "Educational Institution". Learned Counsel appearing for the Coaching Centres vehemently contended that though the Coaching Centres are not conventional Educational Institutions, since they are providing Coaching and training to students of an Educational nature same principles that apply to the Educational Institutions would also apply to these Institutions and that this view had been taken by this Commission in *Fitjee Limited Vs. Minathi Rath I (2012) CPJ 194 NC*. In this case it has been held that Complainants were consumers who sought to avail services for consideration and that *Fitjee* is the provider of the services and that they are Consumer Disputes. The issue that has been raised is that if the Coaching Centres were treated at par, as observed in this order, to be providing Coaching and training, to students of an Educational nature, then they too fall within the definition of 'Education' and, therefore, the services rendered by Coaching Centres cannot be construed to be 'Service' as defined under Section 2(1)(o) of the Act.

44. Learned Counsel appearing for the Complainants submitted that there is no Regulatory Mechanism applicable to the Coaching Institutes. He contended that Coaching Centres are promoting rote learning and not imparting actual knowledge. He vehemently contended that they are running for a commercial purpose with a single aim of making profit and are expanding using the franchise route.

45. We are of the considered view that conduction of Coaching Classes does not fall within the ambit of definition of 'Education' as defined by the Hon'ble Seven Judge Bench of the Supreme Court in *P.A. Inamdar (Supra)*. Coaching Centres cannot be equated to regular schools or colleges which are regulated by a Regulatory Authority and also confer a Degree/Diploma on the student who has passed in the examinations conducted as per the Rules and norms specified in the statute and also by the concerned Universities. Therefore, strictly speaking Coaching Centres cannot fall within the definition of 'Educational Institutions'. We refrain from making any comments on the submissions of the learned Counsel for the Complainants with respect of Coaching Institutions indulging only in 'rote learning'.

46. For all the afore-noted reasons, 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 Fora.

47. Learned Counsel appearing for the Petitioner in Revision Petition Nos. 3383 and 3384 of 2018 submitted that student, who took admission in Multimedia Diploma and Certificate Courses in 3D Animation, Visual Effects, Video, Editing, Graphic Designing and Web Designing, though fall within the definition of Vocational training, the programs are recognized by Karnataka State Open University and withdrawal of any such program cannot fall within the jurisdiction of the Consumer Fora.

48. At the outset, a broad definition of all that comprises 'Vocational Courses' needs to be seen. Generally speaking, there is a three tier system in HR Vocational Training program in India, which involve Certification level for 10+2 students, Diploma level Graduation program and Post-Graduation programs. For example vocational program include courses in areas of agriculture, automobiles, information technology, air conditioning, lab technician, live stock management, films and television, tourism etc. The Hon'ble Supreme Court in *State of Punjab & Ors. Vs. Senior Vocational Staff Masters Association & Ors., 2017 (9) SCC 379*, in para 22 observed that Vocational Courses are those Courses in which teaching is not on regular basis, though they play an important role in the grooming of students in the different fields. Vocational education can also be termed as job oriented education and trains young people for various jobs and helps them acquire specialize skills.

49. The Union Cabinet has approved a merger of the existing Regulatory Institutions in the skills space — National Council for Vocational Training (NCVT) and the National Skill Development Agency (NSDA) into the National Council for Vocational Education and Training (NCVET).

50. The main purpose and objective of NCVET is to recognize and regulate and assess the skill related service regulators. It is clarified that even if there is any defect/deficiency/unfair trade practice in the services offered by private bodies in offering these courses and are not regulated and do not confer any Degree

or Diploma recognized by any Approved Authority do fall within the ambit of definition of 'Educational Institutions' and hence the Consumer Fora have no jurisdiction to entertain the same.

51. In view of the foregoing discussion, we are of the considered opinion that the Institutions rendering Education including Vocational courses and activities undertaken during the process of pre-admission as well as post-admission and also imparting excursion tours, picnics, extra co-curricular activities, swimming, sport, etc. except Coaching Institutions, will, therefore, not be covered under the provisions of the Consumer Protection Act, 1986."

Thus, the Appellant College does not come within the purview of the Consumer Protection Act, 1986 and therefore the Complaint under the Consumer Protection Act, is not maintainable. The Order passed by the State Commission and the Order of the District Forum are therefore set aside. The Revision Petition is allowed leaving open to the Respondent/Complainant to take recourse/remedy as is available under law.

.....J  
R.K. AGRAWAL  
PRESIDENT

**“Awareness is the first step;  
voting is the next.”**

### Support Your Cause

Consumer Protection Council, Rourkela is a registered voluntary organization, espousing the cause of the consumer. To a great extent, for its sustenance it depends on the good will of its donors like you. We solicit your support for sustaining the multifarious activities of the council. Donation to the council is eligible for tax exemption under Section : 80-G(5) (iv) of the IT Act. Donation may please be contributed through cash or crossed cheque / DD, drawn in favour of “ **Consumer Protection Council, Rourkela**”.

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**ADVANTAGE CONSUMER**

**ENGLISH MONTHLY**



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