

Form No:HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT

BAHAWALPUR BENCH, BAHAWALPUR

JUDICIAL DEPARTMENT

W.P No.2863/2024

Dr. Omer Chughtai, etc. Vs Province of the Punjab, etc.

S.No. of order/ proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties or counsel, where necessary
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16.05.2024 Mr. Ehsan Ullah Manj, Advocate for petitioners.
Rai Mazhar Hussain Kharal, Assistant Advocate General.
Mr. Zafar Iqbal Sheikh, Advocate for respondent No.3.

This constitutional petition is directed against order dated 27.03.2024, whereby respondent No.2 - Presiding Officer District Consumer Court Bahawalnagar - had dismissed the application preferred by the petitioners seeking rejection / return of complaint, brought by respondent No.3. Petitioners plead that respondent No.2, exercising powers under the provisions of Punjab Consumer Protection Act, 2005 (‘Act 2005’), lacks jurisdiction to hear, entertain and adjudicate the complaint and in fact jurisdiction to inquire into allegations of maladministration, malpractices and alleged failure on the part of the Healthcare Service Provider – [claimed that Chughtai Lab Jail Road Lahore is the Healthcare Service Provider] exclusively vests in the Healthcare Commission under the provisions of Punjab Healthcare Commission Act, 2010 (‘Act of 2010’).

2. Facts essential for deciding instant constitutional petition are that respondent No.3 hired services for carrying out certain clinical tests. Respondent No.3 questioned the veracity of clinical reports by the petitioners and put service provider to notice, whereafter

complaint was filed for recovery of damages, claiming liability for faulty or defective services, by invoking jurisdiction of Consumer Court. Jurisdiction of respondent No.2 to proceed with complaint was questioned and objection repelled. Hence, this petition.

3. Learned counsel for the petitioners pleaded that in terms of sub-section (2) of section 26 and section 29, read with section 4 (e) of the Act of 2010, jurisdiction to investigate with respect to allegations of maladministration, malpractice and failure in provisioning of healthcare services vests, exclusively, in the Commission, which jurisdiction can be triggered upon bringing grievance to the notice of Commission in terms of section 4(7)(a) of the Act 2010. It is emphasized that issue came up for adjudication earlier and decided vide decision in the case of Dr. Riaz Qadeer Khan vs. Presiding Officer, District Consumer Court, Sargodha and others (PLD 2019 Lahore 429). Adds that ratio was followed in the case of Lady Dr. Nafesa Saleem and another vs. Justice of Peace/Additional Sessions Judge, Multan and 2 others (PLD 2022 Lahore 18) and also in an unreported decision in the case of “Mariam Sajjad vs. Prof. Dr. Rasool Ahmed Chaudhry (RFA No.70634/2023).

4. Conversely, learned counsel appearing for respondent No.3 submits that jurisdiction of the Commission, which is otherwise discretionary, is restricted to imposition of penalty and Commission had no power to adjudicate claim of damages and grant damages, contractual or tortuous, which jurisdiction is either vested in the Consumer Court or Civil Court, depending on the facts of the case. He relies upon unreported decision in the case of “Mariam Sajjad vs. Prof. Dr. Rasool Ahmed

Chaudhry (RFA No.70634/2023), Dr. Muhammad Asif Osawala vs. Mrs. Qamar-un-Nisa Hakro through Attorney and another (PLD 2022 Singh 430), Dr. Shamshad Hussain Syed vs. District Consumer Court, Lahore and another (PLD 2010 Lahore 214) and Shifa International Hospitals Ltd. and others vs. Mst. Hajira Bibi and others (PLD 2018 Islamabad 372).

5. Heard.

6. Arguments advanced by the petitioners, if appreciated would result in rendering various provisions of Act 2005 redundant, which was neither intended through legislative endeavour in shape of Act 2010 nor could such an intent be implied. No inconsistency is found in the enactments, which clearly define the path and the destination. Upon perusal of both statutes no case for express or implied repeal is made out. Principles of harmonious construction are attracted and applicable.

7. A bird's eye view is imperative to understand the scope of the authority and powers available to the Commission and the Consumer Court, conspicuous distinctiveness in the functions to be performed and jurisdictional context, respectively enjoyed and exercised under each enactment. Section 2(k) of Act 2005 defines services, which inter alia included 'medical services'; section 13 of Act 2005 defines liability in the context of faulty or defective services. Section 25 of Act 2005 describes the nature of the claim, that is 'A claim of damages arising out of the contravention of any provision of this Act shall be filed before a Consumer Court set up under this Act'.

8. Conversely, the scope of authority / control conferred unto the Commission under the Act 2010 is akin to a regulatory control – needed to be appreciated in the context that Commission is the regulator of the Healthcare Services establishment or service provided, being the licensee. There is no cavil that Commission is empowered to enquire and investigate into maladministration, malpractice and failure in provisioning of Healthcare services – section 4(e) of Act 2010 but in the capacity of regulator, ensuring improvement of quality of healthcare services. Commission may exercise powers on the application of the aggrieved person, which assumption and exercise of authority is evidently discretionary – distinction has been drawn vis-à-vis the application of the aggrieved person and a reference by the Government or direction by Constitutional Court(s), sub-section (7) of section 4 of Act, 2010. Fundamental difference in assumption and exercise of jurisdiction is with respect to orders Commission could pass, in the context of the grievance raised, if it acted upon the application of the aggrieved person. In terms of section 28 of the Act 2010, Commission is empowered to impose fine / penalty, in wake of contravention of any provision of Act 2010, which cannot exceed of Rs.500,000/-, depending upon the gravity of the offence. Use of expression ‘offence’ in section 28 of Act 2010 is meaningful.

For the purposes of this case, complaint filed by respondent No.3 is not seeking imposition of penalty for any alleged offence committed by the Healthcare Services provider but damages for faulty and defective services. Services rendered being the licensee and services rendered towards the hirer or consumer are different and this distinction sheds light on the distinctiveness of the

enactments and scope of powers defined therein. A consumer can file a claim of damages before the Consumer Court and simultaneously seek indulgence of the regulator / licensor for action against licensee. Section 29 of Act 2010 has to be construed in the context of the authority of the Commission, which provision of law cannot be employed to restrict or discourage claim of damages. Choices of the hirer of services cannot be limited for seeking penalty only but evidently the option of subjecting service provider to contractual or tortuous damages is otherwise available before the Consumer Court or the Civil Court, depending upon the facts of the case. These two streams of remedies manifest true intent of the legislature and address the purpose/objective of each of the enactment.

9. Learned counsel for petitioners failed to convince that how damages could be granted by the Commission under the Act 2010. Argument that no claim of damages could be filed unless allegation of maladministration or malpractice is adjudicated upon and endorsed by the Commission is misconceived. Role of the Commission to act as gatekeeper for determining the existence and pursuit of damages is mere figment of imagination, and not conceived by the provisions of Act 2010. Learned counsel for the petitioner failed to give any explanation when confronted with the mandate of sub-section (11) of section 4 of Act, 2010, which reads as,

“The Commission shall not investigate or inquire into any matter subjudice before a Court of competent jurisdiction on the date of the receipt of a complaint. Reference or motions.”

10. Reliance of the petitioner on sub-clause (2) of section 26 of Act, 2010 is also misconceived, when

considered in the context of the narrative in paragraphs supra. Learned counsel for the petitioners concedes that complaint of respondent No.3 does not fall within the context of medical negligence, as contemplated and defined in the Act of 2010.

11. Learned counsel emphasized on the ratio settled in the case of Dr. Riaz Qadeer Khan vs. Presiding Officer, District Consumer Court, Sargodha and others (PLD 2019 Lahore 429), without appreciating that therein claim pleaded before the Consumer Court was regarding medical negligence. Penultimate paragraph of decision in the case of Dr. Riaz Qadeer Khan's (supra) is relevant and calls for reproduction, which reads as,

“For what has been discussed above, we are persuaded to hold that Healthcare Commission is the only competent forum to investigate into the allegations of maladministration or malpractice by a health service provider and the Consumer Court has no jurisdiction to adjudicate upon such matters. Resultantly, all these writ petitions are allowed and the complaints pending before the learned Consumer Court are directed to be returned for its presentation before the appropriate forum.”

[Emphasis supplied]

It is evident that in wake of allegations of maladministration or malpractice by the Health service provider, the Commission and not the Consumer Court has the jurisdiction, to impose penalty or pass other consequential orders, which *per se* excludes claim of damages from the jurisdictional domain of the Commission. It is interesting that one of the Judges-in-Chambers being co-signatory of the decision in the case of Dr. Riaz Qadeer Khan's, has authored the decision dated 19.12.2023 while deciding RFA No.70634/2023 (supra), wherein pertinent observations are made by learned Division Bench, which are reproduced hereunder:-

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“The Punjab Healthcare Commission can investigate into the allegations of malpractice of failure on the part of healthcare service provider and can announced order in this regard but it has no jurisdiction to grant damages to a person affected by such service whereas said relief can only be granted by the Civil Court if an aggrieved person proves his case. Furthermore, under the Act ibid even no bar has been imposed upon an aggrieved person to approach Civil Court for claim of damages against any healthcare service provider. As such the argument of learned counsel for the respondent have no force and same is repelled.”

12. It is evident that learned author Judge-in-Chambers provided requisite explanation, observing that claim of damages is distinguishable from the power to impose penalty, jurisdiction otherwise extended to the Commission under the law. Yes, as far as the question of imposition of penalty by the regulator, Commissions may claim exclusivity to the extent thereof. The ratio settled in the case of Dr. Muhammad Asif Osawala (supra) also provides an insight into distinctive jurisdictional domain(s), respectively available to the Commission and Consumer Court, and scope thereof.

13. In view of the aforesaid, this petition is devoid of merits and same is hereby **dismissed**. It is pertinent to observe that any observation herein made is solely for the purposes of deciding the case, which shall neither prejudice determination of the claim before Consumer Court nor affect the case of any party.

(ASIM HAFEEZ)
Judge

M.S.Aleem

Approved for reporting

Judge