

**JUDGMENT SHEET.**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**Crl. Appeal No.114 of 2013.**

**Muhammad Farooq Khan**  
**Vs.**

**Excel-Labs, through Central Executive Officer & another.**

**Appellant by: Malik Saqib Mehmood, Advocate**

**Respondents by: Mr. Misbah ul Mustafa, Advocate**

**Date of Decision: 26.01.2015.**

**Aamer Farooq, J.** - Brief facts leading to filing of the instant appeal are that the appellant approached respondent No.1 for histopathological tests on 14.04.2012. In the report compiled by respondent No.1, the appellant was diagnosed as patient of Celiac Disease. The Physician on the basis of the referred report advised the appellant not to eat wheat or any of its by-product.

2. After about more than a year the tests were conducted again from Agha Khan University Hospital, Karachi having its Collection Centre at Kashmir Road, Rawalpindi on 03.07.2013. The subsequent report, provided by Agha Khan University Hospital Karachi, indicated that the appellant was not suffering from the above mentioned disease.

3. The appellant felt aggrieved from such report, therefore, instituted a complaint before the Authority namely respondent No.2, constituted under Islamabad Consumer Protection Act, 1995 (The Act) for redressal of his grievance. The complaint was dismissed by respondent No.2 (The Additional Sessions Judge-IV (West), Islamabad vide order dated 01.11.2013 on the ground that the act of respondent No.1 does not fall within the purview of unfair trade practice.

4. The appellant has filed the instant appeal assailing the above referred order of respondent No.2. Learned counsel for the appellant, inter alia, submitted

that the view taken by respondent No.2 is erroneous inasmuch as the complaint, before it, was competent. It was further submitted that the appellant falls within the definition of consumer as provided in Section 2 (3) of the Act and respondent No.1 provided services to him within the meaning of Section 2 (5) of the Act. In support of his contentions, learned counsel for the appellant relied upon **PLD 2010 Lahore 214** and **PLD 2013 Lahore 69**.

5. The learned counsel for respondent No.1 defended the impugned order and submitted that the same is in accordance with law. He further submitted that the act of respondent No.1 does not fall within the meaning of unfair trade practice as provided in Section 2 (6) of the Act. He further suggested that, on merits, the appellant has no case inasmuch as the subsequent tests were conducted after about more than a year during which time the appellant had been on medication and, therefore, there is nothing to show that the tests conducted by respondent No.1 were defective in any manner.

6. The jurisdiction of the Authority, constituted under the Act, can be invoked under Section 6 (1) of the Act. In this regard the procedure for disposal of the complaint is provided in Section 8 (1) *ibid* which reads as follows:

***“A complainant may in respect of any goods sold or delivered or any service provided or supplied or against any unfair trade practice file a complaint with the Authority”.***

7. The bare reading of the above mentioned provision of the law makes it clear that a complainant can in respect of any service provided or supplied file a complaint with the Authority. In this regard under Section 2(2) a complainant means, *inter alia*, a consumer and under Section 2 (3) of the Act a consumer includes any person who hires any goods or services for consideration. The definition of services is provided in Section 2 (5) of the Act and rendering of medical services forms part of it.

8. The preamble of Islamabad Consumer Protection Act, 1995 makes it clear that it was enacted to promote and protect the interests of consumers and for the matters incidental thereto which means that the Act was passed to protect society and individuals from exploitation. The Indian Supreme Court while discussing the scope of Indian Consumer Protection Act, 1986 observed as follows:-

***“According to the preamble, which can provide useful assistance to ascertain the legislative intention of the Act, the Act was enacted, to provide for the protection of the interest of consumers. Use of the word ‘protection’ furnishes key to the minds of makers of the***

*Act. Various definitions and provisions which elaborately attempt to active this objective have to be construed in this light without departing from the settled view that a preamble cannot control the otherwise plain meaning of a provision. The act meets long felt necessity of protecting the common man from such wrongs for which the remedy under ordinary law for various reasons has become illusory. The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces against powerful business, described as, 'a network of rackets' or a society in which producers have secured power to rob the rest and the might or public bodies which are degenerating into storehouses of inaction where papers did not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked. The legislature has taken precaution not only to define 'complain' 'Complainant', 'consumer' but even to mention in detail what would amount to unfair trade practice by giving an elaborate definition in clause (r) and even to define 'defect' and 'deficiency' by clauses (f) and (g) for which a consumer can approach the Commission. The act thus aims to protect the economic interest of a consumer as understood in the commercial sense, as a purchaser of goods and in the larger sense user of services. It is a milestone in history of socioeconomic legislation and is directed towards achieving public benefit." (Reliance is placed on Lucknow Development Authority V. M.K. Gupta AIR 1994 SC 787.*

In case titled Charan Singh V. Healing Touch Hospital AIR 2000 SC 3138, the Supreme Court of India held:--

*"The Consumer Protection Act is one of the benevolent pieces of legislation intended to protect a large body of consumers from exploitation. The Act provides for an alternative system of consumer justice by summary trial".*

9. Respondent No.1 is providing services of conducting pathological test on the basis of which medical treatment ensues. The conduction of referred tests and compilation of reports constitute "services" within the meaning of the Act. In this behalf it is observed that definition of the word "services" in the Act is inclusive and not exhaustive. Moreover the legislation, under interpretation, is for the benefit of the society and such like enactments are to be given purposive interpretation, keeping in regard the basic intent of the statute and without transgressing its object and scope.

10. In the instant case, for the purposes of the Act, since the appellant is a consumer and respondent No.1 is rendering services and the consumer obtained the services of respondent No.1, therefore, complaint before the Authority (respondent No.2) could be instituted.

11. In view of what has been stated above, the learned Additional Sessions Judge-VI (West), Islamabad misconstrued the provisions of the Act in holding that the complaint was not maintainable, before it. Therefore, the instant appeal is allowed and order dated 01.11.2013 passed by learned Additional Sessions Judge-VI (West), Islamabad is set aside and the matter is remanded for decision, on merits.

**(AAMER FAROOQ)**  
**JUDGE**

\*Altaf Malik

*Blue slip added*

*Approved for reporting*