

P L D 2015 Lahore 204

Before Shezada Mazhar, J

PAKISTAN MOBILE COMMUNICATION LTD.---Petitioner

Versus

**JUDGE DISTRICT CONSUMER COURT, GUJRANWALA and 3 others---
Respondents**

Writ Petition No.28834 and C.Ms. Nos. 2901 and 2902 of 2014, heard on 26th November, 2014.

Inspector-General of Police, Punjab v. Mushtaq Ahmed Warraich PLD 1985 SC 159 rel.

Ahmad Farooq Meer on behalf of Farooq Amjad Mir for Petitioner.

Amjad Sher for Respondent No.2.

Date of hearing: 26th November, 2014.

JUDGMENT

C.M.No.2901/2014

This is an application for placing on record certain documents. Allowed subject to all just and legal exceptions.

C.M.No.2902/2014

2. Sought for dispensation allowed subject to all just and legal exceptions.

MAIN CASE

SHEZADA MAZHAR, J.---Petitioner is aggrieved of an order dated 22-9-2014 whereby the Presiding Officer, District Consumer Court, Gujranwala while dismissing the application moved under Order VII, Rule 11, Code of Civil Procedure, 1908 held that complaint against petitioner Telecommunication Company is maintainable before the Consumer Court.

3. It is the case of the leaned counsel for the petitioner that this Court in F.A.O. No.51/2013 arising from the order of Consumer Court vide order dated 9-6-2014 held that District Consumer Court lacked jurisdiction in view of the Telecom Consumers

Protection Regulations, 2009 whereas the case of respondent is that a conflicting judgment has been passed by this Court in F.A.O. No.60/2009 wherein the complaint before the Consumer Court against the Telecommunication Company was held maintainable.

4. Arguments heard and record perused.

5. Before dealing with the case in hand, it is pertinent to point out that judgment passed by this Court in F.A.O. No. 51/2013 and F.A.O. No.60/2009 are not conflicting with each other. In F.A.O. No. 51/2013 it was held that in presence of Telecom Consumers Protection Regulations, 2009, which is a federal statute, a provincial statute i.e Punjab Consumer Protection Act, 2005 is not applicable, whereas, in F.A.O. No.60/2009 a complaint under Punjab Consumer Protection Act, 2005 was filed in year 2006 before the promulgation of Telecom Consumers Protection Regulations, 2009, therefore it was held that Telecom Consumers Protection Regulations, 2009 will become applicable from the date of notification i.e. 6-4-2009 and cannot be applied retrospectively, and it was held that as the complaint filed in the year, 2006 under the Punjab Consumer Protection, Act 2005 was maintainable.

6. In the case at hand, respondent No.2 has filed the complaint admittedly on 11-6-2012 whereby he prayed that action against the petitioner be taken under the provisions of sections 28, 31 and 32 of the Punjab Consumer Protection Act, 2005 as the petitioner company is involved in sub-standard, low quality, faulty, defective services and by charging extra amount and making wrong addition and deduction from the account of the complainant as well as from the other consumers of the petitioner company.

7. Admittedly petitioner company is a Telecommunication Company which is a federal subject and falls at item No.7 of the Federal Legislative. It is for this reason this Court while dealing with F.A.O. No.51/2009 has held vide order dated 9-6-2014 that Telecom Consumers Protection Regulations, 2009 presently hold the field and in case of any grievance with regard to Telecommunication the same will be dealt with under said Regulation. Regulation No.11 of the Telecom Consumers Protection Regulations, 2009, which states as under:--

11. Nature of complaints-Notwithstanding anything contained in any procedures provided in any law for the time being in force, all Operators shall entertain complaints of Consumers in relation to any Service, including but not limited to the following issues:

(i) Misuse of Service

(ii) Quality of Service

(iii) Illegal Practices

(iv) Poor Services

(v) Provision of Service

(vi) Misleading Statements

(vii) Non-Provision of Service

(viii) Mobile Number Portability related complaints

8. The contents of complaint filed before the Consumer Court by respondent No.2 clearly reveal that the same falls within the parameters mentioned in regulation 11 of Telecom Consumers Protection Regulations, 2009. Regulation 15 whereof relates to procedure by which the complaints needed to be dealt with by the authority and also contains the action/powers which can be passed/imposed against the Telecommunication company as mentioned in Regulations No.15(9) and (10) reproduced hereunder for ready reference:-

(9) In the event that a complaint filed under sub-regulation (2) of Regulation 15 reveals general deficiency or systemic inadequacy in the provision of Services adopted by the Operator, the Operator shall take remedial steps in respect of all Consumers and intimate the same to the Authority.

(10) Without prejudice to the forgoing the Authority may on its own, initiate appropriate action against the Operator, for any activity or activities directly or indirectly, adversely affecting the interests of the Consumers.

9. It is not denied by any of the parties that Telecommunication Company falls within the ambit of Federal Laws, therefore, any legislation made by the Federal Government will prevail over the provincial statute. Hence, in presence of Telecom Consumers Protection Regulations, 2009, which have been made pursuant to clause (o) of subsection (2) of section 5 read with clauses (c) and (m) of subsection (1) of section 4 of the Pakistan Telecommunication (Re-organization) Act, 1996, being a special law, the District Consumer Court has no jurisdiction to entertain complaint against the telecommunication company under the Punjab Consumer Protection Act, 2005 being a general law.

10. Even otherwise it is settled principle of interpretation of statute that provision of special law on a subject excludes the applicability of general law to such subject. Reference in this regard is made to the case reported as Inspector General of Police Punjab v. Mushtaq Ahmed Warraich (PLD 1985 SC 159).

11. For the facts and reasons enumerated above, order dated 22-9-2014 is hereby set aside. Consequently, the complaint filed by respondent before the Consumer Court Gujranwala is returned under Order VII, Rule 10, C.P.C. to the respondent for filing before the competent forum.

12. Petition allowed in the above terms.

KMZ/P-1/L

Petition allowed.