

P L D 2011 Lahore 239

Before Nasir Saeed Sheikh, J

**ALLAMA IQBAL OPEN UNIVERSITY through Vice-Chancellor and 4 others---
Appellants**

Versus

IRFAN BOOTA and another---Respondents

Regular First Appeal No.439 of 2008, decided on 9th December, 2010.

Punjab Consumer Protection Act (II of 2005)---

---Ss. 2(c)(k), 25 & 28-'Consumer'; `Services'---Meaning and scope---Consumer Court awarded compensation totalling Rs.20,000 to complainant/student who was declared failed by the university as his assignment was not sent to the Controller of Examination of the University by his tutor---University contended that the complainant, being a student, was not a "consumer" as defined by clause (c) of S.2 of the Punjab Consumer Protection Act, 2005 and that the services provided by the university also did not fall within the definition of `services' contained in clause (k) of the Punjab Consumer Protection Act, 2005---Validity---University was an educational institution and could not be described to have undertaken commercial activity---Definition of the term `consumer' in clause (c) of S.2 of the Punjab Consumer Protection Act, 2005 contemplated hiring of services for a consideration and the definition was not applicable to the matter wherein a student had submitted application for appearing in any examination to be conducted by an educational institution---Neither the student appearing in the examination held by the university could be described as a `consumer' as defined in S.2(c) of the Punjab Consumer Protection Act, 2005, nor the university was a `service provider' as envisaged in the provisions of S.2(k) of the Punjab Consumer Protection Act, 2005---Complaint lodged by the student was not entertainable by the Consumer Court---Appeal was accepted and impugned order was set aside.

University of Jammu and others v. Brinder Nath and others AIR 2000 J&K 93 rel.

Rana Zia Abdul Rehman for Appellants.

ORDER

NASIR SAEED SHEIKH, J.--This R.F.A. is directed against the order dated 29-10-2008 passed by Presiding Officer of District Consumer Court Faisalabad awarding compensation total amounting to Rs.20,000 against the present appellant to the respondent No.1 in a complaint lodged by the said respondent No.1 under The Punjab Consumer Protection Act, 2005.

2. Briefly stating the facts of the case are that the respondent No.1 claimed to be a student of Allama Iqbal Open University, the appellant under Registration No.6 PLR 4620 Roll No. U442947 and he appeared in the final examination of autumn 2007 in Television Broadcasting

Course under Code No.454. The grievance of the complainant before the Presiding Officer of District Consumer Court, Faisalabad was that he submitted his assignment under the said course with the tutor Miss Noshaba Nargas, who was impleaded as respondent No.5, but at the time, of announcement of his result, it transpired that the said assignment submitted by the complainant/respondent No.1 did not reach the competent authority assigned with the preparation and declaration of result and the respondent No.1 complainant was declared failed in the result of the University. The complainant/respondent No.1 filed a complaint seeking recovery of damages of Rs.5,00,000 by contending that this act of the tutor in not sending the assignment to the Controller of Examination of the University, has resulted into "damage" caused to him as he lost one year in further admission and studies in the Masters class.

3. The District Consumer Court, Faisalabad requisitioned parawise comments from the appellants. It was pleaded by the University that on account of inadvertence of Miss Noshaba Nargas the respondent No.5, the marks on the assignment of the complainant/respondent No.1 could not be submitted to the Controller of Examination and when this mistake was detected, the needful was done and the complainant/respondent No.1 was declared pass. After hearing the arguments, the Presiding Officer of the District Consumer Court vide order dated 29-10-2008 awarded compensation of Rs.10,000 to the respondent No.1 and also a further sum of Rs.10,000/- as damages on account of mental torture and shock.

4. It is contended by the learned counsel for the appellant that the respondent No.1 who is a student of University does not fall within the definition of "consumer" as provided in section 2(c) of the Punjab Consumer Protection Act, 2005. It is further argued that the said respondent No.1/complainant never hired the services of the appellant as envisaged by section 2 clause (k) of the Punjab Consumer Protection Act, 2005. It is contended that the complaint lodged by the respondent No.1 before the Consumer Court was not legally entertainable. It is further argued that the mandatory notice under section 28 of the Punjab Consumer Protection Act, 2005 was also not served upon the appellant. The learned counsel has relied upon a judgment reported as University of Jammu and others v. Brinder Nath and others (AIR 2000 J & K 93) whereby it has been held that an educational University or Board conducting examination of students cannot be held to be a "service provider" nor the student appearing in such examination falls within the definition of a "consumer".

5. The respondent No.1 was proceeded ex parte vide order dated 25-6-2009 passed by this Court.

6. I have considered the arguments of the learned counsel for the appellant.

7. The term "consumer" has been defined in section 2(c) of the Punjab Consumer Protection Act, 2005 in the following words:-

"(c). Consumer" means a person or entity who--

- (i) buys or obtains on lease any product for a consideration and includes any user of such product but does not include a person who obtains any product for resale or for any commercial purpose;

- (ii) hires any services for a consideration and includes any beneficiary of such services;"

Similarly the term "Services" has also been identified in section 2 clause (k) of the Act of 2005 in the following words:

"(k) "Services" includes the provision of any kind of facilities or advice or assistance such as provision of medical, legal or engineering services but does not include--

(i) the rendering of any service under a contract of personal service;

(ii) the rendering of non-professional services like astrology or palmistry; or

(iii) a service, the essence of which is to deliver judgment by a court of law or arbitrator;
"

The appellant is an educational institution and cannot be described to be undertaking any commercial activity. The definition of the term "consumer" particularly its clause 2(c) visualizes hiring the services for a consideration which concept is not attracted in the matter in which a student submits an application for appearing in any examination to be conducted by an educational institution. The judgment relied upon by the learned counsel for the appellant has been announced by a foreign Court but the reason stated in interpreting the term "consumer" and the definition of the term "services" has a persuasive value for this Court. It will be advantageous to reproduce para. 22 of the said judgment which reads as follows:--

"Even otherwise on the plain reading of the subsections of the Act of 1987 quoted above it can be said that the function of conducting examination evaluating answer papers, publishing results etc. is not covered by the definition of 'service' as occurring in section 2(c) of the Act of 1987. The respondent-complainant was not a consumer and therefore, the consumer Court had no jurisdiction to grant relief in this matter."

8. The contentions of the learned counsel for the appellant therefore supported by the above judgment have force to the effect that the student appearing in the examination of the appellant-University cannot be described as a "consumer" as defined in section 2(c) of the Punjab Consumer Protection Act, 2005 nor the appellant-University can be described as to be a "service provider" as envisaged in the provisions of section 2(k) of the said Act.

9. In view of all the above circumstances, the complaint lodged by the respondent No.1 for the grievance raised in his petition was not entertainable by the Consumer Court. The instant appeal is accepted and the impugned order passed by the Consumer Court District Faisalabad is set aside and the complaint lodged by the respondent is ordered to be dismissed. No order as to costs.

