

**IN THE COURT OF SOHAIL NASIR DISTRICT AND SESSIONS**  
**JUDGE/JUDGE CONSUMER COURT,**  
**RAWALPINDI**

(Case No. 18 of 15.01.2013)

*Liaqat Ali Khan son of Muhammad Aslam resident of Post Office Dhok Lari, Tehsil Talagang & District Chakwal*

**Vs.**

- 1. Service Centre through Manger Customer Care Centre, Mobilink Company, 8-State Life Building, Kashmir Road, Rawalpindi.*
- 2. Mobilink through Chief Executive/President, F-8 Centre, Islamabad.*

**Present:** Claimant in person.  
Syed Mumtaz Mazhar Naqi advocate for defendants.

**JUDGMENT**

*1. For the purpose of this judgment the Punjab Consumer Protection Act, 2005, the Punjab Consumer Protection Rules, 2009 and the Pakistan Telecommunication Authority (Re-organization) Act, 1996 shall be called hereinafter as Consumer Act, Rules and Telecom Act respectively.*

*2. By filling this claim under section 25 of Consumer Act, Mr. Liaqat Ali Khan/claimant has asserted that he is user of Cell numbers 0307-5089303 and 0302-5144277 and both SIMS are in his name; on 10.03.2012 being customer he asked from defendants for record of incoming calls of mobile number 0307-5089303 and outgoing calls of mobile number 0302-5144277; for this purpose claimant many a times approached defendant No. 1 and also moved written application but it was not entertained by any officials sitting in franchise; there was complete non co-operation by the staff of defendant No. 1 and claimant was forced to leave the centre on the plea that he could not get any relief; claimant also approached defendants through their helpline but this effort, too, remained in vain; action of defendants is liable to account for under the Consumer Act; because of repeated visits of the offices of defendants claimant suffered mental torture and agony as well as loss of money spent for transportation; claimant served legal notices to defendants in terms of Section 28 of the Consumer Act which was not replied by them.*

*3. Defendants on appearance submitted their joint written statement. Preliminary objections about jurisdiction of this Court and maintainability of claim were taken. On facts it was asserted that under the Policy and Rules of defendants' company calls record can be provided only to Law Enforcement Agencies and that under clause 8 (a) and (d) of*

*agreement between parties defendants are not liable for any action. Dismissal of claim with costs was prayed for.*

*4. Before I proceed further, I will like to refer admitted facts of this case which are as under: -*

- a) Claimant is a registered user of Cell Nos. 0307-5089303 and 0302-5144277.*
- b) Both SIMS are in the name of claimant.*
- c) Defendants are providing services to claimant against consideration.*
- d) Claimant served legal notices to defendants but those were not responded.*
- e) Despite requests made by claimant relevant information has not been provided to him by defendants.*

*5. Under rule 14 (2) of the Rules if defendant admits allegation made by a claimant, the Court can decide claim on the basis of merit of case and documents available on record. Taking benefit of said rule, this claim needs no evidence in view of undisputed facts mentioned earlier.*

*6. Only consideration now is that whether this Court has no jurisdiction and if answer is in affirmation, of course claimant shall be out of Court. In other eventuality, next question shall be whether any policy or rules of defendants' company have any restraint clause or condition for provision of information on request by a registered user of SIM.*

*7. Coming to question of jurisdiction, objection of defendants as evident from written statement is reproduced as under: -*

*“The learned Court has no jurisdiction to take cognizance of the instant matter. It is submitted that in terms of Article 142 (a) of the Constitution of Islamic Republic of Pakistan 1973 (“Constitution”), read with item No. 7, Part-I of the Federal Legislative List in the Fourth Schedule to the Constitution, only Parliament have the exclusive power to make laws with respect to Telecommunications. Indeed, in this behalf, Parliament has promulgated the Pakistan Telecommunication (Re-Organization) Act, 1996 (hereinafter the “Telecom Act”). Section 4 (m) of the Telecom Act provides that the Pakistan Telecommunication Authority (hereinafter the “Telecom Authority”) shall regulate competition in the telecommunication sector and protect consumer rights. The Telecom Authority is also required to submit annual report to the Federal Government on the conduct of its affairs, including action taken for protection of consumer interests, for that year. Accordingly, it is submitted that a Provincial Assembly does not have any power to*

*make any law pertaining to the telecommunications, including with respect to the consumers of telecommunications, and this learned Court functioning under Punjab Consumer Protection Act 2005 (hereinafter “the Act”), promulgated by the Provincial assembly of the Punjab, has no jurisdiction to take cognizance of the instant matter”*

*8. Although, specific plea has been taken but learned counsel for defendants could not convince me that how Telecom Act, bars the jurisdiction of this Court. Admittedly, defendant No. 2 is providing mobile communication services to its customers all over the country. These services have been availed by Mr. Liaqat Ali/claimant against consideration which included initial charges and payment of bills time to time. Section 2 (c) (ii) of the Consumer Act, has provided definition of ‘Consumer’ and it is as under: -*

*“Consumer” means a person or entity who–*

*(i).....*

*(ii) Hires any services for a consideration and includes any beneficiary of such services.*

*9. Similarly, section 2 (K) defines the word ‘Services’ and same is as follows: -*

*“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;*

*10. When above both definitions are read together, the picture is quite clear and it cannot be denied that claimant in this case is a consumer and defendants are services provider. If it is so, it means that above said relation between parties is in existence and they are governed by the provisions of Consumer Act,*

*11. There is no question of legislation by Provincial Government on the subject of Telecommunication because Consumer Act is to provide for protection and promotion of the rights and interests of Consumer, speedy redress of consumer complaints and for matters connected therewith. Under Consumer Act status of defendants is of ‘Services Provider’ and*

*whenever there is a question of defective or faulty services by them, Consumer Act shall come into force for the aid and protection of Consumer.*

**12.** *It is also contended by Mr. Naqvi on behalf of defendants that claim is covered under the arbitration agreement and proceedings are liable to be stayed in terms of Section 34 of the Arbitration Act, 1940. For this, it is enough to say that even if there is an arbitration clause in an agreement between parties, it never ousts the Jurisdiction of a competent Court of law. For this section 17 of Consumer Act is also a good answer which says that*

*“The liability of a person by virtue of this Part to a person who has suffered damage shall not be limited or excluded by the terms of any contract or by any notice”.*

**13.** *In view of above objection raised by learned counsel for defendants about jurisdiction of this Court is over ruled.*

**14.** *On facts it has been asserted by learned counsel for defendants that under Clause 8 (a) and (d) of the agreement between parties there is no liability against defendants. In this regard relevant paragraph from written statement is reproduced as under: -*

*“The relationship between the claimant and the answering respondent is governed by the Agreement, in terms whereof, the Complainant had agreed that answering respondent shall not be subject to any liability or responsibility as now being claimed by the Complainant. In this behalf, clause 8 (a) and (d) of the agreement are relevant which provide as follows-*

*Liabilities*

**a).** *It is expressly agreed between the Customer and PMCL that PMCL shall not be subject to any liability or responsibility by reason of any delay in effecting repairs or for any failure or delay in establishing communication between the Customer or any other person or for any failure or delay while the customer is communicating any message whether such failure or delay shall arise from accident, defects in Customer Equipment or SIM Card or any other equipment or from any other cause whatsoever, including PMCL's negligence. PMCL shall also not be liable to the Customer for any loss, expense or damage of any kind in connection with its performance under this contract or arising from any delay in installation of Customer Equipment or SIM Card, or delay in connection or any disruption, interruption, suspension, eavesdropping of any*

*conversation or malfunction of the Services for whatever reason, including PMCL's negligence.*

**b).** *PMCL shall not be liable to the Customer or be deemed in breach of this contract by reason of any delay in performing or failure to perform, any of its obligations under this contract."*

**15.** *A careful perusal of above clauses indicates that liability shall not be there in case of failure or delay for services of various kinds to a customer. By any means it does not give any protection to defendants from any action in case of denial of a right available to customer. Therefore this objection is also turned down.*

**16.** *Now, the final issue for examination is that if any Policy or Rules of defendants' department imposes any prohibition for supply of information to its customer who is a registered user and is availing services without any default on him. On Court's direction learned counsel for defendants has produced copies of Standard Operating Procedure (SOP) issued by Pakistan Telecommunication Authority which is dated 28.10.2008 and of grant of license to defendants No. 2 by PTA. It is worth mentioning that this Court had provided couple of opportunities to learned counsel for defendants to place all documents including any Act and legislative Rules in this regard. However today Mr. Naqvi has categorically stated that in support of their version defendants have only above referred two documents.*

**17.** *With the valuable assistance of learned advocate for defendants contents of both documents have been gone through but nowhere any condition is found raising a barrier for defendants to supply information of calls data to its customer.*

**18.** *First document is confidential hence I will not refer it in detail. It is with the subject of 'SOP on sharing of information of Cellular Subscribers with Law Enforcement Agencies and provision of CLIR facility'. This document even by imaginations does not say that a registered user of mobile is prohibited to receive information about his calls data. This paper only describes a procedure between Cell Companies and Law Enforcing Agencies, nothing more nothing less.*

**19.** *Coming to grant of license, learned counsel for defendants has referred clause 7.2 and same is as under: -*

Contents of the standard contract of service

**7.2.1.** The standard contract shall include at a minimum, the following terms and conditions: -

**7.2.1.1.** Deposits and alternative methods of providing security for payment where reasonably required provided that in no circumstances may such deposits or security three (3) month period.

**7.2.1.2.** Pricing or mechanisms by which prices are determined.

**7.2.1.3.** Confidentiality of customer information.

**7.2.1.4.** Refunds or other rebates for service problems or over-billing.

**7.2.1.5.** Payment terms, including any applicable interest or administration charges.

**7.2.1.6.** Minimum contract period, and

**7.2.1.7.** Customer and Licensee rights of termination.

**20.** On the strength of above contents learned Counsel maintains that impliedly there is restriction for defendants to provide any information to a registered user about his calls data. I do not see eye to eye with learned counsel because if there is denial of an established right i.e. 'Right To Know' that must be expressed and not implied. To my mind referred contents even on presumptions do not speak about any implied condition on defendants restraining for providing information to its customers.

**21.** This Court pointed out paragraph 7.7 to learned counsel for defendants which is about customer information. It is as under: -

**7.7** Confidentiality of customer information

**7.7.1.** Except as permitted below, the Licensee shall take all reasonable measures to prevent information about its customers, including information about their business other than directory information from being disclosed to third parties, including the Licensee's own subsidiaries, affiliates and associated companies, except information which is required.

**22.** When I asked that how he interprets above clause which imposes a restrain for any information to be provided to third party, learned counsel could not give any satisfactory argument. The words used "Third Party" are of much importance. It's safe interpretation in current circumstances shall be that exchange of information is permitted between parties to agreement and not with any other person except Law Enforcement Agencies under SOP.

**23.** It is also surprising and not understandable that information of incoming and outgoing calls besides SMS are to be provided to customers availing post-paid facility but not to customers under pre-paid policy. If

defendants version is that under policy no information can be given to a registered user, then why this information is being provided to a customer having post paid package. It means that defendants have a contradictory stand in similar state of affairs. This fact is also an indication of discrimination between same groups of people who are availing mobile services from defendants. This, too, appears to be against norms of justice that a person who is paying consideration for services is prohibited to ask for information about his calls data. Moreover this practice is against the concept of 'Right to Know' on which Consumer Act is based.

**24.** In view of above I hold that by no stretch of imaginations defendants can refuse any of his registered users to ask for information about his calls data. Therefore, claimant is succeeded in his claim against defendant No. 2 because defendant No. 1 is only a franchise under defendant No. 2.

**25.** Coming to question of relief, it has been established and proved that defendants without any authority have denied a right available to claimant and even today it has been stated that he cannot ask for information of his calls data. It means that claimant's version that he approached defendants many a times since 10.03.2012 but he was not attended rather humiliated is correct. When it is so, defendants cannot ask for protection under section 15 of the Consumer Act, which says that "where the consumer has not suffered any damages from the provision of service except lack of benefit, the service provider shall not be liable for any damages except a return of the consideration or a part thereof and the costs". Therefore, to my mind, besides other relief, claimant is also entitled for damages on account of continuous denial of his right by defendants. However, I am conscious of the fact that damages must be appropriate and keeping in view facts and circumstances of each case.

**26.** I, therefore, in terms of Section 31 of the Consumer Act, issue an order to defendant No. 2/Mobilink and direct it to take following actions: -

- To provide within a period of seven days from today information of incoming calls of mobile numbers 0307-5089303 and outgoing calls of 0302-5144277 to claimant for the period which he desires.

- *To pay within a period of thirty days from today an amount of Rs. 1,00,000/- (one lac) as damages to claimant.*

*27. Before parting with this judgment I will like to observe that this practice of not supplying information to a registered user by mobile services companies is getting alarming position. SOP mentioned earlier is in between PTA and all mobile companies and grant of license with all companies also appear to be based to on same terms and conditions. It means that they are depriving their registered users from valuable rights without any authority under the law or rules or license or SOP. Admittedly, PTA is the regulatory authority who is responsible to protect consumer rights. This Authority also submits annual report to the Federal Government on conduct of its affairs, including action taken for protection of consumer interest. It appears that said Authority never bothered to address common grievance of registered users who need information of their calls data. Therefore, taking benefit of this case I directed that copy of this judgment shall be sent to Pakistan Telecommunication Authority who shall issue necessary instructions/directions to all Mobile/Cellular companies to provide information to their registered users on request subject to verification of their antecedents.*

*File shall be consigned to record room after its due completion.*

**Announced**  
13.02.2013

**(Sohail Nasir)**  
District & Sessions Judge/  
Judge Consumer Court  
Rawalpindi

*It is certified that this judgment consists of eight pages. Each page has been dictated, read, corrected and signed by me.*

**(Judge Consumer Court)**  
Rawalpindi.