

**IN THE COURT OF KHALID MAHMOOD MALIK, DISTRICT &  
SESSIONS JUDGE/PRESIDING OFFICER DISTRICT CONSUMER  
COURT SARGODHA.**

Case No. 13/2007  
Date of Institution 26.12.2007  
Date of decision 07.01.2008

**AnsarFarooqWarriach**  
122-Trust Plaza, Sargodha  
(Complainant)

**Versus**

**ShaikhShahidMahmood etc.**  
Proprietors, ModrenKhadar House, Urdu Bazar, Sargodha  
(Respondents)

**J U D G M E N T**  
**07.01.2008**

*AnsarFarooqWarriach, petitioner had filed an application/ complaint under the Punjab Consumer Protection Act, 2005 (hereinafter to be called the Act) before the District Coordination Officer (hereinafter to be called the Authority as defined by section 2 (b) of the Act) where he had sought following prayer:-*

*جناب والا سے استدعا ہے کہ برائے کو انصاف فراہم کیا جائے اور ہونے والی نا انصافی کا ازالہ کرانے کے علاوہ دوکاندار کو پکا بل جاری کرنے کا حکم صادر فرمایا جاوے۔*

*Version of the complainant/petitioner as alleged in his complaint was that he was Incharge Assistant of News Bulletin in Radio Pakistan Sargodha; in the month of November he went to a shop named “Modren Khaddar House” Urdu Bazar, Sargodha from where he purchased two suits of fabrics made of Khddar and Wool in lieu of Rs, 850/- but respondent did not issue receipt in spite of the request of petitioner; on the very next day petitioner again went to the shop of respondent for replacement of one suit as because of change in choice of colour of the same; after receiving cloths, respondent had promised to charge it within two/three days but he did not return the said suit; petitioner had filed complaint in hand with the prayer to direct the respondent to issue the bill/receipt and also for other legal remedy in the matter.*

*After making some proceedings on application the Authority vide his order dated 12.12.2007 recommended the matter in hand to be submitted in this court.*

*I have heard the arguments of Assistant Director (Legal).*

*Before I proceed to discuss the issue in hand it will be appropriate to have a glance on the Act, as it is a new enactment on the rights of a Consumer.*

*The Act was promulgated on 25.01.2005 within preamble to provide protection and promotion of the rights and interest of the consumers. A consumer is defined as under:.*

*“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 produce for resale or for any commercial purpose; or*
- (ii) Hires any services for a consideration and includes any beneficiary of such services;*

*Part-II of the Act deals with the question of liability arising from defective products, whereas Part-III relates to defective and faulty services. Similarly, Part-IV provides obligations of a manufacturer and Part-VI is about the powers of the Authority.*

*In pursuance to section 23 (1) of the Act in case of violation of the provisions specified under Section 11, 16, 18 & 19 the Authority can fine the violator up to Rs, 50000/- on a complaint instituted by a complainant.*

*Section 31 of the Act however gives the powers to this Court to pass certain orders keeping in view facts and circumstances and claim of the complainant.*

*Section 11, 16, 18 & 19 as relate to the powers of the Authority so it will be necessary for further discussion to reproduce said provisions of law and those are as follows:*

**11 Duty of disclosure:-** *(1) Where the nature of the product is such that the disclosure of its component parts, quality, or date of manufacture and expiry is material to the decision of the consumer*

to enter into a contract for sale, the manufacturer shall disclose the same.

**(2)** Notwithstanding anything contained in sub-section (1), the Government may, by general or special order, require such disclosure in any particular case.

**16 Duty of disclosure:-**Where the nature of service is such that the disclosure of the capabilities or qualifications of the provider of the service or the quality of the products that he intends to use for provision of the service is material to the decision of the consumer to enter into a contract for provision of services, the provider of services shall disclose the same.

**(2)** Notwithstanding anything contain in sub-section (1), the Government may, by general or special order, require such disclosure in any case.

**18 Price to be exhibited at the business place:-**Unless a price catalogue is available for issue to customer, the manufacturer or trader shall display prominently in his shop or display-centre a notice specifying the retail or wholesale price, as the case may be, of every goods available for sale in that shop or display-centre.

**19 Receipt to be issued to the purchaser:-**Every manufacturer or trader who sells any goods shall issue to the purchaser a receipt showing:-

- (a)** The date of sale;
- (b)** Description of goods sold;
- (c)** The quantity and price of the goods; and
- (d)** The name and address of the seller

The above provisions of law clearly postulate that in case of violations of these provisions the Authority is competent to entertain and adjudicate the matter on receipt of a complaint.

*However, if a seller violates the provisions of section 20 of the Act with regard to disclose return and refund policy to the buyer before transaction then complaint can be filed before this court.*

*Now, I come to the matter in hand. The main grievance of petitioner was that the shopkeeper/respondent had not issued the bill/receipt to him and his grievance be redressed by providing him the justice. Record reveals that in complaint the Assistant Director (Legal) on behalf of Authority had already issued the notices to the parties where respondent did not appear and thereafter as per submission of Assistant Director (Legal) the complaint falls under section 18 to 20 of the Act, and proceed able before this court.*

*The entire claim of petitioner when perused it Prima Facie shows that section 19 of the Act s attracted in this case, which is within the Jurisdiction of the Authority as stated earlier “the main grievance of the petitioner is that the shopkeeper did not issue bill/receipt to the petitioner and his grievance be redressed by provided him justice” therefore, petitioner had rightly brought this complaint before that forum. This being so this complaint is hereby returned to the Authority for its adjudication in accordance with law. The matter be placed there immediately.*

*Before parting with this order I want to make certain observations in regard to rights of consumer for filing the claim before the authority, it's entertainment and proceedings thereon by the said forum.*

1. *The Act provides two remedies for consumer to file a claim In certain cases falling under Section 11, 16, 18 and 19, the jurisdiction is vested with the Authority and Consumer has a right to approach said forum. Part-VI of the Act, deals with the powers of the authority. Study of Part-VI shows that under section 23 (1) a person has the right to file a complaint in cases falling under section 11, 16, 18 and 19 before the authority and after doing the needful the authority has the power to fine the violator for an amount which may extend to Rs, 50,000.00. This sub section is purely restricted to the certain cases as mentioned earlier whereas under sub section (2) the Authority has also the right to file a claim before this court in the cases falling under section 4 to 8 or 13 which relates to defective product and faulty or defective services. Sub Section (3) gives more powers to the authority to file a claim before this court for declaring any act on the part of any person as being in contravention in part-iv of the Act. Under Sub Section (4) the Authority on its own motion or on a complaint or a reference*

submitted by the District Consumer Protection Council can also proceed on particular subject by holding an inquiry about the defects in product or services or practices which contravene any of the provisions of this Act. Here I will like to observe that sub section (3) although gives the power to the Authority to file a claim but it is someone different from sub section (1). In cases of sub section (1) it is the right of a person to file a complaint before the Authority and whenever a case falls under section 23 (1) it will remain within the jurisdiction of the Authority. However, if Authority finds that case does not fall under said sections but under the remaining provisions then by an speaking order Authority can refer the matter to this court otherwise the same will remain within the domain of the Authority who shall adjudicate the matter in accordance with law. It is also important to mention here that it will remain open for the consumer that even in the cases falling within the powers of Authority he can approach the court directly for redressal of his grievance under the Punjab Consumer Protection Act, 2005.

2. On receipt of a complaint or a reference from the District Consumer Protection Council, the Authority may hold an inquiry as to defects in products or services or practices which contravene any of the provisions of the said Act. However, before filing/submitting the claim to the Court Authority is under obligation in pursuance to section 28 (1) of the Act to issue a notice to the manufacturer or service provider as the case may be calling upon him that a product or service was defective or faulty or the conduct of the manufacturer of service provider is in contravention of the provisions of this Act and he should remedy the defects or give damages where the consumer had suffered damage or cease to contravene any of the provisions of the Act. Thereafter, the manufacture or service provider has a right to reply within 15 days after receipt of said notice.

3. Record sent to this court clearly indicates that there is complete deviation from mandatory provisions of law but what the practice is underway by the Assistant Director (Legal) is that a simply printed proforma in shape of notice is to be issued to the parties under notice. Even if it is considered as procedural defect even then wordings of said notice do not fulfill very spirit of provisions and requirement of law, because it is simple notice for appearance/attendance of parties before him. It is well settled principle of law that when a law requires certain thing to be done in particular manner that should be done in that matter otherwise it has no sanctity in eye of law. In this context it is, therefore, concluded that whenever an Authority issues a notice under section 28(1) of the Act, to the manufacturer or service provider, the notice shall contain specific words by calling upon the manufacturer or provider of the services that the products or services is faulty/defective or the conduct of the manufacturer or service provider is in contravention of the provisions of the Act and he should remedy the defect or give damages where the consumer had suffered damage or cease to contravene the provisions of the Act. The parties under notice also must be informed through the same notice of his right of filing of reply within 15 days after receipt of said notice. Said deviated practice on the part of Authority will also be an ultimate hurdle to entertain the claim by this

Court as section 28 (3) of the Act, which specifically provides non entertainment of a claim filed by a consumer or the Authority unless the notice under sub section (1) was duly delivered to the manufacturer or provider of the services and he did not respond thereto.

4. The next is in regard to proceedings conducted by Assistant Director (Legal). It is evident from record that all proceedings from start to end before sending the claim to this Court were conducted by an Assistant Director (Legal). No doubt that under section 23 (6) of the Act the Authority can delegate his powers through a notification to any officer of the Government with its prior approval. There is nothing available on record that if Assistant Director (Legal) was notified by the concerned Authority and there was any approval in this regard so proceeding conducted by the Assistant Director (Legal) on the face of it are *courm non judice*.

5. The question of determination of jurisdiction is always vital issue in proceedings. A case falling under section 11,16,18 and 19 is within the jurisdiction of the Authority as stated above. The forwarding letter attached with application and record shows that at a stage the Authority in regard to jurisdiction simply endorsed the opinion of the Assistant Director (Legal) with the following words:-

*“Approved as Para 5”*

6. The perusal of forwarding letter indicates that Assistant Director (Legal) was unaware of the manners for making official correspondence particularly when a Court of law is addressed. The dignity of Court demands that while addressing the Court one should be very careful and to observe necessary protocol. The ethics of communication were also not observed as prescribed by the Government. A copy of this order be sent to the Secretary, Government of the Punjab, Industries Department, Lahore, Director (Legal), PCPC, Headquarters, Lahore, Assistant Director (Legal), District Consumer Protection Council, Sargodha for information.

**Announced**  
**07.01.2008**

**Sd/-**  
**(Khalid Mahmood Malik)**  
**Presiding officer**  
**District Consumer court,**  
**Sargodha**