

IN THE COURT OF MIRZA JAWAD A: BAIG,
DISTRICT & SESSIONS JUDGE,
PRESIDING OFFICER, DISTRICT CONSUMER COURT,
50-Z, MODEL TOWN, DERA GHAZI KHAN.

(PHONE: PTCL: 0642474100. FAX: 0642470496. VNTC: 0649239094).

Sadiq Hussain Versus Incharge NADRA Center D.G.Khan.

Complaint/ Case No:	2440 / 361 / 12.
Date of Institution:	24-04-2012.
Date of Decision:	31-05-2012.

COMPLAINT ABOUT FAULTY SERVICE

ORDER:

The claimant is **represented** by Mohammad Nadeem Ansari Advocate while the defendant is represented by Mohammad Arif litigation officer as representative of the defendant.

2. The case is at the stage of the **arguments**. I have heard the arguments and perused the record in the light of the arguments. Now I proceed to discuss and **dispose off** the complaint in accordance with the findings in the following paragraphs.

3. Briefly stated the **grievance** of the claimants is to the effect that anomaly has occurred in the record of NADRA relating to the dates of birth of the son and daughter of the claimant due to entry of 15-02-1996 as date of birth of Amna Sadiq daughter by clerical mistake instead of 01-01-1994 being the correct date mentioned in the record of the Union Council while the date of birth of the son of the claimant namely Mohammad Amjad is correctly entered in the record of NADRA as 11-09-1995 and the daughter is 10 years older than the son; that the said anomaly is to be corrected so as to get Bay form of the daughter. It is requested by the claimant that correct date birth of the daughter being 01-01-1995 be replaced in the record and Bay form should be issued along with grant of any other admissible relief.

4. The defendant has **contested** the complaint by filing his written statement by taking the plea that the daughter becomes older than his younger brother namely Mohammad Amjad; that the family composition is changed by proposed amendment which is against the rules and regulation. It is requested by the defendant that the suit of the plaintiff be dismissed.

5. It is pertinent to note that although **evidence** is necessary to be recorded under S.30 of PCP Act 2005 for disposal of the complaints by the Consumer Courts but since the procedural laws known as the Code of Civil Procedure, 1908; the Code of Criminal Procedure, 1898; the Qanun-e-Shahadat Order, 1984, the Bankers' Books Evidence Act, 1891; special rules of evidence u/s 118 of the Negotiable Instruments Act, 1881 are not strictly applicable to the proceedings of the Consumer Courts, as such the propriety demands that the regular evidence should not be recorded in such cases where the points for determination are mostly based on the copies of the admitted documents available in the file of the complaint or admitted in the pleadings just like the present case.

6. It is pertinent to observe that the issuance of **CNICs** and **Bay Forms** amounts to the manufacturing of **PRODUCTS** and the **AUTHORITY** providing the **CNICs** comes within the definition of the **MANUFACTURER** under S.2(h) as such the **AUTHORITY** is obliged to fulfill all the responsibilities of a **MANUFACTURER** of the product under S.4 to 12 & 18 to 22 being supplied by it in dual capacity of the **MANUFACTURER** along with responsibilities of the **SERVICE PROVIDER** under S.13 to 17 of PCP Act 2005.

7. It is therefore observed that the objection about not being **commercial** organization is misconceived because the normal fees as well as fast track charges are being charged by NADRA for various services. The responsibilities of the defendant are therefore dual as MANUFACTURER as well as SERVICE PROVIDER. The expectation of the public about better services of the NADRA is therefore genuine and enforceable under the law.

8. It is necessary to be observed that although it is provided in S.46 of NADRA Ordinance, 2000 that "the provisions of this Ordinance shall have effect notwithstanding anything contained in any other law for the time being if force", but the fact remains that the Punjab Consumer Protection Act was promulgated in 2005 which was not in force at the time of the promulgation of NADRA Ordinance as such the said prohibition contained in NADRA Ordinance cannot be applied on Consumer Act because it is not only subsequent law but it is specifically provided in S.3 of PCP Act, 2005 that the law is in addition to and not in derogation of any other law for the time being in force, therefore I find that S.46 of NADRA Ordinance, 2000 does not oust the plenary jurisdiction of this court because it should be kept in mind while interpreting the jurisdiction of this court that the procedure for redress of grievance provided in all the laws are to be followed in the forum provided under the said laws but the same grievance can also be redressed by this court on strength of S.3 read with S.36 of PCP Act, 2005. It is provided in the latter section that all agencies of the Government shall act in aid of the Consumer Court in the performance of its functions under this Act.

9. The **procedure** laid down in S.18 of NADRA Ordinance, 2000 provides for issuance of the notice in writing calling upon to show cause why the order should not be made for cancellation, impounding, confiscation of card. It is also provided that such order may be made only if there is reason to believe about the defects mentioned in sub clause number (a) to (d). It is also provided in S. 18 sub-section (3) that any person in respect of whose card an order under sub-section (1) has been made may, within thirty days of the order, appeal to the Federal Government against the order and the decision of the Federal Government in appeal shall be final. It is further provided in sub-section (3) that no order on such appeal shall be passed unless the appellant has been given an opportunity of being heard. It is necessary to be observed that sub-section (1) requires the order in writing under the seal of the Authority or an officer authorized by it in this behalf for the said purpose.

10. In accordance with the perusal of S.18 of the law of NADRA, I find that plenary jurisdiction of this court can be validly invoked due to violation of mandatory nature of S.18 of NADRA Ordinance, 2000 **and that the incorrect date of birth** can therefore be validly included in the definition of faulty/defective services so as to treat the claimant as the consumer as defined in Section 2(c) read with Section 2(k) of PCP Act, 2005 and the defendant is to be treated as the service provider.

11. The quick overview of the law with reference to the request about grant of **any other admissible relief**, is to the effect: that return of the consideration or a part thereof and the costs is provided in the law where the consumer has suffered the loss of utility or lack of benefit only while the manufacturer or service provider is also liable for the damages where the consumer has suffered any damage from the defective product u/s 10 & faulty service u/s 15; that the manufacturer or service provider is liable to a consumer for damages proximately caused by the defective product u/s 4 & faulty service u/s 13; that the liability of the manufacturer or service provider is not limited or excluded by the terms of any contract or notice about the defective product u/s 12 & faulty service u/s 17; that the disclosure of the details has been made essential about the product and service where the nature of the same is such that it is material to the decision of the consumer to enter into the contract with reference to the product u/s 11 & service u/s 16; that the standard for the provision of services is determined as such which a consumer could reasonably expect to obtain in Pakistan at

the time of the provision of the service u/s 14; that the court is authorized to direct the defendant to pay reasonable compensation for any loss suffered due to negligence of the defendant u/s 31(e); that to award damages where appropriate u/s 31(f); that to award costs including lawyer's fees incurred on the legal proceedings u/s 31(g) of PCP Act, 2005.

12. It is further observed that it is settled law that the manufacturer or service provider is **not liable** for any damages except a return of the consideration or a part thereof and the costs, specifically where the consumer has not suffered any damages from the product or provision of service except lack of utility/ benefit.

13. It is pertinent to note that the **grant of damages** is curtailed even under Contract Act, 1872 in which it is provided in S.73 to 75 that the damages should be proportionate to the loss and not excessive by mentioning that such compensation for loss or damage caused by breach of contract is not to be given for any remote and indirect loss or damage sustained by reason of the breach. It is an embargo placed by the general law of contracts upon the powers of the courts about grant of damages.

14. It is also observed that further embargo on the **quantum of damages** to be awarded by the consumers courts has been placed by the law provided in S. 4, 10, 13 & 15 of PCP Act by declaring that the manufacturer or service provider shall be liable to a consumer for damages proximately caused by anticipated use of the product or provision of services that have caused damage but he shall not be liable for any damages except a return of the consideration or a part thereof and the costs in such cases where the consumer has not suffered any damages from the provision of service except lack of benefit or loss of utility as such I find that the claimant is not entitled to the recovery of the damages or compensation or counsel fee or litigation charges.

15. As far as the ordinary costs are concerned, it is observed that since the defendant is bound to act on the basis of the computerized data as such he is not to be blamed for delay in the matter and he is entitled to be exempted from the burden of the payment of costs. The defendant is therefore not liable to pay the proximate charges or litigation charges as provided in S.13 & 31 of PCP Act, 2005. Even otherwise, umbrella of indemnity has been provided to the employees of NADRA u/s 40 of NADRA Ordinance, 2000; "for anything which is in good faith done or purporting or intended to be done under this Ordinance or any rule". The word used in S.40 is 'ANYTHING'. The definition of the term 'THING' is so vast that there is no ambiguity of the functions of the employees of NADRA for providing the umbrella of immunity from any suit, prosecution or other legal proceeding because it is provided in S.2(s) that "unless there is ANYTHING repugnant in the subject or context:-" (s) "THING" or "THINGS" and includes all animate or inanimate things, plants, animals, objects, substances, items, concepts, ideas, laws, customs, qualities, signs, symbols, circumstances, affairs, events, acts, deeds, works, transactions, documents, pieces of movable or immovable property, tangible or intangible, rights, privileges, duties, entities, living or non-living beings other than a human being and anything that can be possessed, or owned, or explained, whether known or un-known."

16. In the present case, copy of the school leaving certificate is included in the file which is shown to be issued as back as on 30-05-2007 in which the date of birth of Amna Sadiq daughter of Mohammad Sadiq Hussain is mentioned as 01-01-1994 while the copy of the certificate of the Union Council is also included in the file which shows that the correct date of birth has already been incorporated in the said record relating to the daughter of the claimant on 11-02-2012 being prior to the institution of the present complaint. I am of the view that the defendant should have no hesitation to replace the correct date of birth in the concerned record so as to remove the defect in the record to the satisfaction of the claimant without having any fear of the changing of family composition in the best interest of justice.

17. For what has been discussed above, the complaint is **accepted** by direction to replace the correct date of birth of Amna Sadiq as 01-01-1994 instead of 15-02-1996 and for issuance of Bay form after the amendment while the grant of any other admissible relief is withheld.

18. *Parties are left to bear their own costs.*

19. *This order would become final u/s 34 of PCP Act 2005, if the appeal is not preferred within prescribed period under S.33 of PCP Act 2005 & Rule 18 of PCP Rules 2009 in accordance with the Rules of Procedure of Honourable High Court.*

20. *In case of delay in compliance, the claimant is entitled to get the order implemented by filing the application for implementation with reference to S.31, 32 & 36 of PCP Act, 2005, if so required with the warning to the defendant that the costs to be incurred for and during the application for implementation would be liable to be recovered from his salary.*

21. *One attested copy each of this order is directed to be provided to the parties on filing the applications without court fee tickets even if on plain papers free of charges by entry with signatures or thumb impressions in token of receiving in Dak Register with the clarification that extra copies would be liable to be issued at their own expenses.*

22. *The file of this complaint is to be consigned to the record room of this court duly page marked with proper index and after due completion and made available for issuance of attested copies and kept under safe custody till the period fixed for destruction in accordance with the Rules & Orders of Honourable Lahore High Court.*

Announced:
31-05-2012.

(MIRZA JAWAD A: BAIG)
D. & S. J. / P.O., D.C.C., D.G.K.,
PUNJAB, PAKISTAN.