

Nadeem Iqbal Vs Surgeon Dr. Muhammad Maqsood Zahid

Present: Ch. Abdul Kabeer advocate on behalf of the claimant,  
Nadeem Shahzad Kokab advocate on behalf of the defendant.

Detailed arguments have been heard. Vide order dated 10-07-2018 while exercising my powers under section 36 of Punjab Consumer Protection Act, 2005, whereby all agencies of the government are bound to act in aid of the Consumer Court in the performance of its functions under "The Act", this Court issued directions to the Punjab Health Care Commission to conduct the inquiry for establishing the negligent act of the Doctor as alleged by the complainant in his complaint but Chief Operating Officer of Punjab Health Care Commission has submitted the report that this Court has no jurisdiction to summon the report.

I have gone through the report submitted by the Punjab Health Care Commission, Punjab Consumer Protection Act, 2005 and also Punjab Health Care Commission Act, 2010 and have straight away observed that the Punjab Health Care Commission does not enjoy any power to refuse to submit the report rather under section 36 of Punjab Consumer Protection Act, 2005 the commission is bound to act in aid of the Consumer Court in performance of its functions.

On the other hand the Punjab Health Care Commission Act, 2010 did not allow the commission to make its own laws. At the most, the commission may explore the possibility of purposing amendments to the Act or framing necessary rules and regulations under "The Act", to achieve what it wanted.

Almost everybody knows someone who has suffered due to Doctor's poor treatment. In majority it stems from lack of competency and in other outright greed of the doctors. The Consumer Court is fully competent to proceed against the doctors who provide defective services and in the definition clause of "services" medical service has been purposely added. The Punjab Consumer Protection Act, 2005 came into force in 2005 and


  
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District Consumer Court Gujrat.

allows the Consumer Court to proceed against the doctors for providing the defective service. On the other hand, the Punjab Health Care Commission Act was set up in 2010 and in that Act it is not provided anywhere that the Consumer Court can not summon the investigation report from the Punjab Health Care Commission. The Act is also silent where the victims of doctors lodge the complaint and obtain redressal. In this scenario Consumer Courts are filing the vacuum. The order dated 10-07-2018 whereby the Punjab Health Care Commission was directed to investigate the matter and submit the report was judicial order. On receiving the order passed by this Court the Punjab Health Care Commission had only two options:-

- i. Either to act in letter and spirit and after investigating the matter submit the report in this Court
- ii. To challenge the legality of the order passed by this Court before the Hon'able Appellate Forum but regrettably the Punjab Health Care Commission which was bound to act in aid to this Court under section 36 of Punjab Consumer Protection Act, 2005, started the game of blind mans'buff and tried to sabotage the judicial order passed by this Court instead of performing its duty in accordance of law the Punjab Health Care Commission embroiled this Court through misleading report. Section 30(4) is hereby reproduced as under:-

*"Every proceeding before the Consumer Court shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Pakistan Penal Code 1860 (Act XLV of 1860), and section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (Act V of 1898):*


After perusal of above said provision of The Act one thing is crystal clear that Chief Operating Officer of Punjab Health Care Commission has made intentionally interruption in the judicial proceedings of this Court by not complying with order passed by this Court as required under section 228 of PPC. The act of said officer shows that he has audaciously defied and eluded the process of law. This gimmick on the part of officer of

  
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Punjab Health Care Commission amounts to sabotaging the judicial proceedings. Such conduct can not be countenanced or allowed to prevail. The conduct of Chief Operating Officer of Punjab Health Care Commission amounts to deliberately committing this scoffery of law and by such conduct said officer misinterpreted law only to avoid to investigate against alleged doctor. Such misinterpretation of law can not be encouraged rather such undesirable behaviour on the part of government officer have to be curbed and dealt with iron hand to uphold the dignity of courts and to prevent abuse of process of law.

For what have been discussed above, as this Court has passed the judicial order and the same has not challenged before the Hon'able Appellant Court and is still intact therefore, the commission is bound to obey the order passed by this Court failing which the proceedings under section 228 of PPC shall be initiated against the delinquent. The Registrar of this Court is directed to transmit the copy of this order to Punjab Health Care Commission with the direction to submit the report as per earlier order dated 10-07-2018 on 02-10-2018.

Announced: 25-09-2018

  
(BAKHT FAKHAR BAHZAD)  
*District & Sessions Judge /*  
Judge District Consumer Court  
Gujrat