

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD.**

**M.A. No.01 of 2024**

Appellants : Through Mr. Masood Rasool Babar Memon  
advocate.

Respondent : Through Barrister M. Azmat Channa, advocate.

Date of hearing : 15.03.2024  
Date of decision : 27.05.2024

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

**KHADIM HUSSAIN SOOMRO-J:-** Through this appeal, the appellants have impugned the order dated 20.12.2023 passed by learned Judge, Consumer Protection Court, Jamshoro, whereby Consumer Complaint No.06/2022 filed by the respondent (complainant) has been allowed.

2. Brief facts of the case are that the respondent filed a Consumer Complaint stating therein that his daughter applied for a pre-admission test at Mehran University of Engineering and Technology Jamshoro, where she failed by two marks. Thereafter, the University, via electronic message, informed her to avail herself of a second chance to appear in the second pre-admission test. In pursuance thereof, on 28.09.2022, she deposited the required fee. Allegedly thereafter, no information was given to the candidate by any means of communication by the University, and the final result was uploaded on its official website, which caused the loss of a precious year for the candidate (claimant's daughter).

3. After hearing learned counsel for the parties, the learned trial court passed the following order on 20.12.2023, which has been impugned in this appeal:-

"In view of the above discussion, this court views of that the University is at fault and University has to compensate the daughter of claimant for loss of her precious time and so also for suffering from mental agony; therefore, University is directed to pay sum of Rs.15,00,000/- (fifteen lac rupees) as a compensation to the daughter of claimant for her loss further Mehran University Jamshoro should remain careful and vigilant for the future. If respondent fails or omits to comply with the above order within the period of fifteen (30) days they shall face the punishment as provided u/s 33 (2) of the Sindh Consumer Protection Act, 2014."

4. Learned counsel for the appellants submits that the respondent/ complainant, being a student, was not a "consumer" as defined by clause (e) of Section 2 of the Sindh

Consumer Protection Act, 2014; **(The Act)** that the University is an educational institution and cannot be described to have undertaken commercial activities; that the appellant has fully proved that there was gross negligence on the part of respondent and his daughter but they tried to shift burden of said negligence upon the appellants, therefore, impugned order is liable to set-aside.

5. On the other hand, learned counsel for the respondent argued that there is no illegality or irregularity in the order passed by the learned trial court and that it is an admitted fact that the appellants have committed illegality by not informing the daughter of the respondent about the test date, which resulted in the loss of precious years of his daughter.

6. I have heard the learned counsel for the appellant and peruse the material available on the record.

7. Before dilating upon the merits of the case, it will be very appropriate to discuss the "consumer" has been defined in section 2(c) of the Act of 2014 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 consideration and includes any beneficiary of such services;"

8. The phrases "consumer" and "service" should only be understood to mean someone who uses commercial and trade-oriented services in relation to unfair or restrictive trade practices. Educational institutions and universities do not fall under the purview of the Act's definition of "service" or "facility" due to their unique roles and responsibilities. The words "consumer" and "service" should be construed to exclude schools and universities from their scope have been previously presented. Furthermore, the fact that the lawmakers could have left out industries like banking, financing, insurance, etc., from the definition of "service of any description" if they wanted to encompass "all kinds of service," commercial or otherwise, supports and validates this point of view.

9. Similarly, the term "Services" has also been identified in section 2 clause (k) of the Act of 2014 in the following words:--

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

- (i) the rendering of any service under a contract of service;
- (ii) a service, the essence of which is to deliver judgment by a court of law or Arbitrator ,
- (iii) "Trade" means a conduct of a business providing goods, moveable property or services primarily for personal domestic family or household purpose."

10. The Act's definition of 'service' encompasses a wide and varied context, and education is unquestionably one of those contexts." The Supreme Court of India has observed that "education was 'industry' as defined by the Industrial Disputes Act". According to the Supreme Court of India, Education was deemed an "industry", but the question of whether a teacher was a "workman" according to that Act remained unresolved. However, what's more crucial is determining whether a student may be deemed a 'customer' because the educational institution is a 'business' according to the Industrial Disputes Act. In the case of *Tilak Raj of Chandigarh v. Haryana School Education Board, Bhiwani I (1992) C.P.J. 76* Supreme Court of India has observed as under:-

"Education is generally and pre-eminently a service and it would fall within expansive and large field of 'service' spelt out in the definition under the Act. The Commission relied more on the judgment of the Supreme Court in Bangalore Water Supply and Sewarge Board case MANU/SC/0257/1978 : (1978)ILLJ349SC in which it was held that "education was 'industry' as defined by the Industrial Disputes Act. The Commission overlooked that though the Supreme Court held education to be 'industry' in that case, it did not decide the question whether a teacher was a 'workman' as defined by that Act. We have already referred to this aspect of the matter earlier. But, the more important aspect of the matter is whether a student could be considered to be a 'consumer' merely because the educational institution is an 'industry' within the meaning of the Industrial Disputes Act"

11. *In Maharishi Dayanand University, Rohtak v. Shakuntla Chaudhary II 1993 1 C.P.R. 274*, the same Commission held as under:-

"The Maharishi Dayanand University Act did not provide any immunity to the University from the provisions of the Consumer Protection Act. There was no argument before the Commission in that case that the service rendered by the University would not fall within the scope of the said Act. 71. For the reasons stated already, we are unable to uphold; that the Director of Government Examination will fall within the ambit of the Act, even if educational institutions and Universities are outside the scope of the Act'

12. It has been finally observed that the Consumer Protection Act will not apply to institutions that provide education, vocational courses, activities before and after admission, as well as those that provide excursion tours, picnics, extracurricular activities, swimming, sports, etc., with the exception of mentoring programmes. ***In the case of "Manu Solanki and Ors. vs. Vinayaka Mission University and Ors. (20.01.2020 - NCDRC) : MANU/CF/0055/2020" National Consumer Disputes Redressal Commission New Delhi ruled as under:-***

; "51. In view of the foregoing discussion, we are of the considered opinion that the Institutions rendering education, including Vocational courses and activities undertaken during the process of pre-admission as well as post-admission and also imparting excursion tours, picnics, extra co-curricular activities, swimming, sport, etc. except Coaching Institutions, will, therefore, not be covered under the provisions of the Consumer Protection Act, 1986.

13. The term "educate" is defined in Webster's Third New International Dictionary, Volume I, page 723, as the process of developing a person by fostering their growth or expansion to varying degrees. Acquiring knowledge, wisdom, desirable qualities of mind or character, and maintaining physical health and general competence can be achieved through formal study or instruction. The term 'educare' comes from Latin and means to rear, bring up, and educate. A teacher's role extends beyond delivering lectures in a classroom. It involves nurturing students' talents, shaping their character, and helping them grow into well-rounded individuals. It is often said that a person truly grows and develops with the guidance and support of a teacher. Educational institutions should prioritize the holistic development of students. The connection between 'alma mater' and the 'alumni' is incomparable to that of a trader and a consumer. The term 'alma mater' refers to a foster mother, while 'alumnus' refers to a foster child. It's possible that some individuals with questionable intentions may have tried to turn education into a profit-driven industry, transforming institutions into mere teaching establishments.

14. For educational administration to fulfil its statutory duty, it must give its "services" to all applicants regardless of whether the examination is administered before or after admission. Neither does a student who uses the Board's services for consideration take part in an exam administered by the Board or a university. Any individual who has completed a course of study and wants the Board to verify that they have learned enough to be considered a candidate for the position they are applying for and rank them in relation to other examinees is considered to have participated in the examination. The procedure is not a service that a student may use but rather an examination that the Board administers to determine if a student is qualified to be deemed to have finished secondary school. Students are not paying for any service when they pay the examination fee; it is a price for the right to appear in the test.

15. Turning towards the significance of education, a cornerstone of long-term prosperity, education is a fundamental human right. Several international declarations and resolutions agree with the 1948 Universal Declaration of Human Rights (UDHR) that everyone has the right to an education. Countries throughout the world have recognized this and are actively working to ensure that all students have access to high-quality education. Pakistan has taken several steps to improve education in the nation, and the government is a signatory to several international declarations and agreements that support education. Up until 2010, nevertheless, these endeavours were considered insufficient.

16. In 2010, the Islamic Republic of Pakistan's Constitution was amended to include Article 25A, which delegated the control mechanism of education to the provinces. Since then, provincial governments across Pakistan have developed a plethora of education-related policies, sector plans, acts, and strategies. Article 25A of the Constitution of the Islamic Republic of Pakistan 1973 clearly states that the state is obligated to provide free and compulsory education to all children between the ages of 5 and 16. This article supports equal and inclusive education and is founded on the concept of non-discrimination. The aforementioned article is reproduced as under:-

"Article 25A: "The State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law."

17. Article 37-B, under Principles of Policy (Chapter II), guaranteed the right to an education up to the secondary level before Article 25 A. Nevertheless, the availability of resources is a prerequisite for implementing Article 37 B. Article 25A, which was modified in 2010 and therefore provided for the Right to Education.

18. Looking to the importance of education in human life, the appellant university is here directed to allow the daughter of a private respondent to appear in the forthcoming pre-admission test for which she has already deposited the requisite fees without being influenced by this proceedings.

19. In the present case, the appellants were fined Rs. 1,500,000 (fifteen lacs rupees), which exceeds the statutory limit. The penal provision outlined in the Act, Section 33, states that a maximum fine of Rs. 100,000 (one hundred thousand rupees) is prescribed. However, For proper analysis, firstly, section 33 of the Sindh Consumer Protection Act, 2014 ("the Act") is reproduced as under:-

"Penalties. 33. (1) Where a manufacturer fails to perform or in any way infringes the liabilities provided in sections 4 to 8, 11, 13, 14, 16, 18 to 22, he shall be punished with imprisonment, which may extend to two years or with fine which may extend to hundred thousand rupees or with both in addition to damages or compensation as may be determined by the court."

20. This section outlines the consequences for a manufacturer who fails to fulfil their obligations or breaches the liabilities specified in various sections. Violations can result in penalties. The potential consequences include a maximum prison sentence of two years, a fine of up to one hundred thousand rupees, or a combination of both. In addition, the court has the power to mandate that manufacturers provide payment for damages or compensation, as decided by the court. The Act does not define the term "fine." Upon examining the language of section 33, it becomes evident that it is indeed a form of punishment. The section explicitly states that the individual in question will face imprisonment for a maximum of two years, a fine of up to one hundred thousand rupees, or both.

21. The supreme law of the land, viz Constitution of the Islamic Republic of Pakistan, 1973, provides guidance. It seems that Article 12 (b) of the Constitution is applicable to the facts of the present case. For proper discussion, the same is reproduced as under;

12. (1) No law shall authorize the punishment of a person:- (a) for an act or omission that was not punishable by law at the time of the Act or omission **or (b) for an offence by a penalty greater than, or of a kind different from, the penalty prescribed by law for that offence at the time the offence was committed.** (2) Nothing in clause (1) or in Article 270 shall apply to any law making acts of abrogation or subversion of a Constitution in force in Pakistan at any time since the twenty-third day of March, one thousand nine hundred and fifty-six, an offence. [ **Bold and underlined for emphasis**]

22. According to Article 12 (b) of the Constitution, imposing a punishment that exceeds the legally prescribed penalty for an offence at the time it was committed is prohibited. Simply put, it ensures that individuals are shielded from more severe punishment. In the case of Tariq Cotton Mills Ltd (1989 CLC 2103), this court has discussed Article 12 and made an observation that individuals who are found guilty of an offence should not face a penalty that exceeds the penalty prescribed at the time the offence was committed.

23. When it comes to punishment, it is clear that courts must adhere to the legal boundaries when imposing penalties for offences. If a court were to impose a punishment that goes beyond what is prescribed by law for a specific offence, it would be exceeding

its jurisdiction. This action would be considered invalid and have no legal effect, as it exceeds the authority granted to the court by the Constitution and laws of Pakistan. In any case, it is widely accepted in the legal field that when a specific method is required to be followed, it must be done exactly as prescribed by the law.

22. In light of the above discussion, the instant appeal is allowed. The Impugned judgment dated 20.12.2023, passed by the trial court, is here set aside, as a result of which the compliant filed by the private respondent is dismissed with no order as to cost.

**J U D G E**

Irfan Ali