SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Muhammad Ali Mazhar
Justice Musarrat Hilali

Civil Petition No.5395 of 2025
Appeal against the judgment dated 06.11.2025 passed by the Peshawar High Court, Bannu Bench, in Consumer Protection Appeal No.173-B/2025

Muhammad Ishaq, Deputy Director Benazir Income Support Programme ...Petitioner

Versus

Fardayaz Khan and others ... Respondents

For the Petitioner:	Mr. Khurram Mahmood Qureshi, ASC Mr. Mujahid Khan, DD, (BISP)
For Respondent No.1,4 & 5	In Person
For the Respondent No.6	Mr. Riaz Hussain Azam, ASC along with Shahid Taj
Date of Hearing:	10.03.2026

Judgment

Muhammad Ali Mazhar, J: This Civil Petition for leave to appeal is directed against the judgment dated 06.11.2025 passed by the Peshawar High Court, Bannu Bench, in Consumer Protection Appeal No.173-B/2025.

2. According to the narrative of the petitioner, he is serving as Deputy Director, Benazir Income Support Programme (**BISP**), District Bannu, which is a statutory public welfare initiative, established under the Benazir Income Support Programme Act, 2010, (**Act of 2010**) mandated to provide targeted financial assistance to the most vulnerable households in Pakistan. It is further stated that the operational structure of BISP is non-commercial in nature, functioning under the Poverty Alleviation

and Social Safety Division, Government of Pakistan, and implementing social protection through pre-defined policy instruments and formal banking channels, however, the BISP does not directly disburse financial assistance to its beneficiaries but operates through banks which are designated as official disbursing agencies. The respondent No.1 claimed to have been working as a Point of Sale (**POS**) under a franchise agreement for distributing BISP payments but neither BISP had any role in selecting or appointing any person nor did it have any contract, franchise agreement, supervision or administrative control. In May 2021, the ID of respondent No.1 was deactivated by Bank Alfalah due to internal reasons best known to the said bank. He filed a complaint before the Wafaqi Mohtasib, Islamabad, which was dismissed but the order was never challenged. Instead of pursuing the proper remedy, the respondent No.1 after almost two years, instituted a complaint under Section 13 of the Khyber Pakhtunkhwa Consumer Protection Act, 1997, (**Act of 1997**) in which he arrayed seven respondents, including various franchise operators, BISP officials/contractors, Bank Alfalah's Country Head (BISP Wing), and the petitioner in his official capacity as Deputy Director, BISP. The allegations included misuse of authority, failure to respond to grievances, and arbitrary blocking of Retailer ID, but no documentary evidence was enclosed to support the same. The petitioner appeared and raised objections to the maintainability of the complaint. None of the witnesses produced by respondent No.1 had any official connection with BISP, nor did they produce any evidence showing that the petitioner had issued any order or direction for blocking the Retailer ID. It is further alleged that despite there being no evidence linking the petitioner to the blocking of the Retailer ID, the learned Consumer Court passed the judgment dated 01.07.2025 with the directions to the petitioner and Bank Alfalah to restore the ID of respondent No.1, or to give written reasons for the blockage, even though there was no proof of any action taken by BISP in this regard. The petitioner filed an appeal before the Peshawar High Court, Bannu Bench but vide impugned judgment, the appeal was dismissed.

3. The learned counsel for the petitioner argued that the learned High Court failed to appreciate that the Consumer Court had acted without jurisdiction, as no privity of contract or consumer relationship existed between the complainant and the petitioner. So far as the question of limitation is concerned, he argued that under Section 13 of the Act of 1997, statutory limitation of only ten days is prescribed for filing a consumer complaint which was instituted much after the limitation period from the date of alleged cause of action. It was further contended that the same grievance had been adjudicated and dismissed by the Wafaqi Mohtasib and the matter attained finality. According to the learned counsel, the impugned judgment dated 06.11.2025 passed by the Peshawar High Court, Bannu Bench, as well as the judgment dated 01.07.2025 passed by the Consumer Protection Court, Bannu are both based on misapplication of law and disregard of evidence. The learned High Court dismissed the appeal without considering that no privity of contract, consumer relationship, or "service hired for consideration" existed between the respondent No.1/complainant and the petitioner, thereby rendering the very foundation of the complaint void ab initio. The Consumer Court lacked jurisdiction under Sections 2 (c) and 2 (n) of the Act of 1997. It was further averred that the learned Courts below arbitrarily imposed obligations on the petitioner to restore or justify the blockage of a Retailer ID, which is not within the statutory mandate, policy framework, or administrative control of BISP. There was no consumer relationship that existed between the parties as no service was hired for consideration and no direct nexus subsisted. Neither BISP provided any service nor received any consideration nor had any relationship which was essential for invoking consumer Court’s jurisdiction.

4. The respondent No.1 appeared in person and while supporting impugned judgments, addressed us that he was operating as an

authorized retailer under the BISP scheme and facilitating the disbursement of funds to the beneficiaries but his Retailer ID was blocked by the BISP authorities without any prior notice, intimation, or opportunity of hearing. At the same time he asserted that he was retailer of franchisees (respondent 1 and 2 in the complaint). It was further argued that despite making requests through various representations, no action was taken to redress his grievance. According to him, both the Courts rightly decided the matter in accordance with law and the petitioner failed to point out any misreading or non-reading of evidence, or any legal error for interference by this Court.

5. Heard the arguments. The Act of 1997 was promulgated to provide promotion and protection of the interest of consumers; healthy growth of fair commercial practices; promotion and protection of legitimate interests of consumers and speedy redressal of their complaints and matters arising out of or connected therewith. Indeed the consumer in material form is a starting grid of economic activities; therefore, its starring role should be appreciated and respected in the growth and development of the market with the right and proper consumer protection redressal platform/forum. According to Section 2, clause (c) of the Act of 1997, "Consumer" means any person or entity who (i) buys goods for a consideration which has been paid or to promised or partly paid and partly promised to be paid or under any system of deferred payment including hire purchase and leasing and includes any user of such goods but does not include a person who obtains such goods for re-sale or for any commercial purpose; or (ii) hires any goods or services for a consideration which has been paid or promised or partly paid and partly promised to be paid or under any system of deferred payment including hire purchase and leasing and includes any beneficiary of such services. Whereas clause (n) of Section 2 defines the terms "Services" which includes services of any description which are made available to potential users and includes the provision of facilities in connection with banking, financing, insurance,

transport, manufacturing, processing, accountancy, supply of electrical, mechanical or any other form of energy including gas and petrol, water, telephone, boarding or lodging, entertainment, medicine, education, construction work, amusement, catering, security, or purveying news or other information and similar other services, but does not include the rendering of any service free of charge or under the contract of personal service.

6. Whereas Section 12 of the Act of 1997 is germane to the jurisdiction of the Consumer Court established under section 11A according to which the Court shall have jurisdiction to entertain complaints within the local limits of whose jurisdiction (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or personally works for gain; or (b) any of the opposite parties, where there are more than one, at the time of the institution of the compliant, actually and voluntarily resides, or carries on business, or personally works for gain provided that in such case cither the permission of the Court is given, or the opposite parties who do not reside, or carry on business, or personally work for gain, as the case may be, acquiesce in such institution; and (c) the cause of action wholly or in part arises.

7. The procedure of filing a complaint is explicated under Section 13 of the Act of 1997 in relation to <u>any goods sold or delivered or any service provided</u>, that may be filed in the Court by the consumer to whom such goods are sold or delivered or such service is provided; any recognized consumers association irrespective of the fact that the consumer to whom the goods are sold or delivered or service is provided is or is not a member of such association; or by the Director or any officer of the Directorate authorized by him in this behalf. However under sub-section (2) it is clearly provided that a complaint under this section shall be submitted <u>within ten days of the sale, delivery or rendering of the service</u>; provided that the Court having

jurisdiction to hear the complaint may allow a complaint to be filed after ten days and within such time as it may allow if it is satisfied that there was sufficient cause for not filing the same within the specified period; provided further that such extension shall not be allowed beyond a period or sixty days from the expiry of the warranty or guarantee period specified by the <u>manufacturer of the goods or seller of the services</u> and if no such period is specified, one year from the date of purchase of the goods or providing of services.

8. At the same time, Section 15 of the Act of 1997 deals with the findings of the Court and provides that (1) If after the proceedings conducted under section 14, the Court is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any or all of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to take one or more of the following actions, namely- <u>a) to remove defect from the goods in question; (b) to replace the goods with new goods of similar description which shall be free from any defect; (c) to return to the complainant the price or, as the case may be, the charges paid by the complainant; (d) to do such other things as may be directed for adequate and proper compliance with the requirements of section 4, (*Obligation of manufacturers*) section 5 (*Prices to be exhibited at business place*) or section 6 (*Receipt to be issued to purchaser*); (e) to pay such amount as may be awarded by it as compensation to the consumer for any loss or negligence of the opposite party.</u> [Emphasis supplied] According to sub-section (2) every order made by the Court under sub-section (1) shall be signed.

9. In tandem, Section 19 of the Act of 1997 provides that where a complaint is found to be frivolous or vexatious, the Court as the case may be, shall dismiss the complaint and appropriate compensation may also be awarded to the respondent from the amount of fine so realized. As far as the question of vicarious

liability is concerned, Section 20 of the Act of 1997 accentuates that where any offence under this Act is committed by an agent or servant of any manufacturer or trader, such offence shall be deemed to have been committed by such manufacturer or trader unless he proves that such offence was committed without his knowledge.

10. The universal aim of consumer protection laws are meant to safeguard a consumer's interest from unscrupulous and deceptive business practices. In order to counterbalance the imbalance between corporations/manufactures/service providers and consumers, the right of information, choice, and forum of redress is also provided to ensure fair treatment at the trading floor. This special law ensures that the products are safe for use and prevent the sale of defective goods; proscribing deceitful advertising, disingenuous pricing, and unfair contracts; ensure to provide clear, accurate information about products and the procedures for consumers to seek refunds, replacements, or repairs and file complaints against fraudulent business activities. In fact, the main concentration of consumer protection laws globally is to keep the sellers honest and to protect purchases of goods from fraudulent or deceptive marketing or unfair marketing gimmicks. These laws are vigorous for modern society so that the consumers may be treated fairly and squarely and can seek justice against defective goods and services while maintaining equilibrium in the power dynamics between consumers and conglomerates ethically with the tools to address disputes or complaints which is otherwise necessary that sometimes, advertisements of products mislead consumers with exaggerated claims about their products or services but fail to meet the expected quality or result or sometimes it carries hidden fees or confusing clauses that amounts to unfair business practices. In the recent time, the consumer protection laws also cover e-commerce and digital transactions globally with the same level of fairness, transparency and consumer rights as brick-and-mortar stores.

11. According to an article published on the website “GlobaLex” “International Law and Consumer Protection”, the history of consumer protection was discussed which shows that until the 18th century, the consumers had to verify themselves the quality of the goods they purchased and only in the presence of gross negligence the seller could have been held liable. The struggle against capitalism and food fraud started the first phase of consumerism but it wasn’t until the third phase, in the 1950s, i.e. the involvement of the European countries, that the first consumer organizations were born in Denmark in 1947 and in Great Britain in 1955 where the Government created the Consumer Council in order to enable consumers to express themselves on issues reserved to producers and traders. But the real normative breakthrough came with the Single European Act; it modified the Treaty of Rome by strengthening the role of the Economic and Social Committee, to whom were attributed powers to protect the consumers. The Federal Trade Commission was created on September 26, 1914, when President Woodrow Wilson signed the Federal Trade Commission Act into law. The FTC opened its doors on March 16, 1915. The FTC’s mission is to protect consumers and promote competition. In Europe there are many consumers’ organizations. The Regulation on Consumer Protection Cooperation (CPC) is applicable in the European Economic Area. The consumers’ authorities of Norway, Iceland and Liechtenstein are therefore authorities of the CPC Network. The International Consumer Protection and Enforcement Network is a worldwide organization involving more than 40 countries, most of which are members of the Organization for Economic Cooperation and Development (OECD).The aim of the Network is to share information about cross-border commercial activities that may affect consumer interests, and to encourage international cooperation among law enforcement agencies. The Organization for Economic Cooperation and Development addresses a wide range of issues relevant to consumers. The three main areas of work of the CPC are: building consumers trust in the digital economy; impact of the new technologies

and emerging business practices on consumers; examining consumer policy regimes, including the economic underpinning of consumer policy and its interaction with competition policy. The United Nations Guidelines for Consumer Protection, that were adopted in 1985 and revised in 1999, propose a list of objectives described as "legitimate needs": right to be heard; right to information; right to safety; right to choose; right to consumer education; promotion of economic interests of consumers. Many of these objectives appear to have their origins in human rights such as the right to safety for instance, which echoes the Universal Declaration of Human Rights. Ref: **https://www.nyulawglobal.org/globalex/international_law_consumer_protection.html**

12. Here we would like to quote certain dictums laid down by the Courts of foreign jurisdictions on consumer's rights protection which are under:**-**

1. Donoghue v Stevenson **[1932] AC 562 (HL)**. The Court decided the principle of duty of care/negligence and held that the manufacturer owed a duty of care to the consumer which established the foundation of modern consumer protection in negligence law. It also established the "neighbor principle," forming the basis of modern consumer protection in negligence law.

2. Carlill v Carbolic Smoke Ball Co. **[1893] 1 QB 256 (CA)**. This case deals with misleading advertisements/unilateral contracts. A company advertised a product claiming it could prevent flu and promised a reward if it failed. The court ruled the advertisement was a binding offer.

3. Grant v Australian Knitting Mills **[1936] AC 85 (PC)**. The Court discussed the principle of implied conditions & product safety that the goods must be fit for purpose and free from defects and held the manufacturer liable for the damage and defect.

4. Bolton v Stone **[1951] AC 850 (HL**). The Court discussed the principle of "standard of care" whether reasonable care was taken and defined how far businesses must go to protect consumers.

5. M/S Lucknow Development Authority v M.K. Gupta (**1994) 1 SCC 243 (SC)**. In this case, a government housing authority failed to deliver promised services. The court held that even public bodies are accountable under consumer law. Expanded the consumer protection to include government services.

6. Pharmaceutical Society of Great Britain v Boots Cash Chemists **[1953] 1 QB 401 (CA)**. The Court examined the principle of formation of contract in self-service stores i.e. "consumer contracts in retail". Issue was when a contract is formed in a self-service store? The court clarified that the offer occurs at the checkout, not shelf display. In fact this dictum is helpful to protect consumers in modern retail systems.

7. Indian Medical Association v V.P. Shantha **(1995) 6 SCC 651 (SC)**. The Court examined the scope of Medical Services under the

consumer law and ruled that medical services come within the definition of "service" under consumer protection law and the patients were recognized as consumers.

8. M.R.F. Ltd. v Manohar Parrikar **(2010) 11 SCC 374 (SC)**. The Court discussed the principle of balance between consumer interest and regulation in the context of public policy and regulation and decided the consumer rights interacting with the government regulation.

9. Kishore Lal v Chairman, Employees State Insurance Corporation. **(2007) 4 SCC 579 (SC)**. The Court discussed the medical services and statutory bodies and held that certain statutory medical services may also fall within consumer protection.

10. Spring Meadows Hospital v Harjol Ahluwalia **(1998) 4 SCC 39 (SC)**. The Court examined the principle of medical negligence and compensation and held that hospital was liable for negligence causing harm to a child which also strengthened consumer rights in healthcare.

11. Ghaziabad Development Authority v Balbir Singh **(2004) 5 SCC 65 (SC)**. This was a case of compensation for delay in services. The Court granted compensation for delay in delivering housing which protected the consumers in real estate matters also.

12. Bihar School Examination Board v Suresh Prasad Sinha **(2009) 8 SCC 483 (SC)**. The Court held that education not always a "service" and examination boards do not fall under consumer services which in fact defined the limits of consumer protection law.

13. Indian Oil Corporation v. Consumer Protection Council, Kerala (**1994 1 SCC 397**). The Court held that as there was no privity of contract between the concerned parties therein, no 'deficiency' would arise and the action (complaint) would not be maintainable before the concerned Consumer Forum.

14. Janpriya Buildestate Pvt. Ltd. v. Amit Soni (**2021 SC 1269 (SC)**). The Court held that when there is no privity between the complainant and the opposite party, the opposite party could not become liable under the Act. In other words, if there is no law under which a person is to provide a service and if it does not fall within the residuary clause, namely, 'otherwise' as defined under the word 'deficiency', it is necessary for a consumer to succeed, that there must be a contract. It is in that context we indicated that the existence of an obligation under a contract is a sine qua non for a consumer to successfully prosecute a case under the Act.

13. The learned Consumer Court in its Order dated 01.07.2025 held that since no prior notice was issued and ID was suddenly blocked which caused disruption of services to deserving BISP beneficiaries, hence complaint was partially accepted and respondents were directed to unblock the retailer ID of the complainant. In unison, the learned High Court also dismissed the appeal merely on the ground that the ID was blocked without notice to him but it failed to advert to the jurisdiction of Consumer Court vis-à-vis the crucial ground i.e. who was actually a service provider in this case, bank or the respondent

No.1 who claimed to have an agreement as service provider with POS ID. It was not sole case of normal banking relationship between an account holder/client and bank whose personal account was blocked for some reasons without notice rather on the face of it or on his own showing, the respondent No.1 allegedly structured his compliant of block POS ID as retailer/agent of franchisees (respondent No.1 and 2) in the complaint but he also arrayed BISP so for all intent and purposes, he himself was service provider as POS/agent, although, no such retailer agreement with BISP or its alleged franchisee was placed on record to prove any such arrangement. So for all intent and purposes, he was himself a service provider as retailer of alleged franchisees and not as service acquirer to claim the benefit of Act of 1997. No alleged beneficiary of BISP fund approached the consumer Court against the non-grant of services or payment of fund by BISP or Bank individually or independently. The petitioner at pages 91 to 93 of the paper book attached the lists of POS agents complied by BISP for District Bannu but the name of the respondent No.1 does not reflect which otherwise belies his contention. Since the substratum of the complaint was defective from its inception, that's why in our considered view the complaint was not maintainable and liable to be dismissed. At this stage, we recapitulate that the question of maintainability of lawsuit always go to roots of the case and when it was specifically raised whether the complaint was maintainable under the provisions of Act of 1997 or not, therefore, it should have been decided by the Consumer Court literally and even could have decided on its own motion, keeping in mind the peculiar facts and circumstances of the case which was not done with proper application of mind. Nevertheless, if it was disregarded by the Consumer Court, even then the question of jurisdiction should have been considered by the learned High Court including the nature of relationship and dispute raised in the complaint whether it fit in the provisions of Act of 1997 or not rather than nonsuiting the petitioner on the sole ground that no notice was issued to the respondent No.1 before blocking his alleged POS ID. If the court lacks the jurisdiction and authority, any order or judgment passed by it deems to be null and void.

14. In the case of Jameel Qadir versus Government of Balochistan **(2023 SCP 274 = 2023 SCMR 1919**), it was held by one of us that the term 'jurisdiction' in the legal parlance means the command conferred to the Courts by law and Constitution to adjudicate matters between the parties. The jurisdiction of every Court is delineated and established to adhere to and pass legal orders. In order to deal with the different species of litigation, some Courts and Tribunals are vested with exclusive jurisdiction for taking cognizance of matters which other Courts cannot take under the rigidity or stringency of exclusive jurisdiction to deal with and decide the lis. No Court has the right to decide any lawsuit which is beyond the purview of its jurisdiction and want of jurisdiction conveys an action beyond the domain earmarked to any particular Court or Tribunal which cannot be cured, even by consent or acquiescence of parties. It is the prime duty of the Court to decide the question of jurisdiction first in case of doubts raised regarding jurisdiction, and in any such situation, it is the responsibility of the Court to endeavor to resolve the issue of jurisdiction at an early stage of the proceedings. In case of any doubt, the Court is duty-bound to decide the question of jurisdiction before commencing a full-fledged trial and, if the case is found to be beyond the jurisdiction of that Court, the parties may be directed to seek the appropriate remedy before the appropriate Court or forum, rather than proceeding with the whole case and then deciding the issue of jurisdiction. The expression 'coram non judice' means an act done by a court which has no jurisdiction. In the case of Huddersfield Police Authority v. Watson (**1947 2 All E.R.193**), it was held that where a case or statute had not been brought to the Court's attention and the Court gave the decision in ignorance or forgetfulness of the existence of the case or statute, it would be a decision rendered in per incuriam (Also see: Morelle Ltd. v Wakeling (**[1955] 2 QB 379**) & Young v. Bristol Aeroplane Co. Ltd. (**1944 KB 718 at 729 = (1944) 2 All E.R. 293 at 300**)).

15. So far as the question of limitation is concerned, this Court in the case of Pak Suzuki Motors Company Ltd. vs. Faisal Jameel Butt (**2023 CLD 934**), while considering the provisions of the Punjab Consumer Protection Act 2005 with regard to the defective or faulty product or service, or contravention of the provisions of the Act by the manufacturer or service provider, held that a suit has to be filed within 30 days of the arising of the cause of action. The cause of action, in such circumstances where a product or service is faulty, therefore, arises the moment the consumer obtains knowledge that the product or service is defective or faulty. It was further held that the limitation period in such consumer protection claims becomes more significant especially because claimants should bring a claim as quickly as possible due to the potential depreciation of the product in question, the characteristics of which may differ according to the specific product. Delaying the filing of a claim can lead to challenges in establishing the product's condition at the time of purchase and linking any defects to the consumer's use or handling. As time passes, the product may deteriorate, be repaired or modified, or become unavailable, making it more difficult to prove the defects or assess its original condition. Additionally, timely action demonstrates the consumer's diligence and commitment to addressing the issue. It was further held that when the consumer obtains knowledge of the defect or fault in the product or the service, the 30-day limitation period stipulated under section 28 (4) of the Act commences. It is during this period that the consumer has to first put his grievance before the manufacturer or service provider, seeking rectification of the defect or fault in the product or service, or damages, and provide 15 days to the manufacturer or service provider to remedy the same, as required under section 28(2). It is only after the manufacturer or the service provider responds to the written notice, or where he fails to respond within the stipulated 15-day period, that the consumer can file a claim before the Consumer Court if the cause of action still subsists. The consumer can still file a claim before the Consumer Court by giving sufficient cause

for filing the claim beyond 30 days which will be examined by the Consumer Court, as per the provisos to section 28(4) of the Act.

16. This Civil Petition was converted into an appeal and allowed vide our short order 10.03.2026 wherein keeping in mind the peculiar relationship pleaded by the respondent No.1 in the complaint, we held that complaint under Section 13 of Act of 1997 was not maintainable. As a consequence thereof, the judgment dated 01.07.2025 passed by learned Consumer Protection Court, Bannu and the judgment dated 06.11.2025 passed by the learned Peshawar High Court, Bannu Bench, in Consumer Protection Appeal No.173-B/2025, both were set aside and the complaint before the Consumer Court was dismissed. However, in the interest of justice, we directed the Director General (Cash Transfer), BISP, Islamabad to conduct an inquiry and afford ample opportunity of hearing to respondent No.1/complainant and show him the reasons for blocking his alleged Point of Sale (POS) Agent's ID and also confront him if any complaint received against him to the BISP Directorate and then pass appropriate order within 45 days so that he may recourse to appropriate remedy in accordance with law.

17. Above are the reasons in support of our short order.

Judge

Judge

Islamabad
10.03.2026
Khalid
Approved for reporting.