

Reportable

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.400 OF 2007

Punjab University ... Appellant

:Versus:

Unit Trust of India &amp; Ors. ... Respondents

WITH

CIVIL APPEAL NOS.503 of 2008 &amp; 4664 of 2009

## JUDGMENT

Pinaki Chandra Ghose, J.

1. Delay in filing Civil Appeal No.503 of 2008 is condoned.
2. Civil Appeal No.400 of 2007 has been filed by the Punjab

University which is a statutory/autonomous body constituted

under the Punjab University Act, 1947 for imparting education to

Signature Not Verified

Digitally signed by  
Sanjay Kumar

the general public. Civil Appeal No.503 of 2008 is the cross appeal

Date: 2014.07.09

16:11:36 IST

Reason:

filed by the Unit Trust of India. Both the aforementioned appeals

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arise against the impugned judgment dated October 17, 2006 of the National Consumer Disputes Redressal Commission (hereinafter referred to as "National Commission") in Original Petition No.97 of 2004, which was filed by Punjab University, being the complainant against the Unit Trust of India (hereinafter referred to as "UTI"). Civil Appeal No.4664 of 2009 filed by the UTI arises against the impugned order dated April 17, 2009 passed by the National Commission in Original Petition No.51 of 2005, which has been

filed by the complainant Punjab Agriculture University against the opposite party being the UTI.

3. As the consumer complaint filed in both the matters pertains to the same scheme being the "Institutional Investors Special Fund Unit Scheme, 1998" (hereinafter referred to as "IISFUS-98") in which the Punjab University (complainant in Original Petition No.97 of 2004) and Punjab Agriculture University (complainant in Original Petition No.51 of 2005) invested and the National Commission while passing the order in Original Petition No.51 of 2005 relied upon its earlier decision rendered in Original Petition No.97 of 2004, all the matters were heard together and are being disposed of by means of this common judgment.

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4. To understand the controversy in these appeals, we will briefly discuss the factual matrix, which for the sake of brevity is limited to the facts extracted from Civil Appeal No. 400 of 2007 and is stated as under:

4.1. Punjab University employs thousands of employees for the smooth functioning of the University and for this purpose it receives grants from the Central Government as well as from the State Government for making payment to its employees towards salaries, provident funds, gratuity etc. The University has a contributory Provident Fund Scheme for its employees and its fund is maintained and administered by the University. In the year 1993, Punjab University invested an amount of Rs.9.6 crores in the "Institutional Investors Special Fund Unit Scheme-93" (hereinafter referred to as "IISFUS-93") of UTI, which was an open ended scheme.

4.2. The amount was invested with the reinvestment option of the dividend and the said amount became Rs.19.78 crores on termination of the scheme by the UTI on March 31, 1998. This Scheme guaranteed protection of original capital and assured a return of 16% per annum payable half yearly. The IISFUS-93

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Scheme was unilaterally terminated by the UTI w.e.f. March 31, 1998 and the maturity amount became Rs.19,78,26,299.44p.

4.3. Thereafter, in the year 1998, another Scheme i.e.

IISFUS-98 was floated by the UTI and Punjab University invested an amount of Rs.19 crores which was received by it on the maturity of IISFUS-93 with a specific understanding that the dividend receivable during the Scheme period would be reinvested and it would be refunded with a minimum interest at the rate of 13.5% per annum.

4.4. In view of the conversion of Rs.19 cores from IISFUS-93 to IISFUS-98, the University also made an investment of Rs.4.5 crores. This investment was made out of the funds "Foundation for Higher Education & Research". The Head Office of UTI at Mumbai issued two IISFUS-98 certificates for 1,90,00,000 units and 45,00,000 units worth Rs.19 crores and Rs.4.5 crores respectively, with each unit having a face value of Rs.10/-. The dispute in this matter revolves around the question as to whether the University is entitled to interest at the rate of 13.5% on the reinvested amount i.e the dividend which is reinvested with the UTI.

4.5. On June 4, 2003, the UTI sent the cheques for the maturity amount of Rs.30,45,23,910.23 and for Rs.7,13,81,520/- drawn on

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UTI Bank Limited and also furnished the details of the maturity payments against the investments. On receiving the cheque for Rs.30,45,23,910.23, being the maturity amount of Rs.19 crores from the UTI, the appellant University was surprised and shocked as according to the "Terms of Offer" of IISFUS-98, the maturity proceeds would be Rs.48,76,88,935.12/- which is higher than the amount received. The University served a legal notice to the UTI for the deficit payment of Rs.18,31,65,024.89 and Rs.4,21,93,558/- along with interest. On November 10, 2004, the University filed a complaint, being Original Petition No.97 of 2004, before the National Commission. The contention of the appellant-University before the National Commission was that they were assured that the dividend income would be reinvested in further units at Net Asset Value (hereinafter referred to as "NAV") and on those units also, in any case, they were assured that they would get minimum return @ 13.5% per annum and that it would be repurchased at par i.e. @ Rs.10/-. The respondents filed a

response to the said complaint filed by the appellant University.  
4.6. The National Commission vide its order dated October 10,  
2006 dismissed the said complaint filed by the appellant-University

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on merits. However, the Commission held that the complaint of the  
appellant-University is maintainable under the Act for deficiency of  
services by the respondent-Institution. Hence, the appellant  
University is before us challenging the order passed by the National  
Commission and the respondent-Institution is challenging the locus  
standi of the appellant-University before the National Commission  
in its cross-appeal before us.

5. The case of the appellant being Punjab University is that UTI  
failed to honour the assurance of 13.5% per annum returns and  
that they were in breach of contract as they invested more than  
20% in equity markets owing to which the NAV fell and the same  
amounts to deficiency of services. It has been further submitted by  
the learned counsel appearing on behalf of the appellant that the  
respondents failed to disclose the details of the alleged  
Non-Performing Assets and also failed to disclose the efforts made  
by them to recover Non-Performing Assets and how they intended to  
treat them. It has also been submitted that the National  
Commission was incorrect in considering the offer document which  
was not binding on the parties especially in the light of the fact that  
UTI did not give them the offer document and they were only given a

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letter dated March 9, 1998 addressed by the Executive Director of  
UTI, terms of offer and the conversion application but not the offer  
document. It has been lastly contended that the impugned order is  
incorrect in view of the fact that the appellant as per the terms of  
offer was required to read the offer document without the same  
being binding on the parties and that the terms pertaining to the  
Development Reserve Fund were not honoured.

6. In addition to the above, the Punjab Agriculture University the  
complainant in Original Petition No.51 of 2005, being the  
respondent in Civil Appeal No 4664 of 2009 through the learned  
counsel appearing on its behalf submitted that the investment  
made by the appellant University in the IISFUS-98, cannot come

under the term "commercial" as per the meaning of the word "commerce" as has been held by the National Commission in the impugned judgment. For this purpose, he relied upon the decision of this Court in Laxmi Engineering Works vs. P.S.G. Industrial Institutel.

7. Learned counsel for Punjab Agriculture University further submitted that in the light of the specific findings of the National Commission that "no benefit by way of profit was to accrue to the

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(1995) 3 SCC 583

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complainant, improving its balance-sheet", there was no question of the University making any profit and even if the University was making any profit after paying the statutory dues to its employees, it cannot be called a commercial purpose as it had invested the money on the basis of the promise made by UTI that the University would be paid interest at the rate of 13.5% per annum for the investment made in the IISFUS-98, for the reason that the scheme was open only to the institutions, the UTI was charging a consideration for the scheme floated by it.

8. It was further submitted by the learned counsel for the appellant University that the investors who deposited their money in the UTI Scheme are the consumers and in the event of a breach by the UTI in respect of the promise made by it, it would be open to them to approach the Consumer Forums for "deficiency" of service, and the UTI cannot take a plea that the investments were made for profit and not for earning livelihood. The counsel of the Punjab Agriculture University concluded his arguments by submitting that a distinction has to be made as to how the goods are further used; merely because institutions at the invitation of the UTI had invested money in IISFUS-98, they cannot be called as commercial people

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just because the investment is made for the purpose of earning a profit, and if such a narrow view is taken then the institutions who deposit money with the financial institutions in order to earn interest, in furtherance of their obligation of discharging their duties, would be deprived of litigating their cases for breach of

promise under the Act.

9. Mr. Amarendra Sharan, learned senior counsel appearing on behalf of UTI on the other hand, submitted that the complainant Universities do not fall under the term "consumer" as defined under Section 2(1)(d) of the Act and the respondent-UTI was not providing any "services" as defined under Section 2 (1)(o) of the Act and hence the complainant Universities are not entitled to any relief before the National Commission. We will reproduce Section 2(1)(d) of the Act for ready reference:

"(d) 'Consumer' means any person who,-

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

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(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who 'hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose;

Explanation.- For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment."

10. It is the contention of the learned senior counsel appearing for the UTI that from the definition of "consumer" as quoted above, it is clear that "consumer" means any person who hires or avails of any services for a consideration, but does not include a person who avails of such services for any commercial purpose and the "commercial purpose" does not include services availed by him exclusively for the purposes of earning his livelihood by means of self-employment. Learned senior counsel submitted that the services of participating in the Schemes of the UTI are for commercial purpose if the same are not availed by any person exclusively for the purposes of earning his livelihood by means of

self-employment. He further submitted that as the University invested the money in the UTI's Scheme for the purpose of getting higher returns through the Stock Market for commercial enrichment of its fund, and no consideration was charged by the UTI for the returns on investment, the University is excluded from the definition of "consumer".

11. Mr. Sharan, learned senior counsel further submitted that the University is not availing the Schemes exclusively for the purposes of earning its livelihood by means of self-employment inasmuch as the University's livelihood is by imparting education for consideration from students in the form of tuition and other allied fees/charges and this activity of the University is not 'self-employment'. That it is an admitted fact that the services availed by the University were neither for their self-employment nor for their livelihood and therefore the transactions were for the purpose of investment in the Stock Market with the object of earning profit and a higher rate of return and thus it would be for 'commercial purpose'.

12. Mr. Sharan, learned senior counsel drew our attention to the fact that the University invested the monies of the CPF/GPF and Pension Funds and it admitted before the National Commission that

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the payment of pension to the pensioners/family pensioners is also made from the interest accrued from these investments. As per Mr. Sharan, the aforementioned clearly established that the investment by the University in the Stock Market is for earning profits and that these risks for higher returns are purely commercial ventures with clear intention and motive to achieve the purpose of higher commercial benefits to the University so as to enable it to discharge its liability of payments to the pensioners.

13. Mr. Sharan, learned senior counsel further submitted that even assuming, without admitting, that the UTI was providing services to the University, there is no deficiency in services as alleged by the University. It is Mr. Sharan's case that the University opted for the reinvestment option and UTI reinvested the income into further units at the then prevailing NAV and at the end of the

Scheme, the UTI has redeemed the parent units at par in terms of the Offer Document, and the reinvested units were redeemed at the prevailing NAV rate in terms of the Scheme.

14. In addition to the above, Mr. Sharan submitted that the

National Commission failed to appreciate that the investment in the IISFUS-98 was of "commercial nature" as it provided higher return at the rate of 13.5% per annum on reinvestment in

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commercial venture in the Stock Market Mutual Funds and/or Debt market for earning higher commercial profit. The entire investment made in the scheme was for the purpose of getting higher commercial returns and thus it is purely a commercial purpose.

15. Learned senior counsel for the UTI further submitted that the

National Commission erred in not taking into account the provisions of the IISFUS-98 but the fact that the investments were

being made from the funds generated by Employees Pension and

Provident Funds and that the instant investment made by the

University for a commercial consideration, is itself a commercial

venture. He concluded his arguments by submitting that there was

no direct investment by the individual employees nor they were

beneficiaries of higher income and it was purely an Institutional

investment and the beneficiary of such investment was only the

Institution. Individual employees would not have been paid the

higher rate of interest on their EPF and pension contribution but

they would have been entitled to fixed rate of interest as per the

applicable Provident Fund Schemes, irrespective of whether the

funds were invested or not. In support of his arguments, Mr.

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Sharan relied upon the decisions of this Court in Morgan Stanley

Mutual Fund v. Kirtick Das<sup>2</sup>, and Laxmi Engineering Works (supra).

16. The broad arguments of Mr. Sharan on merits are that UTI

had instituted a closed ended IISFUS-98 for five years for

Institutional Investors who wanted to invest large amounts in an

exclusive Scheme and that as per IISFUS-98, there were two

options available to the investors, first option being that UTI

assured income of 13.5% on the invested amount and second

option being that the investor had an option to choose reinvestment

of income @ 13.5% into further units, income of which would go to the account of the investor. Punjab University had opted for the "reinvestment option" on its own volition, which is evident from the application form duly signed on behalf of Punjab University and as per the "reinvestment option" of IISFUS-98, all unit holders had an option to reinvest the income received @ 13.5% annually on the outstanding units into further units at NAV in terms of Clause XXVII of the 'offer document' of the IISFUS-98, as per which the units allotted under the reinvestment option under Clause XXVII are not subject to the conditions and stipulations governing the parent units in respect of the minimum holding, repurchase and

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(1994) 4 SCC 225

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other matters. That as per Clause XXVII, all the unit holders including the complainant University under IISFUS-98 were paid maturity amount as per the provisions of the Scheme i.e. the parents units were repurchased at par as guaranteed and accumulated units acquired by way on reinvestment option at NAV prevailing at the time of maturity. That as per the Scheme the income of the University was reinvested annually by UTI at the prevailing NAV as per the provisions of the Scheme. Furthermore, the assurance given by the letter dated March 9, 1998 by the Chairman of the UTI was with regard to the return of 13.5% per annum on the capital invested, and along with the said letter the Terms of Offer were enclosed, which gave an option to the investor to receive the amount of 13.5% p.a. in cash or to reinvest the said return by purchasing UTI units; the Terms of Offer also provided that the option for reinvestment of income/return would be on prevailing NAV without any sales load. Mr. Sharan concluded his arguments by submitting that in terms of the above submissions the National Commission correctly dismissed the complaint of Punjab University on merits.

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17. Having heard the arguments of the parties concerned and after perusing the documents produced before us, we find that the primary question to be answered in the present appeals is whether

the complainant-Universities fall within the ambit of the definition of "consumer" as laid down in Section 2(1)(d) of the Act and that the "services" hired by them are not for any "commercial purpose". Based on the answer in the aforementioned question we need to consider whether the learned Commission has correctly dismissed the complaint on merits.

18. We noticed that in the explanation given under Section 2(1)(d), by means of an amendment in 2003 (w.e.f. March 15, 2003) the term "sub-clause (i)" was substituted with "clause" to further widen the scope of the applicability of the explanatory clause. The quandary which exists thus in light of the amendments is whether services availed by the complainants (being investment in the IISFUS-98 made through UTI) precludes them from being consumers under the Act by virtue of those being availed for "commercial purpose". To determine the same we will discuss the various interpretation of the term "commercial purpose".

19. This Court in Laxmi Engineering Works (supra) has dealt with the meaning of the term "commercial purpose" vis-à-vis the

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definition of "consumer" most exhaustively and the position remains the same till date. We will refer to the relevant portion of the said decision as under:

"Now coming back to the definition of the expression 'consumer' in Section 2(d), a consumer means in so far as is relevant for the purpose of this appeal, (i) a person who buys any goods for consideration; it is immaterial whether the consideration is paid or promised, or partly paid and partly promised, or whether the payment of consideration is deferred; (ii) a person who uses such goods with the approval of the person who buys such goods for consideration (iii) but does not include a person who buys such goods for resale or for any commercial purpose. The expression "resale" is clear enough. Controversy has, however, arisen with respect to meaning of the expression "commercial purpose". It is also not defined in the Act. In the absence of a definition, we have to go by its ordinary meaning. "Commercial" denotes "pertaining to commerce" (Chamber's Twentieth Century Dictionary); it means "connected with, or engaged in commerce; mercantile; having profit as the main aim" (Collins English Dictionary) whereas the word "commerce" means "financial transactions especially buying and selling of merchandise, on a large scale" (Concise Oxford Dictionary). The National Commission appears to have been taking a consistent view that where a person purchases goods "with a view to using such goods for carrying on any activity on a large scale for the purpose of earning profit" he will not be a "consumer" within the meaning of Section 2(d)(i) of the



consumer is defined as, 'a purchaser of goods or services'. In Black's Law Dictionary it is explained to mean, 'one who consumes'. Individuals who purchase, use, maintain, and dispose of products and services. A member of that broad class of people who are affected by pricing policies, financing practices, quality of goods and services, credit reporting, debt collection, and other trade practices for which State and Federal Consumer Protection Laws are enacted'. The Act opts for no less wider definition.

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It is in two parts. The first deals with goods and the other with services. Both parts first declare the meaning of goods and services by use of wide expressions. Their ambit is further enlarged by use of inclusive clause. For instance, it is not only purchaser of goods or hirer of services but even those who use the goods or who are beneficiaries of services with approval of the person who purchased the goods or who hired services are included in it. The legislature has taken precaution not only to define 'complaint', 'complainant', 'consumer', but even to mention in detail what would amount to unfair trade practice by giving an elaborate definition in clause . and even to define 'defect' and 'deficiency' by classes (f) and (g) for which a consumer can approach the Commission. The Act thus aims to protect the economic interest of a consumer as understood in commercial sense as a purchaser of goods and in the larger sense of user of services."

It is thus seen from the above extracts that Section 2(1)(d)(i) is discussed exclusively by this Court. We are of the opinion that clauses (i) and (ii) of Section 2(1)(d) of the Act must be interpreted harmoniously and in light of the same, we find that Explanation following Section 2(1)(d)(ii) of the Act would be clarificatory in nature and would apply to the present case and as held by this Court in Laxmi Engineering Works (supra), the term "commercial

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purpose" must be interpreted considering the facts and circumstances of each case.

21. Under Section 20(6) of the Consumer Protection Act, 1987 of the United Kingdom, the definition of the term "consumer" is thus:

"Consumer-- (a) in relation to any goods means any person who might wish to be supplied with the goods for his own private use or consumption;

(b) in relation to any services or facilities, means any person who might wish to be provided with the services or facilities otherwise than for the purposes of any business of his; and

(c) in relation to any accommodation, means any person who might wish to occupy the accommodation otherwise

than for the purposes of any business of his;"

As per Stroud's Judicial Dictionary the term "commercial" is defined as under:

"Commercial- (1) Commercial action includes any clause arising out of the ordinary transactions of merchants and traders and, without prejudice to the generality of the foregoing words, any cause relating to the constructions of a mercantile document, the export or import of merchandise, affreightment, insurance, banking, mercantile agency and mercantile usage

(2) An incorporated canal company whose profits arose from tolls, was held a 'commercial company', or a company associated for "commercial purposes," and, as such, liable to become bankrupt under Joint Stock Companies Act 1844."

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Thus, the words 'commercial purposes' would cover an undertaking the object of which is to make a profit out of the undertakings. In the present case the services of UTI were availed by the complainant for the betterment of their employees, that such an investment was made, and it is to be made clear that no benefit by way of profit was to accrue to the complainant, improving its balance-sheet, in view of the definition of the word 'commerce' given above, under no circumstances, the appellant could be said to be indulging in any 'commercial' activity, thus excluding him from the definition of 'consumer' as enshrined in the Act. The intent of the Universities in the present dispute is not profiteering and the same is for benevolent interest and there is no intention whatsoever that the investment is made for any commercial purpose or gain and therefore we find that the complainant Universities fall within the definition of "consumer" under the Act and the complaints are maintainable before the National Commission.

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22. Now, we need to consider whether in terms of the offer, is there any deficiency of services. The National Commission's findings regarding the same are as under:

"The terms of the offer specifically provides that the UTI would pay an assured return of 13.5% p.a. for all the 5 years of the scheme. The said return (income) for the first year was agreed to be paid in July, 1998. Thereafter, income for the subsequent years was to be paid in July each year. The balance period from 1st July,

2002 to 31st May, 2003 the income was to be paid in May, 2003. After this, option was given to the investors to reinvest the income at prevailing NAV. On maturity it is guaranteed that repurchase price will not be less than the par value of the units, i.e. Rs.10/-. However, there is no such guarantee for premature repurchase and the purchase price will depend on NAV. Further, income assured under the scheme and protection of capital on maturity is guaranteed by the Development Reserve Fund of the Trust.

With regard to capital invested, admittedly, the units are repurchased at par value of unit, i.e. Rs.10 and not at NAV.

Thereafter, the terms and conditions are provided in offer document. One of the highlights provides that capital invested in the scheme will be protected on maturity and the units would not to be redeemed below par.

However, it is made clear that there is no such guarantee for units purchased from the return/dividend. It is true that there is vagueness in this term. There is no clarification whether the said term is applicable to premature repurchase of the units or repurchase of units purchased from the yearly return, i.e. dividend. However, this is to be read along with para-X which

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provides method of repurchase of units. In this also, the same phraseology is used as stated above. However, the clause makes it clear that return or dividend at the rate of 13.5% p.a. is to be reinvested on the basis of NAV, that means, if the price of the unit is Rs.9/-, the income would be invested in units and the purchase price for each unit would be Rs.9/- even though its face value is Rs.10/-.

Thereafter, para XXVII provides for reinvestment of income distributable in further units. It specifically provides that: "A unit holder who has repurchased the reinvested units may continue to avail of the reinvestment facility in respect of the income distributable for the subsequent years. The units allotted under the reinvestment facility under this clause are not subject to the conditions and stipulations governing the parent units in respect of the minimum holding, repurchase are other matters."

We have considered the same in light of the documents produced before us and we find that on merits, the complainants have no case. It has been clearly stipulated in the 'terms of offer' that the maturity amount will depend on the NAV and that the same was guaranteed not to be below the par value of Rs. 10 per unit. All investments are subject to markets risks and fluctuations and an investor has to exercise due caution while investing any amount in any Scheme just because the maturity amount is below their

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expectations they cannot drag the service provider to Court for the same.

23. For the reasons stated and the discussion we had in the preceding paragraphs, we hold that the National Commission correctly held that the University would come within the purview of "consumer" as defined in Section 2(1)(d) of the said Act and correctly dismissed the claim of the complainants on merits.

24. In light of the aforesaid discussion Civil Appeal No.400 of 2007 lacks merits and the same is dismissed. Civil Appeal Nos.503 of 2008 and 4664 of 2009 are disposed of in terms of this judgment.

.....J.  
(Chandramauli Kr. Prasad)

New Delhi;  
July 09, 2014

.....J.  
(Pinaki Chandra Ghose)

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ITEM NO.1A  
(For Judgment)

COURT NO.4

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No.400/2007

PUNJAB UNIVERSITY

Appellant(s)

VERSUS

UNIT TRUST OF INDIA & ORS.

Respondent(s)

WITH C.A. No.503/2008 (With Appln.(s) for c/delay in filing the appeal)  
C.A. No. 4664/2009

Date : 09/07/2014 These appeals were called on for pronouncement of judgment today.

For Appellant(s) Mr. Ravi Prakash Mehrotra ,Adv.  
Mr. Sudeep Kumar, Adv.

Mr. Bhargava V. Desai ,Adv.

For Respondent(s) Mr. Bhargava V. Desai ,Adv.

Mr. Shivaji M. Jadhav ,Adv.

Mr. Annam D. N. Rao ,Adv.

Hon'ble Mr. Justice Pinaki Chandra Ghose, pronounced the reportable Judgment of the Bench comprising of Hon'ble Mr. Justice Chandramauli Kr. Prasad and His Lordship.

Delay in filing C.A. No.503/2008 is condoned.

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The interlocutory application(s) pending if any stands disposed of.

Civil Appeal No.400/2007 is dismissed and Civil Appeal Nos.503/2008 and 4664/2009 are disposed of, in terms of the signed reportable judgment.

(SANJAY KUMAR)  
COURT MASTER

(INDU SATIJA)  
ASSISTANT REGISTRAR

(Signed Reportable Judgment is placed on the file)