

**IN THE COURT OF BAKHT FAKHAR BAHZAD,
DISTRICT & SESSIONS JUDGE/JUDGE CONSUMER COURT
GUJRAT**

CASE NO. 120-2014
Date of institution: 06-09-2014
Date of decision: 13-04-2017

*Awais Ahmad Cheema S/O Nisar Ahmad Cheema, R/O khlas Garh, P/O
Jalalpur Jattan, Teh & Distt Gujrat.*

Claimant

Vs

*Muhammad Asrar S/O Muhammad Hussain, Linesuperintndent GEPCO Jinah
Public Feeder Rural Sub-Division Jalalpur Jattan.*

(Defendant)

Present: Claimant Awais Ahmad Cheema along with his counsel Ch. Ijaz
Aslam Advocate.
Defendant Muhammad Asrar along with his counsel
Ch.Ghazanfar Mehndi
Acvocate

**COMPLAINT/CLAIM UNDER SECTION 25 R/W Ses30 OF PUNJAB CONSUMER
PROTECTION ACT,2005**

Judgment:

1. Awais Ahmad Cheema, claimant has triggered the machinery of law into motion by filing the instant claim under section 25 of Punjab Consumer Protection Act, 2005 (herein after referred to as "Act" for brevity) against the defendant with the assertion that he submitted application to the defendant for connection of Tubewell for consumer account No.29-123420945101 and through demand notice No.3685 dated 19-06-2014 deposited demand notice amount Rs.2,86,868/- on 24-06-2014. It is further alleged in the complaint that on 05-08-2014 the defendant got issued transformer etc and all the relevant material and shifted it at Dehra of claimant along with the electric pool but he did not install the Electric Meter. The complainant further stated that due to lack of non- supply of electricity he faced problems as his crops were to be cultivated and due to delayed tactics, ulterior motives, malafide and defective services the matter was delayed and he is liable to be tried under relevant provisions of

the Act and accordingly he has to bear the following loss.

- i. expenses for preparation of 4 acre land for cultivation Rs.40000/-
- ii. Due to defective service loss of Paneri Rs.10000/-
- iii. Financial loss due none cultivation of rice, fifty thousand/acre Rs.2000000/-
- iv salary of chokidar for safety purpose from 07-08-2014 to 24-08-2014 Rs.9000/-
- v damages for mental torture Rs.200000/-

2. Feeling disgruntled by the conduct of the respondent, the claimant sent a legal notice through registered AD but the same was not responded, copy of legal notice and registered receipt has been enclosed, cause of action arose on 16-08-2014.

3. The defendant appeared before the court and submitted written reply of the claim taking preliminary objections challenging maintainability of the complaint, jurisdiction of the court, complaint filed by the consumer does not fall within the definition of consumer and also on factual grounds he denied the assertions of the complaint and he added that claim has been filed against the defendant in personal capacity and not against the department/WAPDA.

4. it is pertinent to mention here that on issuing the notices by this court the defendant did not appear before the court and ultimately ex-parte proceedings were initiated against him on-24 09-2014 and thereafter he submitted application for setting aside ex-parte proceedings and vide order dated 02-12-2014 the ex-parte proceedings were set aside subject to deposit of Rs.3,000/- with direction to submit written reply on which he submitted reply before the court and the case was fixed for reconciliation by my learned predecessor but reconciliation proceedings failed, complainant appeared through special attorney Ehsan Ullah and statement of the complainant and his witnesses were recorded and thereafter on 23-05-2015 the defendant filed application under Order7 Rule 11 CPC for dismissal of the complaint. The following grounds were agigated in the application under Order7 Rule11of CPC.

- 1. Punjab Consumer Protection Act, 2005 is a provincial law while

WAPDA department is federal one and this court has no jurisdiction to entertain the complaint

2. *The complainant does not qualify the definition of consumer and dismissal of the complaint was prayed.*

5. *On the application submitted by the defendant, written reply was submitted by the complainant, stressing that the complaint is maintainable against the defendant. He relied upon in his written reply on PLD 2015 Lahore 204 and stressed that the application filed by the respondent is liable to be dismissed inter-alia on the agitated grounds.*

6. *Before proceedings further to decide the controversy between the parties the application has been filed under Order 7 Rule 11 CPC. Both counsel for the parties were confronted to explain that whether the provisions of CPC are applicable on the procedure provided for dismissal of complaint under section 30 (3). At this juncture it would be apt to bring on the record provisions of section 30 (3) which is reproduced as under:-*

“For the purpose of this section, the Consumer Court shall have the same powers as are vested in civil court under the Code of Civil Procedure, 1908(Act XX of 1908), while trying a suit, in respect of the following matter, namely:-

- (a) *the summoning and enforcing attendance of any defendant or witness and examining him on oath;*
- (b) *the discovery and production of any document or other material object which may be produce as evidence;*
- (c) *the receiving of evidence on affidavits;*
- (d) *issuing of any commission for the examination of any witness; and*
- (e) *any other matter which may be prescribed.*
- (f)

7. *On the query put by this court, the learned counsel for the parties could not reply satisfactory rather failed to advance legal arguments with regard to applicability of Civil Procedure Code (CPC) on the Act rather both the counsel of the parties remained engaged in fishing expedition and pettifogging. In view of the fact when counsel for the parties remained unable to gave any satisfactory explanation, I have*

made myself research, as the Act on this point i.e applicability of Civil Procedure Code in stricto sensu is silence, after doing this exercise I have found answer of this question in Indian case wherein the answer is found that under the Act it is not mandatory to follow the provision of evidence Act or the Civil Procedure Code (CPC) and must merely observe the principles of natural justice devoid of all technicalities. It was further observed that avowed object of the Act was to afford speedy and affordable justice to consumer, shorn of technicalities, so that consumer would be able to submit their complaint in person without the need of engaging counsel. It is because of this reason the Act does not provide any format for filing complaint and applications. The August Supreme Court of India has held that technicalities required to be eschewed by the Consumer Fora and National Commission as observed even a letter can be treated as an complaint. It was further observed by Indian Supreme Court that unfortunately, over the years, the Consumer Fora are losing sight of the intent and purpose of the Act are often becoming hyper-technical.

“Some of the retired judges, who preside over the Consumer Fora try to bring in

technicalities which they have practiced all their lives in the Civil Courts, and thereby

frustrate the consumer movement.

8. Here are judgments which will illustrate how Consumer Fora should follow simple procedure, merely observing proper and natural justice, devoid of all technicalities.

9. **Case Study**

In the case of SP Aggarwal V/S The Sanjay Gandhi Post Graduate Institute and Medical Sciences, Lucknow (FA No. 478 of 2005 decide on March 31, 2010). The National Commission was required to decide whether the proceedings under CPC Act require a detailed affidavit to be filed in accordance with the provisions of the Civil Procedure Code (CPC), or a short affidavit would suffice.

10. Aggarwal has filed a complaint before UP state Commission alleging medical negligence. The State Commission dismissed the

compliant because of the affidavit filed by the complainant was very short and not in accordance with the provisions of order XIX of the CPC. In appeal, the National Commission observed that the provision of order XIX of the CPC can not be strictly allied to the procedure before the Consumer For a. it held that the Supreme Court had taken a hyper-technical view in rejecting the affidavit as it had not been prepared in accordance with the provisions of the CPC and the annexure filed along with the affidavit had not been not dealt with entitled to due consideration on the basis of the intrinsic value of the become filed . This guidance has been obtained from the WWW. Lawyersclubindia.com/mobileforum/details.asp?mod-id=21080

11. The Act was enacted to provide speedy, efficacious remedy to consumer through a simple, concise Act.

12. Supreme Court of India has held that consumer court should be shorn of all technicalities and the case in this court should be held in a "summary fashion, i.e without too many nuances of law and procedural glitches.

Gullible consumer who approach consumer court after reading this noble words, often find that they are stuck in a morass of legalism and technicalities from which they are unable to extricate themselves.

Every point of fact and law is challenged and put to various tests and the concept of a fact finding forum which consumer court were supported to be has become similar or even worse than the regular courts of the country. Backlogs in consumer courts are almost similar if not worse than the backlog in regular Civil Courts, and if consumer are left wondering how the CPA was supposed to be bettering their lot, particularly in trivial matters involving a few thousand rupees or discourteous service after payment, their frustration would be easy to understand.

13. I have given anxious consideration on the law lay down on the subject whether CPC is applicable in stricto sensu to the complaints/claims under this Act and my conclusion on this legal aspect is that except the circumstances mentioned in section 30(3) of the Act, the CPC is not applicable so application filed under Order 7 Rule 11 CPC is not maintainable before this court as the other matter has been agitated before this court that the complainant/claimant does not fall within the definition of consumer in given circumstances of this case therefore the application is

being decide on its own merits keeping in view the relevant provisions of the Act I am going to decide this legal controversy between the parties.

14. Counsel for the defendant has made castigation that the complaint is not maintainable before this court under the Act as the claimant is not a **“consumer”** under the section 2(c) of said Act. Further no **“service”** has been rendered to the claimant under section 2(k) of the Act. Therefor no damages can be calculated or imposed on the defendant under section 13 or 31 of the Act. He vociferously argued that as this court lack jurisdiction to entertain the claim on above said grounds and prayed for the dismissal of claim.

15. Snipping of the counsel for the claimant that he applied for electricity connection of Tubewel, demand notice was issued but the WAPDA authority adopted delaying tactics despite of the fact that all material was supplied did not install the Meter, due to the defective service provided by the defendant he faced loss mentioned in the contents of complaint. He prayed that claim is maintainable before the court and application filed under Order7 Rule 11 be dismissed and claim be heard and decided on merits.

16. I have anxiously considered the submission of learned counsel for the parties and has gone through the record of case and also relevant provisions of law on the subject.

17. Attending to the question of maintainability I venture to reproduce the preamble of Punjab Consumer Protection Act, 2005 which states as under:-

Preamble, -Whereas, it is expedient to provide for protection and promotion of the rights and interests of the consumers, speedy redress of consumer complaints and for matters connected herewith;

In order to shore further contention advanced by both parties I would like to place on record the definition of consumer which is defined in section 2 (c) of “Act” which is as under:-

Section 2 (c) of Punjab Consumer Protection Act, 2005 provides that “Consumer” means a person or entity who-

- (i) buys or obtains on lease any product for a consideration and

includes any use of such product but does not include a person who obtains any product for resale or for any commercial purpose; or

- (ii) hires any services for a consideration and includes any beneficiary of such services;*

18. While the Act provides definition of services which are also being placed on the record which are as under:-

Section 2 (K) “ services” includes the provision of any kind of facilities or advice or assistance such as provision of medical, legal or engineering service but does not include-

- (i) the rendering of any service under a contract of personal service;*
- (ii) the rendering of non-professional services like astrology or palmistry; or*
- (iii) a service, the essence of which is to deliver judgment by a court of law or arbitrator;*

19. The Act also provides the definition of damages in section 2 (d) and the Act which is as under:-

(d) “ damages” means all damages caused by a product or services including damage to the product itself and economic loss arising from a deficiency in or loss of use of the product or service;

20. Section 13 of the Act stated as under:-

“A provider of services shall be liable to a consumer for damages proximately caused by the provision of services that have caused damage.

21. section 31 of the Act is reproduced as under:-

Order of Consumer Court.-If, after the proceedings conducted under this Act, the Consumer Court is satisfied that the products complained against suffer from any of the defects specified in the claim or that any or all of the allegations contained in the claim about the services provided are true, it shall issue an order to the defendant directing him to take one or more of the following actions, namely:-

- (a) To remove defect from the products in question;*
- (b) To replace the products with new products of similar description which shall be free from any defect;*

- (c) To return to the claimant the price or, as the case may be, the charges paid by the claimant;
- (d) To do such other things as may be necessary for adequate and proper compliance with the requirements of this Act;
- (e) To pay reasonable compensation to the consumer for any loss suffered by him due to the negligence of the defendant;
- (f) To award damages where appropriate;
- (g) To award actual costs including lawyers' fees incurred on the legal proceedings;
- (h) To recall the product from trade or commerce;
- (i) To confiscate or destroy the defective product;
- (j) To remedy the defect in such period as may be deemed fit; or
- (k) To cease to provide the defective or faulty service until it achieves the required standard.

22. Let us take a little pause here and now is time to get down to brass tacks needless to mention here the instant complaint was instituted on 06-09-2014 and due to technicalities and tactics adopted by the counsel for the parties claim could not be decided which is a sheer violation of spirit of Act. I have made an attempt in terms of felicitous metaphor to separate the application of the Act and CPC as in this case the parties have mixed in unwanted provisions of CPC and in this process I have tried to make physical to separate the application of CPC on this Act. Learned counsel for the parties had in this case inextricably mixed up provisions of CPC with the Act to make process of disposal of case unphysical. The background against which these submissions were made the only available course to me is to discard the tactics used by both parties to linger on the matter to defeat the real spirit of Act. From inspection of instant claim it is apparent that both counsel for the parties tried to create hurdles in disposal of claim. So the most pivotal question is that whether CPC is applicable on the complaint filed under this Act my answer is no.

23. After embarking on long journey of examination on the subject of applicability of CPC on the claim filed under this Act I must register that the whole edifice of claim has been architected on the claim filed before this court, the detail of the complaint filed in this court have been earlier

mentioned and it needs no discerning eyes of the court further on this aspect. The facts remain that whether the claim/complaint filed in this court on the story narrated above is proceedable or no? In order to settle this point I have mentioned all the legal provisions in detail in my earlier part of the judgment. Perusal of the above provisions shows that in order to invoke jurisdiction of consumer court the first step for him is that whether he qualifies himself to be a consumer. To be a consumer under Act, a person must hire the "services" for a certain consideration from the service provider. In case there is no service being availed by complainant and no consideration being paid in return of said service, the complainant does not qualify to be a consumer and, therefore, the matter goes outside the fold of this Act.

24. In the present case complainant applied for electricity connection, demand notice was issued which is also admitted fact without any loss of time, the required material was also provided in this regard and later on the Meter Connection was to be installed and within this process, claimant due to the reason best known to him started litigation by filing the complaint. The complainant never attained the status of consumer so in this case there is no relationship of service provider and the consumer as he has not availed the service from the service provider and therefore, is not a consumer under said Act. The claimant has divulged the law brick by brick truth brick by brick and there is nothing before me which can show that there is an iota of relationship of consumer and service provider between the parties.

25. Under section 13 of the Act the defendant is liable to a consumer for damages for defective service similarly under section 31 of the Act court can stop the defective and faulty services until it achieves the required standard. The definition of service under section 2(o) of the Consumer Protection Act 1986 of India is more elaborated and wholesome the said definition includes supply of electric energy as reported and definition of service is as reproduced as under:-

"service" means service of any description which is made available to potential users and includes the provision of facilities in connection with

banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, (housing Construction). Entertainment, amusement or the purchase of news or other information, but does not include the rendering of any service free of charge or a contract of personal service”

The above definition support the argument that service actually means the supply of energy, which is missing in this case. In present case electricity supply had yet to be extended and, therefore, no electricity energy is being supplied to the complainant hence no services are being availed by the complainant.

26. Making an application for electricity connection does not make the applicant a “consumer” and slow response in deciding the application does not fall under the definition of “services” for the purposes of the Act. The main role of service provider needs to be seen. Defendant is an electricity provider and, therefore, the service in question is a supply of energy or electricity. Any administrative step prior to the start of actual service is not service under the Act and does not fall within the fold of the Consumer Protection Act. Even otherwise the defendant do not fall in the definition of energy/service provider, the department falls within the purview of service provider.

27. On the factual plane, the claimant has mentioned the facing of damages on the end of defendant, in this regard I have all my sympathies with the bereaved claimant but at the same time I have to reach an irresistible conclusion that claimant has failed to establish his relationship as consumer with the defendant as service provider which is essential and mandatory provision for proceeding further in matter coming within the purview of Act. Another fact which can not be ignored lightly that the claim filed against the defendant Muhammad Asrar is in his personal capacity and has not impleaded department as defendant which is also serious dent and legal flaw in this claim. This fact suggests that claimant was misguided by the ill-advise, even the storey narrated by the claimant in his claim appears to be a classic cosmic to be told to the children. It is paramount duty of court to sift and screen of relevant law and circumstance under

which the claimant approached this court, the claim filed by the complainant seems to be have a decided attempt to give distorted version in order to drag defendant in his private capacity by filing the claim and non- impleading the department I.e WAPDA. Keeping in view whether the storey narrated in the complaint is genuine or not I think that the claimant has failed to establish relationship as consumer and service provider therefore the instant claim sans substratum is hereby dismissed to be presented at proper forum.

Announced: 13 -04-2017

BAKHT FAKHAR BAHZAD

District & Sessions

Judge/

judge Consumer

Court Gujrat.

Certificate:-

It is certified that this judgment consists of nine pages. Each page has been dictated, read, corrected and signed by me.

Announced: 13 -04-2017

Judge consumer court

GUJRAT.

*Present: Claimant Awais Ahmad Cheema along with his counsel Ch. Ijaz Aslam Advocate.
Defendant Muhammad Asrar along with his counsel Ch. Ghazanfar Mehndi Advocate*

Vide my detailed separate order written in English language of even dated, the complaint in hand Keeping in view whether the storey narrated in the complaint is genuine or not I think that the claimant has failed to establish relationship as consumer and service provider therefore the instant claim sans substratum is hereby dismissed to be presented at proper forum.

Announced: 13 -04-2017

BAKHT FAKHAR BAHZAD
District & Sessions

Judge/

judge Consumer

Court Gujrat.