

IN THE COURT OF MIRZA JAWAD A: BAIG,
DISTRICT & SESSIONS JUDGE,
PRESIDING OFFICER, DISTRICT CONSUMER COURT,
DERA GHAZI KHAN,

(PHONE: PTCL: 0642474100. FAX: 0642470496).

Ijaz Hussain versus Manager Operation MEPCO & 4 other

Complaint/ Case No: 1951 / 654 / 11.

Date of Institution: 28-11-2011.

Date of Decision: 07-03-2012.

COMPLAINT ABOUT FAULTY SERVICES

ORDER:

The claimant is represented jointly by Mazhar Hussain Bhatti Advocate and Sajjad Hussain Mashori Advocate while the defendants are represented by their representatives.

1. The case is at the stage of the filing of joint written statement of MEPCO being defendants No.1 to 4 which has been filed today while written statement of the Bank being defendant No.5 was filed on 29-02-2012 and written statement of additional defendant No.6 was filed on 21-02-2012.

2. I have heard the arguments and perused the file. I proceed to discuss and dispose off the complaint in accordance with the findings in the following paragraphs.

3. Briefly stated the grievance of the claimant is to the effect that he is owner of plot No.23 Block C Khyaban Sarwar D.G.Khan; that he wants to remove illegal wires of electricity relating to the Bank from his plot due to construction being raised on the said plot; that there is also the danger of electrocution due to hanging wires; that the defendants have refused to remove the wires despite legal notices due to ulterior motives; that defendant No.6 has been impleaded in compliance with order of this court.

4. Defendants have contested the complaint by filing their respective written statements. The version of MEPCO as defendants No.1 to 4 is to the effect that the cost of shifting the pole amounting to about Rs.30,000/- is required to be deposited by the claimant for removal of disputed wires. The version of the Bank Manager as defendant No.5 is to the effect that the Bank is functioning in the same building for about 10 years without any incident of electrocution; that owner of the rented building of the Bank should have been impleaded as party; that no notice has been received; that the Bank has no objection on alternate arrangement if the supply of electricity of the Bank remains restored; that application should be dismissed. The version of the SDO of Construction wing of MEPCO as additional defendant No.6 is to the effect that they have nothing to do in the matter being managed by operation wing.

5. It is pertinent to note that although evidence is necessary to be recorded under S.30 of PCP Act 2005 for disposal of the complaints by the Consumer Courts but since the procedural laws known as the Code of Civil

Procedure, 1908; the Code of Criminal Procedure, 1898; the Qanun-e-Shahadat Order, 1984, the Bankers' Books Evidence Act, 1891; special rules of evidence u/s 118 of the Negotiable Instruments Act, 1881 are not strictly applicable to the proceedings of the Consumer Courts, as such the propriety demands that the regular evidence should not be recorded in such cases where the points for determination are mostly based on the copies of the admitted documents available in the file of the complaint or admitted in the pleadings just like the present case.

6. It is proper to be observed that the ELECTRICITY is a PRODUCT according to the definition provided in the Sale of Goods Act, 1930 and the said definition has been made applicable on the cases under PCP Act, 2005 by S.2 (j) of the latter Act. It is also observed that the AUTHORITY providing the ELECTRICITY as a product comes within the definition of the MANUFACTURER under S.2 (h) as such the AUTHORITY is obliged to fulfill all the responsibilities of a MANUFACTURER of the product under S.4 to 12 & 18 to 20 being supplied in dual capacity of the MANUFACTURER along with responsibilities of the SERVICE PROVIDER under S.13 to 17 of PCP Act, 2005. The responsibilities of the defendants are therefore dual as MANUFACTURERS as well as SERVICE PROVIDERS. The expectation of the public about better services of the MEPCO is therefore genuine and enforceable under the law.

7. As far as the objection about non receipt of legal notices is concerned, I find that the same is not valid because the copies of legal notices and postal receipts are included in the file to show that the legal notices were dispatched by the claimant to fulfill his obligation about sending of legal notices. The objection is therefore rejected.

8. It is provided in the Consumer Service Manual of MEPCO in Chapter 3 by Rule 3.1 that the cost of shifting or relocation or addition of service connection is to be borne by the sponsoring agency and not by the affected consumer unless the shifting etc. is to be performed at the request of the consumer.

9. In the present case, the claimant is not the consumer of the connection sought to be shifted while the Bank is the consumer and the owner of the building of the Bank is deemed to be the sponsoring agency therefore I find that the cost of shifting is to be borne by the owner of the concerned building as sponsoring agency through the Bank. The MEPCO is therefore liable to issue the demand notice for the payment of cost of shifting to the owner of the concerned connection through the Manager of the Bank and to shift disputed wires after the deposit of the demand.

10. In accordance with above discussion, the complaint is hereby accepted partly and conditionally to the extent of the direction for issuance of demand notice to the owner of the rented building of the Bank and shifting of disputed wires after deposit of the required amount.

11. *Parties are left to bear their own costs.*

12. *This order would become final u/s 34 of PCP Act 2005, if the appeal is not preferred within period of 30 days under S.33 of PCP Act 2005 & Rule 18 of PCP Rules 2009 in accordance with the Rules of Procedure of Honourable High Court.*

13. *In case of delay in compliance, the claimant is entitled to get the order implemented by filing the application for implementation with reference to S.31, 32 & 36 of PCP Act, 2005, if so required with the warning to the defendants that the costs to be incurred for and during the application for implementation would be liable to be recovered from them.*

14. *A copy of this order is to be sent to the SDO concerned through the representative of the defendants for compliance.*

15. *The file of this complaint is to be consigned to the record room of this court duly page marked with proper index and after due completion and made available for issuance of attested copies and kept under safe custody till the period fixed for destruction in accordance with the Rules & Orders of Honourable Lahore High Court.*

Announced:
07-03-2012.

(MIRZA JAWAD A: BAIG)
D. & S. J. / P.O., D.C.C., D.G.K.,
PUNJAB, PAKISTAN.