

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

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

Manzoor Ahmad Paracha Versus General Manager PTCL & 3 others

Complaint/ Case No: 2230/151/12.
Date of Institution: 21-02-2012.
Date of Decision: 05-05-2012.

COMPLAINT ABOUT FAULTY SERVICE OF PTCL

ORDER:

The Claimant is **represented** jointly by Syed Bashir Hussain Bukhari Advocate & Syed Ashraf Hussain Shah Advocate along with his personal appearance while the defendants are represented by Malik Mureed Hussain Makwal Advocate along with litigation officer of the defendants.

2. The case is at the stage of the filing of the joint written statement which has been filed today. I have heard the arguments and perused the record in the light of the arguments. Now 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 consumer of telephone connection bearing No.064270227 for about 40/50 years; that he was paying the bills regularly; that he received illegal bill of Rs.3,700/- on 23-01-2012; that he was pushed by the revenue officer named in the complaint when he visited the office for correction of the bill; that it was stated by the said officer that the claimant is a beggar and that he was begging; that the claimant is a respectable citizen and belongs to superior family; that the claimant is an aged person; that he has suffered mental and physical agony due to said misconduct of the said officer; that he has issued legal notice to the Divisional Engineer but no reply has been received; that the Revenue Officer and the Divisional Engineer has told the claimant to do whatever he can but they would not pay the damages hence this complaint. It is requested by the claimant that the damages for mental and physical tension amounting to Rs.25,000/- and counsel fee amounting to Rs.10,000/- total Rs.35,000/- should be got recovered from the defendants and any other admissible relief may also be granted in accordance with law.

4. The defendants have **contested** the complaint by filing their joint written statement in which they have denied the allegations and contended that the claimant has no cause of action; that the complaint is not maintainable and liable to be dismissed; that the claimant has not come to the court with clean hands; that he is liable of the concealment of facts; that he has not sent the notice in accordance with law; that his connection was closed on 16-06-2010 due to non payment of

Rs.5,969/-; that the connection was restored on 11-09-2010 on payment of Rs.3,000/- on his application; that he had not paid the bill of Rs.99,900/-; that he applied for rebait on 27-06-2011 and again on 29-06-2011; that the rebait of Rs.1,000/- was given to him; that he filed further application for rebait on 15-08-2011 on which it was decided in an meeting that the rebait of Rs.650/- was to be given to him; that he filed further application for rabait on 27-12-2011; that rebait of Rs.3,500/- was given to him on 30-12-2011; that total rebait (REBATE) of Rs.5,150/- was given to him; that the bill relates to 2010; that the claimant is defaulter of Rs.3,730/- which has not been paid; that the compliant is time barred; that the complaint does not come in the ambit of faulty service; that the complaint has been filed to blackmail the institution; that it has no link with reality; that the complaint is incorrect, against the law, against the facts. It is requested by the defendants that the complaint be dismissed with costs.

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 observed that the AUTHORITY providing the TELEPHONE LINE comes within the definition of the SERVICE PROVIDER as such the AUTHORITY is obliged to fulfill all the responsibilities of the SERVICE PROVIDER under S.13 to 17 of PCP Act, 2005. The expectation of the public about better services of the PTCL is therefore genuine and enforceable under the law. The claimant is therefore entitled to the restoration of the connection on payment of arrears.

7. It is observed that whenever tortious act is the subject matter of the consumer complaint instead of the grievance about the quality of the product or services, then the complaint is liable to be returned for filing civil suit because the alleged humiliation and threats constitutes civil remedy therefore the complaint is deemed to be returned to the extent of said allegation for filing before the learned civil court.

8. As far as the request for grant of damages is concerned, it is observed that it is settled law that the manufacturer or service provider is **not liable** for any damages except a return of the consideration or a part thereof and the costs, specifically where the consumer has not suffered any damages from the product or provision of service except lack of utility/ benefit.

9. It is pertinent to note that the **grant of damages** is curtailed even under Contract Act, 1872 in which it is provided in S.73 to 75 that the damages

should be proportionate to the loss and not excessive by mentioning that such compensation for loss or damage caused by breach of contract is not to be given for any remote and indirect loss or damage sustained by reason of the breach. It is an embargo placed by the general law of contracts upon the powers of the courts about grant of damages.

10. It is also observed that further embargo on the **quantum of damages** to be awarded by the consumers courts has been placed by the law provided in S. 4, 10, 13 & 15 of PCP Act by declaring that the manufacturer or service provider shall be liable to a consumer for damages proximately caused by anticipated use of the product or provision of services that have caused damage but he shall not be liable for any damages except a return of the consideration or a part thereof and the costs in such cases where the consumer has not suffered any damages from the provision of service except lack of benefit or loss of utility as such I find that the claimant is not entitled to the recovery of the damages or compensation or litigation charges under the law of consumer through this court and he will have to bring separate suit before civil court for recovery of the damages about alleged humiliation.

11. In accordance with above discussion, the complaint is **partly accepted** to the extent of the direction about restoration of the connection on deposit of the arrears while the complaint is disposed off by way of return to the extent of the recovery of damages and counsel fee for filing before the learned civil court if so required to be filed.

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

13. *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.*

14. *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.*

15. *One attested **copy** of this order is directed to be provided to the claimant and one copy to the defendants jointly on filing the applications without **court fee tickets** even if on plain papers free of costs by entry with signatures in token of receiving in Dak Register with the clarification that extra copies would be liable to be issued at their own expenses.*

16. *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:
05-05-2012.

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