

IN THE COURT OF MIRZA JAWAD A: BAIG,
DISTRICT & SESSIONS JUDGE,
PRESIDING OFFICER, DISTRICT CONSUMER COURT,
50-Z, MODEL TOWN, DERA GHAZI KHAN.

(PHONE: PTCL: 0642474100. FAX: 0642470496. VNTC: 0649239094).

Zarar Hussain Versus General Manager SNGPL & 2 others

Complaint/ Case No: 2237 / 158 / 12.
Date of Institution: 22-02-2012.
Date of Decision: 19-05-2012.

COMPLAINT ABOUT FAULTY SERVICE OF SNGPL

ORDER:

The claimant is **represented** jointly by Malik Jaffar Hussain Babbur Advocate & Rana Mohammad Rashid Advocate while the defendants are represented by Mohammad Naveed Akbar Advocate.

2. This date was fixed for the **decision** while the arguments were heard on previous date. Copy of the extract of Revenue record has been filed today on behalf of the claimant to show that his house is very small measuring four Marlas. I have perused the file in the light of the arguments. Now I proceed to dispose off the complaint by discussion in the following paragraphs.

3. The **grievance** of the claimant as alleged in the complaint is to the effect that he is the consumer of gas from the defendants through Consumer No. MR-01743571 with Tariff DOM-G; that the bills were being paid regularly; that he is aggrieved by the arrears shown in the disputed bill of October 2011 amounting to Rs.56,197/94-; that the connection has been disconnected and the meter has been removed even prior to the issuance of said bill; that the defendants have not restored the connection despite repeated requests and issuance of legal notice. The claimant has requested that the damages for unjustified removal of the meter amounting to Rs.2,00,000/- should be awarded to the claimant along with recovery of Rs.20,000/- as counsel fee and Rs.5,000/- as other litigation charges in addition to the cancellation of disputed arrears and restoration of the connection.

4. The **version** of the defendants in the joint written statement is to the effect that the claimant has no cause of action; that the complaint is vague; that the complaint is based on mala-fide; that the bill is in accordance with meter reading; that the defendants were justified to disconnect due to non payment on the basis of the notice incorporated in the bill. It is requested by the defendants that the complaint should be dismissed with costs and damages.

5. It is clarified that the separate file of the contempt application filed by the claimant about delay being caused in restoration of the connection has been prepared and the same has been registered on separate number bearing Application No.2494/415/12 dated 05-05-2012. The said application would be decided afterwards by keeping in view the fate of the present complaint in accordance with law.

6. It is pertinent to note that **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, 1891 are not strictly applicable to the proceedings of the Consumer Courts, as such regular evidence is not being recorded in this court 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.

7. It is further observed that in such cases where **regular** evidence is not recorded, it is proper and necessary to treat the copies of the documents annexed with the complaint and written statement including the documents filed during the pendency of the complaint, as prima facie proof and evidence of the parties for reaching to the safe and just conclusion in such cases which can be effectively disposed off without recording regular evidence.

8. It is pertinent to observe that **distribution** of the gas after purchase from the government by SNGPL amounts to the manufacturing of PRODUCTS and the AUTHORITY providing the GAS 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 by it 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 expectations of the public about better services of the COMPANY are therefore genuine and enforceable under the law.

9. I have observed that the normal **consumption** of the claimant is very moderate. Billing history shows that the consumption was never so high as shown in the disputed bill.

10. I have observed that the **excessive** consumption of the gas in such circumstances indicates the leakage of gas without actual consumption and there should be no other reason except leakage although both the parties are avoiding to admit the said reason. I find that both the parties are equally responsible for the negligence about the said leakage.

11. I am conscious of the fact that when **leakage** is within the premises then the same is shown in the meter as consumption and that when the leakage is outside the premises beyond the meter then the same is not shown in the meter but it is noticeable that when the leakage is in the meter itself or for that matter, the leakage is in the main cock, service regulator, inlet pipe of meter or in the meter itself, then the consumer should not be saddled with burden of payment of full charges.

12. I am of the view that the Gas Company is obliged to remove the **leakage** and to keep not only the meter in good repair but also the main cock, service regulator and inlet pipe of meter, free of charge. There is nothing on the record to show the bona-fide service of the defendants to make any effort for removal of the leakage. It means that the company is equally responsible to the

extent of half bill for the leakage of the gas being in the meter or in the auxiliary parts as mentioned above.

13. I am also conscious of the fact that the claimant is also **equally** responsible for the leakage due to his failure to get the same removed from private plumber. There is nothing on the record to suggest that the claimant had hired the services of any private plumber to remove the alleged leakage. He is therefore liable to shoulder the burden of **half** of the disputed charges.

14. As far as one of the possible objections about **jurisdiction** of this court is concerned, it is necessary to be observed that the provisions of PCP Act 2005 have been held to be in addition to and not in derogation of the provisions of any other law for the time being in force according to S.3 of the said Act. Therefore I find that the conditions contained in the agreement between the parties cannot be implemented due to prohibition of exclusion from liability contained in S.12 & S.17 of PCP Act 2005 to take away the plenary jurisdiction of jurisdiction of this Court relating to the domestic connections only with the clarification that the disputes relating to commercial connections should be dealt with **OGRA** itself.

15. It should be kept in mind while interpreting the **jurisdiction** of this court that the procedure for redress of grievance provided in all the laws are to be followed in the forum provided under the said laws. But the same grievance can also be redressed by this court on strength of S.3 read with S.36 of PCP Act 2005. It is provided in the latter section that all agencies of the Government shall act in aid of the Consumer Court in the performance of its functions under this Act. The objection against jurisdiction of the court is not acceptable.

16. 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.

17. 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.

18. 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 or counsel fee.

19. As far as the **ordinary costs** are concerned, it is observed that it is not proper to burden the defendants even with ordinary costs due to equal liability of the parties for the excessive charges on account of the leakage of gas. The claimant is therefore not entitled to the proximate charges or litigation charges mentioned in S.13 & 31 of PCP Act, 2005.

20. For what has been discussed about, the complaint is **partly accepted** by cancellation of the half amount of the disputed arrears and the defendants are directed to reduce the disputed charges up to 50% and make three equal monthly installments of the remaining bill by issuance of modified bill and meanwhile to restore the connection immediately. The complaint is however dismissed to the extent of the prayer for recovery of the damages, compensation, litigation charges, counsel fee etc.

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

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

23. *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.*

24. *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 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.*

25. *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:
19-05-2012.

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