

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

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

Meer Ahmad Qamar                      versus                      TMA Jampur

Complaint/ Case No:                      1986 / 689 / 11.  
Date of Institution:                      07-12-2011.  
Date of Decision:                      07-03-2012.

COMPLAINT ABOUT FAULTY SERVICES

ORDER:

The claimant is represented by personal appearance while defendant is represented by Mian Mohammad Sadiq Advocate along with representative of the defendant.

1. The case is at the stage of the arguments however copies of demand notices and tender notice documents relating to the installation of street lights have been filed by learned counsel for the defendant. 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.

2. Briefly stated the version of the claimant is to the effect that the providing of solar powered street lights being one of the municipal services to be provided by Tehsil Municipal Administration are not being provided to the public of Jampur despite the installation of solar lights without activation; that project having been completed by expenditures of Rs.30,00,000/- is necessary to be commissioned. It is requested by the claimant that the solar street lights already installed should be lit for providing facility to the public and to utilize the expenditures.

3. The defendant is presently represented by learned counsel but it was initially represented by personal appearance of the representative who filed the written statement on behalf of TMA to the effect that extract of Para No.21 has been reproduced in the preliminary objections from the decision of the previous complaint passed by this court about the same dispute bearing No.1062/404/10; that the said order has been implemented in accordance with the available funds; that previous street lights have been restored; that remaining project involving additional cost has been dropped; that no right of the claimant has been violated. It is requested by the defendant that the complaint being incorrect and baseless should be dismissed.

4. 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.

5. I am of the view that the MUNICIPAL SERVICES are deemed to be the FACILITIES as mentioned in the definition of the term SERVICES in S. 2 (k) of PCP Act 2005. The jurisdiction of the consumer court is clear enough from the provisions of S. 27 / 31/ 36 of PCP Act 2005. The ADMINISTRATION providing the MUNICIPAL SERVICES is obliged to fulfill all the responsibilities of a SERVICE PROVIDER under S. 13 to 17 of PCP Act 2005. The expectation of the public about better services of TMA is therefore genuine and enforceable under the law.

6. It is provided in the definition of the 'CONSUMER' in S. 2 (c) of the 'Act' that it means such a person or entity who "Hires any service for a consideration and includes the beneficiary of such services". The beneficiary of the services hired by another is also included in the definition of the consumer. The objection of the defendant about the definition of the term 'CONSUMER' is also not acceptable because the services of the defendant are presumed to be hired by the government for the benefit of the general public and every member of the public is presumed to be the beneficiary of the said services. The claimant is therefore entitled to be treated as the consumer being one of the beneficiaries of the services of the defendants hired by the government.

7. As far as the objection of the defendant is concerned to the effect that the claimant is not the consumer because he has not paid any consideration for the alleged work to the TMA, this court is of the view that said objection is misconceived because it is clear from S.2 (k) of PCP Act (Act II of 2005) that the free services without payment of any fee are not excluded from definition of the term 'SERVICES' because said services do not fall within prohibitory clauses (i) to (iii) of the said clause in which the examples of the services excluded from the definition are given as the 'contract of personal services', 'astrology', 'palmistry', 'court of law', 'arbitration' while the examples of the services to be included in the definition are given as 'medical', 'legal' or 'engineering services'.

8. It is understood that the examples given by law about the services to be included in the definition of the services under S.2 (k) are not exhaustive and most of the instances of both kinds of services can be included by practical experience in accordance with the nature of the cases but it can be safely found that the 'MUNICIPAL SERVICES' cannot be excluded from the definition of the 'SERVICES' by any stretch of imagination.

9. I am of the view that since the defendant is deemed to be the service provider and since the claimant is deemed to be the tax payer as such he is entitled to be treated as the consumer of the TMA and the jurisdiction of this court to adjudicate the present complaint is not barred while the defendant is liable to arrange for the activation of the solar lights which have already been installed by including the same in the next budget if the same is not possible earlier due to lack of funds in the budget of the current year.

10. I am of the view that the staff of the institutions and departments and entities handling public dealings should be considerate, altruistic, unselfish, civilized, gentle, moderate, caring, openhanded, copious, bountiful, goodhearted, philanthropic, benevolent, humanitarian, generous, caring, understanding, kind and thoughtful towards the grievances of the public.

11. They staff and officers of such entities should endeavor to assuage and alleviate the sufferings of the distressed consumers so as to encourage redressal of the grievances even prior to the appearance before the court instead of remaining adamant, annoying, boisterous, disruptive, harsh, importunate, mulish, obdurate, persistent, raucous, rigid rowdy, rude, stiff, strict, stubborn, unruly, rough and tough even after receipt of legal notices and even during the pendency of the complaint before the courts or by absenting themselves from the proceedings of the courts.

12. A perusal of the Local Government Ordinance, 2001 shows that street lighting is included in the definition of "MUNICIPAL SERVICES". It is provided in S.54 (1) (h) (i) that "(1) The functions and powers of the Tehsil Municipal Administration shall be to---(h) provide, manage, operate, maintain and improve the municipal infrastructure and services".

13. It is observed from perusal of the documents filed today that sufficient progress has already been made in the impugned project and the defendant is prepared to do more in future.

14. In accordance with above discussion, the complaint is hereby accepted partly to the extent of the issuance of the direction to activate the solar lights already installed under intimation to this court at the earliest.

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

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

17.     *A copy of this order is to be sent by hand or post to the TMO at the responsibility of the claimant for compliance.*

18.     *The parties are left to bear their own costs.*

19.     *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.