

IN THE COURT OF *MIRZA JAWAD A: BAIG*, DISTRICT & SESSIONS JUDGE,  
PRESIDING OFFICER, DISTRICT CONSUMER COURT,  
DISTRICTS: D.G. KHAN; LAYYAH; MUZAFFARGARH; RAJANPUR,  
50/Z, MODEL TOWN, DIVISIONAL HEAD QUARTER, DERA GHAZI KHAN.

(PHONE: PTCL No. 0642474100) (VNTC No. 0649239094) (FAX No. 0642470496).

Ghulam Akbar versus Chairman WAPDA & 5 others

COMPLAINT ABOUT CANCELLATION OF ELECTRICITY BILL AMOUNTING TO RS.58,559/-

1 <sup>st</sup> Old Complaint / Case No:	1000/ 342/ 10.
Date of Institution:	06-07-2010.
Date of 1 <sup>st</sup> Decision:	27-08-2010.
2 <sup>nd</sup> Old Complaint/ Case No:	1359 / 62 / 11.
Date of 1 <sup>st</sup> Restoration:	02-02-2011.
Date of 2 <sup>nd</sup> Decision:	15-09-2011.
3 <sup>rd</sup> present Complaint/ Case No:	1723 / 426 / 11.
Date of 2 <sup>nd</sup> Restoration:	29-09-2011.
Date of present Decision:	12-01-2012.

ORDER:

Claimant is represented by Malik Munir Hussain Hassam Advocate High Court from D.G.Khan while the defendants are being represented by Fahad Shenail SDO (OP) alongwith Nadeem Javaid litigation clerk of Kot Chutta sub-division of MEPCO, D.G.Khan as representative.

1. The case was previously at the stage of the filing of written reply on behalf of the claimant relating to the ancillary application of the defendants by which it is requested that the claimant should be directed to pay the segregated bill amounting to Rs.40004/- by alleging that the electricity is still being consumed by him without meter in the garb of prolonging the present case because his meter is permanently disconnected for the last 22 months and that the defendants department should not be considered inimical if it takes action against the claimant for theft of electricity.

2. The written reply of the said application has been filed today alongwith advancing of arguments on behalf of the claimant and it has been agreed by the parties that the whole case should be disposed off without recording further evidence because it can be properly disposed off without recording evidence.

3. The case has therefore come to the conclusion at the stage of arguments which have been heard and file has been perused in the light of the arguments as such I proceed to discuss and decide and dispose off the main complaint alongwith ancillary application of the defendants in accordance with the findings in the following paragraphs.

4. The complaint was earlier accepted partially to the extent of "cancellation of the disputed charges and direction for restoration of the meter/ connection and crediting of the excess charges from calculating from 06227 units and the defendants were directed to issue amended bill by showing the said credit on the basis of proper calculation" by order dated 27-08-2010 but the said order was cancelled on review

application of the defendants due to the omission of proper representation of the defendants and the case was reopened for fresh proceedings however the case was dismissed in default of the appearance of the claimant by order dated 15-09-2011 and restored on the application of the claimant on 29-09-2011.

5. Briefly stated the version of the claimant is to the effect that meter No.SP-275858, Reference No.20-5225-15191003-R was got installed by the claimant having paid the bill up to 12-11-2009 but the same was allegedly removed 6/7 months prior to 06-07-2010 hence the present complaint was filed to challenge the bill relating to the month of May 2010 amounting to Rs.58,559/-. The claimant has alleged that Meter Reader Mohammad Aslam has received cash amount of Rs.15,000/- for restoration of the meter and for providing electric supply. He has also challenged the bill relating to the month of April 2010 on the ground that the same was issued after the removal of the meter. The defendants have not responded to the legal notice allegedly issued prior to the institution of the present complaint.

6. The claimant has requested for the replacement of the meter along with recovery of Rs.10,000/- as damages and Rs.10,000/- as counsel fee along with the request for cancellation of disputed charges.

7. The version of the defendants in the joint written statement filed on behalf of AMO and purported to be on behalf of all the defendants is to the effect that the claimant is not paying the electricity bill regularly; that he made last payment of Rs.2128/- in November 2009; that after this he did not make any payment and due amount became Rs.57069/-; that meter was removed in April 2010; that no fine has been imposed to him; that 4930 consumed units were charged; that Mohammad Aslam Meter Reader only charged consumed units; that the claimant has further extended the electricity to all the neighbors of his Basti which is reason of disputed units; that the meter was installed in the Bathik of claimant which remained locked; that the meter was got reversed by the claimant after receiving heavy bill; that the meter can be checked by the court; that the electricity is being stolen by the claimant after removal of meter since April 2010; that there is no other meter in the concerned Basti.

8. 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 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.

9. The reliance has been placed by learned counsel for the claimant on the certificate issued by the meter reader at the time of removal of the meter by mentioning the disputed amount of arrears as Rs.38,372/- and last reading as 06227 units relating to meter No.SP.275858 dated 19-04-2010.

10. The defendants have placed reliance on the report of M&T about terminal strip of the meter found open and hole in meter body on upper side.

11. It has been contended by learned counsel for the claimant that the Meter Reader had mentioned the last reading as 06227 on 19-04-2010 on said certificate whereas the bill relating to the month of April 2010 was showing the reading at 10093 units without meter. It is contended by learned counsel for the claimant that the bills were charged in excess of consumed units fictitiously. He has stressed for cancellation of excess charges and restoration of the meter/ connection.

12. It has been contended by the SDO (OP) that due relief has been given to the claimant in compliance with interim order of this court by reduction of the charges through segregation from Rs.61152/- to Rs.40004/- by reduction of Rs.21100/- but the Authority has reserved its right to charge detection bill and action on the basis of the theft of electricity being committed by the claimant.

13. 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.

14. As far as the question of grant of damages or litigation charges or counsel fee or costs is concerned, 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.

15. 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.

16. 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 recover the damages or compensation or counsel fee or litigation charges or costs through this court under the law of consumers.

17. I have observed that since there were the arrears due from the claimant at the time of the removal of the meter amounting to Rs.38372/- according to the same report which is being relied upon by the claimant while the demand of the defendants was enhanced to Rs.58559/- as mentioned in the complaint and then to Rs.61152/- as mentioned in modified bill issued on 11-06-2011 but since the same has been reduced to Rs.40004/- by way of segregation and since there is the difference of Rs.1632/- in comparison with the arrears mentioned by the meter reader in his certificate as such the same is minor difference keeping in view the huge amount of arrears due from the claimant and the same should be paid by the claimant for seeking the restoration of the supply of electricity because he has himself relied upon the certificate of the meter reader containing the said arrears therefore he is bound to pay the same with modification mentioned in the latest bill dated 11-06-2011 amounting to Rs.40004/-.

18. It is further observed that since segregated modified bill of Rs.40004/- by reduction of Rs.21100/- was produced on behalf of the defendants in the court on 21-07-2011 in compliance with order dated 25-05-2011 as such the meter would have been restored free of costs in further compliance of said order if the claimant would have paid the said bill even under protest but since the claimant had refused to take said bill at that time and since he has not paid the segregated amount as such he would have to pay the charges of restoration of the meter also in addition to the payment of the modified bills.

19. Even if the spirit of the previous order of disposal dated 27-08-2010 as mentioned in paragraph No. of this order is kept in view, it is observed that the spirit of the said order was to provide due relief to the claimant by fresh calculation while the required relief has meanwhile been granted by the defendants in compliance with interim order dated 25-05-2011 by reduction of the disputed charges to Rs.40004/- as such I find that the reduction so far granted is sufficient in the interest of justice and the claimant is liable to pay the reduced bill alongwith RCO charges.

20. As far as the allegation of theft of electricity is concerned, I find that since the meter has been found tampered by M&T after keeping the meter with the defendants and since the same is not shown to have been sent to the M&T immediately after removal as admitted in the written statement and since there is no date on the copy of the report of M&T and since the report is presumed to be obtained after considerable period of removal of the meter as such the defendants are not entitled to the charging of detection bill on the basis of said report relating to the previous period prior to the removal of the meter, however since the allegation of theft is being leveled even at the present time according to the application and photographs included in the file as such the defendants are entitled to proceed against the claimant about the current theft in accordance with law. The application being discussed in the beginning of this order is therefore liable to be disposed off with said observation.

21. In accordance with above findings, the complaint is hereby accepted partly to the extent of modification of the disputed charges by segregation already made during the pendency of this complaint with reduction of the disputed charges to Rs.40004/- and cancellation of the remaining charges and with the direction for restoration of the connection after deposit of the said amount alongwith charges of RCO based upon the demand notice to be issued in compliance with this order by the defendants immediately on receipt of the copy of this order. The complaint is however dismissed to the extent of the remaining relief and about recovery of the damages, compensation, costs, litigation charges, counsel fee.

22. While the ancillary application of the defendants is disposed off with the observation that no action should be taken on the basis of the report of M&T relating to the previous period prior to the removal of the meter against the claimant but the defendants are at liberty to proceed against the claimant in accordance with law relating to the alleged theft of electricity if being committed currently at the spot and since the jurisdiction of this court is barred in the cases relating to theft of electricity therefore the claimant cannot come to this court against the proposed action of the defendants but he would be entitled to challenge the said action if and when taken in the civil and criminal courts in accordance with law, if so required by him.

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

24. *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.*

25. *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.*

26. *A copy of this order is to be provided to the representative of the defendants along with issuance of a copy through the claimant by hand to the RO / SDO MEPCO for compliance.*

27. *A copy of this order is directed to be made available for publishing on the internet to the website of Punjab Consumer Protection Council Secretariat, 135-J, Model Town, Lahore for public disclosure and easy access of information to the consumers relating to the products and services in accordance with Rule 25 of PCP Rules, 2009.*

28. *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:  
12-01-2012.

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