

**IN THE COURT OF MUHAMMAD KALEEM SHEIKH,
DISTRICT & SESSION JUDGE /PRESIDING OFFICER,
DISTRICT CONSUMER COURT, FAISALABAD.**

<p>Muhammad Ramzan s/o Muhammad Abbas R/o P-40 St#1, Premier Colony Faisalabad</p> <p>(Claimant)</p>	<p>1. Fesco through Chief Executive Faisalabad Electricity Supply corporation, Canal Road Faisalabad.</p> <p>2. Muhammad Anwar XEN Fesco Sub Division Factory Area officer near Police Station Factory Area Faisalabad.</p> <p>3. Akram Abid SDO Sub Division Factory Area</p> <p>4. Safdar Ali s/o Darra No. 2 Novelty Pull Faisalabad.</p> <p>(Defendants)</p>
<p>Claim No:</p> <p>Date of Institution of Claim</p> <p>Date of decision</p>	<p>156/DCC-08.</p> <p>10.05.2008.</p> <p>14.07.2009</p>

Muhammad Ramzan.

Versus

Fesco etc.

Claim for recovery of damages.

ORDER:

1. The facts discerning and deciphering this case in nutshell as put forth in the body of the claim are that;
2. The claimant got godown/Darra No. 4, situated at Novelty Pull Faisalabad on lease from TMA City Faisalabad (now a days Lyalpur Town Faisalabad). After obtaining NOC from TMA City Faisalabad, the claimant got installed the electric meter on the above said premises vide reference No.13321308700041U Tariff A-2(1). On 07.04.08, the defendants illegally disconnected electric supply of the

claimant/consumer and removed the above said electric meter from the said premises without any notice and justification. As the claimant had to suffer immense mental torture and business loss due to defendant's faulty and defective services, hence, he has requested for recovery of amount of Rs. 500000/- as compensation for mental torture and business loss under section 25 of PCPA 2005, with the further prayer that his electric supply may be restored.

3. The defendants/Fesco authorities have vehemently contested the above said claim by filing their statement of defence, inter alia, on the ground that the electric connection was removed from the said premises as the NOC, allegedly issued by the then TMA, was found to be bogus and fraudulent that hence, their services may not be deemed to be defective and faulty.
4. As this intricate matter involving mixed questions of law and facts needed evidence, therefore, the parties were required to produce their evidence in support of their respective versions. In this connection, the claimant got recorded his statement as PW-1, through his affidavit EX-P1/1, whereas, he produced Khawaja Akbar Ali and Abdul Haq Shahid as PW-2 and PW-3, respectively through their respective affidavits as EX-PW2/1 and EX-PW3/1. In his documentary evidence the claimant/consumer has tendered the copy of the suit as EX-P2, titled as Muhammad Ramzan versus TMA City etc, copy of suit as EX-P3 copy of work order EX-P4, bank Challan EX-P5, letter No. 1641 dated 16.12.04, EX-P6, copy of electricity bill EX-P7, letter No. 7268, EX-P8, envelop EX-P9, original bill as EX-P10, legal notice EX-P11, postal receipt EX-P12, reply to notice dated 26.04.08 EX-P13, postal receipt EX-P14, suit for declaration EX-P15, agreement deed as Mark "A", bank Challan as Mark "B".
5. In rebuttal, Muhammad Anwar-ul-Haq Deputy Manager Operation/XEN appeared as his own witness as DW-1, through his affidavit EX-DW1/1, Muhammad Anwar Assistant Manager Operation Fesco got recorded his statement as DW-2, through his affidavit EX-DW2/1. In their documentary evidence the

Fesco Department adduced the copy of letter No. GBL/TMO/79/LO dated 07.03.08, as EX-D1, copy of application to the XEN as EX-D2, letter No. 3791 dated 12.03.08 subject NOC EX-D3, letter No. 3426 dated 15.11.07 EX-D4, sundry job order EX-D5, letter No. 7278 dated 10.04.08 EX-D6, meter reading record EX-D7, abridged condition EX-D8, letter No. GBL/TMO/105/LB dated 27.03.08, as Mark "A", copy of FIR anticorruption establishment as Mark "B", final report of ACE as Mark "C".

6. After conclusion of evidence of the parties, I have heard learned counsel for both the parties at length and have perused the recode carefully and in estimably.
7. Prior to discuss the evidence of the parties, it would be pertinent to refer to the statement of Muhammad Ramzan the claimant/consumer which he got recorded on oath before this court on 06.03.9, wherein he stated that the premises from where the electric meter was removed is not in his possession, that he has been in possession of Darra No. 4 from August 2004 to the winter season of 2006, and that one, Haji Sabir s/o Ali Muhammad is now in physical possession of this place. In view of such statement of claimant/consumer the restoration of electricity energy to the disputed place is out of question. Therefore, the controversy has now been narrowed down to the mootable point as to whether or not the claimant/consumer is entitled to any damages/compensation for disconnection of the electric supply and removal of electric meter from his premises without notice? with this context of the matter, I have critically appraised the evidence on record with the help of learned counsel for parties as under;
8. The claimant/consumer PW-1 and his witnesses have stated that the electric supply of the claimant's above said premises was disconnected on 07.04.08, illegally and without notice, when subjected to cross examination Muhammad Ramzan PW-1 further stated that he had no knowledge whether or not TMO had sanctioned the lease of disputed place in his favour. He admitted that Abdul Sattar is in occupation of the disputed premises now, Khawaja Akbar PW-2 and Abdul Haq

PW-3, have also disclosed in cross examination that the claimant is not in occupation and that the notice was not served to the claimant/consumer before disconnection of electricity supply and removal of disputed meter from the dispute place. The copy of the plaint titled as Muhammad Ramzan etc versus TMA City etc instituted in Civil Court at Faisalabad shows that the claimant sought a declaration from the Civil Court that he, being the lessee of the premises, is entitled to its use EX-P-3, is the written statement allegedly submitted by the TMA City wherein, he has admitted the claimant's suit but surprisingly requested for its dismissal in his prayer portion. It is also very strange to note that this written statement does not seem to have been signed or stamped by the TMA City or Ghulam Rasool Land Officer (defendants in that suit) EX-P-4, is the copy of work order showing that the claimant was to be deemed to be the lessee from 01.07.04, to 30.06.05 EX-P-5 is the copy of the receipt of lease EX-P-6 is stated to be the NOC issued by Land Officer for permission to install electricity meter EX-P-7, is the electricity bill in the name of the claimant/consumer from September 2004, to August 2005, revealing that either the claimant had not used the electric energy or that he used it in very small quantity EX-P8, is the notice from AMO Fesco requiring the claimant/consumer to produce his ownership or the NOC that otherwise his electric connection shall be disconnected EX-P-9, is the postal envelop alleged to have contained the above said notice, EX-P10 to EX-P14, are the receipts of legal notices and postal receipts EX-P-15, is the judgment dated 14.05.08 in the suit titled as Muhammad Ramzan etc versus TMA etc to show that the said suit has been decreed in favour of the claimant with the relief to him that he could seek extension period as per terms and conditions which shall be awarded by TMA/defendants in that suit.

9. It so transpired from the statements of Anwar-ul-Haq DMO/ XEN Fesco and Muhammad Anwar AMO/SDO Fesco that on receiving an application No. 3534 dated 02.11.07, (EX-D2) showing that the claimant/consumer conspired with the Ex-Land Officer to obtain forged and fraudulent NOC from the

Fesco, the claimant/consumer was issued notice No. 3426 dated 15.11.07, requiring him to produce valid proof of lease of the disputed property for issuance of NOC but he failed to do so, that the Fesco also issued letter No. 3154 and 3791 dated 01.03.08 and 12.03.08, (EX-D3) for verification and in answer to such queries TMA Lyalpur Town sent letter No. GBL/TMO/105/LB (Mark "A"), disclosing that the NOC in favour of the claimant/consumer dated 18.12.04 and work order dated 08.04.05, were bogus and fake as per record of the TMA City because the same had neither been entered in dak register nor issued by a competent authority of TMA City Faisalabad that, therefore, the Fesco vide its sundry job order dated 10.04.08, disconnected the electricity supply to the consumer's premises (EX-D5).

10. On 14.06.08, Muhammad Mushtaq s/o Muhammad Yaseen, one of the aggrieved persons lodged a complaint in offences under section 420/468/471/PPC against Ghulam Rasool Land Officer TMA, Muhammad Javaid Rent Inspector TMA and Nasir Ahmad Cheema TMO Lyalpur Town and Sufi Abdul Sattar for preparing and producing forged and fictitious documents in the Civil Court to damage the consumer's rights there. On this complaint, the local police held an enquiry and after record of the respective versions of the parties, the enquiry officer concluded that the matter in issue about possession of the disputed premises is pended in the Civil Court whereas, Muhammad Mushtaq, complainant in the said FIR was stated to be in league with Ghulam Rasool, one of the accused but the said Muhammad Javaid and Nasir Ahmad Cheema were found to be innocent as he also recommended the proceedings under section 182 PPC against the said Muhammad Mushtaq vide enquiry report Mark "C".

11. From the above said facts and circumstances, following points are hereby squeezed out with clarity to my entire satisfaction;

- a. The claimant/consumer has been in possession of the disputed property from August 2004 to winter of 2006, in view of his admission but the electric supply to him was

disconnected in April 2008, vide para No. 3 of the body of the claim therefore, the claimant may not be deemed to be an aggrieved person in this case due to such disconnection of supply of electric energy as he was not in occupation of the premises at that time;

- b. The claimant alongwith two others have also initiated tier of civil litigation against the TMA in the Civil Court about the use and occupation of the disputed Darra in which the TMA Faisalabad has taken approbatic/rapprobatic stand in the written statement there showing his connivance with the claimant/consumer in the Civil Court as also the written statement (EX-P-3) does not bear the signature/stamp of any competent authority and that suit has therefore, been ex-parte decreed in favour of the claimant/consumer to the extent that he can seek extension of the agreement to be awarded by the TMA dated 14.05.08 (EX-P-15). The learned counsel for the claimant has stated during arguments that execution petition with regard to decree dated 14.05.08, is pended in the Civil Court;
- c. In Police investigation on a complaint by Muhammad Mushtaq the claimant's version has been found to be false vide Mark "B" and "C";
- d. From the evidence on record, it is apparently clear that the claimant could not produce the documents necessary for obtaining electricity connection rather he connived with the then TMA for obtaining NOC for installation of electricity connection by submitting bogus and fraudulent documents;
- e. There is over whelming evidence showing that the claimant/consumer was issued notice prior to disconnection of electricity supply, to the premises in dispute as such notice bears his signature;
- f. Even if no notice was served to the claimant prior to disconnection of electricity supply the Fesco authorities were entitled to disconnect supply as the claimant/consumer succeeded to secure the electricity

connection by fraudulent means vide No. 14 of agreement (EX-D8).

12. The upshot of the above whole discussion is that the claim is not maintainable as the services of the defendants/Fesco have not been found to be faulty and defective for the following reasons;

- i. The claimant/consumer succeeded to obtain the electric connection in his said premises on fake documents therefore, he has approached this court with unclean hands;
- ii. The matter is subjudice in Civil Court hence, this forum is unable to extend any relief to the consumer;
- iii. The electricity supply to the claimant/consumer was disconnected after notice. However, the Fesco authorities were entitled to disconnect supply without notice as the electric connection was obtained by the claimant by fraudulent means.

13. For what has been discussed above, I have no hesitation to dismiss the claim, the claim is hereby dismissed. File be consigned to the record room after its due completions.

Announced
14.07.2009.

Muhammad Kaleem Sheikh,
Presiding Officer/
District & Session Judge,
District Consumer Court, Faisalabad.

Certified that this judgment consists of seven pages, dictated, signed and corrected by me.

Muhammad Kaleem Sheikh,
Presiding Officer/
District & Session Judge,
District Consumer Court, Faisalabad