

P L D 2018 Peshawar 26**Before Muhammad Nasir Mahfooz, J****EXN PESCO, SUB-DIVISION-II and another---Appellant****Versus****SHER AFZAL KHAN---Respondent**

Criminal Appeal No.257-M of 2016, decided on 10th August, 2017

Khyber Pakhtunkhwa Consumers Protection Act (VI of 1997)---

----Ss. 12 & 17---Electricity Act (IX of 1910), S.54-C---Disputed Electricity bill---Bar to jurisdiction of courts---Scope---Complainant did not default in paying any monthly electricity bill but he had disputed incorrect reading recorded in the bill---Plea raised by authorities was that jurisdiction of Consumer Court was barred-Validity---Disputed electricity bill did not commensurate with actual electricity consumed by complainant---Such discrepancy was proved from documentary evidence produced during trial---Consumer Court though was actually bound to determine subject matter of complaint in summary manner but still a complete opportunity of hearing was given to both parties to settle their controversy one for all---High Court declined to interfere in the matter as Consumer Court had rightly allowed complaint by giving sound reasons after considering each and every aspect of the matter---Appeal against order was dismissed in circumstances.

Water and Power Development Authority and others v. Messrs Kamal Food (Pvt.) Ltd. Okara and others PLD 2012 SC 371 rel.

Fazal Rehman for Appellants.

Ali Muhammad Khan for Respondent.

Date of hearing: 10th August, 2017.

JUDGMENT

MUHAMMAD NASIR MAHFOOZ, J.---Through the instant appeal filed under section 17 of the Khyber Pakhtunkhwa Consumer Protection Act, 1997 the appellants have challenged the order dated 10.11.2016 passed by Consumer Court, Malakand Division at Camp Court Daggar Buner whereby the complaint filed by the present respondent under section 12 of the ibid Act was accepted.

2. Perusal of the contents of the complaint reveals that the present respondent is consumer of electricity meter bearing No.362177 of Peshawar Electricity Supply Company (hereinafter called as PESCO) of Sub-Division Daggar, Buner. The said electricity meter is installed at his house for fulfilling his domestic electricity needs. The dispute is alleged to have arisen from the monthly electricity bill of February, 2014 wherein the meter reading is shown as 19083 and consumption of 14220 units which forced him to contact the office of present appellants and in pursuance thereof, one Wilayat Ali Line Man inspected the meter and correctly recorded the said units overleaf the concerned monthly bill and signed the same on 26.02.2014. The said complaint was registered as No.5740 dated 27.02.2014 and despite his protest to the excessive billing he deposited the electricity bill and thereafter several times raised same objections but in vain, hence he was constrained to file the subject complaint before the Consumer Court concerned. It is further alleged that without any reason they declared his meter as defective as the said meter was neither tampered with nor there was any allegations of theft of electricity or dishonest abstraction of energy.

3. Appellant submitted his reply and raised an objection to jurisdiction of the consumer court and contended that under section 26 of the Electricity Act, Electric Inspector has got jurisdiction to entertain such like matters

besides denied the allegations leveled in the complaint.

4. Appellant appeared as P.W.1 and produced relevant record in support of his complaint. Electricity bills for the month of February, March and April, 2014 are Ex.P.W.1/1 to Ex.P.W.1/3 respectively. In the monthly bill of April, 2014 reading shows 200 units and the monthly bill is Rs.2074 thereafter the bill of May, 2014 shows that the units columns are left blank and in the status column defective code is given with monthly bill of Rs.3768. A legal notice issued by the appellants is Ex.P.W.1/5. Respondent has also produced monthly bills for the months of June and August, 2014 as Ex.P.W.1/8 and Ex.P.W.1/9. Similar to the above bill the relevant columns of reading are left blank but an amount of Rs.5,215/- and Rs.9007/- have been charged against the bill.

4. D.W.1, Assistant Lineman of PESCO Sub division produced Ex.D. W.1/3 to Ex.D.W.1/17 regarding relevant record from the office of appellants. Ex.D.W.1/3 is shown to be laboratory report dated 03.04.2015 of the PESCO regarding the aforesaid meter but their record is silent that how the meter was removed and why the said laboratory report was not exhibited through its proper custody i.e. official of the laboratory concerned.

5. Arguments heard and record perused.

6. The whole record is replete with the unilateral and casual manner in which the appellants have dealt with the grievances of the respondent without giving it a serious consideration. As mentioned above, the meter reading for the consumed units in the bill is blank but still sufficient amount has been charged against the electricity meter of the respondent. No efforts to justify replacement of meter without following proper procedure or to associate the present respondent, is a proof of blatant misuse of their authority. Respondent has been treated indiscriminately without properly addressing his grievance by either issuing prior notice while initiating any action as even during pendency of the complaint of respondent the excessive billing is proved from the monthly bill of February, 2015 wherein Rs.21,537/- is charged for 24 units consumed as shown in the relevant columns and total cost of electricity is 75. Learned counsel for the appellant failed to sufficiently explain the said unilateral actions displayed through the change of electricity meter and charges made against electricity meter rather raised flimsy objections to the jurisdiction of consumer court but not pressed. From perusal of record even a man of ordinary prudence can visualize the discriminatory treatment meted to the respondent-complainant while charging his electricity meter.

7. So far as the objection to jurisdiction of consumer court is concerned, there is no doubt in this fact that PESCO is a company performing functions of distribution of electricity for the province of Khyber Pakhtunkhwa which falls within the definition of Services being a service provider and section 2(c)(ii) of Khyber Pakhtunkhwa Consumer Protection Act, 1997 defines the word "consumer" as;

"(ii) hires any goods or services for a consideration which has been paid or promised or partly paid and partly promised to be paid or under any system of deferred payment including hire, purchase and leasing and includes any beneficiary of such services."

The word "service" is defined in clause (n) of the said section which includes supply of electricity inter alia other kind of services provided by different entities to the exclusion of only that service which is free of charge or under contract of personal service. Since PESCO is admittedly a service provider of electricity and the disputes arising during the supply of electricity falls within the jurisdiction of consumer court. Sections 26, 26-A and Section 54-C of the Electricity Act have different connotations which does not include the subject matter but where there is allegations of theft of electricity or any dishonest abstraction or consumption of energy. It is an admitted fact, that while supplying electricity to every consumer Khyber Pakhtunkhwa an agreement form is signed by the consumer with the PESCO whereas section 26 (1) starts with the words "in the absence of any agreement to the contrary" and section 26 (6) provides for settlement of a dispute by electric Inspector, where any difference or dispute arises between a licensee and a consumer as to whether any meter, maximum demand indicator or other measuring apparatus is or is not correct. Under section 26-A of the Electricity Act the matter will go to electric inspector if there is a charge against consumer for the dishonestly abstracted amount of energy. Moreover, section 39 of the Electricity Act, provides procedure for theft of energy. Section 54-C inter alia provides for bar of jurisdiction for a court from discontinuing supply of energy to any premises or requiring

him to restore supply by energy to such premises but this section is subject to subsection (1) of section 24 wherein issuance of prior notice is essential.

8. There is not a single document to show that the appellants in general or any of the appellants in particular has redressed grievance of the respondent in black and white not to speak of giving detailed reasons. Section 24-A of General Clauses Act binds every public functionary to give detailed reasons and pass a speaking order after deep analysis of any matter that is brought before him. It is now a folkore that public functionaries shall exercise their authority in an arbitrary and fanciful manner.

9. In the present case, respondent/complainant had not defaulted in paying any monthly electricity bill at the time of institution of his complaint but he is disputing the incorrect reading recorded in the monthly electricity bill which does not commensurate with his actual electricity consumed, the discrepancy is proved from the documentary evidence produced during the trial of this case. Though the consumer court was only bound to determine the subject matter of complaint in a summary manner but still he has given complete opportunity of hearing to both the parties to settle the controversy once and for all. Reference is made to Water and Power Development Authority and others v. Messers Kamal Food (PVT) LTD Okara and others (PLD 2012 SC. 371) para 8 of the judgment is reproduced as under;

"The above principle laid down in "Colony Textile Mills Ltd. Multan" was cited with approval in the subsequent judgment of this Court in "Multan Electric Power Company Ltd." (ibid). It follows from the above case-law that where the allegation against the consumer of electrical power is of dishonest consumption of energy through manipulation of, or tampering with, the metering equipment or other similar apparatus, the Electric Inspector would still have the authority to entertain reference under section 26(6). In case the theft alleged is by means other than the tampering or manipulation of the metering equipment etc, the matter would fall exclusively under section 26-A of the Act, outside the scope of powers of the Electric Inspector.

The objection to jurisdiction raised by the learned counsel for the appellant has got no force thus rejected and it is held that consumer court has rightly allowed the complaint by giving sound reasons after considering each and every aspect of the matter in detail, thus calls for no interference by this court.

In the light of above, this appeal being bereft of any merits is dismissed with no orders as to cost.

MH/272P Appeal dismisse

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