IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1482 of 2015

Pakistan Telecommunication Co. Ltd. ---------- Plaintiff

Versus

K-Electric Ltd. ---------- Defendant

Suit No. 1411 of 2015

Pakistan Telecommunication Co. Ltd. ---------- Plaintiff

Versus

K-Electric Ltd. ---------- Defendant

Suit No 1482 of 2015

1) **For hearing of CMA No. 12909/2016.**
2) **For hearing of CMA No. 11511/2015.**
3) **For hearing of CMA No. 11512/2015.**

Suit No 1411 of 2015

1) **For hearing of CMA No 10989/2015.**

Date of hearing: **23.12.2016.**

Date of Order: **08.03.2017.**

Plaintiff: **Through Mr. Ahmed Masood Advocate.**

Defendant: **Mr. Ayan Mustafa Memon along with Mr. Zaheem Haider Advocates.**

O R D E R

Muhammad Junaid Ghaffar, J. These are two connected Suits between the same parties. In Suit No. 1411/2015 the Plaintiff seeks a Declaration to the effect that the Defendant cannot demand the outstanding amount of electricity bills of private consumers residing in the Plaintiff's colonies from the Plaintiff, and further declaration,

that in default defendant even otherwise cannot disconnect the electric supply of any other premises of the Plaintiff. In Suit No. 1482/2015 the Plaintiff seeks a direction against Defendant to disconnect illegal power supply to 261 encroachers and 180 illegal occupants within the Plaintiff's residential colonies. Through CMA No. 10989/2015 in Suit No. 1411/2015, the Plaintiff prays that pending this Suit no coercive action be taken by the Defendant, and through CMA No. 11511/2015 in Suit No. 1482/2015, it is prayed that Defendant be restrained from giving and issuing any electricity meters to the people residing within the Plaintiff's colonies without a No Objection Certificate from the Plaintiff, whereas, through CMA No. 11512/2015 in Suit No. 1482/2015, the Plaintiff seeks directions to the Defendant to disconnect electric meters of illegal occupants and encroachers of property as mentioned in Annexure P/6 to the plaint.

2. Precisely the facts as stated are that Plaintiff is a Company incorporated under the Companies Ordinance, 1984, whereas, the Defendant is a Power Generation, Transmission and Distribution Company for supply of electricity in the City of Karachi. Initially in 1962 the Federal Government created Pakistan Telephone & Telegraph Department and in 1991 a Statutory Corporation was formed in the name of "*Pakistan Telecommunication Corporation*", whereas, in the year 2006 under Privatization arrangement(s) the controlling shares of the Plaintiff were given to the Plaintiff Company, and pursuant to Section 35 of the Pakistan Telecommunication Re-organization Act, 1996, all properties, rights, liabilities to which the Corporation was entitled were transferred in favour of the Plaintiff including inter alia, a total of 19 residential colonies in the use of its employees. It is further stated that the Plaintiff had issued provisional allotment of residences in its colonies to its allottees who are required to make payments of their respective electricity bills and it is the case of the Plaintiff that the relationship between the occupiers or the allottees and the Defendant has always been an individual one. The dispute now between the Plaintiff and Defendant appears to be that there are certain unpaid bills within the Plaintiff's colonies and of which the Defendant is seeking payment from the Plaintiff, whereas, the Plaintiff's case is that the bills are to be recovered from the individuals, and if they are not paying the bills their electricity connections may be disconnected. The Defendant's case is that in default they can also disconnect electricity of other premises of the Plaintiff. All these applications are interlinked with this controversy and therefore, were heard and are being decided together through this order.

3. Learned Counsel for the Plaintiff has contended that out of the total 974 consumers in their colonies 204 are non-verified, whereas, 441 are illegal occupants and only 320 are legal occupants. Per learned Counsel it has been a consistent practice that bills were being issued in the names of allottees and the allottees were paying the same.

He has contended that if an allottee is not paying his bills regularly, the Defendant can disconnect their electricity, whereas, time and again under coercion they have discharged certain liabilities but now they cannot pay any more. Per leaned Counsel by not disconnecting the connections of defaulting allottees the Defendant is facilitating them. He has further contended that an attempt to disconnect the electricity of other premises of the plaintiff against which there is no default is unlawful inasmuch as the Consumer Service Manual under Chapter 8 does not provides so, whereas, provision of Section 24 of the Electricity Act, 1910 is no more applicable in view of Section 45 of the Regulations of Generation, Transmission and Distribution of Electric Power act, 1997, ("**NEPRA Act, 1997**"). Insofar as Suit No. 1482/2015 is concerned, learned Counsel has referred to Chapter 2.3(c) of the Consumer Service Manual and has contended that no new connection can be given to any allottee / tenant without permission of the landlord i.e. Plaintiff; and therefore, through CMA No. 11512/2015 the Plaintiff seeks disconnection of such meters already installed without permission of Plaintiff. In support of his contention he has relied upon *Muhammad Hanif and others V. Karachi Electric Supply Company Limited and another (2013 CLC 571)* and order dated 05.09.2012 in HCA No. 54/2012 and others whereby, the appeal(s) against the same have been dismissed. According to the learned Counsel the provision of Consumer Service Manual is applicable in this matter as against the Electricity Act, and therefore, the Defendant be restrained from taking any action under Section 24 of the Electricity Act, whereby, they intend to disconnect the Electricity of other premises of the Plaintiff.

4. On the other hand, learned Counsel for Defendant submits that it is not in dispute that 18 colonies belong to the Plaintiff and there are 974 consumers, whereas, all the connections are in the name of Plaintiff and not in the names of their employees or allottees. Per learned Counsel notwithstanding this dispute before the Court, the Plaintiff is not even paying the admitted amount of dues of electricity. He has submitted that when this Suit was filed approximately a total amount of Rs. 130 million was outstanding which has now accrued to Rs. 180 million, whereas, the bills are of normal consumption and therefore, there is no dispute regarding any alleged overbilling. Learned Counsel has referred to a joint survey carried out for verification of the connections and submits that even the payment is not being made of verified connections under the garb of interim orders. Per learned Counsel, it is not for the Defendant to seek verification that as to whether there is any illegal occupant in the Plaintiff's colony as according to them the connection has been given to the Plaintiff which is verified in their names. Learned Counsel has also referred to Plaintiff's agreement with their employees and has contended that it is the responsibility and within the domain of the Plaintiff to deduct the electricity charges from their salaries. As to the legal objection, learned counsel has contended that there is no inconsistency

between the provisions of Section 24 of the Electricity Act and Chapter 8 of the Consumer Service Manual inasmuch as both of them are applicable and it is within the domain and authority of the Defendant to disconnect electricity of other premises of the Plaintiff as they have admittedly defaulted in payment of bills of their colonies. Learned Counsel has read out Section 44 and 45 of the NEPRA Act, 1997, and so also Section 24 and 26 of the Electricity Act and has contended that insofar as the order of the learned Single Judge reported as *Muhammad Hanif supra* and upheld by the learned Division Bench is concerned, the same was on an interlocutory application and therefore, is not the law declared. He has further contended that presently the matter is pending before the Hon'ble Supreme Court in CPLA No. 1546-1547 & 1553 of 2012, wherein, status quo orders are operating till date. He has further contended that in fact Consumer Service Manual is only a guideline or instruction and neither a rule nor a regulation and therefore, it does not override the provisions of Electricity Act. In support of his contentions he has relied upon *Haji Abdul Bari V. Sub-Divisional Officer, Sub-Division Qesco and another (2011 YLR 215), Haji Imam Din V. Chairman, WAPDA and 7 others (2011 YLR 1702)* and *Messrs Ramzan Ice and Cold Storage V. Karachi Electric Supply Corporation and others (1990 MLD 999).*

5. I have heard both the learned Counsel and perused the record. Insofar as the facts are concerned, it appears to be an admitted position that Plaintiff owns various colonies in which their employees have been allotted residences. Prior to the Plaintiff's privatization the Telephone Department was a Government owned organization, whereas, same was the position of Defendant. As per practice, the electricity connections were issued in the name of Plaintiff and thereafter, the same was being distributed to their employees / allottees. Now the dispute which has crop up between them is because of default on the part of the allottees. The Plaintiff's case is that various allottees are either encroachers or illegal occupants but for one reason or the other, they have not been able to throw them out and it appears that they are in occupation. However, it also appears to be an admitted position that there are various allottees who are still owned by the Plaintiff and against whom bills are being generated but are unpaid, whereas, according to the plaintiff there are various other illegal occupants who are not paying their bills. The Defendant's case is that they have no concern with the allottees and occupants, whether they be legal or not, for the reason that according to them, the consumer is Plaintiff. Their case is that the connection was given to the Plaintiff upon fulfillment of certain conditions, and if there is any default, it is the responsibility of the Plaintiff to pay such bills. The Defendant's case is that for recovery of such bills they can exercise powers under Section 24 of the Electricity Act which entitles them to even disconnect the electricity of any other premises of the consumer though there may not be any default on such premises. Insofar as the relationship

between the Plaintiff and the Defendant on the factual plane and so also to the effect that what is the exact number of the defaulting consumers is, reference may be made to two correspondence(s) placed on record by the Plaintiff in Suit No. 1482/2015. The first one is email dated 14.9.2014 available at page 45 which is from Mr. Muhammad Wajid (GM Amin & Security South/PTCL), the Plaintiff to Muhammad Sadiq (Director-KE) & Others the Defendant and the relevant portion reads as under:-

> "Assalamoeleikum,
>
> With reference to the decisions made during series of meetings held between representatives of K Electric and PTCL following is submitted:
>
> a. PTCL management **is interested to clear pending liability against all the meters (exact number to be determined after joint Survey**) held against its name in the PTCL Colonies. You are requested to intimate the overall rebate in case PTCL Colonies. You are requested to **intimate the overall rebate in case PTCL makes lump sum payment in mutually agreed installments**.
> b. In order to prevent theft of electricity in PTCL Colonies, you are requested to provide estimate for installation of A.b.C. System in Nappier Colony, Shadman Colony, MRC Colony, Malir Halt Colony and CTO Compound."

6. Similarly, there is another exchange of correspondence available at page 187 of the same file which again is an e-mail from Mr. Waseem Masood (AM Admin KTR-II/PTCL) the Plaintiff to Mr. Majeed Palijo of Defendant which reads as under:-

> "Dear Palijo/Khurram Sb.
>
> With reference to our meeting regarding outstanding dues of 974 consumers against PTCL colonies, it is intimated that most of consumers not matched with PTCL record as provided by M/s K-E and during the meeting declared that joint survey is required for physical verification of not matched claimed consumers.
>
> After conducted the **joint survey 761 consumers physically verified in PTCL colonies out of 974 consumers** and 204 consumers not verified (reasons/remarks mentioned in attached list). It is mentioned that provided data K-E actually is 965 Consumers instead of 974, because 09 consumers repeated twice.
>
> In this connection during the joint survey of CTO Colony found that 46 K-E consumers installed on Encroachments, so, it is requested that please provide the installation detail/documents of Not verified and not found consumers related to PTCL only to check the status & further action accordingly.
>
> IBC wise list of not verified consumers is attached."

7. Perusal of the aforesaid exchange of correspondence (at least for the present purposes) reflects that the Plaintiff admits majority of the connections in their colonies, and the dispute is only to certain number of allottees. It further appears from perusal of

the record and the bills placed before this Court that it is not in dispute that Defendant's consumer is Plaintiff and the bills are also being issued in the name of the consumer i.e. the ***Plaintiff***. Through there are separate meters perhaps installed at the respective employees / allottees residences, however, it is not in dispute that the actual consumer of Defendant is the Plaintiff. Therefore, the question before the Court for disposal of these applications is only to the extent that what measures can be taken by the Defendant for recovery of outstanding Bills, and whether Defendant is entitled to invoke the provisions of the Electricity Act or can only proceed under the Consumer Service Manual. To resolve such controversy, it would be advantageous to refer to certain provisions of law i.e. Section 24 of the Electricity Act, 1910, Section 45 of the Regulations of Generation, Transmission and Distribution of Electric Power Act 1997 (NEPRA Act), Rule 9 of the National Electric Power Regulatory Authority, Licencing (Distribution) Rules, 1999 and Chapter 8 of the Consumer Service Manual which reads as under:-

> **"[24. Discontinuance of supply to consumer neglecting to pay charge:** (1) Where any consumer neglects to pay any charge for energy or any sum, other than a charge for energy, assessed against him by a licensee in respect of supply of energy to his premises, the licensee may after giving not less than seven clear days' notice in writing to such consumer and without prejudice to his right recover such charge or other sum by suit or otherwise, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works, being the property of the licensee, through which energy may be supplied to such premises or to any other premises, other than domestic premises, running distinctly in the name of such consumer, and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply and the minimum charges on account of continued reservation of supply during the period of such discontinuance, are paid, but not longer.
>
> (2) ……
>
> **Section 45 of NEPRA Act, 1997**
>
> 45. Relationship to other laws. The provisions of this Act, rules and regulations made and licenses issued thereunder shall have effect notwithstanding anything to the contrary contained in any other law, rule or regulation, for the time being in force and any such law, rule or regulation shall, to the extent of any inconsistency, cease to have any effect from the date this Act comes into force and the Authority shall, subject to the provisions of this Act, be exclusively empowered to determine rates, charges and other terms and conditions for electric power services;
>
> Provided that nothing in this Act shall affect the jurisdiction, powers or determinations of the Corporate Law Authority or the Monopoly Control Authority."
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> **********
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> "9. Obligation to connect and supply; (1) Within forty-five days after the date of issue of the distribution licence, the licensee shall develop and submit the consumer service manual to the Authority for approval.

(2) the consumer service manual shall contain instructions and guidance in respect of the following matters, namely:

(a) form and manner of application by the consumer to the licensee for obtaining service, along with details of any documents to be submitted in support of the application;

(b) time-frame for providing connection and service to the consumers;

(c) safety and security;

(d) efficient use of electric power, including with reference to characteristics of supply or usage such as time of day, week or season;

(e) procedure and time frame for handling and redressal of different descriptions of complaints by consumers;

(f) the procedure and manner for billing, the time for payment of bills and procedure for collection of bills;

(g) procedure for notice to consumers before disconnection for nonpayment of bills;

(h) procedure and manner for installation of meters and other facilities for connection;

(i) fees and charges for connection, installation of meters, other facilities for connection and resumption of connection after disconnection;

(j) collection of arrears upon or following reconnection; and

(k) procedure for disconnection and the charges and penalties for theft of electric power or for use of electric power for purposes other than those specified in the application for connection and service.

(3) The Authority may direct the licensee to include instructions and guidance in respect of matters additional to those specified in sub-rule (2) and, upon being so directed, the licensee shall comply with the directions of the Authority and shall submit to the Authority a revised version of the consumer service manual within fourteen days of being so directed.

(4) Upon submission of the consumer service manual by the licensee, the Authority shall review the consumer service manual and shall grant its approval upon being satisfied as to the adequacy thereof.

(5) The review and approval process, including in respect of any additional maters as may be directed by the Authority in terms of sub-rule (3) or sub-rule (6), shall be completed not later than forty five days following the initial submission of the consumer service manual by the licensee.

(6) The Authority may from time to time direct the licensee to revise the consumer service manual in such manner and with respect to such details as the Authority may direct, provided that the licensee shall not be required to revise the consumer service manual in a manner which may cause the licensee to be in breach of the Laws or the applicable documents.

(7) Upon approval of the consumer service manual by the Authority, the licensee shall provide;

(a) Ten copies, free of charge, to the Authority;

(b) at least one copy free of charge, to any person seeking connection and service from the licensee; and

(c) such number of copies, upon payment of charges not exceeding the reasonable cost for the preparation and dispatch, to any person requesting for the given number of copies fo the consumer service manual as revised from time to time.

(8) The licensee shall connect and supply electricity power to any consumer satisfying the consumer eligibility criteria specified in the NEPRA Rules and Regulations, who seeks connection and supply of electric power in a manner not inconsistent with the consumer service manual or the terms of the distribution license or which does not result in the licensee being in breach of the Laws or the applicable documents."

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8.1 DISCONNECTION

A premises is liable to be disconnect if the consumer is a defaulter in making payments of the energy consumption charges bill(s) or if he is using the electric connect for a purpose other than for which it was sanctioned, or if he has extended his load beyond the sanctioned load even after receipt of a notice in this respect from the DISCO.

Disconnection Procedure

(a) The consumer shall be bound to pay his energy bill within due date specified in the bill or with the late payment surcharge if paid after due date, before the issuance of the next month bill.

(b) In case of non-payment of the previous months electricity bill, the DISCO shall serve a clear 7 days' notice to the defaulting consumer to either clear the outstanding dues with the current bill or face disconnection and penal action.

(c) Upon non receipt of payment even after the expiry of the notice period, the supply of the defaulting premises shall be disconnected. In such cases the disconnected supply shall not be reconnected or restored by the DISCO until full payment along with late payment surcharge has been made by the consumer.

The power supply of the consumers who are allowed by the DISCO to make the payment in installments shall not be disconnected. However, if a consumer further defaults in making payment of installments, the power supply of such a consumer shall be disconnected without any further notice and shall only be restored after receipt of all arrears.

(d) The power supply of a defaulting consumer shall not be disconnected who has lodged a complaint/petition against any wrong billing or any dispute relating to the payment of energy bill with DISCO, the Electric Inspectors office/Provincial Office of Inspection or NEPRA (for all such, proper restraining orders shall be issued). DISCO shall also not disconnect the supply if a restraining order to this effect has been issued from any court of law.

(e) If a consumer extends his existing load beyond the sanctioned load he shall be issued a notice along with evidence thereof to apply for extension of load within one month of the receipt of notice. The DISCO shall disconnect the power supply if the consumer fails to avail this opportunity."

8. The controversy between the Plaintiff and Defendant insofar as the recovery procedure adopted for the outstanding bills is to the effect that whether Section 24 of the Electricity Act is attracted or Chapter 8 of the Consumer Service Manual would apply. Section 24 of the Electricity Act provides that where any consumer neglects to pay any charge for energy or any sum assessed against him by a licensee in respect of supply of energy to his premises, the licensee may after giving not less than seven clear days' notice without prejudice to his right to recover such charge or other sum by Suit or otherwise, can cut off the supply and for that purpose cut or disconnect any electric supply-line or other works, being the property of the licensee, through which energy may be supplied to such premises or to any other premises, other than a domestic premises, running distinctly in the name of such consumer. This provision enables the licensee (Defendant) to disconnect supply of electricity of even any other premises of a consumer for recovery of its amount against any other premises. Contrary to this, the Consumer Service Manual in Chapter 8.1 provides that premises is liable to be disconnected if the consumer is a defaulter in making payments of the energy consumption charges bill(s) and according to this provisions there is only a defaulting premises of which the electricity connection can be disconnected. The Plaintiff rests its case on Consumer Service Manual and it is their contention that Section 24 of the Electricity Act does not apply and in support reliance is placed on Section 45 of the NEPRA Act, 1997 which provides that the provisions of this Act, rules and regulations made and licenses issued thereunder, shall have effect notwithstanding anything to the contrary contained in any other law, rule or regulation, for the time being in force and any such law, rule or regulation shall, to the extent of any inconsistency, cease to have any effect from the date this Act comes into force and the Authority shall, subject to the provisions of this Act, be exclusively empowered to determine rates, charges and other terms and conditions for electric power services. The Plaintiff further rests their case on an order passed by a learned Single Judge in the case of *Muhammad Hanif supra* wherein, while discussing the implication and applicability of the Electricity Act vis-à-vis. the Consumer Service Manual it has been observed in Para 26 as follows:-

> "26. On the foregoing basis, when section 20 on the one hand and the provisions of Chapters 8 and 14 of the CSM on the other are compared, it appears to me that there are certain points on which there is inconsistency between section 20 and Chapter 14 in particular. To the extent that these provisions are inconsistent, the provisions of the CSM must prevail and those of section 20 must be regarded as having been suspended or gone into abeyance. I cannot therefore accept the submission made by learned counsel for KESC that section 20 and Chapters 8 and 14 independently confer separate and discrete powers on KESC. Rather, the provisions have to be read together and in case there is any inconsistency, it is the CSM that must be applied. It therefore follows that in my view, the procedure for disconnection of electricity supply, if a consumer uses the sanctioned load for standby purposes, must be that laid down in the CSM and not section 20."

9. This order of the learned Single Judge was assailed in HCA No. 54/2012 and vide order dated 05.09.2012 the appeals were dismissed against which a Civil Petition for Leave to Appeal appears to be pending before the Hon'ble Supreme Court. Insofar as the aforesaid findings of the learned Single Judge is concerned, it may be observed that it is on an Interlocutory Application and the Suit is still pending, whereas, the Division Bench while upholding the same also did so on this very ground that it is not final in nature and being on Interlocutory Application is tentative. The relevant observations of the learned Division Bench are as under:-

> "11. Observations in interlocutory application are always tentative in nature. At an interlocutory stage the Court is not required and in fact never finally determines the contentions raised by the parties. In High Court Appeal No.127/2011 Karachi Electricity Supply Company v. Muhammad Shahnawaz and others decided vide judgment announced on 13.08.2012.
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> 14. The present are also appeals against interlocutory orders. The two learned Single Judges have entered into a very extensive discussion about the law and the CSM but all that is still are tentative in nature and it would not be appropriate for a Division Bench to undertake a similar exercise for giving another set of tentative observations. Therefore we do not think we should interfere with the observations regarding the provisions of law made by the learned Single Judges."

10. In the circumstances, and notwithstanding the fact that the aforesaid observation are on an interlocutory application(s), and cannot be regarded as a law declared by the Division Bench of this Court, I can conveniently differ from such findings, as being tentative in nature. However, the same is not required for the reason that the issue is still pending before the Hon'ble Supreme Court in the above Civil Petitions for Leave to Appeal. Moreover, in my view, even otherwise, the said finding has no relevancy to the facts of this case which appears to be an open and shut case insofar as default in payment of bills is concerned. There isn't any issue in this regard, nor the case of plaintiff is that some over or excessive billing has been done or the meters are defective and need corrective measures. The plaintiff has though made an effort to shift the responsibility of payment of such bills on its employees; however, the material placed on record does not support such plea. On a careful examination of the allotment letter dated 20.8.2014 issued to one of its employee (see pg:783 of Suit No 1411/2015-all are perhaps similarly worded) clearly reflects that *"Further to the extended terms in temporary allotment agreement, demand / **utility bills shall be realized from the monthly emoluments through his office**. It is however; in the interest of the allottee to ensure that all bills are regularly paid and nothing accumulates in arrears otherwise he may face unpleasant situation and difficulties at the time of vacating company accommodation on transfer / retirement etc as per prevailing company rules"*. This condition is part of every allotment letter and to my understanding nothing much is required to dilate

upon any further. The plaintiff has allotted the premises to the employee by observing that all utilities shall be realized from monthly emoluments, and at the same time it has requested the employee to ensure that all bills are paid by him. This clearly reflects that if the bills are not paid by the employee, then the plaintiff retains its right to deduct the same from his / her salary. This is simple and not at all complicated. This is further amplified from perusal of the bills being generated by defendant. All bills are admittedly in the name of plaintiff as a "**Consumer**" and it is not the case of the plaintiff that the bills are being generated in the name of their employees. Mere installation of separate meters does not change the complexion and status of plaintiff who still remains a **Consumer** for such purposes. After all the connection has been provided at the request of plaintiff in its name, and it is only for plaintiff's convenience and as a gesture and matter of understanding in the past that separate meters have been installed at the allottees place (this appears to be of the pre-privatization times when both plaintiff and defendants were Government owned entities). However, this does not in law makes the employee / allottee as a Consumer for all legal and practical purposes. Nor does the law provide for any such eventuality. In fact this has been done to facilitate the plaintiff, as otherwise every now and then when a new allottee is inducted a separate application has to be entertained from such employee / allottee to become an individual and distinct consumer of defendant. The correspondence referred to above (See Para 6) clearly reflects that insofar as 761 connections out of 974 are concerned, they are admitted by the Plaintiff; however, payment of even such verified allottees pursuant to a joint survey, has not been made, nor any attempt or willingness has been shown before the Court for deposit or payment of such bills. This does not leave much for the Court to observe further, except that for making out a prima facie case, the conduct of the party seeking an injunctive relief is also of paramount importance. He who seeks equity must do equity, and must come to the Court with clean hands and so also show that his acts were fair and equitable. In the case of ***Basheshar v Municipal Committee*** (**AIR 1940 Lahore 69**), it has been observed, that plaintiff will be disentitled to relief if he acts unfairly or inequitably. It is also noteworthy that insofar as defendant is concerned, there is admittedly no independent contract with the allottee / employee, rather it is between the plaintiff and its employee / allottee. In that case it is out of context and wholly irrelevant to ask the defendant to run after the employee / allottee for claiming payment of unpaid bills as it has no contract with him or her. It is after all the responsibility of plaintiff who has inducted the employee / allottee as tenant or lessee. The defendant is not required to run after the defaulting employee or allottee as it has no privity of contract with him / her, as the connection has been given in the name and at the request of the plaintiff. Reference in this regard may be made to the case of ***Pak Ice***

Factory v. WAPDA & Others (**1987 MLD 2277**), wherein it has been observed as follows;

> 3. I have heard the learned counsel for both the parties. Learned counsel for the respondents rightly pointed out that in the plaint the only plea taken was that the authorities should have determined the liability between the petitioner and his lessee as to who out of the two were to pay the amount and it was not as such pleaded that the amount itself was not recoverable. Learned counsel for the WAPDA has also pointed out that the premises of factory admittedly are owned by the petitioner and if they have been leased out, the WAPDA Authorities are entitled to recover the bills of electricity of charges from the owner of the premises who is the consumer according to WAPDA record and WAPDA Authority is not bound by any arrangement or agreement between the petitioner and the lessee regarding payment of electricity charges. Learned counsel for the petitioner on the other hand contended that previous to this amount the WAPDA Authorities have been receiving the electricity charges from the lessee. I am afraid this contention has no basis in law. **Lessee might have been paying and the WAPDA might have been receiving but it does not' mean that the petitioner is absolved from his liability as consumer. The WAPDA Authorities were well within their right to follow the consumer for payment of electricity charges and if there is any agreement between the petitioner and the lessee, the petitioner in turn could recover the same from him but cannot ask the WAPDA to follow the lessee**. The learned lower Appellate Court has correctly passed the orders. No material irregularity amounting to illegality has been committed in passing the impugned order by the lower appellate Court. The revision petition has no merits. It is, therefore, I dismissed with no order as to costs. (Emphasis supplied)

11. The case in hand in my view is more aptly covered by the provision of Section 21(2)(b)(ii), which deals with duties and responsibilities of distribution licensees (defendant herein), and provides that "*the licensee may disconnect the provision of electric power to a consumer for default in payment of power charges*….". This is provided in the NEPRA Act, 1997, and as contended by the learned Counsel for the plaintiff will have precedence over the provisions of Electricity Act, 1910, including section 20 ibid, and does not restricts the authority of defendant only to disconnect the supply of the defaulting premises as provided in Chapter 8 of Consumer Service Manual but of the **Consumer**. It gives ample and wide sweeping powers to the defendant to take action against the consumer. It is the consumer which is responsible and not the premises, be it the defaulting premises or otherwise according to this section.

12. I need not go and say that this is a provision under the NEPRA Act, itself and will have an overriding effect on the Consumer Service Manual which at most is an instruction manual issued in terms of Section 21 read with Rule 9 ibid. Consumer has been defined under Section 2(c) of the Electricity Act, 1910, Section 2(iv) of the NEPRA Act, 1997 and Chapter 1.4(20) of the Consumer Service Manual, and in view of such position defendant is authorized to take action against the Consumer, including

disconnection of electricity of the Consumer irrespective of the premises. Even, the exception provided in Section 24 of the Electricity Act, regarding domestic consumer has been done away with. However since this is not an issue in this matter, the same will be dealt with accordingly in some other case as and when brought before the Court.

13. In view of hereinabove facts and circumstances of this case, I am of the view that plaintiff has not been able to make out a prima facie case, nor balance of convenience lies in its favor, whereas, no irreparable loss would be cause to it, rather it is the defendant who will be caused prejudice and irreparable loss if any injunctive relief is further granted. The issue in CMA 10989/2015 in Suit No 1411/2015 requires payment of outstanding dues which the plaintiff has failed to pay and or deposit, whereas, no effort or prayer has been made in this regard. Insofar as CMA 11511/2015 in Suit No. 1482/2015 is concerned, it would suffice to observe that reliance on Chapter 2.3 (c) of the Consumer Service Manual is misconceived as applies only to a person seeking a new connection as a "*Consumer*", whereas, in this case the connections are already there in the name of Plaintiff, and as and when an employee, if any, approaches the defendant on its own, independently for a new connection (not an independent meter only), then recourse to the said provision of law would be required which is not the case in hand. Similarly, CMA 11512/2015 in Suit No.1482/2015 is again misconceived, as the disconnection, if any, has to be against the "*Consumer"* as discussed hereinabove. Accordingly all the pending applications of the plaintiff are dismissed. However, since the matter pertains to a human necessity i.e. supply of electricity, this order shall remain suspended; however, subject to payment of the outstanding up to date bills of the verified allottees / occupants (761 as admitted by the plaintiff) to the defendant, and by deposit of the amount or furnishing of any tangible surety to the satisfaction of the Nazir for the up to date amount of outstanding bills of the unverified (204 again as admitted) allottees / occupants. Such payment and deposit shall be made within 7 days from today, failing which the suspension order would be ineffective. The defendant shall communicate the up to date outstanding as above respectively to the Plaintiff and Nazir of this Court.

14. CMA 10989/2015 in Suit No.1411/2015, CMA 11511/2015 & CMA 11512/2015 in Suit No.1482/2015 stands dismissed.

Dated: 08.03.2017 J U D G E