



Before the Appellate Board
National Electric Power Regulatory Authority
(NEPRA)
Islamic Republic of Pakistan

NEPRA Office , Ata Turk Avenue (East), G5/1, Islamabad
Tel. No.+92 051 2013200 Fax No. +92 051 2600030
Website: www.nepra.org.pk E-mail: office@nepra.org.pk

No. NEPRA/Appeal/034/POI/2020/ 1302

November 21, 2022

- | | |
|---|---|
| 1. Muhammad Azeem,
S/o. Miraj Din,
R/o. Hose No. 06, Street No. 21,
Gulshan-e-Park, Fateh Garh Road,
Lahore | 2. Chief Executive Officer,
LESCO Ltd,
22-A, Queens Road,
Lahore |
| 3. Saeed Ahmed Bhatti,
Advocate High Court,
66-Khyber Block, Allama Iqbal Town,
Lahore | 4. Waqas Ahmed,
Advocate High Court,
7-GF, Al-Majeed Centre,
Link Farid Kot, 1-Mozang Road,
Lahore |
| 5. Sub Divisional Officer (Operation),
LESCO Ltd,
Salamat Pura Sub Division,
Lahore | 6. POI/Electric Inspector,
Lahore Region, Energy Department,
Govt. of Punjab, Block No. 1,
Irrigation Complex, Canal Bank,
Dharampura, Lahore |

Subject: **Appeal Titled LESCO Vs. Muhammad Azeem Against the Decision Dated 17.12.2019 of the Provincial Office of Inspection to Government of the Punjab Lahore Region, Lahore**

Please find enclosed herewith the decision of the Appellate Board dated 17.11.2022, regarding the subject matter, for information and necessary action accordingly.

Encl: As Above

(Ikram Shakeel)
Deputy Director (M&E)/
Appellate Board

Forwarded for information please.

1. Additional Director (IT) –for uploading the decision on NEPRA website



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No.034/POI-2020

Lahore Electric Power Company LimitedAppellant

Versus

Muhammad Azeem S/o Miraj Din, R/o House No.06,
Street No.21, Gulshan-e-Park, Fateh Garh Road, LahoreRespondent

APPEAL U/S 38 OF REGULATION OF GENERATION, TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997

For the Appellant:

Mr. Saeed Ahmed Bhatti Advocate

For the Respondent:

Mr. Waqas Ahmed Advocate

DECISION

1. Brief facts leading to the filing of instant appeal are that Mr. Muhammad Azeem (hereinafter referred to as the "Respondent") is a residential consumer of the Lahore Electric Supply Company Limited (hereinafter referred to as the "Appellant") bearing Ref No.16-11315-1243500 with a sanctioned load of 0.96 kW and the applicable Tariff category is A-1(a). The billing meter of the Respondent was replaced with a new meter by LESCO on 08.09.2015. The removed billing meter was checked by the





National Electric Power Regulatory Authority

Metering and Testing (M&T) LESCO and it was declared as tampered (body repasted and running 84% slow) for the dishonest abstraction of electricity vide report dated 10.09.2015. A notice dated 10.09.2015 was served to the Respondent regarding the above discrepancy. Thereafter, a detection bill of Rs.420,714/- for the cost of 19,435 units for twenty (20) months period from January 2014 to August 2015 was charged by the Appellant to the Respondent and added in August 2016.

2. Being aggrieved, the Respondent initially assailed the above detection bill before the Civil Court, Lahore. The Honorable Civil Court Lahore vide order dated 30.01.2019 directed the Respondent to approach the Provincial Office of Inspection, Lahore Region, Lahore (hereinafter referred to as the "POI") for the resolution of dispute. Accordingly, the Respondent filed a complaint before the POI on 30.07.2019 and challenged the above detection bill, which was decided by the POI vide the decision dated 17.12.2019, wherein the detection bill of Rs.420,714/- for the cost of 19,435 units for twenty (20) months period from January 2014 to August 2015 was cancelled. As per the decision of POI, the Appellant was directed to charge the bills for July 2015 and onwards till the date of replacement of the defective meter i.e. 08.09.2015 on the basis of the consumption of corresponding months of the year 2014. The Appellant was directed to overhaul the billing account of the Respondent and for adjustment of payments made against the above detection bill.
3. Subject appeal has been filed against the afore-referred decision dated 17.12.2019 of





National Electric Power Regulatory Authority

the POI (hereinafter referred to as the “impugned decision”) by the Appellant before the NEPRA, wherein it is contended that the billing meter of the Respondent was found tampered (meter body repasted and it was running 84% slow) during the M&T checking dated 10.09.2015 for the dishonest abstraction of electricity. The Appellant further contended that notice dated 10.09.2015 thereof was served to the Respondent and a detection bill of Rs.420,714/- for the cost of 19,435 units for twenty (20) months period from January 2014 to August 2015 was charged to the Respondent on the basis of the connected load. As per Appellant, the POI misconceived the real facts of the case as the above detection bill was debited to the Respondent on account of dishonest abstraction of energy under Section 26-A of the Electricity Act, 1910. According to the Appellant, the POI erred in holding that the above detection bill be revised for two billing cycles i.e. July 2015 and August 2015 as per Clause 4.4(e) of the Consumer Service Manual-2010 (the “CSM-2010”), which is illegal, and unlawful, hence the impugned decision is not sustainable in the eye of law. The Appellant submitted that the POI failed to analyze the consumption data in true spirit and wrongly applied Clause 4.4(e) of the CSM-2010. The Appellant stated that the complaint filed before the POI is barred by time being filed after three (03) years, which is a violation of the Limitation Act, 1908. As per the Appellant, the POI failed to appreciate that the complaint could not be entertained as no notice as required under Section 26(6) of the Electricity Act 1910 was served upon the Appellants before filing the same. The





National Electric Power Regulatory Authority

Appellant prayed that the impugned decision is not sustainable in law and the same is liable to be set aside.

4. Proceedings by the Appellate Board

Upon filing of the instant appeal, a Notice dated 02.07.2020 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days. Later on, the Respondent submitted reply/parawise comments to the appeal before the NEPRA, wherein he rebutted the stance of the Appellant and informed that neither he was associated during the alleged inspection nor any notice was served by the Appellant. The Respondent contended that the impugned decision is quite legal as the meter under dispute was not sent to POI for verification of the alleged slowness of the meter. The Respondent further contended that the POI has rightly applied the CSM-2010 for the determination of the detection bill. The Respondent rebutted the contention of the Appellant regarding the time-barred complaint and informed that the detection bill was charged in August 2016, whereas the complaint was filed before the POI on 30.07.2019 even after exhausting remedy of the Civil Court, which is within three years as per Article 120 of the Limitation Act, 1908. As per Respondent, notices were served to the Appellant through postal receipts before approaching the POI, hence version of the Appellant in this regard has no force. According to the Respondent, no evidence was produced before the Civil Court by the Appellant, whereas no procedure





National Electric Power Regulatory Authority

is available in the proceedings of POI. The Respondent finally prayed that the appeal is liable to be dismissed.

5. Hearing

5.1 Hearing in the matter of the subject Appeal was initially fixed for 30.12.2021 at Lahore and accordingly, the notices dated 24.12.2021 were sent to the parties (i.e. the Appellant and the Respondent) to attend the hearing. As per schedule, the hearing of the appeal was conducted at the NEPRA Regional Office Lahore on 30.12.2021, in which both parties were present. During the hearing, the Respondent requested for the adjournment of hearing which was not opposed by the learned counsel for the Appellant. Therefore the hearing is adjourned till the next date.

5.2 The hearing in the subject matter was again fixed for 14.01.2022 at NEPRA Regional Office Lahore and accordingly, the notices dated 06.01.2022 were sent to the parties (i.e. the Appellant and the Respondents) to attend the hearing. On the given date of hearing, the learned counsel of the Appellant was present whereas, Mr. Waqas Ahmed Advocate submitted power of Attorney on behalf of the Respondent. He sought adjournment for the preparation of the case, which was allowed.

5.3 Hearing of the subject appeal was fixed for 10.03.2022 at NEPRA Regional





National Electric Power Regulatory Authority

Office for which notices dated 03.03.2022 were issued to both parties. On the given date of the hearing, the proxy counsel sought adjournment with the plea that the main counsel engaged on behalf of the Respondent could attend hearing due to sickness. The Adjournment request was not opposed by the learned counsel for the Appellant, hence the hearing was adjourned.

5.4 Once again, the hearing of the Appeal was fixed at NEPRA Head Office Islamabad on 02.06.2022 for which notices dated 26.05.2022 were sent to the parties but no one could appear before the Appellate Board on the said date, therefore the hearing of the appeal was adjourned till next date.

5.5 Lastly, the hearing was scheduled at NEPRA Regional Office Lahore on 16.06.2022, and accordingly, the notices dated 07.06.2022 were served to both parties (i.e. the Appellant and Respondent). On the given date of the hearing, learned counsels were present on behalf of the Appellant and Respondent. During the hearing, learned counsel for the Appellant reiterated the same version as contained in memo of the appeal and contended that the meter of the Respondent was removed by the Appellant and got checked in M&T laboratory on 10.09.2015, wherein it was found tampered. Learned counsel for the Appellant stated that notice dated 10.09.2015 was served to the Respondent, which remained unanswered, therefore the detection bill of Rs.420,714/- for the cost of 19,435 units for twenty (20) months period from January 2014 to August 2015





National Electric Power Regulatory Authority

was debited to the Respondent on the basis of the connected load. As per learned counsel for the Appellant, the POI neither checked the disputed meter nor verified the consumption data of the Respondent and relied on its determination on Chapter 4 of the CSM-2010. Learned counsel for the Appellant defended the charging of the impugned detection bill and prayed that the same be declared as justified and payable by the Respondent.

5.6 Learned counsel for the Respondent refuted the allegation of illegal abstraction of electricity levelled by the learned counsel for the Appellant, opposed the charging of the impugned detection bill and argued that the same is liable to be withdrawn as already declared by the POI. The Respondent finally prayed for the maintainability of the impugned decision.

6. Arguments heard and the record perused. Following are our observations:

6.1 Before going into the merits of the case, the preliminary objection of the Appellant regarding the limitation needs to be addressed. It is observed that the detection bill of Rs.420,714/- for the cost of 19,435 units for twenty (20) months period from January 2014 to August 2015 was charged by the Appellant to the Respondent and added in August 2016, which was initially assailed by him before the Civil Court, Lahore. The Honorable Civil Court Lahore vide order dated 30.01.2019 directed the Respondent to approach the POI for the resolution of dispute. Accordingly, the Respondent filed an application before the POI on





National Electric Power Regulatory Authority

30.07.2019 and challenged the above detection bill.

- 6.2 Thus the complaint of the Respondent was filed before the POI on 30.07.2019 within three years of receipt of the impugned detection bill i.e. August 2016, which is consistent with Article 181 of the Limitation Act, 1908. In this regard, reliance is placed on the Lahore High Court, judgment dated 30.11.2015 in respect of writ petition No.17314-2015 in the case "Muhammad Hanif v/s NEPRA and others", wherein it was held as under:

"The petitioner at the most can invoke Article 181 of The Limitation Act, 1908 which is the residuary provision and caters the issue of limitation where no period of limitation is provided elsewhere in the Schedule of The Limitation Act, 1908 or under Section 48 of The Code of Civil Procedure (V of 1908). Article 181 of The Limitation Act, 1908 prescribes three years for filing an application that applies when the right to apply accrues as prescribed in Article 181 of Limitation Act, 1908."

Foregoing in view, the argument of the Appellant regarding the time-barred complaint has no force and the same is set aside.

- 6.2 As regards another objection of the Appellant for not issuing notice as per the Electricity Act, 1910 by the Respondent before filing a complaint to the POI, it is elucidated that the matter was adjudicated by the POI under Section 38 of the NEPRA Act, 1997 and as per procedure laid down in Punjab (Establishment and Powers of Office of Inspection) Order, 2005, which do not require for service of any notice before approaching the POI. The above objection of the Appellant is





National Electric Power Regulatory Authority

not valid, therefore overruled.

6.3. In its appeal, the Appellant has claimed that the Respondent was involved in the dishonest abstraction of electricity through tampering with the meter. Clause 9.1(b) specifies the indications of illegal abstraction, while Clause 9.1(c) of the CSM-2010 lays down the procedure to confirm the same and charging the consumer on this account stating *inter alia* as below:

9.1(c): Procedure for establishing illegal abstraction shall be as under:

1) *“Upon knowledge of any of the items in 9.1(b), the concerned office of the DISCO will act as follows:*

(i) Secure the meter without removing it in the presence of the owner /occupier or his Authorized representative/respectable person of the locality.

(ii) Install check meter and declare it as billing meter

(iii) Shall constitute a raiding team including Magistrate, Local representative(s) of the area (Councilor/Police officer), Officer of the DISCO (in case of residential/commercial consumers, not below the rank of SDO and in case of other consumers not below the rank of XEN) and an officer of the metering and testing division of the DISCO (who should be an Electrical Engineer) inspect the meter secured at site and declare that illegal abstraction of electricity has, and/or is being carried out. However, for industrial consumers (B-2 and above), a representative of the POI/Electric Inspector is mandatory.

6.4. In the instant case, the Appellant claimed that M&T on 10.09.2015 detected the following discrepancies:

“Billing meter checked and found meter body re-pasted at the time of checking and it was running 84% slow”





National Electric Power Regulatory Authority

- 6.5. Having found the above discrepancies, the Appellant was required to follow the procedure stipulated in Clause 9.1(b) of the CSM-2010 to confirm the illegal abstraction of electricity by the Respondent and thereafter charge the Respondent accordingly.
- 6.6. However, in the instant case, the Appellant has not followed the procedure as stipulated under the ibid clause of the CSM-2010. From the submissions of the Appellant, it appears that the meter of the Respondent was checked and removed by the Appellant in the absence of the Respondent.
- 6.7. As per the impugned decision, the Appellant failed to produce the disputed meter before the POI for confirmation of the alleged tampering in the disputed meter. There is no documentary evidence before us confirming the claim of the Appellant about meter tampering of the Respondent. The Appellant could not provide the billing statement showing the consumption of units during the disputed and undisputed periods. This whole scenario manifests that the claim of the Appellant regarding the illegal abstraction of electricity by the Respondent is unjustified as neither the Appellant adhered to the procedure to confirm the illegal abstraction of electricity as envisaged in Chapter 9 of the CSM nor could produce substantial documentary evidence before us to prove the illegal abstraction through tampering the meter.





National Electric Power Regulatory Authority

6.8. Under these circumstances, we hold that the detection bill of Rs.420,714/- for the cost of 19,435 units for twenty (20) months period from January 2014 to August 2015 charge to the Respondent is illegal, and unjustified being contrary to Clause 9.1(c) of the CSM-2010, and the same is declared null and void.

6.9. It is observed that the POI revised the bills for July 2015, August 2015 and onwards till the replacement of the disputed meter based on the consumption of July 2014 and onwards, which is inconsistent with Clause 4.4(e) of the CSM-2010. Said clause of the CSM prescribes the method for charging the bills on the basis of consumption of the corresponding month of previous year or average consumption of the last eleven months, whichever is higher in case of a defective meter. Thus the Respondent is liable to be charged the revised bills for two months as per Clause 4.4(e) of the CSM-2010. Impugned decision is liable to be modified to this extent.

7. Summing up the foregoing discussion, it is concluded as under:

7.1 The detection bill of Rs.420,714/- for the cost of 19,435 units for twenty (20) months period from January 2014 to August 2015 charged to the Respondent is declared null and void.

7.2 The Respondent may be charged the revised bills for two months as per corresponding consumption of previous years or average consumption of last eleven months, whichever is higher.





National Electric Power Regulatory Authority

7.3 The billing account of the Respondent may be overhauled, accordingly.

8. The appeal is disposed of in the above terms.



Syed Zawar Haider
Member



Muhammad Irfan-ul-Haq
Member



Abid Hussain
Convener

Dated: 17/11/2022

