



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

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No. NEPRA/AB/Appeal/073/POI/2020/ 826

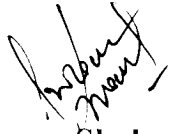
August 15, 2022

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|---|--|
| 1. Ali Ahmed,
R/o. House No. 1379,
Kucha Kundi Garan, Chuna Mandi,
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. Assistant Manager (Operation),
LESCO Ltd,
Sheranwala Gate Sub Division,
Lahore |
| 5. POI/Electric Inspector,
Lahore Region, Energy Department,
Govt. of Punjab, Block No. 1,
Irrigation Complex, Canal Bank,
Dharampura, Lahore | |

Subject: **Appeal Titled LESCO Vs. Ali Ahmed Against the Decision Dated 25.02.2020 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 10.08.2022, 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.073/POI-2020

Lahore Electric Power Company LimitedAppellant

Versus

Ali Ahmed, R/o House No.1379, Kucha Kundi
Garan, Chuna Mandi, 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
Syed Asim Ali Bukhari AM

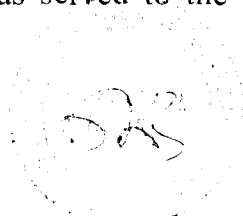
For the Respondent:

Nemo

DECISION

1. Brief facts leading to the filing of instant appeal are that Mr. Ali Ahmed (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.03-11143-0307200 with a sanctioned load of 1 kW and the applicable Tariff category is A-1(a). The billing meter of the Respondent was checked by the Metering and Testing (M&T) LESCO and it was declared as tampered (body repasted) for the dishonest abstraction of electricity vide report dated 11.07.2019.

A notice dated 12.07.2019 was served to the Respondent regarding the above





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discrepancy, which remained unresponded. Thereafter, the Appellant lodged FIR No.358/2019 dated 23.07.2019 against the Respondent and the disputed meter was handed over to the police. Subsequently, a detection bill of Rs.125,000/- for 8,237 units for the twelve (12) months period from July 2018 to June 2019 was charged by the Appellant to the Respondent in August 2019.

2. Being aggrieved, the Respondent assailed the above detection bill before the Provincial Office of Inspection, Lahore Region, Lahore (hereinafter referred to as the "POI") on 02.09.2019. The complaint of the Respondent was disposed of by the POI vide the decision dated 25.02.2020, wherein the detection bill of Rs.125,000/- for 8,237 units for the period July 2018 to June 2019 was cancelled. As per the decision of POI, the Appellant was directed to charge the bills for May 2019 and onwards till the replacement of the defective meter on the basis of the consumption of previous corresponding months. 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 25.02.2020 of 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) during the M&T checking dated 11.07.2019 for the dishonest abstraction of electricity, therefore FIR No.358/2019 was registered with the police against him and the meter under dispute was handed



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over to the police. The Appellant further contended that notice dated 23.07.2019 thereof was served to the Respondent and a detection bill of Rs.125,000/- for 8,237 units for the period of twelve (12) months from July 2018 to June 2019 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, which does not call for interference by the said forum under Section 38 of the NEPRA Act 1997. Reliance in this regard was placed on the various judgments of the honorable Supreme Court of Pakistan reported in PLD 2012 SC 371, PLD 2006 SC 328 and 2004 SCMR Page 1679. The Appellant submitted that the POI failed to check the disputed meter, which was admittedly lying under the custody of the police department as case property. According to the Appellant, the POI erred in holding that the above detection bill be revised for two billing cycles as per Clause 4.4 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 further submitted that the above-referred detection bill was debited on account of dishonest abstraction of electricity, therefore the past consumption data becomes irrelevant and could not be looked into for the determination of dispute, hence the impugned decision is not sustainable in law and the same is liable to be set aside.





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4. Proceedings by the Appellate Board

Upon filing of the instant appeal, a Notice dated 15.07.2020 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days. However, no reply/para-wise comments were received from the Respondent.

5. Hearing

5.1 Hearing in the matter of the subject Appeal was fixed for 10.03.2022 at Lahore and accordingly, the notices dated 03.03.2022 were sent to the parties (i.e. the Appellant and the Respondent) to attend the hearing. As per schedule, hearing of the appeal was conducted at the NEPRA Regional Office Lahore on 10.03.2022, in which learned counsel of the Appellant was present, while no one represented the Respondent. In order to provide an opportunity for hearing to both parties, the hearing was adjourned.

5.2 The hearing in the subject matter was again fixed for 16.06.2022 at NEPRA Regional Office Lahore and accordingly, the notices dated 07.06.2022 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 and its officials were present while again no one entered an appearance for the Respondent. Since the hearing of the appeal had been adjourned earlier and it was rescheduled wherein the Respondent again did not appear; therefore, the Appellate Board proceeded in the absence of the Respondent. During the hearing, learned counsel for the Appellant reiterated the same version as contained in memo of the appeal and



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contended that the meter of the Respondent was removed by the Appellant and got checked in M&T laboratory, wherein it was found tampered, therefore FIR was filed against the Respondent and the disputed meter was handed over to the Police. Learned counsel for the Appellant stated that notice dated 12.07.2019 was served to the Respondent, which remained unanswered, therefore the detection bill of Rs.125,000/- for 8,237 units for the period July 2018 to June 2019 twelve (12) months 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.

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

6.1. At first, the preliminary objection of the Appellant regarding the jurisdiction of the POI needs to be addressed. In the instant appeal, the learned counsel for the appellant (LESCO) challenged the jurisdiction of the Provincial Office of Inspection to adjudicate the complaint of Respondent (Consumer) under Section 38 of the NEPRA Act regarding dishonest abstraction of energy. The Appellant contends that in the cases of detection bills, the Electric Inspector of Government of Punjab Lahore Region Lahore is the competent forum to deal with such cases u/s 26(6) of the Electricity Act, 1910.



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6.2 In order to come up with an opinion on the above-said proposition of law, it is necessary to analyze the relevant laws. Section 26(6) of the Electricity Act, 1910 deals with the disputes between consumers and a licensee over electricity meters and grants power to the Electric Inspector to resolve the same. The said provision reads as under:

“(6) 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 the matter shall be decided, upon the application of either party, by an Electric Inspector, within a period of ninety days from the date of receipt of such application, after affording the parties an opportunity of being heard, and where the meter, maximum demand indicator or other measuring apparatus has, in the opinion of an Electric Inspector, ceased to be correct, the Electric Inspector shall estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply, during such time as the meter, indicator or apparatus has not, in the opinion of the Electric Inspector, been correct; and where the Electric Inspector, fails to decide the matter of difference or dispute within the said period or where either the licensee or the consumer decline to accept the decision of the Electric Inspector, the matter shall be referred to the Provincial Government whose decision shall be final:

Provided that, before either a licensee or a consumer applies to the Electric Inspector under this subsection, he shall give to the other party not less than seven days' notice of his intention so to do.”

6.3. Section 3 (2) (a) of Punjab ((Establishment and Powers of Office of Inspection) Order, 2005 empowers the POI to deal with the complaints in respect of metering, billing, and collection of tariff and other connected matters and pass necessary orders. According to Section 10 of the above-said order “*An aggrieved person may file an appeal against the final order made by the Office of Inspection before the Government or if the Government by general or special order, so directs, to the advisory board*





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constituted under section 35 of the Electricity Act, 1910, within 30 days, and the decision of the Government or the advisory board, as the case may be, shall be final in this regard."

6.4. Section 38 of the NEPRA Act also provides a mechanism for the determination of disputes between the consumers and the distribution licensee. The said provision reads as under:

"38. Provincial offices of inspection.-(1) Each Provincial Government shall-
(a) Establish offices of inspection that shall be empowered to-

(i) Enforce compliance with distribution companies' instructions respecting metering, billing, electricity consumption charges and decision of cases of theft of energy; and

(ii) make determination in respect of disputes over metering, billing and collection of tariff and such powers may be conferred on the Electric Inspectors appointed by the Provincial Government under section 36 of the Electricity Act, 1910 (Act IX of 1910), exercisable, in addition to their duties under the said Act.

(b) Establish procedures whereby distribution companies and consumers may bring violations of the instructions in respect of metering, billing and collection of tariff and other connected matters before the office of inspection; and

(c) Enforce penalties determined, by the Provincial Government for any such violation.

(2) The Provincial Governments may, upon request by the Authority, submit to the Authority—

(a)

(b) ...

(3) Any person aggrieved by any decision or order of the Provincial Office of Inspection may, within thirty days of the receipt of the order, prefer an appeal to the Authority in the prescribed manner and the Authority shall decide such appeal within sixty days."

6.5. Here question arises whether disputes related to Section 26(6) of the Electricity Act, 1910 can be heard and decided by the POI, and thereafter appeal lies before Advisory Board or NEPRA. Both enactments are special laws and provide a mechanism for the determination of disputes between consumers and licensees. Under section



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38(1)(a)(ii) of the NEPRA Act, the Provincial Office of Inspection (POI) is empowered to make the determination in respect of disputes over metering, billing and collection of tariff and such powers are conferred on the Electric Inspectors appointed by the Provincial Government under section 36 of the Electricity Act, 1910 (IX of 1910), exercisable, in addition to their duties under the said Act. Through the Regulation of Generation, Transmission and Distribution of Electric Power (Amendment) Act, 2011 (XVIII of 2011), subsection (3) to section 38 of the NEPRA Act was inserted on 29.09.2011 whereby an appeal before NEPRA against the decision of POI regarding metering, billing, and collection of the tariff was provided. It is observed that the Provincial Office of Inspection is no different person rather Electric Inspector conferred with the powers of the Provincial Office of Inspection for deciding disputes between the consumers and the licensees over metering, billing and collection of tariffs.

6.6. Further Section 45 of the NEPRA Act enumerated the relationship of the NEPRA Act with other laws and provides that the provisions of the Act, Rules and Regulations made and licenses issued thereunder shall have the effect notwithstanding anything to the contrary contained and any other law. Rule and Regulation for the time being in force and any such law Rules or Regulations shall to the extent of any inconsistency, cease to have effect from the date this Act comes into force.

6.7. The honorable Lahore High Court in its reported Judgement **2018 PLD 399** decided that an appeal against the decision of the Provincial Office of Inspection

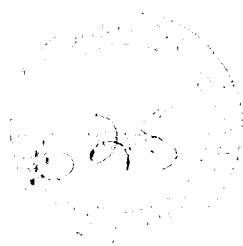




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(POI)/Electric Inspector lies with the Authority. Salient points of the judgment are as under:

- (i) Section 26(6) of the Electricity Act, 1910 the ambit and scope of dispute is confined only to the electricity meters/other measuring apparatuses while the scope of Section 38 of the NEPRA Act is much wider in comparison. Section 38 of the NEPRA Act empowers the Provincial Office of Inspection not only to enforce compliance with the instructions of the distribution companies regarding metering, billing, electricity consumption charges and decisions in cases of theft of energy but also requires it to make determinations in respect of disputes over metering, billing, and collection of tariff.
- (ii) The reading of the NEPRA Act quite clearly demonstrates that the dispute resolution mechanism provided in the Electricity Act, 1910 has now been replaced by the NEPRA Act, which law is later in time and is also much wider in its scope as it encompasses disputes over metering, billing and collection of tariff.
- (iii) Electricity being the Federal subject exclusively, any dispute in regard thereto between distribution companies and their consumers will necessarily have to be adjudicated upon by the Provincial Office of Inspection as per the dictate of the NEPRA Act.
- (iv) Prior to the passing of the Eighteenth amendment in the Constitution, electricity was placed in the concurrent list. With the introduction of the





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Eighteenth Amendment through the Constitution (Eighteen Amendment) Act, 2010 the concurrent list was abolished, and electricity was placed at Entry 4 of Part II of the Fourth Schedule where after it became exclusively a Federal subject.

- (v) The two enactments i.e. Electricity Act, 1910 and NEPRA Act continue to exist side by side providing two different appellate fora to hear appeals against the orders of the Electric Inspector and the Provincial Office of Inspection. Both enactments are special laws. In a similar situation, this Court while rendering judgment in Writ Petition No. 6940 of 2013 titled "S.M. Food Makers and others v. Sui Northern Gas Pipelines, etc" held as follows:

"It is now well settled that the general rule to be followed in case of conflict between two statutes is that the later abrogates the earlier one".

- (vi) The Lahore High Court, in the above circumstances, declared that the decision rendered on a complaint filed before the Electric Inspectors shall be treated to have been given by the Provincial Office of Inspection and that the appeal against the decision of the Electric Inspector / Provincial Office of Inspection after the enactment of subsection (3) of Section 38 of the NEPRA Act shall lie before the Authority as defined in NEPRA Act.

6.8. Further, the observations of Lahore High Court were also endorsed by the honorable Supreme Court of Pakistan vide its Judgement dated 08-03-2022 in Civil Petition 1244 of 2018 titled "GEPCO, etc. v/s PTV & another" whereby it was held that a comparative reading of section 10 of the Punjab (Establishment and Powers of Office of Inspection) Order, 2005 as well as section 38(3) of the NEPRA Act makes it



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abundantly clear that provisions of section 10 of the 2005 Order and section 38(3) are clearly in conflict. In view of the fact that the Ordinance is a Federal statute and admittedly the subject of electricity falls within the Federal Legislative List, it would clearly prevail over the 2005 Order.

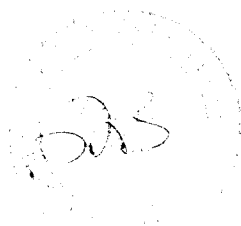
6.9. In view of the above-quoted provisions of laws and Judgements, we are of the opinion that the disputes under section 26(6) of the Electricity Act and 38(1)(a)(ii) are to be adjudicated by the Provincial Office of Inspection and NEPRA is the competent forum to decide the appeals. In view of the foregoing, the objection of the Appellant is dismissed.

6.10. In its appeal, the Appellant has claimed that the Respondent was involved in the dishonest abstraction of electricity. Clauses 9.1(b) and 9.1(c) specifying the indications of illegal abstraction and the procedure to confirm the same and charging the consumer on this account are reproduced below:

9.1(b) ILLEGAL ABSTRACTION OF ELECTRICITY BY REGISTERED CONSUMERS

The following indications shall lead to further investigation by LESCO for the illegal abstraction of electricity. For such cases, LESCO shall observe the procedure as laid down under Clause 9.1(c)

- i. Prize bond/postal order/meter security slip removed.*
- ii. Bond terminal covers seal of the meter broken/bogus/tampered.*
- iii. Terminal cover of the meter missing.*
- iv. Holes made in the KWH meter missing.*
- v. MSB of the meter showing signs of tampering.*
- vi. Meter is hanging loose/titled/physically unbalanced.*
- vii. Meter glass broken*
- viii. Meter dead stop/burnt*





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- ix. *Meter sticking*
- x. *Meter digits upset*
- xi. *Meter running reverse*
- xii. *Meter connected on temporarily/ permanently disconnected premises*
- xiii. *Meter found missing at site*
- xiv. *Meter found a site but no record exists in the office.*
- xv. *Any other means which can cause interference in true recording of the quantum of energy (units) by the metering equipment.*

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.*

(iv) *Once confirmed that illegal abstraction is being done, serve notice to the consumer informing him of the allegations and the findings and the requirement of a written reply from the consumer.*

(v) *Should wait for seven working days for receipt of the reply*

(vi) *The reply to the notice shall be examined by the officer higher in grade than the inspecting officer. If the reply is not convincing or if no reply is received or if the allegations as levied are proved, the inspecting office with the approval of Page 8 of 13 next higher office will immediately serve a detection bill for unclaimed energy limited to the period of three billing*



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months or six months with the approval of CEO previous from the date of establishment of illegal abstraction as elaborated at 9.1(c) (3).

(vii) The detection bill along with a disconnection notice for payment within seven days will be issued by the inspecting office.

(viii) Upon payment of the detection bill, the tampered meter shall be replaced by the DISCO at the cost of the consumer and no further action will be taken by the DISCO.

2) In case the consumer does not make payment and also does not dispute over the quantum of energy assessed, then after the expiry of the stipulated period his premises be disconnected and the procedure for disconnection and reconnection as per Chapter 8 be followed thereafter.

3) The maximum period for charging in such cases shall be restricted to three billing cycles for general supply consumers i.e. A-I & A-II. For period beyond three billing cycles up to a maximum of six months is subject to the approval of the Chief Executive of the DISCO. The CEO may delegate its powers and authorize a committee of Chief Engineer /Director level officers to allow charging of detection bills up to six months to general supply consumers after proper scrutiny so that no injustice is done. Also for such cases action will also be initiated against the officer in charge for not being vigilant enough. For other consumer classes, the period of charging can be more than three billing cycles up to a maximum of six billing cycles.

4) If the consumer objects payment or disputes over the quantum of the units detected by the DISCO, the Appellant authority for revision of the detection bill would be the review committee of the DISCO headed by the next higher officer. The consumer will also be given personal hearing by the review committee.

5) In case, the dispute remains unresolved even after exhaustive review, the DISCO after getting approval of the Chief Executive Officer may lodge the F.I.R. The consumer may also approach a competent court of law under the relevant provisions of the Electricity Act, 1910."

6.11 In the instant case, the Appellant claimed that M&T LESCO on 11.07.2019 along with other LESCO officials/staff and detected the following discrepancy:





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“Static 3/Phase meter checked and found meter body re-pasted at the time of checking”

6.12 Having found the above discrepancy, 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 consumer accordingly.

6.13 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 Respondents was checked and removed by the Appellant in the absence of the Respondent. Thereafter an FIR was lodged with the Police and the impugned meter was also handed over to the Police. It is noted that the procedure adopted by LESCO is relevant in the case of direct theft of electricity by registered/unregistered consumers (hereafter ‘direct theft’) which is dealt with under Section 9.1(a) of CSM-2010. Under the said clause of CSM, the following instances cause direct theft of electricity:

- (i) direct hooking with DISCO’s general supply line by bypassing the metering equipment,
- (ii) using electricity directly from the DISCO supply line and/or
- (iii) a person living on the premises is not a consumer of the DISCO.

6.14 In the instant case, however, the Appellant has claimed to have found the meter of the Respondent tampered causing dishonest abstraction of electricity.



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In such case, the Appellant was required to follow the procedure as stipulated in Clause 9.1(c) to establish the alleged illegal abstraction of electricity and charge the Respondent accordingly. However, the Appellant failed to distinguish between the 'direct theft' and 'illegal abstraction' of electricity which are two distinct offenses having different procedural formalities to deal with under the CSM-2010.

6.15 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. 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.

6.16 Having setting aside the Appellant's claim of dishonest abstraction of energy by the Respondent, it is expedient in the interest of justice to examine the matter to ascertain any slowness/defectiveness of the meter. In the absence of any proof, the consumption data of the Respondent may be seen for this purpose. The Appellant removed the impugned meter in the month of July 2019 and raised the detection bill for twelve months i.e. from July 2018



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to

June 2019. From the available readings, it appears that the new meter was installed at the premises of the Respondent in the month of December 2019. During the months i.e. August 2019 to December 2019, the average consumption was charged by the Appellant with remarks same to same reading. Following is the comparative analysis of the consumption of the Respondent as recorded by the impugned meter during the disputed period of six months i.e. January 2019 to June 2019 with the consumption recorded by the new meter in the corresponding months of the succeeding year i.e. 2020.

Month	Units	Month	Units
Jan-2019	107	Jan-2020	34
Feb-2019	101	Feb-2020	0
Mar-2019	62	Mar-2020	7
Apr-2019	154	Apr-2020	7
May-2019	132	May-2020	4
Jun-2019	146	Jun-2020	7
Total	702	Total	59

6.17 As evident from the above table, the recorded consumption during the disputed period is must higher than the consumption of the Respondent recorded after the replacement of the meter during the corresponding period after the dispute. Therefore, neither the illegal abstraction of electricity nor the slowness/defectiveness is established in the instant case. Hence the Respondent is not liable to be charged any detection bill on these accounts. Under these circumstances, we hold that the detection bill of Rs.125,000/- for 8,237 units for the period July 2018 to June 2019 twelve (12) months charged



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to the Respondent is illegal, unjustified being contrary to Clause 9.1(c) of the CSM-2010 and the same is declared as null and void.

6.18 As regards the period from July 2019 to December 2019, there was no electricity meter installed at the premises of the Respondent. Therefore, the Respondent is not liable to be charged for any detection bill for the same period.

7. Summing the foregoing discussion, we conclude as under:

7.1 the detection bill of Rs.125,000/- for 8,237 units for the period July 2018 to June 2019 twelve (12) months charged to the Respondent is unjustified and the same is declared null and void.

7.2 Similarly, the impugned decision for revision of the bills from May 2019 and onwards till the replacement of the impugned meter on the basis of corresponding consumption of the previous is not correct and the same is set aside

8. The impugned decision is modified in the above terms.

Syed Zavar Haider
Member

Muhammad Irfan-ul-Haq
Member

Abid Hussain
Convener

Dated: 10/4/2022