



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

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No. NEPRA/Appeal/034/2021/ 073

February 02, 2023

- | | |
|--|---|
| 1. Ahsan Furqan,
S/o. Lal Din,
R/o. House No. 373, Kocha Phalrian,
Androon Dehli Gate, 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. Fayyaz Faisal Bau,
Advocate High Court,
Second Floor, Nawa-e-Waqt Newspaper Building,
Queens Road, Lahore |
| 5. Sub Divisional Officer (Operation),
LESCO Ltd,
Dehli Gate 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. Ahsan Furqan Against the Decision Dated 26.01.2021 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 30.01.2023, 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-2021

Lahore Electric Supply Company Limited

.....Appellant

Versus

Ahsan Furqan S/o Lal din,
R/o House No.373, Kocha Phalrian,
Androon Dehli Gate, Lahore

.....Respondent

APPEAL U/S 38(3) OF REGULATION OF GENERATION, TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997

For the Appellant:

Mr. Saeed Ahmed Bhatti Advocate
Mr. Waqar Ahmed SDO

For the Respondent:

Mr. Fayyaz Faisal Advocate

DECISION

1. Brief facts leading to the filing of instant appeal are that Mr. Ahsan Furqan (hereinafter referred to as the "Respondent") is a domestic consumer of the Lahore Electric Supply Company Limited (hereinafter referred to as the "Appellant") bearing Ref No.02-11335-0202101-U with sanctioned load of 2 kW and the applicable Tariff category is A-1. The billing meter of the Respondent was checked by the Metering and Testing





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(M&T) team of the Appellant on 14.05.2020 and it was declared tampered (84% slow, meter body repasted) for the dishonest abstraction of electricity, therefore, a detection bill of Rs.351,750/- against 15,000 units for six months for the period from May 2019 to October 2019 was charged by the Appellant to the Respondent on the basis of the connected load i.e.5.339 kW and added to the bill for November 2019.

2. Being aggrieved, the Respondent filed a complaint before the Provincial Office of Inspection, Lahore Region, Lahore (hereinafter referred to as the "POI") vide an application on 07.02.2020 and challenged the above detection bill. During the joint checking of the POI on 09.09.2020, the meter under dispute of the Respondent was found working within BSS limits, the joint checking report of the POI was signed by both parties without raising any objection. The matter was disposed of by the POI vide the decision dated 26.01.2021, wherein the detection bill of Rs.351,750/- against 15,000 units for six months for the period from May 2019 to October 2019 was declared null and void.
3. Subject appeal has been filed against the afore-referred decision dated 26.01.2021 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 (body repasted and 84% slow) during the M&T checking dated 14.05.2020 for the dishonest abstraction of electricity, therefore a detection bill of Rs.351,750/- against 15,000 units for six months for the period from May 2019 to October 2019 was





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charged to the Respondent. 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, 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. According to the Appellant, the impugned decision is ex facie, coram non-judice, ab initio void and without jurisdiction as the POI failed to decide the matter within ninety (90) days as envisaged in Section (6) of the Electricity Act, 1910. The Appellant submitted that the POI decided the fate of the detection bill based on joint checking report dated 09.09.2020, which was done in the absence of the representatives of the M&T team of the Appellant. The Appellant further submitted that the above detection bill was debited to the Respondent after the completion of legal and departmental formalities, which is justified and payable by the Respondent. 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 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 26.04.2021 was sent to the Respondent





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for filing reply/para-wise comments to the appeal within ten (10) days, which were filed on 06.05.2021. In his reply, the Respondent prayed for dismissal of the appeal *inter alia*, on the following main grounds that the meter under dispute was checked by the meter reader on monthly basis and excessive billing carried out by the Appellant due to refusal from the bribe; that the Appellant was approached time and again for correction of bill as per meter reading but all in vain; that the entire proceedings of the Appellant were carried out with malafide intentions; that the Appellant tried to disconnect the electricity of the premises, which however could not be done due to the interference of the locality; that the allegation of theft of electricity levelled by the Appellant was not established during the POI joint checking dated 09.09.2020; that the POI has rightly cancelled the detection bill of Rs.351,750/- against 15,000 units for six months for the period from May 2019 to October 2019; that the POI is fully competent to decide the instant dispute of billing; and that the appeal be dismissed in the interest of justice.

5. Hearing

5.1 Hearing in the matter of the subject Appeal was initially fixed for 13.10.2022 at NEPRA Regional Office Lahore, which was adjourned for 24.11.2022 on the request of counsel for the Appellant. The hearing in the subject matter was again fixed for 24.11.2022 at NEPRA Regional Office Lahore in which learned counsel along with





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other officials was present on behalf of the Appellant and a counsel appeared for the Respondent. During the hearing, learned counsel for the Appellant reiterated the same version as contained in memo of the appeal and contended that the billing meter of the Respondent was checked by the M&T team on 14.05.2020, wherein it was declared tampered (body repasted). Learned counsel for the Appellant further contended that the detection bill amounting to Rs.351,750/- against 15,000 units for six months for the period from May 2019 to October 2019 was debited to the Respondent on the basis of the connected load. Learned counsel for the Appellant averred that the POI checked the impugned meter without the association of the technical representatives of the Appellant, hence the impugned finding of POI based on the alleged checking dated 09.09.2020 be set aside and the matter be remanded back to POI for rechecking of the metering equipment. 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.

- 5.2 Learned counsel for the Respondent repudiated the contentions of counsel for the Appellant regarding rechecking of the metering equipment and averred that the representatives for the Appellant were not only present during the proceedings before the POI but also the joint checking was carried out by the POI in presence of Mr. Zahid Ali representative for the Appellant, who signed the checking report without showing any concern. He prayed that the impugned decision be upheld and the appeal be





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dismissed being devoid of merits.

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

6.1 Preliminary objection of the Appellant regarding jurisdiction of the POI:

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 the 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 the Government of Punjab Lahore Region Lahore is the competent forum to deal with such cases u/s 26(6) of the Electricity Act, 1910.

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





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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 of 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 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-*





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(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 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





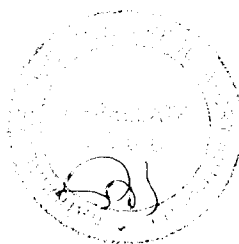
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Government under section 36 of the Electricity Act, 1910 (IX of 1910), exercisable, in addition to their duties under the said Act. Through the Regulation of Generation, Transmission and Distribution of Electric Power (Amendment) Act, 2011 (XVIII of 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 (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

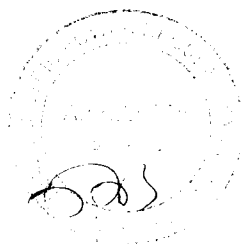




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scope of Section 38 of the NEPRA Act is much wider in comparison. Section 38 of the NEPRA Act empowers the Provincial Office of Inspection not only to enforce compliance with the instructions of the distribution companies regarding metering, billing, 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 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 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, of 1910 and the NEPRA Act continue





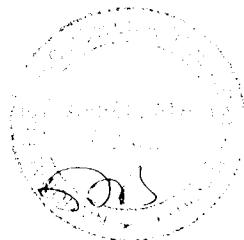
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to exist side by side providing two different appellate fora to hear appeals against the orders of the Electric Inspector and the Provincial Office of Inspection. Both enactments are special laws. In a similar situation, the honorable High Court while 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 the 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 "LESCO, etc. v/s PTV & another" whereby it was held that a comparative reading of section 10 of Punjab (Establishment and Powers of Office of Inspection) Order, 2005 as well as section 38(3) of the NEPRA Act makes it 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





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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 considered view 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 **Objection regarding the time limit for POI:**

As per the record, the Respondent filed his complaint before the POI on 07.02.2020 under Section 38 of the NEPRA Act. POI pronounced its decision on 26.01.2021 i.e. after 355 days of receipt of the complaint. The Appellant has objected that the POI was bound to decide the matter within 90 days under Section 26(6) of the Electricity Act, 1910. In this regard, it is observed that the forum of POI has been established under Section 38 of the NEPRA Act which does not put a restriction of 90 days on POI to decide complaints. Section 38 of the NEPRA Act overrides provisions of the Electricity Act, 1910. Reliance in this regard is placed on the judgments of the honorable Lahore High Court Lahore reported in *PLJ 2017 Lahore 627* and *PLJ 2017 Lahore 309*. Keeping in view the overriding effect of the NEPRA Act being later in time, and the above-referred decisions of the honorable High Court, hence the objection of the Respondent is rejected.





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6.11 Objection regarding prior notice before approaching the POI:

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 not valid, therefore overruled.

6.12 Detection bill of Rs.351,750/- against 15,000 units for six months for the period from May 2019 to October 2019

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) of the CSM-2010 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 a check meter and declare it as billing meter





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(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.

6.13 In the instant case, the Appellant claimed that M&T on 14.05.2020 detected that the impugned meter was intentionally tampered (body repasted). Having found the above discrepancies, the Appellant was required to follow the procedure stipulated in Clause 9.1(c) of the CSM-2010 to confirm the illegal abstraction of electricity by the Respondent and thereafter charge the Respondent accordingly.

6.14 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 billing meter of the Respondent was checked by the Appellant in the absence of the Respondent. Moreover, the Appellant could not prove their allegation for theft of electricity through tampered meter as the meter under dispute was found working ok during the POI joint checking dated 09.09.2020. The joint checking report of the POI dated 09.09.2020 was signed by both the Appellant and the Respondent without raising any objection. Moreover, the Appellant remained silent during the proceedings before the POI with regard to the above said joint checking and did not submit an application before the lower forum for rechecking the metering equipment.





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Therefore, the contention of the Appellant for rechecking the metering equipment of the Respondent at the appellate stage is not correct. The Appellant even did not point out any illegality in the impugned decision.

6.15 In view of the foregoing discussion, we hold that charging of the detection bill of Rs.351,750/- against 15,000 units for six months for the period from May 2019 to October 2019 to the Respondent is unjustified and the same is rightly cancelled by the POI.

6.16 The billing account of the Respondent be overhauled after the adjustment of payment made against the above detection bill.

7. In view of above, the appeal is dismissed.

Muhammad Irfan-ul-Haq
Member

Abid Hussain
Convener

Dated: 30/01/2023

