



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

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No. NEPRA/Appeal/042/POI/2022/040

January 23, 2023

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| 1. M/s. Miniso Life Style Pakistan (SMC Pvt.) Ltd,
Through Faheed Khalid,
Office No. 1001-1013, 10 th Floor,
Hali Tower, Sector-R, DHA,
Phase-2, 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. Sub Divisional Officer (Operation),
LESCO Ltd,
DHA West 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. M/s. Miniso Life Style Pakistan Limited Against the Decision Dated 04.01.2022 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 19.01.2023, 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 The Appellate Board

In the matter of

Appeal No. 042/POI-2022

Lahore Electric Supply Company Limited

.....Appellant

Versus

M/s. Miniso Life Style Pakistan Ltd, Through Faheem Khalid,
Office No. 1001-1013, 10th Floor, Hali Tower, Sector-R,
DHA, Phase-II, Lahore

.....Respondent

APPEAL UNDER SECTION 38(3) OF REGULATION OF GENERATION, TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997

For the Appellant:

Mr. Saeed Ahmed Bhatti Advocate

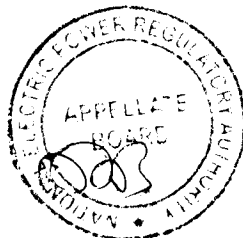
Mr. Sohail Dilawar SDO

For the Respondent:

Mr. Faheem Khalid Advocate

DECISION

1. Briefly speaking, M/s. Miniso Life Style Pakistan Ltd (hereinafter referred to as the “Respondent”) is the tenant of the premises having a domestic connection of Lahore Electric Supply Company Limited (hereinafter referred to as the “Appellant”) bearing Ref No.14-11523-1837700-U with sanctioned load of 05 kW and the applicable tariff category is A-1(b). As per the claim of the Appellant, one phase of the billing meter of the Respondent was found dead stop during Metering & Testing (“M&T”) team checking dated 12.10.2021 for which, notice dated 13.10.2021 was served to the Respondent and a detection bill of Rs.154,826/- against 6,843 units for six months was debited to the Respondent on the basis of connected load and added to the bill of October 2021.
2. Being aggrieved, the Respondent filed a complaint before the Provincial Office of



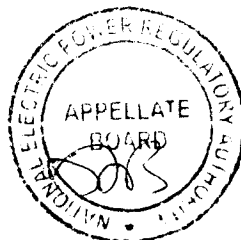


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Inspection Lahore Region, Lahore (the “POI”) on 10.11.2021 and assailed the above detection bill charged by the Appellant. According to the decision of the POI, several opportunities for hearings i.e. 23.11.2021, 07.12.2021, 21.12.2021, and 04.01.2022 were provided to both parties but the Appellant failed to appear before the POI and to submit the reply/para-wise comments despite repeated notices. The matter was disposed of by the POI vide decision dated 04.01.2022 on ex-parte basis and the arrears of Rs.202,979/- charged till October 2021 debited by the Appellant to the Respondent were declared null and void.

3. Subject appeal has been filed by the Appellant against the POI decision dated 04.01.2022 (hereinafter referred to as the “impugned decision”) before the NEPRA.

In its appeal, the Appellant *inter alia*, prayed for setting aside the impugned decision on the grounds that neither any notice was served upon the Appellant nor any notice was received regarding the pendency of complaint before the POI, as such the ex-parte decision given behind the back of the Appellant carries no sanctity in the eyes of law; that the POI failed to give the reasons for passing the impugned ex-parte decision and same was rendered on technical ground qua non-appearance of the Appellant before POI; that it is a settled principal of law that no one should be condemned unheard and causes are to be resolved on the basis of cogent reasons after giving an opportunity of equal hearing to both parties; that the petition of the Respondent has been instituted through an unauthorized person in terms of Article of Association or by the BoD Resolution, reliance is placed on the judgments reported as 2016 CLC 1133, 2016 YLR 1679 and PLD 1991 Lahore 381; that no notice was served by the Respondent before filing the complaint to POI; and that the impugned decision be set aside and





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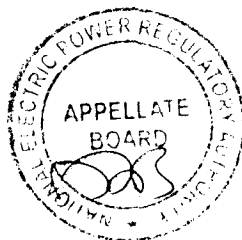
case be remanded back to POI for adjudication on merits after opportunity of hearing to both parties.

4. Proceedings by the Appellate Board

4.1 Upon the filing of the instant appeal, a Notice dated 29.03.2022 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days. In response, the Respondent submitted his reply/para-wise comments to the appeal before the NEPRA, wherein the Respondent opposed the maintainability of the appeal on the following grounds that the appeal is time-barred being filed after the prescribed time; that no notice in writing was served by the Appellant; that the detection bill charged for six months in violation of Clause 4.4(e) of the Consumer Service Manual (the "CSM"); that the said clause allows the Appellant to charge the bills maximum for two months; that the Appellants were fully aware of the case under trial as the original interim order was delivered to the concerned office on 10.11.2021 and the Appellants corrected the bill according to the directions of POI; that the Appellants failed to appear before POI despite several notices, which shows their lack of interest in defending the case and that the appeal be decided in the light of above-stated facts in the best interest of justice.

5. Hearing

5.1 A hearing in the matter was scheduled for 29.09.2022 at Lahore, which was attended by both parties. At the outset of the hearing, learned counsel for the Respondent raised preliminary objection for limitation and argued that the appeal was filed by the Appellant before the NEPRA after a lapse of thirty-seven (37) days from the date of knowledge of the impugned decision. Learned counsel for the Respondent prayed for





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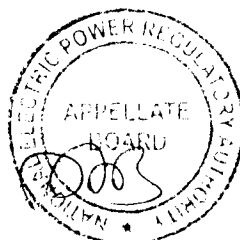
the dismissal of the appeal being filed after the prescribed time limit of 30 days. In response to the objection of limitation, learned counsel for the Appellant replied that copy of the impugned decision dated 04.01.2022 was received by the Appellant on 02.02.2022, and the appeal was filed on 02.03.2022 within thirty (30) days of receipt of the impugned decision as per Section 38(3) of the NEPRA Act 1997.

5.2 Learned counsel for the Appellant repeated the same contentions as given in memo of the appeal and *inter alia*, contended that neither any notice was served by the POI nor any intimation was given by the Respondent regarding the proceedings before the POI, hence the impugned decision could not be decided on ex-parte basis. Learned counsel for the Appellant prayed for setting aside the impugned decision and for remanding back the matter to POI for decision afresh after hearing both parties. On the contrary, the Respondent argued that the Appellants were well aware of the proceedings before the POI but the Appellant did not bother to join the proceedings despite the repeated notices served by the said forum.

6. We have heard the arguments and examined the record placed before us. Our observations are as under:

6.1 Preliminary objection of the Respondent regarding limitation:

While addressing the preliminary objection of the Respondent regarding limitation, it is observed that copy of the impugned decision dated 04.01.2022 was obtained on 02.02.2022 and the appeal was filed on 02.03.2022 within 30 days of the receipt of the impugned decision. There is no force in the arguments of the Respondent that the time of limitation starts from the date of knowledge. Reliance in this regard is placed on the single judgment dated 25.04.2016 of the Honorable Lahore High Court Lahore in the Writ Petitions No. 812, 5119, 1637, 11039, 13470, 13908, 14895, 16172, 16677, 18195,



19762, 19763, 19882, 19916, 29335 and 39623 of 2015, wherein it was held that the POI is required to send the copy of the impugned decision to the parties and the period of limitation for filing the appeal will start from the date of receipt of the impugned decision. In view of the above, the objection of the Respondent regarding limitation is not valid, therefore dismissed.

6.2 Objection of the Appellant regarding Locus standi:

The Appellant objected in respect of *locus standi* and submitted that the application was filed by an unauthorized person before POI. From the record placed before us, it is revealed that the electricity connection sanctioned in the name of Mr. Akhtar Mansoor Raja is installed at the premises situated at Office No. 1001-1013, 10th Floor, Hali Tower, Sector-R, DHA, Phase-II, Lahore, whereas the said premises is occupied by the M/s. Miniso Life Style Pakistan Ltd, the Respondent. As per the definition given in Section 2(iv) of the NEPRA Act, the Respondent should be treated as the Consumer of the Appellant being the occupant of the premises. The relevant excerpt in this regard is replicated below:

(iv) "consumer" means a person or his successor-in-interest who purchases or receives electric power for consumption and not for delivery or re-sale to others, including a person who owns or occupies a premises where electric power is supplied;

In view of the above, this objection of the Appellant is rejected as being devoid of force.

6.3 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



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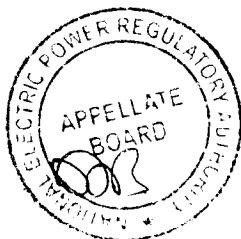
Office of Inspection) Order, 2005, which do not require for service of any notice before approaching the POI. The above objection of the Appellant is not valid, therefore overruled.

6.4 Objection of the Appellant against Ex-parte decision:

During the hearing, the Appellant informed that no notices were served by the POI regarding the proceedings of the Respondent's complaint, and the impugned decision was rendered on ex-parte. The Appellant prayed for setting aside the impugned decision and for the matter to be remanded back to the POI for the decision on merits. In order to ascertain the version of the Appellant, the record was perused, which revealed that several letters i.e. 10.11.2021, 13.12.2021, and 27.12.2021 were sent by the POI to the Appellants to attend the hearing and to submit the reply against the complaint of the Respondent but neither authorized representative for the Appellant appeared nor the reply was filed by the Appellant. As per para 2 of the impugned decision, the interim order issued vide No. EIL/ARB/9662-66 dated 10.11.2021 of the POI was entertained by the Appellant, this indicates that the Appellants were well aware of the proceedings before the POI since the date of complaint i.e. 10.11.2021. This is gross negligence on the part of the Appellant, which led to the determination of the POI on ex-parte. Hence the contention of the Appellant concerning the ex-parte decision is not valid after their admission with regard to the information of the proceedings before the POI and the same is overruled being devoid of merits.

6.5 Detection bill of Rs.154,826/- for 6,483 units charged in October 2021

The Appellant has claimed to have found the billing meter of the Respondent defective





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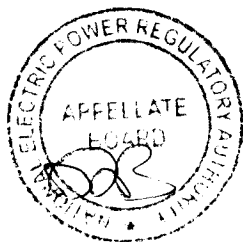
due to one dead phase during checking dated 12.10.2021, therefore a detection bill of Rs.154,826/- for six months was issued to the Respondent in October 2021, which was assailed by him before the POI vide complaint dated 10.11.2021. The Appellant has filed this appeal defending the above detection bill charged to the Respondent and prayed for setting aside the impugned decision.

6.6 As such the billing dispute arose in October 2021, therefore the matter will be dealt under the provisions of the CSM-2021. Clause 4.3.3 of CSM-2021 being relevant in the matter is reproduced below:

“4.3.3 If at any time LESCO, doubts the accuracy of any metering installation, LESCO may after informing the consumer:

- (a) Fix another duly calibrated and tested metering installation (check meter) in series with the impugned metering installation to determine the difference in consumption or maximum demand recorded by the check meter and that recorded by the impugned metering installation during a fixed period.*
- (b) Where it is not possible for LESCO to install check meter/metering installation of appropriate capacity (due to non-availability of such equipment or otherwise) in series with the impugned metering installation, to check the accuracy of the impugned metering installation, LESCO shall, after informing (in writing) the consumer, test the accuracy of the impugned metering installation at the site by means of Rotary Sub-Standard or digital power analyzer or meter testing equipment.*
- (c) If the impugned metering installation should prove to be incorrect during the above checking(s), LESCO shall install a "correct meter" immediately or within two billing cycles if meters are not available.*
 - (i) In case slowness is established, LESCO shall enhance multiplying factor for charging actual consumption till the replacement of the defective metering installation.*
 - (ii) Further, charging of a bill for the quantum of energy lost if any, because of malfunctioning of the metering installation shall not be more than two previous billing cycles.*
 - (iii) In case fastness is established, LESCO shall change/reduce multiplying factor for charging actual consumption till the replacement of the defective metering installation. LESCO shall provide due credit for excessive units up to two previous billing cycles.”*

6.7 In the instant case, the Appellant discovered the alleged slowness of the meter on 12.10.2021. Under the above provision of CSM-2021, immediately upon alleged





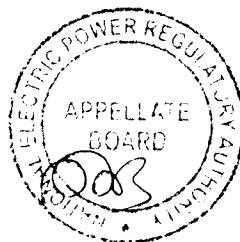
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discovery of slowness, the Appellant was required to install a duly calibrated check meter in series with the impugned metering installation to determine the difference in consumption or maximum demand recorded by the check meter and that recorded by the impugned metering installation during a fixed period. However, the Appellant failed to do so, which is a violation of the procedure given in the CSM-2021 and shows the Appellant's disregard to the law binding upon it.

6.8 Clause 4.3.5 (b) of the CSM-2021 requires that the "Electric Inspector/POI" shall carry out checking of the accuracy of the metering installation within one month of receipt of such request. However, the Appellant neither appeared before the POI nor could produce the disputed meter as required under the CSM-2021 to determine its slowness.

6.9 The Appellant debited the detection bill for six months and the basis of calculation of the said bill was made on connected load, whereas the dispute pertains to the slowness of the meter due to one dead phase. Thus the Appellant not only violated the procedure to establish 33% slowness in the meter but also adopted the wrong methodology for the determination of the detection bill, which is inconsistent with the relevant provisions of the CSM-2021. In view of the foregoing discussion, we are of the view that the detection bill of Rs.154,826/- for six months debited to the Respondent in October 2021 is unjustified and the same is cancelled.

6.10 As per the record produced before the Appellate Board, the Respondent apparently agreed to the revision of the bills for two billing cycles as per CSM-2021. Since the slowness in the impugned meter was discovered in October 2021, therefore, the Respondent is liable to be charged the revised bills for two months after adding 33% slowness of the meter. The impugned decision is liable to be modified to this extent.





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6.11 Here it seems necessary to highlight that the restriction of a maximum of two months recovery allowed under Clause 4.3.3(c)(ii) of CSM-2021, needs to be viewed in its spirit which requires the LESCO to remain vigilant about the accuracy of metering installations and immediate upon doubt about the accuracy of metering installation, take the necessary action as stipulated under the law to confirm slowness so that the loss, beyond previous two months, that is unrecoverable could be avoided.

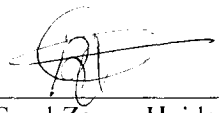
7. Summing up the foregoing discussion, it is concluded that:

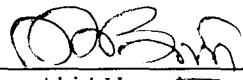
7.1 The detection bill of Rs.154,826/- for six months charged to the Respondent in October 2021 is illegal, and unjustified being contrary to Clause 4.4.3(c)(ii) of the CSM-2021 and the same is declared null and void.


7.2 Under the said Clause 4.4.3(c)(ii) of the CSM-2021, the Respondent may be charged the bills for two months in respect of the quantum of energy lost because of malfunctioning of metering installation at the rate of 33% slowness of the billing meter.

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


Abid Hussain
Convener


Muhammad Irfan-ul-Haq
Member

Dated: 19/01/2023

