



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

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No. NEPRA/Appeal/092/2023/457

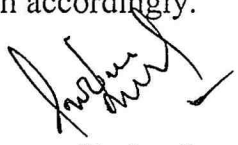
May 17, 2024

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| 1. Muhammad Saeed,
S/o. Piran Ditta,
R/o. 210-B, New Chauburji Park,
Lahore
Cell No. 0300-9478608 | 2. Chief Executive Officer,
LESCO Ltd,
22-A, Queens Road,
Lahore |
| 3. Abid Hussain Chaudhary,
Advocate High Court,
25/26, Munawar Chambers,
1-Mozang Road, Lahore.
Cell No. 0333-4216099 | 4. Muhammad Akbar Khan,
Advocate High Court,
12/B, Aneexy Auqaf,
Lahore
Cell No. 0300-4528686 |
| 5. Assistant Manager (Operation),
LESCO Ltd,
Prem Nagar Sub Division,
Lahore | 6. POI/Electric Inspector
Lahore Region-II, Energy Department,
Govt. of Punjab, Block No. 1,
Irrigation Complex, Canal Bank,
Dharampura, Lahore |

Subject: **Appeal No.092/2023 (LESCO Vs. Muhammad Saeed) Against the Decision Dated 10.08.2023 of the Provincial Office of Inspection to Government of the Punjab Lahore Region-II, Lahore**

Please find enclosed herewith the decision of the Appellate Board dated 17.05.2024 (09 pages), regarding the subject matter, for information and necessary action accordingly.

Encl: **As Above**


(Ikram Shakeel)
Deputy Director
Appellate Board

Forwarded for information please.

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



National Electric Power Regulatory Authority

Before The Appellate Board

In the matter of

Appeal No.092/POI-2023

Lahore Electric Supply Company Limited

.....Appellant

Versus

Muhammad Saeed S/o. Piran Ditta, R/o. 210-B,
New Chauburji Park, Lahore

.....Respondent

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

For the Appellant:

Mr. Abid Hussain Chaudhry Advocate
Mian Maqsood Ahmed Court Clerk

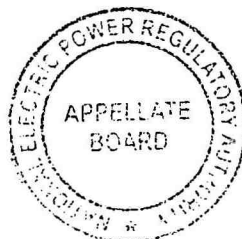
For the Respondent:

Mr. Muhammad Akbar Khan Advocate

DECISION

1. Brief facts leading to the filing of instant appeal are that Mr. Muhammad Saeed (hereinafter referred to as the "Respondent") is a domestic consumer of Lahore Electric Supply Company Limited (hereinafter referred to as the "Appellant") bearing Ref. No.12-11241-0922201-U with sanctioned load of 02 kW and the applicable Tariff category is A-1. During checking dated 26.11.2020 of the Appellant, the Respondent was allegedly found stealing electricity through the tampered meter, therefore FIR No.923/2020 dated 04.12.2020 was registered against the Respondent due to the theft of electricity. Thereafter, a detection bill of Rs.226,517/- against 7,950 units for five (05) months for the period from May 2020 to September 2020 was charged by the Appellant to the Respondent in January 2021
2. Being aggrieved, the Respondent filed a complaint before the Provincial Office of Inspection, Lahore Region-II, Lahore (hereinafter referred to as the "POI") and challenged the above detection bill. During joint checking dated 13.04.2023 of the POI, the impugned meter of the Respondent was found working within permissible limits, joint

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National Electric Power Regulatory Authority

checking report was signed by both parties without raising any objection. The matter was disposed of by the POI vide the decision dated 10.08.2023, wherein the detection bill of Rs.226,517/- against 7,950 units for five (05) months for the period from May 2020 to September 2020 was cancelled and the Appellant was allowed to revise the bills w.e.f July 2020 and onwards till the replacement of the impugned meter as per consumption of corresponding months of the previous year or average consumption of last eleven months, whichever is higher.

3. Subject appeal has been filed against the aforementioned decision 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 during the M&T checking dated 26.11.2020 for the dishonest abstraction of electricity, therefore FIR No. 923/2020 dated 04.12.2020 was registered against the Respondent and a detection bill of Rs.226,517/- against 7,950 units for five (05) months for the period from May 2020 to September 2020 was charged to the Respondent. As per the Appellant, the above detection bill was debited to the Respondent on account of dishonest abstraction of electricity under Section 26(6) 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 2006 SC 328* and *2004 SCMR Page 1679*. According to the Appellant, the POI failed to consider the consumption data and did not peruse the documentary evidence in true spirit. The Appellant submitted that the POI misapplied Clause 4.3.3c(ii) of the CSM-2021 as the above detection bill was charged on the basis of connected load due to theft of electricity committed by the Respondent. The Appellant further submitted that the POI did not consider the facts of the case and passed the impugned decision on extraneous consideration. The Appellant prayed that the impugned decision is not sustainable in law and the same is liable to be set aside.

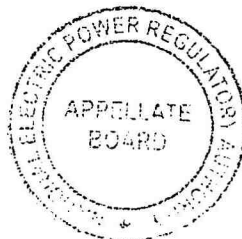
4. **Proceedings before the Appellate Board:**

Upon the filing of the instant appeal, a Notice dated 04.10.2023 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days, which were filed on 17.11.2023. In the reply, the Respondent defended the impugned decision and prayed for the dismissal of the appeal.

5. **Hearing:**

5.1 Hearing was fixed for 20.01.2024 at NEPRA Regional Office Lahore, wherein learned counsels appeared for both the Appellant and the Respondent. During the hearing, learned

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National Electric Power Regulatory Authority

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 26.11.2020, wherein it was declared tampered, therefore FIR No.923/2020 dated 04.12.2020 was lodged against the Respondent and the detection bill amounting to Rs.226,517/- against 7,950 units for five (05) months for the period from May 2020 to September 2020 was debited to the Respondent on the basis of the connected load. As per learned counsel for the Appellant, the POI did not consider the real aspects of the case and cancelled the above detection bill. 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.

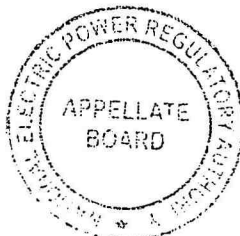
5.2 On the contrary, learned counsel for the Respondent refuted the allegation of theft of electricity levelled by the Appellant and averred that the impugned meter was found working within specified limits during the POI joint checking dated 13.04.2023. Learned counsel for the Respondent further submitted that the detection bill of Rs.226,517/- against 7,950 units for five (05) months for the period from May 2020 to September 2020 was debited by the Appellant, which was cancelled by the POI after due consideration of facts and record of the case. Learned counsel for the Respondent finally prayed for dismissal of the appeal 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-II, 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, of 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:



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National Electric Power Regulatory Authority

“(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 tariffs and other connected matters and pass necessary orders. According to Section 10 of the above-said order:

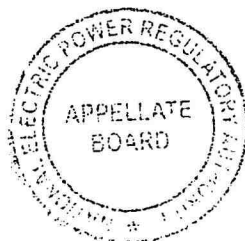
“An aggrieved person may file an appeal against the final order made by the Office of Inspection before the Government or if the Government by general or special order, so directs, to the advisory board constituted under section 35 of the Electricity Act, 1910, within 30 days, and the decision of the 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

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



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National Electric Power Regulatory Authority

(ii) make the 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

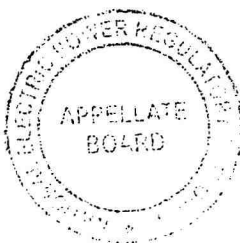
(c) Enforce penalties determined, by the Provincial Government for any such violation.

(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 the 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 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.

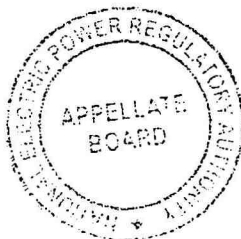


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National Electric Power Regulatory Authority

- 6.6. Further Section 45 of the NEPRA Act enumerates 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 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, of 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 on 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 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



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National Electric Power Regulatory Authority

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".

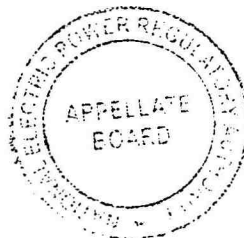
- (vi) The Lahore High Court, in the above circumstances, declared that the decision rendered on a complaint filed before the Electric Inspectors shall be treated to have been given by the Provincial Office of Inspection and that the appeal against the decision of the Electric Inspector / Provincial 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 electricity falls within the Federal Legislative List, it would 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 to decide the complaint:

As per the record, the Respondent filed his complaint before the POI under Section 38 of the NEPRA Act. POI pronounced its decision on 10.08.2023 after the expiry of 90 days from the date 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





National Electric Power Regulatory Authority

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 Appellant is rejected.

6.11. Detection bill of Rs.226,517/- against 7,950 units for five (05) months for the period from May 2020 to September 2020

In the instant case, the Appellant claimed that M&T on 26.11.2020 detected that the impugned meter of the Respondent was intentionally tampered and lodged an FIR against the Respondent. Thereafter, the Appellant debited a detection bill of Rs.226,517/- against 7,950 units for five (05) months for the period from May 2020 to September 2020 to the Respondent, which was challenged by the Respondent before the POI.

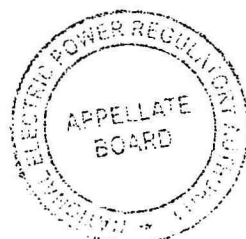
6.10 Having found the above discrepancies, the Appellant was required to follow the procedure stipulated in Clause 9.2 of the CSM-2021 to confirm the illegal abstraction of electricity by the Respondent and thereafter charge the Respondent accordingly. However, in the instant case, the Appellant has not followed the procedure as stipulated under the ibid clause of the CSM-2021.

6.11 As per the judgment of the Supreme Court of Pakistan reported in PLD 2012 SC 371, the POI is the competent forum to check the metering equipment, wherein theft of electricity was committed through tampering with the meter and decide the fate of the disputed bill, accordingly. During joint checking dated 13.04.2023 of the POI, the impugned billing meter of the Respondent was found working within specified limits, joint checking report was signed by both parties without raising any objection. Under these circumstances, we are of the considered view that the detection bill amounting to Rs.226,517/- against 7,950 units for five (05) months for the period from May 2020 to September 2020 charged by the Appellant to the Respondent is unjustified and the same is liable to be cancelled as already determined by the POI.

6.12 Since the Appellant failed to defend their allegation of theft of electricity through tampering with the meter, the determination of the POI for revision for the bills w.e.f July 2020 and onwards till the replacement of the impugned meter as per 100% consumption of the corresponding month of the previous year or average consumption of last eleven months, whichever is higher is not valid and the same is liable to be withdrawn to this extent.

7. In view of what has been stated above, it is concluded that both the charging of the detection bill of Rs.226,517/- against 7,950 units for five (05) months for the period from May 2020 to September 2020 to the Respondent as well as the determination of the POI for revision

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National Electric Power Regulatory Authority

for the bills w.e.f July 2020 and onwards till the replacement of the impugned meter as per 100% consumption of corresponding month of the previous year or average consumption of last eleven months, whichever is higher are unjustified and the same are declared null and void. However the normal bills already charged by the Appellant during the disputed period i.e. May 2020 to September 2020 to the Respondent are justified and payable by him. The billing account of the Respondent may be overhauled, accordingly.

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


Abid Hussain
Member/Advisor (CAD)


Naweed Illahi Sheikh
Convener/DG (CAD)


Muhammad Irfan-ul-Haq
Member/ALA (Lic.)

Dated: 17-05-2024

