



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

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No. NEPRA/Appeal/057/2023/ 607

July 24, 2024

1. Muhammad Nasir Ali,
S/o. Mukhtar Ahmed,
R/o. House No 06, Street No. 35,
Mohallah Kacho Pura, Chah Miran,
Lahore
Cell No. 0334-4298759
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
Cell No. 0300-4350899
4. Sub Divisional Officer (Operation),
LESCO Ltd,
Sanda Sub Division,
Lahore
5. POI/Electric Inspector,
Lahore Region, Energy Department,
Govt. of Punjab, Block No. 1,
Irrigation Complex, Canal Bank,
Dharampura, Lahore
Phone No. 042-99250191

Subject: Appeal No.057/2023 (LESCO Vs. Muhammad Nasir Ali) Against the Decision Dated 27.09.2022 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 24.07.2024 (05 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.057/POI-2023

Lahore Electric Supply Company Limited

.....Appellant

Versus

Muhammad Nasir Ali S/o. Mukhtar Ahmed,
R/o. House No.06. Street:35, Mohallah Kacho Pura,
Chah Miran, 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

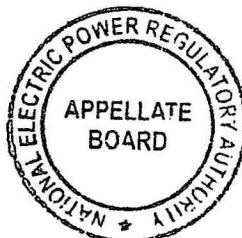
For the Respondent:

Ch. Sarfaraz Consultant

DECISION

1. Brief facts leading to the filing of instant appeal are that Muhammad Nasir Ali (hereinafter referred to as the "Respondent") is an industrial consumer of Lahore Electric Supply Company Limited (hereinafter referred to as the "Appellant") bearing Ref. No.46-11111-1466205-U with sanctioned load of 18 kW and the applicable Tariff category is B-(1)b. The metering and Testing (M&T) team of the Appellant checked the metering equipment of the Respondent on 02.12.2021 and reportedly, the Respondent was found stealing electricity through tampering with the meter (shunt installed inside the meter) therefore electricity of the Respondent was disconnected and the impugned meter was removed and handed over to police as Fard-e-Maqboozgi. Thereafter, an FIR No.1404/2021 dated 02.12.2021 was registered against the Respondent due to the theft of electricity. Resultantly, a detection bill of Rs.679,241/- against 27,749 units for six (06) months for the period from June 2021 to November 2021 was charged by the Appellant to the Respondent @ 40% load factor of the connected load i.e. 22 kW and added to the bill for

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December 2021.

2. Being aggrieved, the Respondent filed a complaint before the Provincial Office of Inspection, Lahore Region, Lahore (hereinafter referred to as the "POI") on 19.01.2022 and challenged the above detection bill. Despite repeated notices, the Appellant failed to appear before the POI, hence the complaint of the Respondent was decided on Ex-parte vide the POI decision dated 27.09.2022, and the impugned detection bill of Rs.679,241/- against 27,749 units for six (06) months for the period from June 2021 to November 2021 was cancelled.
3. Subject appeal has been filed against the afore-referred decision dated 27.09.2022 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 02.12.2021 for the dishonest abstraction of electricity, therefore FIR No.1404/2021 dated 02.12.2021 was registered against the Respondent and a detection bill of Rs.679,241/- against 27,749 units for six (06) months for the period from June 2021 to November 2021 was charged to the Respondent. As per the Appellant, the impugned decision is sketchy, patchy, and non-speaking, wherein the POI failed to give just reasons and justification for passing the impugned Ex-parte decision. According to the Appellant, the POI failed to decide the matter within 90 days from the date of receipt of the complaint as required under Section 26(6) of the Electricity Act 1910, hence the impugned decision became ex-facie, Corum non-judice, and void. The Appellant further submitted that 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.

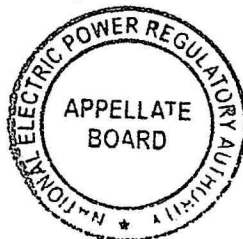
4. Proceedings by the Appellate Board

Upon filing of the instant appeal, a Notice dated 09.06.2023 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days, which however were not filed.

5. Hearing

- 5.1 Hearing was fixed for 01.03.2024 at NEPRA Regional Office Lahore, wherein both parties were in attendance. During the hearing, learned counsel for the Appellant reiterated the

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M. A.



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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 02.12.2021, wherein it was declared tampered, therefore FIR No.1404/2021 dated 02.12.2021 was lodged against the Respondent and the detection bill amounting to Rs.679,241/- was debited to the Respondent. As per learned counsel for the Appellant, neither the Respondent nor POI intimated regarding the proceedings before the said forum, and the Ex-Parte decision was passed without hearing the Appellant. 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, the representative for the Respondent opposed the contention of the Appellant regarding the theft of electricity through tampering with the meter, defended the impugned decision, and prayed for upholding the same.

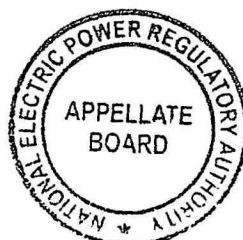
6. Arguments heard and the record perused. Following are our observations:

6.1 Objection regarding the time limit for POI to decide the complaint:

As per the record, the Respondent filed his complaint before the POI on 19.01.2022 under Section 38 of the NEPRA Act. POI pronounced its decision on 27.09.2022 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 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.

6.2 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 and, therefore overruled.



M. Q.

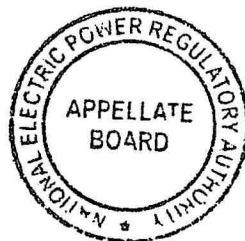


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6.3. Detection bill of Rs.679,241/- against 27,749 units for six (06) months for the period from June 2021 to November 2021

In the instant case, the Appellant claimed that M&T on 02.12.2021 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.679,241/- against 27,749 units for six (06) months for the period from June 2021 to November 2021 to the Respondent, which was challenged by the Respondent before the POI. which was cancelled on Ex-parte.

- 6.4. In the instant appeal, the Appellant prayed for setting aside the Ex-parte decision and remanding back the matter to POI for redetermination. In this regard, the decision of the POI was pursued, wherein it is revealed that several opportunities of hearings as well as for submission of reply were afforded by the lower forum to the Appellant but they neither submitted reply nor appeared before the POI to defend the charging of the impugned detection bill. Hence, the pleading of the Appellant for remanding back the matter has no force and dismissed. The fate of the impugned detection bill will be determined on the basis of available record and consideration of arguments adduced by the Appellant in their defense.
- 6.5. Having found the above discrepancies, the Appellant was required to follow the procedure stipulated in Clause 9.1(b) of the CSM-2010 to confirm the illegal abstraction of electricity by the Respondent and thereafter charge the Respondent accordingly. 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 and removed by the Appellant in the absence of the Respondent.
- 6.6. 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. However, in the instant case, the Appellant did not produce the impugned meter before the POI for verification of the allegation regarding tampering.
- 6.7. To further check the authenticity of the impugned detection bill, the consumption data of the Respondent is compared with corresponding consumption of the preceding and succeeding years in the below table:





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period before dispute		disputed period		period after dispute	
Month	Units	Month	Units	Month	Units
Jun-20	2884	Jun-21	431	Jun-22	7079
Jul-20	4331	Jul-21	472	Jul-22	7388
Aug-20	3691	Aug-21	2506	Aug-22	0
Sep-20	6221	Sep-21	5587	Sep-22	9323
Oct-20	1776	Oct-21	435	Oct-22	4862
Nov-20	5323	Nov-21	1364	Nov-22	6807
Total	24226	Total	10795	Total	35459

The above table shows that the total consumption charged during the disputed period is considerably less as compared to the total consumption of corresponding months of the years 2020 and 2022. This establishes that the Respondent was involved in the illegal abstraction of electricity, hence the assessment of the detection bill be checked in the below table as per provisions of the CSM-2021.

Period: June 2021 to November 2021

- A. Total units to be charged = $S/L \text{ (kW)} \times LF \times \text{No. of Hrs.} \times \text{No. of Months}$
= $22 \times 0.4 \times 730 \times 6$ = 38,544 units
- B. Total units already charged = 10,795 units
- C. Net chargeable units = A - B = 27,749 units

6.8. In view of the above assessment, we are of the considered view that the detection bill of Rs.679,241/- against 27,749 units for six (06) months for the period from June 2021 to November 2021 is justified and payable by the Respondent.

7. Foregoing in view, the appeal is accepted and the impugned decision is set aside.

Abid Hussain
Member/Advisor (CAD)

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

Naweed Illahi Sheikh
Convener/DG (CAD)

Dated: 24-07-2024

