



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

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No. NEPRA/Appeal/046/POI/2022/ ///

October 12, 2022

- | | |
|---|---|
| 1. Rashid Bhutta,
S/o. Ashiq Bhutta,
Through Muhammad Asif,
S/o. Ashiq Bhutta,
R/o. House No. 471/A,
Walayatabad Colony No. 2,
Multan | 2. Chief Executive Officer,
MEPCO Ltd,
MEPCO Complex, Khanewal Road,
Multan |
| 3. Muhammad Arshad Mughal,
Advocate High Court,
06 Justice Tariq Mehmood Block,
District Courts, Multan | 4. Sub Divisional Officer (Operation),
MEPCO Ltd,
Industrial Estate Sub Division,
Multan |
| 5. POI/Electric Inspector,
Multan Region,
249-G, Shah Ruken-e-Alam Colony,
Phase II, Multan | |

Subject: **Appeal Titled MEPCO Vs. Rashid Bhutta Against the Decision Dated 13.10.2021 Provincial Office of Inspection to Government of the Punjab Multan Region, Multan**

Please find enclosed herewith the decision of the Appellate Board dated 10.10.2022, 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 The Appellate Board

In the matter of

Appeal No. 046/POI-2022

Multan Electric Power Company Limited

.....Appellant

Versus

Rashid Butta S/O Ashiq Bhutta, Through Muhammad Asif

S/o Ashiq Bhutta, R/o Hiuse No.471/A,

Walayatabad Colony No.02, Multan

.....Respondent

APPEAL UNDER SECTION 38(3) OF REGULATION OF GENERATION, TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST THE DECISION DATED 02.11.2021 PASSED BY THE PROVINCIAL OFFICE OF INSPECTION MULTAN REGION, MULTAN

For the Appellant:

Mr. Muhammad Arshad Mughal Advocate

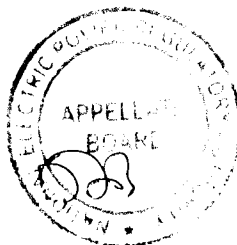
Mr. Bashir Ali Sarwar XEN

For the Respondent:

Nemo

DECISION

1. Briefly speaking. Mr. Rashid Bhutta (hereinafter referred to as the “Respondent”) is a domestic Respondent of Multan Electric Power Company Limited (hereinafter referred to as ‘the Appellant’) bearing Ref No.11-15118-0906003 having sanctioned load of 2 kW under the A-1(a) tariff category. Reportedly, the billing meter of the Respondent became defective with washed display in January 2016, hence the bills for the period January 2016 to December 2016 were charged on an estimated basis. The defective meter was replaced with a new meter by the Appellant in December 2016 and sent to the Metering and Testing (M&T) laboratory for checking. As per the data retrieval report dated 26.12.2016, 7,876 units were found uncharged being the difference between the final reading of the removed meter and units already





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charged by the Appellant. Therefore a detection bill of Rs.98,379/- for 7,876 units was debited to the Respondent by the Appellant and added to the bill for December 2016.

2. Being aggrieved, the Respondent initially filed a civil suit before the Civil Court Multan and challenged the bill of December 2016 total amounting to Rs.186,876/-, which included the above detection bill. Subsequently, the civil suit of the Respondent was dismissed by the honorable Civil Court due to non-prosecution. Thereafter, the Respondent approached the Provincial Office of Inspection, Multan Region, Multan (hereinafter referred to as the "POI") vide complaint dated 10.12.2020 against the charging of the above detection bill. The POI vide the decision dated 13.10.2021 set aside the detection bill of Rs.98,379/- for 7,876 units along with current bills for the period January 2016 to December 2016 and directed the Appellant to revise the bills @ 235 units per month for the period from January 2016 to December 2016. The Appellant was further directed to adjust the payments made against the detection bill and to restore the electric supply of the Respondent through a healthy meter without charging the Reconnection Order ("RCO") fee etc.
3. Being dissatisfied, the Appellant has filed the instant appeal before the NEPRA against the POI decision dated 13.10.2021 (hereinafter referred to as 'the impugned decision'), wherein it is contended that the old meter of the Respondent became defective with vanished display in January 2016, hence the proper billing was not done during the period January 2016 to December 2016. The Appellant further contended that the defective meter was replaced with a new meter in December 2016 and sent to M&T laboratory for checking, wherein 7,876 units were found uncharged based on the



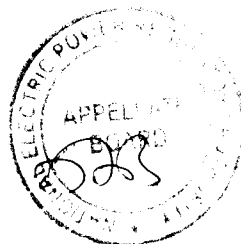


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difference in readings between the last reading already charged and the retrieved data. As per the Appellant, the detection bill of Rs.98,379/- for 7,876 units was charged to the Respondent in December 2016. According to the Appellant, the POI failed to observe the case in letter and spirit and the policy formulated in the Consumer Service Manual 2010 (the "CSM-2010") and passed the impugned decision on surmises and conjectures. The Appellant submitted that the POI did not decide the matter within ninety (90) days) from the date of receipt of the complaint as envisaged in Section 26(6) of the Electricity Act 1910, hence the impugned decision becomes functus, officio, void, ab initio, and coram non-judice, pursuant to the judgment of the High Court reported in 2015 MLD 1307. The Appellant further submitted that the factual controversies were involved in this case and could only be resolved through the evidence, as such the matter exclusively falls within the domain of the Civil Court. The Appellant stated that the POI without going into the merits of the case and without applying a conscientious mind passed the impugned decision, which is not sustainable in the eye of law. The Appellant prayed for setting aside the impugned decision.

4. Proceedings by the Appellate Board

Upon filing of the instant appeal, a Notice dated 11.04.2022 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days. The Respondent submitted reply to the appeal before the NEPRA on 29.04.2022 in which he rebutted the version of the Appellant *inter alia*, on the following grounds that the impugned meter became defective in October 2016 and the average bill of 146 units was charged in November 2016; that the impugned meter was replaced with a





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new meter in December 2016 and detection bill of 7,876 units was added in the bill for December 2016; that neither the data of impugned meter was downloaded nor the data retrieval report was prepared during his presence; that such excessive bill was charged @ 3,210 units per month for two and half months which neither reflects actual consumption nor tally with the consumption of corresponding months of previous or succeeding year; that the Appellant violated Clause 4.4 of the CSM-2010 while charging the above detection bill; that the judgment of Lahore High Court is not applicable in the instant case; that the POI has exclusive jurisdiction as per judgment of Supreme Court of Pakistan reported in PLD 2012 SC 371; that the snaps as provided by the Appellant confirm that the impugned meter became defective in December 2016; that the impugned decision to the extent of revision of bills @ 235 units per month for the period January 2016 to December 2016 be revised being violative of foregoing clause of the CSM-2010; that the binding of ninety (90) days) is not applicable for the POI functioning under NEPRA Act 1997.

5. Hearing

5.1 Hearing in the matter of the subject Appeal was fixed for 22.08.2022 at Multan and accordingly, the notices dated 15.08.2022 were sent to the parties (i.e. the Appellant and the Respondent) to attend the hearing. As per schedule, the hearing of the appeal was conducted at the NEPRA Regional Office Multan on 22.08.2022, in which learned counsel along with XEN was present on behalf of the Appellant but no one appeared for the Respondent. During the hearing, learned counsel for the Appellant reiterated the same arguments as given in memo of the appeal and defended the charging of the





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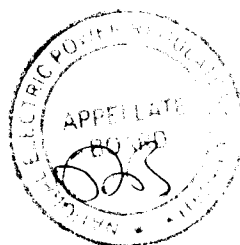
detection bill of Rs.98,379/- for 7,876 units to the Respondent on the plea that the said detection bill was charged on account of pending units on the basis of data retrieval report dated 26.12.2016. He prayed to allow the above-mentioned detection bill being justified. Learned counsel for the Appellant pointed out that the complaint of the Respondent before the POI is barred by the time being filed after the prescribed limit of three years as envisaged in Article 181 of the Limitation Act, 1908. The Appellant pleaded that the impugned decision be set aside being devoid of merits.

6. Arguments heard and the record examined. The Appellant has challenged the impugned decision raising the following objections:

- i. The matter falls in the domain of civil court and the POI has no jurisdiction to decide the dispute.
- ii. The POI failed to decide the matter within 90 days as envisaged in Section 26(6) of the Electricity Act, 1910.
- iii. The complaint of the Respondent is barred by time as per Article 181 of the Limitation Act, 1908.

6.1 Jurisdiction of the POI in the instant case:

The billing meter of the Respondent became defective with vanished display in January 2016. The defective meter was replaced with a new meter in December 2016 and sent to M&T laboratory for checking; whereby 7,876 units were debited to the Respondent and added in December 2016. The entire facts of the case manifest that the case pertains to the billing due to a defective meter and the POI has been empowered to adjudicate such matters under Section 38 of the NEPRA Act. In this context, the honorable Supreme Court of Pakistan in the case reported as PLD 2012





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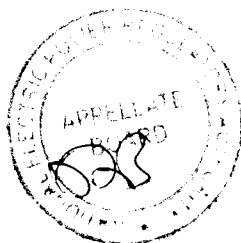
SC 371 held that the POI has exclusive jurisdiction to entertain the complaints of billing, where metering equipment is involved and the Civil Court has the jurisdiction in case of bypassing the meter. Thus the objection of the Appellant has no force and the same is rejected.

6.2 Objection regarding the time limit for POI

As per record, the Respondent filed his complaint before the POI on 10.12.2020 under Section 38 of the NEPRA Act. The POI pronounced its decision on 13.10.2021 i.e. after 307 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 NEPRA 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 the 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 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 on the Electricity Act 1910 and the above-referred decisions of the honorable High Court, the objection of the Appellant is dismissed.

6.3 Objection regarding the time-barred complaint before the POI

The Appellant raised another observation that the complaint filed by the Respondent before the POI was time-barred and therefore the impugned decision dated 13.10.2021 is void and cannot stand in the eyes of law. It is observed that the Respondent had admittedly stated in the memo of the complaint filed before the POI that due to the wrong forum (for redressal of its grievance), he did not press the civil suit which was





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later dismissed for non-prosecution. Thereafter, the Respondent filed a complaint before the POI on 10.12.2020.

In the instant case it appears that it is the case of a defective meter and therefore, the POI is the competent forum to hear and decide the complaint of the Respondent. However, the Respondent had opted for the wrong forum i.e. civil court for his remedy which was later dismissed for non-prosecution. In this scenario, there is no bar in law for filing a complaint to the competent forum after dismissal or withdrawal at the wrong forum.

6.4 Regarding the point of limitation raised by the Appellant, it is noticed that the detection bill of 7,876 units was debited by the Appellant in December 2016 and the remedy was invoked by the Respondent at the wrong forum i.e. Civil Court, which was also dismissed for non-prosecution and thereafter, the Respondent approached the POI on 10.12.2020 after a delay of four years. The Respondent showed no interest to continue his case before the Civil Judge, Multan, which ultimately resulted in dismissal for non-prosecution.

6.5 Though no period of limitation for filing a complaint before the POI, it is a settled principle of law that remedy, if any, should be availed without wastage of time. Here, in this case, the Respondent had wasted time by filing a civil suit against the detection bill of 7,876 units debited in December 2016 to a wrong forum which was not even pressed by the Respondent. In view thereof, the time period of pendency of the civil suit in the court cannot be condoned off and therefore we may consider four (04) years to file the complaint before the POI.

6.6 According to Article 181 of the Limitation Act, 1908, the claim of the Respondent





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beyond 03 years is barred by time. Since the complaint filed before the POI is after a lapse of four (04) years, therefore, it is not consistent with Article 181 of the Limitation Act, 1908. In this regard, reliance is placed on the judgment of the honorable Lahore High Court in the case titled "Muhammad Hanif sis NEPRA" reported as 2018 CLC 1689 Lahore, wherein it is held as under;

"The petitioner at the most can invoke Article 181 of The Limitation Act, 1908 which is the residuary provision and caters the issue of limitation where no period of limitation is provided elsewhere in the Schedule of The Limitation Act 1908 or under section 48 of The Code of Civil Procedure (V of 1908) Article 181 of The Limitation Act 1908 prescribes three years for filing an application that applies when the right to apply accrues as prescribed in Article 181 of Limitation Act, 1908."

7. Foregoing in view, it is opined that the complaint filed by the Respondent before the POI is barred by time, therefore, the impugned decision of the POI dated 13 10.2021 is set aside being without the force of law and consequently the appeal is accepted.

Syed Zawar Haider
Member

Abid Hussain
Convener

Muhammad Irfan-ul-Haq
Member

Dated: 16/10/2022

