



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

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No. NEPRA/AB/Appeal-031/POI-2015/1137-1141

December 03, 2015

1. Mian Absar Akhtar
(Mrs. Shirin N Kothari),
238, Staff Lane,
Fatima Jinnah Road,
Karachi
2. The Chief Executive Officer
K-Electric,
KE House, 39-B,
Sunset Boulevard, DHA-II,
Karachi
3. Rafique Ahmed Shaikh,
General Manager (Regulations),
K-Electric, KE House, 39-B,
Sunset Boulevard, DHA-II, Karachi
4. Ms. Tatheera Fatima
Deputy General Manager,
K-Electric, KE House, 39-B,
Sunset Boulevard, DHA-II, Karachi
5. The Electric Inspector
Karachi Region-I,
Block No. 51, Pak Secretariat,
Shahra-e-Iraq, Saddar,
Karachi.

Subject: Appeal Titled K-Electric Ltd Vs. Mian Absar Akhtar Against the Decision Dated 02.04.2015 of the Electric Inspector/POI to Government of the Sindh Karachi Region-I, Karachi

Please find enclosed herewith the decision of the Appellate Board dated 03.12.2015, regarding the subject matter, for information and necessary action accordingly.

Encl: As Above

(M. Qamar Uz Zaman)

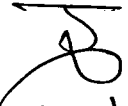
No. NEPRA/AB/Appeal-031/POI-2015/1142

December 03, 2015

Forwarded for information please.


Member Appellate Board

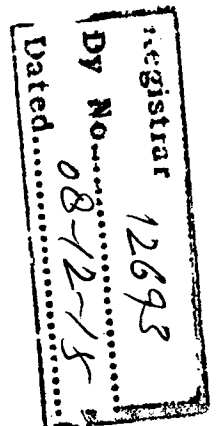
1. Registrar
2. Director (CAD)


08/12/15

CC:

Reg-I / n/f

1. Vice Chairman/Member (CA)





National Electric Power Regulatory Authority

Before Appellate Board

Motion for leave for review filed by K-Electric against the decision of NEPRA Appellate Board dated 28.7.2015 given in appeal No. NEPRA/Appeal-031/POI-2015

DECISION

1. This decision shall dispose of the review application dated 01.09.2015 filed by K-Electric (hereinafter referred to as "KE") against the decision dated 28.07.2015 of National Electric Power Regulatory Authority (hereinafter referred to as NEPRA) Appellate Board.
2. As per facts of the case, Mian Absar Akhter (hereinafter referred to as "respondent"), being aggrieved with the detection bill of Rs.3,395,483/- for 202,796 units for the period 21.09.2010 to 19.09.2013 issued in October 2013 filed a Constitutional Petition No.D-5126/2013 before High Court of Sindh at Karachi which was disposed of vide order dated 5.12.2013 which is reproduced as under:-

"...learned counsel for the petitioner submits that the petitioner would be satisfied if this petition is disposed of by directing the Electric Inspector to resolve the dispute that has been brought before this court through this petition. Accordingly, in case the petitioner approaches the Electric Inspector, the dispute shall be decided by him preferably within a period of thirty 30 days. This petition and CMA NO.31583/2013 are disposed of in the above terms."

3. Pursuant to above order of the honorable High Court, the respondent filed an application dated 10.12.2013 before Provincial Office of Inspection (hereinafter referred to as "POI") which was disposed of by POI vide its decision dated 02.04.2015 and the operative portion of the decision is reproduced below:

"After conducting several numbers of hearings, giving fair opportunities to hear both the parties; scrutinizing the record, made available with this authority and keeping in view of the above findings, this authority while concluding the issue in dispute observed that Opponents have violated the mandatory requirements of Electricity Act-1910 and guide lines

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communicated through Consumer Service Manual (CSM) of NEPRA as pointed out in above findings, hence issue directions to Opponents as below:-

- a) *To cancel the IRB/BP/detection bill. Amounting to Rs.3, 395,483/= of 202796 units for the period from 21.09.2010 to 19.09.2013(36 months) as it has no justification on legal and technical grounds.*
 - b) *To cancel the BP/detection bill, amounting to Rs.955, 453/= for the period from 20.09.2013 to 18.09.2014, issued during the pendency of the case as the same has also no justification on legal and technical grounds.*
 - c) *To cancel the assessed bills issued for the period after initiating the instant case and revise the same on the actual reading/consumption recorded by the undisputed healthy energy meter.*
 - d) *To adjust the already paid amount, by the complainant towards detection bill, in future billing as per actual reading of the healthy energy meter to be secured before the representative of this authority.*
 - e) *To waive to reconnection charges and late payments surcharge after issuance of the impugned detection bill and afterwards, as the complainant was not found at fault.*
 - f) *The energy meters installed inside the premises of the complainant, be shifted outside the premises for the convenience of recording the actual consumption and other connected matters.*
 - g) *Strict disciplinary action against all concerned officer/officials who have violated the lawful orders of this authority and charged the impugned billing without complying with the provisions of Consumer Service Manual, under intimation of this Authority"*
3. Being aggrieved with the above decision dated 02.04.2015 of POI, KE filed the appeal before NEPRA under section 38 (3) of the Act which was registered as appeal No. 031/2015. The Appellate Board disposed of the appeal vide its decision dated 28.07.2015 (hereinafter referred to as "impugned decision") and concluded as under:-

"From the discussion in the foregoing paragraphs, it is concluded that the respondent was not involved in theft of electricity and as such he is not liable to pay any detection bill on this account. The determination of POI in this regard is based on facts and law and we don't find any reason to interfere in it and therefore the impugned decision of POI is upheld.

The appeal is dismissed."

4. KE being aggrieved with the aforementioned impugned decision has filed the instant review petition and submitted that the respondent was involved in theft of electricity and therefore FIR No.64/2013



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dated 07.12.2013 and FIR NO.68/2014 dated 02.10.2014 were registered against the respondent. KE further stated that the case regarding the FIR No. 64/2013 was disposed of by the 5th Civil Judge and Judicial Magistrate Karachi (South) vide its order dated 26.01.2015 against KE and therefore, the criminal appeal No.57/2015 was filed by KE against the said order in the High Court of Sindh Karachi which is still pending. As regards FIR No.68/2014 KE contended that, the same is still pending before XVth Judicial Magistrate (South) Karachi for adjudication. According to KE as the respondent was involved in the theft of electricity directly through a cable by bypassing the metering equipment, therefore the matter is beyond the jurisdiction of POI. In support of its version KE referred a case of similar nature that is KE Vs Khadim Hussain Janwari bearing Appeal No. 12/POI-2013 wherein, it was decided by the Appellate Board that the matter was beyond the jurisdiction of POI. KE further pleaded that despite criminal proceedings the respondent is liable to make payment for the electricity which was illegally abstracted. In this regard KE relied upon the case law reported as 1986 PCr.L.J page no.1684; relevant portion whereof is reproduced hereunder:-

“That the theft of electricity. Payment of electricity not to absolve accused from liability of conviction and it would not be a case of double jeopardy. Accused, held, was under obligation to make payment, even for electricity in respect of which he was alleged to have committed theft regardless of whatever be verdict of court as to his guilt and innocence. Even if he was found guilty theft of electricity and convicted and consequence as conviction vis a viz recovery of electricity charged along with penalty from him could not be constructed as a case of double jeopardy.”

KE submitted that the impugned decision dated 28.07.2015 may be reconsidered/ reviewed in the interest of justice.

5. After issuing notice to both the parties the review petition was heard in the NEPRA's regional office Karachi on 26.10.2015. Mr. Rafique Ahmed General Manager, Ms. Tatheera Fatima Deputy General Manager Legal and Mr. Mohammad Ali Lakhani Advocate appeared for KE. Mr. Ishtiaq Ahmed and Syed Salim Ahmed Advocate appeared for the respondent. Representatives of KE repeated the same arguments which have been given in the review petition and contended that the respondent was involved in theft of electricity with the help of a direct cable by bypassing the metering equipment and therefore two FIRs were registered against the respondent. Representatives of KE submitted that the criminal proceedings against the respondent were pending in the courts of law. According to KE,

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the jurisdiction of POI was barred in the instant case, as the respondent indulged in stealing of electricity directly by bypassing the metering equipment. As per learned counsel for the petitioner, these facts were not considered while passing the impugned decision. On the other hand, learned counsel for the respondent rebutted the arguments of representatives of KE and pleaded that the respondent was acquitted in the criminal proceedings and allegation for theft of electricity was not proved against him. The learned counsel for the respondent defended the decision dated 02.04.2015 of POI and impugned decision dated 28.07.2015 of the Appellate Board and pleaded that the same should be upheld and the review petition submitted by KE be dismissed.

6. We have heard arguments of both the parties and examined the record placed before us. It has been observed that the FIR No.64/2013 registered against the respondent for direct theft of electricity was disposed of by 5th Civil Judge and Judicial Magistrate Karachi (South) vide its order dated 26.01.2015 and the respondent was acquitted. Subsequently this decision was assailed by KE in Sindh High Court Karachi through the criminal Appeal No.57/2015 and the matter is still pending before the honorable High Court. As regards FIR No.68/2014 registered against the respondent for dishonest abstraction of electricity, the matter is pending before the judicial Magistrate Karachi (South) for adjudication. The KE has provided documentary evidences regarding the pendency of the matter regarding FIR No. 64/2013 and 68/2014 before Sindh High Court Karachi and the Judicial Magistrate Karachi (South) respectively. It is observed that in both the FIRs the allegation of theft of electricity was levelled against the respondent through a direct cable by bypassing the metering equipment. As the respondent is allegedly involved in dishonest abstraction of electricity directly and without tampering of the metering equipment or similar apparatus, therefore we are in agreement with the stance of KE that jurisdiction of POI in such cases is excluded. In this regard reliance is made on the case law reported vide 2012 SC 371 and relevant portion reproduced as under:-

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Electricity Act (IX of 1910)---

---Ss. 26(6) & 26-A---Detection bill, issuance of---Theft of energy by consumer, charge of---Jurisdiction of Electric Inspector and Advisory Board---Scope---Electric Inspector for possessing special expertise in examining the working of metering equipment and other related apparatus had jurisdiction to entertain reference under S.26(6) of Electricity Act, 1910 only in case of dishonest consumption of energy by consumer through deliberate manipulation of or tampering with metering equipment or other

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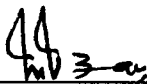


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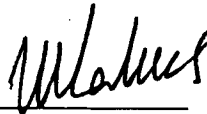
similar apparatus---Electric Inspector would have no jurisdiction in matter of theft by means other than tampering or manipulation of metering equipment etc., falling exclusively under S.26-A of Electricity Act, 1910---Principles. (p. 378) A& B.

As per regulation 3(2) of NEPRA (Review Procedure) Regulations, 2009, any party aggrieved from any order of the Authority and who, from the discovery of new and important matter of evidence or on account of some mistake or error apparent on the face of record may file a motion seeking review of such order. As per available facts, the fact of involvement of petitioner in theft of electricity and registration of FIR was not considered and discussed in the impugned decision, therefore, we are convinced that the impugned decision is liable to be reviewed owing to the fact that there are allegations of theft of electricity on the part of the consumer/petitioner by means other than tampering or manipulation of metering equipment, thus the jurisdiction of POI is excluded as per the verdicts of Honorable Supreme Court of Pakistan in the judgments referred above.

7. The upshot of the above discussion is that the motion seeking leave for review of the impugned decision is allowed and resultantly the decision dated 02.04.2015 of POI is rendered null and void and of no legal effect. The respondent may seek remedy from a competent court of law if so desired.



Muhammad Qamar-uz-Zaman
Member



Nadir Ali Khoso
Convener



Muhammad Shafique
Member

Date: 03.12.2015