



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

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No. NEPRA/Appeal/021/2023/774


December 13, 2023

- | | |
|---|--|
| 1. Faisal Bashir,
S/o. Muhammad Bashir Khan,
House No. G-48, Civil Lines,
Cantt Station, Karachi | 2. Chief Executive Officer,
K-Electric Ltd,
KE House, 39-B, Sunset Boulevard,
DHA-II, Karachi |
| 3. Asif Shajer,
Deputy General Manager,
K-Electric Ltd, KE House,
39-B, Sunset Boulevard,
DHA-II, Karachi | 4. Tatheera Fatima,
Deputy General Manager,
Distribution Legal, K-Electric Ltd,
1 st Floor, Block F, Elander Complex,
Elander Road, Karachi |
| 5. POI/Electric Inspector,
Karachi Region-II, Government of Sindh,
Plot No. ST-2, Block-N, North
Nazimabad, Near Sarina Mobile Market,
Main Sakhi Hasan Chowrangi,
Karachi | |

Subject: Appeal No.021/2023 (K-Electric Vs. Faisal Bashir) Against the Decision Dated 30.12.2022 of the Provincial Office of Inspection to Government of the Sindh Karachi Region-II, Karachi

Please find enclosed herewith the decision of the Appellate Board dated 13.12.2023 (06 pages), regarding the subject matter, for information and necessary action accordingly.

Encl: As Above


(Ikram Shakeel)
Deputy Director (AB)

Forwarded for information please.

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



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No.021/POI-2023

K-Electric Limited

.....Appellant

Versus

Faisal Bashir S/o. Muhammad Bashir Khan,
House No.G-48, Civil Lines, Cantt Station, Karachi

.....Respondent

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

For the Appellant:

Ms. Tatheera Fatima Deputy General Manager
Mr. Sohail Sheikh Deputy General Manager
Mr. Masahib Ali Manager
Mr. Anas Lakhani Deputy Manager

For the Respondent:

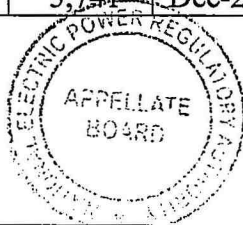
Mr. Faisal Bashir

DECISION

1. Brief facts leading to the filing of instant appeal are that Mr. Faisal Bashir (hereinafter referred to as the "Respondent") is a domestic consumer of K-Electric Limited (hereinafter referred to as the "Appellant") bearing Ref No.AL-301902 with a sanctioned load of 1 kW and the applicable Tariff category is A-1R.
2. Being aggrieved, the Respondent filed a complaint before the Provincial Office of Inspection, Karachi Region-II, Karachi (hereinafter referred to as the "POI") on 22.05.2014 and challenged the arrears of Rs.263,650/- accumulated till March 2014 containing the following detection bills debited for the period from January 2010 to March 2014 by the Appellant:

Detection bill	Amount (Rs.)	Units	Period		Months
			From	To	
First	6,653/-	935	Jan-2010	Jun-2010	06
Second	2,673/-	351	Jul-2010	Nov-2010	05
Third	49,017/-	3,741	Dec-2011	May-2012	06

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Fourth	12,437/-	828	Dec-2012	May-2013	06
Fifth	16,893/-	1,219	Jun-2013	Sep-2013	04
Sixth	30,411/-	2,043	Oct-2013	Mar-2014	06
Seventh	13,917/-	1,173	Apr-2014	Jun-2014	03

3. Meanwhile, the Respondent filed civil suit before the Civil Court Karachi against the abovementioned irregular bills and FIR registered by the Appellant on account of direct theft of electricity. The learned Civil Court vide order dated 11.02.2016 quashed the FIR and acquitted the Respondent from the offense of theft of electricity. The Appellant filed an appeal before the honorable High Court of Sindh at Karachi and challenged the order dated 11.02.2016, which was dismissed by the honorable High Court vide order dated 09.04.2016. Subsequently, the complaint of the Respondent was decided by the POI vide the decision dated 30.12.2022 with the following conclusion:

"After conducting several number of hearings, giving fair opportunities to hear both the parties, scrutinizing the record, made available with this office and in the light of above findings, the undersigned is of view that Opponents have violated the mandatory requirements of Electricity Act- 1910 and guidelines communicated through Consumer Service Manual of NEPRA as pointed out in above findings, hence conclude the matter with following directions to Opponents:-

a) To cancel the monthly bills issued from March 2010 onward, as the electricity was disconnected by the opponents and no single unit was consumed by the complainant and opponents could not prove as per their own record that the complainant has used the electricity through energy meter bearing consumer No.AL-301902, even Opponents failed to prove that the Complainant was involved in the theft of electricity in Case No.1543/2014 before the Honorable Court, decided on 11.02.2016.

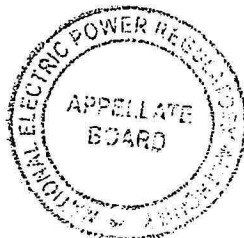
b) To waive all late payment surcharges and disconnection/reconnection charges (if any) which are the outcome of the impugned bills and afterward, as the complainant was not found at fault.

c) To reconnect the electric Supply of the complainant immediately bearing consumer No.AL-301902 as the complainant was not at fault and has been victimized by the Opponents.

d) To comply with the instructions and procedure, conveyed through the Consumer Service Manual issued by NEPRA for compliance by all DISCOs, in letter & and spirit and to avoid unjustified excessive billing.

e) To take appropriate disciplinary action against the officers/officials involved in excessive and unjustified billing.

The complaint is disposed of In terms of above, for compliance by the Opponents."



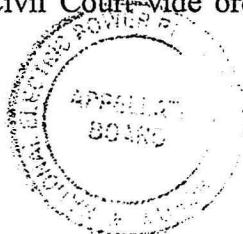


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2. Subject appeal has been filed against the afore-referred decision dated 30.12.2022 of the POI (hereinafter referred to as the "impugned decision") by the Appellant before the NEPRA. In its appeal, the Appellant opposed the impugned decision *inter alia*, on the following grounds; that the premises of the Respondent was inspected time and again, wherein the Respondent was found stealing electricity directly through Kunda; that FIR No.17/2014 was registered against the Respondent and the detection/assessed bills were debited to the Respondent on account of direct theft of electricity; that the electricity of the Respondent was disconnected, however he was using electricity through unfair means; that the Respondent was acquitted on benefit of doubt by the honorable Magistrate Karachi vide order dated 11.02.2016 against which the appeal was filed by the Appellant before the honorable High Court; that the honorable High Court vide order dated 09.04.2016 dismissed the appeal; that the POI conducted last hearing on 02.08.2018 and decided the matter vide impugned decision dated 30.12.2022; that the POI neither solicited gas bills from the Respondent to verify the contention of the Appellant; that the material evidence submitted before the Police was not taken in consideration by the POI; that the POI afforded the relief beyond the prayer of the Respondent, which is violative of Article 52 of the Limitation Act, 1908; that the POI exercise his power beyond his limits and misinterpreted Section 26-A of Electricity Act, 1910, wherein the POI has no power to exercise their jurisdiction and that the same is liable to be struck down.

3. **Proceedings by the Appellate Board**

Upon filing of the instant appeal, a Notice dated 17.02.2023 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 on 03.04.2023, wherein he raised the preliminary objection regarding limitation and contended that the appeal was filed before the NEPRA after lapse of 10 days and no cogent, plausible reasons or grounds were given by the Appellant. The Respondent denied the allegation of theft of electricity through kunda and contended that the Appellant did not produce the material evidence before the POI for verification of the alleged theft of electricity. As per the Respondent, the Appellant even failed to establish the criminal offense against him before the honorable Civil and High Courts, and the Respondent was acquitted of the offense of theft of electricity and FIR was quashed by the honorable Civil Court vide order dated 11.06.2016. According to the



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Respondent, neither any inspection was carried out in his presence nor could the Appellant produce the material evidence before the POI to prove their allegation of direct theft of electricity as required in Chapter 9 of the CSM-2021. According to the Respondent, Article 52 of the Limitation Act 1908 is not applicable in the instant case, as the cause of action has been recurring in nature since the year 2002. The Respondent submitted that the Appellant charged forge and fabricated bills despite the fact that the facility's electricity was disconnected in May 2010 and the same facility was never restored by the Appellant. The Respondent further submitted that the entire proceedings i.e. site inspections, notice and detection bills, etc. are fabricated and based on concocted stories. The Respondent finally prayed for the dismissal of the appeal.

4. Hearing:

4.1 Hearing in the matter was fixed for 06.11.2023 at Karachi and accordingly, the notices dated 30.10.2023 were sent to the parties (i.e. the Appellant and the Respondent) to attend the hearing. As per schedule, the hearing was conducted at the NEPRA Regional Office Karachi which was attended by both parties. The representatives for the Appellant contended that the Respondent is habitual in stealing electricity through unfair means, therefore electricity on the premises was disconnected time and again but the Respondent restored the same illegally. The representative for the Appellant further contended that the detection/assessed bills were debited to the Respondent in order to recover the revenue loss sustained due to the theft of electricity. As per the Appellant, the Respondent disputed the arrears of Rs.264,000/- before the POI till May 2014 but the POI cancelled entire the bills along with LPS w.e.f May 2010 and onwards, which is beyond the prayer of the Respondent. The Appellant prayed for setting aside the impugned decision.

4.2 The Respondent appearing in person denied the allegation of theft of electricity levelled by the Appellant and averred that entire proceedings were carried out unilaterally and the Appellant failed to prove theft of electricity through material evidence. The Respondent supported the impugned decision and prayed for upholding the same.

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

5.1 While considering the preliminary objection of limitation raised by the Respondent, it is noted that the Appellant received the copy of the impugned decision dated 30.12.2022 on



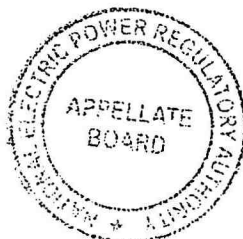


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10.01.2023. Thereafter, the Appellant filed the appeal before the NEPRA on 01.02.2023 which is within thirty (30) days of the receipt of the impugned decision as per Section 38 of the NEPRA Act. There is no force in the arguments of the Respondent 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 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 and, therefore dismissed.

5.2 In its appeal, The Appellant raised the preliminary objection for the jurisdiction of the POI being a direct theft of electricity case. In this regard, the record was perused, which transpires that the Appellant who registered FIR against the Respondent on account of direct theft of electricity but could not defend the same before the honorable Civil and High Courts, which resulted in the acquittal of the Respondent by the honorable Civil Court Karachi vide order dated 11.02.2016. The Appellant filed before the honorable High Court against the order dated 11.02.2016 of the civil court, which was subsequently dismissed by the honorable High Court vide order dated 09.04.2016. Under these circumstances, the objection of the Appellant regarding the jurisdiction of POI is devoid of force and rejected.

5.3 The Appellant raised another objection that the Respondent disputed before POI the arrears of Rs.263,650/- accumulated till March 2014, whereas the said forum cancelled the bills along with LPS w.e.f March 2010 and onwards, which is beyond the pleadings of the Respondent. In this regard, the contents of the impugned decision as well as the complaint of the Respondent were examined, which shows that the Respondent agitated the bills debited by the Appellant till March 2014 vide complaint dated 22.05.2014. We are convinced with the contention of the Appellant that the impugned decision for cancellation of the bills w.e.f March 2010 and onwards is incorrect, unjustified and beyond the prayer of the Respondent and the same is liable to be set aside.





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5.4 Since the Appellant could not successfully prosecute in the honorable Civil and High Courts, the detection/assessed bills raised by the Appellant for the period from January 2010 to March 2014 are declared null and void and the LPS levied against the said irregular bills is also withdrawn. However, the Respondent is liable to pay the normal bills charged during the period from January 2010 to March 2014 by the Appellant. The impugned decision is liable to be modified to this extent.

6. In view of what has been stated, we concluded that;

6.1 The impugned decision for cancellation of bills along with LPS w.e.f March 2010 and onwards is unjustified being beyond the prayer of the Respondent and the same is struck down.

6.2 The following detection bills as well as the assessed/average bills charged for the period from January 2010 to March 2014 are cancelled.

Detection bill	Amount (Rs.)	Units	Period		Months
			From	To	
First	6,653/-	935	Jan-2010	Jun-2010	06
Second	2,673/-	351	Jul-2010	Nov-2010	05
Third	49,017/-	3,741	Dec-2011	May-2012	06
Fourth	12,437/-	828	Dec-2012	May-2013	06
Fifth	16,893/-	1,219	Jun-2013	Sep-2013	04
Sixth	30,411/-	2,043	Oct-2013	Mar-2014	06
Seventh	13,917/-	1,173	Apr-2014	Jun-2014	03

6.3 The arrears pertaining to the regular bills debited for the period from January 2010 to March 2014 be recovered from the Respondent in easy installments.

6.4 The billing account of the Respondent be overhauled, accordingly.

7. The appeal is disposed of in the above terms.

Abid Hussain
Member

Muhammad Irfan-ul-Haq
Member

Naweed Illahi Sheikh
Convener

Dated: 13-12-2023

