



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

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No. NEPRA/AB/Appeal-075/POI-2015/1191-1196

December 15, 2015

1. M/s Mughar Pakistan (Pvt.) Ltd,
Through Aamir Shafi Akram,
Plot No. 57, Main Ghazi Road,
Opposite Allam Iqbal International Airport,
Lahore
2. The Chief Executive Officer
LESCO Ltd,
22-A, Queens Road,
Lahore
3. Hassan Nawaz Sheikh,
Barrister at Law,
Hassan Law Chambers (HLC),
3rd Floor, Alvi Manzil,
1-Fane Road, Lahore
4. Mian Habib-Ur-Rehman
Advocate High Court,
Habib Law Associates,
2nd Floor, Mian Chambers,
1-Fane Road, Lahore
5. Muhammad Azharuddin
AMO/SDO,
LESCOLtd,
Zarar Shahid Road Sub Division,
Lahore
6. The Electric Inspector
Energy Department,
Govt. of Punjab,
Lahore Region, Block No. 1,
Irrigation Complex,
Canal Bank, Dharampura,
Lahore.

Subject: **Appeal Titled M/s Mughals Pakistan (Pvt.) Ltd Vs. LESCO Against the Decision Dated 19.12.2014 of the Electric Inspector/POI to Government of the Punjab Lahore Region, Lahore**

Please find enclosed herewith the decision of the Appellate Board dated 14.12.2015, regarding the subject matter, for information and necessary action accordingly.

Encl: **As Above**

(M. Qamar Uz Zaman)

No. NEPRA/AB/Appeal-075/POI-2015/1197

December 15, 2015

Forwarded for information please.

1. Registrar
2. Director (CAD)

CC:

1. Vice Chairman/Member (CA)

Member Appellate Board

Registrar	13128
By No.	
Dated: 16-12-15	

16/12/15

D/Ry = 1/11/15
m/f



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. NEPRA/Appeal-075/POI-2015

M/s Mughals Pakistan (Pvt) Limited, Mian Ghazi Road,
Opposite Allama Iqbal International Airport, Lahore.

.....Appellant

Versus

Lahore Electric Supply Company Limited

.....Respondent

For the appellant:

Barrister Hassan Nawaz
Syed Shahzad H. Wasti Legal Counsel

For the respondent:

Mian Habib-ur-Rehman Advocate
Azhar-ud-Din SDO

DECISION

1. Brief facts leading to the disposal of this appeal are that the appellant is a temporary consumer of Lahore Electric Supply Company Limited (hereinafter referred to as LESCO) bearing Ref No. 24-11545-1422809 with a sanctioned load of 400 kW under E1-2 tariff.
2. In response to the application dated 21.04.2012 of the appellant, sanctioned load of its temporary connection was extended on 26.06.2012 from 140 kW to 400 kW under tariff E-1(ii). Subsequently a notice dated 26.08.2014 was served upon the appellant by LESCO wherein he was informed that the extension of load of the appellant from 140 kW to 400kW

13



National Electric Power Regulatory Authority

was sanctioned on 26.06.2012 but change of multiplication factor (MF) from 80 to 160 was not done inadvertently in the electricity bills of the appellant due to which it suffered substantially. Another notice dated 02.09.2014 to this effect was also issued by LESCO to the appellant wherein the appellant was informed that change of MF from 80 to 160 was applicable for the period 02.06.2012 to July 2014. The appellant in his response to the above notice sent a reply dated 18.09.2014 through their counsel and stated that they had cleared all their previous bills without any default and as such there were no arrears pending against them. The appellant requested to LESCO that the matter be referred to Electric Inspector for resolution of dispute in accordance with section 24(2) of Electricity Act 1910. LESCO vide its notice dated 06.11.2014 sent a detection bill to the appellant amounting to Rs.13,676,963/- for 581,360 units for the period 26.06.2012 to July 2014 on account of enhancement of MF from 80 to 160. The appellant preferred writ petition No.30133/2014 before Lahore High Court Lahore against the aforementioned detection bill which was disposed by honorable court vide the order dated 14.11.2014. The honorable High Court vide its order dated 14.11.2014 inter-alia, directed the appellant to file a formal complaint before Electric Inspector within seven days and further directed Electric Inspector to decide the matter within 20 days from the receipt of the said order.

3. Pursuant to above, the appellant filed the application before POI and POI in its decision dated 19.12.2014 concluded as under:-

"Summing up the forgoing, discussion, it is held,

- I. That the impugned billing meter have been found working accurately within specified limits of accuracy having Multiplying Factor as "Kwh Reading x 160".*
- II. That the respondents are allowed to charge/recover the cost of the less charged 581360 units for the period from 26.06.2012 to 07/2014, after making the calculations of the payable amount by applying the tariff rates on monthly basis in consultation with the petitioner and the total arrears amount be recovered from the petitioner in twelve (12) equal monthly installments alongwith monthly bills.*
- III. The respondents are directed to over-haul the account of the petitioner accordingly and any excess amount recovered be adjusted in future bills."*



National Electric Power Regulatory Authority

4. Being aggrieved with the POI decision dated 19.12.2014 (hereinafter referred to as the impugned decision), the appellant filed a writ petition No.2148/15 before Lahore High Court Lahore. The honorable Lahore High Court Lahore dismissed the petition in-limine vide its order dated 27.01.2015 and observed that the writ petition was not maintainable as against the impugned decision an alternative remedy of filing appeal under section 38(3) of the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 (hereinafter referred to as "the Act") was available to the appellant. Being dissatisfied the appellant filed intra court appeal No.309/2015 in Lahore High Court Lahore against the Lahore High Court order dated 27.01.2015 which was dismissed by the honorable High Court vide its judgment dated 22.06.2015 and it was held that remedy against the impugned decision dated 19.12.2014 passed by Electric Inspector was available before the Advisory Board.
5. After going through the above mentioned judicial process, the appellant has filed the instant appeal before National Electric Power Regulatory Authority (hereinafter referred to as NEPRA) under section 38 (3) of the Act on 09.07.2015 along with the application for condonation of the delay.
6. In response to the above appeal, the respondent LESCO was issued a notice for filing reply/parawise comments which were submitted on 17.09.2015. The respondent in its reply/parawise comments raised the preliminary objection regarding the limitation and contended that the appeal was badly time barred and be dismissed. The respondent submitted that due to extension of load from 140 to 400 kW, inadvertently MF was not raised from 80 to 160 for the period 26.06.2012 to July 2014. According to LESCO, the bill of Rs.13,676,963/- for 581,360 units for the period 26.06.2012 to July 2014 issued due to enhancement of MF from 80 to 160 was justified and the appellant was liable to pay the same. LESCO defended the impugned decision and prayed that the instant appeal be dismissed in the interest of justice with special costs.
7. Notice was issued to both the parties and the hearing of the appeal was conducted in the NEPRA office Lahore on 27.10.2015. Barrister Hassan Nawaz and Syed Shahzad H. Wasti legal counsel represented the appellant and Mian Habib-ur-Rehman Advocate and Azhar-ud-Din S/O appeared for the respondent LESCO. In the outset of the hearing the representatives

1



National Electric Power Regulatory Authority

of LESCO raised preliminary objection regarding limitation and argued that the impugned decision was announced by POI on 19.12.2014 and the appeal was filed on 09.07.2015 before NEPRA which was time barred in terms of the section 38(3) of the Act. . On the other hand, learned counsel for the appellant rebutted the arguments of LESCO and contended that the impugned decision was earlier challenged before the honorable Lahore high Court Lahore and the matter was finally decided by honorable Lahore High Court Lahore on 22.06.2015 and pursuant to the said decision, the appeal was filed before NEPRA on 09.07.2015. It was pleaded that the time consumed in the judicial process before Lahore High Court Lahore may be condoned for which an application was moved by the appellant. In support of his contentions the learned counsel for the appellant relied upon the following case law of superior courts.

- i. 2011 CLC 355
 - ii. PLD 2011 Pesh 256
 - iii. 2010 PTD (Trib) 2576
 - iv. 2015 PLC (C.S) 1290
8. As preliminary objection has been raised by LESCO regarding the limitation and argued by both the parties therefore, it will be in all fairness to dilate, discuss and decide the matter on the point of limitation at the very first place. It has been observed that the impugned decision was announced by POI on 19.12.2014 and the copy thereof was received by the appellant on 22.12.2014. However, the appeal was filed before NEPRA on 09.07.2015 which is obviously not within the time limits as prescribed in the law. We are not convinced with the arguments of the learned counsel for the appellant that the time lost due to the judicial proceedings before honorable High Court Lahore be condoned. As a matter of fact the honorable Lahore High Court Lahore vide it's order dated 27.01.2015 observed that alternative remedy was available to the appellant for filing appeal under section 38(3) of the Act but instead of filing the appeal before the Authority the appellant preferred intra court appeal before Lahore High Court Lahore and further delayed filing of the appeal before NEPRA.
9. The relevant provisions of law regarding limitation are referred is under:-

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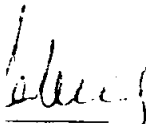
Power Regulatory Authority

order of the Provincial Office of Inspection may, prefer an appeal to the Authority in the prescribed appeal within sixty days

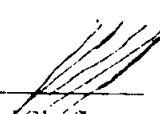
appeals) regulations, 2012:

from any decision or order of the single Member of section 11 of the Act or from a decision given by the 30 days of the order or decision file an appeal

As it can be safely suggested that the appeal should be allowed against the order of the decision. It has been observed that the order was issued on 19.12.2014 and the appeal was filed with NEPRA on 23.12.2014. Evidently the appellant failed to file the appeal within the time prescribed under section 38 of the Act for the appeal to be considered as valid. Therefore, we are not found convincing and valid. Therefore, we are unable to grant the appeal for LESCO and conclude that the appeal is time barred.



Khoso
Member


Muhammad Shafique
Member



National Electric Power Regulatory Authority

- Section 38(3) of the Act.

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

- Regulation 3 of NEPA (Procedure for filing appeals) regulations, 2012:

3. Filing of appeal.- (1) Any person aggrieved by any decision or order of the single Member of the Authority or Tribunal constituted under section 11 of the Act or from a decision given by the Provincial office of Inspection may, within 30 days of the order or decision file an appeal before the Authority.

10. From bare perusal of above referred provisions it can be safely suggested that the appeal should be filed within 30 days of the announcement of the decision. It has been observed that the impugned decision was announced by POI on 19.12.2014 and the appeal was filed with NEPRA on 09.07.2015 i.e. after 203 days of its announcement by POI. Evidently the appellant failed to file the appeal within the time limit of 30 days as prescribed under section 38 of the Act for which the reasons given by the appellant were not found convincing and valid. Therefore, we agree with the contention of the learned counsel for LESCO and conclude that the appeal is time barred.

The appeal is dismissed accordingly.

Muhammad Qamar-uz-Zaman
Member

Nadir Ali Khoso
Convener

Muhammad Shafique
Member

Date: 14.12.2015