



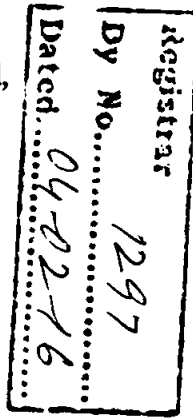
Before the Appellate Board
National Electric Power Regulatory Authority
(NEPRA)
Islamic Republic of Pakistan

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No. NEPRA/AB/Appeals/086/2015 & 098/2015//38-143

February 02, 2016

1. M/s Mariam Spinning Mills (Pv.) Ltd,
Through its owner,
Muhammad Afzal,
S/o Muhamamad Rafique,
45-KM, Multan Road,
Lahore
2. The Chief Executive Officer
LESCO Ltd,
22-A, Queens Road,
Lahore
3. Qiasar Mehmood Ch.
Advocate High Court,
Lawmen Associates,
4-A, Mozang Road,
Lahore
4. Mian Muhammad Mudassar Bodla
Advocate Supreme Court,
Syed Law Building, 4-Mozang Road,
Lahore
5. Faiz Muhammad
Assistant Manager (O),
Sarfray Nagar Sub Division,
LESCO Ltd,
Phool Nagar
6. Electric Inspector
Energy Department,
Govt. of Punjab,
Lahore Region, Block No. 1,
Irrigation Complex,
Canal Bank, Dharampura,
Lahore.



Subject: Appeal Titled LESCO Vs. M/s Mariam Spinning Mills (Pvt.) Ltd and M/s Mariam Spinning Mills (Pvt.) Vs. LESCO Against the Decision Dated 13.07.2015 of the Electric Inspector/POI to Government of the Punjab Lahore Region, Lahore

Please find enclosed herewith the decision of the Appellate Board dated 02.02.2016, regarding the subject matter, for information and necessary action accordingly.

Encl: As Above

(M. Qamar Uz Zaman)

No. NEPRA/AB/Appeals/086/2015 & 098/2015 //144

February 02, 2016

Forwarded for information please.

Member Appellate Board

1. Registrar
2. Director (CAD)

CC:

1. Vice Chairman/Member (CA)

04/02/16



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. NEPRA/Appeal-086/POI-2015

Lahore Electric Supply Company Limited

.....Appellant

Versus

M/s Mariam Spinning Mills (Pvt.) Ltd,
45 KM, Multan Road, Lahore

.....Respondent

Appeal No. NEPRA/Appeal-098/POI-2015

M/s Mariam Spinning Mills (Pvt.) Ltd,
45 Km, Multan Road, Lahore

.....Appellant

Versus

Lahore Electric Supply Company Limited

.....Respondent

For Lahore Electric Supply Company Limited:

Mian Muhammad Mudassar Bodla Advocate

For M/s Mariam Spinning Mills (Pvt.) Ltd:

Mr. Qaisar Mahmood Ch. Advocate

DECISION

1. Through this consolidated decision, appeals No. 086/POI-2015 and -098/POI-2015 filed against the decision dated 13.07.2015 of Provincial Office of Inspection/Electric Inspector, Lahore Region, Lahore (POI) are being disposed of, as common question of law and facts arises in these appeals.
2. Lahore Electric Supply Company Limited (hereinafter referred to as LESCO) is a licensee of

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National Electric Power Regulatory Authority (hereinafter referred to as NEPRA) for distribution of electricity in the territory specified as per terms and conditions of the license and M/s Paradise Spinning Mills (Pvt.) Ltd (hereinafter referred to as the Consumer) is its industrial consumer bearing Ref No.24-11741-9147001 with a sanctioned load of 960 kW under B-3 tariff.

3. As per fact of the case, connection of the Consumer was checked by Standing Committee of LESCO on 31.07.2012 which detected that the Consumer had pasted bogus postal orders on TOU meter box and backup meter box. Allegedly the Consumer was found stealing electricity by opening the meter boxes. FIR No. 397/2012 dated 01.08.2012 regarding the above theft of electricity was registered against the Consumer. The Consumer submitted undertaking dated 07.08.2012 to the effect that for any technical fault or tampering it would be responsible. A notice dated 24.08.2012 was issued to the Consumer regarding the above discrepancy, electric supply of the Consumer was disconnected, the billing meter panel was sealed and taken in custody by the Police as Fard-e-Maqbozgi (case property). A detection bill of Rs. 15,336,272/- for 1,533,165 units/2,533 kW, for the period June 2011 to July 2012, was charged to the Consumer in August 2012. The Consumer approached LESCO Regional Review Committee (hereinafter referred to as the Committee) against the above detection bill and deposited Rs. 7,668,136/- being the 50 % of the disputed amount of Rs. 15,336,272/- and electric connection of the Consumer was restored. Subsequently, the Committee declared vide its decision dated 30.05.2013 that the detection bill was justified and the Consumer was liable to pay the same. A writ petition No. 19775/2012 was filed before honourable Lahore High Court Lahore against the above mentioned detection bill which was dismissed as withdrawn on 28.09.2012 for seeking remedy before the appropriate forum.
4. Being aggrieved with the above mentioned detection bill of Rs. 15,336,272/- for 1,533,165 units/2,533 kW for the period June 2011 to July 2012, the Consumer filed an application before POI on 18.06.2013. The disputed TOU meter was jointly checked by POI on 23.04.2015 and pasting of bogus postal orders on the meter was confirmed but the existing owner denied his involvement in any mal-practice or illegality. During the hearing before POI, preliminary objection was raised by LESCO on the ground that being a theft case it was beyond the

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jurisdiction of POI but the objection was dismissed by POI through its order dated 27.05.2014 and it was held that POI has jurisdiction to adjudicate upon such matters.

5. POI after providing opportunity of hearing to both the parties decided the matter on 13.07.2015 (hereinafter referred to as the impugned decision) with the following conclusion:

"Summing up the foregoing discussion, it is held that the impugned detection bill amounting to Rs. 15,336,272/- as cost of 1,533,165 units/2533 KW MDI for the period from 06/2011 to 07/2012 (Fourteen months) charged in the month of 08/2012 is void, unjustified and of no legal effect; therefore, the petitioner is not liable to pay the same. However, the respondents are allowed to charge a revised detection bill on the basis of same average consumption (i.e. 451067 units/816 KW MDI per month) against the disputed period from 02/2012 to 07/2012 (Six months) after excluding the already charged units during the said period. The respondents are directed to over-haul the account of the petitioner accordingly and any excess amount recovered be adjusted in future bills."

6. Being dissatisfied with the aforementioned decision of POI, the subject appeals have been filed by both the Consumer as well as LESCO.
7. Notices of the appeals were served upon the parties for filing reply/parawise comments but neither LESCO nor the Consumer opted to file the comments.
8. Hearing of the appeals was conducted in Lahore on 11.01.2016 and 25.01.2016. Mian Muhammad Mudassar Bodla Advocate appearing for LESCO contended that being a theft of electricity case it was beyond the jurisdiction of POI to adjudicate upon such matters. In this regard, reliance was placed on PLD-2006-SC-328, PLD-1995-Lhr-56 and 2004-SCMR-1679. Reliance was also placed on NEPRA Appellate Board decision dated 19.10.2015 in the appeal No. NEPRA/Appeal-050/POI-2015. The learned counsel for LESCO submitted that ample opportunity was given to the Consumer before the Committee which declared the detection bill as justified and the Consumer was made liable to pay the same. Learned counsel averred that the matter was challenged by the Consumer before honourable Lahore High Court Lahore in writ petition No. 19775/2012 which was dismissed as withdrawn by the honourable Lahore High Court Lahore vide its order dated 28.09.2012 and no further direction was given by honourable Lahore High Court Lahore. According to LESCO, decision dated 30.05.2013 of the Committee



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attained finality and was not challengeable before POI. Learned counsel for LESCO further submitted that no ground was taken by the Consumer before POI regarding period of detection bill and as such determination of POI in this regard was irrelevant and beyond the pleadings. According to learned counsel for LESCO, the period for theft of electricity (June 2011 to July 2012) was based on the consumption data of the Consumer and was justified. Further, he pointed out that the application/claim of the Consumer before POI was hopelessly time barred under section 26 (6) of Electricity Act, 1910 as checking of the meter was held on 31.07.2012 and application against it was filed before POI on 18.06.2013 after lapse more than a year which was beyond the period of ninety days as provided under the ibid section.

Mr. Qaisar Mahmood Ch. Advocate learned counsel for the Consumer, in his rebuttal contended that POI has jurisdiction in the instant case and placed reliance on PLD-2012-SC-371. He submitted that the violation of clause 9.1 (b) of Consumer Service Manual (hereinafter referred to as CSM) by LESCO was raised before POI and same was discussed in the impugned decision and therefore the stance of LESCO in this regard was contrary to the facts. Learned counsel for the Consumer averred that the meter was installed in a locked room and the key of which was in the possession of LESCO. According to the learned counsel, the Executive Engineer (XEN) LESCO concerned visited site regularly for recording monthly readings of the meter but no discrepancy/theft was ever pointed out or reported by the officer against the Consumer before 31.07.2012. As regards disposal of FIR, the learned counsel for the Consumer apprised that the case was under trial before WAPDA Special Magistrate.


9. Having gone through the record and hearing the arguments advanced by both the parties, it is observed as under:-
 - i. There is no time limit for filing a complaint before the Electric Inspector under section 26 (6) of the Electricity Act, 1910. Moreover, the impugned decision dated 13.07.2015 was rendered by the officer in its capacity as POI. Objection of LESCO that the application before POI is time barred has no merit and therefore dismissed.
 - ii. Meter of the Consumer was checked by LESCO on 31.07.2012 and theft of electricity was observed by tampering of the meter. FIR was lodged on 01.08.2012 and the metering equipment was handed over to Police as case property. Disposal of the case by the Court of



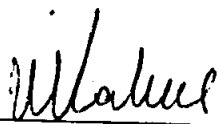
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WAPDA Special Magistrate is still awaited. Detection bill of Rs. 15,336,272/- for 1,533,165 units/2,533 kW for the period June 2011 to July 2012 was charged to the Consumer in September 2012 which was challenged before POI by the Consumer on 18.06.2012 after withdrawal of writ petition from honourable Lahore High Court Lahore.


- iii. Procedure for dishonest abstraction of electricity by registered consumers by the way of tampering of the metering equipment, as prescribed in clause 9.1 (b) of CSM was not followed by LESCO. It is relevant to mention that the maximum time period for raising a detection bill in such a case is restricted to six months and therefore POI has rightly determined the same period accordingly in the impugned decision.
 - iv. Analysis of POI for charging 451,067 units/816 kW MDI per month, based on the average consumption recorded during undisputed period February 2012 to July 2012, is technically justified and is applicable to the Consumer for assessment of the detection bill for the period February 2012 to July 2012 (06 months) and the Consumer is liable to pay the same.
 - v. The findings of POI that the detection bill of Rs. 15,336,272/- for 1,533,165 units/2,533 kW for the period June 2011 to July 2012, is void, unjustified and the Consumer is not liable to pay the same is correct. We are also in agreement with the impugned decision that the Consumer is liable to be charged detection bill @ 451,067 units/816 kW MDI per month for the period February 2012 to July 2012.
10. In view of foregoing discussion, it is concluded that the impugned decision is in accordance with facts and law and the same is therefore upheld. Consequently both the appeals are dismissed.



Muhammad Qamar-uz-Zaman
Member



Nadir Ali Khoso
Convener



Muhammad Shafique
Member

Date: 02.02.2016...