



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

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No. NEPRA/AB/Appeal-102/POI-2015/209-213

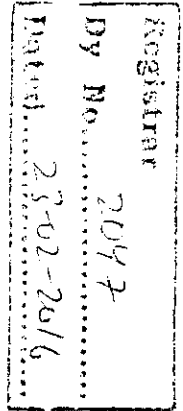
February 19, 2016

1. Nasir Ahmad Ansar
S/o Late Shahraz Ahmad Ansari,
48, Shahra-e-Quaid-e-Azam,
The Mall, Lahore

2. The Chief Executive Officer
LESCO Ltd,
22-A, Queens Road,
Lahore

3. Saeed Ahmed Bhatti
Advocate High Court,
2nd Floor, Akram Mansion,
Neela Gumbad, Lahore

4. Daud Khan
Sub Divisional Officer,
LESCO Ltd,
Royal Park Sub Division,
Lahore



5. The Electric Inspector
Energy Department,
Govt. of Punjab,
Lahore Region, Block No. 1,
Irrigation Complex,
Canal Bank, Dharampura,
Lahore.

Subject: Appeal Titled LESCO Vs. Nasir Ahmad Ansar Against the Decision Dated 30.01.2015 of the Electric Inspector/POI to Government of the Punjab Lahore Region, Lahore

Please find enclosed herewith the decision of the Appellate Board dated 19.02.2016, regarding the subject matter, for information and necessary action accordingly.

Encl: As Above

(M. Qamar Uz Zaman)

No. NEPRA/AB/Appeal-102/POI-2015/ 214

February 19, 2016

Forwarded for information please.

Member Appellate Board

1. Registrar
2. Director (CAD)

CC:

1. Vice Chairman/Member (CA)



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. NEPRA/Appeal-102/POI-2015

Lahore Electric Supply Company Limited

.....Appellant

Versus

Nasir Ahmed Ansari, S/o Late Shahraz Ahmad Ansari,
48 Shakra-e-Quaid-e-Azam, The Mall, Lahore

.....Respondent

For the Appellant:

Saeed Ahmed Bhatti Advocate

For the Respondent:

Muhammad Younas Chaudhary Advocate

DECISION

1. This decision shall dispose of appeal filed by Lahore Electric Supply Company Limited (hereinafter referred to as LESCO) against the decision dated 08.07.2015 of the Provincial Office of Inspection/Electric Inspector Lahore Region, Lahore (hereinafter referred to as POI) under Section 38(3) of the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 (hereinafter referred to as "the Act").
2. The respondent is a consumer of LESCO bearing Ref No. 42-11333-0683000 with a sanctioned load of 5 kW under A-2 tariff.
3. As per facts of the case the audit party vide its Audit Note No. 98, dated 03.04.2014, endorsed vide no. 391 dated 02.07.2014 (hereinafter referred to as AN 98), pointed out that due to wrong application of tariff incorrect bills were issued to the respondent for the period



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January 2013 to January 2014. It was recommended vide AN 98 that a sum of Rs. 330,713/- for 40,315 units be debited to the respondent due to tariff differential. Pursuant to AN 98 an arrear bill of Rs. 331,368/- was charged to the respondent in August 2014.

4. Respondent being aggrieved with the above mentioned bill of Rs. 331,368/- filed a civil suit which was later on withdrawn pursuant to the decision of Supreme Court of Pakistan reported vide PLD 2012 SC 371 and the matter was challenged before POI by the respondent vide his application dated 29.08.2014. The respondent in his application stated that he received a bill for August 2014 containing arrears of Rs. 331,368/- though all the previous bills stood cleared. According to the respondent LESCO has no lawful authority to add any arrears without issuing any notice under section 24 of Electricity Act 1910 and without providing an opportunity of hearing. According to the respondent the electricity bill to the extent of arrears of Rs. 331,368/- was illegal, void and was liable to be set aside.
5. Application of the respondent was disposed of by PCI vide its decision dated 30.01.2015 with the following conclusion:

"Summing up the foregoing discussion, it is held that the impugned detection bill amounting to Rs. 331,368/- charged bill for August 2014 on the basis of audit note (on TOU rates without installing the TOU meter at site) 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 TOU rates after installing an accurate TOU meter at site as per application tariff. The respondents are directed to over-haul the account of the petitioner accordingly and any excess amount recovered be adjusted in future bills.

The petition is disposed of in above terms."

6. Being dissatisfied with the impugned decision, LESCO has filed the instant appeal under section 38 (3) of the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 (hereinafter referred to as "the Act"). LESCO in its appeal submitted that



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the tariff of the respondent was changed from December 2012 but the billing meter was not changed to TOU. According to LESCO peak and off peak hours tariff could not be applied to the respondent during period January 2013 to January 2014 due to absence of TOU meter. LESCO submitted that on the recommendation of AN 98 a sum of Rs. 330,713/- was charged to the respondent on account of difference of tariff rate from 06 to 04. LESCO averred that the difference bill was rightly charged after due verification/approval by the competent authority and the same was quite legal, valid and justified. According to LESCO the impugned decision is illegal unlawful void ab-initio and liable to be set aside. LESCO finally prayed that the impugned decision may be set aside and the detection bill charged in August 2014 be declared as legal, valid and justified.

7. Notice of the appeal was issued to the respondent for filing reply/parawise comments which were filed on 19.10.2015. The respondent in his reply, inter-alia stated that LESCO changed his tariff from flat to TOU tariff and therefore it was incumbent upon LESCO to install TOU meter at site so that tariff could have been properly applied for peak and off peak hours consumption. According to the respondent no TOU meter was ever installed till the announcement of impugned decision and therefore it was rightly declared in the impugned decision that the disputed bill amounting to Rs. 331,368/-, added in bill of August 2014, was illegal, void, unjustified and of no legal effect. The respondent further submitted that the audit note was an internal matter between DISCO and its audit department and the respondent was not liable to pay such an illegal amount on the recommendation of audit note. Reliance was placed on 1988 CLC 501 (Lahore), 2015 CLJ 581 and Lahore 2015 CLJ 588.
8. After issuing notice to both the parties, the appeal was heard on 11.01.2016 at Lahore in which both the parties participated. Mr. Saeed Ahmad Bhatti Advocate, counsel for LESCO contended that sanctioned load of the respondent was 5 kW and as such the applicable tariff was TOU but the correct tariff was not applied for the period January 2013 to January 2014. According to the learned counsel for LESCO the audit party has rightly assessed the arrear



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bill of Rs. 331,368/- due to differential of TOU and non-TOU tariff and the respondent was liable to pay the same. Mr. Muhammad Younas Chaudhary Advocate, counsel for the respondent admitted that no TOU meter was installed therefore TOU tariff was not applicable. According to the learned counsel for the respondent, all dues were cleared by the respondent as per bills issued by LESCO and therefore the arrear bill of Rs. 331,368/- added in the bill for August 2014 was not justified under the garb of tariff differential and the respondent was not liable to pay the same.

9. After hearing the arguments of both the parties and perusal of record, it is observed as under:

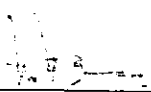
- i. Sanctioned load of the respondent is 5 kW but no TOU meter was installed which is necessary for such connection and for application of TOU tariff.
- ii. According to AN 98, tariff of the respondent was changed to TOU though no TOU meter was installed. The reading of the respondent was recorded collectively for off peak and peak hours but the TOU tariff was applied by segregating off peak and peak hour units. As per AN 98 LESCO suffered revenue loss due to application of off peak tariff.
- iii. There is force in the arguments of the learned counsel for the respondent that pursuant to the judgments of the superior court audit affair is between DISCO and audit department and the audit report in no manner can make the consumer liable for payment of electricity bill on the basis of audit report. In the instant case the respondent was neither issued a showcase notice nor he was joined in the audit proceedings to justify the audit report. We are inclined to hold that the difference bill amounting to Rs. 331,368/- charged in August 2014 based on the audit report is not justified and the respondent is not liable to pay the same.
- iv. Mr. Saeed Ahmed Bhatti advocate counsel for LESCO pleaded that it was incumbent upon POI to decide the matter within 90 days of receipt of the respondent's application dated 30.01.2015. According to learned counsel, after




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expiry of 90 days the matter was to be referred to the Provincial Government for decision under section 26(6) of Electricity Act 1910 but POI failed to do so therefore the impugned decision was functus officio. Muhammad Younas Chaudhary advocate, counsel for the respondent contended that this point was not raised by LESCO in its appeal and therefore may not be considered at this stage. It may noted that the impugned decision was rendered by the officer in his capacity as POI under section 38 of the Act which does not impose any time limit upon POI for deciding the matter and therefore the objection of LESCO is invalid and dismissed accordingly.

10. In view of the above discussion it is concluded that the arrear bill amounting to Rs. 331,368/- charged in the bill for August 2014 on the basis of AN 98 is void, unjustified and of no legal effect and the respondent is not liable to pay the same. Therefore the impugned decision is upheld and consequently the appeal is dismissed.



Muhammad Qamar-uz-Zaman
Member



Muhammad Shafique
Member



Nadir Ali Khoso
Convener

Date: 19.02.2016