



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

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No. NEPRA/AB/Appeal/131/POI/2019/ 129


January 19, 2021

1. Khalid Javaid
S/o. Nazir Ahmed,
Prop: Bismillah CNG & Filling Station,
G. T. Road, Muridke, Sheikhpura
2. Chief Executive Officer
LESCO Ltd,
22-A, Queens Road,
Lahore
3. Mehar Shahid Mehmood
Advocate High Court,
Office No. 34, Third Floor,
Ali Plaza, 3-Mozang Road,
Lahore
4. Muhammad Azam Khokhar
Advocate High Court,
10-Fatima Jinnah Chambers,
Session Courts, Gujranwala
5. Assistant Manager (Opr),
LESCO Ltd,
Canal Park Sub Division,
Muridke, Distt. Sheikhpura
6. Electric Inspector/POI,
Gujranwala Region,
Govt. of Punjab,
Munir Chowk, Near Kacheri Road,
Gujranwala

Subject: **Appeal Titled LESCO Vs. Khalid Javaid Against the Decision Dated 10.10.2018 of the Provincial Office of Inspection to Government of the Punjab Gujranwala Region, Gujranwala**

Please find enclosed herewith the decision of the Appellate Board dated 05.01.2021, regarding the subject matter, for information and necessary action accordingly.

Encl: **As Above**


(Ikram Shakeel)
Deputy Director (M&E)
Appellate Board

Forwarded for information please.

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



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Before Appellate Board National Electric Power Regulatory Authority Islamabad

In the matter of

Appeal No. 131/POL-2019

Lahore Electric Supply Company Limited

.....Appellant

Versus

Khalid Javaid s/o Nazir Ahmed Prop: Bismillah CNG & Filling Station
G.T Road, Muridke, Distt. Sheikhpura

.....Respondent

APPEAL UNDER SECTION 38(3) OF REGULATION OF GENERATION, TRANSMISSION, AND DISTRIBUTION OF ELECTRIC SUPPLY ACT, 1997 AGAINST THE DECISION DATED 10.10.2018 PASSED BY PROVINCIAL OFFICE OF INSPECTION GUJRANWALA REGION, GUJRANWALA

For the appellant:

Mr. Mehar Shahid Mehmood Advocate

For the respondent:

Mr. Muhammad Azam Khokhar Advocate

DECISION

1. As per facts of the case, the respondent is a commercial (CNG Pump) consumer of LESCO bearing Ref No.27-11651-00011-4 with a sanctioned load of 160 kW under the tariff A-2c. The electricity meter of the respondent was found 33% slow due to the yellow phase being dead by LESCO on 28.06.2011. Multiplication factor (MF) of the respondent was raised from 80 to 119.4 by LESCO w.e.f June 2011 and onwards and a check meter was installed in series with the disputed billing meter by LESCO. Thereafter a detection bill of 12,491 units/156 kW MDI for May 2011 was debited to the respondent



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by LESCO due to 33% slowness of the billing meter. Subsequently, LESCO reversed MF from 119.4 to 80 w.e.f October 2013 and onwards as the consumption of the disputed billing meter was found same as the check meter.

2. The respondent being dissatisfied with the actions of LESCO approached the Provincial Office of Inspection (POI) on 19.07.2017 and challenged the arrears of Rs.4,541,457/- which contained the above detection bill and the bills with enhanced MF=119.4 for the period July 2011 to September 2013. The metering equipment of the respondent was jointly checked by POI on 10.09.2018 and both the disputed billing and check meters were found within permissible limits, checking report was signed by both the parties without raising any objection. POI disposed of the matter vide its decision dated 10.10.2018 and concluded as under:

“In the light of the above facts, it is held that the disputed meter was correct till 05/2011 and alleged slowness was charged with enhanced MF from 80 to 119.4 in the monthly bills w.e.f 06/2011 to 09/2013 are void, unjustified and of no legal effect; therefore the petitioner is not liable to pay the same. The respondents are directed to withdraw the aforesaid detection bill and slowness recovered and overhaul the account of the petitioner accordingly by refunding the excess amount recovered as slowness etc.”

3. LESCO has impugned the above decision of POI through the instant appeal, wherein it is contended that the billing meter of the respondent was found 33% slow due to the yellow dead phase on 28.06.2011 but POI ignored this fact and set aside the above detection bill.



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LESCO further contended that the impugned decision was pronounced by POI after the expiry of the mandatory period of 90 days as laid down in Section 26(6) of Electricity Act 1910 and that the impugned decision became functus, officio, void ab initio and Corum non-judice and liable to be set aside.

4. Notice of the appeal was issued to the respondent for filing reply/para-wise comment, which were filed on 24.09.2019. In the reply, the respondent raised the preliminary objection regarding limitation and submitted that the appeal is time-barred being filed with a delay of 84 days. The respondent further submitted that LESCO recovered an excessive amount of Rs.4,541,457/- on account of 33% slowness as observed during unilateral checking dated 28.06.2011. As per respondent, the billing meter was admittedly found correct as compared to the check meter and the MF was reversed from 119.4 to 80 in October 2013, hence the appeal is liable to be dismissed with cost. According to the respondent, the POI has the exclusive jurisdiction to adjudicate the matter after the promulgation of Section 38 of NEPRA Act 1997, therefore limit of 90 days has ceased this effect. The respondent supported the impugned decision and prayed for upholding the same.
5. Hearing of the appeal was held at NEPRA Regional Office Lahore on 14.12.2020 which was attended by both the parties. Learned counsel for LESCO reiterated the same arguments as given in memo of the appeal and contended that the bills with enhanced MF=119.4 for the period July 2011 to September 2013 and the detection bill of 12,491 units/156 kW MDI for May 2011 were charged on account of 33% slowness of the billing meter as observed during LESCO checking dated 28.06.2011. Learned counsel for



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LESCO argued that the complaint of the respondent was filed before POI on 19.07.2017 against the billing of the year 2013, as such the claim of the respondent in this regard is time-barred. As per learned counsel for LESCO, the said objection was raised before POI but the same was neither discussed nor entertained by the said forum. Learned counsel for LESCO prayed for setting aside the impugned decision. Conversely, learned counsel for the respondent rebutted the version of learned counsel for LESCO regarding the time-barred claim and averred that the billing with enhanced MF=119.4 for the period June 2011 to September 2013 was initially agitated before LESCO vide various applications and multiple requests were made for the installation of check meter in series with the disputed billing meter. Learned counsel for the respondent further submitted that LESCO revised the MF from 119.4 to 80 w.e.f October 2013 which is the admittance of LESCO that the disputed billing meter was functioning correctly. Learned counsel for the respondent finally prayed that the impugned decision is liable to be maintained.

6. Arguments heard and the record placed before us was perused. Following are our observations:

- i. As far as the objection of the respondent regarding limitation. It is observed that the impugned decision was announced by POI on 10.10.2018, a copy of the same was obtained by LESCO on 04.12.2018 and the appeal was initially filed before NEPRA on 21.12.2018 within 30 days of receipt of the impugned decision as per Section 38(3) of the NEPRA Act 1997. Therefore the objection of the respondent in this regard carries no weight and should be rejected.



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- ii. As regards the preliminary objection of LESCO regarding the failure of POI in deciding the matter within 90 days u/s 26(6) of Electricity Act, 1910, it may be noted that the said restriction of the time limit is inapplicable for the POI established under Section 38 of NEPRA Act, 1997. Reliance in this regard is placed on the Lahore High Court judgments cited as PLJ 2017-Lahore-627 and PLJ-2017-Lahore-309. As such the objection of LESCO in this regard is devoid of force and should be dismissed.
- iii. Perusal of record shows that 33% slowness of the billing meter of the respondent was observed during LESCO checking dated 28.06.2011, hence LESCO charged the detection bill of 12,491 units/156 kW MDI for May 2011 and onward bills with enhanced MF=119.4 for the period June 2011 to September 2013 due to 33% slowness of the billing meter of the respondent. Subsequently, the respondent assailed the above billing before POI on 19.09.2017. Learned counsel for LESCO pointed out that the claim of the respondent regarding the aforesaid billing before POI is time-barred. Learned counsel for the respondent rebutted the contention of learned counsel for LESCO and informed that the said billing was earlier agitated before LESCO however did not provide any documented evidence to substantiate his contentions. As such the complaint of the respondent filed before POI on 19.07.2017 against the billing of the years, 2011-2013 is inconsistent with Article 181 of Limitation Act, 1908, which restricts the period of claim for three years only. In this regard, reliance is placed on the Lahore High Court, judgment dated

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30.11.2015 in respect of writ petition No.17314-2015 titled “Muhammad Hanif v/s NEPRA and others”, wherein it is held as under:

“The petitioner at the most can invoke Article 181 of The Limitation Act, 1908 which is the residuary provision and caters the issue of limitation where no period of limitation is provided elsewhere in the Schedule of The Limitation Act, 1908 or under Section 48 of The Code of Civil Procedure (V of 1908). Article 181 of The Limitation Act, 1908 prescribes three years for filing an application that applies when the right to apply accrues as prescribed in Article 181 of Limitation Act, 1908.”

In consideration of the above facts, POI has no jurisdiction to entertain the time-barred claim of the respondent and the impugned decision is liable to be set aside.

7. Foregoing in view, the impugned decision is set aside and consequently, the appeal is accepted.

Muhammad Qamar-uz-Zaman
Member/SA (Finance)

Muhammad Shafique
Member/SA (Legal)

Nadir Ali Khoso
Convener/DG (M&E)

Dated: 05.01.2021