



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

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No. NEPRA/AB/Appeal/245/POI/2019/897

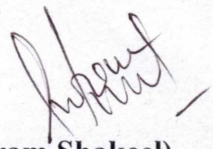
November 22, 2021

- | | |
|--|--|
| 1. Muhammad Nadeem,
Prop: M/s. Pak Industries,
G. T. Road, Qadar Abad,
Sahiwal | 2. Chief Executive Officer
LESCO Ltd,
22-A, Queens Road,
Lahore |
| 3. Mian Muhammad Mudassar Bodla,
Advocate Supreme Court,
Syed Law Building, 4-Mozang Road,
Lahore | 4. A. D. Bhatti,
Advocate High Court,
First Floor, Rehmat Tower,
13-Fane Road, Lahore |
| 5. Sub Divisional Officer (Opr),
LESCO Ltd,
Rural Sub Division,
Okara | 6. POI/Electric Inspector,
Gujranwala Region,
Energy Department, Govt. of Punjab,
Munir Chowk, Near Kacheri Road,
Gujranwala |

Subject: **Appeal Titled LESCO Vs. Muhammad Nadeem Against the Decision Dated 26.06.2019 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 10.11.2021, 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



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No.245/POI-2019

Lahore Electric Supply Company Limited

.....Appellant

Versus

Muhammad Nadeem, Prop M/s. Pak Industries,
G.T Road, Qadar Abad, Sahiwal

.....Respondent

**APPEAL UNDER SECTION 38(3) OF REGULATION OF GENERATION,
TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997
AGAINST THE DECISION DATED 26.06.2019 PASSED BY PROVINCIAL
OFFICE OF INSPECTION GUJRANWALA REGION, GUJRANWALA**

For the Appellant:

Mian Muhammad Mudassar Bodla Advocate

For the Respondent:

Mr. A.D Bhatti Advocate

DECISION

1. Brief facts of the case are that the Respondent is an industrial consumer of Lahore Electric Supply Company Limited (hereinafter referred to as LESCO) bearing Ref No.27-11414-0444000 with a sanctioned load of 360 kW under the B-2(b) tariff. The billing meter of the Respondent was checked by LESCO on 31.07.2007 and it was reportedly found 26% slow, therefore the Multiplication Factor (MF) was raised from 160 to 216.21 by LESCO w.e.f November 2007 and onwards. Said billing meter was again checked by LESCO on 05.05.2009 and reportedly it was found 63% slow.





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Resultantly, a detection bill of Rs. 546,501/- for 49,947 units+272.9 kW MDI for April 2009 was debited to the Respondent due to 63% slowness of the billing meter.

2. Being aggrieved with the abovementioned detection bill, the Respondent proceeded as under:

- The above detection bill was challenged before the Honorable Lahore High Court Lahore vide W.P. No. 1397/2010. The Honorable High Court directed the Respondent to file complaint before the PEPCO Complaint Cell. The Respondent filed a complaint to General Manager PEPCO against the detection bill of Rs.546,501/- but its disposal is not known.
- The Respondent filed a complaint before Wafaqi Mohtasib on 29.01.2011 against the above-said detection bill and deposited 50% of the disputed amount. Pursuant to the directions of Wafaqi Mohtasib, The Provincial Office of Inspection (POI) inspected the metering equipment of the Respondent on 09.04.2011 in presence of both the parties and found the display of the billing meter as vanished. The POI submitted its report dated 13.09.2011 to Wafaqi Mohtasib. Based on the POI recommendation/report dated 13.09.2011, Wafaqi Mohtasib vide order dated 12.04.2013 cancelled the above detection bill against which LESCO filed a review petition before the Wafaqi Mohtasib, which was also dismissed by the Wafaqi Mohtasib vide order dated 08.12.2015.

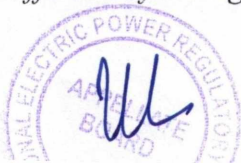




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- It is relevant to mention here that the appeal of the LESCO against the report dated 13.09.2011 of the POI was dismissed by the honorable Advisory Board vide order dated 15.01.2015 with the conclusion that no appeal is maintainable against the report dated 13.09.2011 of the POI.
- During the pendency of matter before the Wafaqi Mohtasib, LESCO charged the remaining amount being 50% of the detection bill of 546,501/- to the Respondent, which was challenged by him before the Honorable Lahore High Court Lahore through W.P. No. 18542/2015. The Honorable Lahore High Court vide order dated 18.06.2015 directed the Respondent to approach the POI for the determination as the Wafaqi Mohtasib lacks jurisdiction. In pursuance of the above order of the Honorable High Court, the Respondent challenged the detection bill of 546,501/- before the POI vide application dated 25.06.2015.
- During the pendency of complaint before the POI, LESCO made a representation before the President of Pakistan against the order dated 08.12.2015 of the Wafaqi Mohtasib, The Honorable President of Pakistan disposed of the matter vide order dated 17.11.2016, the operative portion of which is reproduced below:

“10. It is an admitted position that the parties had already been in litigation before the Lahore High Court in the same matter. It is also an admitted fact that AMO of the agency received the CTs back on 03.04.2009 whereas the Standing Committee of the agency visited the site after a period of one month i.e. 05.05.2009. There is no explanation for this delay on the part of concerned officials of the Agency. It is also an admitted fact





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272.9 kW MDI charged by LESCO was declared as void, unjustified, and of no legal effect.

3. Through the instant appeal, LESCO has agitated the POI decision dated 26.06.2019 (hereinafter referred to as the impugned decision) before the NEPRA inter alia, on the following grounds; (1) the billing meter of the Respondent was found 26% slow during checking on 31.07.2007; (2) MF was raised from 160 to 216.21 w.e.f November 2007 and onwards; (3) the billing meter was found 63% slow during subsequent checking dated 05.05.2009; (4) a detection bill of Rs.546,501/- for 49,947 units/272.9 kW MDI was debited to the Respondent along with the bill of April 2009 with enhanced M.F=432.43 due to 63% slowness of the billing meter; (5) the Respondent assailed the above detection bill before the Honorable Lahore High Court Lahore vide W.P. No. 1397/2010, which was disposed of by the Honorable Lahore High Court with the direction to the Respondent to file complaint before PEPCO Complaint Cell; (6) a complaint was filed before GM PEPCO against the detection bill of Rs.546,501/-; (7) the Respondent also filed a complaint before Wafaqi Mohtasib and deposited 50% of the disputed amount; (8) the Wafaqi Mohtasib directed the POI for checking the metering equipment of the Respondent and for submission of checking report; (9) the Respondent filed an application before the POI, who vide decision dated 13.09.2011 directed the case against LESCO; (10) an appeal was before the Advisory Board against report dated 13.09.2011 of the POI, which was dismissed by the Honorable Advisory Board vide order dated 15.01.2015 with the remarks that no appeal is maintainable;





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(11) Wafaqi Mohtasib vide order dated 12.04.2013 decided the case against which a review petition was filed before the Wafaqi Mohtasib; (12) the review petition was decided by the Wafaqi Mohtasib vide order 08.12.2015; (13) the appeal was filed before the President of Pakistan, which was accepted by the honorable President of Pakistan vide order dated 17.11.2016; (14) the bill of Rs.414,279/- was added in the month of January 2017 in compliance of the order of President of Pakistan; (15) the Respondent filed W.P.No.1255/2017 before the Honorable Lahore High Court Lahore for the implementation of the POI decision dated 26.06.2015; (16) the Lahore High Court Lahore vide order dated 06.12.2017 directed the POI for decision of the case; (17) Lahore High Court never set aside the order dated 17.11.2016 of Honorable President of Pakistan; (18) the POI decided the case without hearing LESCO and set aside the detection bill of Rs.546,501/-; (19) the POI has no jurisdiction to decide the matter which was already decided by the Honorable President of Pakistan vide order dated 17.11.2016; (20) the Appellant issued revised bill of Rs.41,279/- according to the order of President of Pakistan; (21) the matter attained finality and the POI has no jurisdiction to reopen the matter which was already decided by the President of Pakistan; (22) the impugned decision is sketchy and non-speaking; and that the same is liable to be set aside.

4. Notice of the appeal was issued to the Respondent for filing reply/para-wise comments, which were filed on 10.10.2019. In his reply, the Respondent supported the impugned





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that there is factual controversy between the parties with regard to the slowness of the meter, the availability of the check meter with the complainant at the time of site inspection by the Agency's officials, and checking the site itself. The matter is presently being considered by the Electric Inspector under the directions of the High Court.

11. In the circumstances the factual controversy can be resolved after recording and evaluation of evidence by the court of competent jurisdiction. Therefore the findings of Wafaqi Mohtasib are not sustainable and consequently, the Agency's representation is liable to be accepted. However, the matter of delayed action of the Agency to replace the CTs and failure to place on record the factual position of the rejection of its appeal by the Advisory Board on 15.01.2015 as alleged by the complainant in his comments needs to be probed into the Chief Executive Officer of the Agency/LESCO and fix the responsibility.

12. Accordingly, the Honorable President of Pakistan has been pleased to accept the Agency's representation and set aside the impugned findings of the Wafaqi Mohtasib with the advice to take action in the light of the above observations."

From the above, it is obvious that the proceedings of Wafaqi Mohtasib were rescinded as the matter was under adjudication by the POI on the direction of Lahore High Court, Lahore.

- The application of the Respondent was disposed of by the POI vide order dated 26.06.2019, wherein the detection bill amounting to Rs.546,501/- for 49,947 units+





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decision on the following grounds (1) LESCO declared the billing meter 26% slow during unilateral checking dated 31.07.2007 but did not replace the defective CTs of the billing meter for a long period; (2) LESCO declared the billing meter as 63% slow vide checking dated 05.05.2009, when the factory was closed; (3) POI has rightly observed the higher consumption of April 2009 as compared to the consumption of April 2008; (4) the impugned decision is comprehensive, well-reasoned and does not warrant any interference; (5) LESCO issued the impugned detection bill in violation of verdicts of Superior Courts of Pakistan; (6) the Respondent initially challenged the detection bill of Rs.546,501/- before the Wafaqi Mohtasib, who after getting the report of the POI cancelled the impugned detection bill vide order dated 12.04.2013; (7) the review petition of the LESCO was also dismissed vide Wafaqi Mohtasib order dated 04.12.2015; (8) the Respondent was constrained to file the writ petition No.18542/2015 before the Honorable Lahore High Court Lahore for implementation of order of Wafaqi Mohtasib; (9) Lahore High Court vide order dated 18.06.2015 directed the Respondent to approach the POI; (10) the President of Pakistan vide order dated 17.11.2016 held that the controversy between the parties with regard to the slowness of the meter and matter is being considered by the POI hence the objection of LESCO has no value in the eye of law and reliance was placed on PLD 2012 SC 371; (11) the Writ Petition No.1255/2017 was disposed of vide the Honorable High Court vide order dated 06.12.2017 with the direction to the POI for decision and (12) the impugned decision be maintained and the appeal is liable to be dismissed with cost.





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5. Notice was issued and hearing of the appeal was conducted at the NEPRA Regional Office Lahore on 16.07.2021, which was attended by the learned counsels for both the parties. Learned counsel for LESCO reiterated the same arguments as prescribed in the memo of the appeal and contended that the billing meter was found 63% slow during LESCO checking dated 05.05.2009; that a detection bill of Rs.546,501/- for 49,947 units/272.9 kW MDI was debited to the Respondent along with the bill of April 2009 with enhanced M.F=432.43 due to 63% slowness of the billing meter. Learned counsel for LESCO further contended that the Respondent assailed the above detection bill before Lahore High Court Lahore vide W.P. No. 1397/2010, which was disposed of by the Honorable High Court with the direction to the Respondent to file complaint before the PEPCO Complaint Cell. Learned counsel for LESCO submitted that the Respondent filed a complaint before the Wafaqi Mohtasib, which directed the POI for submission of checking report of metering equipment of the Respondent. According to learned counsel for LESCO, The POI vide decision dated 13.09.2011 decided the case against LESCO, and Wafaqi Mohtasib vide order dated 12.04.2013 also decided the case against LESCO, hence a review petition was filed before the Wafaqi Mohtasib, which was rejected by the Wafaqi Mohtasib vide order 08.12.2015. According to learned counsel for LESCO, an appeal was filed before the President of Pakistan, which was accepted by the Honorable President of Pakistan vide order dated 17.11.2016, and the Wafaqi Mohtasib order dated 08.12.2015 was set aside, hence the said order of the President of Pakistan has attained finality and the matter cannot be adjudicated by the





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POI, reliance in this regard is placed on the judgment reported as 1992 SCMR 2102. Learned counsel for LESCO averred that the bill of Rs.414,279/- was added in the month of January 2017 in compliance with the order dated 17.11.2016 of the President of Pakistan. Learned counsel for LESCO finally prayed that the impugned decision is liable to be set aside. Learned counsel for LESCO further pleaded that the above detection bill is justified and the claim of the Respondent in this regard is time-barred. Conversely, learned counsel for the Respondent defended the impugned decision on the following grounds; (1) LESCO declared the billing meter 26% slow during unilateral checking dated 31.07.2007 but LESCO intentionally delayed the replacement of the defective CTs of the billing meter; (2) LESCO declared the billing meter as 63% slow in unilateral checking dated 05.05.2009, when the factory was closed; (3) the detection bill of Rs.546,501/- was charged to the Respondent after two years i.e. in January 2011; (4) the Respondent initially challenged the detection bill of Rs.546,501/- before the Wafaqi Mohtasib, who decided the matter in favor of Respondent vide order dated 12.04.2013; (5) the review petition of LESCO was also dismissed by Wafaqi Mohtasib vide order dated 08.12.2015; (6) the Respondent was constrained to file the writ petition No.18542/2015 before the Lahore High court for implementation of order of Wafaqi Mohtasib; (7) Lahore High Court vide order dated 18.06.2015 directed the Respondent to approach the POI; the President of Pakistan vide order dated 17.11.2016 legitimized the proceeding before the POI; (8) the findings of the POI are correct and that the time





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of litigation be excluded as per Section 14 of Limitation Act 1908 and (9) the impugned decision is liable to be maintained.

6. Arguments were heard and the record was examined. It is observed as under:
- i. LESCO raised the preliminary objection regarding the jurisdiction of the POI on the plea that the President of Pakistan vide order 17.11.2016 has set aside the Wafaqi Mohtasib order dated 08.12.2015, which had attained finality, as such the POI is not authorized to adjudicate the instant matter. To verify the plea of LESCO, the operative portion of the order dated 17.11.2016 of the Honorable President of Pakistan is reproduced below:

“10. It is an admitted position that the parties had already been in litigation before Lahore High Court in the same matter. It is also an admitted fact that AMO of the agency received the CTs back on 03.04.2009 whereas the Standing Committee of the agency visited the site after a period of one month i.e. 05.05.2009. There is no explanation for this delay on the part of concerned officials of the Agency. It is also an admitted fact that there is factual controversy between the parties with regard to the slowness of the meter, the availability of the check meter with the complainant at the time of site inspection by the Agency's officials, and checking the site itself. The matter is presently being considered by the Electric Inspector under the directions of the High Court.

11. In the circumstances the factual controversy can be resolved after recording and evaluation of evidence by the court of competent jurisdiction. Therefore the findings of Wafaqi Mohtasib are not sustainable and consequently, the Agency's representation is liable to be accepted. However, the matter of delayed action of the Agency to replace the CTs and





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failure to place on record the factual position of the rejection of its appeal by the Advisory Board on 15.01.2015 as alleged by the complainant in his comments needs to be probed into the Chief Executive Officer of the Agency/LESCO and fix the responsibility.

12. Accordingly, the Honorable President of Pakistan has been pleased to accept the Agency's representation and set aside the impugned findings of the Wafaqi Mohtasib with the advice to take action in the light of the above observations."

***emphasis added**

As evident from the above, the President of Pakistan disposed of the matter with the findings that the dispute of billing is under adjudication before the POI as per directions of the High Court. Even otherwise, the POI is the competent forum to entertain the disputes related to billing, metering, and collection of tariffs under Section 38 of the NEPRA Act, 1997. Moreover, the billing dispute pertains to the slowness of the billing meter, and no theft of electricity through bypassing the meter is involved, therefore the POI is authorized to decide the same as per the judgment of the Honorable Supreme Court of Pakistan reported in PLD 2012 SC 371. Hence, the objection of LESCO in this regard is incorrect and being rejected.

- ii. With regards to another objection of LESCO regarding the time-barred claim of the Respondent, it is observed that LESCO charged the detection bill of Rs. 546,501/- for 49,947 units+272.9 kW MDI to the Respondent along with the bill of April 2009 with enhanced M.F=432.43 due to 63% slowness of the billing meter, which was initially assailed by him before the Honorable Lahore High





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Court Lahore vide W.P. No. 1397/2010. After litigation at the different forums, the Honorable High Court vide order dated 18.06.2015 directed the Respondent to approach the POI as Wafaqi Mohtasib lacks jurisdiction. Pursuant to the direction of the Honorable High Court, the Respondent challenged the detection bill of 546,501/- before the POI vide application dated 25.06.2015. The objection of the LESCO in this regard carries no weight, hence dismissed.

- iii. On merits, LESCO observed 26% slowness in the billing meter of the Respondent during checking dated 31.07.2007 and raised MF from 160 to 216.21 w.e.f November 2007 and onwards, however, failed to replace the defective CTs of the billing meter till April 2009. This is a gross negligence on the part of the LESCO officials that they failed to replace the defective meter timely. LESCO charged a detection bill of Rs. 546,501/- for 49,947 units+272.9 kW MDI to the Respondent along with the bill of April 2009 with enhanced M.F=432.43 on account of 63% slowness of the billing meter as observed on 05.05.2009. However, during the POI joint checking dated 09.04.2011, the accuracy of the billing meter could not be checked due to its vanished display.
- iv. Under these circumstances, we have to rely upon the consumption data of the Respondent in the below table:

Undisputed month	Units	MDI	Disputed month	Units	MDI
April 2008	43,891	275	April 2009	49,945	272





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The above comparison of the consumption does not even support the LESCO stance that the disputed billing meter was 63% slow in the month of April 2009 as the consumption during the said month is higher than the consumption of April 2008. We hold that 63% slow in the billing meter of the Respondent as claimed by the LESCO did not prove, hence the detection bill of Rs. 546,501/- for 49,947 units+272.9 kW MDI debited to the Respondent @ 63% slowness of the billing meter is unjustified and rightly cancelled by the POI. The billing account of the Respondent should be overhauled after adjusting payments made, if any against the above detection bill.

7. Foregoing in view, the appeal is dismissed.

Abid Hussain
Member/Advisor (CAD)

Dated: 10.11.2021

Nadir Ali Khoso
Convener/Senior Advisor (CAD)

Maria Rafique
Member/ Legal Advisor

