



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

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No. NEPRA/Appeal/035/POI/2021/ 038

January 16, 2023

- | | |
|--|---|
| 1. Anwar Sarwar Khokhar,
S/o. Ghulam Sarwar Khokhar,
R/o. House No. 17, Street No. 12,
Mohallah Janni Shah, Chah Miran,
Lahore | 2. Chief Executive Officer,
LESCO Ltd,
22-A, Queens Road,
Lahore |
| 3. Saeed Ahmed Bhatti,
Advocate High Court,
66-Khyber Block, Allama Iqbal Town,
Lahore | 4. Mazhar Ahmed Khan,
Advocate High Court,
Office No. 66, Block-G,
Gulberg-III, Lahore |
| 5. Assistant Manager,
LESCO Ltd,
Chah Miran Sub Division,
Lahore | 6. POI/Electric Inspector,
Lahore Region, Energy Department,
Govt. of Punjab, Block No. 1,
Irrigation Complex, Canal Bank,
Dharampura, Lahore |

Subject: **Appeal Titled LESCO Vs. Anwar Sarwar Khokhar Against the Decision Dated 26.01.2021 of the Provincial Office of Inspection to Government of the Punjab Lahore Region, Lahore**

Please find enclosed herewith the decision of the Appellate Board dated 13.01.2023, 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. Additional Director (IT) –for uploading the decision on NEPRA website



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No.035/POI-2021

Lahore Electric Supply Company Limited

.....Appellant

Versus

Anwar Sarwar Khokhar S/o Ghulam Sarwar Khokhar,
R/o House No.17, Street No.12, Mohallah Janni Shah,
Chah Miran Lahore

.....Respondent

APPEAL U/S 38(3) OF REGULATION OF GENERATION, TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997

For the Appellant:

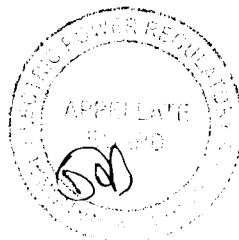
Mr. Saeed Ahmed Bhatti Advocate
Mr. Sajjad Hussain MI
Mr. Zahid Sardar

For the Respondent:

Mr. Anwar Sarwar Khokhar

DECISION

1. Brief facts leading to the filing of instant appeal are that Mr. Anwar Sarwar Khokhar (hereinafter referred to as the "Respondent") is a residential consumer of the Lahore Electric Supply Company Limited (hereinafter referred to as the "Appellant") bearing Ref No.13-11153-1071901 with sanctioned load of 0.96 kW and the applicable Tariff category is A-1(a). The billing meter of the Respondent was checked by the Metering and Testing (M&T) team of the Appellant on 25.06.2019 and it was declared as





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tampered (shunt installed) for the dishonest abstraction of electricity and the connected load was observed higher than the sanctioned load. A notice dated 25.06.2019 was served to the Respondent regarding the above discrepancy. The Appellant removed the impugned meter from the site and handed it over to the police as material evidence. Thereafter, FIR No.750/10 dated 26.06.2019 was registered against the Respondent due to the theft of electricity. Subsequently, a detection bill of Rs.178,472/- for the cost of 7,829 units for twelve (12) months for the period from June 2018 to May 2019 was charged by the Appellant to the Respondent on the basis of connected load=5.182 kW and added to the bill for July 2019.

2. Being aggrieved, the Respondent initially filed a civil suit before the Civil Court against the charging of the above detection bill. The Honorable Civil Court vide order dated 22.01.2020 directed the Respondent to approach the Provincial Office of Inspection, Lahore Region, Lahore (hereinafter referred to as the "POI") for redressal of his grievance. Subsequently, the Respondent filed an application before the POI on 15.05.2020 and challenged the abovementioned detection bill. During the proceedings, the meter under dispute of the Respondent was checked by the POI on 30.11.2020 in presence of both parties, and theft of electricity through the installation of a shunt in the impugned meter was established, the checking report was signed by both parties without raising any objection. The matter was disposed of by the POI vide the decision dated 26.01.2021, wherein the detection bill of Rs.178,472/- against 7,829 units for





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twelve (12) months for the period from June 2018 to May 2019 was cancelled. As per the decision of POI, the Appellant was directed to charge the revised bills for three months i.e. March 2019 to May 2019 based on the connected load as observed during the checking dated 25.06.2019. The Appellant was further directed to overhaul the billing account of the Respondent and for adjustment of payments made against the above detection bill.

3. Subject appeal has been filed against the afore-referred decision dated 26.01.2021 of the POI (hereinafter referred to as the “impugned decision”) by the Appellant before the NEPRA, wherein it is contended that the billing meter of the Respondent was found tampered (shunt installed) during the M&T checking dated 25.06.2019 for the dishonest abstraction of electricity. The Appellant further contended that notice dated 25.06.2019 thereof was served to the Respondent and FIR No.750/10 dated 26.06.2019 was filed against the Respondent and the meter under dispute was handed over to police as case property. The Appellant submitted that a detection bill of Rs.178,472/- for the cost of 7,829 units for twelve (12) months for the period from June 2018 to May 2019 was charged to the Respondent on the basis of the connected load. As per Appellant, the POI misconceived the real facts of the case as the above detection bill was debited to the Respondent on account of dishonest abstraction of energy under Section 26-A of the Electricity Act, 1910, reliance in this regard was placed on the various judgments of the honorable Supreme Court of Pakistan reported in PLD 2012





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SC 371, PLD 2006 SC 328 and 2004 SCMR Page 1679. According to the Appellant, the POI failed to consider the consumption data and erred in holding that the Respondent was not involved in the dishonest abstraction of electricity and revised the bills for three months i.e. March 2019 to May 2019 as per the connected load observed during the checking dated 25.06.2019. The Appellant further submitted that the POI failed to appreciate that the complaint could not be entertained as no notice as required under Section 26(6) of the Electricity Act, 1910 was served upon the Appellant before filing the same. The Appellant stated that the Respondent has no locus standi to file the complaint before the POI as the connection is installed in the name of another person i.e. Mr. Irfan Shaukat. The Appellant finally prayed that the impugned decision is not sustainable in law and the same is liable to be set aside.

4. Proceedings by the Appellate Board

Upon filing of the instant appeal, a Notice dated 26.04.2021 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days. The Respondent submitted his reply before the NEPRA, wherein he challenged the maintainability of the appeal *inter alia*, on the main grounds that the Appellants with malafide intention lodged FIR against him and disconnected the electricity of the premises without prior permission; that the Appellant demanded a bribe of Rs.50,000/- and on refusal legal action was taken against him; that the charging of detection bill of Rs.178,472/- for the cost of 7,829 units for twelve (12) months for the period from





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June 2018 to May 2019 based on conjectures and surmises as the premises consists of 2.5 marla area having three fans and five LED lights; that the POI has rightly allowed three months of detection bill as per Clause 9.2.3 (c) of the CSM-2021 and that the appeal be dismissed with cost in the best interest of justice.

5. Hearing

5.1 Hearing in the matter of the subject Appeal was fixed for 13.10.2022 at NEPRA Regional Office Lahore and accordingly the notices dated 07.10.2022 were sent to the parties. Learned counsel for the Appellant objected that the Respondent has no locus standi to plead the instant case. Learned counsel for the Appellant reiterated the same version as contained in memo of the appeal and contended that the billing meter of the Respondent was got checked by the M&T team of the Appellant on 25.06.2019, wherein it was declared tampered (shunt installed). Learned counsel for the Appellant stated that notice dated 25.06.2019 was served to the Respondent, which remained unanswered, therefore the detection bill of Rs.178,472/- for the cost of 7,829 units for twelve (12) months for the period from June 2018 to May 2019 was debited to the Respondent on the basis of the connected load. As per learned counsel for the Appellant, the tampering in the meter of the Respondent was established during the POI joint checking dated 30.11.2020, hence the entire period of the detection bill be allowed being justified and payable by the Respondent. Learned counsel for the Appellant pointed out that the POI failed to decide the matter within 90 days as





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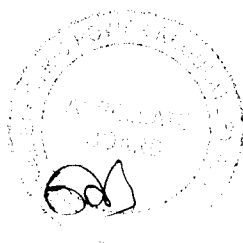
envisaged in the Electricity Act, 1910. He pleaded that the impugned decision be struck down.

5.2 The Respondent refuted the allegation of illegal abstraction of electricity levelled by the learned counsel for the Appellant, opposed the charging of the impugned detection bill and argued that the Appellant is responsible to secure the impugned meter and install a check meter to confirm the alleged tampering in the impugned meter. He submitted that the above detection bill is liable to be withdrawn being unjustified as already declared by the POI and prayed for the maintainability of the impugned decision.

6. Arguments heard and the record perused. Following are our observations:

6.1 Preliminary objection of the Appellant regarding jurisdiction of the POI:

At first, the preliminary objection of the Appellant regarding the jurisdiction of the POI needs to be addressed. In the instant appeal, the learned counsel for the appellant (LESCO) challenged the jurisdiction of the Provincial Office of Inspection to adjudicate the complaint of the Respondent (Consumer) under Section 38 of the NEPRA Act regarding dishonest abstraction of energy. The Appellant contends that in the cases of detection bills, the Electric Inspector of the Government of Punjab Lahore Region Lahore is the competent forum to deal with such cases u/s 26(6) of the Electricity Act, 1910.





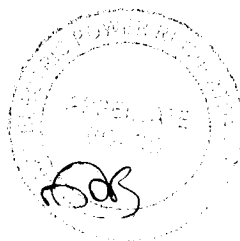
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6.2 In order to come up with an opinion on the above-said proposition of law, it is necessary to analyze the relevant laws. Section 26(6) of the Electricity Act, 1910 deals with the disputes between consumers and a licensee over electricity meters and grants power to the Electric Inspector to resolve the same. The said provision reads as under:

“(6) Where any difference or dispute arises between a licensee and a consumer as to whether any meter, maximum demand indicator or other measuring apparatus is or is not correct the matter shall be decided, upon the application of either party, by an Electric Inspector, within a period of ninety days from the date of receipt of such application, after affording the parties an opportunity of being heard, and where the meter, maximum demand indicator or other measuring apparatus has, in the opinion of an Electric Inspector, ceased to be correct, the Electric Inspector shall estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply, during such time as the meter, indicator or apparatus has not, in the opinion of the Electric Inspector, been correct; and where the Electric Inspector, fails to decide the matter of difference or dispute within the said period or where either the licensee or the consumer decline to accept the decision of the Electric Inspector, the matter shall be referred to the Provincial Government whose decision shall be final:

Provided that, before either a licensee or a consumer applies to the Electric Inspector under this subsection, he shall give to the other party not less than seven days' notice of his intention so to do.”

6.3. Section 3 (2) (a) of Punjab ((Establishment and Powers of Office of Inspection) Order, 2005 empowers the POI to deal with the complaints in respect of metering, billing, and collection of tariff and other connected matters and pass necessary orders. According to Section 10 of the above-said order:





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“An aggrieved person may file an appeal against the final order made by the Office of Inspection before the Government or if the Government by general or special order, so directs, to the advisory board constituted under section 35 of the Electricity Act, 1910, within 30 days, and the decision of the Government or the advisory board, as the case may be, shall be final in this regard.”

6.4. Section 38 of the NEPRA Act also provides a mechanism for the determination of disputes between the consumers and the distribution licensee. The said provision reads as under:

“38. Provincial offices of inspection.-(1) Each Provincial Government shall-

(a) Establish offices of inspection that shall be empowered to-

(i) Enforce compliance with distribution companies' instructions respecting metering, billing, electricity consumption charges and decision of cases of theft of energy; and

(ii) make determination in respect of disputes over metering, billing and collection of tariff and such powers may be conferred on the Electric Inspectors appointed by the Provincial Government under section 36 of the Electricity Act, 1910 (Act IX of 1910), exercisable, in addition to their duties under the said Act.

(b) Establish procedures whereby distribution companies and consumers may bring violations of the instructions in respect of metering, billing and collection of tariff and other connected matters before the office of inspection; and

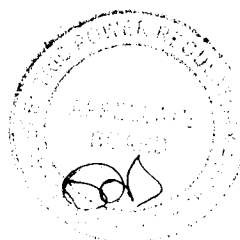
(c) Enforce penalties determined, by the Provincial Government for any such violation.

(2) The Provincial Governments may, upon request by the Authority, submit to the Authority—

(a)

(b) ...

(3) 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



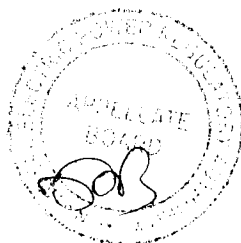


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to the Authority in the prescribed manner and the Authority shall decide such appeal within sixty days.”

6.5. Here question arises whether disputes related to Section 26(6) of the Electricity Act, 1910 can be heard and decided by the POI, and thereafter appeal lies before Advisory Board or NEPRA. Both enactments are special laws and provide a mechanism for the determination of disputes between consumers and licensees. Under section 38(1)(a)(ii) of the NEPRA Act, the Provincial Office of Inspection (POI) is empowered to make the determination in respect of disputes over metering, billing and collection of tariff and such powers are conferred on the Electric Inspectors appointed by the Provincial Government under section 36 of the Electricity Act, 1910 (IX of 1910), exercisable, in addition to their duties under the said Act. Through the Regulation of Generation, Transmission and Distribution of Electric Power (Amendment) Act, 2011 (XVIII of 2011), subsection (3) to section 38 of the NEPRA Act was inserted on 29.09.2011 whereby an appeal before NEPRA against the decision of POI regarding metering, billing, and collection of the tariff was provided. It is observed that the Provincial Office of Inspection is no different person rather Electric Inspector conferred with the powers of the Provincial Office of Inspection for deciding disputes between the consumers and the licensees over metering, billing and collection of tariffs.

6.6. Further Section 45 of the NEPRA Act enumerated the relationship of the NEPRA Act with other laws and provides that the provisions of the Act, Rules and Regulations made and licenses issued thereunder shall have the effect notwithstanding anything to the





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contrary contained and any other law. Rule and Regulation for the time being in force and any such law Rules or Regulations shall to the extent of any inconsistency, cease to have effect from the date this Act comes into force.

6.7. The honorable Lahore High Court in its reported Judgement **2018 PLD 399** decided that an appeal against the decision of the Provincial Office of Inspection (POI)/Electric Inspector lies with the Authority. Salient points of the judgment are as under:

- (i) Section 26(6) of the Electricity Act, 1910 the ambit and scope of dispute is confined only to the electricity meters/other measuring apparatuses while the scope of Section 38 of the NEPRA Act is much wider in comparison. Section 38 of the NEPRA Act empowers the Provincial Office of Inspection not only to enforce compliance with the instructions of the distribution companies regarding metering, billing, electricity consumption charges and decisions in cases of theft of energy but also requires it to make determinations in respect of disputes over metering, billing, and collection of tariff.
- (ii) The reading of the NEPRA Act quite clearly demonstrates that the dispute resolution mechanism provided in the Electricity Act, 1910 has now been replaced by the NEPRA Act, which law is later and is also much wider in its scope as it encompasses disputes over metering, billing and collection of tariff.
- (iii) Electricity being the Federal subject exclusively, any dispute in regard thereto between distribution companies and their consumers will necessarily have to





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be adjudicated upon by the Provincial Office of Inspection as per the dictate of the NEPRA Act.

(iv) Prior to the passing of the Eighteenth amendment in the Constitution, electricity was placed in the concurrent list. With the introduction of the Eighteenth Amendment through the Constitution (Eighteen Amendment) Act, 2010 the concurrent list was abolished, and electricity was placed at Entry 4 of Part II of the Fourth Schedule where after it became exclusively a Federal subject.

(v) The two enactments i.e. Electricity Act, of 1910 and the NEPRA Act continue to exist side by side providing two different appellate fora to hear appeals against the orders of the Electric Inspector and the Provincial Office of Inspection. Both enactments are special laws. In a similar situation, the honorable High Court while rendering judgment in Writ Petition No. 6940 of 2013 titled "S.M. Food Makers and others v. Sui Northern Gas Pipelines, etc" held as follows:

"It is now well settled that the general rule to be followed in case of conflict between two statutes is that the later abrogates the earlier one".

(vi) The Lahore High Court, in the above circumstances, declared that the decision rendered on a complaint filed before the Electric Inspectors shall be treated to have been given by the Provincial Office of Inspection and that the appeal against the decision of the Electric Inspector / Provincial Office of Inspection





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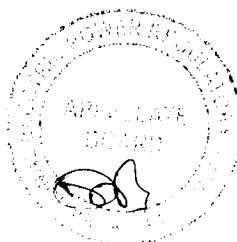
after the enactment of subsection (3) of Section 38 of the NEPRA Act shall lie before the Authority as defined in NEPRA Act.

6.8. Further, the observations of the Lahore High Court were also endorsed by the honorable Supreme Court of Pakistan vide its Judgement dated 08-03-2022 in Civil Petition 1244 of 2018 titled “LESCO, etc. v/s PTV & another” whereby it was held that a comparative reading of section 10 of the Punjab (Establishment and Powers of Office of Inspection) Order, 2005 as well as section 38(3) of the NEPRA Act makes it abundantly clear that provisions of Section 10 of the 2005 Order and Section 38(3) are clearly in conflict. In view of the fact that the Ordinance is a Federal statute and admittedly the subject of electricity falls within the Federal Legislative List, it would clearly prevail over the 2005 Order.

6.9. In view of the above-quoted provisions of laws and Judgements, we are of the considered view that the disputes under Section 26(6) of the Electricity Act and 38(1)(a)(ii) are to be adjudicated by the Provincial Office of Inspection and NEPRA is the competent forum to decide the appeals. In view of the foregoing, the objection of the Appellant is dismissed.

6.10 **Objection regarding the time limit for POI:**

As per the record, the Respondent filed his complaint before the POI on 15.05.2020 under Section 38 of the NEPRA Act. POI pronounced its decision on 26.01.2021 i.e. after 257 days of receipt of the complaint. The Appellant has objected that the POI was





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bound to decide the matter within 90 days under Section 26(6) of the Electricity Act, 1910. In this regard, it is observed that the forum of POI has been established under Section 38 of the NEPRA Act which does not put a restriction of 90 days on POI to decide complaints. Section 38 of the NEPRA Act overrides provisions of the Electricity Act, 1910. Reliance in this regard is placed on the judgments of the honorable Lahore High Court Lahore reported in *PLJ 2017 Lahore 627* and *PLJ 2017 Lahore 309*. Keeping in view the overriding effect of the NEPRA Act being later in time, and the above-referred decisions of the honorable High Court, hence the objection of the Respondent is rejected.

6.11 **Objection regarding prior notice before approaching the POI:**

As regards another objection of the Appellant for not issuing notice as per the Electricity Act, 1910 by the Respondent before filing a complaint to the POI, it is elucidated that the matter was adjudicated by the POI under Section 38 of the NEPRA Act, 1997 and as per procedure laid down in Punjab (Establishment and Powers of Office of Inspection) Order, 2005, which do not require for service of any notice before approaching the POI. The above objection of the Appellant is not valid, therefore overruled.

6.12 **Objection regarding Locus standi:**

The Appellant raised another objection in respect of *locus standi* and submitted that the registered consumer is Mr. Irfan Shaukat but the application was filed before POI





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by Mr. Anwar Sarwar Khokhar. From the record placed before us, it is revealed that Mr. Irfan Shaukat is the registered consumer of the Appellant, and the application before POI was filed by Mr. Anwar Sarwar Khokhar, who is the resident of House No.3, Street No.01, Saleem Park, Near Hussain Park, Lahore. As per the definition given in Section 2(iv) of the NEPRA Act, the Respondent should be treated as the consumer of the Appellant being the occupant of the premises. Relevant excerpt in this regard is replicated below:

(iv) "consumer" means a person or his successor-in-interest who purchases or receives electric power for consumption and not for delivery or re-sale to others, including a person who owns or occupies a premises where electric power is supplied;

In view of above, the objection of the Appellant is rejected.

6.13 Detection bill of Rs.178,472/- for the cost of 7,829 units for twelve (12) months for the period from June 2018 to May 2019

In its appeal, the Appellant has claimed that the Respondent was involved in the dishonest abstraction of electricity through tampering with the meter during the checking dated 25.06.2019. The discrepancy of tampering with the impugned meter was established during the POI joint checking dated 30.11.2020 and the checking report was signed by both parties without raising any objection. Hence only the fate of the detection bill of Rs.178,472/- for the cost of 7,829 units for twelve (12) months for the period from June 2018 to May 2019 needs to be determined. Clause 9.1(c)(3) of the CSM-2010 is relevant for charging the detection bill in case of establishing illegal





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abstraction through tampering with the meter, which is reproduced below for the sake of convenience:

"The maximum period for charging in such cases shall be restricted to three billing cycles for general supply consumers i.e. A-I & A-II. For period beyond three billing cycles up to a maximum of six months is subject to the approval of the Chief Executive of the DISCO. The CEO may delegate its powers and authorize a committee of Chief Engineer /Director level officers to allow charging of detection bills up to six months to general supply consumers after proper scrutiny so that no injustice is done. Also for such cases action will also be initiated against the officer in charge for not being vigilant enough. For other consumer classes, the period of charging can be more than three billing cycles up to a maximum of six billing cycles."

Above referred Clause of CSM-2010 allows the Appellant to charge the detection bill maximum for three billing cycles to a residential consumer in the absence of the approval of the CEO. However, in the instant case, the Appellant charged the detection bill for twelve months for the period from June 2018 to May 2019, which is violative of the ibid clause of the CSM-2010. Under these circumstances, we hold that the detection bill of Rs.178,472/- for the cost of 7,829 units for twelve (12) months for the period from June 2018 to May 2019 charged to the Respondent on the basis of connected load is contrary to the provisions of the CSM-2010, therefore the same is cancelled.

6.14 Since the tampering with the meter is established during the POI joint checking dated 30.11.2020, therefore the Respondent is liable to be charged the detection bill maximum for three months i.e. March 2019 to May 2019 and the basis of calculation of the said







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detection bill be made as per connected load = 5.182 kW (lighting load = 3.182 Kw + AC load = 2 kW) being higher as per Clause 9.1c(3) of the CSM-2010. The impugned decision is liable to be maintained to this extent.

6.15 The billing account of the Respondent may be overhauled after adjustment of the payments made against the above detection bill.

7. Foregoing in view, the appeal is dismissed.


Syed Zawar Haider
Member


Muhammad Irfan-ul-Haq
Member


Abid Hussain
Convener

Dated: 13-01-2023

