

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Before :

Mr. Justice Nadeem Akhtar**Mr. Justice Adnan-ul-Karim Memon****CP No. D- 1589 of 2013**

(Kaleemullah V/S C.E.O HESCO and others)

CP No. D- 1803 of 2015

(Sohail Khan and others V/S Chief Executive HESCO and others)

CP No. D- 2423 of 2015

(Syed Sadique Ali Masoomi V/S Federation of Pakistan and others)

CP No. D- 2834 of 2015

(Muhammad Qasim V/S Federation of Pakistan and others)

CP No. D- 847 of 2016

(Dr. Barkat Ali V/S Federation of Pakistan and others)

CP No. D- 958 of 2016

(Municipal Committee Kotri V/S Federation of Pakistan and others)

CP No. D- 1071 of 2016

(Haji Khan V/S Federation of Pakistan and others)

CP No. D- 1173 of 2016

(Muhammad Usman Siddique & others V/S Federation of Pakistan & others)

CP No. D- 1826 of 2016

(Mst. Tamsila Ansari V/S Federation of Pakistan and others)

CP No. D- 2179 of 2016

(Liaquat Ali V/S C.E.O HESCO and others)

CP No. D- 2389 of 2016

(Zahid V/S Federation of Pakistan and others)

CP No. D- 2539 of 2016

(Imran Khan V/S Federation of Pakistan and others)

CP No. D- 2656 of 2016

(Ali Nawaz Bagrani V/S Federation of Pakistan and others)

CP No. D- 2776 of 2016

(Miss Nasreen Qadri V/S Federation of Pakistan and others)

CP No. D- 2941 of 2016

(Abdullah V/S Federation of Pakistan and others)

CP No. D- 3078 of 2016

(Aftab Hussain V/S Federation of Pakistan and others)

CP No. D- 3148 of 2016

(Muhammad Hanif V/S Federation of Pakistan and others)

CP No. D- 3212 of 2016

(Imam Ali V/S Federation of Pakistan and others)

CP No. D- 3391 of 2016

(Faisal Rajar V/S Federation of Pakistan and others)

CP No. D- 3445 of 2016

(M. Fayaz Hussain V/S Federation of Pakistan and others)

CP No. D- 02 of 2017

(Pokarlal and another V/S Federation of Pakistan and others)

CP No. D- 43 of 2017

(Ali Nawaz and others V/S Federation of Pakistan and others)

CP No. D- 201 of 2017

(Yasir Iqbal V/S Chief Executive HESCO and others)

CP No. D- 291 of 2017

(Shahnawaz V/S Federation of Pakistan and others)

CP No. D- 301 of 2017

(Abdul Qayoom V/S Federation of Pakistan and others)

CP No. D- 314 of 2017

(Ahmed Khan V/S C.E.O HESCO and others)

CP No. D- 322 of 2017

(Shaikh Rahim Rux V/S Federation of Pakistan and others)

CP No. D- 370 of 2017

(Shahmeer V/S HESCO Hyderabad and others)

CP No. D- 379 of 2017

(Abdul Ghaffar Khan V/S Federation of Pakistan and others)

CP No. D- 478 of 2017

(Ghulam Murtaza Soomro V/S Federation of Pakistan and others)

CP No. D- 547 of 2017

(Mst. Razia Rizwan V/S CEO HESCO and others)

CP No. D- 639 of 2017

(Muhammad Arshad Zahid V/S Federation of Pakistan and others)

CP No. D- 733 of 2017

(Sarfraz Ahmed V/S Federation of Pakistan and others)

CP No. D- 729 of 2017

(Fakhur din V/S Province of Sindh and others)

CP No. D- 917 of 2017

(Abdul Jabbar Abid V/S Province of Sindh and others)

CP No. D- 1000 of 2017

(Syed Raza Ali Shah V/S Federation of Pakistan and others)

CP No. D- 1054 of 2017

(Abdul Hakeem Shaikh V/S Federal Ministry of Water & Power and others)

CP No. D- 1067 of 2017

(Muhammad Hassan Khaskheli V/S Federation of Pakistan and others)

CP No. D- 1084 of 2017

(Khuda Bux V/S Federation of Pakistan and others)

CP No. D- 1085 of 2017

(Khuda Bux V/S Federation of Pakistan and others)

CP No. D- 1086 of 2017

(Master Abdul Jabbar Qureshi V/S Federation of Pakistan and others)

CP No. D- 1168 of 2017

(Shoukat Ali Uner and another V/S Federation of Pakistan and others)

CP No. D- 1174 of 2017

(M/s. Nadeem Textile Mills Ltd V/S WAPDA and others)

CP No. D- 1237 of 2017

(Muhammad Ismail Narejo V/S Federation of Pakistan and others)

CP No. D- 1359 of 2017

(Sain Dino V/S Federation of Pakistan and others)

CP No. D- 1446 of 2017

(Abdul Rehman Memon V/S Federation of Pakistan and others)

CP No. D- 1344 of 2017

(Syed Mangial Shah @ Shaman Sain V/S Federation of Pakistan & others)

CP No. D- 1533 of 2017

(Ghulam Muhammad V/S Federation of Pakistan and others)

CP No. D- 1576 of 2017

(Sajjad Hussain V/S Federation of Pakistan and others)

CP No. D- 1727 of 2017

(Nadir Hassan V/S Executive Engineer HESCO and others)

CP No. D- 2071 of 2017

(Faran Waris V/S Federation of Pakistan and others)

CP No. D- 2137 of 2017

(Ali Nawaz V/S HESCO Hyderabad and others)

CP No. D- 2403 of 2017

(Parvaiz Jamal V/S Federation of Pakistan and others)

CP No. D- 2452 of 2017

(Irshad Ahmed V/S Federation of Pakistan and others)

CP No. D- 2608 of 2017

(Ghulam Hussain V/S Federation of Pakistan and others)

CP No. D- 2634 of 2017

(Muhammad Saleem V/S Federation of Pakistan and others)

CP No. D- 2835 of 2017

(Baloch Khan V/S Federation of Pakistan and others)

CP No. D- 2879 of 2017

(Noorul Amin Sipio V/S Federation of Pakistan and others)

CP No. D- 3018 of 2017

(Nafees Ahmed V/S Federation of Pakistan and others)

CP No. D- 3130 of 2017

(Faisal Mughal V/S Federation of Pakistan and others)

CP No. D- 3273 of 2017

(Muhammad Siddique V/S Federation of Pakistan and others)

CP No. D- 3341 of 2017

(Ghulam Shabeer V/S Federation of Pakistan and others)

CP No. D- 3345 of 2017

(Muhammad Nangar Khan V/S Federation of Pakistan and others)

CP No. D- 3369 of 2017

(Barkat Ali V/S Federation of Pakistan and others)

CP No. D- 3696 of 2017

(Sheikh Nabi Bux Azad V/S Federation of Pakistan and others)

CP No. D- 3742 of 2017

(Amanullah V/S Federation of Pakistan and others)

CP No. D- 3808 of 2017

(Nazeer Ahmed and others V/S Federation of Pakistan and others)

CP No. D- 129 of 2018

(Sultan Ahmed V/S Federation of Pakistan and others)

CP No. D- 163 of 2018

(Muhammad Hanif V/S CEO HESCO and others)

CP No. D- 332 of 2018

(Mir Peer Bux V/S Federation of Pakistan and others)

CP No. D- 413 of 2018

(Sajjad Ali V/S C.E.O HESCO and others)

CP No. D- 505 of 2018

(Muhammad Bux V/S Federation of Pakistan and others)

CP No. D- 736 of 2018

(Mengho V/S Federation of Pakistan and others)

CP No. D- 1066 of 2018

(Shahzeb Mughal V/S HESCO and others)

CP No. D- 1526 of 2018

(Nazar Muhammad V/S CEO HESCO and others)

CP No. D- 2094 of 2018

(Mrs. Tanweer Baloch V/S Federation of Pakistan and others)

CP No. D- 2194 of 2018

(Zafar Ali V/S Federation of Pakistan and others)

CP No. D- 2195 of 2018

(Danish V/S Federation of Pakistan and others)

CP No. D- 2334 of 2018

(Sikandar Ali V/S Federation of Pakistan and others)

CP No. D- 2366 of 2018

(Danish Kaimkhani V/S Federation of Pakistan and others)

CP No. D- 2451 of 2018

(Shahjehan Shah V/S Federation of Pakistan and others)

CP No. D- 2469 of 2018

(Dileep Kumar V/S Federation of Pakistan and others)

CP No. D- 2683 of 2018

(Hamayoon Mubarak V/S Federation of Pakistan and others)

CP No. D- 3069 of 2018

(Muhammad Yousif V/S Province of Sindh and others)

CP No. D- 3215 of 2018

(Rais Ahmed V/S Federation of Pakistan and others)

CP No. D- 3218 of 2018

(Muhammad Haneef and another V/S Federation of Pakistan and others)

CP No. D- 3221 of 2018

(Syed Akhlaq Hussain V/S Federation of Pakistan and others)

CP No. D- 3302 of 2018

(Wajahat Hassan and others V/S Federation of Pakistan and others)

CP No. D- 84 of 2019

(Imdad Ali and others V/S Federation of Pakistan and others)

CP No. D- 108 of 2019

(Asghar V/S Federation of Pakistan and others)

CP No. D- 369 of 2019

(Dr. Santosh Kumar V/S Federation of Pakistan and others)

CP No. D- 436 of 2019

(Abdul Karim V/S Federation of Pakistan and others)

CP No. D- 544 of 2019

(Nadeem and others V/S S.D.O HESCO and others)

CP No. D- 696 of 2019

(Altaf Hussain Khowaja V/S Federation of Pakistan and others)

CP No. D- 1137 of 2019

(Mashooque Ali V/S Federation of Pakistan and others)

CP No. D- 1609 of 2019

(Inam Ali V/S Federation of Pakistan and others)

CP No. D- 1683 of 2019

(Raju V/S Province of Sindh and others)

CP No. D- 1827 of 2019

(Khalid Javed and others V/S Federation of Pakistan and others)

CP No. D- 1836 of 2019

(Faraz Hussain Memon V/S Federation of Pakistan and others)

CP No. D- 1904 of 2019

(Sham Kumar V/S Federation of Pakistan and others)

CP No. D- 1929 of 2019

(Khuda Dino V/S Federation of Pakistan and others)

CP No. D- 1946 of 2019

(Riaz Hussain V/S Federation of Pakistan and others)

CP No. D- 1951 of 2019

(Mohammad Akram V/S Federation of Pakistan and others)

CP No. D- 1961 of 2019

(Haji Muhammad Roshan and others V/S Federation of Pakistan & others)

CP No. D- 2034 of 2019

(Barkat Ali V/S Federation of Pakistan and others)

CP No. D- 2043 of 2019

(Muhammad Farman V/S Federation of Pakistan and others)

CP No. D- 2078 of 2019

(Shahid Ali V/S Chairman HESCO and others)

CP No. D- 2123 of 2019

(Muhammad Aslam V/S Federation of Pakistan and others)

CP No. D- 2201 of 2019

(Zafar Ahmed and others V/S Federation of Pakistan and others)

CP No. D- 2326 of 2019

(Mir Abbas Raza Talpur V/S Federation of Pakistan and others)

CP No. D- 2360 of 2019

(Yaqboob V/S Federation of Pakistan and others)

CP No. D- 2370 of 2019

(Liaquat Ali V/S Federation of Pakistan and others)

CP No. D- 2424 of 2019

(Abdul Rehman V/S Federation of Pakistan and others)

CP No. D- 2444 of 2019

(Faisal Yousuf V/S Federation of Pakistan and others)

CP No. D- 2449 of 2019

(Ali Bawani V/S Federation of Pakistan and others)

CP No. D- 2526 of 2019

(Muhammad Waqas Tariq V/S Federation of Pakistan and others)

Dates of hearing
& decision :

04.12.2019 & 05.12.2019.

M/S. Sher Muhammad Leghari, Ashok Kumar, Karamullah Memon, Seema Khoso, Muhammad Hashim, Muhammad Haneez and Rashid Raees, advocates for petitioners

M/S. Fayaz Ahmed Leghari, Ali Abbas alias Nouman Ali for HESCO & Nasrullah Khaskheli, advocate for respondents

Mr. Allah Bachayo Soomro, Addl. A.G. along with Muhammad Ismail Siyal Assistant Electric Inspector.

ORDER

ADNAN-UL-KARIM MEMON, J. – By this common order, we propose to dispose of above referred Constitutional Petitions as they involve a common question of law, i.e. whether the Electric Inspector or the Advisory Board, constituted under Electricity Act, 1910, (**‘the Act’**) are vested with any power to determine a controversy between the licensee (person granted license under the Act by the Provincial Government to supply energy) and the consumer (person who is supplied energy by the licensee) regarding the allegation of theft of electricity or any other ancillary issue, or the civil court has the jurisdiction to entertain such disputes between the parties, or they can invoke writ jurisdiction of this Court for redressal of their grievances.

2. In all the petitions, the petitioners have mainly prayed for direction to the competent authority of the respondent-company to resolve their electricity related issues on priority basis.

3. As per pleadings of the parties, dispute had arisen between them relating to alleged theft of electricity and detection bill was issued in pursuance thereof. The detection bill was challenged by some of the petitioners before the Electric Inspector where the respondent-company raised an objection with regard to the jurisdiction of Electric Inspector on the ground that such jurisdiction vests with the competent civil court. In some cases, the decision of Electric Inspector was never challenged by the respondent-company in the appeal before the Advisory Board, which direction is still not complied with by the respondent-company. Admittedly, the petitioners are consumers of the respondent-company / licensee and the present dispute concerns electricity dues, supplementary or additional bills, detection bills, change of electricity meters, change of transformers, removal of the meter, faulty and tempered / defective meter, issuance of incorrect / excessive bills, and non-compliance of decision of Electricity Inspector.

4. Learned counsel for the petitioners argued that the respondent-company is adamant to take coercive measures against the petitioners by

disconnecting electricity connections due to non-payment of detection bills in time or purported cases of theft of electricity etc. as discussed supra. It was also contented by them that the petitioners were constrained to invoke the constitutional jurisdiction of this Court as the respondent had either failed to redress their grievance or had failed to implement the order of the Electric Inspector, or their complaint had not been decided by the Electric Inspector despite passage of considerable time.

5. We have heard learned counsel for the parties on the issue of maintainability of these petitions and in this context examined Sections 26(6) and 26-A of the Act. For the sake of facility, above Sections are reproduced as under :

" 26(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 the 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 applied to the Electric Inspector under this subsection he shall give to the other party not less than seven days' notice of this intention so to do."

" 26-A. Dishonest abstraction or consumption of energy.-- Notwithstanding anything contained in section 23, the licensee may charge the consumer on the basis of one or more of the following considerations for the amount of energy deemed to have been dishonestly abstracted, consumed or used for the period during which the meter, maximum demand indicator or other measuring apparatus had, in the opinion of the licensee, remained disconnected, injured, altered or prevented from registering the amount of energy supplied or the electrical quantity contained in the supply-

(a) consumer's connected load or maximum demand in kilo watt during any period ;

(b) consumer's maximum consumption of energy in kilo watt hours during any period ;

(c) consumer's load factor ;

(d) the power factor of consumer's load ;

(e) the hours and the time for which the energy is deemed to have been abstracted, consumed or used by the consumer ; and,

(f) the purpose for which the energy is deemed to have been abstracted, consumed or used by the consumer."

6. In support of their contention, learned counsel for the parties did not cite any law. However, we have had the privilege of seeking guidance from two reported judgments of Hon'ble Supreme Court wherein the above statutory provisions have been exhaustively discussed regarding the powers and jurisdiction of the Electric Inspector and the Advisory Board constituted under the Act. The said cases are Colony Textile Mills Ltd. Multan V/S Chief Executive, MEPCO, 2004 SCMR 1679 and Multan Electric Power Company Ltd. V/S Muhammad Ashiq, PLD 2006 SC 328.

7. Learned counsel appearing for the respondent-company viz. Hyderabad Electric Supply Company Limited (HESCO), who is a 'licensee' as defined in Section 2(h) of the Act, has raised the question of maintainability of these petitions and mainly contended that the Electric Inspector had no authority to adjudicate upon the allegation of theft and other ancillary allegations made by HESCO against the petitioners / consumers as the only remedy available to the petitioners was by way of civil suit in a Court of Law. According to them, the Act does not empower the Electric Inspector to take cognizance of any allegation by a licensee of dishonest abstraction or consumption of energy by the consumer, unlike the preceding statutory provisions ; and, since there was no metering equipment involved in the theft of energy by the petitioners, the provisions of Section 26(6) *ibid* are not attracted. We confronted them with the above mentioned reported cases wherein the Honorable Supreme Court while interpreting Sections 26(6) and Section 26-A of the Act laid down the circumstances in which the Electric Inspector could exercise his authority under the Act even in the absence of allegation of theft of electricity. In this context, the following passage at page 1687 from Colony Textile Mills Ltd. Multan (supra) is instructive :

"The difference of above statutory provisions is obvious as the jurisdiction of the Electric Inspector is confined to the disputes relating to the matters falling under section 26(6) of the Electricity Act, 1910, and the matter relating to the charges on account of dishonest obstruction of energy would not be referable to the Electric Inspector. If the matter relates to the correctness of meter, maximum demand indicator, or other measuring apparatus, the dispute for consumption of electricity is referable to the Electric Inspector and in case for dishonest obstruction and consumption of energy, the licensee under

section 26-A of the Electricity Act, 1910, may charge the consumer on the basis of considerations mentioned therein. The distinction is that in case of defect in the metering equipment or any fault caused by the consumer with the intention to prevent the meter from registering the consumption of energy, the assessment made by the licensee of the charges through detection bill can be subject to scrutiny by way of reference made to Electric Inspector by the consumer but if the metering equipment was completely bypassed and through a device energy was being supplied by dishonest obstruction of electricity and the question relating to the correctness of metering equipment or the measuring apparatus was not involved, the charge made under section 26-A is not a dispute referable to the Electric Inspector in terms of section 26(6) or any other provision of the Electric Inspector in terms of section 26(6) or any other provision of the Electricity Act, 1910. It is clear that section 26 (6) is not attracted in the cases in which the dispute related to the dishonest obstruction or consumption of energy but if the dispute between the licensee and the consumer is on account of any defect in meter, the maximum demand indicator or other measuring apparatus is or is .not correct, the matter shall necessarily be decided by the Electric Inspector on an application. moved by either the licensee or the consumer. The scope of the subsection (6) of section 26 is limited to the extent of defect in the meter or the metering apparatus which cannot be enlarged to a case of dishonest obstruction or consumption of energy for the purpose of conferring the jurisdiction to the Electric Inspector to scrutinize the demand made by the licensee under section 26-A of the Act. In the nutshell, section 26(6) is confined to the cases in which due to any technical fault or defect the meter is not in order and is not registering a energy correctly. Thus in case of complete bypass of the meter, if the consumer dishonestly obstructs and consumes the electricity through illegal device and meter equipment is not involved, the provisions of section 26(6) are not attracted and the licensee can assess the consumption under section 26-A of the Electricity Act, 1910. The jurisdiction of the Electric Inspector under section 26(6) is related to the meter or maximum demand indicator and other measuring apparatus supplied for ascertaining the energy consumed at the premises but the dispute relating to the detection bill for dishonest obstruction through illegal method, would not be adjudicable by the Electric Inspector and consumer in such cases may, if so desired invoke the jurisdiction of Civil Court." (emphasis added)

8. The above principle laid down in Colony Textile Mills Ltd. Multan (supra) was approved and followed in the subsequent case of Multan Electric Power Company Ltd. (supra). Coming back to the present petitions, it follows from the above authorities that the cases where the dispute was in relation to the meter or maximum demand indicator and other measuring apparatus supplied for ascertaining the energy consumed at the premises, the Electric Inspector had the exclusive jurisdiction under Section 26(6) of the Act ; and, in cases where the dispute relating to the detection bill for dishonest obstruction through illegal method was involved, only the competent civil court had the adjudicate the same.

9. In view of the above legal position, we are of the clear view that the petitions wherein the dispute is in relation to the detection bill for dishonest obstruction through illegal method, are not maintainable as such dispute ought to have been agitated before the competent civil court ; and, all such petitions are premature wherein the dispute relates to the meter or maximum demand indicator and other measuring apparatus supplied for ascertaining the energy consumed at the premises and such dispute is pending before the Electric Inspector and the petitioners have invoked the constitutional jurisdiction of this Court without waiting for the decision of the Electric Inspector. Moreover, all such petitions falling under the latter category wherein the petitioners have not approached the Electric Inspector at all, are also not maintainable. It may be observed that in all the cases / situations discussed above, the petitioners have either availed their remedy but have not exhausted the same, or have not at all availed the remedy provided to them by law.

10. In view of the above discussion, it is hereby held as under :

- A. Petitioners whose cases do not fall within the exception of Section 26(6) of the Act, will be at liberty to avail their remedy before the Civil Court of plenary jurisdiction in accordance with law ;
- B. Petitioners whose cases fall within the exception of Section 26(6) of the Act and yet they have not approached the Electric Inspector, will be at liberty to avail and exhaust their remedy before the Electric Inspector concerned in accordance with law ;
- C. In cases where the dispute has not be finally decided by the Electric Inspector and the matter is still pending, the Electric Inspector shall decide the dispute within ninety (90) days from the date of this order strictly in accordance with law through a speaking order and after providing opportunity of hearing to all concerned ;
- D. Any party aggrieved by the decision / order of the Electric Inspector must avail its remedy of appeal before the competent forum in accordance with law instead of directly invoking the constitutional jurisdiction of this Court ; and
- E. In cases where the decision / order of the Electric Inspector has attained finality but the same is not being implemented by the party against whom such decision / order is directed, such party shall

implement the same in letter and spirit, and if such party is the licensee, then in case of non-compliance action must be taken against its delinquent official(s) in accordance with law ;

11. In view of the above, office is specifically directed to not entertain any petition falling under any of the above categories i.e. under Sections 26(6) and 26-A of the Electricity Act, 1910. Office is further directed to communicate this order to the Chief Secretary, Government of Sindh, and also to all Electric Inspectors in the Province of Sindh for information and compliance.

12. All these petitions are disposed of in the above terms with no order as to costs.

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Karar_hussain/PS*