

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui, CJ

Mr. Justice Jawad Akbar Sarwana

C.P. No. D-3582 of 2024

Mohsin Ghayur Haider

Versus

Federation of Pakistan & others

Date of Hearing: 08.10.2024

Petitioner: Through Mr. Sohail Hameed Advocate.

Respondents No.1 to 3: Through Ms. Wajiha Mahdi, Deputy Attorney General.

Respondent No.4: Through M/s. Ayan Mustafa Memon and Hasaan Qamar Advocates.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Petitioner, being a tenant of House No.C-4,Block13, Gulistan-e-Jauhar, KDA Scheme no.36, Karachi, has filed this petition challenging the purported excess billing of electricity based on tariff rates as claimed to have been determined and approved by the respondents No.1 to 3 i.e. Federation of Pakistan, Cabinet Secretary and National Electric Power Regulatory Authority.

2. The challenge includes the recovery of sales tax under Sales Tax Act, 1990 and under section 235 of Income Tax Ordinance, 2001. Per learned counsel for petitioner such provisions are not applicable to the household consumer/petitioner and these taxes are therefore not recoverable. It is further claimed that the surcharge and additional surcharge on the petitioner's electricity bill is unreasonable, unconstitutional and irrational. It is also prayed that the terms and conditions of NAPRA are violative of NEPRA Act, 1997.

3. Although the prayers consist of prayer clauses from (i) to (x) however the petitioner has argued his case based on the purported recovery of sales tax and income tax. On this score only, we have heard learned counsel for petitioner as well as respondents and perused record.

4. As to the proposition of Section 235 of Income Tax Ordinance, 2001 wherein it is claimed that the petitioner being a domestic consumer is not entitled for the deduction of income tax, we may sum up the proposition by the application of Section 235 along with the proviso itself. This section provides that there shall be a collection of advance tax at the rates specified in Division IV of Part-IV of the First Schedule on the amount of electricity bill of a commercial or industrial or domestic consumer, and the proviso thereto save those whose names appear on the Active Taxpayers' List. The petitioner is unable to express in any form whatsoever if the petitioner's name has appeared as an Active Tax Payer hence on account of petitioner's own default such provision for any beneficial gain cannot be applied in the petitioner's case.

5. As to the recovery of sales tax, again the petitioner is unable to articulate if electricity could not be counted as goods supplied.

6. Besides the petitioner has not challenged any of the provisions, including any amendment that has been carried out through Finance Act, 2021; precisely the ibid first proviso to Section 235, which is in the way of relief as claimed by the petitioner under section 235 of Income Tax Ordinance, 2001.

7. As to the question of jurisdiction of this Court, the same was taken into consideration by a Bench of Supreme Court in the case of Peshawar Electric Supply Company v. SS Ploypropylene (Pvt.) Ltd. reported as PLD 2023 SC 316 which provides that an efficacious remedy

is available to the consumer under the Act 1997 i.e. NEPRA Act 1997. It reads as under:-

“23. ...

DID THE HIGH COURT CORRECTLY EXERCISE JURISDICTION IN THE MATTER AT HAND?

The learned ASC for the Appellant-Company has held that the Respondents had an alternate efficacious remedy available to them under the Act, 1997. In this respect, he has referred to Section 12-G(sic) of the Act, 1997 and Section 7(2)(g) of the Act, 1997 read with Rule 16(6) of the Rules, 1998. We have examined the said provisions and hold that the law clearly provides that in a situation where a dispute arises, the power to settle the same vests with NEPRA. In such a situation, the learned High Court could not have assumed jurisdiction without first examining whether the alternate remedy mentioned above had indeed been exhausted. The High Court in an emotive manner, entertained a petition in which an alternate remedy exists and was admittedly not availed. Appellate Tribunal of NEPRA consists of specialized members and must be resorted to in the first instance. A right of second appeal has also been given to the High Court concerned. It is well-settled that without availing/exhausting remedies provided by law, a party cannot directly invoke the constitutional jurisdiction of the Honourable High Court more so in highly technical matters including those relating to determination of tariff. Reliance in this respect is placed on Tariq Transport Company Lahore v. Sargodha Bhera This Service (PLD 1958 Supreme Court 437).”

8. Thus, in view of above constitutional proposition, there is nothing that has brought on record to deviate from the findings reached by Supreme Court which is a binding precedent on this Court. Neither any policy of the federal government has been challenged, that covers a challenge to the recovery of surcharge/additional surcharge, nor it could be as being not arbitrary and/or against public policy.

9. Furthermore, the petitioner has not been able to demonstrate if any of the terms and conditions of NEPRA with K. Electric as licensee was/is violative of Act 1997/rules framed thereunder for the determination of tariff rates for the electricity, as prayed in prayer

clauses (iii). The fuel adjustment charges are being worked out by NEPRA periodically based on the fuel cost internationally and its effect could only be seen in the following bills issued to the consumer and cannot be made effective then and there.

10. Above being the situation the petition merits no consideration and the same is accordingly dismissed along with pending application.

Dated:

Chief Justice

Judge