

ORDER SHEET
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT.

W.P. No.6224 of 2017.

GEPCO etc.

VERSUS

Pakistan Television
Corporation Ltd. etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signatures of Judge, and that of parties of counsel, where necessary
	06.11.2017.	Mr. Aurangzeb Mirza, Advocate for the petitioner in WP No.6224 of 2017. Mian Muhammad Javed, Advocate for the petitioner in WP No. 5035 of 2017. Mian Muhammad Mudassar Bodla, Advocate for the petitioner in WP No. 31335 of 2012. Mr. Imran Aziz Khan Deputy Attorney General for Pakistan. Mr. Umer Sharif Advocate for NEPRA. M/s Salman Mansoor & Ahmed Qayyum Advocates for the respondents.

This order shall decide the present writ petition as well as writ petition No.5035 of 2017 and writ petition No.31335 of 2012 on account of common question of law involved in all these writ petitions.

2. The critical question requiring determination is the identity of the proper appellate forum competent to hear appeal against the decision of the Electric Inspector.

3. The facts of the present case are that the petitioner challenged order dated 30.04.2012 passed by the Electric Inspector by filing an appeal before the Advisory Board constituted under section 35 of the Electricity Act, 1910. It is the case of the petitioner that the record of the appeal was misplaced in the Advisory Board. On discovery of the record, the same was returned to the petitioner advising it to file the appeal before National Electric & Power Regulatory Authority (**NEPRA**) in terms of section 38 (3) of Regulation

of Generation, Transmission and Distribution of Electric Power Act, 1997 (**NEPRA Act**). The appeal filed by the petitioner was dismissed by NEPRA by holding it to be time barred.

4. In writ petition No.5035 of 2017, the Electric Inspector passed his decision on 07.01.2012 against which appeal was filed before the Advisory Board on 02.04.2012. The petitioner was advised through letter dated 26.01.2016 to file its appeal before NEPRA under section 38(3) of the NEPRA Act as the record of its appeal was not available with Advisory Board.

5. In writ petition No.31335 of 2012, order dated 18.07.2012 passed by the Electric Inspector was challenged before the Advisory Board on 31.07.2012, which by a majority decision dismissed the said appeal and directed the petitioner to file the appeal under section 38 (3) of the NEPRA Act.

6. Learned counsel for the petitioner in writ petition No.6224 of 2017 referred to order dated 02.12.2016 passed by the Appellate Board of NEPRA through which the petitioner's appeal was dismissed. It was stated that the said appeal was dismissed on the assumption that the petitioner filed its appeal before the Advisory Board beyond the time limit of 30 days. Learned counsel stated that the time frame within which an appeal could be preferred before the Advisory Board is 90 days in terms of Rule 37 of the 1964 Rules. It was thus contended that the Appellate Board of NEPRA fell in error in dismissing the petitioner's appeal. It was furthermore stated by the counsel that the petitioner by way of abundant caution had also filed an application under section 14 of the Limitation Act, 1908 along with its appeal before NEPRA, the contents whereof were not taken into

account by the Appellate Board of NEPRA. The learned counsels in the other two writ petitions stated that the complaints were filed by the consumers before the Electric Inspector under the provisions of Electricity Act, 1910 and, therefore, the appeal against the decision could only lie before the Advisory Board. It was furthermore submitted that under the NEPRA Act, it is the Provincial Office of Inspection created by the respective Provincial Governments which adjudicates upon the disputes whereas under the Electricity Act, 1910 the Electric Inspector is the authority for adjudication of disputes. It was thus contended that where Electric Inspector exercising powers under section 26 of Electricity Act, 1910 passes the decision, the same can only be challenged before Advisory Board and not before NEPRA. The learned counsels for the respondents, on the other hand, took the position that after the promulgation of sub-section (3) of section 38 of NEPRA Act, the appeal against the decision of Electric Inspector could not be filed before the Advisory Board.

7. Arguments heard and record perused.
8. Section 26(6) of the Electricity Act, 1910 deals with the disputes between consumers and a licensee over electricity meters and grants power unto the Electric Inspector to resolve the same. The said provision reads as under:

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 and 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 sub-section, he shall give to the other party not less than seven days' notice of this intention to do so.

The appeal by any aggrieved person against the decision of the Electric Inspector can be instituted before the Advisory Board under the provisions of section 36(3) of the Electricity Act.

9. Section 38 of the NEPRA Act also provides a mechanism for determination of disputes between the consumers and the distributors. 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)
- (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 to the Authority in the prescribed manner and the Authority shall decide such appeal within sixty days.

10. The two enactments i.e. Electricity Act, 1910 and 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, this 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 by 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. In *Ajay Kumar Banerjee and Others v. Union of India and Others* AIR 1984 SC 1130, the Indian Supreme Court laid down the following two tests for ascertaining where a prior special law would yield to a later general law.

- (i) The two are inconsistent with each other
- (ii) There is some express reference in the later to the earlier enactment.

If either of these two conditions is fulfilled, the later law, even though general, would prevail.

From the text and the decisions, four tests are deducible and these are: (i) The legislature has the undoubted right to alter a law already promulgated through subsequent legislation, (ii) A special law may be altered or repealed by a later general law by an express provision, (iii) A later general law will override a prior special law if the two are so repugnant to each other that they cannot co-exist even though no express provision in that behalf is found in the general law, and (iv) It is only in the absence of a provision to the contrary and of a clear inconsistency that a special law will remain wholly unaffected by a later general law.

8. In *Ashok Marketing Limited v. Punjab National Bank* (1990) 4 SCC 406, the Indian Supreme Court after taking into account a number of judgments on the interpretation of statutes held as follows:

The principle which emerges from these decisions is that in the case of inconsistency between the provisions of two enactments, both of which can be regarded as special in nature, the conflict has to be resolved by reference to the purpose and policy underlying the two enactments and the clear intendment conveyed by the language of the relevant provisions therein.

11. The Electricity Act, 1910 created the basic framework for electric supply industry and envisaged growth of the electricity industry through private licensees. It created the

legal framework to lay down the wires and other works relating to the supply of electricity. In line with the policy of deregulating and reforming the power sector, the Government of Pakistan bifurcated the power wing of WAPDA into separate generation, transmission and distribution companies. The details of the deregulation of power sector do not form part of this judgment and are not necessary for determination of the issue involved in these writ petitions. Suffice it to state that electricity is now being distributed to the consumers by various Distribution Companies (DISCOs). Along with these developments, the Federation enacted NEPRA Act, the reading whereof shows that the main responsibilities of NEPRA are to issue licenses for generation, transmission and distribution of electric power; to establish and enforce standards to ensure quality and safety of operation and supply of electric power to consumers; and to determine tariffs for generation, transmission and distribution of electric power. It is furthermore clear from the reading of the NEPRA Act that the policy objective and purposes in relation to its promulgation were to create an independent, autonomous regulatory agency for improving the efficiency of electric power services and for protecting the interests of the investor, the operator and the consumer. DISCOs, which are now charged with the duty to supply electricity to the consumers are directly regulated by and come within the purview of NEPRA Act. NEPRA Act particularly puts in place a dispute resolution regime in regard to the disputes the consumers had with their distributors.

12. Under 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 NEPRA Act is much wider in comparison. Section 38 of the NEPRA Act empowers the Provincial Office of Inspection not only to enforce compliance of the instructions of the distribution companies regarding metering, billing, electricity consumption charges and decision of cases of theft of energy but also requires it to make determination in respect of disputes over metering, billing and collection of tariff. Not only this, section 38 furthermore commands that the Provincial Office of Inspection and its powers can be conferred on the Electric Inspector appointed by the Provincial Governments under the Electricity Act, 1910. The argument that any decision on the dispute rendered by the Electric Inspector can only be challenged before the Advisory Board in terms of the section 36 (3) of the Electricity Act, 1910 thus loses all force and is not valid.

13. The reading of the NEPRA Act quite clearly demonstrates that the dispute resolution mechanism provided in Electricity Act, 1910 has now been replaced by NEPRA Act, which law is later in time and is also much wider in its scope as it encompasses disputes over *metering, billing and collection of tariff*. Electricity now exclusively being the Federal subject, any dispute in regard thereto between distribution companies and their consumers will necessarily has to be adjudicated upon by the Provincial Office of Inspection as per the dictate of NEPRA Act. The tests laid down in the judgment rendered in *S.M. Food Makers* case with regard to the purpose and policy underlying the two special laws are clearly satisfied in the present case to hold that the dispute resolution mechanism specified in NEPRA Act displaced the one provided through section 26 of the Electricity Act, 1910.

14. In order to give effect to the mandate of sub-section (1) of section 38 of the NEPRA Act, the Government of Punjab, Irrigation and Power Department through Notification dated 19.04.2005 issued in pursuance of sub-section (1) of section 38 of the NEPRA Act promulgated the Punjab (Establishment and Powers of Office of Inspection) Order, 2005 (the **Order of 2005**). Section 3 of the Order of 2005 created the *Office of Inspection* with the powers to deal with and to pass orders on the complaints in respect of metering, billing and collection of tariff and other connected matters under the NEPRA Act. The definition of “Violation” as contained in section 2(viii) of the Order is also worth noting which stipulates that the violation means any act or omission contrary to any of the instructions of the distribution companies with respect to *metering, billing, collection of tariff and other connected matters*. These expression are identical to the ones used in Section 38(1)(a)(ii) of NEPRA Act. The Order of 2005 defined the “*Electric Inspector*” to mean any person appointed under section 36 of the Electricity Act, 1910 and conferred with the powers of Office of Inspection under section 38 (1) of the NEPRA Act. Section 4 of the Order of 2005 clinches the issue as according the said provision, the jurisdiction now vests with the Office of Inspection to entertain, hear and decide the complaints. The said provision reads as under.

Filing of Complaint.

(1) An aggrieved person, consumer or a licensee shall file separate complaints for each violation, which shall contain full name and address of the complainant, the grounds of the complaint and the name and address of the violator.

(2) The complaint shall be duly signed by the complainant or his authorized representative shall be supported by a summary of evidence giving brief facts/data and any documentary evidence alongwith such number of envelopes

bearing postal stamps as may, from time to time, be directed by the Office of Inspection and the statement of the complainant shall be verified by an affidavit.

(3) The complaint shall be lodged with the Office of Inspection during office hours along with such number of copies as the Office of Inspection may, from time to time, direct and each set of the complaint shall be complete in all respect.

(4) The contents of the complaint shall be examined by the Office of Inspection so as to satisfy itself of the conformity thereof with the procedure mentioned above.

(5) In case the complaint is not in accordance with the aforementioned procedure, the Office of Inspection, shall return the complaint to the complainant within three days of filling thereof with the direction to rectify the defect, if any and made the complaint afresh in accordance with the above mentioned procedure:

Provided that the complaint shall be returned for one time only and where it is re-filed it shall not be rejected on the ground of any defect without giving the complainant an opportunity of rectifying the defect within the time specified by the Office of Inspection.

- (6) Where the complaint is found to be in conformity with the above mentioned procedure, the filing of the complaint shall be acknowledged, stamped, entered into a register maintained for the purpose and assigned a number and date thereto.
- (7) All proceedings in respect of a complaint shall ordinarily be held at the office of Inspection or any other place as may be directed by the office of inspection. (Emphasis supplied)

The combined reading of various provisions of the Order of 2005 and particularly section 4 unambiguously brings out the fact that complaints by aggrieved person, consumer or licensee concerning disputes with regard to *metering, billing and collection of tariff and other connected matters* shall be dealt with by the *Office of Inspection* in terms of section 38 of the NEPRA Act and not by the Electric Inspector acting under section 26 of the Electricity Act, 1910. There should, therefore, remain no doubt that all the complaints in regard to disputes of *metering, billing and collection of tariff and other connected matters* are to be filed before and decided upon by the *Office of Inspection*. It is

furthermore apparent that the Electric Inspector constituted under Electricity Act, 1910 has been conferred with the powers of *Office of Inspection*.

15. Prior to the passing of the Eighteenth amendment in the Constitution, electricity was placed in the concurrent list. With the introduction of Eighteenth Amendment through Constitution (Eighteenth Amendment) Act, 2010, the concurrent list was abolished and electricity was placed at Entry 4 of Part II of the Fourth Schedule whereafter it became exclusively a Federal subject. No doubt, an appeal is provided against the final order passed by the *Office of Inspection* before the Government of Punjab in terms of section 10 of the Order of 2005. However, sub-section (3) of section 38 of the NEPRA Act was brought on the statute through Regulation of Generation, Transmission and Distribution of Electric Power (Amendment) Act, 2011, which provision stipulated that any person aggrieved by an order/decision of the Provincial Office of Inspection may within thirty days of the receipt of the order file an appeal before the Authority (NEPRA) in the prescribed manner. Suffice it to state that sub-section (3) of section 38 of the NEPRA Act being the federal law will take precedence over the Order of 2005, which is a provincial law. Consequently, the appellate forum (Government) as provided by section 10 of the Order of 2005 against the decisions of the Provincial Office of Inspection has now been replaced by the Authority (NEPRA). All the three appeals filed by the petitioners were filed before the Advisory Board in the year 2012 i.e. after the promulgation of sub-section (3) of section 38 of the NEPRA Act. It is thus clear that the petitioners approached the wrong forum (Advisory Board) against the decisions of the Electric

Inspector. Their appeals were, therefore, rightly not entertained by the Advisory Board.

16. The learned counsel for the petitioner in writ petition No.6224 of 2017 stated that an application under section 14 of the Limitation Act, 1908 was filed before the NEPRA and that its finding that the appeal before the Advisory Board was also time barred had no merit and that the Authority fell in error in rejecting the appeal. The arguments advanced by the learned counsel are not tenable. In a judgment reported as Khushi Muhammad through LRs and others v. Mst. Fazal Bibi and others PLD 2016 SC 872, a full Bench of Hon'ble Supreme Court after reviewing the entire case law on the subject held that section 14 is restricted only to the suits and cannot be resorted to for seeking condonation of delay in filing appeals before the right forum. With regard to the grounds seeking condonation of delay, it was further held in the judgment as follows:

Time spent pursuing an appeal before a wrong forum, in good faith and with due diligence ought in our view to constitute sufficient cause for condonation of delay. But the act of approaching a wrong forum must be accounted for: It should be established that due to some honest, bona fide and genuine ambiguity in the law or in fact, a party or his counsel was led astray in terms of approaching a wrong forum. Mere incompetence of the counsel, inadvertence, negligence or ignorance of law attributable to him and/or overlooking of the record by the counsel cannot constitute sufficient cause *ipso facto*, but the factors(s) which misled the legal counsel, including any ambiguity in the law, causing him to file the appeal before the wrong forum must be indicated. Mere wrong advice of counsel is not an adequate ground *per se* to constitute sufficient cause because if this rule is accepted, the centuries tested rule that ignorance of law is no excuse would stand violated. Besides, the above factors which caused ambiguity and misled the appellant (or his counsel as the case may be) have to be stated with clarity and precision in the application for condonation of delay and proved on the record. (emphasis supplied)

The perusal of the order passed by NEPRA shows that it rightly came to the conclusion on the strength of section 10 of the Order of 2005 that the appeal before the Advisory Board ought to have been filed within a period of 30 days whereas the petitioner filed the said appeal after a delay of 71 days without any explanation. The petitioner, therefore, failed to make out any case for condonation under section 14 of the Limitation Act, 1908. NEPRA thus rightly rejected the appeal filed by the petitioner.

17. In the circumstances, it is declared that after the promulgation of Order of 2005, the decision rendered on a complaint filed before the Electric Inspector 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 after the enactment of sub-section (3) of section 38 of the NEPRA Act shall lie before the Authority as defined in NEPRA Act. In the result, this writ petition and other connected writ petitions fail and are accordingly **dismissed**.

(Shams Mehmood Mirza)
Judge

Announced in open Court on **12.02.2018**.

Judge

Approved for reporting.

Judge

Shams/Javed