

2023 M L D 1255

[Lahore]

Before Jawad Hassan, J

FAISALABAD ELECTRIC SUPPLY COMPANY and 3 others---Petitioners

Versus

ADDITIONAL DISTRICT JUDGE and 2 others---Respondents

W.P. No. 70488 of 2022, heard on 15th February, 2023.

(a) Electricity Act (IX of 1910)---

----Ss. 26 & 26A---Dispute over electricity bill---Electric Inspector, jurisdiction of---Scope--- Suit for declaration and permanent injunction along with application for temporary injunction filed by the consumer in Civil Court against the Electric Supply Company---Maintainability---In light of Ss. 26 & 26A of the Electricity Act, 1910, the Electric Inspector is the competent authority to resolve the disputes if they arise between a licensee and a consumer regarding the meter, maximum demand indicator or other measuring apparatus being not correct---In such like matters the Civil Court has no jurisdiction and only the Electric Inspector has the power to take cognizance thereof---Constitutional petitions were allowed.

Water and Power Development Authority and others v. Messrs Kamal Food (Pvt.) Ltd. Okara and others PLD 2012 SC 371; GEPCO and others v. Pakistan Television Corporation Limited and others PLD 2018 Lah. 399 and Koray Khan v. Manager Operations, MEPCO and others 2020 MLD 1981 ref.

(b) Administration of justice---

----Where procedure had been provided for doing a thing in a particular manner then same should be done in that manner alone and not in any other way or it should not be done at all; otherwise it would be considered non-compliance of the legislative intent and would be deemed illegal.

Abdul Khalil Mandokhel v. Chairman, Balochistan Public Service Commission 2016 PLC (C.S.) 1184; Falak Niaz v. Amal Din 2016 YLR 2047; Sabz Ali Khan v. Inspector General of Police, KPK 2016 YLR 1279; Cantonment Board Clifton v. Sultan Ahmed Siddiqui 2016 CLC 919 and Federation of Pakistan v. Asad Javed PLD 2016 Isl. 53 ref.

Barrister Muhammad Ahmad Pansota for Petitioners.

Muhammad Salman Idrees for Respondents.

Date of hearing: 15th February, 2023.

JUDGMENT

JAWAD HASSAN, J.---Through this single judgment, I intend to dispose of this writ Petition as well as connected petition i.e. W.P. No.70375 of 2022 "Faisalabad Electric Supply Company and 3 others v. Additional District Judge and 2 others" as similar question of law and facts is involved in these cases.

2. The Petitioners through these writ Petitions under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the "Constitution") have impugned the order(s) dated 24.10.2022, separately passed by learned Additional District Judge, Faisalabad, in both cases, while setting aside the order dated 19.10.2022, passed by the trial Court, restraining the Petitioner from disconnecting electricity connection subject to deposit of 50% of the impugned bill.

3. Briefly stated, the facts of the case are that the Respondent No.2/Plaintiff/Hassan Spinning Mills Limited, instituted a suit for declaration and permanent injunction against the Petitioners. Along with the suit an Application under Order XXXIX, Rules 1 and 2, C.P.C. was also filed. Learned trial Court vide order dated 19.10.2022 turned down the request of ad-interim injunction on the ground that the amount of arrears mentioned in the initial bill issued for the month of September, 2022 has already been excluded. The Respondent No.2 being dissatisfied of the aforesaid order filed an Appeal before the learned Additional District Judge, who vide impugned order restrained the Petitioners from disconnecting the electricity supply to the Petitioner subject to payment of 50% of the amount of bill for the Month of September, 2022. Hence, this petition.

4. Learned counsel for the Petitioners Barrister Muhammad Ahmad Pansota submitted that the learned Appellate Court while granting interim relief did not consider the relevant provision of law i.e. section 54-C of the Electricity Act, 1910 (the "Act") according to which any stay against disconnection of supply of energy to the consumer may only be granted if the entire amount assessed is deposited with the Court. He added that the learned Appellate Court passed the impugned order in a hasty and arbitrary manner, therefore, the same is not sustainable in the eyes of law.

5. Conversely, learned counsel for the Respondent No.2 Mr. Muhammad Salman Idrees vehemently objected to the maintainability of this Petition and defended the impugned order by stating that the same has been passed strictly in accordance with law.

6. Heard. Record perused.

7. The Act was enforced to achieve the objective of supply and use of electrical energy to "consumer" i.e. any person who is supplied with energy by a licensee, or who is the owner or occupier of the premises which are for the time being connected for the purposes of a supply of energy with the works of a licensee. The record reveals that ad-interim injunction was refused by the learned trial Court vide order dated 19.10.2022 on the ground that the Petitioners have already excluded the amount of arrears mentioned in the initial bill issued for the month of September, 2022. Whereupon the Respondent No.2 filed an Appeal before the learned

Additional District Judge, who while remitting the case to the trial Court, granted interim relief vide the impugned order dated 24.10.2022 and restrained the Petitioners from disconnecting the electricity supply to the Petitioner subject to payment of 50% of the amount of bill for the Month of September, 2022. The question arises whether the Additional District Judge had the jurisdiction to entertain the Appeal and to exercise its powers keeping in view the Provision of section 54-C of the Act, wherein any stay against disconnection of supply of energy to the consumer may only be granted if the entire amount assessed is deposited with the Court. For ready Reference section 54-C(1) reads as follows:

54C. (a) Where a licensee gives a notice referred to in subsection (1) of section 24 or discontinuous supply of energy to a premises under the provisions of this Act, no court shall make an order prohibiting the licensee from discontinuing supply of energy to the premises, and any such order made before the commencement of the Electricity (Amendment) Ordinance, 1979, shall cease to have effect: Provided that nothing contained herein shall apply to a case in which the plaintiff, applicant or appellant, within a period of thirty days of the aforesaid date at the time of filing the suit, application or appeal, as the case may be, deposits with the court the amount assessed against him by the licensee and all further charges of the licensee as and when they become due; and in the event of his failing to do so, any order prohibiting the licensee from discontinuing the supply of energy to the premises or requiring him to restore the supply of energy to the premises if already made, shall cease to have effect.

Bare perusal of above, it is crystal clear that the case of the Respondent No.2/Plaintiff/Hassan Spinning Mills Limited purely falls within the domain of aforesaid Section, therefore, the impugned order dated 24.10.2022, passed by learned Additional District Judge, Faisalabad, is not sustainable.

8. Moreover, in the light of the section 26 and 26-A of the Act, the Electric Inspector is the competent authority to resolve the dispute if arises between a licensee and a consumer regarding meter, maximum demand indicator or other measuring apparatus is not correct, hence, the learned trial Court lacks jurisdiction. For ready reference the said Sections are reproduced as under:

"26. (1) ...

(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 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 subsection, he shall give to the other party not less than seven days' notice of this intention to do so.

26 A. 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 connected, 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 kilowatt during any period. (b) Consumer's maximum consumption of energy in kilowatt hours during any period Consumer's load factor; (c) The power factor of consumer's load; (d) The hours and the time for which the energy is deemed to have been abstracted, consumed or used by the consumer; and (e) The purpose for which the energy is deemed to have been abstracted, consumed or used by the consumer."

Reliance in this regard is placed on the judgment of the Hon'ble Supreme Court of Pakistan reported as "Water and Power Development Authority and others v. Messrs Kamal Food (Pvt.) Ltd. Okara and others" (PLD 2012 SC 371) wherein it has been observed that in such like matters the Civil Court has no jurisdiction and only the Electric Inspector had the powers to take cognizance thereof. The relevant paragraph is as under:

"8. The above principle laid down in "Colony Textile Mills Ltd. Multan" was cited with approval in the subsequent judgment of this Court "Multan Electric Power company Ltd" (ibid). It follows from the above case-law that where the allegation against the consumer of electrical power is of dishonest consumption of energy through manipulation of, or tampering with, the metering equipment or other similar apparatus, the Electric Inspector would still have the authority to entertain reference under section 26(6). In case the theft alleged is by means other than the tampering or manipulation of the metering equipment etc, the matter would fall exclusively under section 26-A of the Act, outside the scope of powers of the Electric Inspector. Since the Electric Inspector possess special expertise in examining the working of the metering equipment and other related apparatus, it makes sense that any issue regarding their working, functioning or correctness, whether or not deliberately caused, be examined by him. It may be added that Section 26-A is an enabling provision empowering the licensee to charge the consumer for dishonest extraction or consumption of electricity. It does not provide any procedure for resolving any dispute between consumer and the licensee on a charge of theft. It should, therefore, be read in conjunction with the other relevant provisions, including section 26(6) of the Act."

Further reliance is placed on the judgments of this Court reported as "GEPCO and others v. Pakistan Television Corporation Limited and others" (PLD 2018 Lahore 399) and "Koray Khan v. Manager Operations, MEPCO and others" (2020 MLD 1981).

9. It is an established principle of law that where procedure had been provided for doing a thing in a particular manner then same should be done in that manner alone and not in any other way or it should not be done at all; otherwise it would be considered non-compliance of the legislative intent and would be deemed illegal. (rel. Abdul Khaliq Mandokhel v. Chairman,

Balochistan Public Service Commission (2016 PLC (C.S.) 1184 [Quetta]), Falak Niaz v. Amal Din (2016 YLR 2047 [Peshawar]); Sabz Ali Khan v. Inspector General of Police, KPK (2016 YLR 1279 [Peshawar]); Cantonment Board Clifton v. Sultan Ahmed Siddiqui (2016 CLC 919 [Karachi]) and Federation of Pakistan v. Asad Javed (PLD 2016 Isl. 53 [Islamabad])).

10. As discussed above and in view of the judgments of the Hon'ble Supreme Court of Pakistan, referred above, the Respondent No.1/Additional District Judge has not acted in accordance with law while granting the interim relief vide the impugned order dated 24.10.2022. Hence, the same being illegal (in both the cases, separately) is set aside. The writ Petitions stand allowed accordingly.

MWA/F-8/L Petitions allowed.