

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Ijaz ul Ahsan

Human Rights Case No.20883 of 2018

[In the matter of Excessive and Unannounced Load Shedding in Sindh]

In Attendance

: Mr. Khalid Javed Khan, Attorney General for Pakistan.
Mr. Sohail Mehmood, Deputy Attorney General
Mr. Farrukh Dall, Assistant Attorney General
Umer Rasool, Secretary, Power
Tauseef Farooqi, Chairman, NEPRA
Mr. Kashif Hanif, ASC (for NEPRA)
Mr. Abid S. Zuberi, ASC
(for K-Electric) along with
Syed Moonis Abdullah Alvi, CEO, K-Electric
(via video link from Karachi)
Mr. Muhammad Munir Paracha, ASC
Syed Rifaqat Hussain Shah, AOR
(for HESCO & SEPCO)
Muhammad Yaqoob, CEO, HESCO
Zaheer Sheikh, Chief Operating Officer, HESCO
Muhammad Saleem Khan, CEO, SEPCO, Sukkur
Sattar Bux Soomro, Director, SEPCO
Mr. Arshad M. Tayebaly, ASC
Mr. Tariq Aziz, AOR
(in CMA No.76/2020)
Mr. Faisal Siddiqui, ASC
(via video link from Karachi)

Date of Hearing : 01.09.2020

ORDER

Gulzar Ahmed, CJ.— Power Division, Ministry of
Energy has filed its reply by way of H.R.M.A. No.78 of 2020. Such

reply has been examined by the Court and found to be thoroughly unacceptable and does not comply with the Court's order, pursuant to which this reply has been filed.

2. Mr. Umer Rasool, Secretary, Power has appeared before the Court and states that this reply has been filed by him. It seems that this very reply of Power Division, Ministry of Energy goes contrary to what NEPRA is doing and taking action against K-Electric and there seems to be no coordination between the Power Division and NEPRA and further with NTDC. The Ministry of Energy (Power Division) is required to ensure that there is proper coordination between all the departments and whatever is to be done with regard to K-Electric a coordinated decision should be taken by all the relevant departments, agencies and companies, and the same should be executed by one department, in that, there should be one window operation with the K-Electric. K-Electric should not be allowed to go about various departments of the Government or companies or agencies for achieving of its objectives.

3. The learned Attorney General for Pakistan has contended that since the last date of hearing regarding K-Electric matter i.e. 13.08.2020, situation in Karachi has become worse and becoming more and more worse day by day, as on the present day, almost half of the Karachi does not have supply of Electricity. Mr. Abid S. Zuberi, learned ASC states that this state of affairs is because of the rains in the city of Karachi as the infrastructure of K-Electric has submerged or inundated in the water. If that be so,

K-Electric being a private company, should apply its own resources for ensuring clearing of its sub-stations and other distribution network from the rain water and it in this regard cannot wait for any assistance from the Government, in that, the K-Electric is a private company, who has to do its own work and its basic work being supply of electricity to the city of Karachi, such work cannot be interrupted for mere reason that its installations have been affected by rain. As a private institution, it should immediately care for such installations and have it cleared immediately, so that, electricity supply is restored to its consumers. K-Electric cannot blame any institution of the Government in this regard, for that, K-Electric has to do its own work and maintain its installations and also to secure them from any whether effect.

4. The learned Attorney General for Pakistan states that he has not been able to consult the officials of the Ministry of Energy (Power Division) and that he needs time for such consultation and thereafter, shall give a proper report to the Court. At the same time, learned Attorney General has referred to provision of Section 26 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 **(the Act of 1997)**, which is as follows: -

“26. **Modifications.** If the Authority is of the opinion that it is in the public interest, it may, with the consent of the licensee, amend or vary the conditions of any licence issued (or generation granted) under this Act and in the absence of licensee’s consent, the Authority

shall conduct a public hearing on whether the proposed amendment or variance is in the public interest and shall make a determination consistent with the outcome to this hearing.”

5. The learned Attorney General has contended that the issue of electricity in Karachi is that K-Electric has exclusive right of generation and distribution of electricity in the city of Karachi and therefore, to overcome the issue of exclusivity, the above quoted provision of law has to be given effect and the determination has to be made by the Authority. As the law has provided the provision, we do not see any impediment as to why the Authority is not empowered to give effect to the said provision of law. The Authority may proceed to implement Section 26 of the Act of 1997 and make its determination. While making such determination, the Authority shall not be hampered by any Court, either by issuing of any injunctive order or issuing of any writ. The Authority, after making the determination, which it shall do within one month, will file a report before this Court.

6. Under Section 12A of the Act of 1997, the Federal Government is required to constitute an Appellate Tribunal **(the Tribunal)**. It is stated that notification of constitution of the Tribunal has already been issued but members of the Tribunal have not been appointed yet. Let such members be appointed by the Federal Government within 10 days hereof and make the Tribunal functional and provide all necessary infrastructure for its immediate working.

7. Adjourned to a date after four weeks.

CHIEF JUSTICE

Bench-I
ISLAMABAD
20.05.2020
NOT APPROVED FOR REPORTING
Rabbani/

JUDGE