Form No: HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT, LAHORE
(JUDICIAL DEPARTMENT)

Case No. Writ Petition No.67022 of 2024

M/s Five Star Steel Industry (Pvt.) Ltd., etc. **Versus** *Federation of Pakistan, through Secretary Ministry of Law & Justice, etc.*

Sr. No. of order/ Proceedings	Date of order/ Proceedings	Order with signatures of Judge, and that of parties or counsel, where necessary.

28.10.2024 Barrister Momin Malik, Advocate for petitioners.
Rana Nauman Khalid, Assistant Attorney General on Court's call.
Barrister Asad Ullah Chathha, Advocate for NEPRA (respondent No2), on watching brief.

This is a petition that has been filed by M/s Five Star Steel Industry (Pvt) Ltd. and 04 others *(petitioners herein)* under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the 'Constitution') with the following prayer: -

> "In view of the narrated facts and submissions, it is therefore, most respectfully prayed that the instant petition may kindly be accepted in the following terms:
>
> 1. The impugned decision of the respondent No.2/NEPRA Authority dated 11.07.2024 may be declared illegal, unlawful and void ab initio in violation of section 31 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997.
> 2. The increased Fixed Charges imposed in the impugned bills amounting to Rs.57,00,000/- for petitioner No.1 and Rs.18,00,000/- for petitioner No.2, for the month of September 2024 issued by the respondent No.4/LESCO may be set aside as being disproportionate, unreasonable, arbitrary and exploitative.
> 3. The during the pendency of the instant writ petition, the operation of the impugned bill for the month of September 2024 be suspended only to the extent of imposition of increased fixed charges amounting to Rs.57,00,000/- for petitioner No.1 and Rs.18,00,000/- for the petitioner No.2, Rs.34,00,000/- for the petitioner No.3, Rs.1,26,00,000/- for the petitioner No.4

and Rs.1,50,00,000/- for the petitioner No.5 and hence allow the petitioners to deposit bills for the month of September 2024, within a period of four days whereas for the differential amount payable pursuant to the impugned decision dated 11.07.2024, the petitioners be allowed to submit post-dated cheques of the d9ifferential amount of fixed charges with respondents within a period of four days.

4. During the pendency of instant writ petition, the operation of the impugned bills may very kindly be suspended and the electricity connections may not be disconnected.

Any other relief, which this Honourable Court may deem fit and appropriate may very kindly be granted."

2. Heard learned counsel for the parties and record annexed with the petition has been perused.

3. Petitioners are aggrieved by decision of National Electric Power Regulatory Authority ("NEPRA") dated 11.07.2024, in pursuance whereof fixed charges have been imposed in petitioners' electricity bills for the month of September, 2024. According to learned counsel for petitioners fixed charges have been imposed without any lawful justification and same are liable to be set-aside as being disproportionate, unreasonable and arbitrary. Learned counsel appearing on behalf of NEPRA, at the outset, raised the objection qua maintainability of instant petition by arguing that petitioners have the remedy of challenging the impugned decision by filing an appeal under section 12(G) of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (the "Act"). Learned counsel for petitioners when confronted with the objection, argued that Appellate Tribunal NEPRA (hereinafter referred to as "Tribunal") under section 12(G) of the Act is non-functional at present owing to the fact that seat of

Member Finance in the Tribunal is lying vacant. He has also referred order dated 23.08.2024 passed by this Court in Writ Petition No.50029 of 2024 whereby on the ground that Tribunal was not functional and that petitioners in view of non-functionality of the Tribunal cannot be left remediless, notice was issued by this Court to respondents besides granting interim relief. Learned counsel appearing on behalf of NEPRA vehemently controverted the above submissions by stating that the Tribunal is fully functional at the moment and that the orders in the earlier filed cases were obtained by petitioners by misleading the Court as in fact the Tribunal was also functional at the time of passing of the earlier orders. Learned Assistant Attorney General after obtaining instructions from the concerned quarters has apprised that the Tribunal is functional at the moment and cases are being entertained and heard by the Tribunal. This information conveyed by the learned Law Officer has also been got confirmed through Office of this Court. There is no cavil with the proposition that extraordinary constitutional jurisdiction under the provisions of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 is discretionary and equitable and while exercising this jurisdiction, the conduct of the party assumes vital significance and importance. He who seeks equity must come to the Court with clean hands. Where petitioners had attempted to suppress material facts, they would become disentitled to the grant of equitable and discretionary relief. Petitioners did not come to this Court with clean hands and attempted to mislead the Court by suppressing the fact qua functionality of the

Tribunal, therefore, petitioners are not entitled to get discretionary and equitable relief under Article 199 of the Constitution and this petition is liable to be dismissed on this score alone.

4. Apart, there is some force in the submissions made by learned counsel for NEPRA that petitioners, if are aggrieved by the decision of the authority, they have the remedy of filing an appeal under section 12(G) of the Act before the Tribunal established under section 11 of the Act within a period of thirty days of the decision particularly in the backdrop of fact that the Tribunal is fully functional. It is by now settled principle of law that where an alternate, equally efficacious and statutory remedy is available to an aggrieved person, he ought to have availed of that remedy instead of invoking extraordinary constitutional jurisdiction of this Court under Article 199 of the Constitution. It is correct that bar on the filing of petition under Article 199 of the Constitution without availing alternate remedy may be ignored in cases where any jurisdictional error, lack of authority is apparent or impugned action has been shown to be based on *mala fide* or in blatant disregard of law. In the instant case, however, learned counsel for petitioners failed to point out any of the eventualities hinted in the preceding line, justifying invoking of extraordinary constitutional jurisdiction of this Court. In case "*Indus Trading and Contracting Company v. Collector of Customs (Preventive) Karachi and others*" **(2016 SCMR 842)**, while dealing the moot point, it has been held that:-

> "----Ordinarily, the jurisdiction of the High Courts under Article 199 of the Constitution should not be

> invoked where alternative forum under a special law, duly empowered to decide the controversy is available and functioning. Where a special law provides legal remedy for the resolution of a dispute, the intention of the legislature in creating such remedy is that the disputes falling within the ambit of such forum be taken only before it for resolution. The very purpose of creating a special forum is that disputes should reach expeditious resolution headed by quasi judicial or judicial officers who with their specific knowledge, expertise and experience are well equipped to decide controversies relating to a particular subject in a shortest possible time. Therefore, in spite of such remedy being made available under the law, resorting to the provisions of Article 199(1) of the Constitution, as a matter of course, would not only demonstrate mistrust on the functioning of the special forum but it is painful to know that High Courts have been over-burdened with a very large number of such cases. This in turn results in delays in the resolution of the dispute as a large number of cases get decided after several years. These cases ought to be taken to forum provided under the Special law instead of the High Courts. Such bypass of the proper forum is contrary to the intention of the provisions of Article 199(1) of the Constitution which confers jurisdiction on the High Court only and only when there is no adequate remedy available under any law. Where adequate forum is fully functional, the High Courts must depredate such tendency at the very initial stage and relegate the parties to seek remedy before the special forum created under the special law to which the controversy relates".

In case *Mian Azam Waheed and 2 others v. The Collector of Customs through Additional Collector of Customs, Karachi* **(2023 SCMR 1247)**, it was observed by the Supreme Court that writ jurisdiction of the High Court cannot be exploited as the sole solution or remedy for ventilating all miseries, distresses and plights regardless of having equally efficacious, alternate and adequate remedy provided under the law which cannot be bypassed to attract the writ jurisdiction. In the instant case, petitioners do have the efficacious, adequate and statutory remedy available to them to raise their grievance before the Tribunal,

therefore, instant petition is also held to be not maintainable.

5. The upshot of above discussion is that petition in hand is simply misconceived, therefore, the same is dismissed *in limine*.

(Shakil Ahmad)
Judge

Approved for reporting:

Judge

Azhar*