

Form No:HCJD/C-121

ORDER SHEET

**IN THE LAHORE HIGH COURT, RAWALPINDI BENCH
JUDICIAL DEPARTMENT**

Case No: W.P.No.2278/2022

M/s Bahria Town Pvt. Ltd. **Versus** Federation of Pakistan etc.

| S.No. of order/ Proceeding | Date of order/ Proceeding | Order with signature of Judge, and that of Parties or counsel, where necessary. |
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29.08.2022 M/s Syed Tassadaq Murtaza Naqvi and Syed Tassadaq Mustafa Naqvi, Advocates alongwith Mr. Muhammad Adnan Awan, Advocate for the Petitioner.
Mr. Muhammad Sajid Khan Tanoli, Deputy Attorney General alongwith Mr. Aqeel Akhtar Raja, Assistant Attorney General (on Court call).

The Petitioner has filed this writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the "Constitution") against the impugned Fuel Price Adjustment (the "FPA") levied by the Respondent/Electric Supply Company in the bills issued to it for the month of August, 2022.

2. Syed Tassadaq Mustafa Naqvi, Advocate submits that the impugned FPA goes against the format/assessment scheme/mechanism given in Chapter 6 of the Consumer Service Manual issued by the National Electric Power Regulatory Authority (the "NEPRA") and has been charged illegally and unlawfully because it is also contrary to the notifications issued by the NEPRA from time to time, specifically notification dated 01.01.2019.

3. When confronted how writ is maintainable in light of the rationale already rendered by this Court in the judgments reported as *Pakistan Flour Mills Association (Punjab Branch) through Vice Chairman versus Water and Power Development Authority (WAPDA) and others* (PLD 2013 Lahore 182), *Flying Cement Co. Ltd. and others versus Government of Pakistan through Secretary, Ministry of Water and Power and others* (PLD 2015 Lahore 146), *Ghani Global Glass Ltd. versus Federation of Pakistan through Secretary Energy (Power Division), Islamabad and others* (PLD 2020 Lahore 167) as well as the judgments of other superior Courts of the country passed in the cases of *LESCO and 501 others versus North Star Textile Mills and others* (2014 CLC 28 Islamabad) and *Messrs Bolan Steel Industries (Pvt) Ltd through Director and others versus Water and Power Development Authority (WAPDA) through Chairman and others* (PLD 2014 Balochistan 173), wherein the Courts have held that the Fuel Adjustment Charges are not additional charges only but are based upon Fuel Consumption cost, which can be adjusted every month by increasing or by decreasing on the basis of actual cost of fuel consumption, Syed Tassadaq Mustafa Naqvi, Advocate submits that on the issue in hand this Court has already entertained a number of other writ petitions and also granted interim relief in those petitions on the grounds that such charges have been imposed with retrospective effect and subsequently, by incorporating a proviso to Section 31(4) of the

Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (the “Act”) and also in violation of the Doctrine of Vested Right and Past & Closed Transaction.

4. Learned Law Officer has objected to the maintainability of this petition by stating that the impugned FPA has rightly been imposed by the Respondents as per law. However, he seeks time to obtain fresh instructions from the relevant quarters/department.

5. At this juncture, Syed Tassadaq Mustafa Naqvi, Advocate has strengthened the Petitioner’s case by relying on the constitutional provisions contained in Article 3 (right to elimination of exploitation), Article 18 (right to business and trade) and while arguing that right to electricity is the basic fundamental right of the Petitioner as expanded by the Hon’ble Supreme Court of Pakistan in the judgment reported as *Naimatullah Khan Advocate and others versus Federation of Pakistan and others* (2020 SCMR 622) holding that “*right to life was not restricted only to the prosecution of a person but the State was required to ensure that all aspects of citizens’ life were protected and dealt with by the State*”, prays for grant of interim relief as already issued by this Court in a number of writ petitions, including W.P.No.47840/2022, vide order dated 05.08.2022.

6. Pertinent to mention here that before issuing any notice to the Respondents, this Court has to be satisfied whether the NEPRA has authority to impose the impugned FPA because though it has powers under Section 7 of the Act to determine the

tariff rate charges but subject to following the procedure provided under Section 31 of the Act while in this case, according to learned counsel for the Petitioner, the said procedure has not been followed, which is against the provisions of Article 10-A of the Constitution, granting right of fair trial and due process to every citizen of this country.

7. Notice be issued to the Respondents for 15.09.2022. Learned Law Officer shall seek instructions from the relevant quarter(s) and also ensure submission of report/parawise comments by the answering Respondents on or before the next date of hearing.

C.M. No.01/2022

8. Dispensation sought for is allowed subject to all just and legal exceptions. C.M. stands **disposed of.**

C.M.No.02/2022

9. Notice for the aforesaid date. Since learned Law Officer has been heard as per requirement of Article 199(4) of the Constitution in light of the recent judgment passed by the Hon'ble Supreme Court of Pakistan in the case of Federation of Pakistan through Secretary, Ministry of Energy (Power Division), Islamabad and others versus Shafiq ul Hassan and others (2020 SCMR 2119) and interim relief has already been granted in the aforesaid (identical) writ petition, therefore, following the rule of consistency, it is directed that the Petitioner shall pay the outstanding amount of electricity bill(s) for the month of August, 2022 within due date except the FPA mentioned therein,

for which, the Respondent(s) concerned shall issue revised bill(s) within next two working days.

Copy "**dasti**" on payment of usual charges.

(JAWAD HASSAN)
JUDGE

*Mājīd