

## **Scenario 112**

### **SC's JUDGMENT IN RPPs CASE:**

**NOTE:** Before going through these deliberations, kindly see the following figures to dispel away a general perception that '***Pakistan has no power supply***'. It was not the whole truth nor is it now.

### **STATISTICS & CAUSE OF ACTION:**

As per statistics available from the Federal Ministry of Water & Power, Pakistan gets electricity from three main sources; Hydral, Thermal (Gas or Furnace Oil or Steam) and Nuclear. Four major power producers in Pakistan are Water & Power Development Authority (WAPDA), Karachi Electric Supply Company (KESC), Independent Power Producers (IPPs) and Pakistan Atomic Energy Commission (PAEC). When the PPP took over the reigns of the country in 2008, they inherited the following installed capacity of power generation; mostly in working order. The details were:

#### **WAPDA HYDAL:**

Terbela 3478 MW; Mangla 1000 MW; Ghazi-Brotha 1450 MW; Warsak 243 MW; Chashma 184 MW; Dargai 20 MW; Rasul 22 MW; Shadi-Waal 18 MW; NandiPur 14 MW; Kurram Garhi 4 MW; Renala 1 MW; Chitral 1 MW; Jagran (AK) 30 MW: **Total Hydal = 6461 MW.**

#### **WAPDA THERMAL:**

Gas Turbine Power Station Shadra 59 MW; Steam Power Station Faisalabad 132 MW; Gas Turbine Power Station Faisalabad 244 MW; Gas Power Station Multan 195 MW; Thermal Power Station Muzaffargarh 1350 MW; Thermal Power Station Guddu 1655 MW; Gas Turbine Power Station Kotri 174 MW; Thermal Power Station Jamshoro 850 MW; Thermal Power Station Larkana 150 MW; Thermal Power Station Quetta 35 MW; Gas Turbine Power Station Panjgur 39 MW; Thermal Power Station Pasni 17 MW: **Total Thermal = 4811 MW**

**WAPDA's Total Hydal + Thermal capacity was = 11272 MW**

**Karachi Electric Supply Company (KESC):**

Thermal Power Station Korengi 316 MW; Gas Turbine Power Station Korengi 80 MW; Gas Turbine Power Station SITE 100 MW; Thermal Power Station Bin Qasim 1260 MW: **Total (KESC) = 1756 MW**

**Independent Power Producers (IPPs):**

Hub Power Project 1292 MW; AES Lalpir Ltd Mahmood Kot MuzaffarGarh 362 MW; AES Pak Gen Mahmood Kot MuzaffarGarh 365 MW; Altern Energy Ltd Attock 29 MW; Fauji KabirWala Power Company Khanewal 157 MW; Gul Ahmad Energy Ltd Korengi 136 MW; Habibullah Coastal Power Ltd 140 MW; Japan Power Generation Lahore 120 MW; Koh e Noor Energy Ltd Lahore 131 MW; Liberty Power Limited Ghotki 232 MW; Rousch Power Khanewal 412 MW; Saba Power Company Sheikhpura 114 MW; Southern Electric Power Company Ltd Raiwind 135 MW; Tapal Energy Limited Karachi 126 MW; Uch Power Ltd Dera Murad Jamali 586 MW; Attock Gen Ltd Morgah Rawalpindi 165 MW; Atlas Power Sheikhpura 225 MW; Kot Addu Power Co Ltd 1638 MW: **Total (IPPs) = 6365 MW**

**Pakistan Atomic Energy Commission (PAEC):**

KANUPP 137 MW; CHASNUPP-1 325 MW; **Total (Nuclear) = 462 MW**

Electricity generated through hydal means has been the sole domain of WAPDA and the production varied between minimum of 2414 MW and maximum of 6761 MW depending upon the river flow, rains on the mountains and quantity of water released from dams during the four seasons.

Total Power Generation Capacity of Pakistan (including all sources) was 19855 MW and the electricity demand in mid 2010 was only 14500 MW. The problem cropped up because the PEPCO was generating about 10000 MW only due to political gimmicks allegedly causing determined loss to Punjab through its industrial shut down because of the PML(N) government saddled there.

Obviously up to 20 hrs power shutdowns in the country, especially in industrial hubs like Faisalabad were not because of the lack of generation capacity but either because of IMF / World Bank policies imposed by Government or due to lust & ill intentions of power players. The Power Generation companies were not buying Furnace Oil from PSO saying they

don't have money for it but the government was paying for Electricity that was generated by the RPPs from the same Furnace Oil. Pakistan's refineries like PRL continued operating at 40% capacities; allegedly, IMF / World Bank / US had imposed conditions on Pakistan to reduce budget deficit by importing less crude oil [*verification remained in question*].

Faisal Saleh Hayat, the then Federal Minister for Housing & Works, through a widely publicised press statement in early September 2009, had urged the Supreme Court to take action in respect of Rental Power Projects (RPPs) which, according to him, was just another name of corruption. He had raised the issue of corruption in the award of RPPs before every forum, including the National Assembly, but his voice was not attended to. The people involved in this massive scam of US\$5 billion could have been questioned – but none bothered.

Syed Faisal S Hayat then moved the Supreme Court of Pakistan through a detailed application **on 26<sup>th</sup> September 2009**, wherein reiterating the allegations of corruption, he relied upon certain documents of the PEPCO, WAPDA and Ministry of Water & Power to prove his assertions. In par-wise comments of the respondents, all stakeholders denied the allegations of corruption quoting reliance over the approval No: ECC 135/9/2006 dated 16<sup>th</sup> August 2006; a decision of the Cabinet meeting.

When the petition was pending for hearing, another MNA Khwaja Asif belonging to PML(N), vide CMA No.3100 / 2010, joined the proceedings w.e.f. 21<sup>st</sup> October 2010.

### **WHY RENTAL POWER PROJECTS (RPPs):**

In Pakistan, during the last decade zero MW of electricity had been added to the national grid. The new housing schemes, expanding industrial production and other electricity needs kept on rising over the years and as a result the short fall increased to 7500 MW till 2006 which lead to an excuse for the government to indulge in the RPP plans brewing benefits for their own.

[Later, for the 19 RPPs, the Auditor General of Pakistan [AGP] noted in its **Annual Audit report for the fiscal year ending 30<sup>th</sup> June 2011**, that the government had paid Rs:16.6 billion to RPPs in advance payments and had created a liability of \$1.7 billion for itself through the contracts. Thus the AGP recommended cancelling the contracts of RPPs by saying:

*'The RPPs had failed to achieve their commercial operation date [the contracts obligated date by which the RPPs were required to*

*begin supplying power to the grid]; four contracts were never signed and six were dropped due to violations of contracts by power companies. Eight contracts are currently active but have yet to achieve commercial operation status.*

*... Who in the government was responsible for awarding rental power contracts without screening the capabilities and track records of companies bidding for the projects? Many power projects have installed old equipment that has a very low efficiency rate when it comes to power production. No feasibility study was carried out and the policy was adopted in haste. ]*

An earlier press statement should also be kept in sight where [referring to the '**Express News' dated 19<sup>th</sup> March 2010**] Iranian Ambassador in Islamabad Mashallah Shakree had astonishingly told the media that:

***'Iran is offering 2200 MW power to Pakistan on much cheaper price. We can double the quantity if Pakistan wants it. We can negotiate the payment schedule also as we have that power as surplus. We are already supplying power to Turkey and Armenia successfully. Why Pakistan is after rental powers, the most expensive item in the world market.'***

There was nobody to tell him that though Pakistan's economy was crippled by power shut downs, but our most corrupt political elite, ministers and bureaucracy wanted their shares and commissions, nothing else.

***On 22<sup>nd</sup> June 2010***, the issue of corruption in RPPs sparked a heated debate between Minister for Water and Power Raja Pervaiz Ashraf and Makhdoom Faisal Saleh Hayat in the National Assembly, both of them sticking to their stance and challenging each other. The matter went so fiery that even the speaker had to expunge certain remarks of Raja P Ashraf against Mr Hayat. The debate was based on purchase of flats worth four million Pounds in London by Raja Pervaiz Ashraf but the minister said in the National Assembly: *'I swear to God that I and my family do not own a single penny property in any foreign state.'*

During SC proceedings in this case of corruption over the RPPs, much panic was seen in the government quarters. The CJP Iftikhar M Chaudhry sought details of how much electricity the rental power plants were supposed to provide, how much they were producing and what the government had paid them so far. PML(Q)'s Faisal Saleh Hayat accused the government of running the rental power projects for the sole purpose of money making urging that the **Asian Development Bank (ADB) had also pointed out corruption in the scheme.**

In fact the Asian Bank's report was a charge sheet against the Federal Minister Raja Pervaiz Ashraf. The CJP enquired as to why no action was taken if the ADB report had made them responsible for loss. The SC constituted a one-man commission to investigate the corruption charges and state negligence in RPPs and nominated Justice (retd) Rehmat Hussain Jaffri as commission.

**On 2<sup>nd</sup> October 2011**, just days before the final hearing date [*of 15<sup>th</sup> December 2011*], a fresh summary was drafted to be placed before the federal cabinet, seeking replacement of the earlier 7-14 per cent advance payment with Fuel Payment Letter of Credit (FPLC) or with fortnightly advance payments for fuel purchases. The said summary was to accommodate **70MW Kamoki Energy** and **65MW Sialkot Energy** RPPs which were being paid Rs:1.493 billion before production of their single unit. The two projects were among the six RPPs which the Asian Development Bank (ADB) had said should be reviewed before any further action on them. The Federal Ministry of Water and Power [MoW&P] subsequently reviewed the contracts of the six firms and cleared four of them.

See some more gimmicks. Referring to the **'Dunya News' dated 30<sup>th</sup> June 2011:**

***'Karkey [of Turkey] Rental Power Project has become a white elephant as govt has to pay \$ 9million every month. According to the Central Power Purchase Agency (CPPA), we have to pay Rs:41 per unit and in case of non-operation; the government still has to pay Rs:26 per unit. It has capacity to generate 231 MW while only 10 MWs are generated at present. The CPPA maintains that no bank is ready to assist open LC for the afore-said power plant.'***

The other **201MW Reshma Power Plant** was the second most expensive plant (costing 4.97 Cent per unit) after Karachi's ship - mounted Karkey of Turkey (5.98 cents per unit), excluding oil price. The contractual terms between Pepco and the Reshma Power clearly provided all the four options in the contract; slapping liquidated damages (LDs), reducing term of rental contract by a year, re-negotiating the tariff and even cancelling the entire contract. The plant had to be online by the end of 2009 but it was not fully operational till June 2011 at least. According to the contract, Pepco was bound to take charge of the situation; people wondered how and why.

The haste with which the Power Minister Raja Parvaiz Ashraf went to inaugurate Reshma 201MW plant could be gauged from the fact that it had only one machine [out of four (50MW each)] and that too on a test run.

The plant, like the afore-mentioned 'Karkey', had not achieved even 10 per cent of generation capacity till then. Reshma Power came out of the bidding in late 2008 and the PPIB approved it on 9<sup>th</sup> April 2009. The MoW&P had directed Pepco to change the terms and double (14 per cent) the advance payment — amounting to \$55.26 million (Rs:4.576bn) — and it was done accordingly.

Whereas the agreement signed in September 2009 contained:

*"In case the seller (RPP) fails to complete the project within cure (stipulated) period of 30 days after the targeted COD and thereafter, the seller will be charged at the rate of \$191 per day per megawatt up to a maximum amount equivalent to \$17,190 per megawatt for a delay of up to three months after cure period.*

*Such amount will be charged from first rental payment of the monthly rental service fee. If achievement of commercial operations date (COD) is further delayed due to the seller, the buyer shall have the right to re-negotiate the contract."*

However, instead of renegotiating the project which had failed to achieve COD for nearly a year, and till much after, the ministry and Pepco landed in an "accommodating mode" on the pretext that '*rental plants got delayed for third party audit by the Asian Development Bank, that were beyond their control. Reshma Power is no exception.*'

Some sane voices in the PPP had told the PM in writing that the contracts of the said RPPs should be abolished at once which had pushed the four years of the PPP rule in vain. Referring to the '**Dawn**' of **21<sup>st</sup> November 2011**, four leaders of the PPP told PM Gilani through a written letter calling for scrapping of the government's rental power policy and urged him to take action against former minister Raja Pervaiz Ashraf and other persons whose conduct was being scrutinised by the Supreme Court. The letter signed by Haider Ali Khan, member of PPP Punjab Council and son of former PPP information minister Khalid Kharal, Chaudhry Khizar Abbas, Rao Iqbal Ahmed Khan and Rana Iftikhar Khan said:

*'We as candidates of Pakistan People's Party urge you to abolish the rental power policy, cancel all corruption - infested agreements with rental companies and take strong action against Raja Pervaiz Ashraf and all secretaries and Pepco officials who have played havoc with the party and the people of Pakistan. We suggest the prime minister to take action against irregularities in rental power schemes otherwise it will be taken by the Supreme Court and the credit will go to them.*

*We believe that a few people in the government are working for their own interests, instead of the party, and they must be thrown out. There is strong resentment among party leaders and workers over some controversial decisions taken by the government.'*

The SC on various occasions had pointed out that the rental power policy was a failed policy of Gen Musharraf and the PPP which came into power as per the aspirations of the millions of Pakistanis had no reason to continue with such a failed policy. At that moment the people were forced to buy electricity at an exorbitant rate of Rs:52 per unit from one such rental power plant. The party workers asked the high-ups that why the whole party and country should suffer because of the greed and lust for money of a few individuals. The four PPP leaders particularly questioned the wisdom behind the continuation of such policies which were started during the rule of Gen Musharraf.

### **SUPREME COURT'S VERDICT:**

**On 30<sup>th</sup> March 2012**, announcing the verdict of the rental power plant case, a two-member bench of the Supreme Court (SC) headed by Chief Justice Iftikhar M Chaudhry said that all the rental power projects should be dissolved. The hearing of the case was completed in ending 2011 and **on 14<sup>th</sup> December 2011, the judgment was written but reserved.** Declaring all rental power project contracts 'illegal', the CJP said legal proceedings should be carried out against all those involved in the corruption; adding:

*'Pakistan Electric Power Company (Pepco), Water and Power Development Authority (Wapda), National Electric Power Regulatory Authority (Nepra) and the federal government are [collectively] responsible for the corruption of billions of rupees'.*

The petitioners, former Federal Minister for Housing and Works Faisal Saleh Hayat and MNA Khwaja Asif appeared in person while the government departments, sponsors and owners of the rental power plants were represented by their counsels. 90-pages judgment was authored by the CJP Iftikhar M Chaudhry himself.

The SC observed that the policy of the rental power projects was not defined on a transparent basis; rather than overcoming circular debt, the authorities endorsed more contracts. It was ordered by name that legal proceedings should be carried out against the former Federal Minister for Water & Power Raja Pervaiz Ashraf and the then Federal Secretary re-

responsible for releasing finances; also noted that the mark-up should be paid in addition to the retrieval of money. The judgment said:

*'The government of the day, under Article 29 read with Article 2A of the constitution, is bound to formulate policies for the promotion of social and economic well being of the people, which includes provision of facilities to citizens for work and adequate livelihood with a reasonable rest and leisure, etc.*

*Government / Executive, being the custodian of the national resources on behalf of the nation, is bound to preserve and protect the same by strictly adhering to the relevant laws, conventions, experiences and have no authority to compromise with the resources, which fall within the definition of property in terms of constitutional provisions, belonging to general masses falling within the ambit of Article 24 of the Constitution.*

*In the cases of Bank of Punjab vs Haris Steel Industries AND Liaqat Hussain vs The Federation of Pakistan... Article 9 has been interpreted and its scope has been enlarged to each and every aspect of human life. Therefore, whenever a policy is framed with reference to uplifting the socio - economic conditions of the citizens, object should be to ensure enforcement of their fundamental rights.'*

The apex court pointed out that in 2006, when the then military government had decided to adopt the phenomenon of rental power project, no feasibility study [based on the input of the experts on the subject to determine whether or not the implementation of the project was advisable] was carried out which was crucial. The feasibility study, based on the extensive research to ascertain that what would be the impact of such a project in terms of costs of the project, its results, future prospects, operational implications, advantages and disadvantages, should have been there first and then to proceed further.

Further that NEPRA did not play its due role in the process of RPPs; firstly for the reason, that bids were invited on the basis of reference tariff of the fuel; secondly, the NEPRA was directed to follow the guidelines already issued in respect of IPPs, but NEPRA failed miserably to perform its due functions.

*[The ECC of Gen Musharraf's era had approved a plan to introduce rental power into the national electricity grid during a meeting on **12<sup>th</sup> August 2006**, and approved two unsolicited projects: the 136MW plant at Bhiki and a 150MW plant at Sharqpur in Sheikhpura district of Punjab.*



*The shrewd state actors on **15<sup>th</sup> February 2008** decided to allow the Pakistan Electric Power Company (Pepco) to install rental power plants with higher capacities of between 800MW and 1,200MW; blindly following the footprints of corruption.*

*The PPP government continued the policy and awarded contracts for even bigger rental power projects at an ECC meeting on **10<sup>th</sup> September 2008**, making commitment to buy rental power upto 2,700MW depending on similar concocted documents.*

***The PPP government paid Rs:16.6 billion in advance and created a liability of \$1.7 billion which was payable as rental charges to the RPPs on delivery of energy; till the SC's verdict of 12<sup>th</sup> March 2012, only 120MW was produced as against 2700 MW contracts.]***

Supreme Court of Pakistan had announced the reserved judgment in Human Rights Case No. 7734-G / 2009 & 1003-G / 2010 (Alleged Corruption in Rental Power Plants) and other connected Human Rights Case No. 56712 / 2010 (Fraud in payment of RPPs detected by NEPRA).

The main crux of the judgment is as under:-

*'..... The binding force of the Constitution commands them [the executive – PPP government] to ensure well being and prosperity of Pakistan, so whenever they feel threat to the well being of the people for any reason, they [the apex judiciary] are bound to preserve the same.'*

### **HOW CORRUPTION ESCALATED:**

In 1994 [during Benazir Bhutto's 2<sup>nd</sup> spill of government], the Private Power and Infrastructure Board (PPIB) was created as "One Window Facilitator", *interalia*, with a view to promote private sector participation in the power sector of Pakistan and to facilitate investors in establishing private power projects and related infrastructure, execute implementation agreements with project sponsors and issue sovereign guarantees on behalf of Government of Pakistan. **On 16<sup>th</sup> December 1997**, the Regulation of Generation, Transmission and Distribution of Power Act, 1997 (hereinafter referred to as the "the Act, 1997") was promulgated by the then PML(N) government.

In 1998, Pakistan Electric Power Company (PEPCO) was incorporated under the Companies Ordinance 1984 with a view to improve the efficiency of the power sector, to meet customers' electric energy requirements on a sustainable and environmental friendly basis, to stop load shedding, to

construct new grid stations, to reduce line losses, to minimize tripping and theft control, to revamp generation units and to improve customer services, and develop an integrated automated power planning system for generation, transmission and distribution to ensure system stability, fault isolation and upgrade relying, metering and tripping system at the level of National Transmission and Distribution Company (NTDC) as well as Distribution Companies [DISCOs].

During the initial years of the PPP regime [2009-10], the amounts paid to sponsors by way of  $7\% + 7\% = 14\%$  became another alarming issue. Since there were lot of complaints of corruption in awarding contracts of RPPs, against all concerned individually and collectively, therefore, Ministry of Finance went for 3rd Party Evaluation / Audit and to achieve the object, ADB was appointed to do the needful. The ADB report revealed that enhancement of down payment from 7% to 14% should not have allowed without inviting fresh biddings and changing the terms of the contract with a view to ensuring fair competition amongst the bidders.

The petitioners were agitating that there were illegalities committed by Government in making payment of 14% advance to the bidders, particularly, when there was no commitment / agreement at the time of notifying the bids. After much discussion, the said ADB report was accepted and in pursuance thereof, 9 RPPs were allowed to continue and that 14% advance amount paid to the bidders on the basis of reference value went into billions of rupees.

The petitioners contended that a meagre amount of electricity was being generated through the RPPs, although billions of rupees were spent on those projects. Admittedly; after spending billions of rupees in the shape of 7% to 14% down payment; plus exemption from payment of customs duty [@6%]; plus withholding tax, against average cost of Rs:24 per unit kWh, **only 120 MW electricity was being generated** by the RPPs.

Moreover, the power cost was very high and was not in accordance with the provisions of section 7 of the Act, 1997 whereby NEPRA was required to protect the interests of the consumers. Further, **this cost was not final; it was subject to fuel cost component and other charges** of overhead transmission payable to NTDC.

Therefore, RPPs' were proved a total failure and incapable of filling the gap in the demand and supply on a short term basis. The SC was right to point out that peculiar mode of massive corruption under the garb of technicalities; see the details:

- Bhikki RPP was paid Rs:8,698.46 million against supply of only 811.605 mkWh electricity.

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- Sharaqpur RPP was paid Rs:13,941.82 million against generation of 1520.420 mkWh electricity.
- Out of nine RPPs set up after 2008 to whom advance payments were made, six RPPs, namely, Techno Sahuwal, Guddu, Reshma, Young Gen, Naudero-II and Techno Samundri had returned the advance payments in pursuance of orders passed by the SC from time to time.
- Advance payments made to Karkey, Gulf and Naudero-I were not returned till SC's decision at least.
- Karkey was generating 48.33 MW against capacity of 231 MW; Naudero-I was generating 9.16 MW against capacity of 51 MW whereas, Gulf was generating 50.08 MW against its capacity of 62 MW; as per their contractual generation pledge.
- Pakistan Power Resources (Piranghaib Power near Multan) did not generate electricity at all although down payment of US\$14.58 million was made to it, which had not been returned.
- Though Reshma Project returned the down payment, according to learned counsel, yet it was still functioning and generating 15 MW only against pledged capacity of 201.3 MW.
- Per unit cost of electricity produced by the RPPs remained on very high side, e.g., Karkey was ranging from Rs:35 to Rs:50; Gulf from Rs:18 to Rs:19 and Naudero-I from Rs:12 to Rs:19 whereas as per decision of the ECC dated 10<sup>th</sup> September 2008, efforts were to be made that the tariff of the RPPs should be lower than that of the IPPs based on similar technology for their first 10 years. Thus, in this manner, the decisions of the ECC were also violated blatantly.
- While awarding contracts to RPPs, particularly Gulf, Karkey, Reshma, Naudero-I, Naudero-II, Bhikki and Sharaqpur; grave illegalities and irregularities were committed, and procedural lapses and deviations were made from mandatory legal requirements and the same were entered in a non-transparent manner.

Immediately after Supreme Court's order dated **18<sup>th</sup> November 2012**, the sponsors of Reshma Rental Power Plant reimbursed Rs:4.5billion mobilisation advance it received for generating electricity under Rental Power agreement. However, the payment was not made in dollars nor did it include the two-year mark-up, in violation of the court's directive. Mockery was that Reshma Power Plant had earned interest for two years on the mobilisation advance while it had generated only 5 megawatts.

In total, a sum of Rs:8.69 billion could only be recovered from certain RPPs on account of advance payments and interest, whereas, proceedings for recovery of interest amounting to Rs:445.5 million from Young Gen and Reshma, were pending when judgment was announced.

The SC made certain serious observations reflecting lack of control of the government over very serious issue of 'load shedding' since about five years. It was held that:

- Prior to the introduction of RPPs, the system of generation of electricity under the control and management of MoW&P, WAPDA, PEPCO, etc, had sufficient potential to produce more electricity, but instead of taking curative steps for its improvement, including clearance of circular debt of the IPPs or resorting to other means of generation of electricity, billions of rupees were spent on BHIKKI and SHARAQPUR RPPs, which proved complete failure because the object could not be achieved as the shortage of electricity persistently continued, and yet more RPPs were installed for ulterior motives.

*[As emphasised in the SC judgment that annulled all the 19 RPPs, Pakistan had installed capacity of 21,000MW, but electricity was not being produced up to that achievable level just to make money in the RPPs.*

*Meaning thereby that acute load shedding had deliberately been aggravated by the PPP government simply to provide a justification for the RPPs tainted with monumental corruption; but still there was no worthwhile raise in the power generation capacity.*

*While the PPP government continued to spend in projects like the Benazir Income Support Programme (BISP) and protection of its top leaders in Pakistan and abroad, it has avoided sparing just Rs:300b to get rid of the vicious circular debt then which rose to Rs:503 billion till their last day in power (March 2013). The PML(N) government paid it all in one go when assumed power on 1<sup>st</sup> June 2013.]*

- The Federal Government, WAPDA, PEPCO, etc had failed to control pilferage of electricity from the system because of bad governance and failure of the relevant authorities to enforce the writ of the Government. The SC observed that *'the Government is required to improve the existing system of generation and transmission of electricity, by taking all necessary steps, including clearing of circular debt, etc, so that electricity can be generated to the maximum capacity'*

The SC in its judgment had asked the NAB to get criminal cases registered against the ministers and bureaucrats, advisors and other power

players to unearth the conspiracy against the whole nation. The expected detailed investigations were aiming at the glaring irregularities and criminal intentions of the contract signatories especially a cogent factor written and highlighted in most of the contracts that **'the litigations would be settled in UK'**. Why it was admitted or allowed to be incorporated in the terms; the future moments would reveal.

### **CONTRACTS WITHOUT TRANSPARENCY:**

Referring to an essay penned down by one **Zulqurnain Javed** available on webpages, Sindh is the most feasible region for wind power, having the production capacity for setting up wind mills, and generating up to 35000 MW which is more than sufficient for upcoming 25 year needs for Pakistan's growing economy.

Secondly; talking of the fossil fuel, Pakistan keeps one of the largest coal reserves at Thar to produce cheap electricity. 2% of Pakistan's energy was being produced from nuclear which could be raised to 10-20 times. Yet what the PPP government opted for was rental power projects; an ambiguous and ill-intentioned decision it was. Zul Javed held that:

*'Lack of transparency is the biggest hurdle in development of alternative energy. In one report, NEPRA did not allow setting up of wind mills in Sindh as the power companies demanded 8 cents per unit and NEPRA was adamant to pay Rs: 7.5 per unit. This was back in 2007. Now in 2011, NEPRA is willing to pay 16 cents per unit, to the same companies, how ironical?'*

The summary of the whole some Rental Power misappropriation or LOOT and the judgment of the apex court on it be viewed as under:

- The contracts of all the RPPs - solicited and unsolicited, signed off or operational, right from BHIKKI & SHARAQPUR up to PI-RANGHAIB, NAUDERO-I & NAUDERO-II were entered into in contravention of law & Rules, which, besides suffering from other irregularities, violated the principle of transparency and fair & open competition, therefore, the same were declared illegal and void *ab initio*. The contracts of RPPs were ordered to be rescinded forthwith and all the persons responsible for the same were liable to be dealt with for civil and criminal action in accordance with law.
- On accepting the ADB's Audit Report, 9 out of 19 RPPs were allowed to operate; subsequently, 6 out of 9 RPPs were discontinued either having been signed off or having failed to achieve the

target whereas remaining 3 RPPs, i.e., KARKEY, NAUDERO-I and GULF were functioning, but they were producing electricity much less than their generation capacity, except GULF. Piranghaib of Multan had not generated any electricity at all, although down payment was made to it, which was not returned. BHIKKI and SHARAQPUR were paid exorbitant rentals in billions of rupees, but generation of electricity was much below the agreed or the pledged capacity.

- The Ministry of Finance, WAPDA, PEPCO as well as GENCOs were declared responsible for causing huge losses to the public exchequer, which run into billions of rupees by making 7% to 14% down payments to the RPPs. Recovery of the amounts with mark up outstanding against the RPPs in terms of the performance guarantees was ordered by the SC.
- The RPPs proved to be a total failure and incapable of meeting the demand of electricity on a short term basis. In terms of Constitution and Act of 1997, the NEPRA was mandated to safeguard the interests of the consumers, but the concerned officials of NEPRA failed to perform their duties diligently.

All the Government functionaries, including the respective Ministers for Water & Power holding charge in 2006 and onwards during whose tenure the RPPs were approved and set up, the functionaries of PEPCO, GENCOs, PPIB and NEPRA along with sponsors (successful bidders) who had derived financial benefits from the RPPs contracts and Secretaries Finance holding the charge when the down payment was increased from 7% to 14% had prima facie, violated the principle of transparency under Articles 9 & 24 of the Constitution and section 7 of the said Act of 1997, therefore, their involvement in getting financial benefits out of the same by indulging in corruption and corrupt practices was not to be overruled.

RPPs on the whole depict that Pakistan's political elite was least interested in making decisions in the public interest and all they cared about was their kick-backs and commissions. Going through the contracts undertaken with the companies, one could find disgusting conditions like '*all litigations would be dealt in UK*'. The strategy adopted was simple; first to portray RPPs as a solution to load shedding, sign contracts, get the commissions and later leave the public to pay the high costs hoping that no one would remember the fraud after a few years.

God bless the media and then the SC who had taken notice of the mega scandal at appropriate time in the public interest. Astonishingly, the government continued to claim having no funds for buying the furnace oil for already installed power plants but 'willingly paid' extra bugs to RPPs and

then supplying them with the same furnace oil for which there were insufficient funds.

Daily '***the Nation***' dated **1<sup>st</sup> April 2012** had pointed out that:

*'To understand the true scale of their crime, the larger consequences of PPP's anti-people RPP policy and corrupt actions must also be factored in. It would be difficult to put a price on the millions of work hours lost due to load shedding, the mental anguish of millions of citizens, the loss to industries and businesses, the laid off labour, the dark streets of our cities, the dry tube wells in our fields.*

*'It is not just a case of some corrupt government functionaries making millions on the side, but one that shows a complete disconnect with their constitutional obligations and their insensitivity to the hardship and torture visited upon the people they govern due to their actions.'*

Punjab province appeared as the worst victim of power failures owing very little to the Pakistan Electric Power Company (Pepco) compared to other provinces and the federal government, the statistics revealed. The industry went completely crippled in that province, rendering hundreds of thousands of daily wage earners jobless. Punjab owed Rs:4 billion to the Pepco whereas a dispute was going on between the Punjab government and the Pepco for some time over an outstanding payment of Rs:1.5 billion, which was later settled; as it was related to excessive billing. On the other hand, the Sindh government owed about Rs:49 billion to the Pepco; the Karachi Electric Supply Company (KESC) being the major defaulter. Balochistan owed Rs:13 billion; the Khyber-PK owed Rs:1.6 billion only.

### **SELF CREATED CIRCULAR DEBIT:**

Though the Supreme Court had completed the hearing of the said RPPs case in mid December 2011 but till announcement of judgment on the 2<sup>nd</sup> last day of March 2012, so much more material had been pouring in to give the insight knowledge to the honourable judges. For instance, the Economic Survey of Pakistan for 2010-11 indicated that due to high energy prices, there was a shift from expensive imported furnace oil to indigenous gas, creating a huge gap between demand and supply and compelling the government to tackle this with load management strategy, along with increase in prices.

The fact remains that most IPPs were operating well below their generating capacity because they were not made payment of energy produced.

The installed capacity of power generation in the country was then 19,855 MW, which was not being tapped due to the complicated circular debt in the energy sector. Most of the IPPs had to obtain oil on credit from Pakistan State Oil, as they had not enough cash because of power theft, transmission losses, and non-payment of electricity bills by large industrial & business consumers, and even government departments.

In April 2009, the circular debt of RPPs was Rs:104 billion only. They sharply slipped into the grave sand of inter-corporate circular debt then; till Dec 2011 it was Rs:275 billion indicating an increase of 147%. PEPCO owed money to independent power producers (IPPs), who in turn owed money to oil companies. The PPP government had not been able to resolve the crisis in four years. Receivables stood at Rs:775.2 billion and payables at Rs:516.7 billion. Out of Rs:258.5 billion, net receivables of PSO stood at Rs:51 billion, SSGCL Rs:7.1 billion, PEPCO Rs:2.7 billion, OGDCL Rs:115.5 billion, PARCO Rs:37.5 billion, KESC Rs:27.5 billion, GHPL Rs:9.6 billion and PPL Rs:22.2 billion.

On the other hand, SNGPL had net payables of Rs:13.4 billion and the Karachi Water and Supply Board Rs:1.2 billion. Pakistan's energy production relied heavily on expensive furnace oil and gas. With interruption in supply of oil and gas, it became impossible for energy generation to continue at the required pace. According to industrialists, the pattern of electricity production on any day was such that gas was supplied to highly inefficient public sector power plants, while over 200 percent more efficient private sector power plants remain closed. These plants could produce double the electricity from the same quantity of gas used by inefficient power plants. However the cheapest source of electricity remained hydro power generation.

It may not be out of place to mention here that the government of Pakistan made a written commitment with the IMF in November 2008 that *'the circular debt would be ended till March 2009 definitely'* but subsequently neither the government had seriously tried to remove the causes of circular debt nor moved forward to overcome the debt. Even after the SC's judgment, the matter was expected to bring uproars because the government of Pakistan was going to be dragged in the UK's courts for arbitration; another floodgate of corruption was ready for opening.

The government continued to state that long-term projects, which would take four to five years to start, to enhance power generation were in place but no progress report till today. It was unfortunate that in our national grid the share of power generation through hydro petroleum sources remained at 34 per cent only; the rest was availed by the IPPs and other expensive producers. In that situation, the RPPs jugglers jumped in to fill the electricity gap and, instead of generated power, they



brought bags of heavy kickbacks for the corrupt players in the government; politicians and bureaucrats both and at all levels.

### **DACOITS' FIGHT ON LOOT-DIVIDENDS:**

In police organizations a general wisdom prevails that *'thieves & dacoits are mostly caught when they fight over the division of looted & plundered money'*; could RPP's issue be viewed in that context.

The key figure MNA of RPPs Raja Pervaiz Ashraf maintained that the policy of RPPs in Pakistan was first adopted by Gen Musharraf's government in 2006 [*it has been discussed in detail in above paragraphs*] by employing two RPPs. The PPP regime simply accelerated that policy to overcome the load shedding problem on quick basis. Raja cried that **Faisal Saleh Hayat was the minister in that militarised cabinet which had passed policy on RPPs in 2006** and he had signed that summary too.

PPP's stalwarts maintained that it was not the 'national cause' or the extreme love with the people of Pakistan that brought Mr F S Hayat to the apex court but *'might be some left over share from the old deals of 2006'*. However, their cries were ignored by the apex court on the reasons;

- If there was any irregularity in the deals of 2006, it should have been brought before the court or any other forum.
- Then there were two projects in 2006; why raised to 19 in 2008 by the PPP regime.
- The democratic set up of 2008 should have examined the outcome and benefits of 2 RPPs of 2006. If they had not delivered anything positive in two years then PPP should have got them closed. Instead the PPP went for another 17 projects to loot the country hastily.

Bureaucracy in Pakistan is also known for its character throughout the history that some left over officer from the MoW&P had provided the whole set of documents having 'dubious deals' to Mr F S Hayat. In the case, the recovered money from the RPPs had not been taken out from Raja Pervaiz Ashraf but from the concerned 'Directors' and mostly from the top bureaucrats but no body would dare to ask them; even the SC.

The Transparency International, **on 1<sup>st</sup> November 2012**, reported a mega corruption scandal to the prime minister in which the NAB allegedly cleared one of the Rental Power Project [RPP] without recovering \$220 million from it. Allegedly, this huge embezzlement was done in connivance with the NAB where M/s Karkey RPP was allowed to leave Pakistan with-

out paying the recoverable money. [*Interestingly, the name of PM Pervaiz Ashraf was also among the accused persons in that RPP case too.*]

According to the judgment of the Supreme Court announced **on 30<sup>th</sup> March 2012** in the RPP case, besides other actions, the court directed the government to take the following action to recover all payments made to the RPPs with mark-up, who had failed to achieve CoD within the stipulated time. Some of the details have already been given in earlier paragraphs but see another paragraph below:

*"Para 38: Mr Kamal Anwar, ASC assisted the court as Amicus Curiae. He submitted that advance payment was made to 9 RPPs, namely, Karkey, Gulf Rental Power, Reshma Power, Techo Samundri Road Faisalabad, Techno Sahuwal Sialkot, Guddu, Young Gen, Naudero-I and Naudero-II, details whereof have been given hereinabove. None of them could achieve CoD within time, on account of which their contracts were signed off.*

*Statedly, the bank guarantees furnished on behalf of all the bidders have also been en-cashed. .... However, Karkey (231.8 MW), Gulf (62 MW), Naudero-I (51 MW) and Reshma (201 MW), which are still functioning, had achieved delayed COD."*

'Accordingly, recovery from Karkey RPP which failed to achieve CoD within the stipulated time, works out to be approximately \$220.76 million. Karkey was paid 14% advance \$79.05 million; \$7.654 million per month from April 2011 to March 2012 (\$91.84 million); Total to be repaid by Karkey is \$170.89 Million; Bank interest for 3-1/2 years on \$79.05 million is about \$45 million, and for 1 year on \$91.84 million is \$12.87 million so the total recoverable amount from Karkey Power Plant was therefore \$220.76 million'. Though the power plant failed to supply 232 megawatts, its administration was all set to leave Pakistan by paying less than 20 million dollars. **GEO TV's** live program **of 30<sup>th</sup> October 2012** is referred.

In view of above, the Supreme Court had to direct the National Accountability Bureau (NAB) on immediate basis to assure the court that the Turkish ship-mounted rental power plant Karkey would not be allowed to leave till the company cleared its arrears. PML(Q)'s MNA Faisal Saleh Hayat, the complainant of RPPs corruption had told the apex court that the NAB was trying to resolve the matter in 'its own way'. Karkey Company was being pardoned Rs:22 billion and was being told to leave; it was alleged by Makhdoom F S Hayat in a letter signed and sent by him to the apex court in October 2012.

The CJP remarked *'how such matters could be resolved outside the court'*; the country was being deprived off with billions of rupees through NAB's ill intentions in the name of plea-bargaining with Karkey. During November the cases pertaining to **Chichoki Mallian** and **Nandi Pur** were also fixed. In an earlier hearing, the court had given NAB 24 hours to submit a report over allegations of an underhand deal of the bureau with Karkey. After four days, the NAB's prosecutor, in person, had rejected the allegations and affirmed that Karkey would not be moved.

#### **SC ORDERS FOR PM's ARREST:**

**On 15<sup>th</sup> January 2013**, Supreme Court ordered the Federal Investigation Agency [FIA] that the sitting Prime Minister of Pakistan, Raja Pervaiz Ashraf, former Federal Minister of Power, should immediately be arrested by the NAB along with other sixteen accomplices [including Naveed Qamar, Waqar Masood etc] in Rental Power Case and within 24 hours. *'... All concerned, regardless of their rank, who have been booked in the case be arrested and if someone leaves the country, then Chairman NAB will be held responsible along with his investigating team,'* the apex court ordered. FIA's Immigration desks at all the 24 airports of the country were told to place the accused persons on the Exit Control List [ECL].

The Supreme Court's order came at a time when Allama Tahirul Qadri was delivering speech to *'millions people Dharna'* after leading a 38 hours long march from Lahore to Islamabad to demand electoral reforms. Participants of the march celebrated while chanting "Long Live Supreme Court" when Allama Qadri mentioned the court's decision during his speech.

**On 18<sup>th</sup> January 2013**, NAB told the SC that *'it does not have enough evidence to arrest Prime Minister Raja Pervaiz Ashraf and 15 other accused in the rental power plants (RPPs) case.'*

NAB additional prosecutor general presented a progress report in the court which stated the NAB Chairman as saying that **"the investigation and inquiries are not yet complete."** NAB Chairman Admiral Fasih Bukhari and Prosecutor Gen KK Agha had contended that the Supreme Court was overstepping its jurisdiction because it had nothing to do with the investigation. A three-member bench headed by Chief Justice Iftikhar M Chaudhry had expressed dissatisfaction over the NAB report relating to the implementation of its judgment of 30<sup>th</sup> March 2012.

Three days earlier, the apex court had directed that investigation reports

be submitted to the authorities concerned and references against the accused people be approved for their arrest. The NAB Chief told the court that before framing criminal charges against anyone they had to go through the different records and collect evidence to substantiate the allegations. Till then two reports in respect of Piraghaib and Techno Sahuwal prepared by NAB's Rawalpindi office was ready to be considered by the executive board for a final decision.

The fact remains that during the course of year's long proceedings before the apex Court, enough material and facts surfaced that could point towards corrupt practices involving billions of the poor nation in the Rental Power Projects. However, no conviction has taken place yet and believably no conviction would be there. Pakistan's whole history, from the murder of PM Liaquat Ali Khan in October 1951 till today is the witness. No investigations; and if there are investigations – no convictions; salute to Pakistan's 'perfect' judicial practices.

Not even a single conviction of any corrupt politician, top bureaucrat, or high ranking General or towering Pir or god-fathered *jageerdar* [big landlord] or industrialist *Mian or Chaudhry* in Pakistan's 66 years history. All investigations were always faulty or the 'legal & procedural requirements' or 'due process of law' were not fulfilled so all the courts were always helpless. What a continuing coincidence since birth of this country. The only two quotable convictions, of Z A Butto in 1979 & of Nawaz Sharif in 2000 were not on the basis of their actual sins [*for some more than the punishments articulated*].

Here, in the RPPs Case, the Supreme Court deliberated a 3-page order saying that:

- Chairman NAB was asked for the removal of DG NAB Rawalpindi and two IOs associated with the investigation of the RPP cases.
- The SC observed that the IOs were not allowed to ensure the implementation of the court's judgment.
- The SC directed the Additional Prosecutor General NAB, Rana Zahid Mehmood, to [firstly] submit Investigation Reports to the concerned authorities, [secondly] to get approved the final reports / references against the accused and [thirdly] to cause arrest of all the accused including the PM Raja Pervaiz Ashraf.

That was another point that in the NAB Ordinance the Additional Prosecutor General had no powers to accomplish the said tasks of the apex court. [*Section 8 of the NAB Ordinance appoints a Prosecutor General whose mandate is to "give advice to the Chairman NAB upon... legal matters" & perform other "duties of legal character" and the PG MAY*

*appoint Additional PG "to institute or defend cases".]* In effect, the Additional PG was one of the lawyers of NAB, and possessed no legal mandate in terms of administrative work – especially not without the express directions of the Chairman.

Similarly Section 18 of the NAB Ordinance empowers the Chairman or an officer authorized by him to initiate proceedings, inquire, investigate, and / or arrest the accused. It is a mandatory requirement that before ordering an arrest, it is the Chairman who must be satisfied. The Additional PG does not figure into this equation at any place.

Thus for many people it was surprising that why the SC had asked the Additional PG to make arrests of the accused persons involved. The reasons were obvious; the apex court had categorically shown 'distrust' over the intentions of Chairman NAB Adml Fasih Bokhari.

Nothing would happen as per Pakistan's history, the accused persons were given the benefits of a known & golden principle of jurisprudence [innocent till proven guilty]; in that country the ruling elite can never be proved guilty – come what may, see the history.

Then where the Rs:84 billion of RPP gone; no answer with any one; no one amongst those sitting ministers and secretaries was proved guilty; case went untraced. Dr Tahirul Qadri had also left his *Dharna* midway with no apparent result; the people have short memories in Pakistan.

Four years back, PM Raja Pervaiz Ashraf was given the title of ***Raja Rental*** after he was accused of receiving kickbacks in the dubious rental power deals. He had been defending himself in the Supreme Court but the judges were never convinced.

**On 30<sup>th</sup> March 2012**, the apex court had directed the NAB to proceed against those who were responsible for the stated chaos since 2006 till then. As a result, on 20<sup>th</sup> April, NAB had issued arrest warrants for 33 persons, including Liaquat Jatoi, Shaukat Tareen the then Finance Minister and Raja Ashraf, the then Federal Minister and later the prime minister but the progress remained nil.

During the 3<sup>rd</sup> week of April 2012, the Supreme Court declined to approve the NAB Chairman's proposal for reutilization of existing rental power plants [RPPs] through a transparent bidding process to address prevailing energy crisis in the country. A 3-member bench headed by the CJP Iftikhar M Chaudhry expressed dismay over non-implementation of the court's verdict of 30<sup>th</sup> March in letter and spirit, in which it had rescinded

all the RPP contracts by declaring them illegal and non-transparent besides asking the NAB to proceed against all persons, including former power minister Raja Pervez Ashraf.

NAB Chairman Fasih Bokhari had tried to seek approval of the apex court relating to suggestion that he intended to ask the government to put up for bidding all rental power plants for generation of electricity in Pakistan. The Supreme Court brutally reprimanded the Chairman and his team that why the looted wealth of the nation could not be recovered; not a single arrest made.

Till 15<sup>th</sup> May 2012, NAB could recover only Rs.1772 millions from the RPPs.

### **THE ULTIMATE FATE:**

**On 5<sup>th</sup> December 2013**, the National Accountability Bureau [NAB] Executive Board authorised two more investigations against former PM Raja P Ashraf and officials of the Ministry of Water and Power in multi-billion RRP scam. The first investigation was authorised against officials and government functionaries in the case of Rental Power Plant installed at Summandari, Faisalabad, involving alleged corruption worth Rs:2.8 billion. The second investigation was authorised in the case of Walters Power International & Naudero-I Larkana involving corruption worth \$28.423 million. Besides Ex PM Raja Pervaiz, former Water and Power Secretary Shahid Rafi, Additional Secretary Zarar Aslam and WAPDA General Manager Rana Amjad were also made accused in the case. Till then, RPP Naudero-II case was being heard in the Accountability Court, Islamabad, in which Raja Pervaiz was the main accused in addition to nine others.

**On 3rd June 2014**, an Accountability Court in Islamabad indicted former PM Raja Pervez Ashraf and 11 others in an RRP case. Former Finance Minister Shaukat Tareen, former Federal Secretaries Ismail Qureshi and Shahid Rafi were also among those charged in the case of alleged corruption in the Sahuwal and Piranghaib rental power projects. The AC judge Muhammad Bashir dismissed pleas filed by Mr Tareen and Mr Qureshi requesting their names be dropped from the case.

NAB had been investigating 12 RPPs cases in which nine firms reportedly received more than Rs:22 billion as mobilisation advance from the government to commission the projects, but most of them were accused of failing to set up plants. The bureau had already recovered Rs:13 billion in various RRP cases till then.

**On 31<sup>st</sup> July 2015**, the National Accountability Bureau [NAB] during an Executive Board Meeting ultimately decided, consequent upon the observations of December 2013, to file a corruption reference against former PM Raja P Ashraf in a case pertaining to rental power project Naudero-I. Former Secretary Water & Power Fayyaz Elahi, former MD Private Power and Infrastructure Board [PPIB] Fayyaz Ahmed Khan and ex-MD of Pakistan Electric Power Company (Pepco) Tahir Basharat Cheema were named as co-accused.

In the said case, the accused allegedly awarded RPP contracts of 51 megawatts without open competitive bidding in violation of RRP rules, National Electric Power Regulatory Authority (Nepra) Act and Rental Services Contract (RSC) to favour sponsors at the cost of state exchequer.