



Before the Appellate Board
National Electric Power Regulatory Authority
(NEPRA)
Islamic Republic of Pakistan

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No. NEPRA/AB/Appeal/019/2023/641

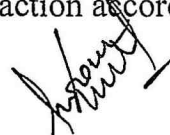
October 23, 2023

- | | |
|--|---|
| 1. M/s. Nishat Textile Mills No. 1,
Through it's Representative, Muhammad Azam,
Sheikhupura Road, Faisalabad | 2. Chief Executive Officer
FESCO Ltd,
West Canal Road, Abdullahpur,
Faisalabad |
| 3. Saeed Ahmed Bhatti,
Advocate High Court,
66-Khyber Block, Allama Iqbal Town,
Lahore | 4. Salman Akram Raja,
Advocate Supreme Court,
Raja Mohammed Akram & Co.
Advocates And Legal Consultants,
33-C, Main Gulberg, Lahore |
| 5. Sub Divisional Officer (Operation),
FESCO Ltd,
Haji Abad Sub Division,
Faisalabad | 6. POI/Electric Inspector,
Energy Department, Govt. of Punjab,
Opposite Commissioner Office,
D.C.G Road, Civil Lines,
Faisalabad Region, Faisalabad |

Subject: **Appeal Titled FESCO Vs. M/s. Nishat Textile Mills No. 1 Against the Decision Dated 20.12.2022 of the Provincial Office of Inspection to Government of the Punjab Faisalabad Region, Faisalabad**

Please find enclosed herewith the decision of the Appellate Board dated 23.10.2023 (09 pages), regarding the subject matter, for information and necessary action accordingly.

Encl: **As Above**


(Ikram Shakeel)
Deputy Director (AB)

Forwarded for information please.

1. Director (IT) --for uploading the decision on NEPRA website



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. 019/POI-2023

Faisalabad Electric Supply Company Limited

.....Appellant

Versus

M/s. Nishat Textile Mills No. 1, through its Representative

Muhammad Azam Sheikhpura Road, Faisalabad

.....Respondent

APPEAL UNDER SECTION 38(3) OF THE REGULATION OF GENERATION, TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997

For the Appellant:

Mr. Saeed Ahmed Bhatti Advocate

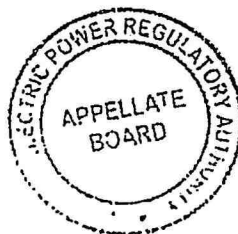
For the Respondent:

Mr. Arsalan Riaz Advocate

Mr. M. Burhan AM (Accounts)

DECISION

1. Through this decision, an appeal filed by Faisalabad Electric Supply Company Limited (hereinafter referred to as "Appellant") against the decision dated 20.12.2022 of the Provincial Office of Inspection, Faisalabad Region, Faisalabad (hereinafter referred to as "POI") is being disposed of.
2. Briefly speaking, M/s. Nishat Textile Mills (hereinafter referred to as the "Respondent") is an industrial consumer of the Appellant bearing Ref No.28-13126-5609200 with sanctioned load of 4,950 kW under the B-3 tariff category. As per the GIS mapping software of the Appellant, 3.1% of line losses occurred during the period from July 2021 to June 2022 at the dedicated feeder of the Respondent, which resulted in the loss of 560,740 units for the period from July 2021 to June 2022 out of which



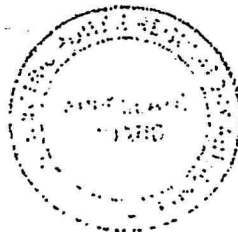
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200,000 units were debited to the Respondent in April 2022. Resultantly, the Appellant debited a difference bill of Rs.5,356,272/- for the remaining 360,740 units to the Respondent due to the difference of readings between the billing meter installed at the site and the meter installed at the grid station.

3. Being aggrieved, the Respondent filed an application dated 16.05.2022 before the POI and challenged the aforementioned difference bill. During joint checking of POI, the grid station meter was found 0.147% slow, whereas the billing meter of the Respondent was found 0.95% slow. POI disposed of the matter vide its decision dated 20.12.2022, wherein the difference bill of Rs.5,356,272/- debited in April 2022 was declared null and void.
4. Being dissatisfied, the Appellant has filed the instant appeal before NEPRA and assailed the afore-referred decision of the POI (hereinafter referred to as the "impugned decision"). In its Appeal, the Appellant contended that the industrial load of the Respondent is being supplied through a dedicated feeder having a length of 4.85 kM. The Appellant further contended that the percentage of line losses increased to the tune of 3.1% as compared to the GIS mapping, which resulted in the loss of 560,740 units for the period from July 2021 to June 2022 out of which 200,000 units were debited to the Respondent in April 2022 and remaining 360,740 units were debited in terms of difference bill of Rs.5,356,272/-. As per Appellant, the above difference bill was fully proved through authentic documents/consumption data but the POI misconceived and misconstrued the real facts of the case and erred in declaring



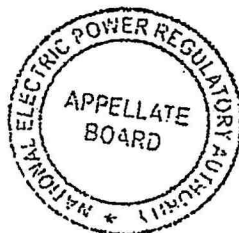
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the above difference bill as null and void. According to the Appellant, the impugned decision is *ex-facie*, *corum non-judice*, and the POI has no jurisdiction to carry out the proceedings after the expiry of the mandatory period of 90 days as envisaged in Section 26(6) of the Electricity Act 1910. The Appellant finally prayed to set aside the impugned decision.

5. Notice dated 17.02.2023 of the appeal was issued to the Respondent for filing reply/para-wise comments, which were filed on 03.04.2023. In the reply, the Respondent opposed the maintainability of the appeal *inter alia*, on the following grounds that the appeal has not been filed by an authorized representative for the Appellant, as such BoD resolution is not affixed with the appeal; that the appeal filed before the NEPRA is barred by the time being filed after a lapse of seven (07) days; that the findings of the POI are based on cogent evidence and reliable material and there are no line losses occurred; that the impugned decision is based on binding principles as envisaged in NEPRA Consumer Service Manual 2021 (the "CSM-2021"); that (if any) line loss occurred in the independent feeder may be claimed by the Appellant in the tariff determination and that the appeal is liable to be dismissed.
6. Notices dated 30.08.2023 were issued to parties and the appeal was heard at NEPRA Regional Office Faisalabad on 09.09.2023. Learned counsel for the Respondent raised the preliminary objection regarding limitation and prayed for dismissal of the appeal being barred by time. He raised another objection that the instant appeal was filed by an unauthorized person as no BoD Resolution was attached to the appeal. On merits, learned counsel for the Respondent, the Appellants are not entitled to recover any bill



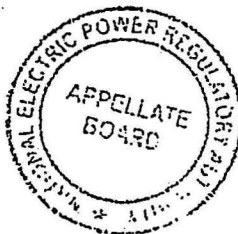


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on account of line losses as the same were already allowed by NEPRA in the tariff determination. Learned counsel for the Respondent prayed for dismissal of the appeal being devoid of merits. On the contrary, learned counsel for the Appellant rebutted the version of the Respondent and averred that a copy of the impugned decision was obtained on 06.01.2023 and the appeal filed before the NEPRA is within 30 days from the date of receipt of the impugned decision. Learned counsel for the Appellant stated that the Director (Legal & Labor) is duly authorized for filing/defending suits, other proceedings, signing verifying complaints, and issuance of Power of Attorney in favor of counsel on behalf of the Appellant. He assured to submit a copy of the BoD Resolution to NEPRA. On merits, learned counsel for the Appellant contended that 3.1% line losses were reported during the period from July 2021 to June 2022 as compared to the GIS mapping, hence the difference bill of Rs.5,356,272/- for the cost of 360,740 units charged due to the difference of readings between the billing meter installed at the site and the meter installed at grid station is justified and payable by the Respondent.

7. Arguments were heard, and the record was examined. Following are our observations;

7.1 While considering the preliminary objection of limitation raised by the Respondent, it is noted that the Appellant applied for the copy of the impugned decision (dated 20.12.2022) on 06.01.2023, which was delivered by the POI on the same day i.e. 06.01.2023. Subsequently, ~~the Appellant filed the appeal before NEPRA on~~ 06.02.2023. In this regard, we shall examine relevant laws dealing with the issue of limitation. Section 38(3) of the NEPRA Act states that "*Any person aggrieved by the*



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decision or order of the Provincial Office of Inspection may within thirty (30) days of the receipt of the order, prefer an appeal to the Authority in the prescribed manner...."

The legislature has defined the word "specified" under Section 2(xxva) which "means specified by regulations made under the Act;" In order to give effect the intent of the legislature, the Authority under Section 47 of the NEPRA Act notified the NEPRA (Procedure for filing appeals) Regulations, 2012 (the "Appeal Regulations"); whereby in terms of regulation 4, the limitation for filing of an appeal under Section 38(3) of the NEPRA Act commences from the date of receipt of copy of the order from the Provincial Office of Inspection; regulation 4 is reproduced hereunder for ready reference:

"4. Limitation for filing appeal- (1) Every appeal shall be filed within a period of thirty days from the date on which a copy of the order against which the appeal is preferred is received by the appellant:

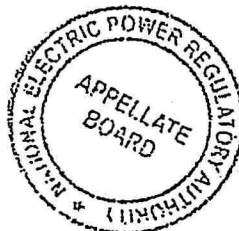
Provided that the Authority may, upon an application filed in this behalf, entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within the period.

(2) Subject to anything contrary on the record the copy of the order against which an appeal is filed shall be presumed to have been received by the appellant if:

- (a) sent by courier, three days following the day it is dispatched by the Receipt and Issue department of the Authority;*
- (b) sent by registered post, seven days following the date it is mailed by the Receipt and Issue department of the Authority; and*
- (c) sent by hand delivery; on the production of the receipt showing the date it is served on the appellant."*

7.2 Further, reliance is also placed on the judgment of the honourable Lahore High Court Lahore in the case titled "LESCO & others Vs. Malik Muhammad Munir" cited as 2016 YLR 1916, whereby it was held as under:

"The above discussion leads me to irresistible conclusion that the Provincial Office



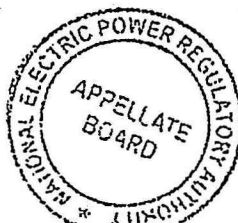


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of Inspections/Electric Inspector is bound to transmit the copy of the order to the aggrieved person through the modes provided under Regulation 4 of the Regulation 2012 and in this way, the period of limitation for filing an appeal in terms of subsection 38(3) of section 38 will be calculated from the date of receipt of order."

After examining the related facts, laws, and Judgment of the honourable Lahore High Court Lahore, we conclude that the Provincial Office of Inspection shall be bound to deliver copy of the order and the limitation starts in terms of regulation 4 of the Appeal Regulations. In view of the above discussion, we are inclined that there is no force in the arguments of the Respondent on the issue of limitation and hence rejected.

7.3 As far as another objection raised by the Respondent regarding authorization, it is observed that the Appellant did not attach any copy of the BoD Resolution at the time of filing of the appeal before the NEPRA. Subsequently, learned counsel for the Appellant submitted a copy of BoD Resolution No.04 dated 27.12.1999 before the NEPRA, which shows that the Director (HR&A) is authorized for filing/defending suits, other proceedings, signing, verifying complaints, written statements and other pleadings, applications, appeals, revisions and issuance of Power of Attorney in favor of counsel on behalf of the Appellant FESCO. Whereas in the instant case, the Director (Legal & Labor) has issued the power of attorney to the counsel without any authorization by the Board. In this regard, regulation 8(2) of the Appeal Regulations clearly states that the Appellant or the Respondent is to be represented by an authorized representative through a written authorization in his favor signed by the Appellant or the Respondent as the case may be. Furthermore, "authorized representative" is defined under regulation 2(c) of the Appeal Regulations, which means a person who is authorized to appear, plead, and act on behalf of the Appellant



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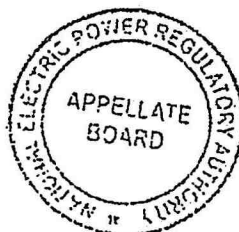
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before the Authority. The above facts revealed that "Director (Legal & Labor) is not an authorized person to issue power of attorney to the authorized representative, therefore, the representative on behalf of FESCO is not duly authorized to file, plead, or argue this appeal. The Respondent further supplemented his arguments by relying on the various judgments of superior courts of Pakistan. In this regard, learned counsel for the Respondent cited the judgment of the Supreme Court of Pakistan reported as 2022 SCMR 1501, wherein it was held that;

"11. In any case, the rigors of Order XXIX, Rule 1, C.P.C as result of non-compliance will obviously come into the play which is not simply a procedural requirement but in essence a matter of dominant implication for justice persons to set the law into motion including the requirement of appointing or engaging a recognized agent and pleader through a written document signed by such person or by his recognized agent or by some other person duly authorized thereunder or under a power of attorney to make such appointment which cannot be ignored lightly and due to this negligence and nonconformity to the express provision, the petitioner was rightly non-suited."

7.4 In another judgment, it was held by the Supreme Court of Pakistan in the case titled "Telecard Limited Vs. Pakistan Telecommunication Authority" reported as 2014 CLD 415;

"The appeal filed by the appellant under the provisions of the Pakistan Telecommunication (Re-Organization) Act, 1996 has been dismissed by the learned High Court on the ground that the same has not been filed by an authorized person admittedly the appellant is a limited company and the appeal has not been filed by someone having due authority under the articles of association of the company authorization by the board resolution. It is settled law that a lis cannot be initiated on behalf of the company which is juristic person, without having due authority either in terms of the articles of association or by the board resolution. This is conspicuously missing in the present case. The appellant has not even appended herewith any document to establish that the CEO of the company, who allegedly signed the memo of the appeal, had the authority."



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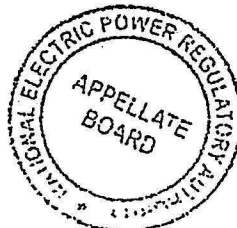
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In another judgment passed by the honorable Lahore High Court as 2016 CLD 2066, whereby it was held that;

"Upon perusal of the application for leave to defend, it can be seen that the application has purportedly been filed on behalf of the defendants Nos. 1, 2, and 3. However, the Board resolution on behalf of defendant No. 1. Company has not been filed nor it has been annexed with the application. It is an established principle vouched by respectable authority that a company is a juristic person and acts through its Board of Directors which authorizes its officers or any of them to act on its behalf by an authority conferred in that resolution of the Board of Directors. The learned counsel for the defendants does not deny that a Board resolution has not been with the application for leave to defend. However, he submits that the defendants Nos. 2 and 3 have signed the application for leave to defend and it should be taken to have been signed on behalf of the defendant No.1 Company as well. This submission of the learned counsel for the defendants is off the mark and does not take into consideration the legal proposition that a company is a separate legal entity and must be represented by a duly authorized officer to do all the acts on its behalf. The signatures which have been affixed on the application for leave to defend do not bring forth any evidence that the application has been filed on behalf of defendant No. 1 Company as well if the proposition put forth by the learned counsel for the defendants is accepted. Then any officer or director of the Company could bind the Company of its act and which could cause irreparable damage to the Company in various ways. Obviously, this cannot be countenanced and this will raise serious complications with regard to the affairs of a company."

7.5 From the above discussion, we are convinced that this appeal is not maintainable, however, since a substantial amount is involved and if not considered, it will be detrimental to the FESCO, a public sector entity. On merits, the Appellant debited a difference bill of Rs.5,356,272/- for the cost of 360,740 units to the Respondent due to the difference of readings between the billing meter installed at the site and the meter installed at the grid station, which was challenged before the POI.

7.6 During joint checking of POI, the grid station meter was found 0.147% slow, whereas the billing meter of the Respondent was found 0.95% slow, which is within



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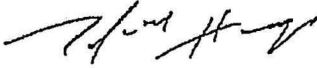
permissible limits of accuracy as laid down in Rule 32 of the Electricity Rules, 1937.

As per Chapter 4 of CSM-2021, an energy meter is to be installed at the premises of the consumer and there is no provision for charging the electricity bills other than the units recorded by the meter at the site. According to NEPRA (Tariff Standards and Procedure) Rules, 1998, the consumer is liable to be charged as per units recorded by the meter at its premises. For line losses beyond permissible limit, no recovery could be made from the Respondent as maintenance of the system and its improvement is the responsibility of the Appellant. Moreover, no notice was served to the Respondent regarding the higher line losses and there is no understanding by the Respondent to the effect thus he would make payment for the same. Even otherwise, NEPRA in its tariff determination allowed the Appellant 9.34% T&D losses for the fiscal year 2021-2022, which is higher than the alleged loss of 3.1% of the dedicated 11 kV Feeder. Therefore, there is no justification to further burden the Respondent by charging the difference bill of Rs.5,356,272/- for the cost of 360,740 units on account of the increase in line losses and the same was rightly cancelled by the POI.

8. The upshot of the above discussion is that the appeal is hereby dismissed being filed without valid authorization as well as devoid of merits.


Abid Hussain
Member


23/10/23
Naweed Illahi Sheikh
Convener


Muhammad Irfan-ul-Haq
Member

Dated: 23-10-2023

Appeal No.019/POI-2023

