



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

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No. NEPRA/Appeal/090/POI/2020/052

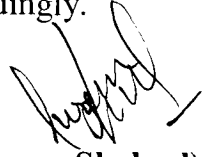
January 25, 2023

- | | |
|---|---|
| 1. Hassan Tahir,
S/o. Munir Ahmad Khan,
R/o. Mohallah Shah Burhan,
City Chiniot | 2. Chief Executive Officer
FESCO Ltd,
West Canal Road, Abdullahpur,
Faisalabad |
| 3. Muhammad Nawaz Waseer,
Advocate Supreme Court,
Sargodha Khushab Law Chambers,
First Floor, Turner Tower,
9-Turner Road, Lahore | 4. Raja Fayyaz Ahmed,
Advocate High Court,
Rana Tahir Block, Chamber No. 26,
District Courts, Chiniot |
| 5. Sub Divisional Officer,
FESCO Ltd,
Chiniot-III Sub Division,
Chiniot | 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. Hassan Tahir Against the Decision Dated 29.04.2020 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 19.01.2023, regarding the subject matter, for information and necessary action accordingly.

Encl: As Above


(Ikram Shakeel)
Deputy Director (M&E)/
Appellate Board

Forwarded for information please.

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



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No.090/POI-2020

Faisalabad Electric Supply Company Limited

.....Appellant

Versus

Hassan Tahir S/o Munir Ahmed Khan,
R/o Shah Burhan, City Chiniot

.....Respondent

APPEAL U/S 38(3) OF REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997

For the Appellant:

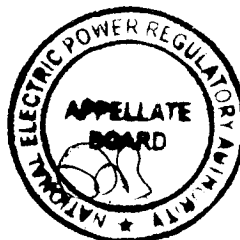
Malik Asad Akram Advocate

For the Respondent:

Nemo

DECISION

1. Brief facts leading to the filing of instant appeal are that Mr. Hassan Tahir (hereinafter referred to as the "Respondent") is an industrial consumer of the Faisalabad Electric Supply Company Limited (hereinafter referred to as the "Appellant") bearing Ref No.27-13163-3081700-R with the applicable Tariff category is B-1(b). The billing meter of the Respondent was checked by the Metering and Testing (M&T) team of the Appellant on 17.05.2000 and it was declared as tampered for the dishonest abstraction of electricity. Therefore, a detection bill of Rs.44,097/- against 9,497 units for six (06)

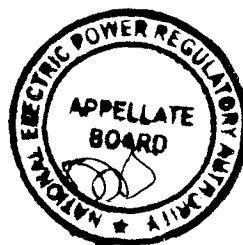




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months for the period from December 1999 to May 2000 was raised by the Appellant against the Respondent and added to the bill for August 2000.

2. Being aggrieved, the Respondent initially filed a civil suit before the Civil Court, Faisalabad against the charging of the above detection bill. After litigation in different courts, the Honorable Lahore High Court Lahore vide order dated 03.08.2019 finally directed the Respondent to approach the Provincial Office of Inspection, Faisalabad Region, Faisalabad (hereinafter referred to as the "POI") for redressal of his grievance. Subsequently, the Respondent filed an application before the POI on 16.08.2019 and challenged the abovementioned detection bill. The matter was disposed of by the POI vide the decision dated 29.04.2020, wherein the detection bill of Rs.44,097/- against 9,497 units for six (06) months for the period from December 1999 to May 2000 was cancelled. As per the decision of POI, the Appellant was directed to overhaul the billing account of the Respondent and for adjustment of payments made against the above detection bill.
3. Subject appeal has been filed against the afore-referred decision dated 29.04.2020 of the POI (hereinafter referred to as the "impugned decision") by the Appellant before the NEPRA. In its appeal, the Appellant opposed the impugned decision *inter alia*, on the main grounds that the impugned decision suffers from serious misreading and non-reading of record and has been passed in a mechanical and slipshod manner; that the POI has not applied his judicious mind while reaching the conclusion and passed the





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order without appreciating the available evidence of record; that the POI committed illegality and failed to take into account that the complaint of the Respondent is badly time barred as the matter related to the year 2000 whereas the complaint was filed on 16.08.2019; that the impugned decision is based on conjectures and surmises and that the same is liable to be set aside.

4. Proceedings by the Appellate Board

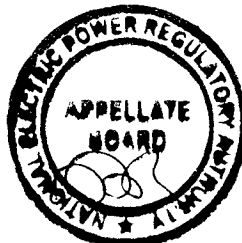
Upon filing of the instant appeal, a Notice dated 19.05.2021 was sent to the Respondent for filing reply/parawise comments to the appeal within ten (10) days. The Respondent submitted his reply before the NEPRA on 01.06.2021, wherein he challenged the maintainability of the appeal *inter alia*, on the grounds (i) that the appeal was filed before the NEPRA after a lapse of four months from the date of impugned decision; (2) the Appellant charged the detection bill of Rs.44,097/- against 9,497 units for six (06) months for the period from December 1999 to May 2000 without any notice or checking of the metering equipment; (3) the above detection bill was initially assailed before the Civil Court Faisalabad; (4) after litigation in different courts, the honorable Lahore High Court, Lahore referred the matter to POI for adjudication; (5) the POI rendered the impugned decision after correct perusal of record; (6) and based on above grounds, the appeal be dismissed with cost in the best interest of justice.

5. Hearing

5.1 Hearing in the matter of the subject Appeal was initially fixed for 14.10.2022 at

Appeal No.090/POI-2020

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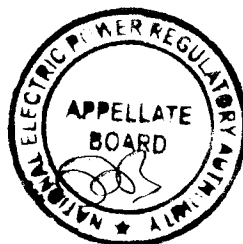




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NEPRA Regional Office Lahore and accordingly, the notices dated 08.10.2022 were sent to the parties. On the given date of the hearing, learned counsel appeared for the Appellant and no one represented the Respondent. In order to provide an opportunity of hearing to both parties, the case was adjourned till the next date.

5.2 Hearing in the matter was again fixed for 25.11.2022 at Lahore for which notices dated 16.11.2022 were served to both the Appellant and the Respondent. On the given date of hearing, the appeal was heard at NEPRA Regional Office Lahore, which was attended by a counsel for the Appellant, and again no one appeared for the Respondent. Since the Respondent did not appear despite repeated notices the hearing proceedings will be carried out in the absence of the Respondent. Learned counsel for the Appellant raised the objection that the complaint filed by the Respondent before the POI is barred by time, hence the same be rejected on this score alone. Learned counsel for the Appellant reiterated the same version as contained in memo of the appeal and contended that the billing meter of the Respondent was checked by the Appellant on 17.05.2000, wherein it was declared tampered. Learned counsel for the Appellant stated that the detection bill of Rs.44,097/- against 9,497 units for six (06) months for the period from December 1999 to May 2000 was debited to the Respondent on the basis of the connected load. As per learned counsel for the Appellant, the POI ignored tampering with the meter of the Respondent and canceled the above detection bill. Learned counsel for the Appellant pleaded that the impugned decision be struck down





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and the above detection bill be allowed.

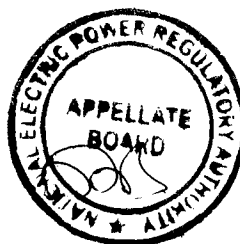
6. Arguments heard and the record perused. Following are our observations:

6.1 Limitation for filing appeal:

According to section 38(3) of the NEPRA Act, any aggrieved party can avail the remedy of appeal against the decision of POI within 30 days of such decision. Further, under Regulation 4 of the NEPRA (Procedure for filing Appeals) Regulations, 2012 (the "Appeal Regulations), the Appeal is required to be filed within 30 days of the receipt of the impugned decision of POI by the Appellant. Further, a margin of 7 days is provided in case of submission through registered post, and 3 days in case of submission of appeal through courier is given in the Appeal Regulations. The Appellant produced a copy of the impugned decision received from the office of POI on 16.07.2020. Counting 30 days from the date of said receiving, the appeal filed on 17.08.2020 before the NEPRA is within the time limit as prescribed in Regulation 4 of the Appeal Regulations. Therefore considering that the impugned decision was received by the Appellant on 16.07.2020, the appeal filed on 17.08.2020 is within the time limit of 30 days, hence the objection of the Respondent in this regard has no force and is rejected.

6.2 Objection of the Appellant regarding the time-barred complaint before the POI:

The Respondent initially filed a civil suit before the Civil Court, Faisalabad against the detection bill of Rs.44,097/- against 9,497 units for six (06) months for the period from



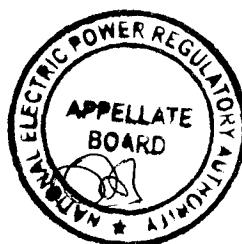


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December 1999 to May 2000 charged by the Appellant. After litigation at different courts, the honorable Lahore High Court, Lahore vide order dated 03.08.2019 returned the civil suit with the direction to the Respondent to approach the POI for redressal of grievance. Accordingly, the Respondent filed a complaint before the POI on 16.08.2019 and challenged the above detection bill. Thus, the time consumed at the wrong forum is excluded as the Respondent availed the remedy by filing the complaint before the POI within three years from the date of order of the honorable High Court i.e. 03.08.2019 as envisaged in Article 181 of the Limitation Act, 1908. Even otherwise, the POI is a competent forum to adjudicate the instant dispute of billing raised due to the theft of electricity through tampering with the meter. Reliance in this regard is placed on the judgment of the Honorable Supreme Court of Pakistan reported in PLD 2012 SC 371. Therefore the objection of the Appellant in this regard bears no force and is overruled.

6.3 Detection bill of Rs.44,097/- against 9,497 units for six (06) months for the period from December 1999 to May 2000

In its appeal, the Appellant has claimed that the Respondent was involved in the dishonest abstraction of electricity through tampering with the meter. Thereafter, a detection bill of Rs.44,097/- against 9,497 units for six (06) months for the period from December 1999 to May 2000 was charged by the Appellant to the Respondent and added to the bill for August 2008. The discrepancy of tampering with the impugned billing meter could not be verified by the POI as the case of theft of electricity is around





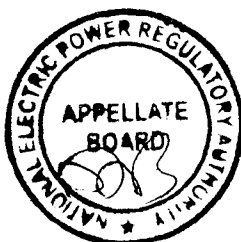
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nineteen years old. The Appellant even failed to submit any document i.e. checking report, detection proforma, notice, FIR, etc. in support of their contention regarding the theft of electricity through the tampered meter. In this scenario, the consumption data will be examined to check the authenticity of the allegation of the Appellant in the below table:

Period before dispute		Disputed period		Period after dispute	
Month	Units	Month	Units	Month	Units
Dec-98	178	Dec-99	1073	Dec-00	992
Jan-99	777	Jan-00	1201	Jan-01	832
Feb-99	856	Feb-00	1193	Feb-01	1011
Mar-99	648	Mar-00	1177	Mar-01	581
Apr-99	828	Apr-00	922	Apr-01	631
May-99	791	May-00	951	May-01	596
Average	680	Average	1086	Average	774

The above comparison of consumption data even does not support the version of the Appellant regarding the theft of electricity committed by the Respondent as the average consumption recorded during the disputed period December 1999 to May 2000 is much higher than the average consumption of corresponding months of the preceding and succeeding years.

6.4 Under these circumstances, we hold that the detection bill of Rs.44,097/- for the cost of 9,497 units for six (06) months for the period from December 1999 to May 2000 is illegal and unjustified and the same is declared null and void.





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6.5 The billing account of the Respondent may be overhauled after adjustment of the payments made against the above detection bill.

7. Foregoing in view, this appeal is dismissed.

Muhammad Irfan-ul-Haq
Member

Abid Hussain
Convener

Dated: 19/01/2023

