



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

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No. NEPRA/Appeal/110/2021/ *688*

November 21, 2023

- | | |
|--|---|
| 1. Muhammad Afzal,
S/o. Miraj Din,
R/o, House No. P-260, St. No. 14,
Mohallah Islam Nagar, Faisalabad | 2. Chief Executive Officer
FESCO Ltd,
West Canal Road, Abdullahpur,
Faisalabad |
| 3. Dr. Muhammad Irtiza Awan,
Advocate High Court,
Awan Law Associates,
Al-Majeed Centre, 1-Mozang Road,
38-Link Farid Kot Road, Lahore | 4. Ch. Muhammad Imran Bhatti,
Advocate High Court,
44-District Courts, Faisalabad |
| 5. Sub Divisional Officer,
FESCO Ltd,
Sargodha Road 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 No.110/2021 (FESCO Vs. Muhammad Afzal) Against the Decision Dated 02.08.2021 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 21.11.2023 (05 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 The Appellate Board

In the matter of

Appeal No. 110/POI-2021

Faisalabad Electric Supply Company Limited

.....Appellant

Versus

Muhammad Afzal S/o. Miraj Din,

R/o. House No. P-260, St. No.14, Mohallah Islam Nagar, Faisalabad

.....Respondent

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

For the Appellant:

Dr. M. Irtiza Awan Advocate

For the Respondent:

Ch. M. Imran Bhatti Advocate

Mr. Muhammad Afzal

DECISION

1. As per fact of the case, the Respondent namely, Muhammad Afzal is an industrial consumer of Faisalabad Electric Supply Company Limited (hereinafter referred to as the "Appellant") bearing Ref No.27-13125-6500681-U with a sanctioned load of 33 kW and the applicable tariff category is B-2(b). Audit Department of the Appellant vide Audit Note No.190 dated 30.04.2017 pointed out less charging of MDI during the period from January 2016 to October 2016 due to defective meter and recommended to debit the difference bill of Rs.115,650/-. Later on, the Appellant debited a detection bill of Rs.115,650/- for 237 kW MDI for the period from January 2016 to October 2016 to the Respondent on the recommendation of the audit department and added to the bill for March 2018.
2. Being aggrieved with the above actions of the Appellant, the Respondent initially filed a civil suit before the Civil Court Faisalabad on 19.04.2018 and assailed the above detection bill, which was subsequently withdrawn due to lack of jurisdiction. Subsequently, the Respondent filed a

Appeal No.110/POI-2021

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M. Irtiza Awan



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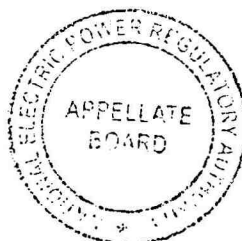
complaint before the Provincial Office of Inspection Faisalabad Region, Faisalabad (the "POI") on 25.02.2021 and disputed the aforesaid detection bill. The complaint of the Respondent was disposed of by the POI vide the decision dated 02.08.2021, wherein the detection bill of Rs.115,650/- for the period from January 2016 to October 2016 debited by the Appellant on the basis of Audit Note No.190 dated 30.04.2017 was declared null and void.

3. Subject appeal has been filed against the afore-referred decision of the POI (hereinafter referred to as the "impugned decision") by the Appellant before the NEPRA. In the appeal, the Appellant opposed the impugned decision *inter alia*, on the following grounds that the Audit department vide audit note No.190 dated 30.04.2017 recommended to charge the detection bill for the period from January 2016 to October 2016 on account of less charged kW MDI; that the Appellant debited the detection bill of Rs.115,650/- for the period from January 2016 to October 2016 to the Respondent, which was cancelled by the POI; that the impugned decision is against the law and facts of the case; that the POI has not thrashed out the consisting reasons in the matter and passed the impugned decision; that the judgment of honnourable Lahore High Court Lahore has not been considered in true aspects; that the Respondent is not authorized to plead the case as the impugned bill was debited to Mr. Muhammad Jameel the registered consumer, whereas the Respondent filed the instant complaint before the POI; that the findings of the POI with regard to Clause 7.5.3 of the CSM-2021 is wrong; that the impugned bill was charged according to ground reality and consumption of the Respondent; and that the impugned decision is liable to be set aside.

4. Proceedings by the Appellate Board

- 4.1 Upon the filing of the instant appeal, a Notice dated 05.11.2021 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days, which were filed on 16.11.2021. In the reply, the Respondent contended that the Director (HR&A) is not authorized to file the titled appeal, hence the same is liable to be dismissed. The Respondent further contended that the electricity connection of the premises is in the name of Mr. Muhammad Jameel, whereas the Respondent owns the premises, who will be treated as a consumer as per the definition given in Section 2(iv) of the NEPRA Act. As per Respondent, the Audit Department vide Audit Note No.190 dated 03.04.2017 recommended to debit the detection bill of Rs.115,656/- on account of the difference of MDI, which is neither payable nor recoverable being without notice, ex-parte, unilateral, against the law and facts of the case. According to the Respondent, he is not responsible

M. O. N.



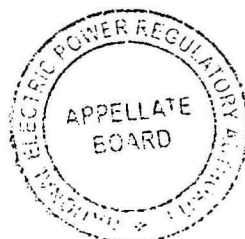


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for payment of the alleged impugned audit amount raised by the Appellant as already held by the superior courts in different cases viz PLJ 2019 Lahore (Note) 46, PLJ 2017 Lahore 474, 2014 MLD 1253, 2013 YLR 1543, 2008 YLR 308, 1988 CLC 501 as well as the NEPRA Appellate Board in the Appeal Nos.135/POI-2016 and 104/POI-2016. The Respondent finally prayed for the dismissal of the appeal with cost.

5. Hearing:

- 5.1 Hearing was held at NEPRA Regional Office Faisalabad on 24.06.2023 but adjourned on the request of the Appellant. Finally, the hearing was conducted at NEPRA Regional Office Faisalabad on 09.09.2023, which was attended by both parties. Learned counsel for the Appellant contended that the audit department pointed out that the impugned meter of the Respondent became defective in January 2016 due to which less MDI was charged during the period from January 2016 to October 2016. Learned counsel for the Appellant further contended that the detection bill of Rs.115,650/- for the period from January 2016 to October 2016 was debited on the observation of the audit department, which was set aside by the POI without perusal of the consumption pattern. Learned counsel for the Appellant termed the above detection bill as justified and payable by the Respondent.
- 5.2 Learned counsel for the Respondent denied the assertions of counsel for the Appellant and stated that neither any site verification was carried out nor the audit department included the Respondent during the audit proceedings, therefore charging the detection bill of Rs.115,650/- for the period from January 2016 to October 2016 on account of unilateral audit proceedings is not justified. He submitted that the superior courts declared that the audit proceeding is an internal matter between DISCO and the audit department and the consumer cannot be held responsible for payment of any detection bill on account of audit observation. Learned counsel for the Respondent supported the impugned decision and prayed that the appeal be dismissed.
6. Arguments were heard and the record was examined. Following are our findings:
- 6.1 The Appellant raised the objection in respect of *locus standi* and submitted that the registered consumer is Mr. Muhammad Jameel but the complaint was filed by Mr. Muhammad Afzal before POI. From the record placed before us, it is revealed that the electricity connection sanctioned in the name of Mr. Muhammad Jameel is installed at the premises situated at P-799 A Samal Industry Estate Faisalabad, whereas, Mr. Muhammad Afzal the Respondent is the present owner



Mr. Afzal



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of the said premises. As per the definition given in Section 2(iv) of the NEPRA Act, the Respondent should be treated as the Consumer of the Appellant being the occupant of the premises. Relevant excerpt in this regard is replicated below:

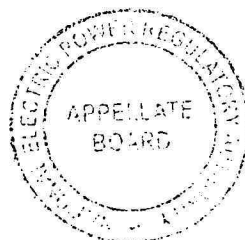
(iv) "consumer" means a person or his successor-in-interest who purchases or receives electric power for consumption and not for delivery or re-sale to others, including a person who owns or occupies a premises where electric power is supplied;

In view of the above, this objection of the Appellant is rejected being devoid of force.

6.2 As regards the objection raised by the Respondent regarding authorization, it is observed 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 as per BoD Resolution No.04 dated 27.12.1999. Hence objection of the Respondent in this regard is devoid of force and rejected.

6.3 As far as the merits of the case are concerned, the billing meter of the Respondent became defective and was replaced with a new meter by the Appellant in October 2016. Subsequently, the Audit Department vide Audit Note No.190 dated 30.04.2017 pointed out that the Respondent was less billed in terms of MDI during the period from January 2016 to October 2016 due to defective meter and recommended to charge the difference of 237 kW MDI. The Appellant debited a detection bill of Rs.115,650/- for 237 kW MDI for the period from January 2016 to October 2016 to the Respondent on the recommendation of the audit department and added to the bill for March 2018.

6.4 To verify the contention of the Appellant regarding the defective meter, the billing statement was examined, which shows that the impugned billing meter remained active till September 2016, which was subsequently replaced in October 2016. The Appellant did not provide any document i.e. checking report, meter change order, notice, etc, through which the cause of the replacement of the meter could be witnessed. If presumed, the impugned meter was defective since January 2016 as to why the Appellant not replace the same within two billing cycles as per Clause 4.4(e) of the Consumer Service Manual 2010 (the "CSM-2010"). This shows gross negligence on the part of the Appellant and the Respondent cannot be held accountable for payment of any bill in the absence of verifiable evidence. The Appellant even did not adhere to the procedure as laid down in Chapter 4 of the CSM-2010 in the case of a defective meter.



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6.5 Even otherwise the arrears pertaining to the period from January 2016 to October 2016 raised in the electricity bill of March 2018 on the basis of Audit observation are not tenable in the eyes of law. The Audit observation is an internal matter between the Appellant FESCO and the Audit Department and the Consumer cannot be held responsible for the payment of any detection bill based on the Audit Para. The honorable Lahore High Court in its judgment in the “Water and Power Development Authority, etc v. Umaid Khan” (1988 CLC 501) held that *no amount could be recovered from the consumer based on the audit report as the audit affair is between the WAPDA and its audit department and no audit report could in any manner make consumer liable for any amount and the same could not bring about any agreement between the WAPDA and the consumer making consumer liable based on the so-called audit report*. The courts in similar cases relied on the same principle in cases reported cited as 2014 MLD 1253 and 2008 YLR 308. In view of the foregoing discussion, we hold that the detection bill of Rs.115,650/- for 237 kW MDI for the period from January 2016 to October 2016 charged to the Respondent based on Audit Note No.190 dated 30.04.2017 is illegal, unjustified and the same is cancelled.

7. Foregoing in view, the appeal is dismissed.

Abid Hussain
Member

Muhammad Irfan-ul-Haq
Member

Naweed Illahi Sheikh
Convener

Dated: 2/11/2023

