



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

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No. NEPRA/Appeal/028/2024/875

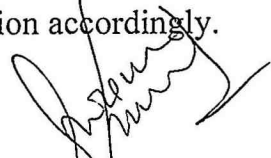
October 10, 2024

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| 1. Muhammad Afzal,
S/o. Muhammad Amin,
R/o. Chak No. 219/RB,
Mohallah Irshad Town, Street No. 2,
Faisalabad
Cell No. 0300-6686267 | 2. Chief Executive Officer,
FESCO Ltd,
West Canal Road, Abdullah Pur,
Faisalabad |
| 3. Hafiz Faisal Raheem,
Advocate High Court,
33-District Courts, Faisalabad
Phone No. 041-2641435
Cell No. 0321-6661306 | 4. Mirza Muhammad Ijaz,
Advocate High Court,
Chamber No. 8, Ground Floor,
Sufi Barkat Ali Law Building,
Near CPO Office, Faisalabad
Cell No. 0306-7050428 |
| 5. Sub Divisional Officer (Operation),
FESCO Ltd,
Factory Area 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.028/2024 (FESCO Vs. Muhammad Afzal) Against the Decision Dated 24.01.2024 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 10.10.2024 (06 pages), regarding the subject matter, for information and necessary action accordingly.

Encl: As Above


(Ikram Shakeel)
Deputy Director
Appellate Board

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.028/POI-2024

Faisalabad Electric Supply Company LimitedAppellant

Versus

Muhammad Afzal S/o. Muhammad Amin, R/o. Chak No.219/RB,
Mohallah Irshad Town, Street No.2, FaisalabadRespondent

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

For the Appellant:

Hafiz Faisal Raheem Advocate
Mr. M. Ali Rehman SDO

For the Respondent:

Mirza Muhammad Ijaz Advocate

DECISION

1. Brief facts leading to the filing of instant appeal are that Muhammad Afzal (hereinafter referred to as the "Respondent") is an industrial consumer of Faisalabad Electric Supply Company Limited (hereinafter referred to as the "Appellant") bearing Ref. No.27-13213-6391600 with a sanctioned load of 13 kW and the applicable Tariff category is B-1(b). The metering and Testing (M&T) team of the Appellant checked the metering equipment of the Respondent on 29.05.2019 and reportedly, the Respondent was found stealing electricity through tampering with the meter. Therefore, FIR No.532/2019 dated 13.06.2019 was registered against the Respondent regarding the theft of electricity and a detection bill of Rs.1,390,366/- against 73,651 units for twelve (12) months for the period from June 2018 to May 2019 was charged by the Appellant to the Respondent @ 60% load factor of the connected load i.e. 25.142 kW and added to the bill for June 2019.
2. Being aggrieved, the Respondent initially filed a civil suit before the Senior Civil Judge Faisalabad against the above detection bill, which was subsequently withdrawn by him.

Appeal No.028/POI-2024

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11.



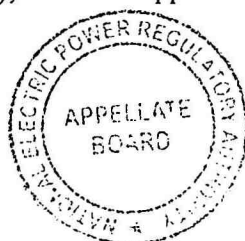
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Thereafter, the Respondent filed a complaint before the Provincial Office of Inspection, Faisalabad Region, Faisalabad (hereinafter referred to as the "POI"), and challenged the above-mentioned detection bill. The complaint of the Respondent was disposed of vide the POI decision dated 24.01.2024, wherein the detection bill of Rs.1,390,366/- against 73,651 units for twelve (12) months for the period from June 2018 to May 2019 was cancelled and the Appellant was directed to debit the revise detection bill of net 30,295 units for six (06) months for the period from December 2018 to May 2019.

3. Subject appeal has been filed against the afore-referred decision dated 24.01.2024 of the POI (hereinafter referred to as the "impugned decision") by the Appellant before the NEPRA, wherein it is contended that the impugned decision is bad in law against the facts of the case, which is illegal and self-contradictory. The Appellant further contended that the POI did not consider the fact that the Respondent was involved in the illegal abstraction of electricity through the tampered meter, therefore FIR No.532/2019 dated 13.06.2019 against him. As per the Appellant, the POI has no jurisdiction to adjudicate the instant matter and the same is liable to be adjudicated by the Civil Court. According to the Appellant, the Respondent has no locus standi to file the instant complaint as the registered consumer of the Appellant is Muhammad Sarwar but this aspect was not considered by the POI. The Appellant submitted that the detection bill of Rs.1,390,366/- against 73,651 units for twelve (12) months for the period from June 2018 to May 2019 was charged to the Respondent to recover the revenue loss sustained. The Appellant stated that the POI failed to appreciate that the complaint could not be entertained as no notice as required under Section 26(6) of the Electricity Act 1910 was served upon the Appellants before filing the same. The Appellant prayed that the impugned decision is not sustainable in law and the same is liable to be set aside.

4. **Proceedings by the Appellate Board**

Upon the filing of the instant appeal, a Notice dated 20.03.2024 was sent to the Respondent for filing reply/para-wise comments to the appeal within ten (10) days, which were filed on 15.04.2024. In the reply, the Respondent prayed for dismissal of the appeal *inter alia*, on the main grounds that neither prior notice was served nor alleged checking was carried out in the presence of the Respondent; that the impugned meter was removed and electricity of the premises was disconnected in violation of the provisions of the Consumer Service Manual (the "CSM"); that the Appellant did not produce the impugned meter





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before the POI for verification of alleged tampering, however, the said forum directed the Appellant to revise the impugned detection bill for six months; that the POI has exclusive jurisdiction to adjudicate the instant matter and that the impugned decision is liable to be maintained and the appeal be dismissed with cost.

5. Hearing

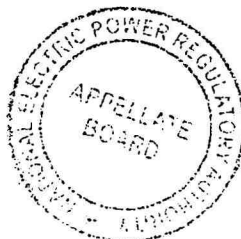
5.1 Hearing was fixed for 08.06.2024 at NEPRA Regional Office Lahore, wherein both parties tendered appearance. During the hearing, learned counsel for the Appellant reiterated the same version as contained in memo of the appeal and contended that the premises of the Respondent was checked by the M&T team on 29.05.2019, wherein the Respondent was involved in illegal abstraction of electricity through tampering with the impugned meter, therefore a detection bill of Rs.1,390,366/- against 73,651 units for twelve (12) months for the period from June 2018 to May 2019 was debited to the Respondent. As per learned counsel for the Appellant, the POI neither checked the impugned meter nor consulted the consumption data and reduced the detection bill for six months. Learned counsel for the Appellant defended the charging of the impugned detection bill and prayed that the same be declared as justified and payable by the Respondent.

5.2 On the contrary, learned counsel for the Respondent rebutted the version of the Appellant regarding charging the impugned detection bill and averred that neither prior notice was served nor alleged checking was carried out in the representation of the Respondent, hence there is no justification to debit any detection bill. Learned counsel for the Respondent argued that the Appellant even failed to follow the procedure as laid down in Chapter 9 of the CSM-2010 to establish theft. As per learned counsel for the Respondent, the POI neither consulted consumption data nor checked impugned metering equipment and allowed the Appellant to recover the detection bill for six months. He finally prayed for the dismissal of the appeal being devoid of merits.

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

6.1 Preliminary objection of the Appellant Jurisdiction of the POI u/s 38 of NEPRA Act:

The billing meter of the Respondent was found tampered during checking dated 29.05.2019 of the Appellant and the detection bill of Rs.1,390,366/- against 73,651 units for twelve (12) months for the period from June 2018 to May 2019 was debited to the Respondent. The entire facts of the case manifest that the case pertains to the billing due





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to tampered meter and the POI has been empowered to adjudicate such matters under Section 38 of the NEPRA Act. In this context, the honorable Supreme Court of Pakistan in the case reported as PLD 2012 SC 371 held that the POI has exclusive jurisdiction to entertain the complaints of billing, where, the metering equipment is involved and the Civil Court has the jurisdiction in case of bypassing the meter. Thus the objection of the Appellant has no force and the same is rejected.

6.2 Objection regarding prior notice before approaching the POI:

As regards another objection of the Appellant for not issuing notice as per the Electricity Act, 1910 by the Respondent before filing a complaint to the POI, it is elucidated that the matter was adjudicated by the POI under Section 38 of the NEPRA Act, 1997 and as per procedure laid down in Punjab (Establishment and Powers of Office of Inspection) Order, 2005, which do not require for service of any notice before approaching the POI. The above objection of the Appellant is not valid and, therefore overruled.

6.3 Objection regarding Locus standi:

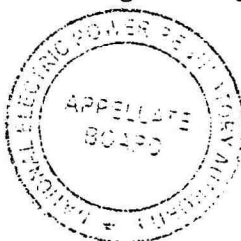
The Appellant raised another objection in respect of *locus standi* and submitted that the registered consumer is Muhammad Sarwar but the application was filed before POI by Muhammad Afzal. From the record placed before us, it is revealed that Muhammad Sarwar is the registered consumer of the Appellant, and the application before POI was filed by Muhammad Afzal, who is the resident of Chak No.219/RB, Mohallah Irshad Town, Street No.2, Faisalabad. 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. The 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 premises where electric power is supplied;

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

6.4 Detection bill of Rs.1,390,366/- against 73,651 units for twelve (12) months for the period from June 2018 to May 2019

In the instant case, the Appellant claimed that M&T on 29.05.2019 detected that the Respondent was using electricity through the tampered meter, therefore electricity of the premises was disconnected and FIR was registered against him. Thereafter, the Appellant



debited a detection bill of Rs.1,390,366/- against 73,651 units for twelve (12) months for the period from June 2018 to May 2019 was charged to the Respondent on the basis of 60% load factor of the connected load i.e.25.142 kW, which was challenged by the Respondent before the POI. The said forum cancelled the above detection bill and directed the Appellant to charge revised detection bill of net 30,295 units for six months i.e. December 2018 to May 2019 against which the Appellant filed the instant appeal before the NEPRA.

6.5 It is observed that the Appellant debited the impugned detection bill for eleven months, which is inconsistent with Clause 9.1c(3) of the CSM-2010. Said clause of the CSM-2010 restricts the Appellant to debit the detection bill maximum for six months in case of theft through tampering with the meter. The Appellant even failed to produce the impugned meter before the POI for the verification of the alleged tampering. To check the justification of the impugned detection bill, the consumption data of the Respondent is examined in the below table:

Corresponding months of previous year		Disputed Months	
Month	Units	Month	Units
Jun-17	4383	Jun-18	3621
Jul-17	5875	Jul-18	2204
Aug-17	3924	Aug-18	6758
Sep-17	8908	Sep-18	4193
Oct-17	2889	Oct-18	2119
Nov-17	2536	Nov-18	8821
Dec-17	50	Dec-18	7579
Jan-18	51	Jan-19	4156
Feb-18	48	Feb-19	5386
Mar-18	1009	Mar-19	7006
Apr-18	3585	Apr-19	7045
May-18	4714	May-19	4605
Average	3164	Average	5291
Detection bill = 11,012 units per month			

The above consumption data shows that the average consumption recorded during the disputed period is much higher than the average consumption of the corresponding months of the preceding year. Even otherwise, the Appellant debited the detection bill @ 11,012




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units per month to the Respondent, which is much higher than the average undisputed consumption of corresponding months of the preceding year.

- 6.3. In view of the foregoing discussion, we are of the considered view that the detection bill of Rs.1,390,366/- against 73,651 units for twelve (12) months for the period from June 2018 to May 2019 is unjustified and the same is cancelled, which is also the determination of the POI.
- 6.4. As regards the determination of the POI for revision of the detection bill for 30,295 units for six months, it is observed that the Respondent did not file an appeal before the NEPRA against the impugned decision. This construed that the Respondent has accepted the impugned decision. Moreover, the impugned decision for revision of the detection bill for six months is consistent with the foregoing clause of the CSM-2010, and the same is maintained to this extent.
7. Foregoing in view, the appeal is dismissed.

On leave
Abid Hussain
Member/Advisor (CAD)

Dated: 10-10-2024


Naweed Illahi Sheikh
Convener/DG (CAD)


Muhammad Irfan-ul-Haq
Member/ALA (Lic.)

