



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

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No. NEPRA/Appeal/154/2021/ *So7*

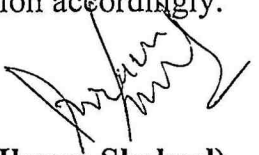
October 10, 2024

- | | |
|---|---|
| 1. Muhammad Umer,
Umer Fabrics, Chak No. 119/JB,
Samana Road, Sargodha Road,
Faisalabad
Cell No. 0300-4995921 | 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. Ch. Muhammad Imran Bhatti,
Advocate High Court,
44-District Courts, Faisalabad
Cell No. 0300-9102120 |
| 5. Sub Divisional Officer (Operation),
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.154/2021 (FESCO Vs. Muhammad Umer) Against the Decision Dated 23.04.2021 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 10.10.2024 (05 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.154/POI-2021

Faisalabad Electric Supply Company Limited

.....Appellant

Versus

Muhammad Umer S/o. Umer Fabrics, Chak No.119/JB, Samana Road,
Sargodha Road, Faisalabad

.....Respondent

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

For the Appellant:

Hafiz Faisal Raheem Advocate
Mr. Shabbir Ahmed Babar MI

For the Respondent:

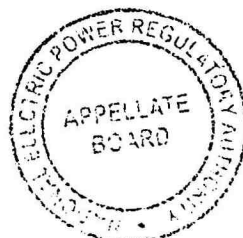
Ch. M. Imran Bhatti Advocate

DECISION

1. As per the facts of the case, Muhammad Umer (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.24-13125-5505845-U having sanctioned load of 45 kW and the applicable tariff category is B-2(b). Reportedly, the billing meter of the Respondent was found 33% slow due to the blue phase being dead during the M&T checking dated 29.07.2020 of the Appellant, therefore, MF of the Respondent was enhanced from 20 to 30 w.e.f September 2020 and onwards by the Appellant due to 33% slowness of the meter. Later on, notice dated 23.10.2020 was issued to the Respondent regarding 33% slowness of the meter, and a detection bill of Rs.803,641/- for 35,192 units+67 kW MDI for three months for the period from June 2020 to August 2020 was charged to the Respondent @ 33% slowness of the meter and added to the bill for December 2020. Subsequently, a check meter was installed in series with the impugned meter of the Respondent by the Appellant on 02.01.2021.

Appeal No.154/POI-2021

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Page 1 of 5

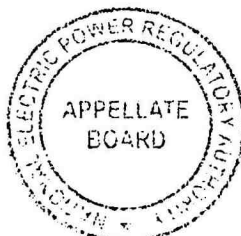


National Electric Power Regulatory Authority

2. Being aggrieved, the Respondent filed a complaint before the Provincial Office of Inspection, Faisalabad Region, Faisalabad (hereinafter referred to as the "POI") and challenged the above detection bill and the bills with enhanced MF. During the subsequent comparison of the consumption recorded by the check and the billing meter from 02.01.2021 to 02.03.2021, the billing meter was found running 16.83% slow as compared to the check meter. The complaint of the Respondent was disposed of by the POI vide decision dated 23.04.2021, wherein the detection bill of Rs.803,641/- for 35,192 units+67 kW MDI for three months for the period from June 2020 to August 2020 and the bills with enhanced MF=30 w.e.f September 2020 and onwards were cancelled. As per the POI decision, the Appellant was directed to revise the detection bill for net 10,314 units for two months i.e. July 2020 and August 2020 and the bills with MF=24.04 w.e.f September 2020 and onwards till the replacement of the impugned meter.
3. Being dissatisfied, the Appellant has filed the instant appeal before the NEPRA and assailed the decision dated 23.04.2021 of the POI (hereinafter referred to as the "impugned decision"). In its appeal, the Appellant opposed the maintainability of the impugned decision, *inter-alia*, on the following grounds that the POI without perusing the record and consumption data passed the impugned decision; that the POI passed the impugned decision after the expiry of 90 days, which is violative of Section 26(6) of Electricity Act 1910; that the Respondent misled the POI deliberately, who did not consider the arguments and the material placed on record; that the impugned decision is bad in law and that the same is liable to be set aside.
4. Notice dated 04.01.2021 of the appeal was issued to the Respondent for filing reply/para-wise comment, which however were not filed.

5. Hearing

- 5.1 Hearings of the appeal were initially conducted at NEPRA Regional Office Faisalabad on 24.06.2023 and 09.09.2023, wherein learned counsel appeared for the Respondent, whereas no one entered an appearance for the Appellant. Therefore, the appeal was dismissed for non-prosecution by Regulation 11(1) of the NEPRA (Procedure for Filing Appeals) Regulations, 2012 by this forum vide order dated 21.11.2023. Subsequently, the Appellant filed an application for restoration of appeal on 21.12.2023, wherein the Appellant submitted that the counsel engaged in the instant case could not attend the hearing on 09.09.2023 due to the sudden death of the paternal aunt, hence his absence was neither deliberate nor intentional. The Appellant further submitted that the NEPRA Authority is empowered to restore the instant



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National Electric Power Regulatory Authority

appeal and the matter be decided on merits, pursuant to the judgment of superior courts. The Appellant finally prayed for setting aside the dismissal order and for the decision on merits.

5.2 In this regard, a hearing was held at NEPRA Regional Office Lahore on 08.06.2024, wherein learned counsels for both the Appellant and the Respondent tendered appearance. Learned counsel for the Appellant repeated the same arguments as contained in the application for restoration of the appeal and argued that the counsel engaged in the instant case could not attend the hearing of the appeal due to the sudden demise of his relative due to which the appeal was dismissed by the learned forum. Learned counsel for the Appellant further contended that the application for restoration of appeal was filed timely, hence the case be decided on merits instead of technical grounds.

5.3 On the contrary, learned counsel for the Respondent averred that the settlement of the dispute with the Appellant is under process, which will be communicated, accordingly. Subsequently, learned counsel for the Respondent informed that the settlement of the disputed bills could not be done, hence the matter be decided on merits under the law.

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

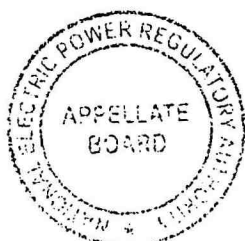
6.1 Objection regarding the time limit for POI to decide the complaint:

As per the record, the Respondent filed his complaint before the POI under Section 38 of the NEPRA Act. POI pronounced its decision on 23.04.2021 i.e. after 90 days of receipt of the complaint. The Appellant has objected that the POI was bound to decide the matter within 90 days under Section 26(6) of the Electricity Act, 1910. In this regard, it is observed that the forum of POI has been established under Section 38 of the NEPRA Act which does not put a restriction of 90 days on POI to decide complaints. Section 38 of the NEPRA Act overrides provisions of the Electricity Act, of 1910. Reliance in this regard is placed on the judgments of the honorable Lahore High Court Lahore reported in *PLJ 2017-Lahore-627* and *PLJ-2017-Lahore-309*. The relevant excerpt of the above judgments is reproduced below:

"PLJ 2017-Lahore-627:

Regulation of Generation Transmission and Distribution of Electric Power Act, 1997--

-838(3)--Electricity Act, 1910, S. 26(6)--Constitution of Pakistan, 1973. Art. 199--Constitutional petition--Consumer of LESCO.. The sanctioned load was differed with the connected load--Determine the difference of charges of the previous period of misuse to be recovered from the consumer--Validity--No disconnection or penal action was taken against petitioner rather only difference of charges between sanctioned load and load actually used by petitioner was charged, hence Clause 7.5 of Consumer Service Manual has not been violated-Issuance of detection bill itself amounts to notice and petitioner had also availed remedy before POI against determination--Order passed by POI was



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National Electric Power Regulatory Authority

beyond 90 days--Order was not passed by the respondent under Section 26(6) of the Act as Electric Inspector rather the order was passed by him in the capacity of POI under Section 38(3) of Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (NEPRA Act), therefore, argument has no substance.

PLJ-2017-Lahore-309:

The learned counsel for the petitioner submitted that there was an outer time limit of 90 days for a decision by the Electric Inspector which has not been observed and which rendered the decision of the Electric Inspector a nullity. This submission of the learned counsel has been dealt with by the Appellate Board and in any case, is fallacious- The short and simple answer rendered by the Appellate Board was that the decision was made under Section 38 of the Act, 1997 and not in terms of Section 26 of the Electricity Act, 1910. Therefore, the outer time limit of 90 days was inapplicable."

Keeping in view the overriding effect of the NEPRA Act on the Electricity Act, 1910, and the above-referred decisions of the honorable High Court, the objection of the Appellant is dismissed.

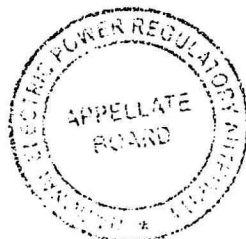
6.2 Application for restoration of Appeal:

Before going into the merits of the case, the fate of the application for restoration of appeal will be decided. It is observed that the appeal was dismissed by this forum for non-prosecution vide order dated 21.11.2023 against which the Appellant filed an application for restoration of appeal on 21.12.2023 within 30 days of the dismissal order, wherein the Appellant asserted that the counsel engaged in the instant case could not attend the hearing dated 09.09.2023 due to the sudden death of the paternal aunt, hence the absence was neither deliberate nor intentional. The Appellant prayed for restoration of the instant appeal and the decision on merits.

In view of the foregoing discussion, we are convinced with the contention of the Appellant that the application for restoration of the appeal is within time and the grounds presented before us are substantial to accept the plea of the Appellant, hence the application for the restoration of the appeal is accepted and the merits of the case will be discussed in the below paras.

6.3 Detection bill of Rs.803,641/- for 35,192 units+67 kW MDI for three months for the period from June 2020 to August 2020 and the bills with enhanced MF=30 w.e.f September 2020 and onwards

As per the available record, the billing meter of the Respondent was found 33% slow during checking dated 29.07.2020, however, the Appellant did not raise the MF timely. Subsequently, the MF was raised from 20 to 30 w.e.f September 2020 and onwards, and a detection bill of Rs.803,641/- for 35,192 units+67 kW MDI for three months for the period from June 2020 to





National Electric Power Regulatory Authority

August 2020 was debited to the Respondent @ 33% slowness of the meter, which were challenged by him before the POI.

6.4 During the subsequent comparison of the consumption of the impugned billing and check meters on 02.03.2021, the impugned meter was found 16.83% slow as compared to the check meter. Hence the charging of the detection bill of Rs.803,641/- for 35,192 units+67 kW MDI for three months for the period from June 2020 to August 2020 and the bills w.e.f September 2020 and onwards due to 33% slowness of the impugned meter is contrary to the quantum of slowness observed in the subsequent checking dated 02.03.2021 and the POI has rightly cancelled the abovesaid detection bill as well as the impugned bills charged with enhanced MF=30 due to 33% slowness of the meter w.e.f September 2020 and onwards.

6.5 Since the impugned meter was initially found slow on 29.07.2020, the Respondent is liable to be charged the supplementary bill for two billing cycles before checking dated 29.07.2020 @ 16.83% slowness of the meter as per Clause 4.3.3c(ii) of the CSM-2020 and the bills with enhanced MF due to 16.83% slowness w.e.f checking dated 29.07.2020 and onwards till the replacement of the impugned meter, under clause 4.3.3c(i) of the CSM-2020. The impugned decision is liable to be modified to this extent.

7. In view of what has been stated above, we concluded that:

7.1 the detection bill of Rs.803,641/- for 35,192 units+67 kW MDI for three months for the period from June 2020 to August 2020 and the bills already charged with enhanced MF=30 w.e.f September 2020 and onwards are cancelled, which is also the determination of the POI.

7.2 The Respondent may be charged the revised supplementary bill for two billing cycles before checking dated 29.07.2020 @ 16.83% slowness of the meter as per Clause 4.3.3c(ii) of the CSM-2020 and the bills with enhanced MF=24.04 due to 16.83% slowness w.e.f checking dated 29.07.2020 and onwards till the replacement of the impugned meter, according to Clause 4.3.3c(i) of the CSM-2020.


7.3 The billing account of the Respondent may be overhauled, accordingly.


8. The impugned decision is modified in the above terms.

On leave
Abid Hussain
Member/Advisor (CAD)

Dated: 10-10-2024

Appeal No.154/POI-2021


Naveed Iftah Sheikh
Convener/DG (CAD)


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

