



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

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No. NEPRA/AB/Appeal-015/POI-2018/ 616 - 613


April 12, 2018

- | | |
|---|---|
| 1. Gul Hassan
S/o Mir Khan Mari,
R/o Village Mirza Khan Mari,
Taluka Tando Adam,
District Sanghar | 2. Chief Executive Officer,
HESCO Ltd.,
WAPDA Offices Complex,
Hussainabad, Hyderabad |
| 3. Executive Engineer (Operation),
HESCO Ltd,
Operation Division,
Tando Adam | 4. Electric Inspector,
Mirpur Khas Region,
Government of Sindh,
Plot No. 107, Nawab Colony,
Mirpur Khas |

Subject: **Appeal Titled HESCO Vs. Gul Hassan Against the Decision Dated 17.04.2017 of the Provincial Office of Inspection to Government of the Sindh Mirpur Khas Region, Mirpur Khas**

Please find enclosed herewith the decision of the Appellate Board dated 10.04.2018. regarding the subject matter, for information and necessary action accordingly.

Encl: As Above


(Ikram Shakeel)

No. NEPRA/AB/Appeal-015/POI-2018/ 616

April 12, 2018

Forwarded for information please.

Assistant Director
Appellate Board

1. Registrar

CC:

1. Member (CA)



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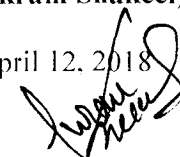
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(Ikram Shakeel)

April 12, 2018


Assistant Director
Appellate Board

1. Registrar

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National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. NEPRA/Appeal-015/POI-2018

Hyderabad Electric Supply Company LimitedAppellant

Versus

Gul Hassan S/o Mir Khan Mari R/o Deh Pai,
Taluka Tando Adam, District SangharRespondent

For the appellant:

Mr. Jan Muhammad Commercial Superintendent

For the respondent:

Nemo

DECISION

1. This appeal has been filed by Hyderabad Electric Supply Company Limited (hereinafter referred to as HESCO) against the decision dated 17.04.2017 of Provincial Office of Inspection, Mirpur Khas Region, Mirpur Khas (hereinafter referred to as POI).
2. As per facts of the case, the respondent is a consumer of HESCO having two agricultural connections bearing Ref No.15-37333-0721400-47 (first connection) and No.15-37333-0720500-47 (second connection) and the applicable tariff is D-1. As per HESCO, both the connections of the respondent were checked by SDO HESCO on 08.10.2015 and allegedly the respondent was found stealing electricity through tampering the meters (strips were found missing) and the connected load of both the

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connections was noticed as 14.92 kW & 14.90 kW respectively. After issuing notice dated 27.10.2015 to the respondent regarding above discrepancy, two detection bills were charged to the respondent by HESCO in November 2015, detail of which is tabulated below:

Connection	Bill type	Period	Units	Amount (Rs.)	Connected Load (kW)
First	Detection	August 2015 to October 2015	7,818	111,468/-	14.92
Second	Detection		7,775	134,421/-	14.90

3. The respondent being aggrieved with the action of HESCO, approached POI and challenged the aforesaid both the detection bills. POI disposed of the matter vide its decision dated 17.04.2017, wherein both the detection bills of Rs.111,468/- and Rs.134,421/- along with late payment surcharges (LPS) were cancelled.
4. HESCO has now filed the appeal against the decision dated 17.04.2017 of POI (hereinafter referred to as the impugned decision). An application for condonation of delay is also filed. In its appeal, HESCO submitted that the appeal was initially filed before Secretary Power and Irrigation Department, Government of Sindh Karachi, which was returned to HESCO by the said office with the direction to file the same before NEPRA. The premises of the respondent was inspected on 08.10.2015 as reported by HESCO and the electricity was being used illegally and the connected load of both the connections was observed as 14.92 kW and 14.90 kW respectively. As per HESCO, the detection bills of Rs.111,468/- and Rs.134,421/- were charged to the respondent against the first and second connections respectively in order to



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recover the revenue loss sustained due to theft of electricity. HESCO objected the maintainability of the impugned decision and pleaded that POI has no jurisdiction to adjudicate the instant matter being theft case by bypassing the meter as envisaged in the judgment reported as PLD 2012SC 371.

5. Notice of the appeal was issued to the respondent for filing reply/parawise comments, which were filed by the respondent on 16.02.2018. In his reply, the respondent raised the preliminary objection on the ground of limitation and pleaded for dismissal of the appeal on this sole ground. On merits, the respondent refuted the allegation of theft of electricity and stated that if any discrepancy was detected by HESCO during the alleged checking then why the consumption of the disputed period was not compared with the consumption of the period after the meter change order (MCO).
6. Hearing of the appeal was fixed for 23.02.2018 at Hyderabad and notice thereof was served upon both the parties. On the date of hearing, Mr. Jan Muhammad CS appeared for HESCO whereas no one represented the respondent. The representative for HESCO reiterated the same grounds as contained in memo of the appeal and pleaded for setting aside the impugned decision.
7. Arguments heard and record perused. Following are our observations:
 - i. The respondent objected the maintainability of the appeal on the ground of limitation and pleaded for its dismissal. Whereas, HESCO has taken the stance that the appeal against the impugned decision dated 17.04.2017 was initially filed before the

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Secretary Power and Irrigation Department, Government of Sindh Karachi, which was returned to HESCO with the direction to file before NEPRA. HESCO however did not provided any documentary evidence, which could substantiate their stance regarding the delay in filing the appeal. Obviously, the appeal was filed before NEPRA on 14.07.2017 after lapse of 80 days of the receipt of the impugned decision. We are not convinced with the arguments of HESCO for condonation of the delay as no sufficient reasons have been given for the delay in filing the appeal before NEPRA.

- ii. As regards the preliminary objection of HESCO regarding lack of jurisdiction of POI being a case of theft of electricity, it is observed that the theft of electricity was alleged through tampering the meter by HESCO during its checking dated 08.10.2015, therefore POI is competent to adjudicate the matter as per decision of honorable Supreme Court. Reliance is placed on PLD 2012 Supreme Court 371, the operative portion of which is reproduced below:

"---Ss. 26(6) & 26-A---Detection bill, issuance of---Theft of energy by consumer, charge of--- Jurisdiction of Electric Inspector and Advisory Board---Scope---Electric Inspector for possessing special expertise in examining the working of metering equipment and other related apparatus had jurisdiction to entertain reference under S.26(6) of Electricity Act, 1910 only in case of dishonest consumption of energy by consumer through deliberate manipulation of or tampering with metering equipment or other similar apparatus---Electric Inspector would have no jurisdiction in matter of theft by means other than tampering or manipulation of metering equipment etc."

Hence objection of HESCO in this regard is not sustainable.

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- iii. As regard merits of the case, HESCO charged the two detection bills amounting to Rs.111,468/- and Rs.134,421/- to the respondent against the first and second connections respectively on the plea that the respondent was involved in illegal abstraction of electricity through tampering the meters (meters strips were found missing). The respondent disputed the aforesaid both the detection bills before POI.
- iv. Perusal of the consumption data as provided by HESCO reveals that mostly nil consumption was recorded during the period after dispute, which could not be based for the comparison. The consumption of disputed and the undisputed period before the dispute will be compared to ascertain the justification of the aforesaid detection bills:

First connection: Ref No. 15-37333-0720400-47		
Period	Normal Mode Average Units/Month	Detection Mode Average Units/Month
Period before dispute September 2014 to July 2015	661	-
Disputed period August 2015 to October 2015	750	3.267
Second connection: Ref No. 15-37333-0720500-47		
Period	Normal Mode Average Units/Month	Detection Mode Average Units/Month
Period before dispute September 2014 to July 2015	671	-
Disputed period August 2015 to October 2015	795	3.263

Analysis of the above table emerges that both the detection bills @ 3,267 units/month and @ 3,263 units/month charged against the first and second connections respectively are much higher than the normal average consumption

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of both the connections recorded during the period before dispute. Moreover the normal average consumption of both the connections recorded during the disputed period August 2015 to October 2015 is even equivalent to the normal average consumption of the period before dispute. Under these circumstances, both the detection bills of Rs.111,468/- for 7,818 units and Rs.134,421/- for 7,775 units for the period August 2015 to October 2015 charged against the first and second connections of the respondent respectively are unjustified.

8. Forgoing in consideration, the appeal is dismissed.

Muhammad Qamar-uz-Zaman
Member

Nadir Ali Khoso
Convener

Muhammad Shafique
Member

Dated: 10.04.2018