



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

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No. NEPRA/Appeal/248/POI/2019/ 66

March 04, 2021

- | | |
|---|---|
| 1. Muhammad Arshad Butt
S/o. Meraj Din,
Prop: Plastic Shoes Factory,
Through Mushtaq Hussain,
S/o. Allah Rakha,
R/o. Mohallah Islambad ,
Main Road, Kachi Saraiy,
Multan | 2. Chief Executive Officer,
MEPCO Ltd,
MEPCO Complex, Khanewal Road,
Multan |
| 3. Sardar Mazhar Abbas Mahar
Advocate High Court,
45-Zikriya Block, District Courts,
Multan | 4. Executive Engineer (Operation)
MEPCO Ltd,
Shak Rukan-e-Alam Division,
Multan |
| 5. Sub Divisional Officer (Op),
MEPCO Ltd,
Manzooraabad Sub Division,
Multan | 6. POI/Electric Inspector
Multan Region,
249-G, Shah Rukan-e-Alam Colony,
Phase II, Multan |

Subject: **Appeal Titled MEPCO Vs. Muhammad Arshad Butt Against the Decision Dated 26.06.2019 Provincial Office of Inspection to Government of the Punjab Multan Region, Multan**

Please find enclosed herewith the decision of the Appellate Board dated 03.03.2021, 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.

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



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No.248/POI-2019

Multan Electric Power Company Limited

.....Appellant

Versus

Muhammad Arshad Butt S/o Meraj Din, Prop Plastic Shoes Factory,
(Through Mushtaq Hussain S/o Allah Rakha R/o Mohallah Islamabad,
Main Road, Kachi Saraity Multan

.....Respondent

APPEAL UNDER SECTION 38(3) OF REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST THE DECISION DATED 26.06.2019 PASSED BY PROVINCIAL OFFICE OF INSPECTION MULTAN REGION MULTAN

For the appellant:

Sardar Mazhar Abbas Advocate
Mr. Muhammad Azam Ali SDO

For the respondent:

Mr. Hassan

DECISION

1. As per facts of the case, the respondent is an industrial consumer of MEPCO having two connections bearing (i) Ref No.27-15193-1927101 having sanctioned load of 75 kW (first connection) and (ii) Ref No.28-15193-1927400 having sanctioned load of 7 kW under the tariff B-1(b) (second connection). Premises of the respondent was visited by metering and testing (M&T) MEPCO on 08.10.2018 and reportedly two meters were found installed at the same premises and the respondent was using shutter gate for



National Electric Power Regulatory Authority

bifurcation purpose. Subsequently, the Audit Department vide Audit Note No.M-16 dated 26.12.2018 pointed out that the respondent was not debited fixed charges by MEPCO to consolidate the load of both the connections and recommended to recover the fixed charges for the period July 2014 to June 2016 (24 months) since the installation of the second connection. Resultantly, MEPCO charged a detection bill of Rs.136,889/- for the period July 2014 to June 2016 (24 months) to the first connection of the respondent in December 2018.

2. Being aggrieved, the respondent filed an application before the Provincial Office of Inspection (POI) and challenged the above detection bill. POI vide decision dated 26.06.2019 declared the detection bill of Rs.136,889/- for the period from July 2014 to June 2016 as null and void and MEPCO was directed to overhaul the account of the respondent accordingly.
3. The appeal in hand has been filed against the above-mentioned decision (hereinafter referred to as the impugned decision) before NEPRA, wherein MEPCO inter alia, contended that two meters were found at the respondent's premises during M&T MEPCO checking dated 08.10.2018 and a shutter gate was installed for bifurcation purpose. MEPCO further contended that the Audit Department vide Audit Note No.M-16 dated 26.12.2018 recommended to recover the fixed charges for the period July 2014 to June 2016, hence the detection bill of Rs.136,889/- for the period July 2014 to June 2016 (24 months) charged to the second connection of the respondent is justified and payable by him. As per MEPCO, POI has failed to see the case in letter, spirit, the policy

12



National Electric Power Regulatory Authority

formulated in the Consumer Service Manual (CSM) and passed the impugned decision on surmises and conjectures. According to MEPCO, the matter exclusively falls within the domain of the Civil Court and the POI has no lawful authority to decide the same. MEPCO submitted that the POI has not applied his judicious mind and rendered the impugned decision contrary to the facts and law. MEPCO finally prayed for setting aside the impugned decision.

4. Notice of the appeal was issued to the respondent for filing reply/para-wise comments, which were filed on 04.10.2019. In his reply, the respondent rebutted the version of MEPCO for charging the detection bill of Rs.136,889/- for the period July 2014 to June 2016 and contended that the above detection bill was charged in violation of chapter 4 of CSM; that no detection bill is chargeable on the recommendation of the Audit Department as the audit is an internal matter between MEPCO and the Audit Department and the respondent cannot be held responsible for the recovery of any bill as envisaged in various judgments reported in 2014 MLD 1253, 2008 YLR 308 & 1988 CLC 501; that the POI has jurisdiction to decide the dispute of billing as the metering equipment is involved in pursuance of judgment reported as PLD 2012 SC 371; that no consumer can be charged beyond six months even in the cases of theft of electricity as per chapter 9 of CSM; that the above detection bill for the period July 2014 to June 2016 charged in December 2018 is barred by time and that the impugned decision is legal, valid and may be upheld.

5. Notice was issued to both parties and hearing of the appeal was held in NEPRA Regional



National Electric Power Regulatory Authority

Office Multan on 15.02.2021, which was attended by both parties. Learned counsel for MEPCO reiterated the arguments of the appeal and argued that the detection bill of Rs.136,889/- for the period July 2014 to June 2016 was charged to the respondent for the recovery of pending fixed charges as per Audit para No.M-16 dated 26.12.2018. As per learned counsel for MEPCO, the claim of MEPCO is not time-barred being charged on the basis of audit para. Learned counsel for MEPCO assured for provision of the CP-52 proforma in support of his contention. On the other hand, the representative for the respondent reiterated the same stance as given in the reply/para-wise comments to the appeal, supported the impugned decision, and prayed for its maintainability.

6. Having heard arguments and examination of the record. This forum has observed as under:
 - i. MEPCO raised the preliminary objection that the instant matter falls within the domain of Civil Court and the POI has no jurisdiction to adjudicate the instant matter. It is noted that the matter pertains to the billing due to a defective/slow meter and the POI is empowered to entertain such disputes pursuant to Section 38 of the NEPRA Act, 1997. Moreover, the honorable Supreme Court of Pakistan vide judgment reported in PLD 2012 SC 371 authorized POI to adjudicate the disputes of such nature. Hence objection of MEPCO in this regard is overruled.
 - ii. MEPCO debited a detection bill of Rs.136,889/- for the period July 2014 to June 2016 (24 months) to the respondent for the recovery of pending fixed charges



National Electric Power Regulatory Authority

as per Audit para No.M-16 dated 26.12.2018 and added in December 2018. The respondent challenged the above detection bill before POI.

- iii. It is observed that the respondent was neither associated in the audit proceedings nor show-cause notice with regard to the recovery of the detection bill of Rs.136,889/- pursuant to Audit note No.M-16 dated 26.12.2018 was served by MEPCO. In addition, the audit observation is the internal matter of MEPCO and the audit department and the respondent cannot be held responsible for payment of any detection bill based on audit para. Reliance is placed on Lahore High Court Judgement dated 25.09.2007, reported in 2008 YLR 308, which is reproduced below:

“WAPDA through chairman –Petitioner versus Fazal Karim respondent.

Electricity Act (IX of 1910)—

---Ss.24 &26—Demand of amount from the consumer on basis of Audit report/objection without issuing a show-cause notice to him or joining him with proceedings to justify Audit report—Validity—Audit report would neither be binding on consumer nor could he be held responsible for the fault of department.”

Besides, the claim of MEPCO regarding the fixed charges is time-barred as MEPCO charged the detection bill for the period July 2014 to June 2016 to the respondent in December 2018 and the detection period i.e. July 2014 to December 2015 cannot be allowed being fall beyond three years. Reliance in this regard is placed on the Lahore



National Electric Power Regulatory Authority

High Court, Lahore judgment dated 30.11.2015 in respect of writ petition No.17314-2015 titled “Muhammad Hanif v/s NEPRA and others”, which is reproduced below:

“-the period of three years for filing an application applies when the right to apply accrues as prescribed in Article 181 of Limitation Act, 1908.”

MEPCO even did not provide CP-52 proforma to substantiate his stance for charging the above detection bill. In view of the foregoing discussion, we are convinced with the arguments of the respondent as well as the determination of POI that the detection bill of Rs.136,889/- for the period July 2014 to June 2016 (24 months) is not recoverable from the respondent and liable to be withdrawn.

- iv. MEPCO alleges that the respondent was using two meters at the same premises, this allegation of MEPCO was not denied by the respondent in his reply as well as during the arguments. Since both the connections (first connection with sanctioned load of 75 kW and second connection with sanctioned load of 7 kW) were installed in the same premises, therefore the consolidated/combined load of both the connections will be considered for recovery of fixed charges. Hence it would be judicious to recover the fixed charges from the respondent for the period January 2016 to June 2016 falling within three years limit as per Article 181 of Limitation Act 1908. The impugned decision is liable to be modified to this extent.

7. From the above discussion, it is concluded as under:

- i. Impugned decision with regard to the cancellation of the detection bill of



National Electric Power Regulatory Authority

Rs.136,889/- for the period July 2014 to June 2016 (24 months) is correct and should be maintained.

- ii. MEPCO should debit the fixed charges for the period January 2016 to June 2016 to the first connection of the respondent and overhaul the billing account, accordingly.

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

Muhammad Qamar-uz-Zaman
Member/SA (Finance)

Nadir Ali Khoso
Convener/DG (M&E)

Dated: 03.03.2021