



National Electric Power Regulatory Authority
(NEPRA)
Islamic Republic of Pakistan

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No. NEPRA/AB/Appeal-050/POI-2015/ 1016-1019

October 20, 2015

1. Qaisar Abbas
S/o Ghulam Abbas,
R/o Kohawar Kalan,
Darya Khan, District Bhakkar
2. The Chief Executive Officer,
FESCO Ltd,
Canal Road, Faisalabad
3. Saeed Ahmed Bhatti
Advocate High Court,
2nd Floor, Akram Mansion,
Neela Gumbad, Lahore
4. Ch. Nadeem Ahmed
Sub Divisional Officer,
Rural Sub Division,
FESCO Ltd,
Darya Khan

Subject: Appeal Titled FESCO Vs. Qaisar Abbas Against the Decision Dated 22.04.2015 of the Electric Inspector/POI to Government of the Punjab Faisalabad Region, Faisalabad

Please find enclosed herewith the decision of the Appellate Board dated 19.10.2015, regarding the subject matter, for information and necessary action accordingly.

Encl: As Above

(M. Qamar Uz Zaman)

No. NEPRA/AB/Appeal-050/POI-2015/ 102-0

October 20, 2015


Forwarded for information please.


Member Appellate Board

- ✓ 1. Registrar
2. Director (CAD)
3. Electric Inspector/POI, Faisalabad Region
4. Master File

CC:

1. Chairman
2. Vice Chairman/Member (CA)
3. Member (Tariff)
4. Member (M&E)
5. Member (Licensing)


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|----------------|-------|
| Registrar | 11181 |
| By No..... | |
| Dated 22-10-15 | |



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. NEPRA/Appeal-050/POI-2015

Faisalabad Electric Supply Company Limited

.....Appellant

Versus

Mr. Qaisar Abbas S/o Ghulam Abbas, R/o Kohawar Darya Khan District, Bhakkar.

.....Respondent

For the appellant:

Saeed Ahmed Bhatti Advocate

For the respondent:

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DECISION

1. Through this decision, an appeal filed by Lahore Faisalabad Electric Supply Company Limited (hereinafter referred to as FESCO) against the decision dated 22.04.2015 of Provincial Office of Inspection (POI) is being disposed of.
2. As per facts of the case, the respondent is an agricultural consumer of FESCO bearing Ref No.29-13356-1893804 with a sanctioned load of 7.46 kW under D1-b tariff.



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3. Meter of the respondent was checked by FESCO on 20.11.2013 and reportedly a shunt was found in all the three phases of the meter allegedly for theft of electricity. A notice dated 22.11.2013 was issued by FESCO to the respondent and a report dated 21.11.2013 of this incident was sent by FESCO to SHO Sadar Police Station Darya Khan and the meter was taken into custody by the police as case property. FIR No.251 dated 29.11.2013 was registered against the respondent for theft of electricity. Subsequently a detection bill on load factor basis with connected load as 12.682 kW amounting to Rs.296,028/- of 28,772 units for the period June 2013 to November 2013 was charged to the respondent. The meter was checked by M&T FESCO in Police Station on 09.01.2014 and allegedly the shunt was found installed in the meter.
4. Being aggrieved with the aforementioned detection bill the respondent filed an application dated 27.12.2013 with POI. Meter was checked by POI on 20.05.2014 in the police custody but no shunt was found installed in the meter. POI after conducting hearing proceedings announced its decision on 22.04.2015 with the following conclusion:-
“Summing up the forgoing discussion, it is held that the detection bill amounting to Rs.296,028/- separately issued in the billing month of 11/2013 for the period 06/2013 to 11/2013 is held as null, void and illegal and the petitioner is not liable to pay the same. FESCO Authority is directed to charge the petitioner @ (12.682 KW x 65% load factor) per month for the period 10/2013 to 11/2013 and over haul the account of the petitioner/consumer accordingly.”
5. Being aggrieved with the POI decision dated 22.04.2015, FESCO has filed the instant appeal under section 38 (3) of the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 (hereinafter referred to as “the Act”). It is contended by FESCO that the respondent was found involved in theft of electricity by slowing the meter through installation of shunts in all the three terminals of the meter. FESCO stated that a report dated 21.11.2013 regarding the theft was made to SHO Sadar Police Station Darya Khan and the impugned meter along with other material was handed over to police as case property and in response Police lodged FIR No.215 dated 29.11.2013. According to FESCO a notice dated 22.11.2013 was issued regarding illegal abstraction of electricity and the respondent confessed his crime through an affidavit dated 22.11.2013. FESCO submitted that the detection bill was calculated for connected load of 12.682 kW at the rate of 65% load factor for the period June 2013 to November 2013 (6

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months) which amounted to Rs.296,028/- for 28,772 units and issued to the respondent under section 26(A) of Electricity Act 1910. FESCO further added that the shunt was removed in the Police Station allegedly by a police officer being close relative of the respondent. FESCO averred that it was proved before POI that the detection bill was legal, valid and justified but POI declared the same as null, void and illegal. According to FESCO, the impugned decision is not maintainable. FESCO pleaded that the detection bills was charged to the respondent u/s 26-A Electricity Act,1910 on account of dishonest abstraction of energy which does not call for any interference/scrutiny by the Provincial Office of Inspection under Section 38 of the Act but Electric Inspector to the Govt. of Punjab Faisalabad region has the exclusive jurisdiction in the matter of the detection bill under section 26(6) of the Electricity Act 1910 as has been held and declared by the Honourable Supreme Court of Pakistan in the judgment reported in PLD-2012 Supreme Court 371. FESCO made reliance on PLD 2006 Supreme Court page 328 and 2004 SCMR Page 1679 and stated that POI has no jurisdiction in the instant case and therefore the impugned decision of POI was liable to be set aside. According to FESCO the detection bill issued against the respondent was correct, valid and justified as proved through the authentic documents on the record, hence impugned decision was liable to be set aside. FESCO explained that POI allowed charging of detection bill for two months which depicted that the respondent was involved in the dishonest abstraction of electricity. FESCO inter-alia submitted that the impugned decision is liable to be set aside.

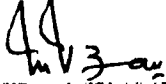
6. In response to the above appeal, the respondent was issued a notice for filing reply/parawise comments which were not submitted.
7. Hearing of the appeal was conducted at Lahore on 12.09.2015 in which Mr. Saeed Ahmed Bhatti Advocate represented the FESCO but no one entered appearance for the respondent. The learned counsel for FESCO reiterated the same arguments as given in memo of the appeal and pleaded that being a theft case it was beyond the jurisdiction of POI and therefore determination made by him was without lawful authority and liable to be set aside. In support of his contention he submitted decision of Superior Courts and prayed for acceptance of the appeal.
8. We have heard arguments of the learned counsel for FESCO and examined the record placed before us. It has been observed that:
 - i. Admittedly it is a case of theft of electricity for which FIR was lodged and the meter along with other relevant material was taken in to custody by the police as case property.

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- ii. Section 38 (2) of the Act empowers POI to make determination in respect of disputes over metering, billing and collection of tariff. The instant case petitions to illegal abstraction of electricity where the courts have plenary jurisdiction to adjudicate the matter and therefore it is beyond the jurisdiction of POI to decide the instant matter.
 - iii. We are convinced with the argument of learned counsel for FESCO that being a theft case POI has no jurisdiction to entertain the complaint and therefore impugned decision was given by POI without lawful authority and is liable to be set aside.
9. In view of foregoing discussion, the appeal is accepted and the impugned decision is set aside.



Muhammad Qamar-uz-Zaman
Member



Nadir Ali Khoso
Convener



Muhammad Shafique
Member

Date: 19.10.2015