



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

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No. NEPRA/AB/Appeal-135/POI-2016/ *1301-1306*

August 31, 2017

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|----------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Muhammad Bilal,
S/o Asif Mehmood,
Prop: M/s Fazal Rasool Weaving Factory,
P-180, Judge Wala, ABC Road,
Faisalabad | 2. Chief Executive Officer
FESCO Ltd,
West Canal Road, Abdullahpur,
Faisalabad |
| 3. Mian Muhammad Javaid,
Advocate Supreme Court,
4-Link Farid Kot Road, Lahore | 4. Ch. Muhammad Imran Bhatti,
Advocate High Court,
44-District Courts, Faisalabad |
| 5. Sub Divisional Officer (Operation),
FESCO Ltd,
Gulberg Sub Division,
Faisalabad | 6. Electric Inspector
Energy Department,
Govt. of Punjab,
Opposite Commissioner Office,
D.C.G Road, Civil Lines,
Faisalabad Region, Faisalabad |

Subject: Appeal Titled FESCO Vs. Muhammad Bilal Against the Decision Dated 30.06.2016 of the Electric Inspector/POI to Government of the Punjab Faisalabad Region, Faisalabad

Please find enclosed herewith the Decision of the Appellate Board dated 30.08.2017 regarding the subject matter, for information and necessary action accordingly.

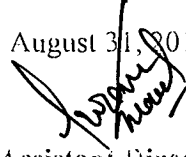
Encl: As Above

No. NEPRA/AB/Appeal-135/POI-2016/ *1307*

Forwarded for information please.

(Ikram Shakeel)

August 31, 2017


Assistant Director
Appellate Board

✓ 1. Registrar

CC:

1. Member (CA)



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. NEPRA/Appeal-135/POI-2016

Faisalabad Electric Supply Company LimitedAppellant

Versus

Muhammad Bilal, S/o Asif Mehmood,
Prop: M/s Fazal Rasool, Weaving Factory,
P-180, Judge Wala ABC Road, FaisalabadRespondent

For the appellant:

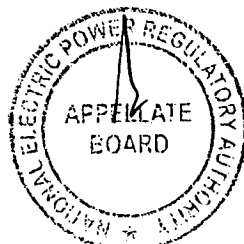
Mian Muhammad Javaid Advocate

For the respondent:

Ch. Muhammad Imran Bhatti Advocate

DECISION

1. This decision shall dispose of an appeal filed by Faisalabad Electric Company Limited (hereinafter referred to as FESCO) against the decision dated 30.06.2016 of Provincial Office of Inspection, Faisalabad Region, Faisalabad (hereinafter referred to as POI).
2. Brief facts of the case are that the respondent is an industrial consumer of FESCO bearing Ref No. 24-13223-53036201 with a sanctioned load of 69 kW under B-2 tariff. A detection bill of Rs.174,515/- on account of peak units for the period April 2007 to April 2009 was charged to the respondent by FESCO vide Audit Note No.175 dated 01.02.2010, against which an amount of



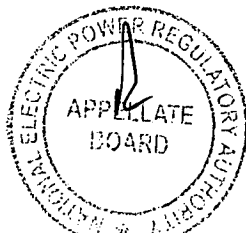


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Rs.77,297/- was recoverable from the respondent. As per FESCO, electricity meter of the respondent became defective in January 2013 and the respondent was charged for the period January 2013 to May 2013 (5 months) by FESCO on DEF-EST code. Defective meter of the respondent was replaced with a new meter by FESCO vide meter change order (MCO) dated 12.06.2013. Subsequently audit department vide Audit Note No.118 dated 26.06.2014 pointed out less charging of units during the period January 2013 to May 2013 (5 months) and on the recommendation of audit department, another detection bill amounting to Rs.220,128/- for 24,990 units (off peak=21,775 peak=3,215) for the period January 2013 to May 2013 (5 months) was charged by FESCO to the respondent in October 2014 and the respondent paid 50% of the aforesaid second detection bill. Afterwards FESCO issued an electricity bill for August 2015 to the respondent, which contained an adjustment bill of Rs.77,297/- recoverable against the Audit Note No.175 dated 01.02.2010 and the arrears of Rs.110,064/- recoverable against the Audit Note No.118 dated 26.06.2014.

3. Being aggrieved, the respondent filed an application before POI on 27.08.2015 and challenged the adjustment bill of Rs.77,297/- recoverable against the Audit Note No.175 dated 01.02.2010 and the second detection bill amounting to Rs.220,128/- charged against the Audit Note No.118 dated 26.06.2014. POI disposed of the matter vide its decision dated 30.06.2016 with the following conclusion:

“Summing up all the observations/discussion and keeping in view all the aspects of case this forum declares that the charging of amount of Rs.220,128/-



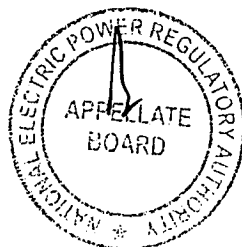


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and amount of Rs.77,297/- due to Audit Notes as null and void and without any legal effect and consumer is not liable to pay the same. FESCO/respondents are directed to withdraw the same and overhaul the petitioner's account by adjusting all Credits, Debits, Deferred Amount & Payments already made by the consumer."

The above referred decision has now been challenged by FESCO inter-alia on the grounds that the impugned bills of Rs.220,128/- and Rs.77,297/- charged on the basis of audit recommendation are justified and payable by the respondent.

4. Notice of the appeal was served upon the respondent for filing reply/parawise comments, which were filed on 01.11.2016. In his reply, the respondent contended that the impugned decision rendered by POI is in accordance with facts and law and liable to be upheld. Respondent averred that the audit notes are internal matter between DISCO and its audit department and the consumer could not be held responsible for payment of any bill charged on the basis of audit recommendation. The respondent placed reliance on the Judgements cited as 2008 YLR 308 and 2014 MLD 1253.
5. After issuance of notices to the parties, hearing of the appeal was conducted in NEPRA regional office Lahore on 15.08.2017 in which both the parties participated. Mian Muhammad Javaid, learned counsel for FESCO contended that the audit department vide Audit Note No.118 dated 26.06.2014 pointed out the less charging of units during the disputed period January 2013 to May 2013, hence a detection bill of Rs. 220,128/- charged by FESCO to the respondent is

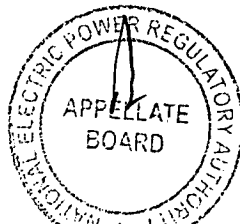




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justified and payable by the respondent. As regards the adjustment bill of Rs.77,297/- added in the bill for August 2015, learned counsel for FESCO explained that the said amount was recoverable against the detection bill of Rs.174,515/- earlier charged for the period April 2007 to April 2009 vide Audit Note No.175 dated 01.02.2010. As per learned counsel for FESCO, audit observation regarding recovery of electricity dues can be raised at any stage as envisaged in the judgement reported vide 2008 PLD Lahore 754. On the other hand, Ch. Muhammad Imran Bhatti learned counsel for the respondent reiterated the same arguments as given in the respondent's parawise comments/reply to the appeal and contended that the electricity bills were charged by FESCO to the respondent on monthly basis, which were paid by the respondent regularly. Learned counsel for the respondent argued that claim of arrears at a belated stage is barred by time, furthermore he could not be held responsible for payment of the any bill on the basis of audit recommendation as per the judgements reported as 2008-YLR-308 and PLJ-2017-Lahore-474.

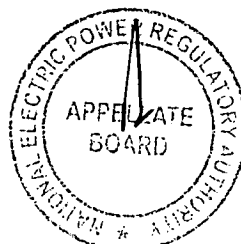
6. Arguments heard and record perused. It is a matter of fact that the electricity meter of the respondent was found defective by FESCO in January 2013 and the respondent was charged for the period January 2013 to May 2013 on DEF-EST code basis. Subsequently audit department pointed out the less recovery of units during the disputed months i.e. January 2013 to May 2013 vide Audit Note 118 dated 26.06.2014, hence second detection bill of Rs.220,128/- for 24,990 units (off peak=21,775, peak=3,215) for the same months was charged by FESCO to the respondent in October 2014 against which 50% payment was made.





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Afterwards FESCO issued an electricity bill for August 2015 to the respondent, which contained arrears of Rs.110,064/- against the aforesaid second detection bill and an adjustment bill of 77,297/- recoverable against the Audit Note No.175 dated 01.02.2010. The respondent disputed the aforesaid bills of Rs.220,128/- and Rs.77,297/- before POI on 27.08.2015. As regards the adjustment bill of Rs.77,297/- recoverable against the first detection bill of Rs.174,515/- charged vide the Audit Note No.175 dated 01.02.2010 added in the bill for August 2015, it is observed that two reference Nos. mentioned in the Audit Note No.175 dated 01.02.2010 do not match with the reference No. of the respondent. Besides FESCO failed to produce any document (prior notice, billing statement and detection bill) in support of their stance regarding the recovery of aforesaid adjustment bill. Hence prima facie, recovery of Rs.77,297/- from the respondent on the basis of aforesaid Audit Note No.175 is not justified and liable to be withdrawn to this extent. Regarding the second detection bill of Rs.220128/- charged against the Audit Note No.118 dated 26.06.2014, it is observed that nil consumption was recorded during the corresponding undisputed months of previous year i.e. January 2012 to May 2012, hence the respondent was charged @ 6,522 units/month for the disputed months i.e. January 2013 to May 2013 based on the average consumption recorded during the undisputed period before dispute i.e. July 2012 to December 2012 on DEF-EST code, which is correct and payable by the respondent. However there is no justification for charging the detection bill Rs.220,128/- for 24,990 units (off peak=21,775, peak=3,215) for the same





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months by FESCO. POI has rightly determined in the impugned decision that the audit is an internal matter between DISCO and audit party and the respondent is not responsible for any payment on the recommendation of the audit. In this regard reliance is placed on the case reported as 2014-MLD-1253 titled M/s. Mehmood Textile Mills v/s MEPCO, wherein the honorable Lahore High Court declared the audit objection is a matter between MEPCO and its audit department.

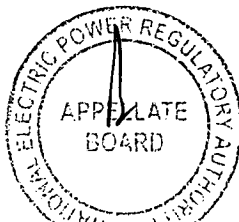
7. Reference is made to another Lahore High Court Judgement dated 25.09.2007 reported in 2008-YLR-308; operative part whereof is reproduced below:

“WAPDA through chairman –Petitioner versus Fazal Karim respondent.

Electricity Act (IX of 1910)—

---Ss.24 &26—Demand of amount from consumer on basis of Audit report/objection without issuing 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 fault of department.”

Since the respondent was neither associated in the audit process nor any notice was issued, therefore the adjustment bill of Rs.77,297/- charged against the first detection bill of Rs.174,515/-and the second detection bill of Rs.220,128/- for 24,990 units (off peak=21,775, peak=3,215) for the period January 2013 to May 2013 charged to the respondent by FESCO vide Audit Note No.175 dated 01.02.2010 and Audit Note No.118 dated 26.06.2014 respectively are declared null and void as already determined in the impugned decision.





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8. From what has been discussed above, we do not find any reason to interfere with the impugned decision which is upheld and accordingly the appeal is dismissed.

Muhammad Qamar-uz-Zaman
Member

Muhammad Shafique
Member

Nadir Ali Khoso
Convener

Date: 30.08.2017

