



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

NEPRA Office, Atta Turk Avenue (East), G5/1, Islamabad
Tel. No. +92 051 2013200 Fax No. +92 051 2600030
Website: www.nepra.org.pk E-mail: office@nepra.org.pk

No. NEPRA/AB/Appeal/092/2018/ *1180-1185* *June 10, 2019*

1. Bilal Shahid
S/o. Shahid Rafique,
R/o. 678-P, Zeeshan Road,
Khiyaban Colony No. 2,
Faisalabad
2. Chief Executive Officer
FESCO Ltd,
West Canal Road, Abdullahpur,
Faisalabad
3. Mehar Shahid Mehmood,
Advocate High Court,
Office No. 25, 3rd Floor,
Ali Plaza, 3-Mozang Road,
Lahore
4. Ch. Muhammad Imran Bhatti
Advocate High Court,
44-District Courts,
Faisalabad
5. Sub Divisional Officer (Opr)
FESCO Ltd,
Sargodha Road Sub Division,
Faisalabad
- Electric Inspector
Energy Department, Govt. of Punjab,
Opposite Commissioner Office,
D.C.G Road, Civil Lines,
Faisalabad Region, Faisalabad

Subject: **Appeal Titled FESCO Vs. Bilal Shahid Against the Decision Dated 07.10.2011 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 30.05.2019, regarding the subject matter, for information and necessary action accordingly.

Encl: **As Above**

No. NEPRA/AB/Appeal/092/2018/ *1186*
Forwarded for information please.

Registrar

(Ikram Shaked)

June 10, 2019

Assistant Director
Appellate Board



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. 092/2018

Faisalabad Electric Supply Company LimitedAppellant

Versus

Bilal Shahid S/o Shahid Rafique, R/o 678-P, Zeeshan Road,
Khiyaban colony No.2, FaisalabadRespondent

**APPEAL FILED UNDER SECTION 38(3) OF REGULATION OF GENERATION,
TRANSMISSION AND DISTRIBUTION ACT 1997 AGAINST THE DECISION
DATED 07.10.2011 OF PROVINCIAL OFFICE OF INSPECTION, FAISALABAD
REGION, FAISALABAD**

For the appellant:

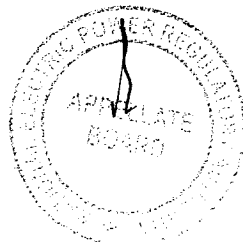
Mehar Shahid Mehmood Advocate

For the respondent:

Ch. M. Imran Bhatti Advocate

DECISION

1. Through this decision, an appeal filed by Faisalabad Electric Supply Company Limited (hereinafter referred to as FESCO) against the decision dated 07.10.2011 of the Provincial Office of Inspection, Faisalabad Region, Faisalabad (hereinafter referred to as POI) is being disposed of.
2. FESCO is a licensee of National Electric Power Regulatory Authority (hereinafter referred to as NEPRA) for distribution of electricity in the territory specified as per terms and conditions of the license and the respondent is its industrial



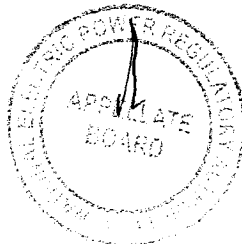


National Electric Power Regulatory Authority

consumer bearing Ref No.24-13125-5508316-U with a sanctioned load of 55 kW under B-2(b) tariff. TOU billing meter installed on the premises of the respondent on 03.09.2008 was declared defective/22.03% fast during metering and testing (M&T) FESCO checking dated 26.08.2009, whereas the backup meter of the respondent was found okay. Subsequently, metering equipment of the respondent was again checked by FESCO in April 2010 and reportedly, the difference of readings was noticed between the TOU billing and backup meters. Defective TOU billing meter of the respondent was replaced with a new meter by FESCO in September 2010 and 26,360 units/53 kW MDI were refunded by FESCO being excessively charged during the period April 2010 to September 2010 due to 22.3% fastness of the TOU billing meter.

3. However the respondent was not satisfied with above adjustment, hence filed a complaint before the POI against the excessive billing due to 22.3% fastness of the TOU billing meter since its installation in September 2008. POI disposed of the matter vide its decision dated 07.10.2011 with the following conclusion:-

"In view of the above facts it is held that the disputed meter remained defective during the disputed period from 02/2009 to 09/2010 and the billing raise/charged on the defective disputed meter during the above said disputed period is void, unjustified and of no legal effect, therefore, the petitioner is not liable to pay the same. However, the respondents are directed to revise the billing against the disputed period from 02/2009 to 09/2010 [as recorded from 10/2008 to 01/2009 and from accordingly. They are further directed to overhaul the account of the petitioner and any excess amount recovered be refunded to the petitioner accordingly."





National Electric Power Regulatory Authority

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In the matter of

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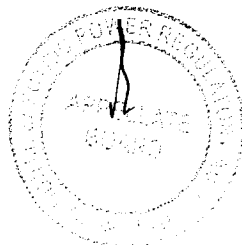
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For the respondent:

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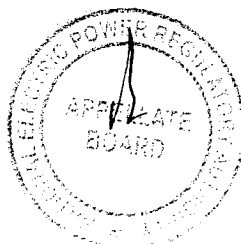


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4. FESCO had initially filed the appeal before the Advisory Board, Government of Punjab Lahore (the Advisory Board) against the decision dated 07.10.2011 of POI (hereinafter referred to as the impugned decision). The Advisory Board vide its letter dated 27.03.2017 intimated FESCO that the appeal cannot be placed before this forum after amendment in Section 38 of NEPRA Act, 1997 on 25.09.2011. Feeling aggrieved with the actions of Advisory Board, FESCO approached the Lahore High Court, Lahore through Writ Petition No.11832/04/17 and the honorable court vide order dated 13.04.2017 directed the Advisory Board to pass a speaking order within 90 days from the date of receipt of the order. Consequently, the Advisory Board adjudicated the matter and pronounced its decision dated 12.10.2017, which is reproduced below:

“Advisory Board agrees to the contention of the counsel for FESCO and returns the appeal back to FESCO being lack of jurisdiction and to lodge the same before NEPRA being an appropriate forum as per law.”

5. FESCO has filed the instant appeal before NEPRA, wherein it is inter alia, contended that the impugned decision was pronounced after expiry of 90 days as envisaged u/s 26(6) of Electricity Act, 1910 and that POI did not apply his judicious mind and passed the impugned decision without consideration of the record. An application seeking condonation of delay is also filed with the contentions that the appeal against the impugned decision was initially filed before the Advisory Board, which refused to adjudicate the matter against which WP No.11832/04/2017 was filed before Lahore High Court, Lahore. Lahore High

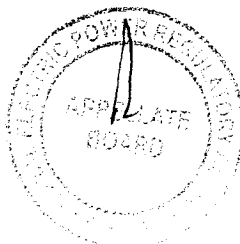




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Court, Lahore vide order dated 13.04.2017 disposed of the matter and the Advisory Board decided the appeal vide order dated 12.10.2017 and the appellant received the copy of the said order on 27.03.2018. FESCO prayed that the delay in filing the appeal is unintentional, which may be condoned in the best interest of justice in pursuance of the judgment of the Supreme Court of Pakistan cited as 2003 PLC (CS) 796.

6. Notice of the appeal was issued to the respondent for filing reply/para-wise comment, which were filed on 05.03.2019. In his reply, the respondent objected the maintainability of the appeal on the ground of limitation and contended that the appeal is time-barred by six years and five months from the date of receipt of the impugned decision by FESCO. As per respondent, no sufficient, plausible & judicious reasons were given in the application for condonation of the delay. According to the respondent, the appeal is filed with the malafide intention just to prolong the proceedings of the dispute and to avoid the implementation of the impugned decision.
7. Notice was issued to both the parties and hearing of the appeal was held in NEPRA provincial office on 08.04.2019 in which both the parties were in attendance. At the outset of the hearing, the learned counsel for the respondent repeated the preliminary objection and averred that the appeal against the impugned decision dated 07.10.2017 was filed before NEPRA on 17.04.2018, which is barred by time and liable to be dismissed on this ground alone. As per

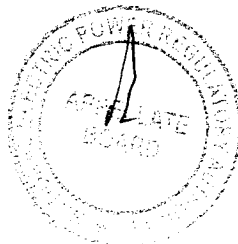




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government, it is noted that the appeal was filed before the Advisory Board on 04.01.2012 after the expiry of 79 days of receipt of the impugned decision. Prior to the insertion of sub section 3 of Section 38 of NEPRA Act, 1997 on 25.09.2011, any aggrieved person could file an appeal against the final order made by the Office of Inspection before the Advisory Board within 30 days in pursuance of clause 10 of the Punjab (Establishment and Powers of Office of Inspection) Order, 2005. Even before the wrong forum, the appeal was filed after the time limit provided in the Punjab (Establishment and Powers of Office of Inspection) Order, 2005.

Another aspect to be observed is that on 27.03.2017, Advisory Board returned the appeal to FESCO for filing the same before NEPRA but said decision was assailed before Lahore High Court who gave directions to the Advisory Board on 13.04.2017 to decide the case within 90 days. Before the Advisory Board, FESCO itself made a statement that the appropriate forum is NEPRA. Advisory Board agrees to the contention of the counsel for FESCO and returns the appeal back to FESCO being lack of jurisdiction and to lodge the same before NEPRA being an appropriate forum as per law.” Therefore, once it was brought to the notice of FESCO by the Advisory Board for the first time on 27.03.2017 that the appropriate forum is NEPRA, then at least the appeal before NEPRA should had been filed within 60 days from that date but the appeal is filed with delay..





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9. From the discussion made above, we have reached to the conclusion that the appeal filed by FESCO is time-barred, hence the application of condonation of delay is rejected and consequently the appeal is dismissed being barred by time.

Muhammad Qamar-uz-Zaman
Member

Muhammad Shafique
Member

Nadir Ali Khoso
Convener

Dated: 30.05.2019

