



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

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No. NEPRA/AB/Appeal/098/2019/& 127/2019/ 1129

November 19, 2020

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| 1. Muhammad Sarwar
S/o. Wali Muhammad,
R/o. House No. P56, St. No. 2,
Ali Town, Chak No. 120/JB,
Sargodha Road, Faisalabad | 2. Chief Executive Officer
FESCO Ltd,
Canal Bank, Abdullahpur,
Faisalabad |
| 3. Saeed Ahmed Bhatti
Advocate High Court,
66-Khyber Block, Allama Iqbal Town,
Lahore | 4. Ch. Muhammad Imran Bhatti
Advocate High Court,
44-District Courts,
Faisalabad |
| 5. Sub Divisional Officer (Operations),
FESCO Ltd,
Islam Pura Sub Division,
Faisalabad | 6. POI/Electric Inspector
Faisalabad Region,
Energy Department, Govt. of Punjab,
Opposite Commissioner Office,
D.C.G Road, Civil Lines, Faisalabad |

Subject: Appeal Titled Muhammad Sarwar Vs. FESCO & FESCO Vs. Muhammad Sarwar Against the Decision Dated 16.01.2019 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 12.11.2020, regarding the subject matter, for information and necessary action accordingly.

Encl: As Above

(Ikram Shakeel)
Assistant Director
Appellate Board

✓ Forwarded for information please.

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



National Electric Power Regulatory Authority

**Before Appellate Board, National Electric Power Regulatory Authority,
Islamabad**

In the matter of

Appeal No. 098/2019

Muhammad Sarwar s/o Wali Muhammad R/o House No.P-56, St. No.2
Ali Town, Chak No.120/JB, Sargodha Road, FaisalabadAppellant

Versus

Faisalabad Electric Supply Company LimitedRespondent

Appeal No. 127/2019

Faisalabad Electric Supply Company LimitedAppellant

Versus

Muhammad Sarwar s/o Wali Muhammad R/o House No.P-56, St. No.2
Ali Town, Chak No.120/JB, Sargodha Road, FaisalabadRespondent

**APPEAL UNDER SECTION 38(3) OF REGULATION OF GENERATION,
TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997
AGAINST THE DECISION DATED 16.01.2019 PASSED BY PROVINCIAL
OFFICE OF INSPECTION FAISALABAD REGION FAISALABAD**

For FESCO:

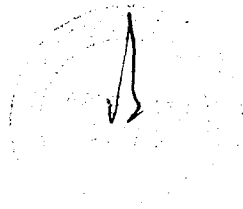
Mr. Saeed Ahmed Bhatti advocate
Mr. Muhammad Tulha SDO

For Consumer:

Ch. Muhammad Imran Bhatti
advocate

DECISION

1. Faisalabad Electric Supply Company Limited (hereinafter referred to as 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





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and conditions of the license and Mr. Muhammad Sarwar is its consumer having industrial connection with sanctioned load of 23 kW under the tariff B-I (hereinafter referred to as "the Consumer"). As per the facts of the case, the metering and testing (M&T) FESCO checked the premises of the Consumer on 07.04.2008 and allegedly that the Consumer was stealing electricity through the tampered meter and the running load was noticed as Red phase=66 Amp, Yellow phase= 69 Amp, Blue Phase=12 Amp. FESCO disconnected the electric supply of the Consumer and charged a detection bill (first detection bill) of Rs.72,523/- for 13,439 units to the Consumer on 26.06.2008. Against the above actions of FESCO, the Consumer approached the Civil Court Faisalabad on 17.07.2008. Subsequently, the electric supply of the Consumer was restored by installing the same disputed meter on the direction of the honorable Court. M&T FESCO again checked the premises of the Consumer on 20.06.2009 and as per FESCO the Consumer was found involved in the dishonest abstraction of electricity through the tampered (terminal strip damaged) meter and the connected load was observed as 37 kW being higher than the sanctioned load. Electric supply of the Consumer was again disconnected by FESCO and FIR No.789/09 dated 20.06.2009 was registered with the Police Station Nishatabad Faisalabad against the Consumer, which was cancelled by the Civil Court Faisalabad vide order dated 07.08.2009. Another detection bill (second detection bill) of Rs.1,124,770/- for 173,815 units for the period April 2008 to 20.06.2009 (14 months and 25 days) was charged by FESCO to the Consumer @ 60% load factor of the connected load (37 kW) and



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added in the bill for August 2009, which however was deferred by FESCO. The honorable Civil Court Faisalabad vide order dated 10.06.2013 declared the first detection bill of Rs.72,523/- as illegal and unlawful. Later on, the Consumer received a bill of Rs.1,241,451/- in January 2017, which included the arrears of the second detection bill of Rs.1,124,770/- along with late payment surcharges (LPS).

2. Being aggrieved, the Consumer filed an application dated 04.06.2018 before the Provincial Office of Inspection (POI) and challenged the second detection bill of Rs.1,124,770 with LPS. POI announced its decision on 16.01.2019 (hereinafter referred to as the impugned decision) and held that the second detection bill of Rs.1,124,770/- for 173,815 units for the period April 2008 to 20.06.2009 (14 months and 25 days) is null & void and directed FESCO to revise the second detection bill for 33,251 units for a period of six months i.e. January 2009 to June 2009 @ 30% load factor of the connected load as per provisions of chapter 9 of Consumer Service Manual (CSM).
3. Being dissatisfied with the impugned decision, both the parties have filed appeals. As the subject matter of the appeals is same, therefore both have been clubbed and being disposed of through a single/consolidated decision.
4. In its appeal, FESCO opposed the impugned decision on the grounds that the Consumer was stealing electricity through tampering with the meter and the connected load was noticed as 37 kW during checking of M&T FESCO on 20.06.2009 for which FIR No.789/09 dated 20.06.2009 was registered and the



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electric supply was disconnected; that the application dated 04.06.2018 of the Consumer before POI is time-barred; that the second detection bill amounting to Rs.1,124,770/- for 173,815 units for the period April 2008 to 20.06.2009 (14 months and 25 days) was charged to the Consumer u/s 26-A of Electricity Act, 1910 on account of dishonest abstraction of electricity, which does not call any interference by the POI; and that the impugned decision is ex facie coram non-judice, ab-initio void and without jurisdiction, as it was announced after the expiry of the mandatory period of 90 days u/s 26(6) of Electricity Act, 1910. On the contrary, in the appeal No.098/2019, the Consumer opposed the impugned decision inter alia on the grounds that the claim of FESCO regarding the second detection bill of Rs.1,124,770/- for 173,815 units for the period April 2008 to 20.06.2009 (14 months and 25 days) added in the bill for January 2017 is time-barred by 08 years and 10 months; that the impugned decision for revision of the second detection bill for the cost of 33,251 units for six months is contrary to clause 9.1 of the Consumer Service Manual (CSM); that the impugned checking dated 20.06.2009 of FESCO was unilateral and without notice to the Consumer; that the POI has erroneously passed the impugned decision with regard to the charging of 33,251 units, hence the same is liable to be set aside to this extent and that the second detection bill of Rs.1,124,770/- along with LPS liable to be declared null and void.

5. Notice of the appeals was sent to both parties for reply/para-wise comments, which were only filed by the Consumer. In his reply, the Consumer rebutted the



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grounds of the opposite party and reiterated its stance as given in memo of the appeal No.098/2019.

6. Hearing of both the appeals was conducted in NEPRA Regional Office Lahore on 02.10.2020, which was attended by both the parties. Learned counsel for FESCO reiterated the same stance as taken in the appeal and submitted that the second detection bill of Rs.1,124,770/- for the period April 2008 to 20.06.2009 was debited to the Consumer on account of theft of electricity through tampered meter as observed on 20.06.2009. As per learned counsel for FESCO, electric supply of the Consumer was disconnected by FESCO and FIR No.789 dated 20.06.2009 was lodged against him with Police. According to the learned counsel for FESCO, the complaint of the Consumer regarding the second detection bill is time-barred. Learned counsel for FESCO prayed for setting aside the impugned decision to the extent of revision of the second detection bill for six months on the basis of 30% load factor of the connected load. Conversely, learned counsel for the Consumer explained that the billing meter was allegedly found tampered by FESCO on 07.04.2008, hence the first detection bill of Rs.72,523/- was charged to the Consumer on 26.06.2008. Learned counsel for the Consumer contended that the first detection bill was challenged before the Civil Court Faisalabad and the honorable Civil Court set aside the first detection bill in the year 2013. Learned counsel for the Consumer further contended that the billing continued on the same disputed meter after the checking dated 07.04.2008 but FESCO again levelled the allegation of theft of electricity on the same disputed meter during checking dated



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20.06.2009. As per learned counsel for the Consumer, the second detection bill of Rs.1,124,770/- was charged by FESCO in March 2017 after a lapse of more than eight years, hence the claim of FESCO is time-barred. Learned counsel for the Consumer argued that the impugned decision to the extent of revision of the second detection bill for six months on the basis of 30% load factor of the connected load is not correct as the second detection bill was charged on the same disputed meter checked earlier during the FESCO first checking dated 07.04.2008.

7. Arguments of both the parties heard and record examined. The following has been observed:

- i. As regards the preliminary objection of FESCO regarding the failure of POI in deciding the matter within 90 days as envisaged in Section 26(6) of Electricity Act, 1910, it may be explained that the period of 90 days is provided in Electricity Act, 1910 which is not relevant for the offices of Provincial Offices of Inspection (POI) established under Section 38 of NEPRA Act, 1997. NEPRA is the appellate authority against the decisions of POI and not that of Electric Inspectors. It has already been held by Honorable Lahore High Court in judgments cited as PLJ 2017-Lahore-627 and PLJ-2017-Lahore-309 that impugned order was passed by POI under section 38 of NEPRA Act, 1997 and not by Electric Inspector under Electricity Act, 1910 therefore, the outer time limit of 90 days is inapplicable. The objection of



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FESCO in this regard is devoid of force, therefore rejected.

- ii. Another objection of FESCO regarding the jurisdiction of POI to decide the case is concerned, it is observed that the dispute pertains to the stealing of electricity through tampering with the meter and POI has been empowered to decide the fate of billing charged due to tampered meter through the judgment of honorable Supreme Court of Pakistan reported as PLD 2012 SC 371. This objection of FESCO carries no weight, hence dismissed.
- iii. FESCO charged two detection bills to the Consumer i.e. first detection bill of Rs.72,523/- for 13,439 units debited on the basis of FESCO checking dated 07.04.2018, which was set aside by the Civil Court Faisalabad vide order dated 10.06.2013. Second detection bill of Rs.1,124,770/- for 173,815 units for the period April 2008 to 20.06.2009 (14 months and 25 days) issued on the basis of FESCO checking dated 20.06.2009, which was assailed by him before POI.
- iv. FESCO is of the view that the complaint of the Consumer about the second detection bill before POI is time-barred. Similarly, the Consumer is claiming that the second detection bill of Rs.1,124,770/- for 173,815 units for the period April 2008 to 20.06.2009 (14 months and 25 days) was charged in January 2017 after more than eight years. To verify the contention of both the parties, the billing statement as provided by FESCO was examined, which revealed

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that the second detection bill of Rs.1,124,770/- for 173,815 units for the period April 2008 to 20.06.2009 (14 months and 25 days) was initially charged by FESCO to the Consumer in August 2009 after the M&T checking dated 20.06.2009, which was subsequently deferred. FESCO again added the arrears of the second detection bill of Rs.1,124,770/- and LPS in the bill of Consumer for January 2017. The Consumer agitated the second detection bill before POI vide application dated within 3 years as per Article 181 of limitation Act, 1908. Hence, the objections of both the parties in this regard are dismissed.

v. According to clause 9.1c(3) of CSM, the Consumer having industrial connection may be charged the detection bill maximum for six months, whereas in the instant case, FESCO charged the second detection bill for a period April 2008 to 20.06.2009 (14 months and 25 days), which is violative of foregoing clause of CSM. In consideration of the above, we are inclined to agree with the determination of POI that the second detection bill of Rs.1,124,770/- for 173,815 units for the period April 2008 to 20.06.2009 (14 months and 25 days) debited to the Consumer along with LPS is unjustified and should be cancelled.

vi. However the Consumer is liable to pay the detection bill for the period i.e. January 2009 to June 2009 (6 months) and the basis of charging the above



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detection bill be made on the connected load i.e. 37 kW in pursuance of clause 9.1c(3) of CSM. Hence the POI has rightly allowed FESCO to charge 33,251 units for the period i.e. January 2009 to June 2009 to the Consumer.

vii. The billing account of the Consumer may be overhauled in accordance with paras iv & v above.

8. In view of what has been stated above, we do not find any irregularity in the impugned decision, the same is maintained and consequently, both the appeals are dismissed.

Muhammad Qamar-uz-Zaman
Member

Muhammad Shafique
Member

Nadir Ali Khoso
Convener

Dated: 12.11.2020

