



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

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No. NEPRA/Appeal/145/POI/2019/ 061

February 03, 2021

1. Ghulam Shabbir Shah
Advocate,
S/o. Muhammad Yousaf Shah,
R/o. Civil Lilnes, Jhang Saddar,
Tehsil & District Jhang
2. Chief Executive Officer
FESCO Ltd,
West Canal Road, 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 (Opr)
FESCO Ltd,
Shor Kot Rural Sub Division,
Shor Kot
6. Electric Inspector/POI,
Energy Department, Govt. of Punjab,
Opposite Commissioner Office,
D.C.G Road, Civil Lines,
Faisalabad Region, Faisalabad

Subject: **Appeal Titled FESCO Vs. Ghulam Shabbir Shah Against the Decision Dated 23.01.2019 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 20.01.2021, 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.

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



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Before Appellate Board National Electric Power Regulatory Authority Islamabad

In the matter of

Appeal No.145/POI-2019

Faisalabad Electric Supply Company Limited

.....Appellant

Versus

Ghulam Shabir Shah, Advocate S/o Muhammad Yousaf Shah
R/o Civil Lines, Jhang Saddar, Tehsil & District Jhang

.....Respondent

**APPEAL UNDER SECTION 38(3) OF REGULATION OF GENERATION,
TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997
AGAINST THE DECISION DATED 23.01.2019 PASSED BY PROVINCIAL
OFFICE OF INSPECTION FAISALABAD REGION FAISALABAD**

For the appellant:

Mr. Saeed Ahmed Bhatti Advocate

For the respondent:

Ch. M. Imran Bhatti Advocate

DECISION

1. Brief facts giving rise to the filing of instant appeal are that Faisalabad Electric Supply Company Limited (hereinafter referred to as FESCO) is a licensee of the 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 domestic consumer bearing Ref No.08-13361-0519400 having a sanctioned load of 3 kW under the applicable tariff A-1(a). The electric supply of the respondent became off due to heavy storm on 12.05.2014 and he approached FESCO on



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13.05.2014 for the restoration of the electric supply. During the visit of the premises of the respondent, FESCO staff noted the reading index on the billing meter as 16,565, whereas the respondent was billed 4,504 units till May 2014 and the connected load of the respondent was observed higher than the sanctioned load. The disputed billing meter of the respondent was again checked by metering and testing (M&T) FESCO on 16.05.2014 and reportedly it was found burnt due to short terminal. FESCO initially charged a detection bill of Rs.256,780/- for the cost of 12,061 units to the respondent in May 2014 on account of pending units and later on issued a revised detection bill amounting to Rs.186,610/- to the respondent in June 2014. The electric supply of the respondent was disconnected by FESCO in July 2014 due to nonpayment of the above bill.

2. Being aggrieved with the actions of FESCO, the respondent initially filed a civil suit before the Civil Court Jhang on 02.09.2014. During the pendency of the civil suit, the respondent deposited the detection bill of Rs.186,610/- on 18.02.2016. Civil Judge, Jhang vide order dated 22.03.2018 directed respondent to approach the Provincial Office of Inspection (POI) being a competent forum in the light of Judgment of Supreme Court of Pakistan reported in PLD 2012 SC 371. Consequently, the respondent filed an application before POI on 04.06.2018 and challenged the above detection bill. The matter was decided by POI vide decision dated 23.01.2019 in which the detection bill of Rs.186,610/- charged in May 2014 was cancelled and FESCO was allowed to charge the revised bill of 420 units for May 2014 based on maximum consumption charged during





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the last two years.

3. Subject appeal has been filed by FESCO against the above decision inter-alia on the grounds that the meter under dispute was checked by FESCO in May 2014 and it was found burnt and 12,061 units were found pending due to the difference of the reading noted on the disputed meter and units already charged till May 2014; that the detection bill of Rs.186,610/- for 12,061 units was charged to the respondent on the basis of above checking; that POI declared the above detection bill for May 2014 as null and void and revised the same for 420 units for May 2014 without applying his judicious mind and ignoring the real facts of the case; that the application of the respondent is barred by limitation as the detection bill of May 2014 was challenged before POI vide application dated 04.06.2018; that the POI miserably failed to appreciate that the respondent was estopped by his words and conduct to file the petition and it hits the Article 114 of Qanoon-e-Shahadat Order 1984; that the above detection bill charged to the respondent is legal, valid and justified; that the impugned decision is ex-facie, coram non-judice, ab-initio void and without jurisdiction as the POI has no jurisdiction to carry out the proceedings after the expiry of the mandatory period of 90 days as envisaged u/s 26(6) of the Electricity Act 1910 and that the impugned decision is liable to be set aside.
3. Notice of the appeal was served upon the respondent for filing reply/para-wise comments, which were filed on 09.11.2020. In the reply, the respondent raised the preliminary objection on the ground of limitation and contended that the appeal filed before NEPRA is time-barred by 65 days from the date of receipt of the impugned decision. The



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respondent raised another objection regarding authorization and stated that the Board of Directors has not authorized Director (HR&A) FESCO to file the titled appeal. As per respondent, FESCO disconnected the electric supply of the respondent without prior notice in July 2014 and served a detection bill of Rs.186,636/- in August 2014. The respondent submitted that he filed a civil suit before the Civil Judge Jhang on 02.09.2014 against FESCO and subsequently deposited the detection bill of Rs.186,610/- on 18.02.2016 under protest to avoid the disconnection of electric supply. As per respondent, the Honorable Civil Judge vide order dated 22.03.2018 referred the matter to POI in pursuance of Judgment of Supreme Court of Pakistan reported in PLD 2012 SC 371. The respondent rebutted the stance of FESCO regarding the jurisdiction of POI and stated that the complaint was entertained by the officer in the capacity as POI under Section 38 of NEPRA Act 1997 and not as Electric Inspector under Electricity Act 1910. The respondent finally prayed for dismissal of the appeal.

4. After issuing notice, hearing of the appeal was held in NEPRA Regional Office Lahore on 14.12.2020 in which both the parties appeared. At the beginning of the hearing, learned counsel for FESCO argued that the appeal was filed before NEPRA on 18.03.2019 against the receipt of the impugned decision within 30 days as prescribed in Section 38(3) of NEPRA Act 1997. Learned counsel for FESCO repeated the objection of the time-barred claim and contended that the respondent agitated the bill of May 2014 before POI on 04.06.2018 after the expiry of three years, hence the complaint of the respondent is liable to be dismissed. On merits, Learned counsel for FESCO termed the detection bill of



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Rs.186,610/- for May 2014 as justified on the plea that the said bill was charged to the respondent on account of pending 12,061 units as observed during FESCO checking in May 2014. Learned counsel for FESCO averred that the respondent deposited 50% amount of the disputed detection bill, hence he is estopped to file a complaint before the POI. Learned counsel for FESCO finally prayed for setting aside the impugned decision. On the contrary, learned counsel for the respondent repudiated the version of learned counsel for FESCO and contended that the aforesaid detection bill was initially challenged before the Civil Judge on 02.09.2014 but the civil suit was dismissed by the honorable Civil Court vide order dated 22.03.2018 due to lack of jurisdiction. Learned counsel for the respondent further explained that the respondent approached POI on 04.06.2018 against the charging of the aforementioned detection bill, hence the time consumed in the Civil Court may be excluded. Learned counsel for the respondent pleaded for dismissal of appeal and maintainability of the impugned decision.

5. Arguments were heard and the record placed before us was examined. Following are our observations:

- 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 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 Faisalabad



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High Court in judgments cited as PLJ 2017-Faisalabad-627 and PLJ-2017-Faisalabad-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 FESCO in this regard is devoid of force, therefore rejected.

- ii. The claim of FESCO that after the payment of the detection bill amounting to Rs.186,610/- for 12,061 units for May 2014, the respondent is estopped for agitating it before POI is not convincing as the Qanoon-e-Shahadat Order 1984 is not applicable stricto-sensu in the present case.
- iii. As regards another objection of FESCO regarding the time-barred claim of the respondent, it is observed that the respondent disputed the detection bill of Rs.186,610/- for May 2014 before the Civil Judge, Jhang on 02.09.2014 and the Honorable Civil Judge vide order dated 22.03.2018 dismissed the civil suit due to lack of jurisdiction as per Judgment of Honorable Supreme Court of Pakistan reported in PLD 2012 SC 371. The respondent filed the complaint before POI on 04.06.2018 within three years of the order dated 22.03.2018 of the honorable Civil Judge Jhang. Hence the Objection of FESCO in this regard carries no weight and should be dismissed.
- iv. Regarding the point of limitation raised by the respondent, it is noticed that the copy of the impugned decision dated 23.01.2019 was obtained by FESCO on 14.02.2019, and the appeal was initially submitted by FESCO before NEPRA on 18.03.2019



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within 7 days of its dispatch in accordance with Regulation 4 (2)(b) of NEPRA (Procedure for Filing Appeal) Regulations, 2012. The relevant portion is reproduced below for the sake of convenience:

"Limitation for filing the appeal.—(1) Every appeal shall be filed within a period of thirty days from the date on which a copy of the order against which the appeal is preferred is received by the appellant: Provided that the Authority may, upon an application filed on this behalf, entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within the period. (2) Subject to anything contrary on the record the copy of the order against which an appeal is filed shall be presumed to have been received by the appellant if: (a) sent by courier, three days following the day it is dispatched by the Receipt and Issue department of the Authority; (b) sent by registered post, seven days following the date it is mailed by the Receipt and Issue department of the Authority; and (c) sent by hand delivery; on the production of the receipt showing the date it is served on the appellant."

We are convinced with the arguments of learned counsel for FESCO that the appeal filed before NEPRA is within the prescribed limit as envisaged in the *ibid* Regulation of NEPRA (Procedure for Filing Appeal) Regulations, 2012.

v. As regards another objection of the respondent for authorization of FESCO, it is observed that FESCO has placed BoD resolution dated 27.12.1999, wherein Director (HR & Admin) has been authorized to sign the memorandum of the appeal and vakalatnama. Hence this objection of the respondent regarding the filing of the appeal by an unauthorized person is not correct and overruled.

vi. FESCO charged a detection bill of Rs.186,610/- for 12,061 units to the respondent in Appeal No.145-2019



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May 2014 on account of pending units, which was initially assailed before the Civil Court and subsequently before POI on 04.06.2018.

vii. Perusal of record shows that the disputed meter was installed by FESCO on the premises of the respondent on 06.03.2012. Later on, FESCO found 12,061 pending units during checking dated 13.05.2014. How is it possible that the disputed billing meter remained at the site for more than two years but no such discrepancy of pending units was observed by the meter reader during the monthly readings? It is also observed that FESCO did not produce the disputed billing meter before POI for verification of their claim of pending units. FESCO has already charged 4,504 units and also debited 12,061 pending units during twenty-six months i.e. March 2012 to May 2014 to the respondent, which comes out to be total 16,564 units. To verify the justification of charging the above detection bill, the total units charged by FESCO may be compared below with the units assessed as per the formula given in Annex-VIII of CSM.

- Units/month charged by FESCO = Total units ÷ No. of Months
= 16,564 ÷ 26 = **637 units**
- Units/month assessed as per CSM = Load (kW) x LF x No. of Hrs./month
= 3 x 0.15 x 730 = **328 units**

From the above analysis, it is established that the respondent was charged bills on the higher side by FESCO as compared to the units assessed as per CSM. Under these circumstances, the detection bill of Rs.186,610/- for 12,061 units charged by FESCO to the respondent in May 2014 is illegal, unjustified, and may be cancelled, which is also the determination of POI.



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viii. As meter of the respondent was found defective in May 2014, hence it would be judicious to charge the detection bill for two months i.e. April 2014 and May 2014 based on the consumption of the corresponding month of the previous year or the average consumption of the last eleven undisputed months, whichever is higher in pursuance of clause 4.4 of CSM. The determination of POI for charging 420 units as detection bill for May 2014 is inconsistent with the foregoing clause of CSM and liable to be modified to this extent.

9. In view of what has been stated above, it is concluded that the impugned decision for cancellation of the detection bill of Rs.186,610/- for 12,061 units charged by FESCO to the respondent in May 2014 is correct and maintained to this extent. The respondent may be charged the bills for April 2014 and May 2014 as per consumption of the corresponding month of the previous year or the average consumption of the last eleven undisputed months, whichever is higher in pursuance of clause 4.4 of CSM. The billing account of the respondent may be overhauled accordingly.

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

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

Nadir Ali Khoso
Convener/DG (M&E)

Muhammad Shafique
Member/SA (Legal)

Dated: 20.01.2021