



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

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No. NEPRA/Appeal/239/POI/2019/ 060

February 03, 2021

- | | |
|--|---|
| 1. Malik Kamran Aslam
S/o. Malik Muhammad Aslam,
Wah CNG Station,
G. T. Road, Wah | 2. Chief Executive Officer
IESCO Ltd,
Head Office, St. No. 40,
Sector G-7/4, Islamabad |
| 3. Faisal Bin Khurshid,
Advocate Supreme Court,
Al Rushd Advocates,
32-Haroon-Ur-Rasheed Block,
Near Post Office, Johar Road,
F-8 Markaz, Islamabad | 4. Ch. Muhammad Imran Bhatti
Advocate High Court,
44-District Courts, Faisalabad |
| 5. Sub Divisional Officer (Operation)
IESCO Ltd,
Hassanabadal Sub Division,
Hassanabdal | 6. POI/Electric Inspector,
Islamabad Region,
XEN Office, Irrigation & Power
Department,
Rawal Dam Colony, Park Road,
Islamabad |

Subject: **Appeal Titled IESCO Vs. Malik Kamran Aslam Against the Decision Dated 05.03.2019 of the Provincial Office of Inspection to Government of the Punjab Islamabad Region, Islamabad**

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



National Electric Power Regulatory Authority

Before Appellate Board National Electric Power Regulatory Authority Islamabad

In the matter of

Appeal No.239/POI-2019

Islamabad Electric Supply Company LimitedAppellant

Versus

Malik Kamran Aslam s/o Malik Muhammad Aslam,
Wah CNG Station, G.T. Road, WahRespondent

APPEAL U/S 38 OF REGULATION OF GENERATION, TRANSMISSION, AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997

For the appellant:

Mr. Faisal Bin Khurshid Advocate
Mr. N.E Sayid SDO

For the respondent:

Ch. Imran Bhatti Advocate

DECISION

1. Through this decision, an appeal filed by Islamabad Electric Supply Company Limited (IESCO) against the decision dated 05.03.2019 of the Provincial Office of Inspection, Islamabad region, Islamabad (POI) is being disposed of.
2. As per facts of the case, the respondent is a commercial consumer of IESCO bearing Ref No.27-0034105 with a sanctioned load of 152 kW and the applicable tariff is A-2C. The billing meter of the respondent was found 35.4% slow during IESCO



National Electric Power Regulatory Authority

surveillance team checking. Notice dated 17.07.2007 was served to the respondent regarding the above discrepancy and a detection bill (first detection bill) of Rs.4,660,386/- for 74,304 units for the period January 2007 to June 2007 was charged by IESCO to the respondent on account of said slowness and added in the bill for August 2007. The said billing meter of the respondent was again checked by IESCO technical committee on 15.10.2008 and reportedly it was found 56.51% slow. A check meter was installed in series with the disputed billing meter of the respondent by IESCO vide meter change order (MCO) No.31/04 dated 15.10.2008. After issuing notice dated 15.12.2008 to the respondent regarding 56.51% slowness of the billing meter, another detection bill (second detection bill) of 89,032 units/562 kW MDI for the period May 2008 to August 2008 was debited to the respondent.

3. Being aggrieved, the respondent assailed the above detection bills before the POI. Metering equipment of the respondent was checked by POI on 27.11.2010 in presence of both the parties, wherein the disputed billing meter of the respondent was found 80% slow. The matter was disposed of by POI vide the decision dated 30.05.2011 (hereinafter referred to as the first decision), the operative portion of which is reproduced below:

“After consulting the detection policy of the respondent, and the consumer service manual I am in opinion that the petitioner may charge the detection bill for 03 months



National Electric Power Regulatory Authority

from 03/2007 to 06/2007 instead of 6 months @ 35.40% slowness basis. As the meter was 56.51% slow in 10/2018 and a check meter was installed in series with the disputed one, so I am again in opinion to charge the consumer from 12/2007 as 28855 units, 01/2008 as 19280 units, 02,03,04,05,06,07,08,09,10/2008 and 11/2008 as a 19280, 20400, 19280,22720, 21520,22880,15600,14480,10320,17200 and 13200 respectively instead of any slowness enhance multiplying factor. As the consumption of check meter existed. Therefore the respondents are directed to overhaul the account of the petitioner charge as per the direction of the above. Also, charge the consumption of the check meter from 12/2008 to onwards till the replacement of the meter or convert the check meter as a healthy meter if already not converted. Waive off all late payment surcharges levelled. Respondents are directed to overhaul the account of the petitioner and charge as per the directions given above. No LPS be charged. Replace the defective/ disputed meter immediately if not replaced already to avoid further litigation.

4. Subsequently, IESCO issued a bill total amounting to Rs.2,082,236/- to the respondent in December 2018, which included the arrears of Rs.1,347,812/- + current bill of Rs.715,721/- + fuel price adjustment (FPA) of Rs.18,702/-. Being dissatisfied with the actions of IESCO, the respondent filed writ petition No.4350-2018 in the Islamabad High Court, which was referred to POI by the honorable High Court vide order dated 28.12.2018 with the direction to decide the matter within 30 days with intimation to



National Electric Power Regulatory Authority

the Court. POI vide decision dated 05.03.2019 disposed of the matter with the following conclusion:

“Summing up all the above observations/discussion and keeping in view all the aspects of the case this forum is directed to the respondents to implement the decision otherwise action will be recommended under the clause 11(2) of the Establishment and Powers of Office of Inspector) Order 2005 It is informed that as per clause 11(2) of the Establishment and Powers of Office of Inspector) Order 2005 any person, consumer or licensee, who commits a breach of any interim order/decision issued by the office of Inspection shall be punished with a fine which may extend to Ten Thousand Rupees and in case of continuous violation of interim order with a further fine which may extend to Five Thousand Rupees for every day during which the violation continues. The respondents are directed to overhaul the account on the above findings and also directed to replace the defective energy meter of the petitioner with an accurate billing in future and to avoid further litigation in the future.”

5. Through the instant appeal, the afore-referred decision dated 05.03.2019 of POI was impugned by IESCO before NEPRA. In its appeal, IESCO contended that the billing meter of the respondent was found 35.4% slow for which notice dated 17.07.2007 was served to the respondent and the first detection bill of Rs.4,660,386/- for 74,304 units for the period January 2007 to June 2007 was charged to the respondent. IESCO further contended that the said billing meter of the respondent was subsequently found 56.51%



National Electric Power Regulatory Authority

slow during another checking dated 15.10.2008, hence a check meter was installed in series with the disputed billing meter of the respondent by IESCO vide MCO No.31/04 dated 15.10.2008. As per IESCO, the second detection bill of 89,032 units/562 kW MDI for the period May 2008 to August 2008 was debited to the respondent on account of 56.51% slowness of the meter. According to IESCO, the billing meter of the respondent was found 80% slow during POI joint checking dated 27.11.2010. IESCO submitted that the impugned decision suffers from technical, factual, and legal infirmities, which is unlawful, malafide, arbitrary, and calls for interference by this Authority. IESCO further submitted that the defunct billing meter ceased to register energy whatsoever was consumed by the respondent legitimately. IESCO stated that the opinion of POI is scanty, without valid basis and reflection of wheeling and dealing as it is passed without taking into account the expert opinion based on technical testing which shows the real aspects of the case. IESCO finally prayed for setting aside the impugned decision.

6. Notice for filing reply/para-wise comments to the appeal was issued to the respondent, which was submitted on 20.11.2020. In the reply, the respondent objected the maintainability of the appeal inter alia, on the grounds that the POI vide impugned decision directed IESCO to implement its first decision; that the appeal was filed through Assistant Manager IESCO instead of Chief Executive Officer IESCO without any lawful authority; that IESCO has not implemented the first decision despite



National Electric Power Regulatory Authority

passing of more than eight years that IESCO has not filed appeal before the Advisory Board against the first decision of POI, which has attained finality; that the electricity meter was working within BSS limits and the meter reader did not notice any discrepancy during the monthly readings; that the consumption of electricity varies due to slump in the market and imposition of illegal, unscheduled load shedding; that IESCO charged the first detection bill of Rs.4,660,386/- for 74,304 units for the period January 2007 to June 2007 on the plea that the disputed billing meter was found 35.4%, which was paid under duress on 27.08.2007; that the POI vide first decision declared the first detection bill as null and void; that IESCO with malafide intentions issued a bill of Rs.2,082,236/- in December 2018 which contained the arrears of Rs.1,347,812/; that writ petition No.4350-2018 was filed in the Islamabad High Court, which was referred to POI by the honorable High Court vide order dated 28.12.2018; that POI vide impugned decision directed IESCO to implement the first decision; that the entire proceeding of IESCO were carried out in violation of the Consumer Service Manual (CSM) and that the appeal is liable to be dismissed with cost.

7. Hearing of the appeal was conducted in NEPRA Head Office, Islamabad on 03.12.2020, which was attended by both parties. Learned counsel for IESCO reiterated the same contentions as given in memo of the appeal and contended that the TOU billing meter of the respondent was found 35.4% slow for which the first detection bill of Rs.466,386/- was charged to the respondent. Learned counsel for IESCO further



National Electric Power Regulatory Authority

contended that the second detection bill of 89,032 units was debited on account of 56.51% slowness as observed on 15.10.2008, which was replaced with a new billing meter vide MCO dated 15.10.2008. Learned counsel for IESCO informed that 80% slowness in the disputed billing meter of the respondent was established during POI joint checking dated 27.11.2010, hence both the above detection bills are justified and payable by the respondent. Learned counsel for IESCO argued that the POI in the first decision based its determination on the consumption of new meter which is incorrect and may be withdrawn. Learned counsel for IESCO averred that the respondent agreed to pay 70% amount of the disputed bill and the remaining 30% amount was adjusted by IESCO accordingly. On the other hand, learned counsel for the respondent rebutted the version of learned counsel for IESCO and argued that both the above detection bills were challenged before POI, who vide first decision declared the same as null and void and rightly allowed IESCO to recover first detection bill for three months and the bills from December 2007 to October 2008 based on the reading of the check meter instead of the slowness of the disputed billing meter. Learned counsel for the respondent repudiated the version of IESCO regarding the filing of the appeal against the first decision before the Advisory Board and submitted that no proof in this regard was provided by IESCO, as such the first decision of POI has attained the finality. Learned counsel for the respondent further submitted that IESCO did not implement the first decision and the deferred amount of the above-disputed detection bills was



National Electric Power Regulatory Authority

added in the arrears of the bill for December 2018, which was assailed before the Islamabad High Court vide writ petition No.4350-2018. As per learned counsel for the respondent, the honorable High Court vide order dated 28.12.2018 referred the matter to POI for the decision, who vide impugned decision-directed IESCO to implement its first decision and sent the report to Islamabad High Court. Learned counsel for the respondent supported the impugned decision and prayed for its maintainability.

8. Arguments heard and the record perused. Following are our observations:

- i. The respondent objected to the maintainability of the appeal on the plea that the same was filed through an unauthorized person. It is noticed that the instant appeal was filed by the Assistant Manager IESCO and the same official was contesting before POI as respondent No.04 but no such objection was raised. Therefore raising the objection at the belated stage is not sustainable in the eye of law and rejected.
- ii. IESCO charged the following detection bills to the respondent due to slowness of the billing meter, which was replaced with a new meter vide MCO dated 15.10.2018.
 - First detection bill of Rs.4,660,386/- for 74,304 units for the period January 2007 to June 2007 debited @ 35.4% slowness of the meter.
 - Second detection bill of 89,032 units/562 kW MDI for the period May 2008 to August 2008 debited @ 56.51% slowness of the meter.



National Electric Power Regulatory Authority

iii. The respondent assailed the above detection bills before the POI. Metering equipment of the respondent was checked by POI on 27.11.2010 in presence of both the parties, wherein the billing meter of the respondent was found 80% slow. POI vide the first decision dated 30.05.2011 directed IESCO to revise the first detection bill for 03 months i.e. March 2007 to June 2007 @ 35.4% slowness and the bills for the period December 2007 to November 2008 on the basis of reading of the check meter instead of any slowness. Subsequently, IESCO issued a bill total amounting to Rs.2,082,236/- to the respondent in December 2018, which included the arrears of Rs.1,347,812/- against which the respondent approached the Islamabad High Court, who vide order dated 28.12.2018 referred the matter to POI for the decision within a period of 30 days. POI vide impugned decision dated 05.03.2019 disposed of the matter with the direction to IESCO to implement the first decision otherwise action will be recommended under clause 11(2) of the Establishment and Powers of Office of Inspector) Order 2005.

iv. Learned counsel for IESCO claims that an appeal was filed before the Advisory Board against the first decision of POI and the same is under adjudication before the said forum, however, learned counsel for IESCO did not provide any document in this regard to substantiate his contention. Thus the first decision dated 30.05.2011 of POI has attained finality and should be implemented by IESCO in true spirit. Under these circumstances, POI vide impugned decision has rightly directed IESCO



National Electric Power Regulatory Authority

to implement its first decision and recommended action against IESCO in case of violation in pursuance of clause 11(2) of Punjab (Establishment and Powers of Office of Inspection) Order 2005. The billing account of the respondent may be overhauled after adjusting unjustified detection bills and a revised bill be issued to the respondent as per the first decision of POI.

9. Foregoing in view, we do not find any reason to interfere with the impugned decision, the same is upheld and the appeal is dismissed accordingly.

Muhammad Qamar-uz-Zaman
Member/Senior Advisor (Finance)

Muhammad Shafique
Member/Senior Advisor (Legal)

Nadir Ali Khoso
Convener/Director General (M&E)

Dated: 20.01.2021