



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

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No. NEPRA/AB/Appeal-036/POI-2015/ 850-853

September 08, 2015

1. M/s Fazal Cloth Mills Ltd,
Through Rafique Ahmed Anjum,
Manager (General), Unit No. 4,
Jhang Road, Muzaffargarh
2. The Chief Executive Officer
MEPCO Ltd,
Khanewal Road,
Multan
3. Rao Muhammad Iqbal,
Advocate Supreme Court of Pakistan,
20-Zakariya Block, District Courts,
Multan
4. Malik Ameer Abbas Samtia,
Deputy Director Legal,
MEPCO Ltd, Khanewal Road,
Multan

Subject: **Appeal Titled MEPCO Vs. M/s Fazal Cloth Mills Against the Decision Dated 20.03.2015 of the Electric Inspector/POI to Government of the Punjab Multan Region, Multan**

Please find enclosed herewith the decision of the Appellate Board dated 08.09.2015, regarding the subject matter, for information and necessary action accordingly.

Encl: As Above

(M. Qamar Uz Zaman)

No. NEPRA/AB/Appeal-036/POI-2015/ 854

September 08, 2015


Forwarded for information please.


Member Appellate Board

1. Registrar
2. Director (CAD)
3. Electric Inspector/POI, Multan Region
4. Master File

CC:

1. Chairman
2. Vice Chairman/Member (CA)
3. Member (Tariff)
4. Member (M&E)
5. Member (Licensing)


11/09/15
D/Rg-II
m/f

Registrar	9651
Dy No.
Date: 11-09-15



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. NEPRA/Appeal-036/POI-2015

Multan Electric Power Company Limited

.....Appellant

Versus

M/S Fazal Cloth Mills Ltd, Unit No.4, Jhang Road, Muzaffar Garh, Head Office 129-1, Old Bahawalpur Road, Multan.

.....Respondent

For the Appellant:

Rao Muhammad Iqbal Advocate

For the Respondent:

Nemo

DECISION

1. Brief facts giving rise to the instant Appeal are that Multan Electric Power Company Limited (hereinafter referred to as MEPCO) 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. The respondent is Industrial consumer of MEPCO bearing Ref No.30-15711-1346206 with a sanctioned load of 4,750 kW under B-3 tariff.



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2. As per facts of the case, meter of the respondent was checked by M&T MEPCO on 22.03.2013 was found with discrepancy of date and time which was communicated vide notice dated 01.04.2013. The respondent claimed a refund of Rs.5,957,867/- due to difference of billing from peak to off-peak for 1,196,511 units for the months January 2013 to June 2013 vide application dated 17.08.2013. MEPCO however, afforded a refund of Rs.2,129,653/- on account of tariff differential for 431,919 units from peak to off-peak hours for the months April 2013 to June 2013 on the recommendation of MEPCO review committee. The respondent being dissatisfied with the said adjustment filed an application dated 10.12.2014 before Provincial Office of Inspection/Electric Inspector Multan Region, Multan (hereinafter referred to as POI). The meter was replaced on 13.06.2013. The POI announced its decision on 20.03.2015 and concluded as under:

"Keeping in view all the aspects of the case and summing up all the above observations/conclusions, this forum declares the charging of current bills for 01/2013, 02/2013 and from 04/2013 to 06/2013 for excessive Peak Hour consumption due to disturbed Date & Time of the meter as Null, Void & of no legal effect. The respondents are directed to recalculate the same as per above Table and afford the consumer the credit for the cost of difference of 1223755-KWh units from Peak Hour to Off-Peak Hour. They are also directed to overhaul petitioner's account by adjusting all Debits, Credits & Payments already made by the consumer/petitioner."

3. Being aggrieved with the POI decision date 20.03.2015 MEPCO has filed the instant appeal through Rao Muhammad Iqbal Advocate and inter-alia stated that the application of the respondent was resisted by MEPCO before POI and it was proved that the claim of the respondent was not tenable as the same was based on misconception but POI failed to appreciate law as well as facts in letter and spirit and passed the impugned decision which was not sustainable and maintainable in the eye of law and was liable to be set aside. According to MEPCO as factual controversies were involved, it was exclusively domain of Civil Court and the POI has no lawful jurisdiction to decide the matter and therefore the



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impugned decision passed without lawful authority and jurisdiction had no legal effect. MEPCO further contented that the impugned decision was passed without going into the merits of the case and without applying judicial mind and was therefore nullity in the eyes of law. Finally the appellant prayed that the impugned decision passed dated 20.03.2015 by POI may be set aside.

4. The respondent was issued a notice for filing reply/parawise comments which were submitted on 03.07.2015. The respondent in his reply/parawise comments declared the submissions of the appellant as incorrect and defended the impugned decision of POI. The respondent pleaded that the appeal was based on conjectures and surmises and was not sustainable in the eye of law.
5. After issuing notice to both the parties the appeal was heard in Multan on 07.08.2015. Rao Muhammad Iqbal Advocate appeared for MEPCO and there was no representation for the respondent. As the point of limitation was noticed it will be in all fairness to dilate, discuss and decide the matter on the point of limitation at the very first place. The learned counsel for the appellant argued that the impugned decision given by POI was illegal and no limitation runs against an illegal order. The learned counsel contended that as per decision of the superior judiciary the technicalities cannot come in the way of justice and the appeal shall be decided on merit. Since it is a metering and billing dispute therefore, objection raised by appellant in memo of the appeal regarding jurisdiction was not maintainable and POI is a competent forum to determine billing and metering dispute pursuant to section 38 of the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997(hereinafter referred to as "the Act"). Therefore decision given by POI was under lawful authority and therefore objection of the appellant in this regard is dismissed. It has been observed from the record that the decision was announced by POI on 20.03.2015 and copy whereof was delivered to the appellant on 30.04.2015. The appeal was filed by MEPCO on 11.05.2015 which has obviously been filed after the time limit as prescribed in



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the law. It is established without any reasonable doubt that the appeal filed by MEPCO was time barred and liable to be dismissed on the ground of limitation.

6. Furthermore it would be beneficial to consider relevant provisions of limitation as provided in Section 38 (3) of the Act, Regulation 3 of the NEPRA (Procedure for filing appeals) Regulations, 2012 and section 9 of Punjab (Establishment and Powers of Office of Inspection) Order, 2005. Said provisions are reproduced hereunder for sake of convenience:

- **The Act:38 (3). Provincial offices of inspection.**

Any person aggrieved by any decision or order of the Provincial Office of Inspection may, within thirty days of the receipt of the order, prefer an appeal to the Authority in the prescribed manner and the Authority shall decided such appeal within sixty days

- **Procedure for filing appeals:**

3. Filing of appeal. - (1) *Any person aggrieved by any decision or order of the single Member of the Authority or Tribunal constituted under section 11 of the Act or from a decision given by the Provincial office of Inspection may, within 30 days of the order or decision file an appeal before the Authority.*

- **Punjab Establishment and Powers of Office of Inspection:**

9 Final Order.— (1) *Not later than 120 days of the filing of the complaint, the Office of Inspection shall issue its final order. In case of delay, reasons shall be recorded in writing for such delay. Final order shall be comprehensive in all respects containing the violations made and penalties imposed thereon.*

7. From bare perusal of above referred provisions it can be safely suggested that the appeal should be filed within 30 days of the announcement of the decision. It has been observed that the impugned decision was announced by POI on 20.03.2015 and the appeal was filed with NEPRA on 11.05.2015 i.e. after 53 days of its announcement by POI. Evidently MEPCO failed to file the appeal within the time limit of 30 days as prescribed under section 38 of the Act. It is always the duty of the parties to remain vigilant and obtain certified copy for the purpose of filing appeal. Therefore we are inclined to hold that valuable right has accrued in favor of the respondent due to failure on the part of MEPCO in filing the instant appeal before NEPRA within the time as prescribed by law. As a matter of fact MEPCO is



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required to explain and justify each day of the delay in filing the appeal after the decision was pronounced on 20.03.2015 and copy was received on 30.04.2015 but MEPCO failed to do so. Therefore it is concluded that the appeal is time barred and the same is dismissed accordingly.

Muhammad Qamar-uz-Zaman
Member

Muhammad Shafique
Member

Nadir Ali Khoso
Convener

Date: 08.09.2015