



National Electric Power Regulatory Authority

Islamic Republic of Pakistan

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Registrar

No. NEPRA/TCD/07/6571-74

27-8-2012

Chief Executive Officer,
Hyderabad Electric Supply Co. Ltd.
WAPDA Offices Complex,
Hussainabad,
Hyderabad

Subject: **Complaint filed by M/s. Popular Fiber Mills (Pvt.) Ltd. under Section 39 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 against HESCO regarding Illegal Demand of Cross Subsidy / Fixed Charges and Security Deposit**

Please find enclosed herewith the Orders of the Authority in the subject matter for compliance within 30 days of the receipt of this Order.

Encl: As above

— S—
(Syed Safer Hussain)

Copy to:

1. C.E. /Customer Services Director,
Hyderabad Electric Supply Co. Ltd.
WAPDA Offices Complex,
Hussainabad,
Hyderabad
2. Mr. Shamshad Ullah Cheema (Advocate)
Supreme Court of Pakistan
Office No. 3, 4, Bangsar Plaza, Commercial Market,
Satellite Town, Rawalpindi.
3. Mr. Kamran Hussain Mughal
Director Coordination
Popular Fiber Mills (Pvt.) Ltd.
311, Chapal Plaza
Hasrat Mohani Road, Karachi.

No. NEPRA/TCD/07/6575

Forwarded for information, please.

Sr. Advisor (CAD) [w.r.t. Dy. No. 866 dated 27.08.2012]
Master File

CC:

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

27-8-2012

Registrar



**BEFORE THE
NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
NEPRA**

Complaint No. HESCO - 628/2010

Popular Fiber Mills Jamshoro (Pvt) Ltd Complainant

Versus

Hyderabad Electric Supply Company Ltd Respondent

Date of Hearing: May 24, 2011

Date of Decision: July 12, 2012

Present:

- | | |
|--------------------------|-----------------------------------|
| 1) Mr. Ghiasuddin Ahmed | Chairman/Member (CA) |
| 2) Mr. Shaukat Ali Kundi | Member (Licensing) |
| 3) Mr. Habibullah Khilji | Member (Monitoring & Enforcement) |
| 4) Khawaja Muhammad Naem | Member (Tariff) |

Participants on behalf of:

Complainant: 1) Mr. Malik Junaid Eman
2) Mr. Kamran Hussain Mughal
3) Mr. Shamsbad Ullah Cheema (Advocate)

Respondent: 1) Mr. Deep Chand (CE/CSD)
2) Mr. Ghulam Shabbir, DM (FM&CM)
3) Mr. Khalid Mahmood (DG Com), PEPCO
4) Mr. Anwar Kamal, (Advocate Supreme Court)

Subject: COMPLAINT FILED BY M/S POPULAR FIBER MILLS (PVT) LTD UNDER SECTION 39 OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST HESCO REGARDING ILLEGAL DEMAND OF CROSS-SUBSIDY/FIXED CHARGES AND SECURITY DEPOSIT

ORDER

1. This order shall dispose of the complaint dated 12.11.2010 of Popular Fiber Mills (Pvt) Limited Jamshoro Sindh (hereinafter referred to as "complainant") against Hyderabad Electric Supply Company (hereinafter referred to as "Respondent" or "HESCO").

2. The complainant in his complaint stated that being an industrial concern it was a consumer of the respondent HESCO under Tariff B-3 (Industrial) with the sanctioned load of 2400 kW. The complainant further stated that due to inability of the respondent to meet the electricity demand (of the complainant) it decided to go for self generation. Besides, the prices of power and production losses were also the contributing factors which resulted into decision of self generation. The

complainant further stated that the HESCO was accordingly informed on 15.05.2005 in this regard. On 30.06.2005 permission for the installation of 3 x 1005 kW generating sets for its own use was obtained from Electric Inspector. The HESCO was informed about switching over to self generation on 1.07.2004 and was requested to disconnect the supply of the complainant and return the amount of security deposit. In response, on 23.08.2004 respondent informed the complainant to follow Section 22 of NEPRA Act 1997 wherein it is provided that if a bulk power consumer intends to stop purchase of electricity from a DISCO, it shall convey its intention by notice in writing three years before such stoppage otherwise the consumer shall continue to make payment to the DISCO equal to the amount of cross subsidy. HESCO required the complainant to make the payment of fixed charges for a period of three years from the date of stoppage of power. The complainant further stated that it filed a Constitution Petition before Sindh High Court in the year 2004 and the court vide its order dated 25.05.2006 directed Board of Directors (BoD) of HESCO for sympathetic consideration of the matter. However, HESCO illegally continued to receive fixed charges and so far an amount of Rs.60, 57,669.33 has been recovered from July, 2005 to September, 2008 which is required to be refunded. Another bill amounting to Rs.57,040,34/- for the month of October, 2008 was sent by HESCO to the complainant, but the complainant filed a Constitution Petition No.45 of 2008 before Sindh High Court Hyderabad and the Honourable Court vide its order dated 21-09-2010 decided as under :

"We therefore, direct HESCO to accept the application of the complainant of permanent disconnection of electricity to them w.e.f. 01.07.2004 as mentioned in order dated 25.05.2004 in CP No.12-381/2004 and this be done within a period of one week. The HESCO make recovery of the dues from the complainant in accordance with law and if the complainant is aggrieved of the same, the complainant may avail remedy before the NEPRA who seems to be the Forum provided by the above referred Act of 1997 for determination of the dispute regarding the tariff and charge of electricity between the consumer and the licensee company."

Despite the fact that the permanent disconnection of the complainant's connection was ordered with effect from 01.07.2004, respondent again served the bill for the month of October, 2010 amounting to Rs.71,40,912/-. Hence, based on the preceding assertions, the complainant has sought indulgence of NEPRA on the following grounds:

- i) HESCO's demand for payment of cross subsidy is totally illegal and unjustified, as the same is not covered under the abridged conditions of supply, Eligibility Criteria 2005 and Consumer Service Manual.
- ii) HESCO being licensee cannot charge any tariff which is not approved by NEPRA.
- iii) Section 22 of NEPRA Act is applicable only for the bulk power consumer under category (C) and the complainant does not fall under ambit of Section 22 of NEPRA Act.
- iv) Section 22 of NEPRA Act is relevant for those bulk consumers who are located in the service territory of another distribution company from where the electricity is supplied. In this case the complainant is not a bulk power consumer and also it is not located within the territory of some other DISCO. As such this section cannot be applied upon the complainant, as the complainant has shifted to self generation for his own use.
- v) No consumer can be compelled to purchase the electricity from a DISCO.
- vi) Since July 2004 not a single unit of electricity was consumed by the complainant and disconnection from the date has also been ordered by the High Court, therefore there is no justification for HESCO to retain the amount of security.
- vii) There are no outstanding electricity dues against the complainant.

The complainant requested to NEPRA to declare the demand of the respondent for payment of cross subsidy / fixed charges as illegal and unlawful and to refund the already recovered amount of Rs.60,57,699.33/- and the amount of security deposit of complainant alongwith interest.

3. The case was referred to HESCO on 26-11-2010 for comments. HESCO submitted its report vide letter dated 13.12.2010 which was returned with the direction to resubmit para wise

comments under the signature of Customer Services Director (local person). Accordingly vide its letter No.CEO/HESCO/CSD/M(C)/DMC/1136 dated 02.02.2011 the respondent submitted the report. The respondent stated in its aforesaid report that the complainant is not correct in its statement that the respondent had failed to meet with the electricity demand of the complainant rather it was the decision of the complainant to switch over to self generation. The respondent was informed about the said switch over on 09.07.2004 vide its memo dated 14.07.2004. Moreover, the rates of electricity are fixed by NEPRA and not by HESCO. The respondent further stated that under Section 22(2) of NEPRA Act, the complainant was required to inform the respondent in writing three years before stoppage of purchase of electricity. Thus in accordance with NEPRA Act, the respondent was not to disconnect the electricity upto three years and was entitled to charge fixed charges for three years. The complainant's demand for refund of security deposit without payment of fixed charges was not justified. It was also stated that the complainant filed a petition before Sindh High Court regarding billing dispute after 09.07.2004 and according to the decision of the Hon'ble Court, the complainant and the respondents had compromised on the period of fixed charges. As per court order, the application of permanent disconnection was to be treated as application for reduction of load and the matter was to be referred to the Board of Directors of HESCO for sympathetic consideration/decision. Accordingly the load was reduced from 2400 kW to 1200 kW with effect from 01.07.2005 and bill adjustment of Rs.2,20,911/- was allowed on account of difference of reduction of fixed charges. The remaining amount of Rs.56,41,034/- was kept in set aside and advised the complainant for payment. The complainant did not pay the said amount and filed another petition in the Sindh High Court. The respondent further contended that according to court decision and NEPRA Act Section 22 (2) three years were completed on 30.06.2008 (to be accounted after reduction of load i.e. 01.07.2005 to 30.06.2008 = 36 months) but the complainant was billed upto October, 2010 and billing has been stopped from November, 2010. As such the bills issued after 30.06.2008 are required to be withdrawn for which an adjustment of Rs.18,82,450/- is under process of approval. The respondent submitted that its demand of cross subsidy is in accordance with Section 22(2) of the Act and is not related to Rule 10 of NEPRA Licensing (Distribution) Rules 1999. The cross subsidy is recoverable from all consumers who purchase power in bulk on account of reservation of power. An amount of Rs.52,58,462/- is still outstanding against the complainant for which directions be issued to the complainant for payment.

4. A hearing in the matter was held on 24.05.2011 which was presided over by Member (Consumer Affairs) in which both the parties participated. Both the parties submitted their written statements in which both of them reiterated and stuck to their earlier submitted arguments. However, Mr. Anwar Kamal, Advocate submitted on behalf of the respondent HESCO that the cross subsidy has neither been determined by NEPRA nor by any EN-WAPDA DISCOs. The audit has therefore pointed out recovery of fixed charges which are defined instead of cross subsidy. HESCO is legitimately entitled to recover the fixed charges from the complainant for reservation of power. The advocate further requested that section 22 and 31 of the NEPRA Act be reexamined and clarification in this regard be issued. He also demanded for holding another hearing but it was not acceded to.

5. The interpretation of Section 22 of NEPRA Act is the bone of contention between the parties which is reproduced below:

22. Sale to bulk power consumers.— (1) Notwithstanding anything contained in section 21, for a period of fifteen years from the commencement of this Act, the Authority may permit a generation company or a distribution company to sell electric power to bulk power consumers located in the service territory of another distribution company and such permissions shall be granted—

- a. on case to case basis on an application made in writing by a generation company or a distribution company; and*
- b. if the bulk-power consumer has not defaulted in previous charges of electric power to any other distribution company.*

(2) Where a bulk power consumer intends to stop purchase of electric power from a distribution company, it shall convey its intention by notice in writing three years before such stoppage:

Provided that such consumer shall continue to make payments to the distribution company equal to the amount of cross subsidy for uncommenced service for which it would otherwise have provided through purchase of electric power by the bulk power consumer.

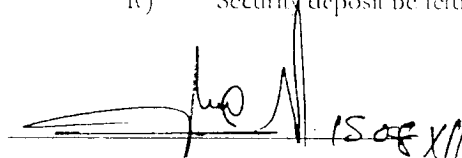
This contention of HESCO has been considered in the light of principles of interpretation of statutes. It is a common principle of interpretation of statute that the statute has to be read as a whole and in its entirety. Infact, it is well settled principle that no provision or word in a statute is to be read in isolation. Given that, independent reading of sub-section 2 of Section 22 (above) would lead us to misinterpretation which may result in grave consequences. Since sub-section 1 addresses those bulk power consumers located in the service territory of another distribution companies. Therefore, interpretation demands that the subsequent discussion of bulk power consumers in sub-section 2 should be treated as the discussion of the same bulk power consumers who are located in the service territory of another bulk power consumer. The respondent would be right in his contention, had the provision of sub-section 2 be incorporated as a new Section in the NEPRA Act by the then legislators.

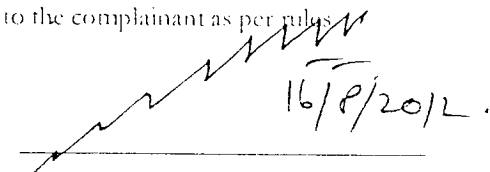
Perusal of above reveals that the subsection (2) is applicable to these bulk power consumers who intends to stop purchase of electric power from host Disco and opt for getting electricity from a generation company or a distribution company located outside the territory of host Disco. In the instant case the complainant has not obtained electric power from a source located outside the territory of HESCO. The complainant has simply stopped purchasing electric power from HESCO and has switched over to self generation. Therefore provisions of section 22 of NEPRA Act are not applicable as such.

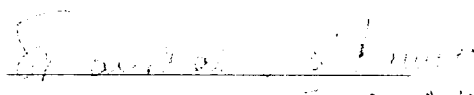
6. The Honorable High Court of Sindh vide its order dated 21.09.2010 passed in Constitution Petition No. 446 of 2008 directed HESCO to accept the application of the complainant for permanent disconnection of electricity with effect from 1.7.2004. Hence the complainant ceases to be the consumer of HESCO w.e.f 01.07.2004 and therefore HESCO cannot claim any revenue or fixed charges whatsoever from a P-Disc connection.


7. In view of the above, decision is as under:

- i) Section 22 of the NEPRA Act is not applicable in the cases where the bulk power consumers opt for self generation. Thus the requirement of three years prior notice does not arise in this case. Further, Section 22 of the NEPRA Act deals with "cross subsidy" and not with the "fixed charges". Fixed charges levied by HESCO have no legal justification as such.
- ii) In pursuance to the orders of the Sindh High Court dated 21.09.2010 the date of permanent disconnection of M/s Popular Fiber Mills shall be treated as 01.07.2004. The complainant is therefore, liable to pay any dues / fixed charges to HESCO upto 30.06.2004. HESCO cannot raise any claim after 30.06.2004.
- iii) Any bill served to the consumer and recovery made thereunder after 30.06.2004 by HESCO is not admissible and such bill(s) shall therefore be withdrawn and amount recovered be refunded to the complainant.
- iv) Security deposit be refunded to the complainant as per rules.


(Khawaja Muhammad Naem)
Member


(Habibullah Khilji)
Member


(Shaukat Ali Kundi)
Member


(Ghiasuddin Ahmed)
Chairman