



National Electric Power Regulatory Authority
Islamic Republic of Pakistan

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Registrar

No. NEPRA/TCD/07/6576-79

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28/08

27-8-2012

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

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

Sd/-
(Syed Safeer 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/07/6580

Forwarded for information, please.

Sr. Advisor (CAD) [w.r.t. Dy. No. 865 dated 27.08.2012]

CC:

Acting Chairman

27-8-2012

Registrar

Consumer Affairs Division
Dy. No. 5703
Dated: 28/8/12



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

Complaint No. HESCO - 661/2010

M/s Popular Spinning Mills (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 Naeem | Member (Tariff) |

Participants on behalf of:

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

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

Subject: COMPLAINT FILED BY M/S POPULAR SPINNING MILLS (PVT) LIMITED JAMSHORO UNDER SECTION 39 OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST HESCO REGARDING REFUND OF FIXED CHARGES / CROSS SUBSIDY AND SECURITY DEPOSIT (OLD AC NO 2472200002305)

ORDER

This order shall dispose of the complaint of M/s Popular Spinning Mills (Pvt) Limited Jamshoro Sindh (hereinafter referred to as "Complainant") against Hyderabad Electric Supply Company (hereinafter referred to as "Respondent" or "HESCO")

2. Precisely, the complainant in his complaint dated 12.11.2010 received on 14.12.2010, stated that complainant being an industrial concern was a consumer of HESCO under Tariff B-3 (Industrial) with the sanctioned load of 1500 kW. Due to HESCO's inability to meet the electricity demand of the complainant, the price of power and production loss suffered by the company, it demanded to install its own power generating units and HESCO was accordingly informed on 15.05.2003. The complainant invested an amount of Rs.60,000,000/- for purchase, installation and operation of Generators within its boundary. Accordingly, HESCO was informed about switching over to self generation on 07.02.2004 and in the same letter HESCO was requested to disconnect the supply of complainant and return the amount of security deposit. In response HESCO informed the complainant to comply with the 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. Therefore, HESCO required the complainant to make the payment of fixed charges (which is termed by HESCO as equivalent to cross subsidy) for a period of three years from the date of stoppage of power. In response to this demand of HESCO the complainant 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. However, HESCO illegally continued to receive alleged fixed charges and so far an amount of Rs.3,915,201/- has been recovered from July, 2005 to September, 2008 which is liable to be refunded. Another bill amounting to Rs.3,097,477/- for the month of October, 2008 was sent by HESCO to the complainant, and the complainant filed a Constitution Petition No.446 of 2008 before High Court of Sindh at Hyderabad and the court issued the order. The operative part of the order is as under :

"we therefore, direct HESCO to accept the application of the Petitioner of permanent disconnection of electricity to them w.e.f. 01.07.2004 as mentioned in order dated 25.05.2004 in CP No.D-381/2004 and this be done within a period of one week. The HESCO make recovery of the dues from the Petitioner in accordance with law and if the Petitioner is aggrieved of the same, the Petitioner 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, HESCO again served the bill for the month of October, 2010 amounting to Rs.47,20,510/-. Being aggrieved with the above mentioned illegal demand of HESCO and in compliance with the directions of the Honourable Court, the complainant is seeking indulgence of this august Forum against HESCO being licensee of NEPRA for contravention of the provisions of NEPRA Act, Rules, Regulations and the Licence inter-alia on the following grounds:

- a) That the demand of HESCO for giving a three years notice or payment of cross subsidy in lieu thereof is totally illegal, wanton and unjustified.
- b) That being a consumer of HESCO, the terms and conditions for supply of electricity are to be governed under abridged condition of supply of electricity and nothing has been provided therein about giving three years prior notice or to pay the amount of cross-subsidy/fixed charges as claimed by HESCO.
- c) That in terms of rule 10 of the NEPRA Licensing (Distribution Rules, 1999, there is a prohibition of discrimination and cross-subsidy.
- d) That HESCO being licensee could not charge any tariff which is not approved by NEPRA and the payment of the amount of cross-subsidy for alleged non-giving of three years notice is never approved by NEPRA, therefore, it cannot be claimed by HESCO.
- e) That the complainant was a consumer under category B3 and this very fact is even substantiated from the bills issued by HESCO and if for the sake of argument, it is presumed that section 22 is presumed to be applicable, it is relevant for the "Bulk Power Consumer" who is charged under category C. Thus the complainant also does not fall within the ambit of section 22 of the NEPRA Act.

- f) That as per section 22 of NEPRA 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 if the bulk power consumer intends to stop purchase of electric power, it shall convey its intention by notice in writing three years before such stoppage. Thus, it is established that section 22 is relevant for those bulk consumers who are located in the service territory of another Distribution Company wherefrom the electricity is supplied. Here in this case, firstly the complainant is not a bulk power consumer, and secondly it is not located within the territory of some other DISCO, therefore, this section can not be applied upon the complainant.
- g) That the complainant had informed HESCO about going for self generation about one year prior to that date.
- h) That no consumer could be compelled to purchase the electricity from a DISCO under compulsion.
- i) That since Feb. 2004, not a single unit of electricity was consumed by the complainant and disconnection from that date has also been ordered by the Honourable High Court, therefore, there is no justification for HESCO to retain the amount of security deposit of complainant.
- j) That the amount of cross-subsidy/fixed charges was received by HESCO without any legal authority and was done under the threat of taking penal action and HESCO is liable to refund that amount alongwith interest.

Finally, the complainant requested NEPRA to declare the demands of HESCO for payment of cross subsidy / fixed charges illegal and unlawful and HESCO may be ordered to refund the already received amount of cross-subsidy Rs.3,915,201/-, refund the amount of security deposits of complainant alongwith interest, and any other relief which is deemed appropriate may also be awarded.

3. The case was referred by CAD NEPRA to HESCO on December 21, 2010 for comments. Report was submitted by HESCO on December 31, 2010 but the same was returned to HESCO with the directions to resubmit para-wise comments under the signatures of Chief Executive Officer or Customer Services Director (focal person). HESCO submitted the response on 02-02-2011 which was not clear and it was once again asked to submit the report relevant to the points raised by the complainant. Accordingly, HESCO through its letter dated 26-02-2011 submitted report.

4. HESCO in its report contended that billing of fixed charges from 03/2001 to 07/2005 was made to this connection which is Rs.5,038,100/- out of which Rs.2,008,623/- was withdrawn in the light of Board of Directors decision made as per order of Honourable High Court of Sindh Hyderabad. After July 2005 to September 2008 the consumer paid all the month wise bills regularly and payment amounting to Rs.195,034/- made from 07/2008 to 09/2008 has been adjusted from the above noted amount. Hence the remaining outstanding bill upto the month of June 2008 amounting to Rs.2,838,060/- is payable by the consumer.

5. The facts of the case as submitted by the parties in their correspondence with NEPRA were considered, and it was found appropriate to grant the parties an opportunity of being heard in person. Therefore a hearing was fixed on May 24, 2011 to enable the parties to further elaborate their position before arriving at a fair decision. Pursuant to the hearing the parties again sent their written arguments. The complainant reiterated his arguments as already provided in the complaint. Whereas in the written arguments the respondent stated that there is confusion in public power sector and Local Audit Department of WAPDA regarding the interpretation of Section 22, in particular subsection (2) thereof, regarding payment of cross subsidy and the duration thereof. The Local Audit Department of WAPDA is mixing up such cross-subsidy, not yet determined by NEPRA, with the fixed charges, already determined by NEPRA. Although the WAPDA Local Audit Party's interpretation of Section 22 may be well founded in law, as neither NEPRA, nor PEPCO nor any Ex-WADPA DISCO has worked out a mechanism for the calculation of cross-subsidy, it cannot be realized. The respondent prayed that NEPRA may graciously determine the

basic principles be applied to the determination of the issue, the amount to be recovered from or refunded to the Complainant can only be determined thereafter. The respondent further prayed that as the interpretation of Sections 22 and 31 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 and application of applicable SROs was not discussed at the hearing held on 24-05-2011, therefore another hearing may kindly be held. The request of the respondent was not acceded to as it had no justification.

6. 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 uneconomic 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 those 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.

7. 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 what so ever from a P-Disc connection.

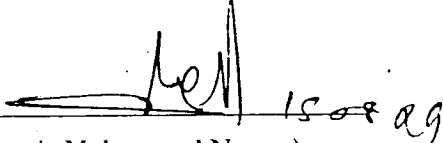
8. In view of the above discussion, Authority has taken the decision as under:

- 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 the instant case. Further, Section 22 of the NEPRA Act deals

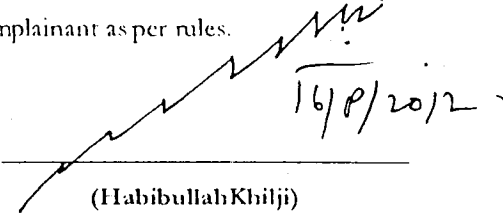
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with "cross subsidy" and not with the "fixed charges". Fixed charges levied by HESCO have no legal justification as such.

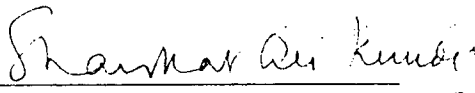
- ii) In pursuance to the orders of the Sindh High Court dated 21.09.2010 the date of permanent disconnection of M/s Popular Spinning Mills shall be treated as 01.07.2004. The complainant is therefore, liable to pay any dues / fixed charges to HESCO upto 30.06.2004. HESCO cannot raise any claim after 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.



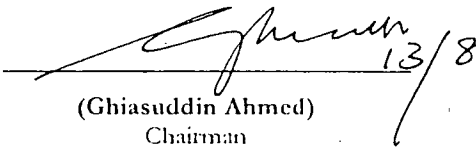
(Khawaja Muhammad Naeem)
Member



(Habibullah Khilji)
Member



(Shaikat Ali Kundi) 09.08.12
Member



(Ghiasuddin Ahmed)
Chairman