

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Const. Petition No. D-1073 of 2022
along with CP No. D-1090, 1093, 1109,1120, 1202,1203,
1209,1218, 1231,1242, 1243, 1249, 1314, 1340, 1341,
1486, 1507 of 2022, 186 and 409 of 2023.

Date of hearing	Order with signature of Judge
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Present:

Mr. Justice Zaffar Ahmad Rajput,
Mr. Zulifqar Ahmad Khan

Date of hearing: **24.05.2023.**

Date of decision: **02.06.2023.**

M/s Dareshani Ali Hyder 'Ada', Nisar Ahmed Bhanbhro, Iftikhar Ali Arain, Ghulam Murtaza Korai, Muhammad Nasir Malik, Sheeraz Fazal and Gulshan Ahmed shujrah, Advocates for the petitioners.

M/s Ghulam Shabbir Shar and Abdul Mujeeb Shaikh, Advocates for the respondents/ SPECO along with Raja Aziz Ahmed, Chief Commercial Officer (SEPCO), Sukkur.

Mr. Muhammad Aslam Jatoi, Assistant Attorney General for Pakistan.

ZULIFQAR AHMAD KHAN, J. Petitioners have chosen to challenge imposition of Fuel Price Adjustment (FPA) surcharge levied through the electricity bills issued by the Electric Power Company (SEPCO) primarily alleging that such imposition is unjustified particularly when a learned single bench of Lahore High Court Lahore in W.P No. 50725 of 2022 through a detailed judgment spread over more than 80 pages has held that such imposition cannot exceed more than seven belated days; should not be of an exorbitant amount; such overcharging on the basis of line losses, less efficient power plants has to be shared by the companies

under a rational proportion and government should explore cheap modes of producing electricity. The judgment is dated 06.02.2023.

Whereas learned counsel for respondents as well as Assistant Attorney General for Pakistan has assisted this Court with the background of imposition of FPA and has placed in our hands a recent order passed by the circuit of High Court of Sindh at Hyderabad dated 16.05.2023 in numerous constitutional petitions wherein reliance has been placed on the Judgment passed by the Hon'ble Supreme Court in the case of Peshawar Electric Company Ltd (PESCO) v. S.S. Polypropylene (Private) Limited (PLD 2023 SC 316) as well as on the recent judgment passed by three members bench of Hon'ble Supreme Court in the case of Civil Appeal No. 1011 to 1119 of 2020 and 1185 to 1191 of 2020 dated 19.01.2023 rendered by Hon'ble Justice Ayesha A. Malik where such impositions were held to be legit. Interestingly the said judgment arises out of an earlier judgment rendered by one of us namely (Zulifqar Ahmad Khan,J.) where issue of Fuel Charges Adjustment (FCA) was discussed at length and the Court held that FCA was rightly imposed.

Since the order of the Circuit Court at Hyderabad has fully considered all these Judgments in an eloquent manner, we find it prudent to reproduce the same hereunder in verbatim:-

*“ Through all these petitions, the petitioners have challenged imposition/charge of Fuel Price Adjustment ("**FPA**") in their electricity bills issued by respective Electricity Distribution Companies. On the very first date a learned Division Bench while entertaining these petitions has passed ad-interim orders to the effect that the petitioners are only required to pay the current dues and not the FPA as claimed in their monthly Bills. However, it appears that during pendency of these petitions, the controversy as to the legality of charging FPA in*

monthly bills, as well the question of jurisdiction of High Court under Article 199 of the Constitution in entertaining such petitions now stands decided by the Hon'ble Supreme Court in the case reported as *Peshawar Electric Supply Company Ltd (PESCO) v SS Polypropylene (Private) Limited (PLD 2023 SC 316)*. The said case arose from a Judgment by the learned Peshawar High Court, whereby, the petitions of the consumers were allowed and it was held that imposition of FPA is unconstitutional and illegal. It has been held by the Supreme Court that firstly, the matter pertains to the exclusive domain of NEPRA under Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997, ("**1997 Act**") including the powers to issue guidelines and standard operating procedures outlining the mechanism through which various tariffs, including the 'charges' ought to be factored in the respective tariffs of the consumers, whereas, NEPRA after an elaborate, open and transparent process that involves hearing of all stake holders and after careful scrutiny of various components of the claimed rate of tariff suggests a uniform consumer tariff across the country in line with section 31(4) of the 1997 Act. Lastly it has been held that the High Court under Article 199 of the Constitution lacks jurisdiction in such matters as they pertain to policy making and economic regulations; hence, falls within the domain of the Executive.

Similarly in the case of *K-Electric1 v Federation of Pakistan* it has been held by the Supreme Court that tariff determination is a complex and technical process, for which, for which, NEPRA has been established; a detailed regime exists with procedures, process and guidelines on tariff determination which in no manner empowers the Federal Government to determine or adjust the tariff and it is the clear mandate of the Act.

Since the controversy as well as the jurisdiction issue already stands decided against the petitioners by the Supreme Court in the aforesaid Judgment(s), no case of any indulgence is made; hence, all these

petitions being misconceived are hereby dismissed with pending applications.”

One cannot fail to observe that the issue of Fuel Adjustment Charges has encircled the Courts at various instants where finally the Apex Court has held that such imposition is in accordance with law inter alia as laid down under second proviso of Section 31 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997, therefore, with regard to the assertion of learned counsel for the petitioners that FPA surcharge could not have been imposed is devoid of any merit.

Notwithstanding therewith, the learned counsel for the petitioners raised a very interesting point before this Court as to such imposition having been applied discriminately across the country. Learned counsel has given examples of bills issued by different Electric Power Companies where FPA component for the same period appears to be different, as well as, learned counsel also raised a question that when Courts have chosen to hold such imposition of FPA legit, why time and again electric tariff are revised when the main component of tariff-change is only the fuel price adjustment. These contentions were considered by this Court patiently, compelling us to send these matters to the Tribunal established under Section 11 of the Act, 1997 for the consideration of these aspects after issuing notices to relevant parties as NEPRA under Section 7 of the Act 1997 is not only empowered to prescribe and enforce standards for generation, transmission and distribution of electricity, but at the same time under clause 'd' of sub-section 2 thereof it is also mandated to establish a uniform system of accounts of such generation, transmission and distribution companies. Let these aspects be considered by the Tribunal in accordance with the abovementioned provisions of law and other applicable rules

and guidelines after hearing all relevant parties. Let a speaking order be passed in this regard, a copy of which be sent for our considerations in chambers.

These constitutional petitions are thus disposed of in the above terms.

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