

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No.D-884 of 2013

[M/s Al-Abbas Cement Industries Ltd vs. Federation of Pakistan and others]

C.P No.D-902 of 2014

[Tughlaq Paper Industries vs. Federation of Pakistan and others]

Date	Order with signature of the Judge
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11.02.2025

Mr.Irfan Ahmed Qureshi, Advocate for Petitioner in C.P No.D-884/2013

Mr.Shaukat Ali Pathan, Advocate for Petitioner in C.P No.D-902/2014

Mr. Muhammad Arshad S. Pathan, Advocate for HESCO

Mr.Parkash Kumar, Deputy Attorney General

ORDER

The petitioners have filed the above writ petitions challenging the imposition of the Fuel Price Adjustment (FPA) surcharge levied through the electricity bills issued by the Hyderabad Electric Supply Company (HESCO). The petitioners allege that such imposition retrospectively is unjustified, illegal, void, and mala fide.

2. Learned counsel representing the Petitioners, the learned counsel representing HESCO, and the learned Deputy Attorney General have been duly heard. The contents of the petitions have been scrupulously examined.

3. In view of analogous reliefs and circumstances as presented in the extant Petitions, antecedent Petitions brought before this Circuit Court, per an Order dated 16.5.2013, adjudicated by the Divisional Bench of this Court, subsequently chronicled as ***Muhammad Shamim and another***¹, wherein reliance has been assiduously placed on the Judgment rendered by the Supreme Court of Pakistan in the case of ***Peshawar Electric Company Ltd (PESCO)***² and the Judgment rendered by the Supreme Court of Pakistan in Civil Appeals No. 1011 to 1119 of 2020 and 1185 to 1191 of 2020 dated 19.01.2023, which was too subsequently chronicled as ***K-Electric Limited through its CEO, Karachi***³, wherein such impositions were categorically validated. It is deemed propitious to rearticulate the aforementioned Order of the Divisional Bench of this Court in the case of ***Muhammad Shamim and another (supra)***, as follows:-

¹ Muhammad Shamim and another vs. Federation of Pakistan and others (SBLR 2024 Sindh 476)

² Peshawar Electric Company Ltd (PESCO) vs. S.S. Polypropylene (Private) Limited (PLD 2023 SC 316)

³ K-Electric Limited through its CEO, Karachi vs. K-Electric Limited through its CEO, Karachi (PLD 2023 S.C 412)

“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 S.S. 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-Electric v Federation of Pakistan, it has been held by the Supreme Court that tariff determination is a complex and technical process for which NEPRA has been established; a detailed regime exists with procedures, processes 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.”

4. It is imperative to underscore that the aforementioned judicial pronouncements adjudicated analogous matters concerning the legal propriety of imposing Fuel Price Adjustment (FPA) surcharges through electricity invoices. In these instances, the Supreme Court unequivocally affirmed the legitimacy of such impositions, thereby fortifying the regulatory apparatus instituted by the National Electric Power Regulatory Authority

(NEPRA) pursuant to the Regulation of Generation, Transmission, and Distribution of Electric Power Act, 1997. These rulings accentuate the exclusive jurisdictional ambit of NEPRA in tariff determinations and the procedural exactitude requisite in the formulation of these tariffs.

5. For the foregoing reasons, including the Supreme Court's judgments and the absence of jurisdiction of this Court under Article 199 of the Constitution in matters pertaining to policy-making and economic regulations, we find no merit in the petitions filed by the Petitioners. Therefore, the same are hereby **dismissed**.

JUDGE

JUDGE

Sajjad Ali Jessar