

IN THE COMPETITION APPELLATE TRIBUNAL

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No. 365(v) /Reg./CAT/2025
Dated: 20-05-2025

Peshawar Electric Supply Company Limited (PESCO)

Vs.

Competition Commission of Pakistan & others

NOTICE

Appeal No.03/2023

Take notice that under rule 51 of the Competition Appellate Tribunal Rules, 2015, attested copies of the Judgment dated **14-05-2025** is enclosed for information and record.

2. Given under my hand and stamp of the Tribunal, this 20th day of May, 2025.



M. Khan
(MUSTAJAB ALAM KHAN)

Registrar
REGISTRAR
Competition Appellate Tribunal
Government of Pakistan
Islamabad

1. **Peshawar Electric Supply Limited (PESCO)**,
Through its Chief Law Officer,
WAPDA House, **Peshawar**.
2. **M/S Nayatel (pvt) Ltd.**, (Through its Chief Executive Officer,)
GD Arcade, 73-E, Fazal-ul-Haq Road,
Blue Area, **Islamabad**.
3. **M/S Cyber Internet Services (pvt) Ltd.**, (Through its Chief Executive
Officer,)
House # 19, Street # 88, Sector G-6/3, **Islamabad**.
4. **Syed Haziq Ali Shah** (Advocate Supreme Court of Pakistan),
Office: 306-C, Third Floor, City Towers,
University Road, **Peshawar**.
- ✓ 5. **Competition Commission of Pakistan**
ISE Tower, 7th Floor, 55-B, Jinnah Avenue, **Islamabad**.

**IN THE COMPETITION APPELLATE TRIBUNAL,
ISLAMABAD**

(Appeal No. 03 of 2023)

Peshawar Electric Supply Company Limited (PESCO)

..... Appellant

Versus

Competition Commission of Pakistan

..... Respondent

Present: Mr. Justice Sajjad Ali Shah, Chairperson.
Dr. Faiz Illahi Memon, Member Technical-I.
Mr. Asim Akram, Member Technical-II.

For the Appellant: Syed Haziq Ali Shah, Advocate
For the Respondent: Ms. Natalya Kamal, Advocate, along
with Hafiz Naeem, senior Legal Advisor.
For Respondent 2 & 3. Mr. Asfand Yar, Advocate

Date of hearing: 14.05.2025.
Date of Announcing 14.05.2025.
Judgment:

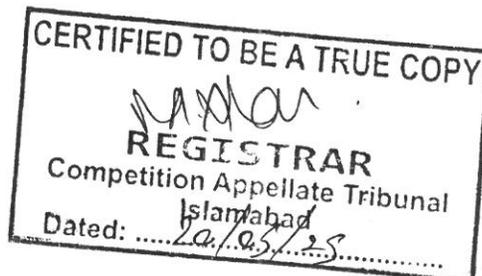
JUDGMENT

Justice Sajjad Ali Shah, Chairman.

We have heard the learned counsel for the respective parties. Our attention has been invited to the operative part of the order impugned which read as follows:-

“Notwithstanding the same, owing to the peculiarity of the case, to ensure compliance and to encourage corrective behavior, we are exercising restraint and hereby directing the Respondent to restore access to the ROW and/or provide the ROW to the Complainants on fair, reasonable and non-discriminatory terms at the earliest but no later than twenty-one (21) days from the date of receipt of this Order and not to repeat the prohibit act”.

2. Learned counsel for the appellant submits that the appellant's Board of Directors in the meanwhile has decided not to provide right of way to any of the cable operators, or



other service providers, such as fiber optics etc in supersession of their previous Board resolution.

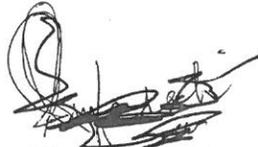
3. On the other hand, counsel for the Commission has pointed out that such act is in violation of "Public and Private Right of Way Policy Directive" issued by government of Pakistan, especially Rules-16(3) which provides that the licensees can use the poll of government and privately owned Electric distribution and supply companies for Aerial installation of the optical fiber cables at the prescribed rent fixed by government of Pakistan

..... Further per sub Rule-7, *once right of way is granted and fee and other terms agreed, the owner of Private Right of Way or the public authority shall not unilaterally change or alter the terms and conditions or right of way permission for the PS/1 licensees.* It was therefore, contended that in view of these provisions the appellant could not have unilaterally recalled the facility and in case the appellants intend to recall then the mechanism is provided under the same policy which has not been followed.

4. On the other hand we are of the view that the order impugned only reiterate the public and private right of way rules / policy and leaves for the appellant to provide services on fair reasonable and non- discriminatory terms. It is ^{by Mr} now ~~by~~ settle principle of law that mere differentiation and non-equality of treatment would not per-se amounts to discrimination unless it can be shown to be apparently malafide and arbitrary. There can be no discrimination if the Act or treatment is based on reasonable classification on an intelligible differentia which distinguishes persons or things that are grouped together from those which have been left out and the differentia must have rational nexus to the object sought to be achieved by such classification. Reference can be made to (2007 SCMR 410 and PLD 2010

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CERTIFIED TO BE A TRUE COPY
[Signature]
REGISTRAR
Competition Appellate Tribunal
Islamabad
Dated: 20/05/23

SC 265). Keeping in mind these principles, the appellant should proceed and make a policy of levieing the Right of Way charges in a transparent manner after considering the ground reality and through a speaking decision. In terms of above, the appeal stands disposed of. The penalty in case of non-compliance seems unwarranted, as stated the discrimination needed to be examined and determined in its true perspective on the basis of principles settled by the Apex Court and, therefore, stands waived. The appellant to take up this issue in the next meeting of Board of Directors preferably within a period of 30 days.



Chairman



Member Technical-I



Member Technical-II

Announced in open Court:
14.05.2025.

