

**2010 C L C 1918**

**[Lahore]**

**Before Nasir Saeed Sheikh, J**

**GOVERNMENT OF NORTH-WEST FRONTIER PROVINCE through Secretary  
Finance---Petitioner**

**Versus**

**NATIONAL ELECTRIC POWER REGULATORY AUTHORITY, through Chairman  
and 2 others---Respondents**

Writ Petition No. 2020 of 2009, decided on 19th November, 2009.

**Constitution of Pakistan (1973)---**

---Art. 199---Constitutional petition---Interim relief---Recovery of tariff---Petitioner was provincial government and had grievance against National Electric Power Regulatory Authority with regard to change in electricity tariff---Petitioner/Government sought interim protection against recovery of tariff by the Authority, till institution of appropriate proceedings against final order---Respondent-Authority took an exception to such interim protection as the petitioner/government was avoiding recovery of tariff---Further contention was that order finally deciding tariff by the Authority was in the knowledge of the government and was also placed on record along with parawise comments and government did not assail the same, therefore, government was not entitled to any interim relief from High Court in the matter---Validity---High Court declined to grant interim relief as it was open to the government to seek such relief from competent forum, where final order would be assailed---Petition was disposed of accordingly.

Mian Gul Hassan Aurangzeb and Hamid Ahmad for Petitioner.

Ch. Mushtaq Khan for Respondent No.1.

Anwar Kamal for the Respondent No.2 along with Shakeel, Assistant Manager (Legal)PESCO.

Muhammad Akhtar Awan, Deputy Attorney-General, for Respondent No.3.

Syed Karamat Ali Rizvi, Project Director EMC, Finance Department, N. -W . F. P.

**ORDER**

**NASIR SAEED SHEIKH, J.**---During the hearing of this writ petition, which was completely argued by both the parties on 11-11-2009 and the judgment of the case was reserved. While dictating the judgment, I came across an important aspect of the fact that in the main Writ Petition No.1172 of 2009 (now Writ Petition No.2020 of 2009), the order dated 11-6-2009 of NEPRA was challenged as is depicted in paragraph No.35 of the writ petition. The matter in respect of the present lis was taken up to the Hon'able Supreme Court of Pakistan through C.P.L.A.No. 1059 of 2009 against the judgment passed by the erstwhile Islamabad High Court on 4-5-2009 passed in. Writ Petition No.1049 of 2008. The C.P.L.A No. 1059 of 2009 was disposed of by the Hon'able Supreme Court of Pakistan vide order dated 21-10-2009. In paragraph No.4 of the order of the Hon'ble Supreme Court of Pakistan, the following observation was made:--

"4. Further submission of the learned counsel is that in terms of the impugned judgment fresh determination has been made by NEPRA, which is now subject-matter of challenge in Writ Petition No.1172 of 2009, before the Islamabad High Court. He, therefore, submits that looking to this subsequent development in the matter, petitioner would be satisfied in case they are permitted to take up the dispute of retrospective applicability with effect from 5-9-2008 or otherwise in the said proceedings".

2. In order to seek clarification from the learned counsel for the parties on the above development, the case was re-fixed for today. The learned counsel for both the parties have entered appearance.

3. The learned counsel for the petitioner, on instructions, has candidly agreed that the Writ Petition No.2020 of 2009 (Writ Petition No.1172 of 2009 before the erstwhile Islamabad High Court) only assails the order dated 11-6-2009 and the final order dated 4-9-2009 has not been so far assailed here in this writ petition. It is also admitted by the parties that the NEPRA has finally decided the tariff petition of PESCO vide order dated 4-9-2009, which order has been placed on the record in the parawise comments of the respondent No.2 and is annexed at page No.12 with the comments.

4. The attention of the learned counsel for the petitioner was thus drawn towards the said order and its effect upon the present proceedings. The learned counsel for the petitioner submitted that in view of final order having been passed by the NEPRA on 4-9-2009, the present writ petition, which is against an interim order need not to be further pressed and makes a request in the disposal of the Writ Petition No.2020 of 2009 on the ground that it has become infructuous after the passing of the final order dated 4-9-2009 by NEPRA as stated above and that the petitioner reserves the right to assail the final order dated 4-9-2009. NEPRA through a proper proceeding before the competent forum and shall be at liberty to raise all the legal and factual objections including the objection of lack of jurisdiction of the NEPRA if and when the final order dated 4-9-2009 is assailed by writ petitioner through a proper process before a competent forum. The learned counsel for the petitioner further submits that the right of the petitioner reserved by the Hon'ble Supreme Court of Pakistan in the order dated 21-10-2009 while disposing of C.P.L.A. No.1059 of 2009 with respect to challenging the recovery of the tariff, in question, with retrospective effect be also available to the petitioner in the proceedings in which the final order

dated 4-9-2009 is assailed by the petitioner, if so advised. The learned counsel for the respondents Nos. 1 and 2 further submit that this raising of the objections by the petitioner shall be subject to all just and legal exceptions to be taken by the said respondents at that time. The respondents Nos.1 and 2 shall also have a right to raise all the other objections to the contentions being raised by the petitioner in the prospective proceedings of challenging the order dated 4-9-2009 by the petitioner before the competent forum.

5. The learned counsel for the respondents Nos. 1 and 2 do not have any objection to this reservation of the right of the learned counsel for the petitioner.

6. The learned counsel for the petitioner submits that till the institution of the appropriate proceedings against the final order dated 4-9-2009, the interim protection be given to the petitioner against the recovery of tariff by the respondents. The learned counsel for the respondent No.2 takes a serious exception to this request and submits 'that the recovery of the tariff is being avoided by the petitioner since 5-9-2008. It was further contended by the learned counsel for the respondent No.2 that the order dated 4-9-2009 finally deciding the tariff petition by the NEPRA was very much in the knowledge of the petitioner and was also placed on the record along with parawise comments and the petitioner did not assail it till to-date, therefore, the petitioner is not entitled to any interim relief from this Court in the matter as now being requested for. The request of the learned counsel for the petitioner cannot be acceded to in the light of what has been discussed above. It shall be open to the petitioner to seek interim relief from the competent forum, where the final order dated 4-9-2009 will be assailed, if so advised.

7. With these observations, the present Writ Petition No. 2020 of 2009 is disposed of with the consent of the parties, without any orders as to costs.

M.H./G-55/L

Order accordingl