

IN THE SUPREME COURT OF PAKISTAN, ISLAMABAD

(ORIGINAL JURISDICTION)

Human Right Case No 32686– S/2012

Application by Syed Adil Gilani, 5C, 2nd Floor Khayaban-e-Ittehad, Phase VIII,
DHA, Karachi

The complaint of illegal Amendment Agreement dated April 2009 with, KESC and providing KESC illegal benefits over and above terms of Implementation Agreement dated 14th Nov. 2005, and granting concessions of billions of rupees per annum to KESC at the cost of the exchequer.

Rreport of the Senate Standing Committee on Water & Power ,

Respectfully Sheweth;

Further to my letter dated 11th September 2013, I submit further the copy of the the copy of the report of the Senate Standing Committee on Water & Power , about which the news was published on 10th September 2013.

Following are the excerpts from the Executive Summary of the Senate Standing Committee report;

3. ----- As the M/o Water and Power mentioned in its summary to ECC dated 12-10-2008, that "the performance of KESCL ever since its privatization had been highly unsatisfactory primarily due to their failure to inject appropriate capital into the company, lack of competent operator for O&M, high level of T&D losses and accumulated losses of nearly Rs: 50 Billion at close of FY 2007-8". It seemed that the private consortium was intentionally intended to fail for getting further benefits through their future plans with collaboration of some influential government offices, as they succeeded later on. The M/o Water and Power instead of proposing any action against the private Consortium under IA 2005, moved a summary to ECC dated 15th August 2008 for approval of four incentives as bailout package to the consortium as below:-

- I. 4% price cap on fuel price variation may be removed on KESCL and accumulated amount of Rs. 4.493 billions on account of ATA*
- II. KESCL may be treated at par with DISCOs for tariff purposes instead of marginal cost basis.*

- III. *KESCL should enter into a time bound power purchase agreement with NTDC.*
- IV. *A Committee may be constituted under the Chairmanship of the Finance Minister to resolve the matter of all outstanding payments to NTDC and other public sector organization.*

4. *The ECC in its meeting held on 26th August 2008, not only approved above mentioned package without examining their international failure and the fact that a privatized entity did not deserve to get the aforesaid package under the rules, but ECC was also accelerated its working by constituting committee under the Chairmanship of the Finance Minister who was also chaired the ECC meetings on behalf of the Prime Minister. On the recommendation of that committee, the M/o Water and Power submitted another summary to ECC on 12-10-2008, in which proposed that:- (a) Revised Amended Agreement and Shares Purchase Agreement 2009 may be signed with new Ibraj Group (b) Total arrears on account of marginal cost differential against KESCL of **Rs. 71.976 Billion** were set out by ECC as **Rs. 31 billion** liabilities taken by GOP and **Rs. 13.635 billion** were transferred to DISCOs (C) The remaining amount of **Rs. 27.341 billion** would be paid by KESCL in installments. Further the GOP also taken liability to resolve the issue of FBR's outstanding dues against the KESCL amounting to **Rs: 321,733,000/-**. Moreover NTDC submitted to this committee during a meeting in writing, "If KESCL was supplied 650 MW electricity at marginal cost basis instead of DISCOs rates, the advantages to the National Exchequer would have been approximately 110 Billion. This concession was not even allowed to KESCL prior to its Privatization in 2005 when the government owned and was holding 100% shares. This concession was against the objectives and terms of privatization of KESCL. The MD NTDC informed that the total outstanding payable amount by KESCL including markup on delayed payments was Rs. 46,928 Million. A Multiyear tariff for a period of seven years was granted to KESCL in 2005 and it further extended up to 2016 only to facilitate the private owners of KESCL. After continuous failure of private consortium since 2005, the M/o Water and Power and ECC should have cancelled the KESCL Privatization bid and should have called new pre-qualifications-tendering and bidding as obligatory under the PPRA rules, instead of signing new RIA 2009 and giving them huge incentive based on bailout package.*

5. *Interestingly, all these decisions were being taken by the Ministry from the ECC without obtaining prior approval of the Cabinet or the Prime Minister. Under the Rules of Business 1973, it was obligatory on the M/o Water and Power to first bring into the notice of the Prime Minister instead*

of directly submitting it to ECC rather it was domain of the Cabinet Committee on Privatization (CCOP) and the Privatization commission.

6. *The issues discussed in ECC were not prior approved by the cabinet or the Prime Minister which was obligatory under rule 17(1) of the Rules of Business 1973, (at Annex-A) the Prime Minister instructions dated 13-3-2009 regarding jurisdiction of the Cabinet Committee that ratification by the Cabinet is pre-requisite on the cases mentioned in the list at Sr. Number (IV), (VI), (X) and (XI) (at Annex-B) and the Cabinet decision dated 20.03.2004 (at Annex-C). The Additional Secretary Cabinet Division informed this Committee that prior approval and ratification from the Cabinet or the Prime Minister was not on record and the decisions taken by ECC in 2008 regarding Ibraj Company should be ratified under the law.*

7. *As regard 650MW power supply from the National Grid to KESCL it was mandatory to have pre-concurrence of the Council of Common Interest (CCI), because Inter-Provincial distribution of electricity was the jurisdiction of CCI not ECC. It was pertinent to mention here that ECC did not fix the figures of 650 MW supply to KESCL rather it was decided to Ministry level which was a serious breach of law/policy. Later on, in 2012, the M/o Water and power moved a summary to CCI only for ratification of its illegal decision. The CCI, curtailed the Power supply of 650 MW to 350 MW on the strong objection raised by Chief Minister Punjab. After the CCI decision the Ibraj Group got restraining orders from the Sindh High Court against the CCI curtailment till the final disposition of the position.*

An indulgence of the Honorable Court in the matter is prayed for.

Transparency International Pakistan is striving for across the board application of Rule of Law, which is the only way to stop corruption.

Yours Obediently,



Syed Adil Gilani,
Adviser

26 September 2013

Ecnl: Copy of the Report of the Senate Standing Committee on Water & Power .