

Case No. 04/2006

In the matter of:-

M/s Rupana Paper Mills (P)Ltd. 1398, 1st Floor, Sector 40-B,
Chandigarh (Pb) located at Plot No. 264, Village Bir Palasi, Roper Road,
Nalagarh, Distt. Solan H.P.

...Complainant

V/s

The Himachal Pradesh Electricity Board, Vidyut Bhawan, Shimla-4, the
Chief Engineer (Commercial), HPSEB, Vidyut Bhawan and Additional
Superintending Engineer, Electrical Division, HPSEB, Nalagarh, Distt.
Solan H.P.

...Respondents

Present for M/s Rupana Mills Pvt.Ltd. Sh.Narinder Puri, Adv.

For Respondents HPSEB & others: Sh. Bimal Gupta, Advocate

For Consumer Representative: Sh.P.N.Bhardwaj
(under Section 94 (3) of the
Electricity Act,2003)

ORDER

M/s Rupana Paper Mills Pvt.Ltd.Nalagarh Distt.Solan (H.P) through Sh. Naveen Nautiyal, its Head of Department of Accounts (in short called the Complainant) have filed a complaint under Section 142 of the Electricity Act,2003 against the HPSEB (through its Secretary), the Chief Engineer (Commercial) HPSEB and the Additional Superintending Engineer, Electrical Division, Nalagarh (in short called the respondents) and has prayed that:-

- (a) Clause 18 in load sanction order No. HPSEB/CE(COMM)PC-LS-XI/2005-12842-46 dated 21.9.05 and letter No. HPSEB/DB/PAC/2005-9356-59 dated 16.11.2005 whereby the respondents have laid arbitrarily an illegal stipulation for receiving an amount of Rs.91,21,500/- as infrastructure development charges, by misconstruing the provisions of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations,2005, be quashed;

- (b) the decision of the respondent Board whereby they have approved to receive the full cost towards augmentation of transmission system from the prospective consumers, in violation of the directions of this Commission be, quashed;
- (c) respondent Board be directed to refund the amount received from the complainant under the compelling circumstances; and
- (d) other orders and directions, which the Commission deems fit, be passed in favour of the complainant.

2. The brief facts of the case are that the complainant applied to the Govt. of Himachal Pradesh (in the Directorate of Industries) to set up an Industrial Undertaking for manufacture of M.G.White Poster Paper at Nalagarh, Distt.Solan H.P. with a total project cost worked out to Rs.1521.45 lakhs with the provision of Rs.34 lakh for HPSEB Expenses and Deposits. For the purpose of approval of the project by the State Level Single Window Clearance and Monitoring Authority the complainant was required to obtain clearance from various Departments, interalia, HPSEB which were requested on 21.5.2004 to issue Power Availability Certificate for supply of 2250 KW of power supply.The said project cost was approved by the State Level Single Window Clearance and Monitoring Authority and on 1.7.2004 the Director of Industries assigned provisional Registration Number to the Complainant.

3. On 6.7.2004 and 16.9.2004 the Chief Engineer (Commercial) HPSEB asked the applicant complainant to deposit “Non-refundable Advance Consumption Deposit” @ Rs.100/- per KW (totaling to Rs.2,25,000/-) of the load approved and Consumer share @ Rs.200/- per KW (totaling to Rs.4,50,000/-) for the establishment of infrastructure for the release of power. The said amount was deposited by the complainant on 22.9.2004. Thereafter, the respondents informed the complainant that non-refundable Advance Consumption Deposit has been increased @ 1000/- per KW and as such the complainant was asked to deposit the difference amount, which was accordingly deposited by the

complainant amounting to Rs.20,25,000/-. The respondent Board on 7.10.2004 issued a sanction letter and Power Availability Certificate in favour of the complainant for supply of 2250 KW of electricity from 33KV. The condition No.6 of the said Power Availability Certificate stipulated that in case of construction of 33KV Joint Feeder or augmentation of the existing 33KV Feeder, if required, along with bay and the associated terminal equipment's both ends, the entire cost shall be shared proportionately by the group of the Industrial Consumers. Clause 18 of the sanction letter dated 21.9.2005 provided that the respondent Board has approved the recovery of expenditure for supply of electricity as per the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations,2005, for supplying power at 33KV from Nalagarh Sub-Station @ Rs.4054/- per KVA on Contract Demand. Accordingly Rs.91,21,500/- for 2250 KVA contract demand may be recovered from the complainant, before the release of load. Respondents on 16.11.2005, after adjusting the amount of Rs.4,50,000/-already paid by the complainant, raised demand of Rs.86,71,500/-. The Complainant has challenged this demand on the ground that the respondent Board has led itself into misconception on wrong interpretation of the provisions contained in the aforesaid regulations that the whole amount is to be recovered from the complainant. Moreover, when the electrical sub-station with 66/33 with 20MVA capacity was already established at Nalagarh, nothing additional was required to be done for supplying the electricity to the complainant. Apart from this, the respondents have not given any basis for arriving at the figures. The complainant have also approached this Commission to restrain the respondents from effecting recovery and in the meanwhile to direct the respondents to release electric supply to the complainant forthwith as per their demand. On 18.03.2006, the counsel appearing for respondents assured that the respondents will take all necessary immediate steps to ensure the strict compliance of the provisions of the regulations and the issuance of the consequential orders. On 26.05.2006, the respondents have filed the reply stating that there is no denying of the fact, that the complainant firm sought approval from the State Level Single Window Clearance and Monitoring Authority for setting up its unit at Village Bir Palasi in Nalagarh in the name and style of M/s Rupana Paper Mills (P) Ltd.; but the approval of the Committee did not forbid the respondent Board from realizing the infrastructure charges or any other charges due to it against release of power connection, nor did the

State Govt. exempted the complainant firm from paying the cost share either. The respondents have further stated that the Power Availability Certificate for a load of 2250 KW power stands approved in favour of the complainant. The difference on account of non-refundable Advance Consumption Deposit was demanded, on the commencement of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 w.e.f. the 30th March 2005, whereby the rate of Advance Consumption Deposit for large supply category of consumers has been enhanced to Rs.1000 per KW. Clauses 5 and 6 of the Power Availability Certificate are exclusively meant for the respective consumer applicant/complainant, whereby the recovery of infrastructure charges @ Rs.4054/- per KVA for 33KV Power at Nalagarh are envisaged for the over all development of the infrastructure under Nalagarh Electrical Sub-Division to be utilized for the general good of the industries. Accordingly an amount of Rs.91,21,500/- for 2250 KVA Contract Demand was to be recovered from the complainant, before release of load. The amount of Rs.4,50,000/- has already been deposited by the firm and a notice for depositing the balance amount of Rs.86,71,500/- has been issued to the firm. The firm has been allowed to pay the said balance amount in 5 equal yearly installments and the firm has paid the Ist installment amounting to Rs.17,34,000/-

4. The respondents have further stated that due to sudden influx of industries of all hues, in Baddi –Barotiwala and Nalagarh region, and to meet the load growth and requirement of the industries, the respondent Board had to develop infrastructure involving huge amount in terms of money, which the HPSEB can ill afford due to financial constraints. The infrastructure, being developed, is exclusively meant for taking care of load requirements of prospective industrial consumers.

5. From the above, the main point which needs consideration, is whether before the release of electricity the prospective industrial consumers are required to pay the expenditure incurred by the HPSEB to develop infrastructure and, if so, whether the demand raised in this case is in accordance with the HPERC (Recovery of Expenditure to Supply Electricity) Regulations, 2005 or not.

6. Sub-section (1) of section 43 of the Electricity Act,2003, cast the duty on every distribution licensee, on an application made to it, to give supply of electricity within one month after receipt of the application requiring such supply and where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity immediately after such extension or commissioning or within such period as specified by the Commission, in regulation 3 of the HPERC (Licensee's Duty for Supply of Electricity on Request) Regulations,2004. Further sub-section (2) of the said section 43, reads as under:-

“(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1):

Provided that no person shall be entitled to demand or to continue to demand, from a licensee a supply of electricity for any premises having a separate supply, unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission”.

7. If a distribution licensee fails to supply the electricity within the period specified in sub-section (1) of section 43 he is liable to a penalty, which may extend to one thousand rupees for each day of default. From this, it is abundantly clear that sub-section (2) of section 43 contemplates the agreement between the distribution licensee and the applicant to pay expenditure incurred for laying the electric plant or electric lines, as may be determined under the regulations framed by the Commission. Further sub-sections (2) and (3) of section 45 of the Act provide that the charges (which also include the rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee) are to be fixed in accordance with the methods and the principles as may be specified by way of regulations framed by the Commission. The distribution licensee is not to show undue preference to any person or class of persons or discrimination against any person or class of persons. Section 46 of the Act empowers the Commission to authorise a distribution licensee to charge from a person requiring a

supply of electricity in pursuance of section 43 any expenses in providing any electric line or electrical plant used of the purpose of giving that supply.

8. In exercise of the powers conferred by section 46 of the Act, the Commission has framed the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, which have come into force w.e.f. 4th April, 2005. Regulations 3, 4 and 5 of the said regulations lay down the procedure for estimation of the cost of electrical plant and works based upon the approved latest cost data as published by the distribution licensee under regulation 13, every year. However, regulation 15 permits the licensee until cost data book is published in accordance with regulation 13 or a period of one year from the date of the said regulations came into force, whichever is earlier, to use cost data published for the year by the Rural Electrification Corporation in respect of works of 33KV and below and the cost data used by the Power Finance Corporation in respect of works above 33KV in the latest sanctioned scheme of the licensee.

9. Harmonious reading of the provisions of sections 42, 43, 45 and 46 of the Act, and the HPERC (Recovery of Expenditure to Supply of Electricity) Regulations, 2005 framed by the Commission, makes it abundantly clear that where supply of electricity requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply electricity immediately after such extension or commissioning or within the period as specified in the HPERC (Licensee's Duty for Supply of Electricity on Request) Regulations, 2004. But no person is entitled to demand from a licensee to supply electricity for having a separate supply, unless he agrees with the licensee to pay to him such price and charges (including the rent or other charges in respect of any electrical plant and works) based upon the approved latest cost data, as published by the distribution licensee or the data published for the year by the Rural Electrification Corporation or, as the case may be, the data used by the Power Finance Corporation, authorized under regulation 15 of the said regulations to be used by the distribution licensee. Thus neither the provisions in the Act nor the provisions in the regulations contemplate the advance lump-sum payment of the charges before the release of the power. The distribution licensee is obliged to estimate and recover the cost of electrical

plant and works strictly in accordance with the provisions of the said regulations, without showing any discrimination against any person or class of persons. The cost data had yet to be submitted by the respondent and yet to be approved by the Commission. There is no question of recovery of expenditure on blanket and adhoc rates per kva. It is inconceivable that the expenditure for providing supply to all the consumers in future shall be the same. Recovery of expenditure only through industrial consumers regardless of staging of connections is without any basis, rationale and justification. Moreover the letter No. HPERC/CE(Comm)/LS-Cost sharing/2005-13945-14235 dated 3rd Oct.2005 from the Chief Engineer (Comm.) now relied upon by the respondents has also come up for consideration of this Commission, in case No.268/05 M/s Parwanoo Industries Association and CII V/s HPSEB, wherein this Commission on 5.11.2005 had to observe as under:-

“The Commission further observes that until August, 2005, the highest maximum demand on this Sub-station (Parwanoo Sub-station) had gone upto 20.23 MVA only which suggests that augmentation carried out in the year 1999 was premature, infructuous and ill-planned as the augmented capacity has not still been used up even 6 years later. There was, therefore, no justification for recovery of expenditure so incurred and collecting the money from various prospective consumers upto the demand of 20.23 MVA. As per clarification provided on 31.10.2005 in clarificatory petition No.315/05, the demand on sub-station upto 20 MVA could not have been charged upon any prospective consumers”.

and subsequently on 9.12.2005 had to observe, as under;-

“Upon hearing, the Commission observes that as the issues involved in case No.268/05 were concerned, the security deposit as well as the recovery of expenditure for supply of electricity were in violation of the respective regulations viz. the HPERC (Security Deposit) Regulations, 2005 and the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005. The Commission had issued the [Removal of

Difficulties] First Order clarifying the application of the rates in respect of different consumers. The augmented capacity of Parwanoo sub-station has still not been used up even after connecting 71 prospective consumers with applied load of 3796 KW. The perusal of the project report for the augmentation of 66/11 kv, 2x10 MVA transformers to 2x20 MVA at Parwanoo alongwith 66 kv Sub-station line from Barotiwala to Parwanoo at the estimated cost of Rs.313 lacs reveals that the report was prepared on unrealistic projections and not on the factual conditions and circumstances. This has been more than vindicated by the fact that even upto August 2005, the demand had not exceeded the rated capacity of the un-augmented transformers. The transformers have short term over rating capacity also and the old transformers could have been capable of taking additional demand and releasing many more connections from the same transformers. In this manner of speaking, the project report was fictitious and the augmentation carried out in the year 1999 was premature, infructuous and ill-planned as per the observations made in the interim order dated 5.11.2005”

In the light of the above, the said letter No. HPSEB/CE(Comm.)/LS-Cost. Dated 3rd Oct,2005 has already been held void-abinito and struck-down.

10. In view of the foregoing discussion, the demand of Rs.91,21,500/- for 2250 KVA @ Rs.4054 per kva on contract demand, is found to be in contravention of the provisions of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 and hence the Commission directs the respondent Board to refund the amount paid by the Complainant Company above rupees 4,50,000/- immediately, on the undertaking to be given by the Complainant Company that it will pay the difference of the amount of justifiable cost which would be worked out by the respondent Board on the basis of cost data published for the relevant years by the Rural Electrification Corporation/Power Finance Corporation, as the case may be.

Announced in Open Court.

Dated: 17.06.2006

(Yogesh Khanna)
Chairman