

BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION
SHIMLA

M/s Emm Tex Synthetics Ltd
Jagat Khana, Nalahgarh,
Distt. Solan, H.P.

...Petitioner

V/s

1. H.P. State Electricity Board
2. The Assistant Executive Engineer,
Electrical Sub-Division, Nalagarh, Distt., Solan. (H.P.)

...Respondents.

(Petition No. 109/2004)

(Decided on 30.4.2008)

CORAM
YOGESH KHANNA
CHAIRMAN

Counsel :-

for the petitioner

Shri. O.C. Sharma,
Advocate

for the respondents

Shri

Consumer Representative
(u/s 94 of the Electricity Act, 2003)

Shri. P.N. Bhardwaj

Order

(The case last heard on 26.4.2008 and orders reserved)

The Emm Tex Synthetics Ltd, Jagat Khana, Nalagarh-174101 (hereinafter referred as the petitioner) filed a complaint, which is registered as case No. 109/2004, under section 142 of the Electricity Act, 2003, for non-compliance by the Himachal Pradesh State Electricity Board (hereinafter referred as the respondent Board) of order dated 3.8.2002, passed in complaint case No. 3 of 2002 i.e. **Parwanoo Industries Association (P/A) V/s Himachal Pradesh State Electricity Board (HPSEB)**; and against the wrong, illegal, arbitrary and unjustified supplementary demand of Rs. 123,91,800/- as sundry charges in the energy bill dated 8.4.04 on account of PLVC for the months of 11/01, 2/02, 2/02 and 3/02. The Commission vide its interim order dated 25.6.2004 restrained the respondents from disconnecting

the electricity supply on account of non-payment of sundry charges raised in the energy bill dated 8.4.04 during the pendency of the case. The petitioner has urged that the respondent Board cannot recover outstanding amount, as per provisions laid down under section 56(2) of the Electricity Act, 2003, as no sum due from any consumer under this section is recoverable after the period of two years from the date when the same becomes first due. The Learned Counsel for the respondent Board questioned the jurisdiction of the Commission to entertain the complaint. After hearing the parties, the Commission, felt that vital and substantive point of law have been raised, with regard to the previous escaped liability and the jurisdiction of the Commission. The Commission, therefore, heard the parties on the question of jurisdiction and more upon the effect of the repeal in certain circumstances. The Commission considered the preliminary issues involved vide its interim order dated 5.3.2005

2. Before this petition could be taken up for consideration on merits, the Hon'ble High Court of Himachal Pradesh vide its order dated 13.04.05, passed in CWP No. 261/05, moved by the respondent Board, stayed the operation and execution of the Commission order dated 5.3.2005. As such this petition i.e. case No. 109/04 had to be adjourned sine die. Thereafter, on the constitution of the Appellate Tribunal for Electricity under section 110 of the Electricity Act, 2003 the impugned order dated 5.3.2005 was taken up for consideration by the said Appellate Tribunal in appeal No. 117 of 2007, which was decided on 5th Nov., 2007. The Hon'ble Appellate Tribunal for Electricity has set aside the impugned order dated 5.3.2005 stating that one of the preliminary objection by the respondent Board was that the dispute raised by the respondent was not entertainable as the dispute raised in the petition was an individual dispute of a consumer and the Commission had no jurisdiction to go into such a dispute. The Hon'ble Supreme Court in **Maharashtra Electricity Distribution Co V/s Lloyds Steels Industries 2007 (10) SCALE 289**, has ruled that an individual dispute of a consumer has to be raised before the Forum envisaged by section 42(5) of the Electricity Act, 2003 and not before the Regulatory Commission. Thus this Commission lacks jurisdiction to adjudicate upon this petition.

In the result, the petition, without consideration on merits, is dismissed on account of the jurisdictional fact, with the liberty to the petitioner to pursue the matter before the appropriate Forum/authority available to him under the law. The interim order dated 25.6.2004, passed in this case also stands withdrawn.

This order is passed and signed on the 30th day of April, 2008

(Yogesh Khanna)
Chairman