

BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION

In the matter of:-

Petition under clause (f) of sub-section (1) of section 94 of the Electricity Act, 2003, for the review of the order dated 5.4.2008 passed in Suo Motu Case No. 49/2007, imposing penalties for the non-compliance/contravention of HPERC (Distribution Licensee's Standards of Performance) Regulations, 2005, issued on 3rd Nov., 2003, under section 181, read with sections 57, 58, 59 and 86 of the Electricity Act, 2003.

(Review petition No. 120/2008)

(Order made on 2.9.2008)

CORAM
YOGESH KHANNA
CHAIRMAN

Counsel for HPSEB

Sh. Bimal Gupta
Advocate

Consumer Representative

U/s 94 of the Electricity Act, 2003 Sh. P.N. Bhardwaj

Order

(Last heard on 23.8.2008 and orders reserved)

The petitioner, Himachal Pradesh State Electricity Board (for brevity to be called "the Board"), have sought the review of the orders dated 5.4.2008 passed by the HPERC (for short "the Commission" in Suo Motu Case No 49/2007, imposing penalties for non-compliance/contraventions of the provisions of the regulations framed by the Commission under the Electricity Act, 2003 (hereinafter referred as "the Act"). In the order dated 5.4.2008 passed by the Commission, a penalty of Rs. 25,000/- (Rupees twenty five thousand) was imposed on the Board. Further an additional penalty for continuing failure @ Rs. 2,000/- only per day was imposed on the Board immediately after 31st Dec., 2007, until the compliance of the Commission's order to the satisfaction of the Commission.

2. In brief the facts of this case are that the Commission, in pursuance of section 57, read with clause (i) of sub-section (1) of section 86, of the Act, framed the HPERC (Distribution Licensee's Standards of Performance) Regulations, 2005 (hereinafter referred as "the said regulations") specifying the standards of performance of the distribution licensees intending to serve as guidelines for them to operate their distribution system for ensuring quality, continuity and reliability of service to be rendered by them. The said regulations came into force on 3rd Nov., 2005 i.e. the date on which these were published in the Rajpatra, Himachal Pradesh. Sub-regulation (1) of regulation 5 of the said regulations lays down that the standards specified in Schedule-1 to the said regulations shall be the guaranteed standards of performance, being the minimum standards of service which a licensee is to achieve and maintain in discharge of his obligations as a distribution licensee. Item (1) of the said Schedule makes it obligatory to the distribution licensee to set up the Call Centres, with appropriate information and technology backbone alongwith appropriate staffing of the same within the time lines provided therefor. Though Call Centres were to be set up in phased manner, the Call Centres in all the Sub-Divisions in the State were to be set up within a period of 12 months from the commencement of the said regulations, which period expired on the 3rd of November, 2007. Sub-regulation (3) of regulation 5 of the said regulations provides that "the distribution licensee shall, frequently but at an interval of not less than six months, educate the consumers of their rights regarding the standards of performance as specified by the Commission under section 57 of the Act, by giving wide publicity amongst its field staff and public general including local rural and urban bodies, through electronic and print media."

3. The Commission issued directions vide its letters No. HPERC/D(T&D)/401-Vol-II/DK/2005-3993 dated 2.12.05 and even No. 3992 dated 3.12.05; 2155 dated 20.7.06; 2379 dated 4.8.06, 2993 dated 25.9.06; 3719 dated 2.12.06 and 3953 dated 19.12.06 to the licensee (i.e the Board) to comply with the requisite provisions of these regulations on different occasions clearly mentioning therein that in case of failure of the Board to comply with the provisions of said regulations the Commission will be

constrained to initiate legal action consistent with the provisions of the Act. The Commission being not satisfied with the steps, taken by the Board, to implement the provisions of the Commission's Regulations, expressed its concern, but even then no sincere efforts were made by the Board.

4. During the hearing held on 21.4.2007, in the suo motu proceedings, the Board was directed to expedite the setting up of the call centres by 31st July, 2007, but in this regard it was stated by the Board that the extension of building was under construction and it was likely to be completed by the end of August, 2007 and on 25.8.2007 the Commission granted the extension in time as asked for. Subsequently on 27.10.2007 the Board again stated that the call centres are to be put up in place by Dec., 2007 and asked for further extension upto 31st Dec., 2007. Apparently, there was apprehension that even if extension in time as asked for is accorded, the call centres, as envisaged under the SOP Regulations will not be made functional for more time and the officers of the Board will continue seeking extension after extension. However, Commission vide its interim order dated 27.10.2007, granted extension in time for setting up and commissioning of the call centres upto 31st Dec., 2007 and also specifically directed the Board and its officers to take note that on failure of compliance of the SOP regulations, even after 31st Dec., 2007 the Commission shall be constrained to determine the quantum or extent of fines, penalties to be imposed therefor, under sub-regulations (3) of regulation 62 of HPERC (Conduct of Business) Regulations, 2005. Surprisingly enough, when the matter was taken up again on 29th March, 2008 (after the expiry of three months of the extended time i.e. 31st Dec., 2007), the licensee Board further asked for more time upto April, 2008. From the facts as brought out hereinbefore, it is observed by the Commission that the licensee is not serious in compliance of the regulations but to the contrary it is bent upon bye-passing regulations by seeking extension in time. Despite repeated directions/orders by the Commission, the Board willfully ignored them, with the result that the regulations are being defied and are not implemented, thereby defeating the very essence and objective for which the said regulations have been framed.

5. The Commission, issued a show cause notice to the Board for non-compliance and serious contravention of the regulations to impose penalty under section 142 of the Act and regulation 62(3) of the HPERC (Conduct of Business) Regulations, 2005 and allowing an opportunity to the Board of being heard in the matter. The respondent Board, evaded a direct reply and could not refute the fact that the Board has received 7 lakh complaints, without any claim for compensation for infringement of guaranteed standards, demonstrates itself that the licensee, i.e. the Board has failed to create public awareness as envisaged under the SOP regulations and the non-compliance of the regulations is the betrayal of the public interest, and non-compliance of the regulations also hampers the functioning of the Commission, in pursuance of the said regulations. Taking a lenient view, being the first batch of such contraventions, the Commission imposed, after considering the nature and extent of non-compliance and the relevant factors as per regulation 62(3) of the HPERC (Conduct of Business) Regulations, 2005 and under the over all provisions of section 142 of the Electricity Act, 2003, a fine of Rs. 25000/- only and additional penalty for continuing failure @ Rs. 2000/- only per day until the compliance to the satisfaction of the Commission. The Board was asked to submit the status/ Action Taken Reports on the fifteenth day of every month until compliance is made.

6. The scope and authority of review is derived from section 94(1)(f) of the Electricity Act, 2003 and regulation 63 of the Himachal Pradesh Electricity Regulatory Commission (Conduct and Business) Regulations, 2005, read with section 114 and Order 47 rule 1 of the Code of Civil Procedure, 1908. A person aggrieved by an order, from which no appeal has been preferred or no appeal is allowed may prefer a review on the following grounds:-

- (a) discovery of new and important matter which, after the exercise of due diligence was not within his knowledge or could not be produced at the time when the order was passed or made, or
- (b) mistake or an error apparent on the face of the record, or
- (c) any other sufficient reason.

7. The law in relation to the scope of review has been settled by the Hon'ble Supreme Court in case of Parsion Devi V/s Sumitri Devi (1997) 8

SCC 715, Aribam Tulsehwar Sharma V/s Aribam Pishak Sharma AIR 1979 SC 1047, Raja Shatrunji V/s Mohd Azmat Azim Khan (1971) 2 SCC 200, Smt. Meera Bhanja V/s Nirmala Kumari Chaudhary AIR 1995 SC 455 and has also been followed by the Appellate Tribunal for Electricity in its Orders (dated 17.11.2006) in Appeal No. 40 of 2006, dated 23.11.2006 in appeal Nos. 80 to 197 of 2006 and Appeal No. 226 of 2006, dated 31.10.2007 in appeal Nos. 159 of 2005, 162 and 167 of 2006.

8. To sum up the power of review, legally speaking is permissible where some mistake or error apparent on the face of record is found and the error apparent on record must be such an error which may strike one on a mere looking at the record and would not require any long drawn process of reasoning. A review cannot be equated with the original hearing of a case. A review petition has a limited purpose and cannot be allowed to be an appeal in disguise and cannot be exercised on the ground that was erroneous on merits.

9. Despite the penal order the setting up and functioning of the Call Centres is still awaited. In the present review petition too the Board, has not brought out any mitigating circumstances for reduction of the penalties already imposed. The Board has put forward two main arguments in the review petition that the amount of penalty of Rs. 2000/- per day w.e.f. 1.1.08 has been imposed without taking into consideration the provisions of Schedule-1 of the SOP Regulations. The Schedule -1 details out the compensation to be levied in case of non-compliance of guaranteed standards of performance. The Board has pleaded that as per the said Schedule they have to establish call centres connecting all the sub-divisions within 24 months. According to the Board a period of 24 months has been provided with the stipulation that compensation @ Rs. 100/- per day beyond twelve months from the specified time is payable and therefore the Commission has erred in not taking this into consideration and therefore review is justified. By making this submission the Board has accepted the fact that they have violated the provisions of SOP Regulations but are only questioning the quantum of penalty levied. In the petition the Board has confused the matter between “penalty” and “compensation”. The Commission has imposed penalty under section 142 of the Act whereas the Board is talking about compensation which can be awarded under the SOP regulations. In the opinion of this

Commission, these two are totally different and the review requested by the Board on this account holds no merit. The second plea put forward by the Board is that the Board is in the process of setting up the Call Centres and has been informing the Commission regularly of the progress made on this regard and they are not intentionally avoiding setting up the Call Centres, which they are hopeful of commissioning by end of May 2008. This contention of the Board also does not hold good, since even on the day of making this order the setting up of the Call Centres is still awaited.

10. The Commission is of the view that a very fair approach was adopted and the impugned order was passed much after much deep deliberations and deep consideration. The review petition does not bring out any new and important fact, which after the exercise of due diligence, was not within the petitioner's knowledge or could not be produced by him at the time when order was passed. It does not merit review on these facts, which were in the knowledge of the Commission when it issued the impugned order and the Board has not been able to put forth any new fact or important matter or any error apparent in the order, to merit review.

In view of this the Commission finds no sufficient and justifiable reason to accept the review petition moved by the Board and hence the same is dismissed.

This order is made and signed on 2nd day of September, 2008.

(Yogesh Khanna)
Chairman.