

BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION,
SHIMLA-171002

In the matter of: -

Compliance of direction No. 9.4.19 contained in Tariff Order for HPSEB for FY 2004-05 to review the justification for 400 kV transmission line from Nalagarh to Kunihar and 400 kV Sub-station at Kunihar.

AND

In the matter of: -

1. The H.P. State Electricity Board
Vidyut Bhawan, Shimla-4
2. Sh. S.R. Mehta,
Chief Accounts Officer,
HPSEB, Vidyut Bhawan, Shimla.

(Review Petition No. 124/2009
in Compliance Case No. 255 of 2007)

(Order dated 16.10.2009)

CORAM: -
YOGESH KHANNA
CHAIRMAN

Present for: -

The H.P. State Electricity Board
Sh. S.R.Mehta,
The Chief Accounts Officer
HPSEB

Sh.NarinderSinghThakur,
Advocate
Sh. Bimal Gupta,
Advocate

Consumer Representative
(Under Section 94(3) of the
Electricity Act, 2003)

Er. P.N.Bhardwaj

Order

(Last heard on 29.08.2009 and orders reserved)

This is the petition moved by the Himachal Pradesh State Electricity Board (hereinafter referred as “the Board”) and Sh. S.R. Mehta, Chief Accounts Officer of the Board, seeking review of the order dated 25.05.2009 passed in case No.255 of 2007 by the Himachal Pradesh Electricity Regulatory Commission (hereinafter referred as “the Commission”), holding Sh. S.R.Mehta, guilty under section 142 of the Electricity Act, 2003 (hereinafter referred as “the Act”) for contravention of the Commission’s directions and punishing him with fine of Rs,5000/-. As there is delay of 7 to 8 days, in filing the review petition, the petitioners have also moved an application for condonation of delay. The Commission, after hearing the Counsels for the petitioners, condones the delay and admits the petition for hearing.

2. The brief facts involved in this case are that on the application of the Board for determination of its Annual Revenue Requirement (ARR), Transmission and Bulk Supply Tariff and Distribution and Retail Supply Tariff for the FY 2004-05, the Commission issued the Tariff Order on 2nd July, 2004. While issuing the said Tariff Order, the Commission has given a number of directions-cum orders to the Board, both at the time of public hearing and in the order issued. The tariff determined by the Commission and the directions given in Section 9 of the said Tariff Order were quid pro quo and mutually inclusive. In view of the fact that the 25% share of power under NJPC together with some proportion of free power is to be exported out of the State and does not belong to the licensee and besides PGCIL has established 400 kV Sub-Station at Nalagarh which could be used for meeting additional load on the existing 220 kV Sub-Station at Kunihar in future, the Commission directed the Board to review the justification for 400 kV transmission line from Nalagarh to Kunihar and 400 kV Sub-Station at Kunihar. The Board is entitled to only 2.47% of Power generated from NJHEP as the State of the Region Share which does not justify the

establishment of a 400 kV Sub-Station at Kunihar. The justification was directed to be got examined in collaboration with the CEA and the Power Grid Corporation of India Ltd; and, submitted to the Commission for its approval by November 30, 2004.

3. The issue concerning review of the justification for 400 kV transmission line from Nalagarh to Kunihar and 400 kV Sub-Station at Kunihar had been figuring in the Tariff Order dated 2nd July, 2004 and carried forward in subsequent tariff orders. Despite repeated discussions/deliberations in the proceedings, concerning the compliance of the tariff directions/orders, and also expressing by the Commission of its deep concern over the matter, having impact on the tariff determination, the Board and its officers had been taking the matter very casually. The Board accorded the administrative approval and expenditure sanction to the scheme for Rs. 6733.810 lacs during March, 2007. The REC authorities agreed on 9.7.2007 to fund the scheme of Rs. 6060.43 lacs. After identification of the assets to be mortgaged to the REC and then completing the contractual formalities, during August, 2007, the REC released on 5.10.2007 the first loan installment against the said loan. The tender was published on 22.2.2008 and bid documents were to be opened on 29.7.2008. Keeping in view the slow progress in the matter and the Board not pursuing the same with due diligence for which the loan installment was released on 5.10.2007, the Commission directed, on 6.12.2008, the Board to expedite final decision on the financial bids and also directed the Chief Accounts Officer of the Board to apprise the Commission, about the time lines in processing the file alongwith the fortnightly developments/achievements towards finalisation of the award of the work. The Commission again expressed its concern over the matter on 7.2.2009 and 7.3.2009, but it still took more than three months for the Chief Accounts Officer, to submit his report, as called by the Commission's Order dated 6.12.2008.

4. The Chief Accounts Officer, HPSEB states that he could not submit before 7th March, 2009, the investigation report as per the directives of the Commission dated 6.12.2008 and 7.2.2009 due to his involvement with State Assembly Business and his

duty in connection with discussions in the Planning Commission, New Delhi. The Commission expressed its concern over the non-serious attitude of the Chief Accounts Officer for not complying with the directions of the Commission within the stipulated time schedule. This tendency lingered on the proceedings unnecessarily and the Commission was convinced that the Chief Accounts Officer had willfully contravened the directions of the Commission. The Commission therefore, decided to initiate a proceeding for imposition of personal fine under section 142 of the Electricity Act, 2003 on the said Chief Accounts Officer for non-compliance of the directions of the Commission.

5. Keeping in view the principles of natural justice, the Commission afforded an opportunity of being heard in person to the said Chief Accounts Officer, as contemplated under sub-regulation (3) of Regulation 62 of the Conduct of Business Regulations of the Commission. In reply he stated that the requisite report was to be prepared after scrutinizing various records available in various wings of the Transmission Wing of the Board. Immediately on the receipt of the Commission's order dated 6.12.2008 he requested the Chief Engineer (Transmission), Hamirpur for making the record available for scrutiny and preparation of the report. The collection of record consumed considerable time, as the records were stated to be with the Scrutiny Committee headed by the Chief Engineer (MM), and thereafter with the Whole Time Members of the Board for necessary action for award of the work. The record was made available only after the purchase order was issued. During the intervening period from 12th Feb., to 4th of March, 2009 he remained busy for preparing the budget proposals for the FY 2009-10, arranging audit certificates on Annual Accounts of the Board for the year 2007-08 and printing thereof for being laid on 27.2.2009, before the Legislative Assembly, which was in session from 12.2.2009 to 27.2.2009. Thereafter he was directed to be with the Chairman of the Board, w.e.f. 1.3.2009 to 3.3.2009, and returned to headquarters on 4.3.2009 and resumed duties on 5.3.2009. In these circumstances it was very difficult for him to scrutinize the records and submit the requisite report on 7.3.2009. However, he apprised the Commission

about these circumstances on 7.3.2009. The record was voluminous and it took seven days for finalization and approval of the report by the competent authorities of the Board. The report could ultimately be submitted to the Commission on 20.3.2009.

6. The Commission is not convinced with the reasons put forth by the Chief Accounts Officer for delay or non-submission of the report asked for by the Commission. All- the-more, the delay in submission/report, asked for, has led to delay in the issuance of further appropriate directions to the Board for its speedy decisions on the matters concerning public interest as well as the tariff determination. This Commission taking, however, an extremely lenient view and considering the nature and extent of non-compliance and relevant factors as per regulation 62(3) of the HPERC (Conduct of Business) Regulations, 2005 and the overall provisions of Section 142 of the Electricity Act, 2003 determined the quantum of fine imposed on Sh. S.R. Mehta, a fine of Rs. 5000/- only.

7. The Board and Sh.S.R.Mehta, the Chief Accounts Officer of the Board, have now sought the review of the said order dated 25.05.2009 imposing penalty of Rs.5000/-on Sh. S.R.Mehta on the grounds: -

- (a) that while passing the impugned order the Commission has not considered the reasons for delay in submission of report as given in the reply by Sh. S.R.Mehta;
- (b) that before passing the impugned order the petitioner was not given opportunity of being heard;
- (c) that the work of 220/66KV Sub-Station at Nalagarh had been awarded by the Board on 7.02.2009, as such delay in submitting the report has not caused any loss to the Board.
- (d) that section 142 of the Electricity Act,2003 does not create absolute offence and thus mensrea is the basic ingredient of any offence . Mere non-compliance with an order could not be sufficient to take penal action;
- (e) that the clear cut mandate of Section 142 of the Electricity Act is to the effect that the fine under that section can only be imposed if there is non-compliance of directions of this Commission, whereas after the availability of record, inquiry report has already been complied on 20.03.2009.

8. In support of his contention Sh. S.R.Mehta has placed on record the judgment of the Hon'ble Appellate Tribunal for Electricity, passed on 13th September, 2007 in **Appeal No.115 of 2007- Sh. B.M. Verma V/s Uttrakhand Electricity Regulatory Commission.**

9. The scope of review is very limited. The power of review is permissible where some mistake or error on the face of record is found, and the error apparent on record must be 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. Thus a review petition has a limited purpose and cannot be allowed to be appeal in disguise and it cannot be exercised on the ground that the decision was erroneous on merits. **Parsion Devi Vs. Sumitri Devi (1997) 8SCC 715, Ariban Tuleshwar Sharma Vs. Aribam Pishak Sharma AIR 1979 SC.1047, Raja Shatrunji Vs Mohd Azmat Azim Khan (1971) 2 SCC 200, Smt. Meera Bhanja Vs. Nirmala Kumari Chaudhary AIR 1995 SC.455.**

10. It is clear from section 142 of the Act, that the Commission is empowered to take cognizance of the contravention of any direction issued by it or any other provisions of the Act or the rules or regulations made thereunder either suo-motu or on a complaint filed before it by any person. After allowing the defaulter an opportunity of being heard on the matter, the Commission is empowered to direct him to pay by way of penalty a sum not exceeding one lac rupees for each contravention. In a case where there is continuous failure on the part of the defaulter to comply with the directions of the Commission provisions of the Act or rules or regulations made thereunder , an additional penalty up to Rs. six thousand for every day during which the failure continues, after violation of the first such direction, can be imposed by the Commission.

11. Section 142 of the Act applies not only when any person contravenes the Act, or Rules or Regulations, but also when any person contravenes any direction

issued by the Commission. It needs to be noted that the Commission vide its order dated 2nd July,2004 had made abundantly clear that the review of justification for 400 KV transmission line from Nalagarh to Kunihar and 400 KV Sub-Station at Kunihar was necessary. For this purpose the Commission vide its subsequent Tariff Order issued for FY 2009-2011 redirected the said direction to the Board and vide its order dated 6.12.2008,directed the Chief Accounts Officer, of the Board to apprise by way of report the Commission about the transmission lines in processing the file for finalizations of the award of the work from the date of opening of the bids. It is a matter of serious concern that despites expressing concern by the Commission repeatedly on 7.02.2009 and 7.03.2009, regarding non-compliance of the directions, Sh. S.R.Mehta continued to treat the matter lightly and in a non-serious manner and has submitted the desired report on 20.03.2009. The Commission painfully observes that the petitioners did not stir in taking action. The attitude of a petitioner's smacks of deliberate defiance to Commissions order, which does not augur well for the smooth and efficient operation of the State power sector.The Hon'ble APTEL in its decision rendered in appeal **No 115/20 07-B.M Verma Vs UERC** relied upon by the petitioner, itself recognises that it is true that the order of the Commission cannot be taken lightly. If the utilities defy the Commission with impunity the very effort for reforms of the electricity sector with the enactment of the Electricity Act,2003 and policies formulated thereunder should be reduced to a farce. The Commission afforded an opportunity of being heard to the delinquent officer as contemplated under sub-regulation (3) of regulation 62 of the Commission Conduct of Business Regulations, and reasons for delay as put-forth by Shri Mehta had already been taken into consideration while imposing penalty on him.

12. In relation to the contention raised by the applicant that section 142 of the Electricity Act,2003 does not create absolute offence and thus mensrea is the basic ingredient of any offence. Mere non-compliance with an order could not be sufficient to take penal action ,it would be worthwhile to point out that the Hon'ble Appellate Tribunal for Electricity in its recent **judgment dated 31st July,2009 delerived in**

Aappeal No.53 of 2009- Bihar State Electricity Board Vidyut Bhawan, Baily Road Patna and another Vs. Central Electricity Rergulatory Commission, New Delhi has considered this preposition and after putting reliance on the judgments rendered by the Hon'ble Supreme Court in **Chairman SEBI vs. Shriram Mutual Funds-2006 Vol 5.SCC 361, and Union iof India and others Vs. Dharmendra Textile Processors 20208 Vol.13 SCALE 233**, has concluded that the perusal of section 142 of the Act as well as the ratio decided by the Supreme Court with reference to the violation of the directions or contravention of rules would make it clear that once it is shown that the contravention or the violation of the directions of the Commission has taken place the imposition of penalty by the Commission on such person is natural consequence. In other words, the power to impose penalty gets invoked as soon as the contravention of rules and directions as contemplated under section 142 of the Act is established.

13. Sh. Bimal Gupta, Advocate, representing Sh. S.R.Mehta has reiterated that due to multiple duties assigned to him, it was beyond his control to furnish the report within the time lines set out by the Commission. Sh. Mehta has made sincere efforts to procure the relevant records from the concerned authorities of the Board, as the report could be prepared after considering the facts available on the records. The delay in compliance of the Commission's order was not willful and was attributed to the facts beyond his control. As he is retiring on 31.08.2009, penalty imposed upon him will definitely affect his unblemished service record that too at the get end of his service carrier.

14. Sh. P.N. Bhardwaj, the Consumer representative appointed under Section 94(3) of the Electricity Act, 2003 has argued that keeping in view the fact the Sh. Mehta has an unblemished service record and has rendered valuable services for fairly long time, such lapses should be taken leniently. According to him the hands of justice will be better served if the proceedings initiated against him are closed or he is discharged by giving a mere warning, as to ensure that such violations do not occur the Board should exercise due diligence in compliance of the Commission directions in future.

15. The observations of the APTEL judgment dated 31st July, 2009 in Appeal No.53 of 2009(supra) reads as under: -

“27. We are constrained to make this observation in order to press upon the Commission that merely because we have found that no mensrea is necessary to impose the penalty for violation of direction, the same should not be taken by the Commission that whenever there is contravention, there shall be an imposition of penalty. We make it clear that if the Commission feels satisfied with the circumstances of the explanation given by the person concerned, the Commission either may accept the explanation and close the proceedings or discharge the person by giving a mere warning so as to ensure that the said violation does not recur. In other words the Commission have to exercise its statutory powers by taking into consideration the various circumstances in to consideration before coming to the conclusion regarding the imposition of the penalty”.

With this back ground and the circumstances of this case and the judgment cited and submission made by the parties, the Commission is of the view that there will a very fair approach and the hands of the justice will be served if the personal penalty of Rs.5000/- imposed upon Sh. S.R.Mehta, under section 142 of Electricity Act, 2003, is withdrawn and the Board is to ensure that in future such violations do not occur and the Board and its officers should exercise due diligence in compliance to the Commission directions.

It is so ordered.

Yogesh Khanna
Chariman