

BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION  
SHIMLA

M/s Claridge Moulded Fibre Ltd.  
Village Malkumajra, P.O. Bhud, Tehsil Nalagarh  
Distt. Solan. (H.P)

...Petitioner

V/s

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

...Respondents.

(Petition No. 196/2005)

(Decide on 15.3.2008)

**CORAM**  
**YOGESH KHANNA**  
**CHAIRMAN**

Counsel :-

for the petitioner

Shri. O.C. Kaushal  
Advocate

for the respondents

Shri. Bimal Gupta  
Advocate

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

Shri. P.N. Bhardwaj

**Order**

M/s Claridge Moulded Fibre Ltd. Village Malkumajra, P.O. Bhud, Tehsil Nalagarh, Distt. Solan. (H.P), through Sh. Rajinder Singh its Chief Executive Officer and authorized representative (hereinafter referred as the petitioner), filed a complaint under section 142 under the Electricity Act, 2003, read with para 9.0 of the Complaint Handling Mechanism and Procedure against the alleged wrong illegal and unjustified demand of sundry charges for Rs. 30,09,000/- raised in the energy bill dated 8.4.2004. The complainant also filed an application for an interim ex-parte stay order under regulation 25 of the HPERC (Conduct of Business) Regulations, 2001 then in

force. The Commission vide its interim order dated 25.5.2005 as confirmed on 13.7.2005, restrained the respondents from realizing and recovering the aforesaid amount as well as disconnecting the electric supply of the petitioner qua the disputed amount of Rs. 30,09,000/-.

2. The facts, in brief, are that two connections for unit-1 and unit-2 with connected load of 400 kw and 325 kw respectively were sanctioned in 1987 and 1996 under the then category MS. The two units are stated to be separate, duly partitioned with no possibility of using power from one another. They are physically separate and have independent separate manufacturing processes. The bill dated 8.4.04 with respect to Account NO. LS-5 (unit-1) placed demand of Rs. 30,09,000/- in the column of sundry charges as pointed out by the audit for the period April, 1997 to April, 2000. The details of alleged amount of sundry charges of Rs. 30,09,000/- were not supplied. The complainant company filed a complaint on 19.5.2004 before the Commission against the above wrong, illegal and unjustified demand of the sundry charges of Rs. 30,09,000/- as raised in the sundry charges bill of 8.4.2004. The Commission sent this complaint to the Chief Engineer (Comm.) on 28.5.2005 directing him to settle the issue and furnish suitable reply to the complainant company within one month from the receipt of the letter. The Commission also directed the complainant company to follow up the procedure laid down in the CHMP notified on 8.2.2002. The respondents through their letter dated 17.5.2004 explained that the demand has been pointed out by the RAO during the audit of the Sub-Division for the period 4/98 to 3/2001 to the effect that the two industries should have been treated as one unit and charged tariff LS-2 applicable at that time. The petitioner pleads that the loads of the unit-1 and 2 cannot be clubbed together nor can the respondent change the category and schedule of tariff from MS to LS-2. Feeling aggrieved with the reply of the Asstt. Engineer/Sr. Executive Engineer, the petitioner applied to the Appellate Authority, the Chief Engineer (OP) South in Performa-IX for investigation of the matter as per the CHMP. The Appellate Authority did not investigate the matter and decide the matter on the ground that this being a billing dispute, did not fall within the purview of the CHMP. He advised that since the amount of dispute arising out of the wrong billing is more than Rs. 10.00 lacs, the same falls within the purview of the Board Level Disputes Settlement Committee.

The petitioner further pleads that the respondents are estopped from demanding the alleged amount of Rs. 30.09,000/- due to their own acts, conduct and acquiescence. The recovery/demand of the alleged sundry charges/arrears has become time barred in view of the provisions contained in sub-section (2) of section 56 of the Electricity Act, 2003 and no sum due from any consumer is recoverable after the period of 2 years from the date when such sum became first due, unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied. The demand is also hit by Article 14 of Limitation Act which bars the recovery after a period of 3 years.

3. During the course of hearing, the Commission directed this case to be listed alongwith case No.109/2004 titled as “M/S Emm Tex Synthetics Ltd V/s HPSEB” as the legal issues raised being more or less similar in both the cases. Accordingly Order of 5.3.2005 passed in case No. 109/04 was also to become applicable to this case as well. 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. This petition i.e. case No.196 of 2005 and also case No. 109/2004 were 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 5<sup>th</sup> 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 HPSEB 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.

4. Keeping in view the legal position, as set out in the foregoing para of this order, the petitioner has prayed for allowing it to withdraw this petition with the liberty to file a complaint before the Forum for Redressal of Consumers, as constituted under sub-section (5) of section 42 of the Electricity Act, 2003 on the same cause of action, in the interest of justice.

5. In the result, the petition is dismissed as withdrawn 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, and the interim order 25.2.2005 as confirmed on 13.7.2005 in this case also stands withdrawn.

This order is passed and signed on the 15<sup>th</sup> day of March, 2008.

(Yogesh Khanna)  
Chairman