

BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION,
SHIMLA

In re:

Application under sections 142 and 146 of the Electricity Act, 2003, for securing compliance of the HPERC (Licensee's Duty for Supply of Electricity on Request) Regulations, 2004.

M/S Padmavati Steels Ltd
Vill Johron, Trilokpur Road,
Kala Amb, Distt. Sirmour.

... Petitioner/applicant

V/S

1. The H.P. State Electricity Board
2. The Chief Engineer (Commercial),
HPSEB, Vidyut Bhawan, Shimla.
3. The A.E.E., HPSEB, Kala Amb, Distt. Sirmour (H.P.)

... Respondents

Petition No. 219/07

(Decided on 22.8.2008)

CORAM:-
YOGESH KHANNA
CHAIRMAN

Counsel:-

for the petitioner

Sh. P.C. Dewan

for respondents.

Sh. Bimal Gupta, Advocate

Order

(Last heard and order reserved on 26.7.2008)

In para 24 of this Commission's interim order dated 26.4.08, it was concluded by this Commission that the HPERC (Licensee's Duty for Supply of Electricity on Request) Regulations, 2004 (hereinafter referred as "the said regulations") came into force on 22 June, 2004, on their publication in the Rajpatra, Himachal Pradesh, and it was incumbent on the Himachal Pradesh

State Electricity Board (hereinafter as “the respondent Board”) to submit a proposal for erection of 33/11 KV Sub-station and get the time frame, for erection of the said sub-station and commencing the power supply, approved from the Commission under sub-regulation (3) of regulation 3 of the said regulations. The respondent Board was supposed to intimate applicant firm, about its readiness with infrastructure, which despite various requests from the applicant firm, the Board has never intimated even though the augmentation of 132 KV Sub-station, Kala Amb was completed in Nov., 2006. Further the respondent Board, asked the applicant firm to deposit the sum of Rs. 27.00 lacs, for revalidation of the PAC’s, ignoring the fact that issuance of the PAC’s/their revalidation is not contemplated either under the Act or the regulations, and the levy of revalidation charges has not been approved by the Commission in the Schedule for General Charges in the relevant tariff. In view of the provisions contained in section 62 of the Act, the licensee cannot charge a tariff in excess of the tariff determined by the Commission. If any licensee recovers price or charges exceeding the tariff determined by the Commission, the excess amount is recoverable by the person who has paid such price or charge, along with interest equivalent of the bank rate and the licensee is also liable to penalties, as prescribed under sections 142 and 146 of the Electricity Act, 2003. Thus the action of the respondent Board and its officers is in the total disregard and in contravention of the provisions of sections 43 and 62 of the Electricity Act, 2003, and the regulations framed thereunder. Also in the considered view of the Commission, this is case of not only the contravention but of open defiance of the statutory provisions.

2. Further in para 27 of the said order, the Commission made it clear that, before the appropriate penalties are imposed in terms of section 142 of the Electricity Act, 2003 and Regulation 62 (3) of the HPERC (Conduct of Business) Regulations, 2005, keeping in view the principles of natural justice, the Commission would like to afford an opportunity of being heard in person, to the respondents. The respondent Board, through its Secretary and the other respondents i.e. Chief Engineer (Commercial), HPSEB and the A.E.E., HPSEB, Kala Amb, Distt Sirmour, were ordered to remain present and make representations, if they like so, on the next date of hearing which was fixed for 24.5.08.

3. On 24.5.08, when the matter again came up for hearing Sh. V.D. Sharma, Chief Engineer (Commercial) and Sh. Rakesh Kapoor, S.D.O., Kala Amb were present and the respondent Board was represented through Sh. Bimal Gupta, Advocate. The written statement filed by Dr. M.P. Sood, Secretary of the Board, on behalf of the Board, was an effort to side track consideration of the real issues/ parameters and hence the Commission had to point out that this matter has been fixed for hearing the respondent Board and its officers on limited issues as envisaged under sub-regulation (3) of regulation 62 of the CBRs of the Commission, read with sections 43 and 62 of the Electricity Act, 2003 and the HPERC (Licensee's Duty to Supply of Electricity on Request) Regulations, 2004. The conclusions already arrived at by the Commission in its order dated 26.4.08, can only be questioned on merit by way of review/appeal separately. The Commission, therefore, ordered the respondent Board to address the relevant issues only and in the meanwhile also to release the connection to the firm.

4. On the next date of hearing i.e. on 26.7.2008, the written statement submitted by Sh. V.D. Sharma, Chief Engineer (Commercial), indicated that the electricity connection has been released on 10.7.2008 and further this statement only depicts the justification for delay in release of the electric connection and is silent about the pointed out contraventions of the provisions of the sub-regulation (3) of regulation 3 of the HPERC (Licensee's Duty for Supply of Electricity on Request) Regulations, 2004 and of sections 43 and 62 of the Act. The Commission, therefore, called upon the respondents to make submissions in clear and unambiguous terms with regard to the following factors as per regulation 62 (3) of the Commissions CBRs:-

- “(a) the nature and extent of non-compliance or violation;
- (b) the amount of wrongful gain or unfair advantage derived or contra loss or disadvantage caused to any person(s), including Commission, as a result of the non-compliance or violation;
- (c) the amount of loss or degree of harassment caused to any person(s) including Commission, or harmful effect in the efficient, economical and competitive performance of electric industry, as a result of the non-compliance or violation ,

- (d) the nature and extent of harm or impairment caused to the objects and purposes of the Act, as a result of non-compliance or violation,
- (e) motive for non-compliance or violation, and
- (f) the repetitive nature of non-compliance or violation”.

5. Still the respondents have evaded a direct reply and had not denied/refuted in clear terms that no wrongful gain or unfair advantage has been derived as a result of non-compliance or violation; or any harassment has been caused to any person as a result of the non-compliance or violation. The Commission is unable to accept the perfunctory and technical denials and evasive reply that there has been no violation, no wrongful gain or unfair advantage derived as a result of non-compliance and no financial loss or degree of harassment is caused to any person by such contravention.

6. The Commission at this stage is concerned only with the factors and the parameters, while determining the quantum and extent of fines to be imposed as required vide regulation 62 (3) of the HPERC (Conduct of Business) Regulations, 2005, and not the merits or the legal issues which have already been dealt with at length in the main order dated 26.4.2008. In that manner of speaking, the respondents’ written statements have no relevance.

7. The Commission reiterates the considered view contained in paras 24 and 26 (b) of the main order that this is an open case of not only of the contravention but of open defiance of the statutory provisions contained in sections 43 and 62 of the Electricity Act, 2003 and sub-regulation (3) of regulation 3 of the HPERC (Licensee’s Duty for Supply of Electricity on Request) Regulations, 2004. The issue whether the respondent Board and its officers has contravened the statutory provisions was convincingly and conclusively decided against the respondents in the main order passed on 26.4.2008.

8. The Board is lacking sincerity in following mandatory statutory provisions of the Act and regulations in their letter and spirit. The Commission views this contravention on the part of the respondents as very grave and

serious in nature and it can have far reaching implications and consequences and tends to adversely affect the very objects and purposes Act. In Commission's view, this violation and contravention almost tantamounts to open defiance with complete impunity on the part of respondent Board. By delaying the process and contravening the statutory provisions the Board has derived wrongful gain and unfair advantage by causing contra harassment, loss and disadvantage to the applicant firm.

9. The imposition of fines on the public utilities are also not seriously viewed. The yardsticks/parameters for invoking the penal provisions against the public and private sector utilities cannot be at par. The public undertakings are funded out of the State exchequers. Though there exist various statutory mechanisms and authorities to exercise checks over the expenditure of such bodies, it takes a long process to detect their administrative lapses and financial improprieties. In the larger public interest, there is immediate need to ensure proper implementation of statutory obligations and the immediate accountability therefor. Besides this, the fixation of individual responsibility is not an easy task. The public utilities act through their management and officers at various levels and public utilities remain accountable for acts of commission and omissions of officers and employees. However, due to frequent transfers, short spell of postings of functionaries, punitive actions against public utilities, cannot prove very effective measures to check contraventions of the statutory provisions and to achieve the objective of the Act.

10. The Commission has given a deep and anxious thought to the quantum and extent of fines and having considered, amongst other relevant things, the parameters enumerated in regulation 62 (3) of the HPERC (Conduct of Business) Regulations, 2005, and over all provisions of section 142 of the Electricity Act, 2003 and having considered the fact that the consumers of the electricity are in no way to be burdened with the unnecessary costs accrued on account of delays and inefficient discharge of the statutory duties by the licensee, the Commission hereby imposes, without prejudice to any other penalties to which it may be liable under the Electricity Act, 2003, upon the respondent Board by way of penalty, a sum of Rs. 10,000/- (Rupees

ten thousand only) which shall not be a pass through expenditure in the Board's ARR. It is further ordered that the penalty be deposited with the Secretary of the Commission within a period of 30 days from the date of this order, as specified in sub-regulation (4) of regulation 62 of this Commission Conduct of Business Regulations.

It is so ordered.

This order is passed and signed on 22nd August, 2008.

(Yogesh Khanna)
Chairman