

BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION,
SHIMLA

M/S Morepen Laboratories Ltd,
Village Masoolkhana, Parwanoo,
Teshsil Kasuali, Distt. Solan, H.P.

...Appellant

V/s

1. H.P. State Electricity Board,
Vidyut Bhawan, Shimla-4.
2. Assistant Engineer, Electrical Sub-Division,
Kasuali, Tehsil Kasuali, Distt. Solan, H.P.
3. Nodal Officer-cum-S.E. (Operation Circle)
HPSEB, Solan.

...Respondents

Appeal No. 260 of 2007 and Appeal No. 262 of 2007

Decided on 30.8.2008

CORAM
YOGESH KHANNA, CHAIRMAN

Counsel:-

For appellant	Sh. B.S. Dogra, Advocate
For respondents	Sh. Bimal Gupta, Advocate.

Order

(Last heard on 23.8.2008 and orders reserved)

Both the above mentioned appeals have been preferred by M/S Morepen Laboratories Ltd, Parwanoo, Teshsil Kasuali, Distt. Solan, H.P. (hereinafter referred as “the appellant”) and involve common issues and can be clubbed together for decision by a common order. These appeals are under regulation 12-A of the Himachal Pradesh Electricity Regulatory Commission (Electricity Ombudsman) Regulations, 2004, against the two orders dated 27th October, 2007, passed by the H.P. Electricity Ombudsman (hereinafter referred as “ the Ombudsman”) in case No. 7 of 2006 and in case No. 8 of 2006, which were the representations to the Ombudsman made by the

appellant under regulation 13 of the HPERC (Guidelines for Establishment of Forum for Redressal of Grievances of Consumers) Regulations, 2003, read with sub-section (6) of section 42 of the Electricity Act, 2003, against the orders dated 26.5.2006, passed by the Forum for the Redressal of Grievances of Consumers in complaint No. 1422405022 and 1422405021, respectively. The appellant has sought the following reliefs:-

- (a) to set aside the impugned order dated 26.5.2006, passed in these complaints by the Forum for Redressal of Grievances of the Consumers, and
- (b) to set aside the impugned order dated 27.10.2007, passed by the Ombudsman.

2. At the request of the appellant, the Commission vide interim order dated 11.12.2007 suspended the operation of the orders passed by the Ombudsman on 27.10.2007 upholding the orders of the Forum below dated 26.5.2006, made in the said cases till the final disposal of the appeals and further restraining the respondents from receiving/recovering the amount as demanded by the respondents in the notices dated 16.11.2007 and also from disconnecting the electricity supply qua the same.

3. The facts, in brief, leading to these appeals are that the appellant i.e. M/S Morepen Laboratories Ltd has been provided with electricity connections by the Licensee viz. the respondent Board (i.e. HPSEB) under account No. L.S.D-5 & L.S.D-6 which fall under the category of L.S consumers and are under the jurisdiction of respondent No.3. In both these cases in the energy bills for the month of August, 2005, issued on 3.9.2005 and 6.9.2005, demand charges for Rs. 1,53,589 and Rs. 20,86,804, respectively, were created as sundry charges by the respondent for the first time on account of penalty for overdrawal during peak load hours from January, 2002, onwards, on the basis of Audit Note of the Resident Audit Officer during June, 2005. The appellant challenged the demand charges which pertain to a period of 3 years w.e.f 2002-03 to 2004-05 and stated that under the provisions of section 56 of the Electricity Act, 2003, all claims for a period prior to 2 years from the date of demand are barred. The appellant also contested the calculations and the difference of the amounts in the bills and the audit report. It has also been urged that the Board has not given any prior notice to the appellant firm to

include the charges on account of penalty for overdrawal on bonafide sanctioned light load, before including these as sundry charges in the bills of August, 2005 and as such charges are not leviable as sundry charges. The peak load exemption charges (PLEC) and peak load violation charges (PLVC), as given in the tariff, are applicable to the appellant also. The penalties imposed for overdrawal are only in terms of increased energy charges i.e. for HT consumer against Rs. 45/KVAh which is Rs. 6.76/KVAh. Besides penalties for the other account No. L.S.D-7 amounting to Rs. 14,100/- is included, which does not pertain to the appellant firm. In view of this the appellant contends that the calculations being wrong and charges levied being totally imaginary and baseless needs to be quashed.

4. The Forum, vide its two orders dated 26.5.2006, after hearing the parties, upheld the claim of the Board shown as the sundry charges in the bills of 8/2005 and held that the penalty for drawl during peak load hours, when the demand exceeded the bonafide sanctioned light load, has been rightly levied by the respondent Board on the basis of the **HPERC order dated 3.8.2002 passed in the case of M/S Parwanoo Industrial Association V/s HPSEB**. The provisions of the Electricity Act, 2003 are not retrospective and as such do not cover the period prior to the commencement of the Act. As regards the application of section 56, read with section 185, of the Electricity Act, 2003 and section 6 of the General Clauses Act, 1897, for the period after June, 2003 to August, 2003, the Forum was of the view that section 56 of the Act, is for disconnection of supply and does not debar recovery of the claim due by means other than disconnection. Thus the claim for the period upto August, 2005 is accordingly not barred by time.

5. Aggrieved by the Forum's orders dated 26.5.2006, passed in complaint cases 1422405022 and 1422405021, the appellant made representations to the Electricity Ombudsman under regulation 13 of the Himachal Pradesh Electricity Regulatory Commission (Guidelines for Establishment of Forum for Redressal of Grievances of Consumers) Regulations, 2003, read with section 42 (6) of the Electricity Act, 2003, praying for setting aside the orders of the Forum on the grounds, which were more or less the same as raised before the Forum. The Learned Ombudsman, in pursuant to the provisions of regulation 11(1) of the HPERC (Electricity Ombudsman) Regulations, 2004

asked both the parties to settle the disputes through reconciliation or mediation before announcing its order. Sufficient time was given to both the parties to reconcile and settle the dispute and it was agreed between the parties that:-

- (a) in case No. 8 of 2006, for two months i.e. 8/2004 and 2/2005 PLVC charged on total load drawn is wrong because as per tariff prevalent at that time, the light load is to be excluded from the total load and as such amount charged on 16 KVA each (light load) for two months i.e. 8/2005 and 5/2005 @ Rs. 300/- per KVA i.e. 9600/- out of total disputed amount is not chargeable to the firm; and in case No. 7/2006 for three months i.e. 3/2005 to 5/2005 light load for 296 KVA @ 300 per KVA i.e. $3 \times 296 \times 300 = 2,66,400/-$ out of the total amount of Rs. 20,86,894 is also not chargeable.
- (b) PLVC amount w.e.f. 9/2003 to 9/2005 (i.e. for previous two years from the month of receipt of energy bill wherein this amount was reflected first time) is payable by M/S Morepen Laboratories Ltd to the respondent Board.

The Learned Ombudsman upheld both the Forum's orders dated 26.5.2006 to the extent that these orders shall not affect the reconciled disputes.

6. Now aggrieved by the decision of both i.e. the Forum and the Ombudsman, the appellant has filed these appeals before this Commission under regulation 12-A of the HPERC (Electricity Ombudsman) Regulations, 2004 which reads as under:-

“12-A Appeal- (1) Any person aggrieved by an award made under regulation 12 by the Electricity Ombudsman may, prefer an appeal in Form 1-A against such award to the Commission, within a period of forty-five days from the date of the award:

Provided that the Commission may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing the appeal within that period.

- (2) The Memorandum of Appeal shall be signed and verified in the manner specified in Form 1-A.
- (3) The appeal shall be accompanied by such fee as may be specified in the Schedule to the Himachal Pradesh

Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 and such fee shall be payable to the Commission in the same manner as the fees are payable in relation to the petitions or applications made to the Commission under the said Conduct of Business Regulations.

- (4) On receipt of an appeal under sub-regulation (1), the Commission shall, after giving the appellant an opportunity of being heard, dispose of the appeal as expeditiously as possible, and the decision of the Commission shall be final.
- (5) Unless otherwise permitted by the Commission, the matters, in relation to which no provision has been made in these regulations, shall be governed by the provisions laid down in the Conduct of Business Regulations of the commission for submission and processing of the petitions and applications in the Commission.”

7. Sh. Bimal Gupta, Advocate, appearing on behalf of the respondent Board, on the face of the provisions of sub-sections (5) and (6) of section 42, of the Electricity Act, 2003, has questioned the jurisdiction of this Commission to hear and dispose of these appeals.

8. Without considering the basic question of jurisdiction and maintainability, the consideration on merits would be fallacious. **In Shrist Dhawan (Smt) V/s Shaw Bros (1992) / SCC 5334** it has been laid that error of jurisdictional fact renders the order ultra vires and bad in law. As has been held in **Suresh Kumar Bhikam Chand Jain Vs. Pandey Ajay Bhushan (1998)/ SCC 205**, the plea of jurisdiction can be raised at any stage. It is also the settled law that no statutory Authority or Tribunal can assume jurisdiction in respect of the subject matter which the statute does not confer, if the Court or Tribunal exercises the jurisdiction then the order is vitiated.

9. The Hon’ble Appellate Tribunal for Electricity, had the opportunity to consider the scope of the provisions of section 42(5) to (8) of the Electricity Act, 2003 in various cases i.e. **Reliance Energy Limited V/s Maharashtra Electricity Regulatory Commission and Maharashtra State Electricity Distribution Company V/s Prayas, Kerve Road Pune (Appeal Nos. 30 of 2005, 164 of 2005 and 25 of 2006) decided on 29.3.2006 (2007 APTEL**

543); **Dakshin Haryana Bijli Vitran Nigam Ltd V/s Princeton Estate Condominium Association, DLF Universal Ltd (Appeal Nos 105 to 112 of 2005) decided on 29.3.2006; (2007 APTEL 356) and Dakshin Haryana Bijli Vitran Nigam V/s DLF Services Ltd (Appeal No. 104 of 2005) decided on 29.3.2006.) (2007 APTEL 764); and Reliance Energy Ltd. V/s K.H. Nadkarni & Others (Appeal No. 11 of 2005) decided on 26.5.2006 (2007 APTEL 298) and CSEB V. Raghuvir Singh Ferro Alloys Ltd. & Others (Appeal Nos. 125, 126 & 127 of 2006) decided on 28.11.2006 (2007 APTEL 842); Himachal Pradesh State Electricity Board V/s M/S Emm Tex Synthetics Ltd. Jagat Khana Nalagarh & other (Appeal No. 117 of 2007, decided on 5th November, 2007;** In the aforesaid decisions the Hon'ble Appellate Tribunal, has concluded that the relation between a consumer and a distribution licensee is governed by Part VI – Distribution of Electricity Sub-sections (5) to (8) of section 42- which provides with respect to Forum for Redressal of Grievances and the Appellate forum i.e. Ombudsman as well. When a Forum has been constituted for redressal of grievances of consumers by the mandate of section 42, no other forum or authority has jurisdiction. The State Electricity Regulatory Commission, being a regulatory, the State level authority under the 2003 Act as well as rule making authority has to exercise such functions as are provided in the Legislative enactment and it should not usurp the jurisdiction of the Consumer Redressal Forum or that of the Ombudsman. The special provision excludes the general is also a well accepted legal principle. The Regulatory Commission being a quasi-judicial authority could exercise jurisdiction, only when the subject matter of adjudication falls within its competence and the order that may be passed is within its authority and not otherwise. It follows that the State Regulatory Commission has no jurisdiction or authority to decide the dispute raised by the respondents – who are consumers or the Consumer Association. The consumers have a definite forum to remedy their disputes under section 42(5) and further representation under section 42(6). Further section 42 (8) also saved the rights of consumer to approach any other forum such as the forums constituted under the Consumer Protection Act, 1986 or other Courts as may be available.

10. The Hon'ble Supreme Court in its verdict given in **Maharashtra State Electricity Distribution Co. Ltd V/s Lloyds Steel Industries Ltd JT 2007 (10) SC 375** approving the decision of the Delhi High Court in **Suresh Jindal Vs. BSES, Rajdhani Power Ltd & Others and Dheeraj Singh Vs BSES Yamuna Power Ltd 132 (2006 DLT 339 DB)** has also concluded that complete machinery has been provided in section 42(5) and 42(6) of the Electricity Act, 2003, for redressal of grievances of individual consumers. Hence wherever a Forum/ Ombudsman have been created/appointed, the consumer can only resort to these bodies for redressal of their grievances. The Hon'ble Supreme Court in its another decision dated 14.8.2007 in **Civil Appeal No. 2846 of 2006 Maharashtra Electricity Regulatory Commission Vs Reliance Energy Ltd & Others JT 2007 (10) SC 365**, has not interfered with the decision of the Appellate Tribunal in First Appeal Nos. 30 and 164 of 2005 and 25 of 2006 (2007 APTEL 543) and has ruled that the adjudicatory function of the Commission is limited to the matters prescribed in section 86(1)(f) i.e. adjudication of disputes between the licensees and the generating companies and as such the Commission cannot adjudicate disputes relating to grievances of individual consumers. The Commission has jurisdiction only to issue general directions to prevent harassment to the public at large by its licensees/distributors.

11. Keeping in view the above discussion, it can be safely be concluded that the specific provisions of section 42(5) and 42(6) of the Electricity Act, 2003 provide for a Forum for redressal of grievances and further representation to the Electricity Ombudsman. The licensees/distribution companies are to decide the individual cases received by them after giving a fair opportunity to the consumers. The consumers who still feel dissatisfied with the order passed by the licensee/distribution companies can approach the appropriate Forum constituted under section 42(5) of the Act and, if still not satisfied, to approach the Ombudsman under section 42(6) of the Act. These provisions in the Act do not contemplate any further appeal to the Commission. Thus it follows that regulation 12-A of the HPERC (Electricity Ombudsman) Regulations, 2004 is excessive exercise of power. No statutory authority can assume jurisdiction in respect of a subject matter which the statute does not confer.

12. With this background, the circumstances of these cases and the judgments cited, the Commission does not find any ground to hear and dispose of these appeals. As such this Commission does not have the jurisdiction to hear and dispose of the appeals from the orders of the Ombudsman. It is needless to add that it is well open to the appellant in each of the appeal to invoke the jurisdiction of the competent forum or other Courts as may be available to them. As a result the interim orders dated 11.12.2007 are hereby rescinded and withdrawn.

It is so ordered.

This order is passed and signed on 30th August, 2008.

(Yogesh Khanna)
Chairman