

Suo Motu Case No. 268/05

In the matter of:

- (i) Parwanoo Industries Association,  
Sector-5, (Rotary Vocational and Community Centre),  
Parwanoo-173220:  
(through Rakesh Bansal, General Secretary)
- (ii) M/s Confederation of Indian Industry,  
Northern Region,  
Sector 31-A, Chandigarh-160030  
(through Sh. Ashok Tandon, H.P. State Council) - Complainants

V/s

HPSEB (through its Secretary)  
Vidyut Bhawan, Shimla.

Present for HPSEB: Sh. R.K.Punshi, Director (SERC)  
Sh.Kuldeep Singh Advocate

Consumer Representative: PN Bhardwaj  
(Under Section 94(3) of  
The Electricity Act,2003)

ORDER

Parwanoo Industries Association and Confederation of Indian Industries (Complainants) in their letters dated 12.8.2005 and 13.8.2005, respectively addressed to the Chairman, HPSEB (respondent Board) and copies endorsed to this Commission complained about the contravention of the HPERC (Security Deposit) Regulations, 2005 (hereinafter referred to as "Security Deposit Regulations") the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 (hereinafter called as the "Recovery of Expenditure Regulations") and regulation 4(1) of the HPERC (General Conditions of the Distribution Licensee) Regulations, 2005.

2. Sub-section (1) of section 43 of the Electricity Act,2003, cast the duty on every distribution licensee, on an application made to it, to give supply of electricity within one month after receipt of the application requiring such supply and where such supply requires extension of distribution mains, or commissioning of new sub-stations, the

distribution licensee shall supply the electricity immediately after such extension or commissioning or within such period as specified by the Commission, in regulation 3 of the HPERC (Licensee's Duty for Supply of Electricity on Request) Regulations, 2004. Further sub-section (2) of the said section 43, reads as under:-

“(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1):

Provided that no person shall be entitled to demand or to continue to demand, from a licensee a supply of electricity for any premises having a separate supply, unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission”.

3. If a distribution licensee fails to supply the electricity within the period specified in sub-section (1) of section 43 he is liable to a penalty, which may extend to one thousand rupees for each day of default. From this, it is abundantly clear that sub-section (2) of section 43 contemplates the agreement between the distribution licensee and the applicant to pay expenditure incurred for laying the electric plant or electric lines, as may be determined under the regulations framed by the Commission. Further sub-sections (2) and (3) of section 45 of the Act provide that the charges (which also include the rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee) are to be fixed in accordance with the methods and the principles as may be specified by way of regulations framed by the Commission. The distribution licensee is not to show undue preference to any person or class of persons or discrimination against any person or class of persons. Section 46 of the Act empowers the Commission to authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses in providing any electric line or electrical plant used of the purpose of giving that supply. Under section 47 of the Act a distribution licensee may require any person, who requires supply of electricity in pursuance of section 43 to give him reasonable security, as may be determined by

regulations, for the payment to him of all monies which may become due to him in respect of electricity supplied to such person, or where any electric line or electrical plant or electric meter is to be provided for supply of electricity to such person, in respect of the provision of such line or plant or meter, and if that person fails to give such security, the distribution licensee may, if thinks fit, refuse to give the supply of electricity or to provide the line or plant or meter for the period during which failure continues where any person has not given the security or the security given by any person has become invalid or insufficient, the distribution licensee may by notice require that person within thirty days after the service of notice, to give such reasonable security for payment of monies which may become due to him in respect of supply of electricity or provision of such line or plant or meter. The distribution licensee is to pay interest equivalent to the bank rate or more, as may be specified by the Commission on such security and refund on the request of the person who gave it.

4. In exercise of the powers conferred by section 46 of the Act, the Commission has framed the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, which have come into force w.e.f. 4<sup>th</sup> April, 2005. Regulations 3, 4 and 5 of the said regulations lay down the procedure for estimation of the cost of electrical plant and works based upon the approved latest cost data as published by the distribution licensee under regulation 13, every year. However, regulation 15 permits the licensee until cost data book is published in accordance with regulation 13 or a period of one year from the date of the said regulations came into force, whichever is earlier, to use cost data published for the year by the Rural Electrification Corporation in respect of works of 33KV and below and the cost data used by the Power Finance Corporation in respect of works above 33KV in the latest sanctioned schemes of the licensee.

5. Harmonious reading of the provisions of sections 42, 43, 45 and 46 of the Act, and the HPERC (Recovery of Expenditure to Supply of Electricity) Regulations, 2005 framed by the Commission, makes it abundantly clear that where supply of electricity requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply electricity immediately after such extension or commissioning or within the period as specified in the HPERC (Licensee's Duty for Supply of Electricity on Request) Regulations, 2004. But no

person is entitled to demand from a licensee to supply electricity for having a separate supply, unless he agrees with the licensee to pay to him such price and charges (including the rent or other charges in respect of any electrical plant and works) based upon the approved latest cost data, as published by the distribution licensee or the data published for the year by the Rural Electrification Corporation or, as the case may be, the data used by the Power Finance Corporation, authorized under regulation 15 of the said regulations to be used by the distribution licensee. Thus neither the provisions in the Act nor the provisions in the regulations contemplate the advance lump-sum payment of the charges before the release of the power. The distribution licensee is obliged to estimate and recover the cost of electrical plant and works strictly in accordance with the provisions of the said regulations, without showing any discrimination against any person or class of persons. The cost data had yet to be submitted by the respondent and yet to be approved by the Commission. There is no question of recovery of expenditure on blanket and adhoc rates per kva. It is inconceivable that the expenditure for providing supply to all the consumers in future shall be the same. Recovery of expenditure only through industrial consumers regardless of staging of connections is without any basis, rationale and justification.

6. It has been alleged that the respondent Board is not accepting the security on the basis of contract demand in the cases where contract demand has been declared by the consumers and is insisting that the security should be paid on connected load instead, which is bound to be higher, in contravention of regulations 5 of the Security Deposit Regulations. It has further been stated by the complainants that the respondent Board at Parwanoo is still demanding the augmentation charges @ of Rs. 9400/- per 10 kW of new and extended load after the day on which of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 came into force, ignoring the fact that the said regulations clearly specify the nature and extent of the expenditure that a licensee can recover from the consumer. Further this Commission also observed that the electricity bills issued in respect of domestic consumers of Shimla town after April, 2005 were on monthly basis instead of bi-monthly as provided in the Security Deposit Regulations, which was in contravention of the said regulations.
7. On 27.9.2005 when matter came up for hearing, Sh. Rahul Mahajan, Advocate appearing on behalf of the respondent Board refuted the alleged contravention of sections 45, 46 and 47 of the Electricity Act, 2003, read with the regulations referred

to above. It was also urged on behalf of the respondent Board that it is nowhere mentioned whether the initial security is to be taken on connected load or contract demand and for which category of consumers and whether the stipulation in the table below regulation 5 of the Security Deposit Regulations about initial security deposit per kW/kva or fraction thereof relates to regulation 5 or in general. Hence, it has been contended that the said regulations are ambiguous and vague. On query from the Commission, Shri Rahul Mahajan admitted that the respondent Board has not approached the Commission, for any clarificatory order or for issuance of the removal of difficulties order, as permissible under the law.

8. In relation to the contravention of the Recovery of Expenditure Regulations Sh. Rahul Mahajan, Advocate appearing on behalf of the respondent Board stated that the respondent Board had carried out augmentation of 66/kv, 2x10 MVA Parwanoo Sub-station to 2x20 MVA alongwith augmentation of 66 KV single circuit line from Parwanoo to Barotiwala on cost sharing basis in nineties as per the agreement with the complainant PIA at the cost of Rs. 346 lacs, out of which Rs. 186 lacs was contributed by the respondent Board. Out of this Rs. 159 has been recovered from the consumers till date and Rs. 27 lakh yet remains to be recovered. Sh. Rakesh Bansal, appearing on behalf of the complainants PIA stated that there was no agreement between the respondent Board and the PIA for cost sharing of this work. He argued that though the Sub-station was augmented and has benefited all types of consumers, why only the industrial consumers are being asked to pay Rs.9400 per 10 KW and as such demand is inconsistent with the provisions of regulations, 3, 4 and 5 of the said Recovery of Expenditure Regulations.
9. Again on the next hearing i.e. on 7.10.2003 Sh. Rakesh Bansal appearing for PIA stated that there has been no agreement between the respondent Board and PIA with regard to cost sharing of augmentation of Parwanoo Sub-Station. Agreements, if any, are with individual companies only. He contended that at that time, the Parwanoo Sub-Station was augmented from 20 to 40 MVA. The load of this Sub-Station was of the order of only 14/16 MVA and at present is 21 MVA. The 85% of the share of the cost of augmentation has already been recovered, even though only 1 MVA of the augmented capacity has been used up. The augmentation charges continue to be recovered only from the industrial customers and not from other categories of

consumers that are equally benefited from this augmentation. The Commission directed the respondent Board to file complete list of cases to whom the demand notices have been sent for recovery of cost incurred earlier in Parwanoo, Baddi, Barotiwala and in other areas ending September, 2005 and also to file the status of loading of Parwanoo Sub-Station showing the highest maximum demand recorded during the last one year. Accordingly respondent Board furnished the information of maximum demand recorded in MVA for the year 2004-05 and 2005-06 in respect of 2x20 MVA Parwanoo Sub-Station and details of 72 demand notices issued to industrial consumers during the period from 1.4.2005 to 30.9.2005 for recovery of expenditure incurred earlier in 1999 on augmentation of Parwanoo Sub-Station for Supply of Electricity. Analyzing the said information, the Commission observed on 5.11.2005, as under:-

“The Commission further observes that until August, 2005, the highest maximum demand on this Sub-Station (Parwanoo Sub-Station) had gone upto 20.33 MVA only, which suggests that the augmentation carried out in the year 1999 was premature, infructuous and ill planned as the augmented capacity has not still used up even 6 years later. There was therefore, no justification for recovery of expenditure so incurred and collecting the money from various prospective consumers upto the demand of 20.33 MVA. As per clarification provided on 31.10.2005 in clarificatory petition No.315/05, the demand on Sub-Station upto 20 MVA could not have been charged upon any prospective consumer.”

10. The respondent Board furnished the information in respect of 72 prospective consumers, but failed to indicate the contract demand signed by such consumers then or later as per the interim order of 5.11.2005. Copy of the scheme sanctioned during 1997-98 for augmentation of Parwanoo Sub-Station was also submitted, but respondent Board denied that the augmentation carried out in 1999 was premature or ill planned. In respect of augmentation of Parwanoo Sub-Station in 1999, Shri PN Bhardwaj, the consumer representative, contended that there was absolutely no justification for augmentation or recovery of expenditure so incurred and collecting the money from various prospective consumers upto the present demand of some 20 MVA on the Sub-Station. Subsequently this Commission, on hearing the parties had to make the interim order dated 9.12.2005, which reads as under:-

“Upon hearing, the Commission observes that as far as issues involved in case No.268/05 were concerned the security deposit as well as the recovery of expenditure for supply of electricity were in violation of the respective Regulations viz. the HPERC (Security Deposit) Regulations, 2005 and the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005. The Commission had issued the (Removal of Difficulties) First Order clarifying the application of the rates in respect of various classes of consumers. The augmented capacity of Parwanoo Sub-Station has still not been used up even after connecting 71 prospective consumers with applied load of 3796 kw. The perusal of the project report for the augmentation of 66/11 kv, 2x10 MVA transformers to 2x20 MVA at Parwanoo alongwith 66 kv Sub-Station line from Barotiwala to Parwanoo at the estimated cost of Rs.313 lacs reveals that the report was prepared on unrealistic projections and not the factual conditions and circumstances. This has been more vindicated by the fact that even upto August, 2005 the demand had not exceeded the rated capacity of the transformers. The transformers have short term over rating capacity also and the old transformers would have been capable of taking additional demand and releasing many more connections from the same transformers. In this manner of speaking, the project report was fictitious and the augmentation carried out in the year 1999 was premature, infructuous and ill-planned as per observations made in interim order dated 5-11-2005. In respect of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 the Commission observes that the Regulations were unambiguous and too clear to be misunderstood or misinterpreted. There is no question of recovery of the expenditure on blanket and ad hoc rates per kva. It is inconceivable that the expenditure for providing supply to all the consumers in future shall be the same regardless of the location and the loading. The cost data had yet to be submitted by the Board and yet to be approved by the Commission. Recovery of expenditure of Rs.95.97 crores only through the industrial consumers regardless

of the staging of the connections is without any basis, rationale and justification and is tantamount to recovering far less amount on NPV basis.”

11. In conclusion the letter No.HPSEB/CE (Comm)/LS-Cost sharing/2005-13945-14235 dated 3<sup>rd</sup> October 2005 from the Chief Engineer (Comm) has been held void-abinitio and struck down. Further the amount of Rs.31,21,400/-, deposited by 72 consumers was ordered to be refunded by credit to their electricity bills in respect of those already connected and in case to one not as yet connected, after deducting the actual expenditure incurred then to supply, but without taking into consideration the cost of augmentation of the line and the Sub-Station.

12. Keeping in view, the facts and circumstances of the case and before imposing the penalty under section 142 of the Electricity Act, 2003, the Commission has afforded another opportunity to the respondent Board to answer the interrogatories as per regulation 62(3) of the HPERC (Conduct of Business) Regulation 2005. The respondent Board has stated that its letter dated 3.10.2005, which has been held void and struck down by this Commission, has been withdrawn and directions have been given to the Superintending Engineer (Operation Circle) Solan to refund the amount of Rs.31,21,400/- deposited by 72 consumers and remaining cost share account of augmentation of Parwanoo Sub-station stand deferred till final decision of this Commission. The Board is now releasing the connections, on furnishing the appropriate undertaking by the consumers to pay requisite charges as may be determined. Further the respondent Board has submitted that it has never violated any of the directions/regulations and neither it has any wrongful gain or unfair advantage derived, nor contra loss or disadvantage caused to any person, the respondent Board has neither non-complied or violated the regulations nor there is any motive which can be attributed, nor there is harm or impairment to the objects and proposes to the Act. Since the respondent Board has stopped recovering the expenditure for supply of electricity from consumers, there is no repetitive nature of the non-compliance. Though technically speaking the Board has contravened the provisions of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 and of the HPERC (Security Deposit) Regulations, 2005, yet the Commission, keeping in

view the response and unintentional violation on the part of the respondent Board, refrains from imposing any penalty as envisaged under section 142 of the Electricity Act, 2003.

13. The respondent Board has also moved the MA No.113/06, praying the Commission to issue guidelines for the procedure to recover the cost of infrastructure developed or to be developed and cost data calculated by the respondent Board for the period prior to 2006-07 be approved. It is not proper to make such requests in the course of the proceedings questioning omissions or commissions of the respondent Board, which are of limited scope and extent. In this connection it would be apt to point out that this Commission has, while disposing of the clarificatory petition No.315/05, issued the clarificatory order dated 31.10.2005 in relation to the provisions contained in the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 and has also issued the (Removal of Difficulties) First Order clarifying the application of the different rates in respect of different consumers. In case the respondent Board requires any further clarification or it experiences any difficulty in the implementation of the said regulations, it may, by pinpointing the specific difficulty, initiate appropriate action/ proposal for the removal of said difficulty, if any, by way of amendment or issuance of removal of difficulty order as permissible under the law.

14. The Commission after taking into consideration, the facts and circumstances of the case, the documents placed on record, the arguments advanced and provisions contained in the Electricity Act, 2003 and the regulations framed thereunder, holds that:-

- (a) the licensee, the respondent Board shall estimate again the justifiable cost of electrical plants and works involved strictly in accordance with the provisions of the HPERC (Recovery of Expenditure for Electricity Supply ) Regulations, 2005 based on the data cost, published for the relevant years by the Rural Electrification Corporation/Power Finance Corporation authorized to be used under regulation 13 of regulations ( ibid);

- (b) the licensee, the respondent Board, shall if it experiences any difficulty, move separately for removal of such difficulty, either by way of issuance of an order for removal of difficulty or amendment of regulations as permissible under the law.
- (c) the licensee, the respondent Board, shall not recover any expenditure based on its letter dated 3<sup>rd</sup> October,2005, which has been held void abinitio and has been struck down and it shall ensure that any amount already recovered is refunded/adjusted as already ordered by this Commission on 9.12.2005.

Announced in the open court.

(Yogesh Khanna)  
Chairman.

Dated:17.06.2006.