

BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION,  
SHIMLA-H.P.

In the matter of: -

M/S Himalayan International Ltd.  
Subh Khera, Poanta Sahib,  
District Sirmour,H.P.

..... Petitioner

V/S

1. The Chairman H.P.S.E.B., Shimla-4
2. The Chief Engineer (Comml),HPSEB
3. The Chief Engineer (Operation ),HPSEB
4. Superintending Engineering ,HPSEB  
Nahan Circle, District Sirmour,(H.P.)
5. The Sr. Executive Engineer,HPSEB,  
Poanta Sahib, District Sirmour,( H.P. )
6. The Sub- Divisional Officer,  
HPSEB,Poanta Sahib,District Sirmour,(H.P.)

.....Respondents

Complaint under Himachal Pradesh Electricity Regulatory  
Commission (Distribution Licensee Standards of  
Performance), Regulations, 2005 and the Electricity Act,  
2003

Petition No. 46/2008  
(Decided on 16.09.2009)

**CORAM: -  
YOGESH KHANNA  
CHAIRMAN**

Counsels-

for the petitioner:

Sh. Rahul Mahajan,  
Advocate

for respondents:

Sh. Satyen Vaidya,  
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)

Through petition No.46/2008, M/S Himalayan International Ltd. Subh Khera, Poanta Sahib, District Sirmour, (H.P.) (hereinafter referred as “the petitioner”) has claimed compensation alongwith interest @18% per annum for losses suffered on account of negligent, deficient, callous acts, deeds and attitudes of the Himachal Pradesh State Electricity Board ( hereinafter referred as “the respondent Board”) and not adhering the Standards of Performance (SOP) and regulations framed by the Commission. Sub- sections (5) and (6) of section 42 of the Electricity Act,2003,(hereinafter referred as “the Act”) , as interpreted by the Hon’ble Supreme Court in its various rulings, provide for the redressal of grievances of the individual consumers through the Forum for Redressal of Grievances of consumers and Electricity Ombudsman alone. This Commission decided to proceed with this petition keeping in view the fact that firstly Regulation 8(3) of the HPERC (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers) Regulations, 2003 excludes the complaint involving compensation under section 57 of the Act, from the jurisdiction of the Forum, set up for redressal of the grievances of the consumers . Secondly the Hon’ble APTEL vide Para 18 of its judgment dated 11.09.2007 given **in appeal No.78 of 2007 HPSEB V/s M/S Himalayan International ltd. & another** has stated that the decision of the Commission that the Commission had the jurisdiction to adjudicate upon the dispute has not been challenged in that appeal and APTEL have not ruled either way on the same. Further by virtue of the provisions of regulation 6(3) and item 3 of the Table below regulation 7(1),read with regulation 16(3) ,of the HPERC (Distribution Licensee’s Standards Performance ) Regulations,2005 (hereinafter referred as “Standards of Performance Regulations”) framed under section 57,read with clause (i) of sub-section (1) of section 86, of the Act, the Commission has the authority and is competent to determine the compensation for violation of the Standards of

Performance and loss/ damage suffered consequent to the failure of distribution licensee to meet the guaranteed standards of performance.

2. During the pendency of this petition the Hon'ble APTEL in its two separate latest decisions dated 30.03.2009 rendered in **Appeal Nos.180 and 181 of 2008-BSES Rajdhani Power Ltd. V/S Delhi Electricity Regulatory Commission and another reported as 2009 ELR (APTEL) 0352 and 2009 ELR (APTEL) 0363** respectively, has considered this issue in the light of its earlier decisions in **Dakshin Harayana Bijli Vitaran Nigam Ltd. V/s DLF Services Ltd. - 2007-ELR (APTEL) 356; Dakshin Harayan Bijli Vitaran Nigam Ltd. V/s Princeton Park Condominiums –2007 ELR (APTEL)764;** and also the verdict of the Hon'ble Supreme Court in the **Maharashtra Electricity Regulatory Commission V/s Reliance Energy Ltd. AIR 2008 SC-956** and the **Maharashtra State Electricity Distribution Company V/s Lloyd Steel s Ltd. AIR 2008 SC-1042** and has held that the Grievance Redressal Forum or the Ombudsman alone is a competent Authority to deal with the grievances of the consumers. The State Commission cannot usurp either the jurisdiction of the Grievance Redressal Forum or of the Ombudsman. The individual consumers cannot approach the Commission for redressal of their grievances as there is a specific remedy available for the consumers to approach the concerned authorities like the Grievance Cell and the Ombudsman, whose award is final and against which no appeal will lies with the Commission. The State Commission ought not to have entertained the complaint and ought have directed the complainant/ consumer to approach the Grievance Cell mechanism especially constituted for this purpose to seek the remedy.

3. The Hon'ble Supreme Court in its decisions referred to in the forgoing paragraph has no where held, that once the consumer avails remedies through the Grievances Cell and the Ombudsman, the independent powers of the Commission in respect of imposing compensation under section 57 or punishment for breach of rules, regulations etc. under section 142, on the licensee stand extinguished. So, the ratio decided by the, Supreme Court is that the Commission will be well within its power to punish the distribution licensee who has harassed the public as his consumers, by imposing compensation. Such action can only be initiated by way of suo-motu

proceedings on the report of the Ombudsman complaining about the conduct of the licensee, who violated the regulations, rules and licensing conditions due to which the consumer was subjected to a lot of harassment.

4. From the above dictum it is clear that all the individual grievances of the consumers have to be raised before the Grievance Redressal Forum and the Ombudsman only. The Commission, therefore, cannot decide the disputes between the licensee and the consumer, as the order of penalty as well as compensation in order to give relief to the consumer amounts to usurping the jurisdiction of Grievances Cell and the Ombudsman.

5. So in view of the above conclusion, the Commission finds it appropriate to return this petition to the petitioner/complainant with the liberty to file this petition before the Consumer Redressal Forum, which shall examine the matter and pass suitable orders thereon in accordance with law, without being influenced in any manner by the views expressed by this Commission.

With the above, observations, this petition is disposed of.

It is so ordered.

(Yogesh Khanna)  
Chairman