

BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION
SHIMLA

Mehatpur Industries Association
Service Building, Industrial Area,
Mehatpur, Distt. Una. (H.P)

...Petitioner

V/s

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

...Respondents.

(Petition No. 89/2005)

(Decided on 30.4.2008)

CORAM
YOGESH KHANNA
CHAIRMAN

Counsel :-

for the petitioner

Shri. C.S. Kapoor
General Secretary

for the respondents

Shri. Bimal Gupta
Advocate

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

Shri. P.N. Bhardwaj

Order

(The case was last heard on 26.4.2008 and orders reserved)

The Mehatpur Industries Association, Service Building, Industrial Area, Mehatpur, Distt. Una (H.P), through Sh. C.S. Kapoor, its General Secretary and authorized representative (hereinafter referred as the petitioner), filed a complaint under section 142 of the Electricity Act, 2003, against the alleged wrong, illegal and unjustified demand of sundry charges for Rs. 1,62,000/- raised in the energy bills of 28 industrial consumers, which have been detailed and described in the complaint (the date of bills shown as 27.3.2005). The petitioner 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 23.3.2005 restrained the respondents from realizing and recovering the aforesaid sundry charges on account of light load used during the peak load hours by the industrial consumers.

2. The facts, in brief, are that the Asstt. Engineer, Electrical sub-Division, Mahatpur, on the directions of Circle office, HPSEB, Una issued notices followed by electricity bills, incorporating arrears for the period ranging for May, 2002 to Dec., 2004, for the month of Feb., 2005, delivered on 27.3.2005, required to be paid on or before 27th March, 2005 without surcharge. On receipt of notices the petitioner association approached the concerned officials and pointed out the discrepancies in view of the Tariff order effective from 1.11.2001 and the provisions of the Electricity Act, 2003, particularly the provisions of section 56(2) of the Act. On the non-redressal of their grievances by the respondents, the petitioners have through this petition/complaint approached this Commission.

3. In reply to the petition, the respondent Board states that the relief prayed for is for the benefit of individual consumers. The petitioner is neither affected nor interested person, therefore, the petition is not maintainable. Moreover, the Electricity Act has come into force on 10.6.2003, the sundry charges shown in the bills in question are based upon the readings recorded by the Meter Reading Instrument (MRI), for the period 10.8.2002 to 31.12.2004. The sundry charges are nothing but escaped liabilities of the consumers, which were detected by MRI readings. The consumers were given notice in January, 2005 demanding from them charges calculated in accordance with the tariff, fixed by the Commission, applicable for the period in question. The consumers failed to liquidate their liabilities as per the notices, therefore, in March, 2005, bills incorporating the demands of escaped liabilities in the form of sundry charges were raised. The respondent Board further contends that the respondent Board is entitled to recover arrears prior to 10.6.2003, as per the Electricity Act, 1910, the Electricity (Supply) Act, 1948, the Electricity Rules, 1956, regulations and the Sales Manual of the Board framed thereunder. According to petitioner the applicability of the said Acts/Rules, stands saved

by section 185 of the Electricity Act, 2003, read with section 6 of the General Clauses Act, 1897 and there is no bar of section 56(2) of the 2003 Act for raising demand of the arrears prior to 10.6.2003, when the Electricity Act, 2003 has not come into force.

4. During the course of hearing, the Learned Counsel for the respondent Board submitted that legal issues in this case being identical **to those in case of M/S Emm Tex Synthetics V/s HPSEB in case No. 109/04**, and the respondent Board have filed the appeal in the Hon'ble High Court of H.P. It is therefore, prayed that this case may be adjourned sine die until the decision of the Hon'ble High Court. In view of the submissions made by the Learned Counsel for the respondent Board and also the fact that the legal issues raised being more or less similar in both the cases i.e the present petition and case **No. 109/2004 titled as M/s Emm Tex Synthetics Ltd V/s HPSEB and the interim order of 5.3.2005** passed in case No. 109/04 was also to become applicable to this case as well, the Commission directed this case to be listed alongwith case No. 109/04.. 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.89 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 5th 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.

5. In the result, the petition is dismissed 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 dated 23.3.2005 passed in this case also stands withdrawn.

This order is passed and signed on the 30th day of April, 2008.

(Yogesh Khanna)
Chairman

