

BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION
SHIMLA

Shri. Bishan Chauhan S/O Shri. M.L. Chauhan,
Resident of Mohan Building Cemetery Road,
Sanjauli, Shimla 171006 (H.P.)

...Petitioner

V/s

1. H.P. State Electricity Board
2. The Assistant Executive Engineer,
Electrical Sub-Division, Dhalli, Shimla

...Respondents.

(Petition No. 146/2004)

(Decided on 30.4.2008)

CORAM
YOGESH KHANNA
CHAIRMAN

Counsel :-

for the petitioner

Shri. Ashok Negi,
Advocate

for the respondents

Shri

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)

Shri Bishan Chauhan S/O Shri. M.L. Chauhan, resident of Mohan Building, Cemetery Road, Sanajauli, Shimla-171006 (H.P.) (hereinafter referred as the petitioner), has moved a petition under the Electricity Act, 2003, praying for restoration of electricity supply to Account No. SN-64C, in the premises of the petitioner known as "Indu Niwas" Cemetery Road, Sanjauli, Shimla. The Commission vide its interim order dated 29.10.2004 allowed the ad-interim relief of restoration of supply subject to the payment of 50% of the outstanding dues i.e. 11100.50 in addition to current bill amount of Rs. 423/- within one week. In the main petition the petitioner stated that the Himachal Pradesh State Electricity Board (hereinafter referred as the

respondent Board) has shown amount recoverable against some other independent and separate account. Further the respondent Board is alleged to be making the demand to repay the outstanding amount of Rs. 22194.15/- after elapse of period of more than 10 years, especially when energy meter in the name of petitioner was installed only 5-6 years back and at that point of time of no such demand of the said outstanding amount was raised by the respondent Board. The petitioner further asserts that the respondent Board cannot recover outstanding amount, where the period of more than 10 years has already expired, until and unless such sum becomes first due and thereafter such sum is shown continuously as recoverable as arrears of charges for electricity supply. Further, as per provisions laid down under section 56(2) of the Electricity Act, 2003, no sum due from any consumer under this section is recoverable after the period of two years from the date when the same becomes first due.

2. During the course of hearing, the Commission directed this case to be listed alongwith case No.109/2004 titled as “M/S Emm Tex Synthetics Ltd V/s HPSEB” as the legal issues raised being more or less similar in both the cases. Accordingly both the petitions i.e. case No. 109/04 and 146/04, were heard together for deciding all the legal issues. Order of 5.3.2005 in case No. 109/04 became applicable to this case as well. 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.146 of 2004 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.

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 29.10.2004 passed in this case also stands withdrawn.

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

(Yogesh Khanna)
Chairman