

**BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY
COMMISSION, SHIMLA**

In the matter of the Himachal Pradesh State Electricity Supply Code (Third Amendment) Regulations, 2018.

CORAM:

**S.K.B.S NEGI
CHAIRMAN**

**BHANU PRATAP SINGH
MEMBER**

STATEMENT OF REASONS

The Himachal Pradesh Electricity Regulatory Commission (in short the Commission) processed the proposal to insert the following sub-para 3.1.2.1 in para 3 of the Himachal Pradesh Electricity Supply Code, 2009 made in exercise of the powers conferred under section 50 and clause (x) of sub-section (2) of section 181 of the Electricity Act, 2003: -

“3.1.2.1 In case of a new connection, where an applicant is unable to produce “No Objection Certificate” for seeking electricity connection, from the Statutory Authority (ies) like the Panchayat, Municipality or the Town and Country Development Authority (by whatever name called), the licensee shall not refuse electricity connection to an applicant seeking electricity connection for domestic supply, or in case of other non-domestic purposes for the connections with connected load and contract demand not exceeding 20kW and 20kVA respectively, only for want of such “No Objection Certificate” and shall release the electricity connection to such applicant on the submission of the undertaking/declaration to the extent that the licensee may disconnect the electricity connection under reference, in the event of a legally binding order issued by the Statutory Authority (ies) for disconnection of supply owing to any default/non-compliance of statutory provisions. This shall be without prejudice to any other rights of the licensee including that of getting its payment due as on the date of disconnection”

2. The Commission as required under sub-section (3) of section 181 of the Electricity Act, 2003 read with rule (3) of the Electricity (Procedure of Previous Publication) Rules, 2005, invited the public objections and suggestions on the said Draft amendment by way of insertion of public notices in two Newspapers i.e. “Amar Ujala” and “Hindustan Times”

on 4th February, 2018 and also letter dated 7th February, 2018 requested the major stakeholders, including Industrial Associations, Department of MPP & Power, Town and Country Planning, Urban Development, Directorate of Energy, Government of HP and Distribution Licensee i.e. HPSEBL. The text of the proposed amendment alongwith explanatory memorandum was made available on the Commissions website: www.hperc.org. No comments/suggestions on this proposed insertion of sub-para 3.1.21 in the Himachal Pradesh Electricity Supply Code, 2009 were received. However, this Commission before finalization of the draft proposal, considered it appropriate to drop the decision for insertion of sub-para 3.1.2.1.

3. Now, Sh. K.S. Daulta, in his capacity as the Consumer Representative, has brought to the notice of this Commission the unavoidable harassment to the genuine consumers, due to time consuming process involved in procuring and non issuance of the “No Objection Certificate” by the Statutory Authorities such as the Panchayats, Municipalities and Town & Country Development Authorities. To over reach this many malpractices, including electricity theft, have become very common feature. He contends that in the present day the electricity is indispensable and essential requirement of everybody and has impact on the fundamental right of the citizen to live and the same cannot be withheld indefinitely. He urges that the Consumers have a statutory right to apply for and obtain supply of electricity from a Discom and the Discom has a corresponding obligation to supply electricity to the Applicant Consumers. It is matter of common knowledge that in construction of buildings heavy building material is used for constructing the same as such completed buildings should be immediately occupied in order to save on economy by the owner. Moreover, if any, deviation or violation is committed by the Applicant Consumer(s), the same can be rectified at any time subsequently by invoking the provisions of Clause (h) of sub-regulation (1) of regulation 7 of the said Supply Code. Apart from this some of the State Electricity Regulatory Commissions like DERC, have amended their Electricity Supply Codes for not insisting for production of “No objective Certificates” from the development authorities of the area and the

electricity connections are being released on the bare undertaking/ declaration to the extent that the Licensee, in the event of legally binding order issued by the Statutory Authority for disconnection of supply owing to any default/non-compliance of statutory provisions, may disconnect his supply.

4. Here it is apt to make reference to the recent decisions of various High Courts. The Chhatrisgarh High Court vide its decision rendered in **CWP No. 3341- N.R. Sharma Vs. Chhatrisgarh State Power Distribution Company Ltd. (C.G.) Raipur and others AIR 2018 Chhatisgarh 98**, has held that-

“12. Access to Electricity should be construed as a human right, of course, to the requirements to be satisfied under the Electricity laws. Denial of the same, upon even satisfying the requirements, would amount to violation of human rights.

13. The Supreme Court in the matter of Chameli Singh and others Vs. State of U. P. and another (AIR 1996 SC 1051) discussed the components of right to live, and specifically observed that right to life includes the right to live with human dignity and further observed that right to live guaranteed in any civilised society implies the right to shelter and while discussing the right to shelter, it has been held that right to shelter includes electricity which is undisputedly, an essential service to the shelter for a human being. The Supreme Court observed as under:-

“7. In State of Karnataka Vs. Narasimhamurthy (AIR 1996 SC 90) SCC p. 526, para 7: JT at p. 378, para 7), this Court held that right to shelter is a fundamental right under Article 19(1) of the Constitution.....”

8.....Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civil amenities like roads etc. so as to have easy access to his daily avocation.....”

5. In **Kanubhai Jethabhai Rohit and others V/s State of Gujarat**, the Gujarat High Court was considering the validity Regulation 4 of the Gujarat Electricity Regulatory Commission (Electricity Supply Code and

Related Matters) Regulations, 2015, with reference to Article 21 of the Constitutions of India. In that case supply of electricity for residential purpose was denied on the ground that the petitioner did not have ownership of land and tenancy proceedings were pending. Petitioners established occupation of land in question Electricity Supply Code covered both ownership or occupation for supply of electricity. It was held that- Authority at time of denying supply cannot conclusively assume that land belongs to Govt. and so no electricity supply of electricity on the said grounds, de hors statutory provisions including supply Code. Such denial is illegal and violative of Article 21. In that case the Hon'ble Court observed as under:-

“It is not only unfortunate but shameful that in a country with democracy, where the people have got a fundamental right, have to claim and fight a litigation for supply of domestic electricity though it would also form a right to life under Article 21. It does not require any elaborate submission that right to life under Article 21 will have a different facet and in modern days it may not be possible to survive without the supply of electricity in as much as the children may be studying, senior citizens may be sick. On the one hand when right to education is sought to be made compulsory and on the other hand such a hostile attitude by Respondent Nos. 2 and 3 as a licensee asking for proof of ownership has no excuse to deny the supply of electricity.”

6. The High Court of Himachal Pradesh in para 7 of its recent Order dated 22.10.2018 passed in **CWP No. 2454 of 2018- Madan Lal V/s State of Himachal Pradesh and others** observed that:-

“7. The question that falls for consideration is whether the petitioner, as an interim measure, be allowed the basic amenities of water and electricity. There is no gain in saying that potable water or electricity are integral part of Right to Life within the meaning of Article 21 of the Constitution India. These are basic necessities for human being and can well be termed as essential of human rights. If the title dispute, owing to the prescription of right to appeal under the Statute remains pending for considerable long period, we see no reason to deny the petitioner's family the basic amenities of water and electricity, subject to their payment of requisite charges. It goes without saying that in the event of petitioner's having failed to prove his right to retain the possession, both facilities will also go alongwith the residential house.”

7. It is apt to point out that the provisions for submissions of indemnity bond, in lieu of NOC, were sustained in **Kanubhai Jethabhai Rohit V/s State of Gujarat (Supra)**, which read as under.-

“ Where the NOC from the owner of the premises is not available due to any reason(s), new connection be allowed on the basis of submission of indemnity bond prescribed by the Distribution Licensee to indemnify the Distribution Licensee against losses on account of disputes that may arise out of effecting service connection to him.”

8. After having stock of the facts, brought out by the Consumer Representative as set out in the preceding para 3 and the judicial verdicts of various High Courts cited precedings paras 4, 5, 6 and 7, we find, it appropriate to reconsider this issue and conclude that, especially when the right to live is guaranteed to our citizens as a fundamental right, the electricity is a basic amenity for the purpose of living and the same cannot be withheld without any valid reason. Moreover, Section 43 of the Electricity Act, 2003, casts duty on the DISCOM to give supply of electricity, within one month after the receipt of the application requiring the supply. **The Hon’ble Apex Court in its verdict dated 02.09.2011 rendered in Civil Appeal No. 7572 of 2011 Shri Chandu Khamaru V/s Nayan malik & others** have also ruled that the consumers have a statutory right to apply for and obtain electricity from a DISCOM and the DISCOM has a corresponding obligation to supply electricity to the applicant consumers. Further of **the High Court of Madras vide its verdict dated 17/12/2014 –P. Rajesh V/s the Chairman, Tamil Nadu Electricity Generation and Distribution Corporation 2015- ELR (HC) 0128** has held that the relief may be given to the applicant consumer(s) by providing service connection, without insisting on production of “No Objection Certificate”. The similar relief has also been given by the said court in various other cases. If any delay comes about through non-occupation, the owner of the property suffers.

Moreover, the policy at the National level also aims at providing access of electricity to all households in the Country in a time bound manner. Per commitment made by National Common Minimum Programs, the Discoms, are obliged to cater the needs of the consumers.

Since the proposed insertion has already been considered by the Review Panel and the process of previous publication stands completed, we decide to insert sub-para 3.1.2.1(as reproduced in the opening para of this Order) in the HP Electricity Supply Code, 2009.

The draft amendment regulations making insertion of sub-para 3.1.2.1 in the Supply Code, finalised and approved as above be notified accordingly.

Sd/-

(Bhanu Pratap Singh)
Member

Sd/-

(S.K.B.S. Negi)
Chairman

Place: Shimla.

Dated: 03.12.2018.