

BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION SHIMLA

M/s Valley Iron and Steel Co.Ltd.,  
Dhaura Kuan Distt, Sirmaur (Nahan),  
Himachal Pradesh.

...Petitioner

V/s

1. The HP State Electricity Board Ltd., Co.  
thro' its Executive Director (Personnel) ,  
Vidyut Bhawan, Shimla-171004.
2. The Chief Engineer (Comml),  
HPSEB Ltd. Co., Vidyut Bhawan,  
Shimla-171004.
3. The Sr. Executive Engineer, HPSEB Ltd. Co.,  
Electrical Division, Poanta Sahib,  
Distt. Sirmaur, HP.

... Respondents

Petition No. 82 of 2009

(Decided on 23.08.2010 )

**CORAM**  
**YOGESH KHANNA,**  
**CHAIRMAN**

Counsels:-

for the petitioner

Sh. P.C.Dewan  
Sh.H.P.Singh

for the respondents

Sh. Satyan Vaidya,  
Advocate

**ORDER**

(Last heard on 31.07.2010 and Order reserved)

M/s Valley Iron and Steel Co. Ltd. Dhaura Kuan, Distt. Sirmour (Nahan), H.P.  
(hereinafter referred as "the petitioner") has set up an Industrial Undertaking for the  
manufacturing of Stainless-steel, Billets, Flats, HR Coils, CR Coils, Bright Bar, Quick

Lime, S.S.Pipes, S.S.Fittings, Ferro Alloys etc. and owns a large supply unit bearing account No.VISL-21 with a connected load of 8774 kW and contract Demand of 8287 kVA. The petitioner applied for an additional load of 3,000 kW by depositing 3 lakh as ACD and Rs.6,00,000/- (six lakhs) as Infrastructure Development Charges (IDC). The load extension has though been sanctioned, but the petitioner in meanwhile planned a massive expansion and applied for PAC for 60 MW. The Sr. Executive Engineer, Electrical Division, Poanta Sahib i.e. the respondent No.3, asked, on 09.09.2008, the petitioner to deposit Rs.60,00,000/- (sixty Lakhs only) by way of DD as ACD @ Rs.1000/- per kW and another Rs.1,20,00,000/-(One Crore twenty Lakhs ) by way of DD as IDC @ Rs.200/- per kW as advance share cost, as per the Commission's regulations, which was to be adjusted against the actual expenditure to be incurred for granting power to the petitioner. But the petitioner disputed the demand raised by the respondent Board and also questioned that the estimate of expenditure of 220 kV bay at Giri power house (the feeding end), 200 kV line from the Giri Power House to the petitioner's 220 kV sub-station saying that this estimate has been framed to release the 3 MW extension and shift the existing load about 9000 kW from 33 kV to 220 kV yet the same hold good for the 60 MW power now proposed to be availed by the petitioner instead of 3 MW extension.

2. The petitioner also states that the material is being procured by the petitioner. The departmental charges have already been paid by the petitioner on 24.11.2008, with the undertaking that the entire work has to be executed at the petitioner's expense. At the request of the petitioner, pending the disposal of this petition the operation of the order, of the Chief Engineer (Comml), dated Feb, 10, 2009, demanding advance cost share of Rs.1,20,00,000/- was stayed by this Commission.

3. In reply to the petition the respondent Board states that the present petition is not maintainable in the eyes of law, as the petitioner has not approached the available appropriate authority i.e. the Forum for Redressal of Grievances of the Consumers set up by the Board. On merits it states that the request of the petitioner was duly considered for additional demand of 3000 kW by the Board and the PAC was issued and load was also sanctioned to fulfill additional load requirements of the petitioner. On this account the petitioner was liable to deposit non-refundable security amounting to Rs. 3 lacs and Infrastructure Development Charges amounting to Rs.60 lacs. The petitioner was to avail

additional supplied/ sanctioned load of 3000 kW within three months from the intimation about the Board's readiness to give supply, i.e. from 09.09.2008. In the present case the time was extended up to 08.06.2009, and the petitioner was requested to deposit load retention charges amounting to Rs.1,20,000/- within fifteen days from the date of issue of letter dated 22.01.2009. Even then the petitioner failed to avail the additional load. The petitioner is sailing in two boats, on one head he is requesting for extension in time limit for availing load upto 15.6.09 vide his letter dated 5.12.2008 and on the other hand he has applied for PAC for 60 MW vide his letter dated 27.09.2008.

4. As confirmed by the Chief Engineer (Comml), of the Board, in his letter dated 10.02.2009, the advance cost share amounting to Rs.1,20,00,000/- is to be deposited by the petitioner. It is also submitted that the firm is complicating the matter by putting misleading facts. The job cost of Rs.57.62 lacs deposited by the petitioner out of Rs.581.48 lacs against full estimated cost was for the purpose to release their power connection having 12000 kW load (Existing 9000 kW + Additional 3000 kW) at 220 kV level, whereas the plaintiff's revised load requirement is for 60 MW load. The present 220 kV infrastructure at Giri is already full to its capacity and is having cushion to accommodate additional demand of 3 MW of the plaintiff. The additional infrastructure of 220 kV level will have to be set up. So, the cost share of Rs.1.2.Crore is correct and cannot be dispensed with. The power will be available at 33 kV, as an interim arrangement, after completion and upgradation of the system. The petitioner will have to shift its entire load on 220 kV supply voltage within one year after the release of additional 3000 MW load, failing which supply to the consumer at 33 kV shall have to be disconnected immediately.

5. With for the purpose of providing additional 3 MW load, the existing 220 kV bay at Giri end (for petitioner) and 220 kV transmission line from Giri to the factory premises of the petitioner was made and the actual cost of estimate has been demanded in accordance with the provisions of the HPERC(Recovery of Expenditure) Regulations, 2005.

6. As regard to the additional demand of 60 MW, which has been applied/ proposed later on by the petitioner, the existing infrastructure of 220 kV voltage at Girinagar is inadequate, because the 220 KV transmission line from Khodri to Girinagar is packed to

its full capacity and the allotted H.P share of 130MW (from Uttranchal) is also being drawn. So, in order to provide 60 MW of additional power to the petitioner, new infrastructure of 220 kV level will also have to be set up at Giri by erecting 220 kV line from Sawara Kuddu or Kunihar/Moginand. Thus the demand of Rs.1.2 Crore towards advance cost share to provide additional 60 MW load to the petitioner is legitimate and justified.

7. The petitioner in his rejoinder, to the reply filed on behalf of the Board, has refuted the Board's assertion that the petitioner is sailing on two boats but to the contrary has asserted that the demand of Rs. 1.20 crore is unjustified and there is no provisions in the rules or the Act to ask for load retention charges; the connection can be granted on furnishing the undertaking that the petitioner will pay actual cost after the same is worked out. The petitioner further contends that the second circuit of 220 kV Khodri-Girinagar line is not being laid for the petitioner and this line was conceived in the year 2000 for evacuation of the Khodri power, when the petitioners request of the 60 MW power was no where in sight. Only the cost of line upto transmission sub-station is required to be recovered per the Recovery of Expenditure regulations.

8. Before proceeding further to discuss the merits of the contentions the Commission considers it appropriate to decide "in limine" the jurisdictional issue which has been vehemently challenged by Sh. Satyen Vaidya Advocate Learned Counsel for the respondent Board.

9. Without considering the basic question of jurisdiction and maintainability, the consideration on merits would be fallacious. It has been held in **Suresh Kumar Bhikam Chand Jain Vs. Pandey Ajay Bhushan (1998)/ SCC 205**, the plea of jurisdiction can be raised at any stage. It is also the settled law that no Statutory Authority or Tribunal can assume jurisdiction in respect of the subject matter which the statute does not confer, if the Court or Tribunal exercises the jurisdiction then the order is vitiated. Moreover in **Shrist Dhawan (Smt) V/s Shaw Bros (1992) / SCC 5334** it has been laid that error of jurisdictional fact renders the order ultra vires and bad in law.

10. The Hon'ble Appellate Tribunal for Electricity, had the opportunity to consider the scope of the provisions of section 42(5) to (8) of the Electricity Act, 2003 in various cases i.e. **Reliance Energy Limited V/s Maharashtra Electricity Regulatory**

**Commission and Maharashtra State Electricity Distribution Company V/s Prayas, Kerve Road Pune (Appeal Nos. 30 of 2005, 164 of 2005 and 25 of 2006) decided on 29.3.2006 (2007 APTEL 543); Dakshin Haryana Bijli Vitran Nigam Ltd V/s Princeton Estate Condominium Association, DLF Universal Ltd (Appeal Nos 105 to 112 of 2005) decided on 29.3.2006; (2007 APTEL 356) and Dakshin Haryana Bijli Vitran Nigam V/s DLF Services Ltd (Appeal No. 104 of 2005) decided on 29.3.2006.) (2007 APTEL 764); and Reliance Energy Ltd. V/s K.H. Nadkarni & Others (Appeal No. 11 of 2005) decided on 26.5.2006 (2007 APTEL 298) and CSEB V. Raghuvir Singh Ferro Alloys Ltd. & Others (Appeal Nos. 125, 126 & 127 of 2006) decided on 28.11.2006 (2007 APTEL 842); Himachal Pradesh State Electricity Board V/s M/S Emm Tex Synthetics Ltd. Jagat Khana Nalagarh & other (Appeal No. 117 of 2007, decided on 5<sup>th</sup> November, 2007; BSES Rajdhani Power Ltd. V/s Delhi Electricity Regulatory Commission (Appeal No. 181/08, decided on 30.3.2009, [2009 ELR (APTEL) 0352] and U.P. Power Corporation Ltd. V/s Premier Ispat (Pvt.) Ltd. in appeal No. 42 of 2006 decided on 23.12.2009 (2010 ELR (APTEL) 0124. In the aforesaid decisions the Hon'ble Appellate Tribunal, has concluded that the relation between a consumer and a distribution licensee is governed by Part VI – Distribution of Electricity-Sub-section (5) to (8) of section 42-provides with respect to Forum for Redressal of Grievances and the Appellate forum i.e. Ombudsman as well. When a Forum has been constituted for redressal of grievances of consumers by the mandate of section 42, no other forum or authority has jurisdiction. The State Electricity Regulatory Commission, being a regulatory, the highest State level authority under the Electricity Act, 2003, as well as rule making authority has to exercise such functions as are provided in the Legislative enactment and it shall not usurp the jurisdiction of the Consumer Redressal Forum or that of the Ombudsman. The special provision excludes the general is also well accepted legal position. The Regulatory Commission being a quasi-judicial authority could exercise jurisdiction, only when the subject matter of adjudication falls within its competence and the order that may be passed is within its authority and not otherwise. It follows that the State Regulatory Commission has no jurisdiction or authority to decide the dispute raised by individual consumers or the Consumer Association. The consumers have a definite forum to remedy their disputes under section**

42(5) and further representation under section 42(6). Further section 42 (8) also saved the rights of consumer to approach any other forum such as the forums constituted under the Consumer Protection Act, 1986 or other Courts as may be available.

11. The Hon'ble APTEL in its decision dated 11.9.2009 rendered in **appeal No. 78 of 2007 - the Himachal Pradesh State Electricity Board V/s M/S Himalaya International Ltd and another**, has clearly concluded that the words "any dispute" appearing in clause (f) of sub-section (1) of section 86 of the Act cannot be given such wide meaning as to include dispute between a licensee and a consumer. The dispute raised by a consumer cannot be dealt with under the said provisions.

12. The Hon'ble Supreme Court in its verdict given in **Maharashtra State Electricity Distribution Co. Ltd V/s Lloyds Steel Industries Ltd JT 2007 (10) SC 365** approving the decision of the Delhi High Court in **Suresh Jindal Vs. BSES, Rajdhani Power Ltd & Others and Dheeraj Singh Vs BSES Yamuna Power Ltd 132 (2006 DLT 339 DB)** has also concluded that complete machinery has been provided in section 42(5) and 42(6) of the Electricity Act, 2003, for redressal of grievances of individual consumers. Hence wherever a Forum/ Ombudsman have been created/appointed the consumer can only resort to these bodies for redressal of their grievances. The Hon'ble Supreme Court in its another decision dated 14.8.2007 in **Civil Appeal No. 2846 of 2006 Maharashtra Electricity Regulatory Commission Vs Reliance Energy Ltd & Others JT 2007 (10) SC 365**, has also not interfered with the decision of the Appellate Tribunal in First Appeal Nos. 30 and 164 of 2005 and 25 of 2006 (2007 APTEL 543) and has ruled that the adjudicatory function of the Commission is limited to the matters prescribed in section 86(1)(f) i.e. adjudication of disputes between the licensees and the generating companies and as such the Commission cannot adjudicate disputes relating to grievances of individual consumers.

13. Keeping in view the above discussion, it can be safely concluded that the specific provisions of section 42(5) and 42(6) of the Electricity Act, 2003 provide for setting up Forum for redressal of grievances and further representation to the Electricity Ombudsman. Thus the Forums for redressal of grievances set up by the licensees/distribution companies are to decide the individual cases received by them after giving a fair opportunity to the consumers. The consumers who still feel not satisfied

with the order passed by the licensee/distribution companies can approach the appropriate Forum constituted under section 42(5) of the Act and, if still not satisfied, with the order passed by the appropriate forum to approach the Ombudsman under section 42(5) of the Act. The Commission, therefore, lacks jurisdiction to entertain and dispose of the complaint/application because such consumer disputes fall within the purview of the Forum set up under section 42(5) and the Ombudsman appointed under section 42(6) of the Act.

14. In view of the above cited judgments on the jurisdictional issue and advertent to the averments made by the rival sides, this Commission concludes that this Commission has no jurisdiction or authority to adjudicate the disputes other than the disputes arising between the licensees and the generating Companies; and as such Commission cannot adjudicate disputes relating to grievances of individual consumers. Therefore, in the result, the Commission dismisses this petition with the liberty to the petitioner to work out its remedies before the competent forums or other Courts as may be available to it. It is further made clear that the Commission has not gone into merits of the various contentions advanced by either side in other respect, and, therefore, the Commission's decision on the jurisdictional issue should not prejudice any further course of action that may be pursued by the petitioner in the case.

In view of the above the petition No. 82 of 2009 is disposed of, and the order regarding bank guarantee shall also stand withdrawn (in the context of this order).

(Yogesh Khanna)  
Chairman.