

the balance of the shared cost, which is stated to be due to the petitioner Company, amounting to Rs. 460.6 lacs, along with a compound interest @ 8% amounting to Rs. 328.79 lacs under the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005(in brevity the Recovery of Expenditure Regulations).

2. Brief facts, which are relevant for the disposal of this petition, are that the petitioner Company has been provided by the respondent Board, the electricity connection, for manufacturing cement under the L.S category vide Account No. GACL-1, HPSEBL under Sub Division, Darlaghat/Electrical Division, HPSEBL Arki for sanctioned connected load of 37 MW, with contract demand of 32 MW, which was subsequently revised to 40 MVA at 132 KV Transmission Line. The petitioner Company was required to deposit the shared cost as per estimates made by the respondent Board and the petitioner Company deposited the estimated cost of Rs. 987 lakhs, in three installments as under:-

Ist installment for (vide receipt Mo. 297932 dated 7.6.1993)	Rs. 272 lakhs
2 nd installment for (vide receipt No. 297975 dated 10.02.1994)	Rs. 516 lakhs
3 rd installment for (vide receipt No. 438097 dated 23.01.1995)	Rs. 199 lakhs

According to the petitioner Company ,the D/C 132 KV Transmission Line, the cost of which was entirely borne by the petitioner Company, was made operational and the petitioner Company started to receive power through one circuit of the D/C 132KV Transmission Line on 28th Feb,1995.

3. The respondent Board on 25th Nov, 2009 extended the circuit of the D/C 132 KV feeder, supplying power to the petitioner Company, to meet the power demand to the tune of 35 MVA of Respondent No. 3 i.e. M/s Jaypee Himachal Cement Project located at Village Baga, Tehsil Arki, Distt. Solan (H.P). The plant of Respondent No.3, became operational in January, 2010. The Power Availability Certificate, issued on 12.01.2005 to the Respondent No.3, specifically, provided that-

“In case of construction of 132 KV or 220 KV joint feeders, along with bay and the associated equipments at both ends, if required, the entire cost shall be shared proportionally by the group of the industrial consumers. The cost of the same will be intimated to you by the Chief Engineer (Transmission), HPSEBL, Hamirpur”.

4. According to the petitioner Company, regulations 5 and 6 of the Recovery of Expenditure Regulations are specific on the manner of cost recovery from original applicant and refund of the balance cost, as and when new connections are installed or given from the electrical plant and/or electrical line on pro-rata basis with interest @ of 8% compounded annually and the total cost recoverable towards sharing of cost on prorata basis between the petitioner Company and Respondent No.3 is worked out as Rs. 987 lacs. Taking the Contract Demand of petitioner Company being 40 MVA and that of Respondent No.3 being 35 MVA, the petitioner Company claims cost sharing, as per regulations 5 and 6 of the Recovery of Expenditure of Regulations in the ratio of 40:35. Thus the petitioner Company claims the sum of Rs. 460.6 lakhs as cost share of Respondent No.3 along with compound interest @ 8% amounting to Rs. 328.79 lacs being payable effective from the date on which the transmission line was made operational i.e. w.e.f. 28.02.1995.

5. Pursuant to the said Recovery of Expenditure Regulations, the petitioner Company initiated the process of cost sharing with the respondents, but there has neither been a denial nor acceptance of the financial relief due to the petitioner Company. The petitioner Company has now moved the present petition, seeking direction of this Commission to the respondent Board, to refund the balance cost, due to the petitioner Company, amounting to Rs. 789.38 lacs (shared cost of Rs. 460.6 and compound interest @ 8% of Rs. 328.79 lacs).

6. In reply to this petition the respondent Board submits that the petition is neither competent nor maintainable for the simple reasons that the amount claimed by the petitioner is the liability of the Respondent No.3, in terms of regulations 5 and 6 of the Recovery of Expenditure Regulations. However, on merits the Respondent Board admits that the respondent Board, being a licensee has provided electricity connection to the petitioner Company under Account No. GAC-I, HPSEB, under Electrical Sub Division HPSEBL, Darlaghat/ Electrical Division, HPSEBL, Arki and the same falls under L.S. category for manufacturing of cement and for that propose "A & A Form" was executed by the petitioner Company for sanctioned connected load of 37 MW with a contract demand of 32 MW at 132 KV, which was subsequently revised to 40 MVA vide letter dated 22.08.2009. The D/C 132 KV Transmission Line was made operational and the petitioner Company started to receive power through one circuit of the said line on 5.7.2000.

7. M/s Jaypee Himachal Cement Project i.e. Respondent No.3, in order to establish the cement plant at Village Baga, Tehsil Arki, applied for Power Availability Certificate and the same was granted. The load was sanctioned and released to Respondent No.3 in the year 2009. Subsequently when Respondent No.3 applied for enhanced load the respondent Board expressed its inability to do so from the existing transmission network, but agreed to supply 15 MW power on 220 KV mode from Kunihar Sub Station. The Power Availability Certificate issued on 3.5.2011 clearly stipulated that the firm i.e. Respondent No.3 will construct 220KV D/C Transmission Line from 220KV/132KV Sub-Station at Kunihar to the last link point of 220KV/D/C Kango Rouri i.e. the line constructed by the petitioner Company and for that purpose Respondent No.3 shall execute the works indicated in the terms of scope of work.

8. Thereafter, respondent-Board entered into a Transmission Line Agreement with Respondent No.3 wherein it was made clear in clause 12 that Respondent No.3 will construct a double circuit 220 KV Line from Kunihar to the last link point of Rouri 220 KVD/C line under construction by the ACL i.e. the petitioner Company and the cost sharing of the HPSEBL, M/s Jaypee Himachal Cement and M/s Ambuja Cements Ltd. shall be worked out with the formula i.e. MOM dated 17.3.2010. It was also agreed in the said agreement that the shifting of load up to already sanctioned load of 32MVA from 132 KV Kango-Kunihar Transmission Line to the proposed 220 KV line will be subject to cost sharing of 132KV Kango-Kunihar Transmission Line by M/s JP Associates Ltd. with the petitioner Company and with further agreed condition that Respondent No.3 shall also off load the cost of construction borne by the petitioner, in this petition, in this operation i.e. last link point of Respondent No.3 at Rouri to LILO point of Respondent No.3 at Baga in the ratio of increase of load above 50 MW as per the provisions of the Recovery of Expenditure Regulations.

9. The respondent Board asserts that in view of the Transmission Line Agreement it is Respondent No.3, who has to share the cost of 132KV Transmission Line in question with the petitioner Company and the respondent Board are not liable to pay such cost. The petitioner Company did not initiate any process for recovery of share of cost from Respondent No.3. The Gaggal-Dharlaghat-Kunihar Transmission Line was erected and laid down on a deposit work basis by the respondent Board on behalf of the petitioner Company and was made operational before the commencement of the Recovery of Expenditure Regulations. As such, the Recovery of Expenditure Regulations or any provisions thereof will not be applicable in the present case.

10. The respondent Board refutes that there is any denial on behalf of the Respondent Board on the financial relief to the petitioner Company. The respondent Board has taken all steps intimating the Respondent No.3, the amount of cost to be shared by Respondent No.3. The petitioner Company has written letters to the respondent Board, seeking refund of the cost, but has not initiated any process for recovery of share of cost from Respondent No.3. The respondent Board has also written letter dated 7.6.2012 to Respondent No.3, informing that the load sanction was released in favour of Respondent No.3 with clear stipulation that the Respondent No.3 will bear the cost sharing of existing EHV net work of the respondent Board which will be recovered from Respondent No.3 on the basis of rates of cost data for the year 2009-10. After assessing the cost share of Respondent No.3, as per Recovery of Expenditure Regulations, the respondent No.3 was called upon to deposit a sum of Rs.648.27 lacs with the Senior Executive Engineer, Electrical System, Bilaspur, but the Respondent No.3 has not yet deposited the said amount.

11. The Respondent No.3, in reply to the petition submits that there is no privity of contract between the petitioner and respondent No.3 regarding cost sharing of the Transmission Line and, therefore, the petitioner has no legally enforceable cause of action against the Respondent No.3. There was already an Extra High Transmission Line i.e. Gaggal-Darlaghat-Kunihar Transmission Line made operational in the year 1995 and the Respondent No.3 only required an extension from the aforesaid EHT Line. The Respondent Board directed the Respondent No.3 to deposit and the Respondent No.3 deposited an amount of Rs. 691 lacs as the cost of Transmission Line along with associated switchgear tapping from Kharsi (Tehsil Sadar, Distt. Bilaspur) to its premises at Village Baga, Tehsil Arki, Distt. Solan (H.P). In the year 1995, when the Transmission Line was made operational, this Commission was not even contemplated much less constituted. Even the regulations sought to be enforced have been framed only in the year 2005 and the said regulations are thus not applicable or enforceable in the present case, because the said regulations cannot operate retrospectively and even otherwise do not contemplate the relief as is being sought for by the petitioner Company. The petitioner Company cannot be permitted to read and rely the instructions, which are to operate in future.

12. The Respondent No.3 further asserts that the necessity of making adhoc and interim arrangement arose because of the non-completion of the 220KV line which Transmission Line, after its completion by April, 2015, is to cater all power requirements of Respondent No.3 and as such the Respondent No.3 will have no concern whatsoever with the 132KV line, from where

presently it is utilizing its power requirements. Therefore, it is absolutely clear that the Transmission Line presently is being utilized by the Respondent No.3, as a matter of interim and short term arrangement, and this arrangement is strictly in accordance with regulation 5 of the Recovery of Expenditure Regulations. Moreover, the said short term arrangement for utilization of the 132 KV D/C Gaggal-Darlaghat-Kunihar Transmission line w.e.f. January 2010 in all probabilities would be ending by April, 2015, as decided in the minutes of the meeting relating to issues of power requirement of respondent No.3, held on 17.8.2012 with the respondent Board. The Respondent No.3 cannot otherwise be expected to share the cost of the line, which it otherwise is going to use for just about five years (2010-2015).

13. The Respondent No.3 also questions the claim of the petitioner Company stating that the petitioners vide Annexure P-3 have claimed to have incurred an expenditure of Rs. 415.95 lacs towards total cost of D/C line from Gaggal to Kunihar, along with technical equipments at both ends, while, as per the letter dated 14.9.2009 (Annexure P-5) the petitioners themselves claim to have incurred a cost of Rs. 268.34 lacs for laying down D/C line from Gaggal to Kunihar along with terminal equipments at both ends. Further out of 160 MW (D/C) 85 MW are being utilized by the Board, 40 MW by the petitioners and remaining 35 MW by the Respondents No.3 that too with effect from January, 2010.

14. Keeping in view the peculiar circumstances and facts involved in this case, the parties were advised to sort out the matter through intra parties discussions/negotiations. The respondent Board acting as the Nodal agency, convened meetings on 14.03.2013, 20.4.2013 and 28.6.2014. The issue of cost sharing was deliberated upon in the meeting held on 14.03.2013 between the representatives of parties. wherein M/s Jaypee Associates stated that in order to settle the issue amicably the said Company intends to share the cost of the Asset/Electrical infrastructure only to the extent of period from which they may use the Asset/Electrical infrastructure, as in the near future they may have their own 220KV line and 220KV Sub-Station at Kharsi (near present LILO point) in place and may not need sharing capacity of the petitioner Company. On the next meeting held on 20.4.2013, the representative of M/s ACL did not agree to the proposal of M/s Jaypee Associates. Further in the meeting held on 21.6.2014, the calculations of cost sharing, were discussed in detail, and M/s ACL accepted the calculations, but M/s Jaypee Associates Ltd. did not accept the same.

15. Further more, the Commission has given opportunity to all the parties during the hearings which were held on number of days, to make their elaborate submissions and also has given sufficient time to all the parties to file their written submissions.

16. For general clarity and understanding and in order to appreciate the submissions of the Learned Counsels for the parties, it would be useful to make reference to the provisions of sections 2(5), 42, 43(1), 46 of the Electricity Act, 2003 and regulations 3 and 4 of the HPERC (Licensee's Duty for supply of Electricity on Request), Regulations,2004 and regulations 5 and 6 of the Recovery of Expenditure Regulations made thereunder, to the extent they are relevant to the disposal of this petition. These provisions read as under:-

(i) Section 2(15) defines "Consumer" as under:-

"(15) "Consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be";

(ii) Section 42(1), which provides that a distribution licensee is responsible to develop and maintain an efficient co-ordinated and economical distribution system, reads as under:-

"42 (1) Duties of distribution licensee and open access.- It shall be the duty of a distribution licensee to develop and maintain an efficient co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act".

(iii) Sub-section (5) to (8) of section 42, which provides for redressal of grievances of consumers, read as under:-

"(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

(6). Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.

- (7). The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.
- (8). The provisions of sub-sections (5), (6) and (7) shall be without prejudice to right which the consumer may have apart from the rights conferred upon him by those sub-sections”.
- (iv) Further as per section 43 of the Electricity Act, 2003, as a part of “its” universal obligations, a distribution licensee is duty-bound to supply electricity at consumer’s premises within one month after receipt of the application from the consumer, which will be feasible only if a distribution main exists in the proximity of the consumer’s premises and has capacity to supply the required demand without undertaking any upgradations of the existing infrastructure requiring extension of distribution mains or new sub-stations. Where the upgradation of the infrastructure is envisaged, the supply to the consumer’s premises is to be given immediately after the upgradation or within such period as may be specified by the Commission. The Sub-section (1) of Section 43 of the Electricity Act, 2003, is reproduced hereunder:-
- “43 **Duty to supply on request**: (1) Every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply;
- Provided that where such supply requires extension of distribution mains, or commissioning of new sub-station, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission”.
- (v) Regulation 3 of the HPERC (Licensee Duty to Supply Electricity on Request) Regulations, 2004, lays down the time lines, within which licensee is duty bound to supply the electricity to the consumers;
- (vi) The Section 46 of the Electricity Act, 2003 empowers the distribution licensee to recover expenses reasonably incurred from the consumer in making the supply of electricity available to it in pursuance of Section 43. The aforesaid Section reads thus:-

“46 **Power to recover expenditure**:- The State Commission may, by regulations, authorize a distribution licensee to charge from a person requiring a supply of electricity in pursuance of Section 43 any expenses reasonably incurred in providing any electric line or electric plant used for the purpose of giving that supply”.

- (vii) Regulations 5 and 6 of the HPERC (Recovery of Expenditure for supply of Electricity) Regulations, 2005 read as under:-

“5. Specific provision for extra high tension supply: (1) The following provisions shall apply for extra high tension supply.-

(a) In case of application for new connection, where such supply requires only extension of extra high tension line from the existing transmission substation to the consumer’s premises, the distribution licensee shall estimate and recover the cost of such line and the cost of terminal and metering arrangements at the premises of the consumer, but not including the cost of meter and current Transformer and/or potential Transformer used for metering. The distribution licensee shall estimate and recover the cost of line on per kilometer basis and the cost of metering arrangements based on the latest cost data as published by the Transmission licensee;

(b) in case of application where it is required to erect a new power Transformer or augment the capacity of existing power Transformer with or without bay extension at a EHT substation, for extending supply to the applicant, the licensee shall estimate and recover the cost of the works in the manner mentioned in clause (b) of sub-regulation (1) of regulation 3.

(c) in case of application where there is need to erect , strengthen, augment or extend the EHT line in order to establish a power Transformer for extending supply to the applicant, the distribution licensee shall estimate and recover the cost of such section of EHT line on per kilometre basis.

Provided that the distribution licensee shall estimate the cost of electrical plant and works based upon the approved latest cost data as published by the distribution or the transmission licensee:

Provided further that in case there are subsequent applications for supply or additional supply and the existing electrical plant has –

- (i) adequate spare capacity to meet with the additional demand, or
- (ii) spare capacity but not sufficient to meet with the additional demand, and there is need to strengthen/augment the existing electrical plant for meeting the additional supply,

the licensee shall estimate and/or recover the cost in the like manner, including the actual cost already incurred, with compound interest at the rate of 8% per annum on prorata basis and the credit of the depreciated cost of old/existing electric plant rendered surplus on account of augmentation shall be afforded in the estimate.

- (2) The distribution licensee shall provide the supply within the time frame as specified in Himachal Pradesh Electricity Regulatory Commission (Licensee's Duty for Supply of Electricity on Request) Regulations, 2004.
- (3) The applicant shall provide the required space within applicant's premises for Transformer and associated equipments including metering arrangements, if so required by the licensee.

6. Recovery of cost.- (1) Subject to the provisions of sub-regulation (2), the balance cost of electrical plant and or electric line after deducting the amount payable by the applicant under sub-regulation (1) of regulation 3, regulation 4 and regulation 5 shall be either invested by the licensee or paid for by the applicant and where licensee's Investment Approval does not permit this cost, the licensee shall recover the total balance cost from the applicant:

Provided that the balance cost shall be refunded to the applicant as and when new connections are installed or given from the electrical plant and/or electrical line on pro-rata basis with the interest rate of 8% compounded annually.

Provided further that notwithstanding anything contained in any other law for the time being in force, balance cost due shall be recoverable from subsequent applicant(s) and the bills of the consumer, who had paid the balance cost shall be invariably flagged continuously until paid fully”.

17. It is appropriate to state that the recovery of expenditure incurred through cost sharing is not a new concept. The past practice of sharing cost had its roots in the Indian Electricity Act, 1910 and is being continued in the regulations framed by various Regulatory Commissions in the Country. Every distribution licensee under section 43 of the Electricity Act, 2003, (which corresponds to section 22 of the Indian Electricity Act, 1910) is duty bound to supply to any premises on application filed by the owner or the occupier. Where such supply requires extension or commissioning of new sub-stations, the distribution licensee is to supply electricity to such premises immediately after such extension or commissioning of the sub-station.

18. In order to discharge its Universal Obligation to supply electricity on the request to the consumer's premises, as envisaged in section 43 of the Act, the distribution licensee has a binding duty imposed by section 42(1) of the Act (ibid) to develop and maintain an efficient co-ordinated and economical distribution system in its area of supply. Section 42 cannot be read in isolation, and it should be read conjointly with sections 43, 45,46,47,48 and 50 of the Act. The perimeter of the network of the "distribution system" is determined by the numerous "distributing mains" geographically dispersed and entering to various pockets of consumers in all directions within the area of supply and implemented in pursuance to the Utility's plan, to meet the projected growth in load and demand to facilitate making prompt supply line connections to the consumers' premises from the nearest distribution mains in an efficient and economical manner, as envisaged in sections 42(1) and 43(1) of the Act. The licensee might have to build up the entire electricity infrastructure at its own cost. Other consumers of the supply area, likely to be unduly burdened with the cost of electrification of the project can be allayed by the appropriate use of provisions of sections 45 and 46 of the Act. In other words the licensee is responsible for ensuring that its distribution system is upgraded, extended and strengthened to meet the demand for electricity in its area of supply. The cost of extension and up-gradation of the system for meeting demand of new consumer(s) is recoverable from the new consumer(s) through system loading charges/strengthening charges/ infrastructure development charges (by whatever name called) and approved by the Commission. Section 46 of the Act provides that the State Electricity Regulatory Commission may by regulations authorise a distribution licensee to charge from a person requiring supply of electricity, in pursuance of section 43, any expenses, reasonably incurred on providing electric line or electrical plant used for the purpose of supplying electricity. The estimates are prepared as per provisions of the regulations and on the basis of the charges approved by the Commission. The said regulations laid down the procedure for recovery of

expenditure incurred and also refund of the differential of the amount deposited and the actual expenditure incurred.

19. With the background as delineated in the foregoing paragraphs, the issues which arise for consideration and determination in this petition are;--

- (1) Whether the cost sharing is permissible, and if so, whether the petitioner Company has legitimate claim, arising therefrom?
- (2) Whether the Petitioner Company and Respondent No.3 are the consumers in terms of the Electricity Act 2003, and if so, where should the disputes be raised?
- (3) Whether the State Commission has jurisdiction to go into the dispute raised by the consumer against the distribution licensee, when the remedy lies before the Forum for Redressal of Grievances of the Consumers (FRGC) and Ombudsman under Section 42 (5) to 42 (7) of the Electricity Act, 2003?
- (4) Relief ?

20. Now let us consider the issues one by one-

The recovery of expenditure incurred through cost sharing is not a new concept. The past practice of sharing cost had its roots in the Indian Electricity Act, 1910 and is being continued in the regulations framed by various Regulatory Commissions in the Country. Every distribution licensee under section 43 of the Electricity Act, 2003, (which corresponds to section 22 of the Indian Electricity Act, 1910) is duty bound to supply to any premises on application filed by the owner or the occupier. Where such supply requires extension or commissioning of new sub-stations, the distribution licensee is to supply electricity to such premises immediately after such extension or commissioning of the sub-station.

21. The distribution licensee is responsible for ensuring that its distribution system is upgraded, extended and strengthened to meet the demand for electricity in its area of supply. From the facts, as set out in the earlier part of this order, it is crystal clear that the respondent Board, being a licensee, provided electricity to consumers to cater to the requirements of petitioner Company and a dedicated D/C 132KV Transmission line i.e. EHT Gaggal-Darlaghat-Kunihar line, the cost of which was entirely borne by the petitioner Company, was made operational, in the year 1995, much before the commencement of the Electricity Act, 2003 and framing of the Recovery of Expenditure Regulations, thereunder. Subsequently, the Respondent Board, on 25th November 2009, extended, as a short term arrangement, the circuit of the D/C 132KV feeder, supplying power to the petitioner Company, to meet the demand to the tune of 35 KVA of Respondent No.3 i.e. M/s Japee Himachal Cement Project, located at Village

Bagga, Tehsil Arki, Distt. Solan (H.P) and the plant of the Respondent No.3 became operational in January, 2010. Ultimately, on the termination of the short time arrangement, the supply to Respondent No.3 is to be shifted to D/C 220KV line, to be constructed by the Respondent No.3 from Kunihar Sub-Station to the last link plant of Rouri 220 KV D/C line under construction of the petitioner Company. By that time the provisions of Electricity Act, 2003 and the Recovery of Expenditure Regulations, have come into force. The Respondent Board, entered into a Transmission Line Agreement with the respondent No.3, whereunder cost sharing among the respondent Board, Respondent No.3 and the petitioner Company is to be worked in accordance out with under the formula stated in minutes of meeting dated 17.3.2010. It was also agreed that the shifting of load up to already sanctioned load of 32MVA from 132KV Kango-Kunihar Transmission Line will be subject to the cost sharing of 132KV Kango-Kunihar Transmission Line by Respondent No.3, with the petitioner Company. The petitioner Company is not a party to the Transmission Line Agreement and the out of 160 MW (D/C) 85 MW is being utilized by the Respondent Board, 40 MW by the petitioner Company and 35 MW by Respondent No.3 w.e.f. January, 2010.

22. Admittedly, D/C 132KV Transmission Line, the cost of which was entirely borne by the petitioner Company, is being utilized by the Respondent No.3, the Respondent Board and the petitioner Company. The legitimate prorata claim of the petitioner Company, arising from the user of the dedicated Transmission Line built up entirely at its cost, cannot be turned down barely on the technical grounds raised by the Respondent No.3 such as that there was no privity of Contract or when the connection was released the Transmission Line was already in existence. Proviso to sub-section (2) of Section 43 specifically stipulates that no person shall be entitled to demand, or to continue to receive, from a licensee the supply, unless he agrees or pays price therefor. Moreover, there is specific stipulations for cost sharing by the subsequent users in the Power Availability Certificate dated 12.1.2005 issued by the Board and in clause 12 of the Transmission Line Agreement executed on 28.11.2009 by the Board with the respondent No.3 and the regulations framed under the Act, also provide for recovery of the reasonable expenditure incurred for supplying electricity to the consumer. Thus, the Respondent Board cannot absolve itself from of its responsibility, by simply saying that the claim of the petitioner company is the liability of Respondent No.3 in terms of regulations 5 and 6 of the Recovery of Expenditure Regulations; Respondent Board has taken all steps intimating the Respondent No.3, the amount of cost to be shared by Respondent No.3, the Respondent Board has written letter

dated 7.6.2012 to Respondent No.3; informing that the load sanction was released in favour of Respondent No.3, with clear stipulation that the Respondent No.3 will bear the cost sharing of existing EHV net work of the Respondent Board, which will be received from Respondent No.3 on the basis of rates of cost data for the year 2009-10; and also stating that after assessing the cost share of Respondent No.3, as per Recovery of Expenditure Regulations, the Respondent No.3, was called upon to deposit of a sum of Rs. 684.27 lakhs with the Senior Executive Engineer, Electrical System, Bilaspur, which the Respondent No.3 has not yet deposited the said amount.

23. In **Fasil Chaudhary Vs .D.G. Doordarshan reported in (1989) 1SCC 89**, the Supreme Court held that fair play in the joints is also a necessary **concomitant** for an administrative body functioning in the sphere of contract and administration. In **Burman Krishna Bose Vs. United India Insurance Co. Ltd. 2001 (6) SCC 455**, the Supreme Court held thus:

“Even in an area of contractual relations, the State and its instrumentalities are enjoined with the obligation to act with fairness and in doing so can take into consideration only the relevant materials. They must not take any irrelevant and extraneous consideration while arriving at a decision. Arbitrariness should not appear in their actions of decisions”

In U.P. State Road Transport Corporation Vs. Mohd Ismail, (1991)3 SCC 239, it has been held thus:

“The Corporation is a public utility organization where mediating motion is efficiency and effectiveness of public service are the basic concepts which cannot be scarified in public administration by any statutory corporation. The Corporation has to render this public service within the resource use and allocation. Within these constraints the Corporation has to exercise its discretion and perform its task. The second aspect relates to the manner in which statutory discretion is to be exercised. The discretion allowed by the statute to the holder of an office is intended to be exercised according to the rules of reason and justice, not according to private opinion;...according to law and not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself”.

In view of the foregoing discussion, it can be safely concluded that the cost sharing is permissible under law. Even though there is no privity of contract between the petitioner

Company M/s Ambuja Cement Company and Respondent No.3, i.e. M/s Jaypee Associates, the contractual obligations in relation to the parties to this list are to be regulated, on the one hand in accordance with the terms and conditions, agreed to by the Respondent Board and the petitioner Company for setting up, at the cost of the petitioner Company, the dedicated Transmission Line i.e. D/C 132KV Transmission Line and on the other hand by the conditions laid down in the load sanction Order issued by the Board in the year 2009, to meet the requirements of Respondent No.3, vis-à-vis the Transmission Line Agreement entered into on 28.11.2009 by the Respondent Board with the Respondent No.3 i.e. M/s Jaypee Himachal Cement Project, which provide that cost shall be shared proportionately by the group of Industrial consumers. Further, the Respondent No.3 has also conceded and expressed its intention to settle the issue amicably by sharing cost of the said 132KV D/C Transmission Line, subject to the condition that such cost sharing is based on the expenditure incurred, per details given in letter dated 14.8.2009 (Annexure P-5) and is calculated, after taking into consideration the prorata utilization of the said Transmission Line w.e.f. January, 2010 till April, 2015 when in all probabilities the short term arrangement for utilization of the said line by the Respondent No.3, will come to end. At the time when the load was released in January 2010 to Respondent No.3, the Electricity Act, 2003 and the HPERC (Licensee Duty to Supply Electricity on Request) Regulations, 2004 and the Recovery of Expenditure Regulations, 2005 had come into force. The said regulations authorize the Board to charge, in case of subsequent users of the system, from a person requiring supply of electricity, in pursuance of Section 43, any expenses reasonably incurred on providing electric line or plant used for the purpose of supplying electricity, and also refund on prorata basis with interest @ 8% compounded annually. The Board is enjoined with the obligation to act with fairness and in doing so it is to act within the limit to which an honest man competent to the discharge of his office ought to confine itself. This issue is disposed of accordingly.

Issues 2 and 3:

24. These two issues involving same jurisdictional issues could be considered together. Both the petitioner Company and respondent No.3, being connected for the purpose of receiving electricity with the works of a licensee, i.e. the Respondent Board are the consumers within the meaning of Clause (15) of Section 2 of the Electricity Act, 2003 and the disputes arising between the Board and its consumers should be resolved under the Disputes Resolution Mechanism provided in the Act.

25. 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);** 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 of the Consumers (FRGC) 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 body, the highest State level authority under 2003 Act as well as rule making authority has to exercise such powers and perform 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 provision 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 Consumers 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 saves the rights of the consumers to approach any other forum such as the forums constituted under the Consumer Protection Act, 1986 or other Courts as may be available.

26. 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 virus and bad in law.

27. 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 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. However the Commission has jurisdiction only to issue general directions to prevent harassment to the public at large by its licensees/distributors.

28. Keeping in view the above discussion, it can be safely be concluded that the specific provisions of section 42(5) and 42(6) of the Electricity Act, 2003 provide for Forum for redressal of grievances and further representation to the Electricity Ombudsman. 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(6) of the Act. The Commission, therefore, has no jurisdiction to entertain and dispose of the petition as such consumer disputes fall within the

perview of the Forum set up under section 42(5) and the Ombudsman appointed under section 42(6) of the Act.

29. **The Appellate Tribunal in appeal No. 117 of 2007- the Himachal Pradesh State Electricity Board V/s M/s EMM Tex Synthetics Ltd;** which was decided on 5th Nov., 2007, has set aside the order passed by this Commission stating 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.

Issue No.4:-

30. The High Court of Himachal Pradesh vide its orders dated 2.6.2014, passed in **CMP No. 153/2004; - HPSEB and Ors V/s Mohit Chaudhary; CMP No. 162/2004-HPSEB and Ors V/s Mohit Chaudhary and CMP No. 213/2004 HPSEB and Ors. V/s Rajan Dhawan**, after putting reliance on the verdict of the APEX Court in **Maharashtra Electricity Regulatory Commission V/s Reliance Energy Ltd. & others (2007) SSCC 381 and Civil Appeal No. 2005 of 2011, titled as M/s H.P. State Electricity Board through its Superintending Engineer V/s Gujarat Ambuja Cement Ltd. and others** has ruled that the Commission, who was not authorized to deal with the individual disputes of Consumers, had no jurisdiction or authority to entertain the complaint/petition filed by the individual consumers. Para 3 thereof, reads as under:-

“3 *In Reliance Energy (supra), the apex Court after taking into account various provisions of the Act and Regulations framed thereunder, clarified that sections 42(5) and 42(6) of the Act provides for a complete machinery for redressal of grievances of individual consumers. Hence all individual grievances of consumers have to be raised only before a Forum constituted in terms of said sections. The Court further held that disputes to be adjudicated by the authorities, other than referred to in Section 42 sub section (5) do not include disputes of individual consumers. For redressal of such dispute, jurisdiction of a proper Forum, so constituted under the Act, has to be invoked. This view stands reiterated by the apex Court in M/s Gujarat Ambuja Cements (supra)*”.

31. In view of the various pronouncements of the Hon’ble Supreme Court and the High Court of Himachal Pradesh, cited in the preceding para, to make any deliberation on this issue, will be of no use and will be infructuous exercise.

32. In the result, the petition No. 138/2012 is dismissed on account of the jurisdictional fact, with the liberty to the petitioner Company, to pursue the matter before the appropriate Forum/authority available to it under the law.

33. As a matter of fact, the hearing started on 6th October 2012. The Learned Counsels for all the parties were given opportunity to make their elaborate submissions on several hearings posted on several dates as on 30.10.2012, 1,12,2012, 29.12.2012, 16.3.2013, 23,4,2013, 9.5.2013, 22.6.2013, 20.7.2013, 31.8.2013, 21.9.2013, 19.11.2013, 17.12.2013, 4,3,2014, 3,4,2014, 25,4,2014 and 6.6.2014. Ultimately orders thereon were reserved on 6th June, 2014 with the direction to file their written submissions within two weeks thereafter. The Respondents made their written submissions on 17.6.2014 and 11.7.2014. That is how; it has taken some time for disposal of this petition.

(Subhash C. Negi)
Chairman