

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

Petition No. 168/07

In the matter of:-

Petition under section 23 of the Electricity Act, 2003,
read with regulation 68 of the H.P. Electricity
Regulatory Commission (Conduct of Business)
Regulations, 2005.

(Date of decision 17.11.2007)

M/s Himachal Aquaculture Farms Gagret-
Deoli Road, Distt Una (H.P.) through
its Proprietor Smt. Seema Luthra

.... Petitioner

V/s

- (1) The State of Himachal Pradesh
through Secretary (Animal Husbandry)
Shimla-2
- (2) The Himachal Pradesh State Electricity Board
Vidyut Bhawan, Shimla-4.
- (3) The Assistant Executive Engineer,
Electrical Division, Gagret,
District Unat (H.P.)

.... Respondents

Present:	Counsel for the petitioner	Sh. Naveen Bhardwaj Advocate
	Counsel for the respondents Nos.2 and 3	Sh. Satyen Vaidya Advocate
	Counsel for respondent No. 1	(none)

ORDER

(This petition was last heard on 12.10.2007 and decision thereon was reserved)

Facts of the Case

1. Facts in brief leading to this petition are that with a view to improve and boost the agriculture, horticulture and other agriculture related produce the State Govt. of Himachal Pradesh, from time to time, has been floating many schemes for the benefit of agriculture, and has been providing many facilities including the supply of electricity on subsidised rates, to the producers.

2. The petitioner, considering that the fisheries come under the purview of agriculture and attracted by the schemes of State Govt., planned to establish a Fish Farming Unit at village Deoli at Gagret in Una Distt. The petitioner took the fish farm Deoli (Gagret) on lease from the Department of Fisheries, H.P. for a period of 10 years w.e.f. 23.11.2001 to 22.11.2011 and a lease deed for that purpose was also signed on 28th November, 2001. The petitioner has invested huge amount approximately of Rs. 30 lacs for acquiring land, digging the ponds, acquiring bread of high grade fish and construction of building for the staff and storage of the equipment etc.

3. After completion of the infrastructural work, the petitioner applied on 14.1.2002 to respondent No.3 i.e. the Assistant Executive Engineer, Electrical Sub-Division, Gagret for energy under the Head of Agriculture Pumping for fish farming, and also deposited on 20.3.2002 a sum of Rs. 1050/- as security towards installation of electricity meter. Since the petitioner had applied for electrical connection under the Head Agriculture Pumping the petitioner presumed that the meter had been installed under the same head and the subsidised tariff rates would be applicable thereon. The production in the farm started in May/June, 2002. In the meantime petitioner came to know that the electricity authorities were going to charge the commercial rates for the energy supplied to the farm. The petitioner, therefore, represented to the respondent No.1 i.e. the State Govt. stating that the fishery is a considered component of agriculture and all the benefits and concessions, that are given to agriculture, should also be given to the fisheries and there is no reason that fish farms should be treated as industry and power tariff on commercial rates is levied on it. There is a huge difference between agricultural tariff vis-à-vis commercial tariff on an industrial unit and as such it is not practical to run the fish farming activity in case commercial rates are charged for the supply of electricity. The petitioner, therefore, requested for changing the tariff of energy consumed by the farm from commercial to agricultural pumping rates. When nothing was heard from respondent No.1, the petitioner made repeated representations, on 3.1.2003, 2.8.2003, 7.8.2003, 27.8.2003 and 15.10.2003, addressed to various State Govt. authorities, including the Hon'ble Minister of Animal Husbandry and Hon'ble MPP & Power Minister, but nothing was done by the respondents to redress the grievance of the petitioner.

4. In the meanwhile the petitioner received energy bills dated 25.11.2002, 22.1.2003 & 22.4.2003 whereby billing was made on commercial scale. As the petitioner did not make payment of the bills, the power to the farm was disconnected on 13.2.2003 and recovery notice was also served on it on 7.5.2003 by respondent No.3. The petitioner made repeated representations for rectification in the rates of the energy bills, but the respondent Board continued

sending similar demand notices and nothing was mentioned regarding the fate of representations made by the petitioner.

5. The petitioner had to approach the Hon'ble High Court by filing Writ Petition No. 915 of 2005 claiming amongst other reliefs, that the electricity bills dated 25.11.2002, 22.1.2003, 24.4.2003 & 23.8.2003 be quashed and the respondent Board be directed to revise the bills accordingly by correcting the rates of tariff from commercial to Agricultural Pumping. The Hon'ble High Court vide its order dated 4.4.2007, while disposing of the said Writ Petition, directed that:-

“On an overall examination of the case, we feel that it is the respondent No.4, i.e. the H.P. State Regulatory Commission which can best decide the question raised by the petitioner, since this is the body which fixes the tariff rates for electricity in the State year to year. We, therefore, direct that in case the petitioner approaches the respondent No.4 with its grievance and requests within a period of three weeks from today, the Regulatory Commission shall decide the matter within three months thereafter, after hearing the petitioner as well as the Electricity Board. We want to make it clear that we have not expressed any opinion on the merits of the case.”

Subsequently, the Hon'ble High Court vide its order dated 29th June, 2007 further extended the period of three weeks, allowed to the petitioner to approach this Commission, upto 16th July, 2007.

6. In pursuant to the said direction of the Hon'ble High Court the petitioner moved the petition before this Commission on the 16th July, 2007, impleading the State Govt. as well as the HPSEB and its officers, as respondents. On scrutiny of the same, some deficiencies/ shortcomings were noted and the petitioner was given opportunity to file the revised petition. Accordingly, the petitioner filed the revised petition on the 9th Sept, 2007.

7. In reply to the said petition the respondent No.1, i.e. the State Govt. have admitted that the State Govt. has been formulating schemes for the benefit of agriculture, horticulture and other agriculture related produce and that the petitioner has taken the fish farm Deoli (Gagret) on lease from the Department of Fisheries, H.P., for a period of 10 years w.e.f. 23.11.2001 to 22.11.2011, and a lease deed to that extent was signed on 28th Nov., 2001. It has further been admitted that on the representations received from the petitioner, the matter was taken up by the State Govt. with the HPSEB, asking that agricultural rates on power may be levied in case of Deoli Fish Farm as fisheries is a component of agriculture.

8. The respondents 2 and 3, have vehemently apposed this petition, stating that the petition deserves to be dismissed, as against respondents 2 and 3, on the ground that the petitioner has failed to comply with the order of the Hon'ble High

Court, whereby the petitioner was permitted to approach this Hon'ble Commission on or before 16.7.2007. The petition under reply reflects the date of preparation on 9th Sept., 2007, which implies that the petition was filed on or after the said date. Further the petition on the face of it fails to disclose any enforceable action against the replying respondents 2 and 3. It is urged that the respondent No.2 i.e. the H.P. State Electricity Board is legally bound to charge the consumers strictly in accordance with the relevant schedule of tariff applicable, from time to time, on the basis of categorization of consumers made in the schedule of Tariff. The schedule of tariff prevalent during the disputed period did not allow the Fisheries farm within the purview of agricultural supply and the fisheries farm fell under the purview of small and medium industrial power supply (SMS).

9. The respondents have also alleged that the petitioner has not approached this Commission with clean hands. The petitioner submitted its application for Agriculture Supply on 20.3.2002, alongwith an affidavit to the effect that the pump sets would be used only for irrigation purposes with further understanding that in case the respondent Board finds water being used for purposes other than the irrigation, the charges could be levied on the applicable tariff. On site inspection it was found that the Fisheries Farm, installed by the petitioner, did not conform to the requirements to be eligible for electricity connection under Agriculture purpose tariff. The petitioner was accordingly asked to get the formalities completed and to submit test reports, for relevant load which at the relevant time was assessed as commercial supply tariff. The petitioner on 13.6.2002 applied in writing for sanction of commercial connection and submitted the test reports on 15.6.2002. Accordingly respondent Board released the connection on 15.6.2002 in favour of the petitioner on commercial tariff. Subsequently the said connection was converted to SMS in pursuance of letter 10.2.2003 issued by the Chief Engineer (Comml.), HPSEB, whereby it was clarified that the relevant industrial tariff is applicable to fish farming units in the State. Respondents 2 & 3 have submitted that they are legally bound to follow the schedule of tariff in letter and spirit and were bound to charge the petitioner on the schedule of tariff applicable to SMS since the petitioner did not qualify the criteria for being charged on Agricultural Pumping Supply. The bills were raised on the basis of the SMS tariff and the question of any assurance with respect of making corrections, does not arise at all. When the petitioner failed to pay the said bills, the disconnection was effected, after affording due information and opportunity to pay the current dues. Apart from this the petitioner has drawn far fetched assumptions which have no legal basis, and the petitioner can not claim any benefit of its alleged ignorance about legal provisions.

Points in issue

10. In view of the submissions made by the parties the following questions arise for consideration:-

- (I) Whether the petitioner has failed to file the petition within time allowed by the Hon'ble High Court?
- (II) Whether the petition on the face of it fails to disclose any enforceable action against the respondents No. 2 and 3?
- (III) Whether the petitioner is eligible to any relief?

Discussions and Analysis

Issue No.I Whether the petitioner has failed to file the petition within time allowed by the Hon'ble High Court?

11. The Hon'ble High Court vide its order dated 4.4.2007 passed in CWP No. 915 of 2005, directed the petitioner to approach this Commission with its grievance and requests within a period of 3 weeks and subsequently the Hon'ble High Court vide its order dated 29.6.2007 further extended the said period of three weeks, allowed to the petitioner to approach this Commission, upto 16th July, 2007. The petitioner filed the petition before this Commission on the 16th July, 2007, and there is no delay on the part of the petitioner. On scrutiny of the said petition some deficiencies/shortcomings were noted and the petitioner was given opportunity to file the revised petition. The revised petition has been filed on 9th Sept., 2007 in continuation of the original petition filed on 16th July, 2007. The Commission, therefore, decides this issue in favour of the petitioner.

Issue No.II Whether the petition on the face of it fail to disclose any enforceable action against the respondents No. 2 and 3?

12. The Commission has heard the Learned Counsels for the parties and has examined the respective contentions and has given anxious consideration to the point in issue. The petitioner has drawn far fetched assumptions which have no legal basis. Unless and until the tariff schedule is revised, the representations to various authorities carries no legal validity, and as such the Board and its officers are duty bound to charge the tariff determined by the State Electricity Regulatory Commission at the relevant time under the Electricity Regulatory Act, 1998, or as the case may be under the Electricity Act, 2003. Thus a duty is cast upon the Board and its officers to charge the consumers strictly in accordance with the relevant schedule of tariff applicable from time to time on the basis of categorisation of consumers made in the schedule of tariff. During the disputed period and even now the Fisheries Farms do not fall within the purview of Agriculture Pumping Supply; and these come under the purview of Small and

Medium Power Supply (SMS). The distribution licensee i.e. the respondent Board has the right to raise the energy bills on the SMS tariff; and on non-payment of bills has a right to disconnect the premises. The Commission, therefore, finds no reason to hold the action of the respondents 2 & 3, in no way wrong, arbitrary or against the provision of law or principles of natural justice. Hence no direction to quash /revise/correct the bills raised by the Board and to reconnect the petitioner's Farm can be issued. This issue is decided against the petitioner.

Issue No.III Whether the petitioner is eligible to any relief?

13. In CWP No. 915/2005, before the Hon'ble High Court, the main contention of the petitioner was that the activity of fish farming is akin to agriculture and thus it should be treated as an agricultural activity and the tariff to be charged from him should be according to schedule for Agricultural Pumping Supply. The Hon'ble High Court while disposing of the said petition have stated that they are not very clear whether the activity of filling up the fish ponds would fall within the ambit of term "irrigation" as mentioned in the schedule. The Hon'ble High Court has left to be decided by this Commission, as it is involved in the process of Tariff determination.

14. While going through various documents furnished by the petitioner and submissions made by respondent No.1, i.e. State Govt., it is concluded that the petitioner, attracted by the schemes of the State Govt. to boost the agricultural and allied produce, planned to establish a Fish Farming Unit at village Deoli at Gagret in Una Distt, and took the Fish Farm on lease from the Department of Fisheries, H.P. for a period of 10 years w.e.f. 23.11.2002 to 22.11.2011, reserving rent of Rs.60, 000/- payable in one month in advance annually, with 10% increase in lease money every year. The lease out farm was not to be utilized for any other purpose except the propagation of fisheries activities. The petitioner's Detailed Project Report, also envisaged the provision for electricity supply at the Agricultural Farming Rates.

15. The Himachal Aquaculture Farm was to carry out the farming operations, with technical support from the Department of Fisheries, G.O.H.P. and the Indian Council of Agriculture Research and MA Aquities, a private Consultant from A.P. The relevant extracts from the said DPR read as under:-

“Para 7(i) Bore Well and Pump set

It is proposed to make one well about 100 ft. deep to meet the water requirements. It is purposed to install 5 hp submersible pump. An estimated cost of Rs. 2.00 lacs is provided for this item.

Para 7(j) Farm Electrification.

An agriculture connection of three phase shall be installed near the open well for pumping water into the ponds to maintain optimum water level.

Another domestic connection shall be installed at the staff quarters for domestic lighting and outside lights. A provision of 1.50 lacs is made for the purpose.

Para 8(f) Cost of Power.

The farm will have an agricultural meter with a connected load of about 11 KW, which will be utilized for pumping water into the ponds by 5 hp submersible pump sets. A separate domestic meter shall be installed for staff quarters and farm lighting etc.

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xxx”

16. It is also on record that the affidavit filed, by the petitioner on 20.3.2002, supporting his application for electricity, stated that the pump sets would be used only for irrigation purposes, with further understanding that in case the respondent finds water being used for purposes other than the irrigation, the charges would be levied on the applicable tariff. These facts disclose that the petitioner entertained legitimate belief that the Fish Farm, is chargeable to the same tariff as is applicable for Agriculture Pumping Supply; and had been representing to various State Govt. authorities, including the Hon’ble Minister for Agriculture and Hon’ble Minister for MPP, to charge the tariff chargeable for Agriculture pumping instead of commercial SMS tariff. The State Govt. in its reply have admitted that by charging electric tariff to fish farm at par with Agriculture tariff, the fish farming in the State is likely to be boosted.

17. The claim of the petitioner relates to the disputed period falling within 15.6.2002 to 22.4.2003, and has been raised at the belated stage, after the expiry of more than 4 years. It is not possible and open in law to revise the tariff schedule retrospectively at such a belated stage. However, the respondent Board may incorporate the proposal to include Fish Farming in the Agricultural Pumping Supply in future tariff proposals.

Conclusion:

18. In the result as the Commission do not find any weighty reason for revision of the tariff, retrospectively, at the belated stage of 4 to 5 years, the petition preferred by M/s Himachal Aquaculture Farms, is hereby dismissed.

Announced in open Court.

File be consigned to record room.

(Yogesh Khanna)
Chairman