BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA

In the matter of:-

M/s Karan Synthetic Pvt. Ltd.
(now known as Unit No.5 of Veer Plastic Ltd.)
Located at Village Gole Jamala, Tehsil Nalagarh,
Distt. Solan (HP) **……Petitioner**

Versus

1. The HP State Electricity Board Ltd.
through its Executive Director(Personnel)
Kumar House, Shimla-171004

2. The Asstt. Executive Engineer,
Electrical Sub-Division-II, HPSEBL
Nalagarh (HP) **…...Respondents**

Petition No. 30 of 2018

(Decided on **11th Sept., 2018)**

CORAM:

S.K.B.S NEGI
CHAIRMAN

BHANU PRATAP SINGH
MEMBER

Counsel:-

for petitioner:	Sh. P.C. Dewan, Advocate
for respondent No.-1and 2	Sh. Surinder Saklani Standing Counsel a/w Sh. Kamlesh Saklani (Authorized Representative)

ORDER

(Last heard on the 1st Sept., 2018 and Orders reserved)

M/s Karan Polypac Pvt. Ltd(now known as Unit No. 5 of Veer Plastic Ltd.) Village Gole Jamala Nalagarh, Distt. Solan (HP) through its authorised signatory Sh. Shiv Takiar S/o Late Sh. Gurmeet Kumar Takiar R/o F-5 Uniroyal Apartments Khera, Nalagarh (hereinafter referred as “the petitioner”), has moved this petition under sections 142 and 146 of the Electricity Act, 2003 (hereinafter referred as “the Act”) for taking suitable action against the Himachal Pradesh State Electricity Board Ltd., Kumar House, Shimla (hereinafter referred as “the Respondent Board”) and its Asstt. Executive Engineer HPSEBL at Nalagarh (hereinafter referred as “Respondent No.2”), for not

complying the provisions of the Act and the Regulations framed thereunder and also causing harassment to the petitioner by raising illegal/unjustified demand referring to the Commission's clarification dated 02.05.2011 which has already been quashed by the **Hon'ble Appellate Tribunal for Electricity at New Delhi, vide its judgment dated 18th December, 2015, delivered in Appeal Nos. 188,189,190,191,192, 194 & 195 of 2014- M/s Hi-Tech Industries Trilokpur Road, Kala Amb, Distt. Sirmour (HP) and others V/s Himachal Pradesh Electricity Regulatory Commission & others.**

2. Brief facts of the case are that the petitioner submits that it applied for the electric connection for its industrial Unit (Unit No.5) proposed to be set up at Village Gole Jamala, Nalagarh, Distt. Solan, (HP) in the year 2005 for being released at 11 kV from 33 kV Nalagarh Sub-station created by the petitioner (presently known as Unit No. 4 of Veer Plastic Ltd.) for receiving supply at 33 kV transmission system. Per statement of the petitioner an estimate of **Rs. 95,57,340/-** was prepared by the officers of the Respondent Board and the same was deposited by the petitioner and 33 kV line from Nalagarh to the premises of the petitioner was laid by the petitioner and the connection was released in Dec., 2007. In the year 2014, after 7 years, purported to be a notice was issued by the Additional Superintending Engineer, Electrical Division, HSPEBL, Nalagarh to the petitioner and demand of Rs.39,20,800/- was raised, purported to be in furtherance of the Clarificatory Order dated 02.05.2011 issued by the Commission, for recovery of pro-rate cost of power system already created besides the power system to be created for the Consumers. This demand was challenged by the petitioner in the Hon'ble High Court and some other Consumers, to whom similar notices were issued, approached the Hon'ble APTEL questioning the impugned clarification dated 02.05.2011 and the notices. The notices and the clarification issued by this Commission were quashed and the case was remanded by the Hon'ble APTEL to the Commission. The Commission re-examined the issue and gave the clarification in this regard on 05.10.2016, devising the mechanism for adjustment of advance cost share towards Infrastructure Development Charges, which is not the direction to the Discom to raise the demands from the consumers. Thereafter, again on 10.04.2017, a demand notice was issued by the aforesaid Additional Superintending Engineer against the petitioner. The petitioner requested the notice serving officer to withdraw the notice but the Respondent No. 2 i.e. Assistant Executive Engineer, Electrical Sub-Division No.II, HPSEBL, Nalagarh again referred the clarification dated 02.05.2011. According to the petitioner after the application of the petitioner, as required under the Recovery of Expenditure Regulations then in force and the connection of the petitioner was granted at 11 kV from

Nalagarh Sub-station created by the petitioner (presently known as Unit No.4 of Veer Plastic Ltd; for receiving supply at 33 kV transmission system, no estimate was prepared for installation of transformer at Nalagarh and there was no relevance of installation of 66 kV transformers at Nalagarh to the connection of the petitioner. The clarification dated 02.05.2011 has already been quashed by the Hon'ble APTEL and hence again making the said clarification basis for exacting unjustified amount is nothing short of malpractice of the respondents, who are the only power connection provider in the State. There is no instruction/regulation statutory provision to transfer any such amount to the electricity bill. The common expenditure has been passed through the ARR, which has already been recovered as per the tariff Regulation of 2004. The respondents have not rendered the account of Rs. 3,54,200/- deposited by the petitioner. The said amount is refundable along with 8% compound interest. The petitioner has now filed this petition seeking directions to the respondent Board to follow the provisions of the Act and Regulations framed thereunder and to withdraw the notice issued and also to restrain the respondents from transferring the notice amount to the bill of the petitioner. As the Commission vide its order dated 05.10.2016 in Suo-Motu petition No. 25 of 2016 has only devised the mechanism for adjustment of advance cost share towards Infrastructure Development Charges, which is not a direction to the Discom to raise the demands from the consumers, the petitioner has prayed to conduct an inquiry or call for detailed investigation under Section 128 of the Act, as to why the Consumers are repeatedly made to suffer mental torture and agony for no offence and to take the action against the respondent Board under sections 142 and 146 of the Act for not working as per Rules and Regulations made under the Act.

3. It would be pertinent to mention here that the provisions of section 142 are specific in empowering the Regulatory Commission to impose 'penalty', for non-compliance of the directions or for the contravention of provisions of the Act, regulations, Orders and directions issued thereunder, which may not exceed one lakh rupees for each contravention and in the case of continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after the first contravention of the first such order or direction. Section 146 is in fact a power with the Court to impose fine, which may extend to one lakh rupees, or imprisonment for three months or with both in respect of each offence, for non-compliance of order or direction given under the Act.

The Hon'ble APTEL vide its judgment rendered in **Appeal No. 183 of 2010-BSES Rajdhani Power Ltd. V/s Delhi Electricity Regulatory Commission and**

another- 2011 ELR (APTEL) 0839, had an occasion to lay down the procedure to be followed in the penalty proceedings under section 142 of the Electricity Act, 2003, wherein it is made clear that the Commission is not to act mechanically, but has first to find out the prima facie satisfaction and then to issue show cause notice to the person concerned, who has to file reply and, thereafter, the Commission has to frame the charges and to give further opportunity to the person concerned to place materials to disprove the charges and then to decide the case on the basis of the evidence available on record. In such matters no conclusion can be drawn merely on the basis of affidavit or on a petition.

4. In response to the petition the Respondent No. 2, submits that-

(a) the petition is not maintainable, as the petitioner has not exhausted all the remedies available to it under the law. The dispute, as raised in the petition is between the Licensee and a Consumer for which the Electricity Act, 2003, stipulates the adjudicatory body in the form of the Consumer Grievances Redressal Forum established under section 142 of the said Act;

(b) the petitioner has not come up with clean hands and has suppressed the material facts from this Commission and the impugned notices dated 14.07.2014 and 10.04.2017 given by the Respondent No. 2 are as per the HPERC Order;

(c) in the instant case load was sanctioned at 11 kV supply voltage to which sub-metering is done from 33 kV connection of M/s Karan Polypack fed from 66/33/11 kV Nalagarh Sub-station and it was clearly mentioned in the Power Availability Certificate and the Load Sanction Order that the power shall only be released after augmentation and upgradation of 66 kV System and on payment of cost Sharing amount on account of recovery of expenditure for supply of electricity as per regulations. The Consumer did submit undertaking, attested from Class –I Magistrate, before the release of connection to the extent that he will pay the IDC charges as per the decision of the APTEL as and when decided and demanded by the Respondent Board. The connection was released on 10.12.2007 on 11 kV supply voltage and the demand notice amounting to Rs.39,20,800/- is strictly as per regulation 5(1)(b) of the HPERC Recovery of Expenditure Regulations and an expenditure of Rs.14,60,36,941/- has been incurred for augmentation of 66/33 kV, 2x20 MVA transformer at Nalagarh. The demand notice has been given on actual expenditure basis. Cost data is used for estimation purpose under the regulations in force and refund claim is unjustified;

(d) in order to discharge its Universal Obligations to supply electricity on the request to the Consumer, as envisaged under section 43 of the Act, the licensee has to build up the entire electricity infrastructure at its own cost. Moreover, the licensee is responsible for ensuring that its system is

upgraded, extended and strengthened to meet the demand for electricity in its area of supply. Per provisions of the section 45(5) of the Act, the licensee is to recover the charges fixed in accordance with the provisions of the Act, and the Regulations framed thereunder.

5. The petitioner, in rebuttal, has filed the rejoinder to the response of the Respondent No.2, stating that the issues raised in the petition are not billing disputes between the licensee and the Consumer; rather it is a report/complaint about non-compliance of the provisions of the Act, Rules and Regulations by the respondents and raising a fake demand repeatedly causing mental harassment to the petitioner and driving him to avoidable litigation. Non-compliance of rules by the licensee attracts detailed inquiry as per section 128 of the Act. The petitioner further reiterates that it is not mentioned in the PAC or any other letter that capacity at Nalagarh sub-station was inadequate to supply power to the petitioner. The time line mentioned was just to indicate that some other larger project was being constructed and only after that the connection would be granted i.e. to say the power will be made available after commissioning of 33/11 kV sub-stations owned by M/s Karan Synthetic (1) Pvt. Ltd. Further per clarificatory Order on 315/2005 the works at upstream substation shall not be charged from the applicant Consumer. For the petitioner herein 33 kV Nalagarh Sub-station is upstream of the feeding sub-station. There is no explanation for the initial delay of 6-7 years in issuing the notice. The only plausible reason appears to be the waiting for the clarification dated 02.05.2011 which enabled the HPSEBL to recover prorate cost of power system already created or to be created. This clarification has already been quashed on 18.12.2015 by the Hon'ble APTEL and the subsequent clarification of 2016 does not provide for the same. So the instant notice is legally untenable. No regulation allows recovery of power system planned and created in the interest of power system improvement/augmentation before the receipt of application for connection.

6. During the hearing of this review petition Sh. P.C. Dewan the Learned Advocate, appearing for the petitioner reiterated the views already expressed in the petition and the rejoinder to the response of the Respondent No.2 as set out in the forgoing para 5 of this Order. He further raised additional issues involving the facts on which disputed demands were raised and also regarding justification of the recovery of expenditure on the usual practice of adding capacity at 33 kV and 11 kV under short term measure and medium term arrangement was provided by Loans/REC Loan, which have already been passed through in the ARR and for inclusion of the cost sharing, as existed under the repealed Indian Electricity Act, 2010. Such facts are to be looked into by the Forum of Redressal

of Grievances of Consumers set up under the Act and cannot be the matter of inquiry/investigation for initiating penal action under section 142 of the Act.

7. The Commission is of the view that there is no provision in the Act which gives the Commission jurisdiction to settle such disputes and in relation to the relief, other than that under Section 142 of the Electricity Act, 2003, sought by the petitioner. Such relief does not fall within the jurisdiction of this Commission and as the matter mainly relates to the redressal of the grievances of the individual Consumer for raising the demands it would fall under the jurisdiction of the Forum for Redressal of Grievances of Consumers set up under section 142 of the Act.

8. Despite the aforesaid provision the present petition has been moved under the garb of securing compliance of the Regulations and also for invoking the penal provisions under section 142 of the Act against the respondent Board and its officers. The ultimate aim of the petition seems to seek the intervention of this Commission for re-opening the issues and seeking directions of this Commission to the respondent Board to rework the charges claimed from the Industrial Consumers. The Commission has already stated in clear terms that the charges are to be worked out, and bills are to be raised, by the Distribution Licensee in conformity with the Regulations. The disputes, especially the billing disputes, between the Licensee and Consumers are to be adjudicated by an adjudicatory body stipulated in the Act i.e. the Forum of Consumers Grievances Redressal i.e. the Forum set up, and the Ombudsman appointed, under Section 42 of the Act, unless the complainants succeed to establish any contravention of the provisions of the Act, Regulations and directions of the Commission and the extent to which any person is likely to sustain loss or damage due to such contravention. In the present case the petitioner has not been able to clearly set out these pre conditions to invoke the provisions of either Section 142 or of Section 129 of the Act for securing compliance of the provisions of the Regulations.

9. In the light of above discussion the Commission, therefore, declines to entertain the said petition with the direction that, if the petitioner still feel aggrieved by the action of the respondent Board, the petitioner would be at liberty to approach the appropriate Forum set up for the resolution of such disputes.

This petition is disposed of accordingly.

(BHANU PRATAP SINGH)
MEMBER

(S.K.B.S. NEGI)
CHAIRMAN