

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

Miscellaneous Application No: 172 of 2024

Date of Institution: **20.05.2024**

Heard on: 22.11.2024

Decided on: 26.12.2024

M/s Prime Steel Industries Pvt. Ltd. through its
Chief Executive Officer,
R/o Semi Industrial Plot No. 27,
Anaj Mandi Dirba (Sangruri),
Punjab-148035.

.....Applicant

Versus

The HP State Electricity Board Limited, through its
Chief Engineer (Commercial),
Vidyut Bhawan,
Shimla, H.P. 171004.

.....Respondent

**Application for clarifying/ reviewing/ modifying the Clause 13(f) of
the Tariff Order for FY 2021-22 dated 31.05.2021.**

CORAM

**DEVENDRA KUMAR SHARMA
CHAIRMAN**

**YASHWANT SINGH CHOGAL
MEMBER (Law)**

Present:-

Sh. Shrawan Dogra, Ld. Sr. Advocate duly assisted by Sh.
Manik Sethi. Ld. Advocate for the Petitioner.

Sh. Kamlesh Saklani, Authorised Representative for the
Respondent.

ORDER

The present application has been filed for clarifying Clause 13(f)
of Schedule – Large Industrial Power Supply (LIPS) of the Tariff order
for FY 2021-22 dated 31.05.2021.

2. It is averred that the Applicant is a consumer of the Himachal Pradesh State Electricity Board Limited (Respondent/ HPSEBL for short) and has set up an industry which came into production on 31.12.2019 and falls under the category of LIPS.

3. It is averred that the Commission while determining the tariff for FY 2019-20 vide order dated 29.06.2019, made a solemn commitment in Note (C) of para 3 of the Schedule – LIPS that the new industries coming into the production after 01.07.2019 will be entitled to 15% lower energy charges than the approved energy charges and the Applicant on the basis of said commitment has set up the industry.

4. It is averred that the Applicant on setting up the industry which came into production on 31.12.2019 became eligible for the benefit of 15% lower energy charges on the approved energy charges for three years in terms of Clause (3) of the Note of the Schedule – LIPS which was accordingly disbursed. However, while determining the tariff for FY 2021-22 vide order dated 31.05.2021, the Clause (3) of Note of the Schedule – LIPS of the tariff order dated 26.09.2019 has been qualified by Clause (f) of Schedule – LIPS that the rebate on energy charges on new industries shall be subject to the period of consumption during normal and peak hours.

5. According to the Applicant, it approached the Hon'ble High Court by filing CWP No. 1602/2022 challenging Clause 13 (f) of Schedule – LIPS of tariff order dated 31.05.2021 for FY 2021-22 but the Hon'ble High Court vide Order dated 03.05.2024 after hearing the parties, directed that the grounds be raised before the Commission. Accordingly, the Writ Petition was allowed to be withdrawn with liberty to approach the Commission vide Order dated 03.05.2024 (Annexure A-3). Hence, the present application has been filed.

6. According to the Petitioner, the insertion of Clause 13 (f) in the Schedule – LIPS in the tariff order dated 31.05.2021 for FY 2021-22 and consequential action of curtailing the rebate of 15% on the approved energy charges for the period of three years in terms of Clause (3) of Note in para 3 of Schedule – LIPS in the tariff order dated 29.06.2019 is illegal and arbitrary as the Applicant has been made entitled to the rebate of 15% over the energy charges for a period of three years and withdrawal of the same prematurely has affected the settled right of the Applicant. It is averred that the said Clause inserted in tariff order dated 29.06.2019 was an allurements for setting up new industries and benefit thereof was given to the Applicant but withdrawal thereof prematurely is hit by the doctrine of promissory estoppel.

7. According to the Applicant, Section 64 (6) of the Electricity Act, 2003 provides that the tariff order shall continue to be in force unless amended or revoked but without amending or revoking the tariff order, the same has been tinkered with which is impermissible under the law. Further, it is a settled principle of law that if a thing is required to be done in a particular manner, the same needs to be done in that manner and in no other manner.

8. Further, the amendment or clarification unless exclusively made retrospectively cannot be applied retrospectively and will always be prospective but the tariff order dated 31.05.2021 has been made applicable over the rights of the consumers retrospectively.

REPLY OF THE RESPONDENT

9. The application has been resisted by the Respondent by way of filing reply that the Petition filed by the Applicant is not maintainable in the eyes of law since no legal or vested rights of the petitioner have been violated or infringed by the replying respondents in any way or in any manner. It is submitted that replying respondent being deemed 'distribution licensee' under the Electricity Act, 2003, is a regulated entity governed by the Regulations framed by the Commission. It is submitted that the Commission exercises the powers vested under the Electricity Act, 2003 and under Section 62 of the Act, it is one of the

statutory duties of the Commission to determine the tariff for retail sale of electricity in accordance with the provisions of the Act. Sub-section (3) of the section 62 of the Act has been reproduced as under:

"The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required."

10. Further, the Commission in exercise of the powers under Section 181 of the Electricity Act, 2003 has framed Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2011. Further, the Commission has also notified the Himachal Pradesh Electricity Regulatory Commission (Format for Multi Year Tariff Filings by the Distribution Licensee) Order, 2011 wherein, multi-year tariff pattern has been adopted. It is provided under Section 61(f) of the Act that while determining the tariff, the Commission shall be guided by the multi-year tariff principles. Pursuant to above provisions, the Commission had issued the Multi-Year Tariff Order dated 29.06.2019 for 4th Control Period for FY 2019-2024. The Commission has also issued retail supply tariff order for FY 2021-22 applicable w.e.f.

01.06.2021 on 31.05.2021 by exercising the quasi-legislative powers vested under the Act.

11. It is averred that Clause 13 (f) of the Schedule of Tariff for LIPS of tariff order dated 31.05.2021 for FY 2021-22 contains rebate for new and expansion industries as under:

- a) For new industries which have come into production between 01.04.2018 to 30-06-2019, the energy charges shall be 10% lower than the approved energy charges for the respective category for a period of three years.
- b) For new industries which have come into production between 01.07.2019 to 31.05.2020, the energy charges shall be 15% lower than the approved energy charges for the respective category for a period of 3 years.
- c) For new industries which have come into production between 01.06.2020 to 31.05.2021, the energy charges shall be 10% lower than the approved energy charges for the respective category for a period of
- d) For new industries coming into production on or after 01.06.2021, energy charges shall be 15% lower than the approved energy charges for the respective category for a period of 3 years.
- e) For existing industries which have undergone expansion during 01.04.2018 to 30.06.2019 and/or during 01.06.2020 to 31.05.2021 energy charges shall be 10% lower than the approved energy charges corresponding to the respective category for a period of three years for quantum of energy consumption corresponding to proportionate increase in contract demand.

Provided that such expansion if undertaken during 01.07.2019 to 31.05.2020 and/or shall be undergoing expansion on or after 01.06.2021, the energy charges shall be 15% lower than the approved energy charges for the respective category for

a period of 3 years for quantum of energy consumption corresponding to proportionate increase in contract demand.

- f) It is clarified that the above-mentioned rebate on energy charges shall be applicable during normal and peak hours. In case of night hours, night time concession shall only apply.
- g) In case of units registered under HP Industrial Policy 2019, but not falling under the respective category of small, medium, large industrial power supply as notified by the commission, the rebate on the energy charges (as per the relevant tariff category) shall be applicable for new units as well as for existing units which have undergone expansion similar to the applicability of rebate on industrial power supply.

12. Further submitted that as per tariff order dated 31.05.2021 issued by the Commission, the rebate on energy charges shall be applicable to industrial consumers on normal and peak hour consumption only and during the night hour consumption only Night Time Concession shall be applicable. The rationale behind this approach of Commission is that Night Time Concession is already being given to industrial consumers as per provisions under "Part-I General Conditions of Tariff' at the following rates:

- 110 paise/kVAh for consumption during night hours for the month of June, July and August 2021;
- 70 Paise/ kVAh for other months.

Hence, the substantial rebate has already been extended to the industrial consumers in the shape of Night Time Concession in the tariff order and thus, the Commission has not allowed any additional rebate or concession to industrial consumers during night hour

consumption. The rebate during night time is like giving the double premium. As submitted in the above paras, the replying respondent is bound to act upon the directions issued by this Commission in the tariff order. It is worthwhile to mention here that the rebate on energy charges being provided to industrial consumers is not a grant or subsidy from GoHP and the financial burden on account of this rebate to industrial consumers has to be borne by other categories of consumers, which includes Domestic, Non-Domestic and Non-Commercial, Commercial, Agriculture, Irrigation and Drinking Water, Bulk Supply, Street Light Supply, Temporary Metered Supply and other industrial consumers etc. Thus, the burden on account of rebate to these industrial consumers is being borne by other consumers of the State and giving additional rebates on night hours consumption shall further burden the other consumers of the State and the Petition is misuse of the process of law and liable to be dismissed.

13. On merits, it is denied that Petitioner has set-up the industry on dated 31.12.2019, whereas the Petitioner had purchased the assets of its predecessor i.e. M/s Sri Rama Steel Industries Pvt. Ltd through the auction purchase from the Himachal Pradesh Financial Corporation (HPFC) on 07-03-2019,

14. The relevant provision of the schedule of Tariff order as provided in tariff order dated 26.06.2019 has been reproduced as under:

- a) For existing industrial consumers, a rebate of 15% on energy charges shall be applicable for additional power consumption beyond the level of FY 2018-19.
- b) For new Industries which have come into production between 1.04.2018 to 30.06.2019, the energy charges shall be 10% lower than the approved energy charges for the respective category for a period of 3 years.
- c) For new industries coming into production after 01.07.2019 the energy charges shall be 15% lower than the approved energy charges for the respective category for a period of 3 years.
- d) In case of sick unit or permanently disconnected units, industrial consumer can avail pre-paid meter with a load upto 20 kW for the purpose of lighting, surveillance and security.

15. It is denied that the Petitioner had decided to invest in the State on solemn commitment given in the tariff order. Rather, the Petitioner had purchased the assets of its predecessor i.e. M/s Sri Rama Steel Industries Pvt. Ltd through the auction purchase from the Himachal Pradesh Financial Corporation (HPFC) on 07-03-2019.

16. It is averred that the Commission has issued the Tariff order in accordance with the provision of Sub-section (3) of the section 62 of the Electricity Act, 2003. It is denied that the insertion of the clause 13 (f) in the Tariff order dated 31.05.2021 has not curtailed the benefit of 15% lower energy charges on the approved energy charges for the

period of three years in terms of Clause (3) of Note to the Tariff Schedule of Tariff Order for FY 2019-2020 dated 29.06.2019.

17. It is submitted that the tariff is being determined by the Commission on year to year basis on the ARR approved. The Tariff order of FY2019-20 cannot be implemented for the tariff of succeeding years but the rebate as allowed for a period of 3 years can be implemented on the tariff and its provisions of respective year. It is denied that the Tariff Order shall continue to be in force for the period determined unless the same is amended or revoked.

18. It is averred that the Commission has clearly specified under clause (c) Part-I General Conditions of Tariff that "This tariff automatically supersedes the existing tariff w.e.f. 1st June, 2021 that was in force with effect from 1st June 2020 except in such cases where 'Special Agreements' have otherwise been entered into for a fixed period, by HPSEBL with its consumers. Street Lighting Agreements shall, however, not be considered as 'Special Agreements' for this purpose and revised tariff as per schedule 'SLS' of this Schedule of Tariff shall be applicable".

19. It is averred that the incentives of the concessional rate of electricity charges would be notified in the Schedule of Tariff for Himachal Pradesh on year to year basis by the HP State Electricity

Regulatory Commission. The Tariff order in question was issued by the State Commission by exercising the quasi-legislative powers vested in it under section 62 of the Electricity Act, 2003 and Replying Respondent being a regulated entity is bound to implement the same in letter and spirit. It is averred that the grounds made out in the petition are akin to the grounds of the appeal, which is provided under section 111 of the Electricity Act, 2003. It is submitted that tariff order is appealable order under section 111 of the Electricity Act, 2003, thus the petition is not maintainable in the eyes of law.

20. In rejoinder, the contents of the reply have been denied and those of the Application have been re-affirmed.

21. We have heard Sh. Shrawan Dogra, Ld. Senior Advocate duly assisted by Sh. Manik Sethi, Advocate for the Petitioner and Sh. Kamlesh Saklani, Authorised Representative for the Respondent and have perused the entire record carefully.

22. Sh. Shrawan Dogra, Ld. Senior Advocate duly assisted by Sh. Manik Sethi, Ld. Advocate has submitted that the rebate of 15% on energy charges granted in the Tariff Order FY 2019-20 at Note (C) of Para 3 of the schedule for a period of three years for new industries coming into production after 01.07.2019 has been curtailed prematurely and abruptly by the tariff order for the year 2021-22 dated

31.05.2021 without any amendment in the tariff order for FY 2019-20 which is impermissible under the law. It is also submitted that Section 64(c) of the Electricity Act, 2003 clearly provides that the tariff order unless amended or revoked shall continue to be enforce for the period specified in the tariff order. According to him, the Respondent in view of the tariff order dated 31.05.2021 has denied the benefit of Clause (C) of Note of Para 3 of Tariff Schedule – LIPS which has resulted in huge loss to the Petitioner. Sh. Dogra has relied upon the law laid down in (2023) 4 Supreme Court cases 788 BSES Rajdhani Power Limited versus Delhi Electricity Regulatory Commission and BSES Yamuna Power Limited versus Delhi Electricity Regulatory Commission and another in support of his contention.

23. Sh. Kamlesh Saklani, Authorized Representative on the other hand has submitted that the night time concession is already available to the industries and therefore, no prejudice has occurred to the Petitioner with the clarification that the rebate on energy charges shall be applicable during normal and peak hours as in the night hours, the night concession has already been provided to the industries and the clarification was necessary as the industries were availing double benefits.

24. In order to appreciate the controversy in the matter, it is relevant to reproduce Clause (C) of Note of Para 3 of the Tariff Schedule – Large Industrial Power Supply (LIPS) vide which it was provided that the new industries coming into production after 01.07.2019, the energy charges shall be 15% lower than the approved energy charges for the respective category for a period of 3 years. The said Clause is being reproduced as under:-

“For new industries coming into production after 01.07.2019 the energy charges shall be 15% lower than the approved energy charges for the respective category for a period of 3 years.”

25. It is therefore, evident that the industries coming into production after 01.07.2019 were made entitled to the rebate of 15% in the energy charges than the approved energy charges for the respective category for a period 3 years. This rebate was, therefore, available w.e.f. 01.07.2019 to 30.06.2022.

26. The Commission while determining the tariff for the FY 2022-23 vide order dated 31.05.2021 also made rebates for new and expansion industries in Para 13 of the Tariff Schedule – Large Industrial Power Supply(LIPS). However, in Clause (f) of para 13, a clarification was issued that the rebates mentioned in para 13 (a) to (e) shall be applicable during normal and peak hours and in case of night hours,

night time concession shall only apply. Clause (f) of para 13 of tariff Schedule of Tariff Order dated 31.05.2021 is reproduced as under:

“it is clarified that above-mentioned rebate on energy charges shall be applicable during normal and peak hours. In case of night hours, night time concession shall only apply.”

27. It is therefore, apparent from the aforesaid clarification that the rebate on energy charges was restricted to normal and peak hours whereas for night hours, night time concession shall only apply. In fact, para 9 of the above Schedule provides for night time concession and the Commission while appending clause (f) to para 13 was of the view that the rebate shall only be availed during normal and peak hours as the rebate was already available in respect of night time concession.

28. Now the question arises whether clause 13(f) of the Tariff Schedule – LIPS of tariff order dated 31.05.2021 for the FY 2022-23 takes away the rebate/ concession of 15% allowed vide Clause (C) of Note to Tariff Schedule – LIPS in tariff order dated 29.06.2019. The plain answer is in negative for the reason that the aforesaid rebate vide tariff order dated 29.06.2019 had been provided for promoting the new and expansion industries coming into production w.e.f. 01.07.2019 which was for a specific period of 03 years.

29. It is the case of the Applicant that on the aforesaid concession provided by the Commission in the tariff order, the Applicant had setup the industry which came into production on 31.12.2019 and had

become eligible for the benefit of 15% lower energy charges for a period of three years which was being disbursed to the Applicant but by the aforesaid clause 13 (f) in the tariff schedule in the tariff order for the FY 2021-22 providing the rebate only during normal and peak hour, the HPSEBL has curtailed the benefit of 15% lower energy charges in respect of the Applicant which is illegal and arbitrary.

30. The Respondent/ HPSEBL in its detailed and exhaustive reply has submitted that the substantial rebate has already been granted to the industrial consumers in the shape of night time concession, thus the rebate as per the tariff order dated 29.06.2019 was likely to give double premium to the Applicant, as such, the Respondent has rightly acted upon Clause (13(f)) of the Tariff Schedule of tariff order dated 31.05.2021 and no prejudice has been caused to the Petitioner. It is also the contention of the Respondent that the Applicant has purchased the assets of its predecessor that i.e. M/s Sri Rama Steel Industries Pvt. Ltd. on 07.03.2019 and has not setup the new industry whereas the tariff order has been issued on 31.05.2021 and thus, the Applicant has not acted upon the solemn commitment and decided to invest in the State as projected. This contention of the Respondent is without any basis as there is no denial of the averments that the benefits of Clause (C) of the Note of Tariff Schedule – LIPS as per

tariff order dated 29.06.2019 had been extended to the Petitioner. Similarly, the night time concession was also available during the determination of tariff vide order dated 29.06.2019, as such, question of double premium is of no consequence.

31. Once the Applicant has availed the rebate of 15% on the energy charges than the approved energy charges as per tariff order dated 29.06.2019, certainly the same cannot be curtailed prematurely and shall continue till 30.06.2022 and the Applicant shall continue enjoying the same till 30.06.2022. This rebate being availed by the Applicant is not affected by Clause 13(f) of the Tariff Schedule – LIPS of the tariff order dated 31.05.2021.

32. The Commission has not amended the tariff order dated 19.06.2019 in any manner. Thus, applicability of Section 64(6) is not attracted in the facts and circumstances of the case. Similarly, the law laid down in (2023) 4 Supreme Court Cases 788 BSES Rajdhani Power Limited versus Delhi Electricity Regulatory Commission and Another has no application to the facts and circumstance of the case.

33. In view of the above, the application succeeds and allowed. It is clarified that the rebate/concession of 15% being provided to the Applicant for setting up new industry which came into production on 31.12.2019 than the approved energy charges shall continue to be

availed by the Applicant till 30.06.2022 and was illegally and arbitrarily curtailed by the Respondent pursuant to Clause (f) of the Tariff Schedule of Tariff order dated 31.05.2021.

34. It is important to mention that in this case, the Applicant had promptly challenged the action of the Commission by filing a Writ Petition No. 1602 of 2022 in the Hon'ble High Court which has been withdrawn vide order dated 03.05.2024. The Hon'ble High Court in order dated 03.05.2024 has directed the Commission to pass a speaking order. Therefore, this order shall not be quoted as precedent for those industries which have not approached the Commission or the Hon'ble APTEL and the Hon'ble High Court in time.

The Application disposed off accordingly.

The file after needful be consigned to records.

Announced
26.12.2024

-Sd-
(Yashwant Singh Chogal)
Member (Law)

-Sd-
(Devendra Kumar Sharma)
Chairman