BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA

Appeal No. 92/07

In the matter of: -

The H.P. State Electricity Board
Vidyut Bhawan, Shimla-4. …Appellants

V/s

M/S Gujrat Ambuja Cements Ltd;
P.O. Darlaghat, Tehsil Arki, Distt. Solan (H.P)
…Respondents

Present for Appellants: Sh.Bimal Gupta, Advocate
For Respondents: Sh.A.K.Mittal,
General Manager(Elect.& Autorotation)
Sh. Sunil Sood, Dy.Manager (Electrical)

ORDER

FACTS OF THE CASE

The facts leading to this appeal are that M/S Gujrat Ambuja Cements Ltd; P.O. Darlaghat, Tehsil Arki, District Solan (hereinafter referred to "as the respondent") has been provided with an electricity connection by the Himachal Pradesh State Electricity Board (hereinafter referred to "as the appellant Board") under Account No. GACL-1 for L.S category. In the Application and Agreement Form, executed by the respondent and the appellant Board, the parties agreed to a 46.925 MW of connected load with a contract demand of 32 MVA at 132 KV. The respondent is manufacturing cement, which is a continuous process, and as such availed exemption for running its essential load during peak load hours for 14.981 MW, which was sanctioned to the respondent on 11.8.1999. The respondent continued availing peak load violation exemptions till 12.1.2001, when the appellant Board restricted/reduced peak load exemption from 14.91 MW to 7 MW.

2. On release of power connection, the appellant Board had installed an electro-mechanical tri-vector meter for recording the energy consumption by the respondent. The joint manual meter readings were used to be recorded monthly and the peak load violations were calculated based on energy consumed on hourly basis and recorded at 132 KV Sub-Station, Darlaghat.

3. On 24.3.2000 at 14.00 hrs. the electro-mechanical tri-vector meter was replaced by the appellant Board with static-tri-vector energy meter, having the facility of recording MRI. The replaced meter was supplied and tested by M/S Duke Arnics Electronics (P) Ltd, Hyderabad. But the respondent pleaded to the appellant Board, even though a letter regarding the installation was given to them but it did not contain any details whether the meter was tested before installation and its accuracy was checked at site. Though the brochure of the meter does state that the field accuracy checks are feasible yet no such checks were made at site while installing the meter. The appellant Board's letter dated 23.7.2001 confirms the fact that although MRI was available, yet the joint manual meter readings continued to be recorded. On 23.7.2001, the appellant asked the respondent to deposit a sum of Rs. 68,21,948, on account of peak load hours violations as per MRI, by exceeding the allowed load limits, on 23.01.2001 & 22.5.2001. The peak load violations during the peak load hours was calculated on hourly energy recorded at 132 KV Sub-station, Darlaghat and this practice continued from Feb., 1998 to Nov., 2001, without any objection from the respondent. The dispute had arisen when the appellant issued letter dated 23.7.2001, stating that the peak load violations on 23.1.2001 & 22.5.2001 are based on MRI data deviating unilaterally from the earlier practice and that too without informing the respondent prior to Nov., 2001. Even on taking joint meter readings, the real time clock in built in the static-tri-vector meter had been showing an error of 10 minutes, which stated to have been brought to the notice of the appellant Board on 1.12.2005, by the respondent. Subsequently after the complaint was filed by the respondent before the Forum on 25.8.2005, the appellant Board have written on 15.12.2005 to the meter supplier (M/S Duke Arnics Electronics Ltd; Hydrabad) for deputing an Engineer for rectifying the time settings.

4. According to the respondent, the MRI readings were not made in their presence. The respondent received a letter dated 23.7.2001 from Superintending Engineer, HPSEB, Solan, raising a demand of Rs. 68,21,498, and they immediately reacted, to the said letter, on 27.7.2001, intimating that they had not made any peak load violations as alleged. The respondents have submitted that the appellant Board did not respond to the above letter till 10.12.2004 i.e. for a period of more than 3½ years, which is itself indicative of the fact that the matter was closed.

5. The respondent on 25.8.2005 filed, before the Forum for the Redressal of Grievances of Consumers, set up under section 42(5) of the Electricity Act, 2003, a complaint regarding the demand raised by the appellant Board for Rs. 68.21,498, only on account of alleged PLVC for January, 2001 & May, 2001, as per MRI data as per their letter dated 23.7.01. Because the TOD and TOI had not been commissioned in the meter during that period, the data recorded as per MRI report was wrong. After going through the written submissions and listening to the arguments of the parties, the Forum dismissed the complaint on 17.12.2005, holding that the argument of the respondent that it was only after they took up with the respondent Board vide their letter dated 9.11.2001 the integration time of MDI was set and that thereafter there is no complaint/problem on this account, does not hold good. In the opinion of the Forum the letter dated 9.11.2001 of M/S Gujrat Ambuja was with reference to the provisions of the tariff applicable from 1.11.2001 and that the setting of the meter with respect to demand integration period was done after this is not tenable as the tariff applicable for the disputed period defines maximum demand as average load over a period of 30 minutes and that the standard value of demand integration period is 30 minutes as per IS (8530-1977) and that provision for 30 minutes integration period exists in the purchase order vide which the meter in question was procured and that the calibration of the meter at site is not possible. Thus the Forum accordingly concluded that the electronic meter had 30 minutes demand integration period right from the date of installation. The manual data in no case can match and be more accurate than highly accurate 0.5 class accuracy electronic meter, installed at 132 KV Sub-Station, Darlaghat. The contention of the respondent that the claim for the Appellant Board is not tenable in view of section 56(2) of the Electricity Act, 2003, has also not been accepted by the Forum as the claim was first raised during

July, 2001 (i.e. within 6 months when it first become due (January, 2001), it is not covered under the said provision.

6. Being aggrieved by the Forum's order dated 17.12.2005 the respondent approached, on 28.1.2006, the Electricity Ombudsman, appointed under section 42(6) of the Electricity Act, 2003, to, restrain the Appellant Board from realizing and recovering the demand of Rs. 68,21,498/- raised through letter dated 23.7.2001, and also from disconnecting the electricity supply and for staying the operation of the impugned order.

7. The Learned Ombudsman after going through the petition, Rejoinder, Forum's order, arguments advanced by the parties in the hearings framed the following issues:-

(1) Whether the MDI in the tri-vector meter will average out the demand in KW/KVA over the Demand Integration Period (DIP) of 30 minutes?

(2) Whether the meter was tested before installation in the M&T lab, except for a dial test and was the verification of DIP ever conducted before and after putting the meter into service?

(3) Whether the MRI was not made operational immediately after installation and what were the reasons for not doing so?

(4) Whether Peak Load Violations have taken place after these violations in dispute and also after performing the on site programming in Nov., 2001?

(5) Whether the meter had an error of 10 minutes in the RTC? If yes, what could be the implication in ascertaining the peak load violations, which is in dispute?

(6) Whether it is true that down loading of data from MRI is not selective?

8. The Learned Ombudsman, after going through points raised in the petition, reply of the respondent, documentary evidence produced during the arguments and hearing the parties, concluded that there is a dispute as to what is the demand integration period (DIP), which the appellant Board claims it to be 30 minutes and the respondent contests the same. The recording of the Peak Load Violation is based on this. The claim of the appellant Board is based on specifications of purchase order of the Board and factory testing of the meter. The Learned Ombudsman, while going through the purchase order dated 22.12.98, found that as per specifications/ particulars of the meter DIP was specified to be 30 minutes. However, there is no proof whether the

same was set at 30 minutes in the factory or in M&T Lab or at site as no such certificate/test report was supplied by the appellant Board. This is also not covered in the routine test/accuracy test conducted on the meter by the supplier firm nor in M&T Lab of the Board. DIP can be set either at 30 minutes or 15 minutes at a manufacturer's works but the adjustment option exists in the meter. The standard reference meter (ERS) for site testing of electronic tri vector meters ordered alongwith the meters specified the demand integration period as 15 minutes or 30 minutes selectable through switch. In view of this the Learned Ombudsman is unable to accept the statement of the appellant Board that DIP is only 30 minutes as per international practices. Since the MRI record data supplied on 23.7.2001 to the respondent firm, from Jan., 2000 to May, 2001, indicates that maximum demand recording started recording only during Jan., 2001 i.e. TOD was activated during Jan., 2001, therefore the appellant Board's claim that the meter was working perfectly since its installation on 24.3.2000 can not also be taken as correct. There is no reasons on record as to why the DIP could not be verified by the appellant Board even when the respondent was disputing this right from the beginning, i.e. July, 2001, when the claim of Peak Load penalty was raised by the Board. The Forum's decision, depending only on purchase order placed without any authentication by test reports or other proof i.e. counter checking through portable standard reference meter (ERS), is found to be erroneous.

9. The Learned Ombudsman further concluded that MRIs were not used for recording the reading of energy immediately after installation and energy readings continued to be taken manually by the appellant Board and bills raised accordingly upto Nov., 2001 i.e. the date on which two part tariff was introduced. Meter was installed on 24.3.2000, TOD was activated in Jan., 2001, and MRI was used for the first time during May, 2001. The Board has also accepted that the staff was in learning process for recording through MRI and was only after introduction of two part tariff in Nov., 2001, that MRI was made a regular feature. The Board also accepted that the sudden appearance of data reset 12 (31.1.01) and recorded in earlier resets, may be due to wrong command given by the untrained staff. Thus it is proved beyond doubt that the new meters were introduced for the first time in March, 2000 and system was not fully operational and stable and manually recorded readings were billed upto Nov., 2001 and

during the disputed period of MDI, the meter was not fully commissioned for reading accurately the various inbuilt features.

10. According to the learned Electricity Ombudsman it remains unexplained that especially when the respondent in response to letter of Dy. Chief Engineer Operation, Solan, dated 23.7.01, replied back on 27th July, 2001 as to why the appellant Board took no action as per the procedure laid down in the Sales Manual, wherein the detailed procedure for verifying the accuracy of meter is given. Moreover this silence on the part of the Board indicates that their office was not sure of accuracy of the meter MD. It was only after more than three years that reminder was issued by SDO (E), Sub-Division, Darlaghat to the respondent to deposit the peak load violation charges, without any reference to reply to the queries raised by the respondent firm. Ultimately the Learned Ombudsman has reached to the conclusion that the appellant Board has failed to prove that the demand raised by them as penalty for over drawal is justified and enforceable and the Board has failed to follow the procedure laid down for verifying the accuracy of the challenged meter, under the Indian Electricity Act, 1910, and rules framed thereunder, and also its own Sales Manual Instructions and Abridged Conditions of Supply. The Forum while deciding the complaint of the respondent has failed to take note of all these important factors. In view of these findings, the Learned Ombudsman has set aside the Forum's order and declared the demand raised by the appellant Board as not enforceable and set aside the penalty of overdrawal as not payable.

11. Aggrieved by the judgment and order dated 3rd March, 2007 passed by the Learned Ombudsman the Board has filed this appeal before this Commission on the ground that the Learned Ombudsman, while holding the meter in question as faulty, has failed to appreciate the fact that the recording of "OO" in preceding resets of electronic meter installed was on account of wrong CT connection. In fact the CT was connected "in export mode" in the matter in question whereas it should have been "in import mode", which resulted into recording of "OO" data. This cannot be the sole ground for holding the meter as faulty and defective. Moreover, it was not the case put forth by the respondents before the Forum below. As such the said plea could not have been allowed to be raised for the first time in appeal. The findings of the Learned Ombudsman that instructions and procedures for verifying the accuracy of the meter have not been

observed/ adhered to by the Board are also totally wrong for the reasons that right from installation of electronic meter, till date the respondent is regularly paying the energy bills raised on the basis of data retrieved from the meter, more specifically, after the disputed period till date and the meter in question is not changed, replaced or challenged by the respondent; that the meter was commissioned only for the readings of KWH, KVAH & KVARH and the appellant never checked all the settings of the meter when the same was received from the supplier.

12. In response, the respondent has submitted that the order passed by the Learned Ombudsman is just and reasonable and has been made after hearing both the parties in depth, investigating the statements, verifying the documentations and technicalities involved in the case. The respondent has asserted that the new electronic trivector meter was not fully commissioned for all parameters like TOD, integration time and in relation to the recording of "OO" readings in the MRI data, provided by the appellant Board for reset nos. 11, 10, 9, 8 _ _ _ _ _ , the Board had earlier mentioned that they had given command for down loading of data for previous 5 resets only i.e. some wrong command had been given by the untrained staff. Now the appellant have come with a new version saying that the recording of "OO" readings was due to connection of CT in "export mode" instead of "import mode". However, the respondent asserts that there were no wrong connections and also polarities were O.K. as per the test report submitted by the S.D.O. (M&T), Solan. Had the connections of these CT/PTs been wrong, the KWH/KVAH readings would also be wrong. The appellants never intimated the respondent regarding changing of CT connection from "export made" to "import mode" as alleged in their appeal, In fact the appellant had given a message for routine checking of their CT/PT connections. There is no dispute over KWH/KVAH readings recorded by the meter. The dispute was only regarding TOD and integration period of the meter in question prior to Nov., 2001 and there after has been no dispute since then. The respondent further asserts that although the tariff applicable at that time was KWH based, the MRI was required for assessing the maximum demand and peak load violations. As such all the parameters of the trivector meter should have been set/programmed from the day of its installation, i.e. 24.3.2000. Neither the supplier of electronic meter nor the M&T had checked for the set parameters like TOD and

integration time (which are the only parameters which show the violations) and moreover the meter has not been commissioned/programmed for these parameters. Further it has been stressed that in accordance with clause 14(a) of the Abridged Conditions of Supply and as per Sales Manual- Section IV- instruction No. 101 & 110(2), a correct meter is to be installed, sealed and maintained by the Board at each point of supply on the premises of the consumer. The responsibility of installing correct meter and maintaining it correct is that of the Board and the meter must be tested by the XEN, M&T. If supplier's certificate or M&T certificate is not available, the same has to be tested and commissioned for all the data's as per purchase order by the supplier in the presence of the consumer.

13. The respondent also submits that the dispute arose on receipt of HPSEB claim of Rs. 68.21 lacs in July, 2001 towards peak load violation charges for the month of 01/01 and 5/01 on the basis of MRI reports as TOD & TOI had not been commissioned in the meter during that period, the recorded data as per above MRI was wrong. The respondents reverted back immediately stating that integration period have not been programmed/set in the meter. As such the demand as per MRI appeared to be wrong and should not be considered as violation as hourly energy readings were taken and were within sanctioned limits as per practice continued from Jan., 1998 till October, 2001. Since Nov.,2001 the billing is being done on the basis of MRI readings. No reply was received from Board for 3½ years and therefore; they considered the matter as cleared and closed. In Dec., 2004 a letter from the Board was received for payment of the same claim without reflecting to their objections/reply. According to them the demand has become time barred by limitation under section 56 (2) of the Electricity Act, 2003.

14. For better understanding the facts of the case the Commission called for the records, concerning this case, from the Forum, and also asked the Board to explain the delay in not responding to the objections raised by the respondent on 27.7.2001 for pretty long time of 3½ years. The Board has now explained that it revealed from the official records that on receipt of letter dated 27.7.2001, the official was endorsed for discussion, but it appears that it escaped the notice of the new incumbent/official, who joined on the transfer of the then incumbent/ official dealing the case of the respondent

Company and even the Superintending Engineer concerned also stood transferred. During the audit it was the audit party who raised the audit para about the recovery of the amount in question from the respondent Company and letter dated 10.12.2004 was issued to the respondent Company by giving due reference to the earlier letter dated 23.7.2001. The appellant Board has further submitted that inaction on the part of the appellant Board or its officials was neither willful nor intentional but for the reasons stated above, which is bonafide mistake on the part of the official of the Board and further the respondent has not reminded. This submission of the Board has been rebutted by the respondent stating that the case had been discussed in detail with the then concerned officials of the Board and who were fully in agreement that the required parameters were not set. As such they had not responded to the letter dated 27.7.2001 and the matter was treated as closed.

15. In view of the submissions made by the parties the following questions arise for consideration, in this appeal:-

(a) Whether non-setting or non-programming of all the parameters of the tri-vector meter constitute the defect or deficiency in service? If so, where defect of incorrect recording of consumption in the meter is disputed, an enquiry or local inspection by an independent expert, unconnected with either the consumer or the electricity supplier, is essential?

(b) Whether the demand raised for peak load violations was justified and enforceable?

DISCUSSION AND ANALYSIS

16. In exercise of the powers conferred by section 181, read with section 42(5) of the Act, this Commission, i.e. HPERC has framed the HPERC (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers) Regulations, 2003 (Regulations)- Clauses (8)(10)(12) (13) & (14) of Regulation 2 of the said Regulations defines the expressions “complaint”, “consumer dispute” “defect”, “deficiency” and “electricity service”. A plain reading of these clauses indicates that the definition of the expression “complaint” is comprehensive. In particular regulation 2 (8)

(i) talks of allegation made by way of a complaint that there exists defect or deficiency in electricity services provided by the distribution licensee; and Clause 2(14) states that "electricity service" means supply, billing, metering and maintenance of electrical energy to the consumer and all other attendant sub-services etc. and Clauses 2(12) and 13(1) stipulate that expressions "defect" and "deficiency" means any fault, imperfection or shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a distribution licensee. These provisions clearly contemplate a dispute arising even out of the non-setting or non-commissioning of all the parameters or non-programming of the meter. There can be no manner of doubt that disputes involving a defective meter and the bills purportedly raised on the basis of such meters can be examined by the Forum established under section 42 (5) of the Act. To allay the apprehensions of the respondent either the licensee or the Forum should have the defective meter independently checked. The respondent is bound by those provisions of the erstwhile Indian Electricity Act, 1910, that are not inconsistent with the Electricity Act, 2003, particularly in the context of the electricity meters. Section 26(6) of the Indian Electricity Act, 1910 contemplates an independent authority (the Electrical Inspector) to examine a dispute concerning a defective meter; Even though there is no parallel provision under the Electricity Act, 2003, sub-regulation (3) of regulation 11 of the Forum regulations, provides that where during the pendency of any proceedings, before the Forum, it appears to it to be necessary; it may pass such interim order as is just and proper in the facts and circumstances of the case, subject to the condition that the complaint is decided within a maximum time of three months as specified in sub-regulation (2). While interpreting almost the similar provisions the Hon'ble Delhi High Court in a recent case of Yogesh Jain V/s BSEB Yamuna Power Ltd. AIR 2007 Delhi 161 (in para 8) has observed as under:-

> " The Forum can order an enquiry or local inspection to determine if a meter is infact defective as complained by a consumer. It is expected that while ordering a local enquiry, the Forum would direct it to be carried out

by an independent expert, unconnected with either the consumer or the electricity supplier".

Further in para 10 of the same judgment it has been observed as under:-

" It hardly needs to be emphasized that the Forum is, as is every other quassi judicial authority, enjoined by law to act in a just and fair manner. The Forum is bound to take note of all statutory provisions and judicial decisions in performing its functions and in making and pronouncing its decisions".

17. Thus, it is the duty of the Forum to assess the pros and cons of the case and pass the orders accordingly on merits of the case. The orders passed by the Apex Court in this context in Balraj Taneja V/s Sunil Madan, AIR 1999 SC 3381, fully dovetails with the observations made above, wherein it has been held that the Court (Forum) is not to act blindly upon the admissions of a fact made by the respondent in his written statement nor the Court (Forum) should proceed to pass judgment blindly merely because a written statement has not been filed by the petitioner in the petition filed in the Court (Forum).

18. In the light of the above discussions, it can be safely concluded that the non-setting or non-programming of all the parameters of the tri-vector meter constitute the defect/deficiency in service and to alley the apprehensions of the complainant neither the licensee Board nor the Forum had got the enquiry conducted through an independent expert, as contemplated under the law. Rather the Forum has relied blindly on the statements made on behalf of the Board. The Forum's decision, depending only on purchase order placed, without any authentication by test reports or other proofs; i.e. counter-checking through portable standard reference meter, is obviously erroneous. Moreover, the fact cannot be ignored that the new meters were introduced for the first time in March, 2000 and the system was not fully operational and stable and manually recorded readings were billed upto Nov., 2001 and during the period of MDI, the meter was not fully commissioned for recording various inbuilt features. All the more there is no proof whether the meter was set at 30 minutes in the factory, when it was installed, especially when DIP can be set either at 30 minutes or 15 minutes, as the adjust options

exist in the meter, selectable through a switch. In this context, there hardly exist any reasons to differ with the conclusions drawn by the Learned Ombudsman.

19. The second aspect of the matter is whether the demand raised for peak load violations was justified and enforceable, under section 56 of the Electricity Act, 2003. In this case Clause 18(C) of Abridged Conditions of Supply in the Sales Manual of HPSEB, does not appear to have been interpreted in accordance with the Judgment of this Commission, dated August, 3,2002, in complaint No. 3 of 2002 of Parwanoo Industries Association V/s HPSEB by HPERC, in a dispute regarding application and interpretation of Tariff Order 2001-02, wherein it has been adjudicated that for Peak Load Violations, the consumer has to pay the demand charges as well as energy charges to be levied on the consumption of energy recorded during peak load hours on the day of violation, to be identified on the basis of demand. Besides it, consumer has also to pay the penalty on the demand in excess of the contract demand. This Commission is alive of the fact that the Commission's judgment dated August 3, 2002, interprets the Tariff Order 2001-2002, which came into force with effect from Nov., 2001; and cause of action i.e. the peak load violations occured in this case in the month of January & May, 2001. The Commission feels that the note of the said judgment dated 3rd August, 2002, should have been taken by the Forum as the guiding factor in disposal of this complaint. The Learned Ombudsman has rightly concluded that the interpretation of the said condition should be read in the spirit of the Judgment of this Commission (supra) and the Peak Load penalty charges for half an hour violation in the month increasing the amount of whole month every energy bill by 12.5% does not seem to be reasonable and logical, when the consumer is otherwise giving peak load exemption charges and apart from this instructions and procedures have not been fully adhered to by the appellant Board.

20. So far as the enforceability of the demand raised is concerned, the respondent has contended before the Forum that in view of section 56(2) of the Electricity Act, 2003, the claim raised by the appellant Board is not tenable. Section 56 (2) (ibid) reads as under:-

> "(2)Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum

became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

21. The Hon'ble Delhi High Court in Yogesh Jain V/s BSEB Yamuna Power Ltd (supra), has ruled that "as regards the applicability of section 56 of the Act and the defence available to a consumer in terms of that provision, there can be no manner of doubt that if such a contention is raised before the Forum, it is bound to deal with it in accordance with Law" Thus the contention that electricity dues involving defective meter, which are older than 2 years prior to date of bill cannot be sought to be recovered in terms of section 56, can be raised before the Forum and the Forum is bound to deal with it in accordance with law. While determining whether the disputed claim is barred by limitation or not, the Forum has failed to take note that provisions of section 56(2) are not to be read in isolation of the other provisions of the Electricity Act, 2003, and the verdicts of the Apex Court. Section 175 of the Electricity Act, 2003 lays down that the provisions of this Act are in addition to and not in derogation of any other law for the time being in force i.e. the Limitation Act, 1963.

22. The Appellate Tribunal for Electricity vide its judgment dated 14th Nov., 2006 disposing of two appeals i.e. Appeal No. 202 of 2006 – Ajmer Vidyut Vitran Nigam Ltd. Chittorgarh V/s M/s Sisodia & Granites Pvt. Ltd and others; and Appeal No. 203 of 2006 - Ajmer Vidyut Vitran Nigam Ltd. Chittorgarh V/s M/s Safe Polymers Pvt. & Another, has interpreted the provisions of section 56(2) of the Electricity Act, 2003. In brief the facts of that case were that on 24.8.2000, the respondent being consumer of the appellant was provided with an electrical connection for 150 kVA with connected load of 298 H.P. The respondent's meter was previously subjected to inspection on 19.7.2001 and 10.9.2002 and on both the occasions it was recording the consumption flawlessly. On 3.3.2003, when the meter was checked up by the appellant on site using ACCUCHECK, it was found to be defective as the meter was recording less than the actual consumption. On 5.3.2003, the appellant replaced the defective meter by a new meter. The defective meter alongwith the joint inspection report was sent to the concerned Deptt. of the appellant for the defect analysis and assessment and computation of charges as per the applicable rule and procedure. While the matter was pending with

the Commercial Deptt. of the appellant, during the audit process it was detected that a sum of Rs. 4,28,034/- worked out on the basis of the inspection report has not been debited to the account of the first respondent. As a consequence, on 19.4.2005, the appellant raised a demand notice for the sum of Rs. 4,28,034/- and advised to file their objections, if any, with 15 days or else the aforesaid amount shall be debited to their account. The first respondent did not agree with the additional demand and asked for details of the charges which was provided to them by the appellant by a communication dated 10.5.2005. On 2.6.2005, the first respondent furnished its own calculations and the appellant did not agree with it and debited a sum of Rs. 4,28,034/- in the regular electricity bill dated 8.8.2005. The first respondent did not make the payment of the demand of arrears. Objections against the demand of the appellant were raised by the respondent before the Electrical Inspector, who set aside it being raised beyond the limitation period as provided under section 56(2) of the Electricity Act, 2003. Subsequently, when the matter was further agitated by the appellant, before the Regulatory Commission, the Commission also quashed the demand raised by the appellant on the ground that same has been raised beyond a period of two years as provided by section 56(2) of the Electricity Act, 2003. With this background the appellant filed appeal before the Hon'ble Appellate Tribunal, the Hon'ble Appellate Tribunal, after taking stock of the Delhi High Court verdict given in H.D. Shourie V/s Municipal Corporation of Delhi, AIR 1987 Delhi 219, has concluded (in paras 17 & 18)that :-

> "17.Thus in our opinion, the liability to pay electricity charges is created on the date electricity is consumed or the date the meter reading is recorded or the date meter is found defective or the date theft of electricity is detected, but the charges would become first due for payment only after bill or demand notice for payment is sent by the licensee to the consumer. The date of the first bill/demand notice for payment, therefore, shall be the date when the amount shall become due and it is from that date the period of limitation of two years as provided in section 56(2) of the Electricity Act, 2003, shall start running. In the instant case, the meter was tested on 3.3.2003 and it was allegedly found that the meter was recording energy consumption less than the actual by 27.63%. First inspection report was signed by the consumer and licensee and thereafter the defective meter was replaced on 5.3.2003. The revised notice of demand was raised for a sum Rs. 4,28,034/- on 19.3.2005. Though the liability may have been created on 3.3.2003, when the error in recording of consumption was detected, the amount became payable only on 19.3.2005, the

day when the notice of demand was raised. The time period of two years, prescribed by section 56(2) for recovery of the amount started running only on 19.3.2005. then the first respondent cannot plead that the period of limitation of the amount has expired.

18. Though we have held that the amount due from the appellant is not barred by limitation and is recoverable, yet at the same time, we regretfully recognize that it was a serious lapse on the part of the licensee for having sent a demand notice only on 19.4.2005 to the consumer after more than 2 years of declaring the meter faulty. Notwithstanding the fact that the demand is not barred by limitation, the fact of considerable delay in raising the demand was against the commercial principles. The licensee ought to have realized that when such large sums of money are allowed to remain unrecovered from the consumers for long period of time, it not only affects the investment opportunities but also erodes the value of the principle on account of inflation. The action of the licensee is not in public interest it woefully demonstrates the lack of commercial sense".

23. This Commission, had too an opportunity to interpret the provisions of section 56(2) of the Electricity Act, 2003, vide its order dated 5.3.2005 made in case No. 109/04 M/S Emm Tex Sythesis Ltd. Nalagarh but the same is pending for adjudication before the Appellate Tribunal. It would be useful to quote para 12 of the said order, which reads as under:-

> "12. The Commission is actually aware and conscious of the far reaching implications of this order for the respondent Board insofar as it shall not be able to recover the sum due after the period of 2 years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied. And, more often than not, such is the case either due to negligence, complicity, complacency or delayed detection and lack of commercial alacrity on the part of Board employees but perhaps the legislature intended so to introduce commercial accountability besides avoiding any arbitrary or sudden shock to the consumers of being slammed with unexpected demand. Such an intendment shall seem perfectly in accord with the emphasis on consumers empowerment in the PREAMBLE of the Electricity Act, 2003. The distribution licensee, the State Electricity Board shall therefore, have to give an altogether new and clarion reorientation to its commercial operations and hold those responsible for commercial operations accountable for the recovery of sums due in accordance with the provisions of the Act."

24. The conclusions drawn both by Hon'ble Appellate Tribunal with judgment dated 14.11.2006 in Appeal Nos. 202 & 203 of 2006, and this Commission's order dated 5.3.2005 are almost the same on this issue. It is pertinent to point out that in the instant

case cause of action and the demand was raised, much earlier to the commencement of the Electricity Act, 2003 (i.e. 10th June, 2003) as such the question of applicability of section 56(2) of the said Act, does not arise. However, it cannot be disputed that the electricity is "goods" and the suit for recovery of dues for sales of goods is governed by Arts 14 or 15 of the Limitation Act, 1963, which stipulates the period of three years period as limitation period beginning to run from the period of the bill elapses. In this case the period of limitation has started running with effect from 23.7.2001 i.e. date on which the demand of Rs. 68,21,488/- was raised. Section 9 of the Limitation Act, 1963 lays down that where once time has begun to run, no subsequent disability or inability to sue stops it. Thus the limitation period of 3 years expired on 23.7.2004. The respondent represented against the said demand on 27.7.2001 but the appellant Board did not respond to the objections made by the respondent till 10.12.2004, after the audit party raised the audit para about the recovery of the amount in question and letter dated 10..12.2004 was issued to the respondent by giving due reference to the earlier letter 23.7.2001 which claim has already become barred by limitation on 23.7.2004.

25. The Commission has given very thoughtful and serious considerations to the pleadings made, submissions, arguments and counter arguments advanced during the hearing, the legal position and the authorities cited as well known in the context of similar cases, especially the recent decision of the Hon'ble Appellate Tribunal rendered in Appeal No. 202 of 2006 and 203 of 2006 and the meanings ascribed to the words "first due" occurring in section 56 (2) of the Electricity Act, 2003. The Commission concludes that the Learned Electricity Ombudsman has not committed any error, which could be said to be in exercise of jurisdiction, illegality or with material irregularity. As such this Commission finds no reasons to interfere with the orders passed on the 3rd March, 2007 by the Learned Electricity Ombudsman (H.P.), in case No. 1 of 2006 and as such the appeal is dismissed.

However, a number of cases have come to the Commission's notice wherein the officials of the utility pay scant attention to undertaking activities commensurate with the required commercial attenuation. The utility will, therefore, utilize this episode as a case study and will fix due responsibility on the concerned officials who have been negligent

in discharge of their duties in terms of undertaking recoveries in this case. A copy of the Action Taken Report be submitted by the utility to the Commission within 3 months of this order.

Announced in open Court.

The records requisitioned from the Forum be returned and the file be consigned to record room.

Dated 19.10.2007

(Yogesh Khanna)
Chairman