

BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION  
SHIMLA

M/S Coral Health Care Pvt. Ltd.  
15-Industrial Area, Parwanoo

...Petitioner

V/s

1. H.P. State Electricity Board,  
Vidyut Bhawan, Shimla.
2. Chief Engineer (Comml.)  
HPSEB, Vidyut Bhawan, Shimla-4.
3. Addl. Superintending Engineer,  
Electrical Division,  
HPSEB, Nalagarh, Distt. Solan
4. The Assistant Executive Engineer,  
Electrical Sub-Division,  
Parwanoo, Distt. Solan. (H.P.)

...Respondents

(Petition No. 32/07)

(Decided on 30.4.2008)

**CORAM**  
**YOGESH KHANNA**  
**CHAIRMAN**

Counsel:-

for the petitioner	Sh. P.P. Chauhan Advocate
for the respondents	Sh. Bimal Gupta Advocate

Consumer Representative      Sh. P.N. Bhardwaj  
(u/s 94 of the Electricity Act, 2003)

**Order**

(The case last heard on 26.4.2008 and orders reserved)

M/S Coral Health Care Pvt. Ltd, 15- Industrial Area, Parwanoo Dist. Solan, Himachal Pradesh, through its Director Sh. Umesh Anand (hereinafter referred as the petitioner) moved a complaint under section 142 of the Electricity Act, 2003, impleading the Himachal Pradesh State Electricity

Board and its Chief Engineer (Comml), Addl. Superintending Engineer, Nalagarh and Asstt. Executive Engineer, Parwanoo, for contravention of the provisions of the Electricity Act, 2003 and the Regulations framed thereunder i.e. the HPERC (Licensee's Duty for Supply of Electricity on Request) Regulations, 2004. The petitioner also filed the application for interim stay.

2. The facts, in brief, involved are that the petitioner took from the H.P. Housing and Urban Development Authority the leasehold rights of Industrial Plot No. 15 measuring 648.37 Sqm in sector 5 at Parwanoo Distt. Solan (H.P.) and got itself registered with the State Govt. for setting up and running up industrial undertaking for the manufacture of Herbal-Skin Cream at Parwanoo. The petitioner also applied for an electricity connection and the respondent Board released the same on 6.5.2005. Ever since the energy charges are being paid by the petitioner to the respondent Board as per the bills raised by it. On 30.10.2006, respondent No.4 i.e. Asstt. Engineer, Elect. Sub-Division, HPSEB, Parwanoo, Distt. Solan asked the petitioner to submit the "No Objection Certificate" from the M.C. Parwanoo, within fifteen days, otherwise the electric connection of the petitioner was to be disconnected. Being alarmed by this, the petitioner moved this petition stating that the letter dated 30.10.2006 issued by the respondent No.4, is contrary to the specific provisions of section 43 of the Electricity Act, 2003, which categorically casts statutory duty on the respondent Board to give supply of electricity to such premises within one month of the application requiring such supply. Moreover, once the electricity connection has been released, the same cannot be disconnected by the respondent Board on flimsy requirement of NOC of M.C, which has nothing to do with the supply of electricity. Sections 173 and 174 of the Electricity Act, 2003 further mandatorily lay down that the provisions of the Act have the overriding effect over other laws. The petitioner, therefore, contended that the impugned letter is against the provisions of the Electricity Act, 2003 and is liable to be quashed and the respondent Board needs to be restrained from disconnecting the electric connection.

3. The Commission, while admitting the petition for consideration vide its order dated 17.2.2007, directed the respondent Board not to disconnect the petitioner's electricity connection during the pendency of this petition.

4. The respondent Board in its reply admits that the petitioner applied for electricity connection to the respondents, which was sanctioned to the petitioner by the respondents on 6.5.2005 and the connection was released on 26.8.2006. It is also admitted that the petitioner has been paying energy bills issued to him from time to time. The respondent Board further states that at the time of applying for electricity connection and submission of the A&A Form the petitioner had not furnished "Non Objection Certificate" from the competent authority i.e. Municipal Council, Parwanoo to the effect that the construction raised by the petitioner is authorized one which is sine qua non condition for release of electricity connection to the consumers in terms of conditions No. 2(C ) of the Abridged Conditions of Supply as applicable to the consumers of the HPSEB. Further section 83-A of the H.P. Town and Country Planning Act, 1977 created a bar for providing water and electricity connection to the buildings without production of necessary "Non Objection Certificate" from the Town and Country Planning Deptt. The petitioner at the time of applying for electric connection was not in possession of any such N.O.C. either under the Town and Country Planning Act, 1977 or from the concerned authorities under the Municipal Act, 1994 i.e. Municipal Council, Parwanoo. In view of this the petitioner gave undertaking, alongwith A&A Form, for production of the same to the respondent Board. Besides this undertaking the petitioner also furnished the Indemnity Bond to identify the respondent Board for any action or proceedings taken by the NAC/MC Council, Parwanoo/ H.P. Housing Board/ Town and Country Planning Deptt. or any other agency. It is only on the basis of such undertaking, indemnity bond and assurances, the electricity connection was sanctioned and released to the petitioner. Since the release of electricity connection till the date the petitioner has failed to submit NOC to the respondent Board.

5. In another **petition No. 92/2003 titled as Mohit Chaudhary V/s Secretary, HPSEB & Others decided by this Commission on 1.5.2004** the similar issues were raised and on the cumulative consideration of the provisions of law and for reasons assigned the Commission concluded that Clause 2(c ) of the Sales Circular No. 204 dated 30.11.94, is inconsistent with the provisions of section 43 of the Electricity Act, 2003 and has no force of law, nor does it have any legal validity. The Commission, therefore, struck

down clause 2 (c ) of the Sales Circular No. 204 dated 30.11.94 as invalid and in operative. The Commission also held that the H.P. Municipal Act, 1994 and Town & Country Planning Act, 1977 have no effect and no relevance to the obligation to supply on request under section 43 of the Electricity Act, 2003. The said decision stands challenged before the Hon'ble High Court of H.P. in CWP No 153 of 2004 and the operation of the Commission orders also stands stayed. In view of this the action in this petition also had to be adjourned sine die.

6. **The Appellate Tribunal in appeal No. 117 of 2007-** the Himachal Pradesh State Electricity Board V/s M/S EMM Tex Synthetics Ltd; which was decided on 5<sup>th</sup> Nov., 2007, has set aside the order dated 5.3.2005 passed by this Commission stating that the dispute raised by the respondent was not entertainable as the dispute raised in the petition was an individual dispute of a consumer and the Commission had no jurisdiction to go into such a dispute. The Hon'ble Supreme Court in **Maharashtra Electricity Distribution Co V/s Lloyds Steels Industries 2007 (10) SCALE 289**, has ruled that an individual dispute of a consumer has to be raised before the Forum envisaged by section 42(5) of the Electricity Act, 2003 and not before the Regulatory Commission. Thus this Commission lacks jurisdiction to adjudicate upon this petition.

7. Without considering the basic question of jurisdiction and maintainability, the consideration on merits would be fallacious. It has been held in **Suresh Kumar Bhikam Chand Jain Vs. Pandey Ajay Bhushan (1998)/ SCC 205**, the plea of jurisdiction can be raised at any stage. It is also the settled law that no Statutory Authority or Tribunal can assume jurisdiction in respect of the subject matter which the statute does not confer, if the Court or Tribunal exercises the jurisdiction then the order is vitiated. Moreover in **Shrist Dhawan (Smt) V/s Shaw Bros (1992) / SCC 5334** it has been laid that error of jurisdictional fact renders the order ultra vires and bad in law.

8. The Hon'ble Appellate Tribunal for Electricity, had the opportunity to consider the scope of the provisions of section 42(5) to (8) of the Electricity Act, 2003 in various cases i.e. **Reliance Energy Limited V/s Maharashtra Electricity Regulatory Commission and Maharashtra State Electricity Distribution Company V/s Prayas, Kerve Road Pune (Appeal Nos. 30 of**

**2005, 164 of 2005 and 25 of 2006) decided on 29.3.2006 (2007 APTEL 543); Dakshin Haryana Bijli Vitran Nigam Ltd V/s Princeton Estate Condominium Association, DLF Universal Ltd (Appeal Nos 105 to 112 of 2005) decided on 29.3.2006; (2007 APTEL 356) and Dakshin Haryana Bijli Vitran Nigam V/s DLF Services Ltd (Appeal No. 104 of 2005) decided on 29.3.2006.) (2007 APTEL 764); and Reliance Energy Ltd. V/s K.H. Nadkarni & Others (Appeal No. 11 of 2005) decided on 26.5.2006 (2007 APTEL 298) and CSEB V. Raghuvir Singh Ferro Alloys Ltd. & Others (Appeal Nos. 125, 126 & 127 of 2006) decided on 28.11.2006) (2007 APTEL 842);** In the aforesaid decisions the Hon'ble Appellate Tribunal, has concluded that the relation between a consumer and a distribution licensee is governed by Part VI – Distribution of Electricity-[Sub-section (5) to (8) of section 42]-provides with respect to Forum for Redressal of Grievances and the Appellate forum i.e. Ombudsman as well. When a Forum has been constituted for redressal of grievances of consumers by the mandate of section 42, no other forum or authority has jurisdiction. The State Electricity Regulatory Commission, being a regulatory body, the highest State level authority under 2003 Act as well as rule making authority has to exercise such powers and perform such functions as are provided in the Legislative enactment and it shall not usurp the jurisdiction of the Consumer Redressal Forum or that of the Ombudsman. The special provision excludes the general is also well accepted legal position. The Regulatory Commission being a quasi-judicial authority could exercise jurisdiction, only when the subject matter of adjudication falls within its competence and the order that may be passed is within its authority and not otherwise. It follows that the State Regulatory Commission has no jurisdiction or authority to decide the dispute raised by individual consumers or the Consumer Association. The consumers have a definite forum to remedy their disputes under section 42(5) and further representation under section 42(6). Further section 42 (8) also saves the rights of the consumers to approach any other forum such as the forums constituted under the Consumer Protection Act, 1986 or other Courts as may be available.

9. The Hon'ble Supreme Court in its verdict given in **Maharashtra State Electricity Distribution Co. Ltd V/s Lloyds Steel Industries Ltd JT 2007 (10) SC 365** approving the decision of the Delhi High Court in **Suresh Jindal**

**Vs. BSES, Rajdhani Power Ltd & Others and Dheeraj Singh Vs BSES Yamuna Power Ltd 132 (2006 DLT 339 DB)** has also concluded that complete machinery has been provided in section 42(5) and 42(6) of the Electricity Act, 2003, for redressal of grievances of individual consumers. Hence wherever a Forum/ Ombudsman have been created/appointed the consumer can only resort to these bodies for redressal of their grievances. The Hon'ble Supreme Court in its another decision dated 14.8.2007 in **Civil Appeal No. 2846 of 2006 Maharashtra Electricity Regulatory Commission Vs Reliance Energy Ltd & Others JT 2007 (10) SC 365**, has not interfered with the decision of the Appellate Tribunal in First Appeal Nos. 30 and 164 of 2005 and 25 of 2006 (2007 APTEL 543) and has ruled that the adjudicatory function of the Commission is limited to the matters prescribed in section 86(1)(f) i.e. adjudication of disputes between the licensees and the generating companies and as such the Commission cannot adjudicate disputes relating to grievances of individual consumers. However the Commission has jurisdiction only to issue general directions to prevent harassment to the public at large by its licensees/distributors.

10. Keeping in view the above discussion, it can be safely be concluded that the specific provisions of section 42(5) and 42(6) of the Electricity Act, 2003 only provide for Forum for redressal of grievances and further representation to the Electricity Ombudsman. The licensees/distribution companies are to decide the individual cases received by them after giving a fair opportunity to the consumers. The consumers who still feel not satisfied with the order passed by the licensee/distribution companies can approach the appropriate Forum constituted under section 42(5) of the Act and, if still not satisfied, with the order passed by the appropriate forum to approach the Ombudsman under section 42(6) of the Act. The Commission, therefore, has no jurisdiction to entertain and dispose of the petition No. 32/07 as such consumer disputes fall within the perview of the Forum set up under section 42(5) and the Ombudsman appointed under section 42(6) of the Act.

In the result, the petition, without consideration on merits, is dismissed on account of the jurisdictional fact, with the liberty to the petitioner to pursue

the matter before the appropriate forum/authority available to him under the law. The interim order 17.2.2007, passed in this case also stands withdrawn.

This order is passed and signed on the 30<sup>th</sup> day of April, 2008.

(Yogesh Khanna)  
Chairman