

BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION  
SHIMLA

M/S Time Technoplast Ltd;  
Sai Road, Baddi, Distt. Solan (H.P)

...Petitioner

V/s

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

...Respondents

(Petition No. 175/07)

(Decided on 30.4.2008)

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

Counsel:-

for the petitioner	Sh. Rahul Mahajan, Advocate
for the respondents	Sh. Bimal Gupta Advocate

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

**Order**

(Last heard on 26.4.2008 and orders reserved)

M/S Time Technoplast Ltd; Sai Road, Baddi, Distt. Solan (H.P),  
(formerly known as Time Packaging Limited) through its Director Sh. Sanjeev  
Sharma (hereinafter referred as the petitioner) moved a complaint, under

Electricity Act, 2003 and the regulations framed thereunder, impleading the Himachal Pradesh State Electricity Board and its Chief Engineer (Comml), the Superintending Engineer, Parwanoo, the Sr. Executive Engineer, Parwanoo and the Sub-Divisional Officer, Baddi, for contravention of the provisions of the Electricity Act, 2003 and the Regulations framed thereunder.

2. Through this complaint the petitioner has requested this Commission:-

- (a) to grant and set aside the order dated 16.7.2007, whereby the Sr. Executive Engineer, Electrical Division, HPSEB Parwanoo has ordered disconnection of electricity connection No. LP 214 in the name of M/s Time Packaging Ltd; now known as M/S Time Technoplast Ltd;
- (b) to grant and set aside the condition of obtaining NOC from the Town and Country Planning, Baddi Barotiwala, Nalagarh Authority (BBNA) being contrary to the Electricity Act, 2003 and regulations framed thereunder; and
- (c) to direct the respondents not to disconnect the electricity connection No. LP 214.

3. The petitioner has stated that the impugned letter dated 16.7.2007, 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 electricity supply to such premises within one month of the application requiring such supply. Moreover, once the electricity connection is released, the same cannot be disconnected by the respondent Board on flimsy requirement of NOC of Municipal Council, which has nothing to do with the supply of electricity. Sections 173 and 174 of the Electricity Act, 2003 mandatorily provide 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.

4. The petitioner also filed an application under section 151 of CPC for interim stay. The Commission, while admitting the petition for consideration vide its interim order dated 28.7.2007, directed the respondent Board not to

disconnect the petitioner's electricity connection during the pendency of this petition.

5. The facts, in brief, involved are that the land comprised in Khasra Nos. 773/1, 774/2, 773/2, 774/2, 775, 796 and 798 New Nos. (Old Nos. 958/773, 960/774, 775, 796 and 798) situated in Pargana Dharampur, District Solan, Himachal Pradesh, were initially purchased by M/s Batra Industries Ltd. in the year 1983 for setting up an Industrial Unit at Baddi, for manufacturing bicycle rims, chain wheels and cranks. It is submitted that initially when the land was purchased by M/s Batra Industries Ltd in the year 1983 for setting up of an Industrial Unit at Baddi in old Khara No. 958/773, 960/774, 775, 796 and 798, it had taken the permission on 9.9.1983 to purchase the land measuring 5 bighas 14 biswas comprised in above Khasra numbers from the State Govt. of Himachal Pradesh under section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972. The permission for change of land use and also for the setting up of an Industrial Unit was also taken on 16<sup>th</sup> Dec., 1982 by M/s Batra Industries through Department of Industries.

6. The said land was purchased by M/s Time Packaging Limited now known as Time Technoplast Limited i.e. petitioner Company from M/s Batra Industries Ltd. The permission for purchase of the land was accorded by the State Government on 16.2.1996 and mutation in respect of the aforesaid land and Industrial Unit purchased from M/s Batra Industries Ltd was affected on 22.2.1996 and 26.2.1996 in the name of M/s Times Packaging Limited in the revenue record. The IPARA clearance was also obtained on 10.10.1995.

7. In the meanwhile the Executive Engineer, Development Control Division, Town and Country Planning Department, Parwanoo, Solan, Himachal Pradesh, served a notice dated 23.9.1995 on M/s Batra Industries Limited by averring therein that M/s Batra Industries Private Limited have violated the provisions of Sections 16 and 38 of the Town and Country Planning Act, 1977. On receipt of the notice, M/s Batra Industries Limited met officials of the said Executive Engineer and apprised them of the position that no unauthorized construction has been carried out by them. Thereafter the petitioner Company purchased the Industrial premises, as well as the land, on which the Industrial Premises of M/s Time Technoplast Limited are situated, in the year 1995 from M/s Batra Industries Private Limited. After the said

purchase the petitioner Company submitted the application form for permission under Section 31(1) to the Executive Engineer, Development Control Division, Town and Country Planning Department, Parwanoo, Solan, Himachal Pradesh. In response to the said application, the said Executive Engineer, issued a letter dated 29.3.1996 wherein certain objections were raised. The said objections were met with by the petitioner Company by submitting reply dated 3.5.1996 wherein it was specifically stated that the land had already been converted into Industrial Land and mutation in the name of petitioner Company has been sanctioned and notice dated 20.10.1995 was never addressed to the petitioner company. The petitioner made available the copies of the certificate issued by the Directorate of Industries dated 10.10.1995 granting permission to the petitioner Company to set up the Unit for manufacturing of High Power, High Density Polythene Plastic; of the consent to establish given by the H.P. Pollution Control Board on 3.2.1996; the approval of the project by IPARA and of the letter dated 25.11.1995, sanctioning the power to the petitioner Company.

8. Subsequent to the purchase by the petitioner Company the Industrial Unit from M/s Batra Industries Limited alongwith the land, after getting necessary permission from the State Government under Section 118, the Executive Engineer, Development Control Division, Town and Country Planning Department, Parwanoo, Solan, Himachal Pradesh again issued the notice that unauthorized construction is being carried on. The petitioner Company replied to the said notice vide their letter dated 7.4.1997 averring therein that no unauthorized construction is carried out and only some minor additions were required for which necessary Plans have already been submitted to his office and it was also further stated that the land use change has already been approved by the State Govt. and the Unit has been established since last 15 years before the institution of the Master Plan and Lay Out Plan at Baddi. It was also requested that the Plan for minor additions be sanctioned.

9. After the reply was submitted by the petitioner Company to the letter dated 14.10.1996, the Town and Country Planning Department dropped the notice dated 14.10.1996, as no notice thereafter was ever received. Thereafter on 28.4.2003, the petitioner Company was taken aback to receive notice

whereby the said Executive Engineer, had asked the petitioner Company to show cause as to why action under Section 38(A) of the Himachal Pradesh Town and Country Planning Act should not be taken. The reply to the said notice was given on 8.5.2003. Thereafter again letter dated 9.6.2003 was received from the said Executive Engineer, wherein he raised the question of unauthorized construction, which was also replied to by the petitioner Company that there is no violation. Further the Asstt. Town Planner, Parwanoo vide letter dated 16.10.03 wrote to AEE, HPSEB, Barotiwala to tell as to how electricity is provided in absence of "No Objection Certificate" to the petitioner Company.

10. Subsequently in July 3, 2004, the Assistant Town Planner, Development Control Division, Town and Country Planning Department, Parwanoo, Solan, Himachal Pradesh, also issued show cause notice under Section 39 of Himachal Pradesh Town and Country Planning Act, 1977. The petitioner Company replied to the show cause notice vide letter dated 2.8.2004 and denied and refuted all the allegations. It is also further stated that vide letter dated 10.1.2005 from the office of Town and Country Planning Department, Parwanoo, Solan, Himachal Pradesh, papers for compounding of the unauthorized construction were also received as provided in Rule 19(E) of the Himachal Pradesh Town and Country Planning Rules.

11. On 12.7.2007 the Chief Executive Officer, Baddi-Barotiwala Nalagarh Development Authority (BBNDA) addressed an order/letter to the Additional Superintending Engineer, H.P. State Electricity Board, Parwanoo, District Solan, for disconnection of services, under Section 83-A of the Himachal Pradesh Town and Country Planning Act, 1977, prior to taking further action of sealing and demolition of the structure. The petitioner Company filed a detailed reply on 18.7.2007 to the order dated 12.7.2007 stating that the order dated 12.7.2007 is bad in law and contrary to the provisions of the Act and Rules.

12. Thereafter the Sr. Executive Division, Electrical Sub-Division, HPSEB, Parwanoo made the impugned order dated 16.7.2007 for disconnection of electricity connection LP-214 in the name of the petitioner Company or to produce necessary "No Objection Certificate" from the Town and Country Planning Department. It is contended by the petitioner that the

order/letter dated 16.7.2007 issued by the respondents especially No.4, is bad in law and contrary to the provisions of the Electricity Act, 2003. The petitioner also pleads that the respondents cannot disconnect the electricity connection of the petitioner Company on the basis of letter of BBNDAs as Electricity Act, 2003 is a special statute and it nowhere provides for obtaining any NOC from any authority before issuance of electricity connection. The petitioner Company feeling aggrieved by the order dated 16.7.2007 passed by the respondent No.4 has made this complaint on the following, amongst other, grounds:-

- (a) that the order dated 16.7.2007 issued by respondent No.4 is totally wrong, illegal and devoid of merits. The Respondent No.4, without taking into consideration the provisions of the Electricity Act, 2003 and the Regulations framed by the Commission regarding supply of electricity has passed an illegal order; as the respondent No.4 has acted as a paper stamp of BBNDAs;
- (b) that the respondents below have failed to take into consideration the order passed by this Commission **in petition No. 92/2003 titled Mohit Chaudhary Vs. Secretary, HPSEB dated 1.5.2004** wherein the Commission has observed that the provisions requiring NOC from authorities are inconsistent with the provisions of Section 43 of the Electricity Act, 2003 and have no force of law. Further also in the said judgment it has been held that the Municipal Act and the Town and Country Planning Act have no effect and no relevance to provide electricity connection under Section 43 of the Electricity Act, 2003. Moreover the electricity connection was provided in the year 1995 and the industry is running since then. Nowhere the Electricity Act, 2003 or the Regulations framed thereunder make it mandatory to obtain an NOC from the TCP or BBNDAs either for sanctioning of electricity connection or for continuing with the same. Respondents cannot vest themselves with the power which they do not have under a statute; Thus in view of the fact that no NOC from any authority is required in terms of Electricity Act, 2003 as well as order dated 1.5.2004 passed in case No. 92/2003, the impugned order dated/letter dated 16.7.2007

passed by respondent No.4 is bad and deserves to be set aside and quashed;

- (c) that Section 83(A) of the Town and Country Planning Act provides that unless and until a No Objection Certificate has been obtained from the Director, Town and Country Planning or the Special Development Area Authority, no electricity or water or sewerage connection shall be given. It nowhere provides that in case where the electricity connection has already been provided and is in use since years, the same can be disconnected or withdrawn;
- (b) that the respondents have also failed to take into consideration that once when the plans to do additions were submitted and the Town and Country Planning Authorities failed to either reject or sanction the same, there was a deemed sanction in view of Section 31 of the H.P. Town and Country Planning Act, 1977;
- (e) that the Electricity Act, 2003 being a special statute over rules all the general laws. Section 174 of the Electricity Act, 2003 provides that the Act will have an over riding affect "Save as otherwise provided in Section 173, the provisions of this Act shall have effect notwithstanding anything in-consistent therewith contained in any other law for the time being in force or in any instruments having effect by virtue of any law other than this Act." Section 173 provides that "Nothing contained in this Act or any instrument having effect by virtue of this Act, rule or regulation shall effect in so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 (68 of 1986) or the Atomic Energy Act, 1962 (33 of 1962) or the Railways Act, 1989 (24 of 1989)." Thus for all intents and purposes, the Electricity Act, 2003, being a special Act, will over ride all the general laws, regulations and instructions issued under the other Acts/Regulations. Further also under Section 185 all the enactments made earlier have been repealed except as provided for in Sub-Section (2) of Section 185. Moreover section 43 of the Electricity Act, 2003, casts a duty on the distribution licensee i.e. the respondent Board to give electricity supply within one month of the receipt of the application. Thus, in view of the above that Electricity Act, 2003

having an over riding effect, the condition imposed by the Assistant Engineer of NOC from TCP/Municipal Council is bad, arbitrary and contrary to the Electricity Act, Regulations and Law;

- (f) that the respondents have clearly ignored and brushed aside the provisions of Section 43, 57, 143, 173, 174, 175 and 185 of the Electricity Act, 2003; which being a special statute, have an over riding effect on all the other general law rules etc. That the petitioner company's electricity connection being illegally disconnected in an arbitrary and flimsy manner by the respondents, the petitioner company left with no other alternative but to approach the Commission for the redressal of its grievances to direct the respondents not to disconnect the electricity connection on flimsy grounds that NOC from TCP has not been obtained as under the Electricity Act, 2003 there is no provisions for the same.

13. The complainant being a consumer, submits that the said petition is maintainable and the Commission has the jurisdiction to adjudicate the matter in view of the Electricity Act, 2003 and HPERC (Licensee Duty to Supply of Electricity on Request) Regulations, 2004 and also in view of the fact that the distribution licensee have failed to adhere to the standards of performance as enumerated under Section 57 of the Electricity Act, 2003 and the Regulations framed thereunder. Further also as there is non compliance of Section 43 and non consideration of the provisions of the Act, and the legal position that special Act prevails on general law the petition is maintainable and competent in law.

14. 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 order dated 1.5.2004 also stands stayed. Keeping in view of the pendency of the matter before the High Court, the Learned Counsel, appearing for the respondent Board, had no objection for admission of this petition and he gave undertaking that the Board shall not implement the impugned order dated 16.7.2007 or disconnect the electric connection of the petitioner Company till the disposal of the proceedings before the Hon'ble High Court. In view of this further proceedings in this petition had to be adjourned sine die.

15. **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.

16. 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.

17. 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]-which 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 the 2003 Act 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 a 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 definitive 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.

18. 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 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.

19. 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 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 dis-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. 175/07 moved by the petitioner, 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.

20. 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 28.7.2007 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