

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

In the matter of:-

1. M/s Ascent Hydro Power Ltd.
6, Shiv-Wastu, Tejpal Scheme, Road No.-5,
Vile Parle (East) Mumbai-400057
and Branch Office, at House No. 16,
H.P. Officers Colony, (West End),
Panthaghati, Shimla-171009
 2. M/s Harisons Hydel Const. Co. Pvt. Ltd.
Akhara Bazar, Kullu, HP- 175101
 3. M/s Ginni Global Pvt. Ltd.
2nd Floor, Shanti Chamber, 11/6B,
Pusa Road, New Delhi- 110005
-Petitioners

Versus

The HP State Electricity Board Ltd. thro' its
Executive Director (Personnel)
Vidyut Bhawan, Shimla-171004

.....Respondent

Petition Filing No. 91 of 2016
(Decided on **14th March, 2017**)

CORAM

S.K.B.S. Negi
CHAIRMAN

Counsels: -

for petitioners:	Sh. Ajay Vaidya Advocate
for respondent:	Sh. Ramesh Chauhan, (Authorised Representative)

ORDER

(Last heard on 4th March, 2017 and Order reserved)

M/s Ascent Hydro Power Ltd., a corporate body having its registered Office at 6, Shiv Wastu, Tejpal Scheme, Road No. 5, Vile Parle (East) Mumbai-400057; alongwith M/s Harisons Hydel Construction Pvt. Ltd., having its registered office at Akhara Bazar, Kullu, (HP) and M/s Ginni Global Pvt. Ltd., having its registered office at 2nd Floor, Shanti Chamber, 11/6B Pusa Road, New Delhi (hereinafter referred as “the petitioners”) have jointly moved this petition, through Sh. Ashok Sood r/o, Goel Niwas, Boileauganj, Shimla, to initiate appropriate proceedings against the Himachal Pradesh State Electricity Board Ltd. (hereinafter

referred as “the Respondent Board”) under sections 142 and 146 of the Electricity Act, 2003, (in brevity “the Act”) for non-compliance of the Commission Orders dated 22.05.2010, 10.06.2010 and 10.09.2014, and to impose penalty and to direct the Respondent Board to make payment pursuant to the aforesaid Orders, alongwith interest @ 1.5 p.m. and further interest.

2. In the present cases, the Commission enhanced prospectively the tariff of Sechi Hydro Electric Project (4.5MW) of Petitioner No.1; Braham Ganga HEP(5MW) of Petitioner No.2; & Tarila HEP (5MW) of Petitioner No.3., Vide Orders dated 22.05.2010; 10.06.2010 and 22.05.2010 respectively on account of change in statutory Laws, rules and State Govt. Policy, subsequent to the signing of the PPA, which intra alia included the increase on account of the impact of 15% mandatory release of water. These Orders were effective from the dates on which these Orders allowing the increase were made by the Commission. The said increase was challenged by the Respondent Board by way of 8 writ petitions before the Hon’ble High Court, which were disposed of by the Hon’ble High Court on 16.08.2013. The Respondent Board filed SLPs in the Hon’ble Supreme Court, challenging the said Order of the HP High Court, which were dismissed on 24.03.2014. During the pendency of the writ petitions, the operation of the Orders passed by the Commission and the proceedings before the Commission on the review petitions, filed by the IPPs, remained stayed. The Commission disposed of the Review petitions filed by the IPPs by a common Order dated 10.09.2014, whereby the increase allowed on account of impact of 15% mandatory water release was withdrawn w.e.f. 25.04.2014. The Commission Order dated 10.09.2014 also stands challenged by the IPPs before the Hon’ble APTEL and the verdict, thereon is yet awaited.

3. Keeping in view the verdict of the Hon’ble APTEL rendered in **BSES Rajdhani Power Ltd. V/s Delhi Electricity Regulatory Commission & another 2011 ELR (APTEL) 839** the Commission, before entertaining the petition or complaint for taking action under section 142 of the Act, at the outset has to satisfy itself by applying its mind as to whether the allegations contained in the petition or complaint or information, would constitute contravention or violation of any of the provisions of the Act or rules or regulations, made thereunder or the directions issued by the Commission. This necessitates the issuance of Show Cause Notice to conduct inquiry under section 142 of the Act. Accordingly the Respondent Board has been called upon to Show cause as to whether the allegations levelled against it in the petition do not constitute the contravention of the provisions/directions and as to why the petition for initiating proceedings under sections 142 and 146 of the Act, as prayed for, may not be entertained.

4. On 17.09.2016, when this petition came up for admission hearing, Sh. Ramesh Chauhan, representing the Respondent Board, strenuously contended that this petition is not maintainable and deserves out right dismissal. He submitted that the allegations leveled against the Respondent Board in the petition did not constitute the contraventions or violations of any provisions of or directions issued under the Act. In support of his contention he referred to paras 46 and 47 of the Commissions' common Order dated 10th Sept., 2014, passed in Review Petition Nos. 11/2014, 12/2014, 14/2014, 15/ 2014, 16/2014, 30/2014, 62/2014, 64/2014, 121/2010 and 108/2010 and Petition Nos. 137/2010 and 26/2011 and stated that as a sequel to that order the revised bills were required to be raised by the IPPs along with the data of minimum 15% water discharge from their respective projects, but the complainants have not raised the revised bills and have not furnished the requisite water discharge data. Further the operation of the Commission Orders remained suspended due to stay orders of the High Court and the aforesaid order has also remained challenged and is still under adjudication before the Hon'ble APTEL. Till date of filing the complaints, the complainants had not sought any directions of this Commission. Hence the question of non-compliance of the provisions of the Act, or of any directions issued thereunder, does not arise at all.

5. Per contra Sh. Ajay Vaidya, Learned Advocate for the plaintiffs/complainants, stated that he would be submitting the water discharge data, alongwith supporting documents, within a fortnight, and he prayed that the issue of the maintainability of this petition may be kept open till then. Sufficient time was allowed to the petitioners for this purpose. But the matter when again came up for admission hearing on 22.10.2016, the petitioners again prayed for more time. The Commission, having a liberal approach, gave the final opportunity to the petitioners to furnish the water discharge data, with supporting documents, in relation to their projects, supported by affidavits, within two weeks, with a copy to the Respondent Board, to enable it to file their further submissions within next two weeks thereafter. It was also made clear that the time lines, as set out in that order, were to be meticulously followed. However, the petitioners made the additional submissions only on 16.11.2016, much after the time allowed to them and the details which have been furnished were only in relation to petitioner No. 3 i.e. M/s Ginni Global Ltd. Subsequently the petitioner made the additional submissions on 2nd December, 2016, in relation to petitioner No. 1 i.e. M/s Ascent Hydro Power Ltd. and others and on 12.12.2016 in relation to petitioner No. 2 i.e. M/s Harisons Hydel Construction Pvt. Ltd. Again on 23.12.2016, Sh. Ajay Vaidya Advocate for the petitioner sought the time to file his further submissions, with reference to the response of the Respondent Board. Despites the fact that the Commission had already given the final opportunity, the Commission granted two weeks time, reckoned from 23.12.2016, to file the further additional submission.

Sh. Vaidya, has filed the further additional submissions only on 22.02.2017 i.e. after the period specifically allowed to him. Even in the additional submissions he only reiterates his earlier stand. From this it is evident that the petitioners are still not serious to disclose the full material facts for initiating the proceedings under Section 142 or 146 of the Act. The petitioners have made composite prayer, for directions to the Board to make payment pursuant to Annexers 5, 6 & 7, but it is not evident that there is any specific direction from this Commission, the non-compliance of which can be form the basis for initiating of the penal provisions as prayed for.

6. Mere change in the tariff is not sufficient for initiating of the penal proceedings under sections 142 and 146 of the Act. The petitioner should have raised the revised bills and in the absence of any valid reasons the DISCOM must have declined to entertain the revised bills. From the contents of the petition, it is not clear whether the Respondent Board declined to entertain the petitioners claim and the petitioners exhausted the specific remedy available to them under the PPA; especially when the PPA provides in Article 8 specific billing procedure and provisions for adjustments through supplementary bills, and also for resolution of billing disputes, failing which the provisions of Article 13 are to be attracted with respect to the disputed amount of such bills. Only after exhausting the dispute resolution mechanism laid down in the PPA, the recourse could be taken to section 81(1)(f) of the Electricity Act, 2003, and the provisions of sections 142 and 146 of the said Act, could not be invoked directly.

7. On the other hand it is observed that the Respondent Board has also concealed the material facts even in relation to the availability of the water discharge data and details of submission of bills by the petitioners, the copies of which have now been placed on record of this petition by the petitioners.

8. The Commission has heard the Learned Counsel for the parties on the maintainability of the petition under sections 142 and 146 of the Act, and has given the thoughtful consideration to their submissions. In light of the rival submissions, the petitioners have failed to establish any contravention or violation of any the provisions of the Act, or rules or regulations, made or directions issued thereunder by the Commission. As such this is not a fit case to invoke the penal provisions of sections 142 and 146 of the Act.

9. Before parting with this case, it would be appropriate to state that it is one of the fundamental principles of jurisprudence that the litigants must observe total clarity and candour in their pleadings. In this case both the parties have not come up to this Commission with clean hands and have also suppressed material facts from the Commission, with a view to

gain advantage, in the petition, which amounts to over reaching the opposite party. The petitioners while filing the present petition did not disclose all the relevant details of material facts in their pleadings. In this regard it would be appropriate, to quote the Hon'ble Supreme Court in **S.P. Chengalvaraya Naidu V/s Jagnath & Ors, AIR 1994 SC, 853 (at para 6)** as under:-

“A Litigant, who approaches the Court, is bound to produce all the documents executed by him, which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side than he would be guilty of playing fraud on the Court as well on the opposite party.”

Further the Hon'ble Supreme Court in **Amar Singh v/s Union of India & Ors. (2011) 7 SCC 69 (At para 53)** has observed that:-

“53. Courts have, over centuries, frowned upon litigants who, with intent to deceive and mislead the Courts, initiated proceedings without full disclosure of facts. Courts held that such litigants have come with ‘unclean hands’ and are not entitled to be heard on merits of their case”.

Accordingly, the Commission declines to entertain this petition for initiating proceedings under sections 142 and 146 of the Act, against the Respondent Board and strongly condemn the attitude of the petitioners as well as of the Respondent Board for not disclosing all the relevant details of the material facts in their pleadings. The Respondent Board, being a statutory authority should also endeavour to do what is fair or just to meet the honest billing dispute resolution claims raised by the petitioner in consonance with mechanism set out in the PPA.

It is so ordered

--Sd/-
(S.K.B.S. Negi)
Chairman