

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

**Appeal No. 126 of 2009 &
IA No. 237 of 2009**

Dated: 9th December, 2009

**Present : Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. H.L. Bajaj, Technical Member**

Himachal Pradesh State Electricity Board Appellant (s)

Versus

HP Electricity Regulatory Commission & Ors. ... Respondent (s)

Counsel for the Appellant (s) : Mr. M.G. Ramachandran,
Mr. Anand K. Ganesan &
Ms. Swapna Seshadri

Counsel for the Respondent (s) : Mr. Sanjay Sen & Mr. Achintya for HPERC

ORDER

The subject matter of the show cause notice initially issued against the appellant in this case is with reference to the failure to set up Call Centres and to commission the same within a particular date.

Finding that there was a failure, the penalty was imposed by the Commission by Order dated 05.04.2008.

According to the learned counsel for the Appellant, the Call Centres have been set up and commissioned subsequently, and on that basis, they filed a Review Petition before the Commission, which in turn dismissed the same as not maintainable.

Thereafter, the Appellant approached this Tribunal in the form of an Appeal. By Order, dated 16.03.2009, this Tribunal directed the Appellant to approach the Commission again to show the circumstances in order to consider the prayer for waiver of the Penalty.

In pursuance of our Order, the Appellant approached the Commission and in turn the Commission appointed a Secretary to inspect the Call Centres and to give a report to the Commission. Accordingly, the Secretary inspected and submitted a report. On the basis of the said report, the Commission has passed the Order confirming the Order of Penalty passed by it earlier.

This is the subject matter of the challenge in this Appeal.

We have heard the learned counsel for the parties.

On going through the records, it is clear that the Call Centres have been installed and commissioned on or before 29.09.2008. But, on a perusal of the impugned order, it is noticed that the Commission has given a finding that though the Call Centres had been set up and commissioned, there was no effective functioning of the same.

According to the learned counsel for the Appellant, the materials have been placed before the Commission stating that most of the complaints which were received by the Appellant have been resolved and all the Call Centres have been set up and commissioned before 29.09.2008 itself, and as such, the Penalty cannot be confirmed for the absence of the effective functioning, which is not the charge in the show cause notice. We find force in this contention.

Though the Call Centres have been set up subsequently, they were not set up on the date of the Order dated 05.04.2008, therefore, in our view, the fine of Rs. 25,000/-, imposed by the Commission by way of Penalty on the appellant can be retained. However, in the circumstances of the case and also in the light of the efforts taken by the Appellant to comply with the Order of the Commission by setting up the Call Centres and Commissioning the same subsequently by 29.09.2008, we feel it appropriate to set aside the order of the Commission relating to imposition of the Penalty on per day basis alone. Accordingly, ordered.

As requested by the learned counsel for the Commission, we give liberty to the Commission to make a re-visit in order to find

out with regard to the effective functioning of the Call Centres and decide the said issue separately.

With these observations, this Appeal is partly allowed.

(H.L. Bajaj)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson