

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

Appeal No. 135 of 2006

Dated: November 12, 2008

**Present: Hon'ble Mrs. Justice Manju Goel, Judicial Member
Hon'ble Mr. A.A. Khan, Technical Member**

Himachal Pradesh State Electricity Board -Appellant(s)

Versus

Himachal Pradesh Electricity Regulatory Commission -Respondent(s)

Counsel for the Appellant(s) : Mr. M.G. Ramachandran and Ms. Swapna
Seshadri

Counsel for the Respondent(s) : Mr. Rana S. Biswas and Ms. Ruchika Rathi for
HPERC

ORDER

1. The order impugned in this appeal is the Himachal Pradesh Electricity Regulatory Commission's order passed in exercise of power under Section 142 of The Electricity Act, 2003, hereinafter referred to as the Act, dated 6/4/2005. The facts leading to the passing of the impugned order are as under:-

2. The Himachal Pradesh Electricity Regulatory Commission, hereinafter referred to as the Commission, was established on 30/12/2000. The appellant Board on 18/11/2004 issued a notification increasing the miscellaneous charges for giving electricity connection. This miscellaneous charge was called Infrastructural Development Charges. The Commission on 9/12/2004 issued a notice to the appellant Board describing the hike in the Infrastructural Development Charges and Advance Consumption Deposit without approval of the Commission as contravention of the provisions of the Section 45, 46 and 47 of The Act. The Commission referred to sub-section (5) of section 45 of The Act, that provides that the charges fixed by the distribution

licensee shall be in accordance with the provisions of the Act and the regulations made in this behalf by the State Regulatory Commission. The Commission also referred to section 46 of the Act which provides that the State Electricity Regulatory Commission may by regulations authorize a distribution licensee to charge from a person requiring supply of electricity in pursuance of section 43 any expenses, reasonably incurred on providing electric line or electrical plant used for the purpose of supplying electricity. The Commission also referred to section 47 of the Act which provides that the distribution licensee may require any person to give a reasonable security as may be determined by the regulations. The Commission claimed that the hike in the Infrastructural Development Charges and Advance Consumption Deposit without approval of the Commission were in contravention of the aforesaid provisions. The Commission required the appellant to show-cause as to why proceedings under section 142 of the Act may not be initiated against it. The Commission stayed the operation of the Board's notification dated 18/11/2004 till the show-cause notice was replied to. The appellant submitted a reply on 13/1/2005. In the reply, the appellant submitted, *inter-alia*, that on 28/12/2004 the notification dated 18/11/2004 had been withdrawn. The Commission thereafter, heard the appellant on 27/1/2005. On 27/1/2005 after hearing Mr. P.C. Sardana, appearing for appellant Board concluded that the appellant was guilty of contravention of the aforesaid provisions. During this hearing, it was submitted on behalf of the appellant that the appellant issued the notification dated 18/11/2004 under misconception of the legal situation and that the appellant in fact had not recovered enhanced charges under the notification from any consumer and thus had not made any unlawful gain. The consumer representative, however, alleged that certain consumers had paid the enhanced Infrastructural Development Charges. However, no specific allegations in this regard was made and no details of any such recoveries was given. The Commission recorded in its order that Mr. Sardana had admitted the contravention and pleaded for mercy. The Commission reserved its order. This

was followed by the impugned order dated 6/4/2005 whereby the Commission levied a fine of Rs. 1 lacs for the aforesaid contravention and additional penalty of Rs 6,000 for everyday reckoned from 18.11.2004 to the date of withdrawal of the aforesaid communication(28/12/2004).

3. The appellant contends that the appellant should not have been subjected to such penalty in view of the fact that the notifications enhancing Infrastructural Development Charges was promptly withdrawn and that in fact no recovery under said notification was at all ever made. On behalf of the Commission, it is submitted that such recoveries had actually been made since the consumer representative had made a statement. We have carefully gone through the orders passed by the Commission. There is no finding in this regard by the Commission. The Commission has not stated anywhere that it disbelieved the statement of Mr. Sardana. Therefore, as it appears from the record, the appellant had actually not made any recovery under the said notification on dated 18/11/2004.

4. The appellant is not disputing that it actually made a contravention of the aforesaid provisions by issuing the notification dated 18/11/2004. Nonetheless, it remains to be seen as to whether the contravention was so severe as to call for a penal action.

5. It is true that the Commission has the power to punish any licensee for such contravention. Nonetheless, it appears to us that this was not a situation which called for wielding the rod. The notification which was issued in contravention of the law remained in force for a short duration and even during this period it had not been actually given effect to. In our opinion, this was not appropriate case in which the Commission was required to exercise its jurisdiction under section 142 or to impose a penalty which was so heavy as said above.

6. Accordingly, we set-aside the impugned order and allow the appeal and discharge the notice to show-cause.

(A.A. Khan)
Technical Member

(Manju Goel)
Judicial Member