

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

Appeal No. 68 of 2006

Dated: December 3, 2008

**Present: Hon'ble Mrs. Justice Manju Goel, Judicial Member
Hon'ble Mr. H.L. Bajaj, Technical Member**

Himachal Pradesh State Electricity Board -Appellant(s)

Versus

Himachal Pradesh Electricity Regulatory Commission -Respondent(s)

Counsel for the Appellant(s) : Mr. Anand K. Ganesan

Counsel for the Respondent(s) : Ms. Shikha Ohri and Mr. Sakya Singha
Choudhuri along with Mr. Madan Chauhan,
Secretary, HPERC

ORDER

The Secretary of the Himachal Pradesh Electricity Regulatory Commission (HPSEB), Mr. Madan Chauhan is present in compliance with this Tribunal's order dated 12th November, 2008. He makes the following statement:

"The impugned order directed appointment of Mr. A. K. Jain, former Member of West Bengal Electricity Regulatory Commission to investigate into affairs of HPSEB. Mr. A. K. Jain never took up the appointment. The Commission did not appoint any other person in place of Mr. A. K. Jain. Till date nobody has been appointed to investigate into the affairs of HPSEB, the appellant. The Commission does not intend to appoint anybody to investigate into the affairs of the HPSEB

although the Commission insists that its instructions be complied with."

Mr. Ganesan, advocate appearing for the appellant HPSEB says that HPSEB had always been willing to comply with the directions and is willing to satisfy the Commission on the compliance of its directions.

The appeal is infructuous and will be disposed of separately.

(H.L. Bajaj)
Technical Member

(Manju Goel)
Judicial Member

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ORDER

1. The present appeal is directed against the order dated 23.12.2005 passed by the Himachal Pradesh Electricity Regulatory Commission (HPERC/Commission for short). The Commission issued a number of letters to the appellant, which is a deemed licensee in the state of Himachal Pradesh, between 31/10/2005 to 7/11/2005 and reminders on 12/12/2005 and 13/12/2005 requiring the appellant to explain why the provisions HPERC (General Condition of Distribution License) Regulations, 2004, HPERC (General Conditions of Transmission License) Regulations, 2004 and HPERC (General Conditions of Trading License) Regulations, 2004 were not being complied with. Certain adverse remarks about the state of affairs of the appellant had been made in the interim order of the Commission dated 16/07/2005. Vide the impugned order, the Commission appointed Sh. A.K. Jain former member of West Bengal Electricity Regulatory Commission as the investigating authority to investigate into the affairs of

the appellant and report to the Commission within 50 days of the commencement of the assignment as such. The terms of reference were as under

- (i) *to investigate the affairs of the transmission licensee, HPSEB.*
- (ii) *to investigate the affairs of the distribution licensee, HPSEB.*
- (iii) *to investigate the affairs of the trading licensee, HPSEB.*
- (iv) *to investigate the financial position of the transmission licensee i.e. the HPSEB to ascertain if he is able, fully and efficiently, to discharge the duties and obligations imposed on him by deemed licensee.*
- (v) *to investigate the financial position of the distribution licensee, i.e. the HPSEB to ascertain if it is able, fully, and efficiently, to discharge the duties and obligations imposed on him by deemed licensee.*
- (vi) *to investigate the financial position of the trading licensee, i.e. the HPSEB to ascertain if it is able, fully and efficiently, to discharge the duties, and obligations imposed on him by deemed licensee.*

2. The appellant first applied for the review which was dismissed and thereafter filed the present appeal.

3. Although, the appellant challenges the order, it also contends that substantial compliance of regulations have since been done. The appellant also filed a status report in this regard and the Commission has been taking time to examine it the compliance is satisfactory. A long time has passed since the impugned order was passed in December, 2005.

Mr. A.K. Jain, who was appointed to investigate into the affairs of the appellant, did not join his assignment. On 12/11/2008, when the appeal came up for hearing, we directed that the Secretary of Commission shall be present on 3/12/2008(today) with instructions as to whether the Commission insists on appointment of an independent investigator to go into the affairs of the appellant. Sh. Madan Chauhan, Secretary of the Commission today appeared in the Court and made the following statements:-

The impugned order directed appointment of Mr. A.K. Jain former member of West Bengal Electricity Regulatory Commission to investigate into affairs of HPSEB. Mr. A.K. Jain never took up the appointment. The Commission did not appoint any other person in place of Mr. A.K. Jain. Till date nobody has been appointed to investigate into the affairs of HPSEB, the appellant. The Commission does not intend to appoint anybody to investigate into the affairs of the HPSEB although the Commission insists that its instructions be complied with."

4. The learned counsel for the appellant also assures that the appellant would be willing to comply with the directions of the Commission.
5. In view of the above, the present appeal has become infructuous and the same is accordingly dismissed.

(H.L. Bajaj)
Technical Member

(Manju Goel)
Judicial Member