

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

Appeal No. 21 of 2007

Himachal Pradesh State Elec. Board **...Appellant**

Versus

Parwanoo Industries Association & Ors. **...Respondent(s)**

Under Section 111 (2) of Electricity Act, 2003

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

Dated; 16th May, 2007.

Counsels for Appellant : Mr.M.G. Ramachandran, Advocate

Counsels for Respondent : Mr. Sanjay Sen, Advocate
Ms. Ruchika Rathi, Advocate,

Order

The appellant, Himachal Pradesh State Electricity Board (for brevity to be called 'HPSEB') has challenged the Orders dated 31.10.2003 and 21.01.2004 passed by the Himachal Pradesh Electricity Regulatory Commission (for short 'the Commission'). The aforesaid orders arose out of the Commission's order dated 29.10.2001 passed on the petition filed by the HPSEB for determination of Annual Revenue Requirements and tariff for the financial year 2001-

02. Sequel to the tariff order dated 29.10.2001, the HPSEB issued a notification for implementation of the tariff order.
2. The First and Second Respondents filed petitions under clause 12 of HP Regulatory Commission (Conduct of Business) Regulations, 2001 before the State Commission complaining that the tariff order dated 29.10.2001 was discriminatory as it discriminated Large Scale Consumers on account of load factor wherein the demand charges were uniformly linked to one, two and three shifts working of the industry without limitation of the overall unit load and energy. The petitions of the Respondents were disposed of by the Commission. The First and Second Respondents also filed an appeal under Section 27 of ERC Act - 1998 Act before the Himachal Pradesh High Court challenging the tariff order dated 29.10.2001. The High Court passed an order on 17.04.2002 and the appeal was withdrawn by the Respondents.
 3. The First and Second Respondents, thereafter, filed complaint/Execution Petition and the Commission issued a clarificatory order dated 03.08.2002. HPSEB filed an appeal challenging the Commission's order dated 03.08.2002 and seeking stay on it. While the appeal was pending before the High Court, the First and Second Respondents filed proceedings before the

Commission for execution of its order dated 03.08.2002. The Commission on 07.12.2002, communicated to the First and Second Respondents that no action could be taken on their execution petitions as the HPSEB's appeal was pending before the High Court. It was erroneous on the part of the Commission to stay further proceeding on the basis that HPSEB's appeal was pending before the High Court. On 15.09.2003, the High Court passed an order not granting the interim directions as prayed for by the appellant.

4. We observe that after the clarificatory order dated 03.08.2002, the HPSEB has issued implementation circulars dated 09.10.2002, 13.11.2002 and 13.02.2003/04.03.2003, which were at wide variance with the Commission's order and amounted to a willful and deliberate contravention of the Commission's order.
5. HPSEB in the proceedings for execution petition has admitted before the Commission that there was delay in implementing the order dated 03.08.2002 in letter and spirit on the ground that the appeal filed in the High Court was disposed of only on 15.09.2003. This action appears to be a lame excuse as the appellant was duty bound to implement the Commission's order until it was stayed and

mere appeal being filed before the High Court is not a legitimate ground for non-implementation of the Commission's order.

6. The Commission passed an order dated 31.10.2003 issuing a show cause notice to the respondent, HPSEB for serious contravention of the Commission's order proposing to impose penalty under Section 142 of the Electricity Act, 2003 and Regulations 51 (iii) of HPERC's Conduct of Business Regulations, 2001 and allowing an opportunity to HPSEB of being heard in the matter.

7. We painfully observe that the appellant did not stir in taking corrective action even after the Commission passed an order dated 31.10.2003, declaring the impugned circulars dated 09.10.2002, 13.11.2002 and 13.02.2003/04.03.2003 as violative of the Commission's orders and struck them down. The attitude of the appellant smacks of deliberate defiance to the Commission's orders which does not augur well for the smooth and efficient operation of the State power sector. In the order dated 12.01.2004, passed by the Commission, a penalty of Rs. 25,000/- (Rupees twenty five thousand) was imposed upon the respondent, Board. Further, an additional penalty for continuing failure of Rs. 1500/- per day was imposed on HPSEB immediately after 03.09.2002 until the date of

compliance with the Commission's order to the satisfaction of the Commission.

8. We have heard the learned counsel for the appellant and respondent Commission. At this stage Mr. M.G. Ramachandran, learned counsel for the appellant fairly expressed sincere regrets for default of the appellant in complying with the orders of the Commission and that the appellants are prepared to apologise for not complying with the Commission's orders in letter and spirit and pleaded for lenient view. He also says that the order of the Commission in question has since been complied with.

9. We have given a serious thought to the plea made by the learned counsel on behalf of the appellant and feel that ends of justice will be served for limiting the penalty to Rs. 25,000/- imposed by the Commission on the Board. The appellant is, however, directed to file before the Commission a statement of compliance indicating the date by which the Board has fully complied with the Commission's orders dated 29.10.2001 and 03.08.2002 and Commission will fully satisfy itself and notify the acceptance of the date of compliance.

10. We also hope that the appellant Board and as well as the other licensees will appreciate the binding effect of the orders passed by the Commission under Electricity Act, 2003 and will take all steps in ensuring their full compliance.

10. A copy of the order be sent to all the Regulatory Commissions for communicating the same to the licensees working within their respective jurisdiction for abiding the Commissions order within the framework of law.

11. In view of the above, we dispose of the appeal and with no costs.

(Mrs. Justice Manju Goel)
Judicial Member

(Mr. A. A. Khan)
Technical Member