

BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION

BAYS No. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA

Case No. HERC/PRO – 78 of 2017

DATE OF HEARING : 29.05.2019

DATE OF ORDER : 29.05.2019

IN THE MATTER OF:

Petition seeking: -

(A) Clarification of connection charges where the deposit estimate in respect of cost of line has already been charged and deposited by the consumer.

(B) Refund of an amount of Rs. 273350/- charged by the respondent under the head of service connection charges along with interest at the rate 18 % per annum in pursuance of the HERC order dated 17.08.2011

Petitioner

Shri Balaji Cotton Industry having registered office at Village Taruana, Thesil Kalanwali, District Sirsa.

V/s.

Respondent

1. Dakshin Haryana Bijli Vitran Nigam, Hisar Haryana through its Managing Director.
2. Chief General Manager (Audit), Vidyut Sadan, Vidyut Nagar, Hisar.
3. Deputy General Manager (OP) Divison, DHBVNL, Dabwali.
4. Sub Division Officer, DHBVNL, Kalanwali, Sirsa.

PRESENT

On behalf of the Petitioner:

No one appeared

On behalf of the Respondent:

1. Smt. Sonia Madan, Advocate, DHBVN
2. Shri Pushpinder Kumar, SDO, DHBVN
3. Shri Lakhvir Singh, UDC, DHBVN

QUORUM

Shri Jagjeet Singh, Chairman
Shri Pravindra Singh, Member
Shri Naresh Sardana, Member

ORDER

Brief background of the Case:

1.1. The Petitioner has submitted that:

- a) Their firm in the year 2007 had installed a cotton factory within the vicinity of Village Taruana, Tehsil Kalanwali District Sirsa and the Petitioner's firm for smooth running of its establishment, had applied for an electricity connection with the Respondent No.4.
- b) The respondent Nigam after the receipt of an application for release of an electric connection from the Petitioner's firm, had required the petitioner to deposit an amount of Rs. 273750/- towards service connection charges and further required the petitioner to deposit an amount of Rs. 229080/- towards ACD and further required the Petitioner's firm to deposit further small amount on account of other relevant charges. They deposited an amount of Rs. 511330/- with the respondent Nigam on dated 01.08.2007.
- c) They came to know that the respondent Nigam is going to release an electric connection to them from the Rural Feeder and the respondent Nigam in pursuance of the same, had deposited an amount from the Petitioner's firm and upon the same, the Petitioner's firm represented to the respondent Nigam qua release of an electric connection in favour of the Petitioner's firm from the already existing Urban Feeder and the Petitioner's firm further undertakes to bear the necessary expenses required for release of an electric connection to the Petitioner's firm from the Urban Feeder.
- d) The respondent Nigam in pursuance of the same, had visited the site and had prepared an estimate amounting of Rs. 337000/- which includes cost of Cable required for supplying of an electricity to the Petitioner's firm from the 11KV kalanwali Urban Feeder. In pursuance of the same, they deposited the requisite amount of Rs. 337000/- with the respondent Nigam on dated 14.09.2007 considering the same to be valid and legal demand of the respondent Nigam in

terms of the standing instructions of the Nigam. Nigam released electric connection dtd. 11/10/2007.

- e) After lapse of reasonable time, the petitioner came to know that the officials of the respondent Nigam under the lack of knowledge had got deposited an amount of Rs. 273350/- towards service connection charges and had later on also got deposited an amount of Rs. 337000/- on account of cost of electric line required for release of an electric connection despite the fact that in terms of the HERC order dated 17.08.2011 where the consumer himself has bear the cost of line required for supplying electricity to its business concern, there the respondent Nigam desist from charging any single penny towards service connection charges and that so in the present scenario as the Petitioner's firm had deposited an amount of Rs. 337000/- towards deposit estimate which includes cost of line so, the respondent Nigam cannot charge any amount on account of service connection charges.
- f) As per technical parlance service connection charges are levied in accordance with the provisions of regulation No.4 of the HERC (Duty to supply electricity on request, Power to recover expenditure incurred in providing supply and power to require security). That the bare perusal of the above regulation abundantly makes it clear that the objective of levying service connection charges is to recover cost incurred by a distribution licensee in providing any electricity supply to a consumer. It is pertinent to mention over here that since the cost of release of an electric connection has already been borne by the Petitioner's firm by getting deposited an amount of Rs. 337000/- So the respondent Nigam cannot charge any amount from Petitioner's firm towards service connection charges.
- g) They came to know about its legal right and with a view to recover the amount back from. the respondent Nigam vide its representation dated 13.01.2010 had represented and requested to the respondent Nigam to refund an amount of Rs. 273350/-so deposited on account of service connection charges and the respondent Nigam after in receipt of a representation from the Petitioner's firm by taking false and frivolous plea, had justified their action of retaining an amount of Rs. 273350/-.
- h) With a view to enforce their valuable rights had filed a civil Writ Petition before the Hon'ble High court of Punjab and Haryana having CWP no. 18133 of 2010 and during the pendency of the said Writ Petition, the counsel appearing on

behalf of Nigam has submitted before the Hon'ble High court that petitioner can approach the Commission for redressal of it's grievance. They withdrew the application and filed before the Commission.

- 1.2. In view of above, the Petitioner has prayed that the Respondent may be directed to refund an amount of Rs. 273350/- alongwith interest @ 18% p.a. and the Respondent may be penalised for non-compliance of the settled principles of the Act.

Respondent's Replies

2.1 DHBVN has submitted as follows:

- a) Petition filed by the Petitioner is untenable in its present form. The Petitioner has not cited any relevant provision of law under which the present petition is maintainable before this Hon'ble Commission. The Petitioner has made a vague reference to Section 142 of the Electricity Act, 2013, which in no form is applicable to the instant case. The Petitioner has failed to establish as to how the said provision is applicable to the facts of the instant case, more so, in view of the fact that the Respondent has acted/followed strictly in terms of the applicable Sales circular approved by this Hon'ble Commission. The Petitioner has also sought clarification on implementation of service connection charges. However, no ambiguity, whatsoever, has been pointed by the Petitioner regarding the same in any statutory provisions rules/regulations/ or sales circular.
- b) The instant petition is not maintainable in its present form in view of jurisdictional error. It is the only case of the Petitioner, which is an industrial consumer, that the Respondent has wrongly charged service connection charges and is liable to refund the same. That the nature of grievance stated above is by all means a 'Consumer Dispute'. It is a matter of fact that a Regulatory Commission being a quasi-judicial authority could exercise jurisdiction, only when the subject matter of adjudication falls within its jurisdiction and the order that may be passed is within its authority and not otherwise.
- c) It may be noted from Section 86(1)(f) of the Act that the Hon'ble Commission has only power to adjudicate upon disputes between licensees and generating companies. Therefore, the Hon'ble Commission cannot adjudicate disputes

relating to grievances of individual consumers. The adjudicatory function of the Commission is thus limited to the matter prescribed in Section 86(1)(f). The redressal of grievance or complaint does not fall under any one of the functions enumerated above. Also no other provision in the Electricity Act confers such power or authority or jurisdiction on the commission, not even by implication.

- d) A comprehensive reading of provision referred above leaves no manner of doubt that the Hon'ble Commission, under above mentioned provisions, cannot adjudicate disputes relating to grievances of individual consumers. In view of the foregoing, the instant petition filed by a consumer seeking refund of service connection charges is not maintainable before this Hon'ble Commission.
- e) The present Petition is barred by the law of limitation. The Petitioner had earlier referred the instant dispute before the Hon'ble High Court by way of Writ Petition no. 18133 of 2010 titled as '*M/s Shri Bala Ji Cotton Industries versus DHBVN and ors.*' The Hon'ble High Court while disposing of said petition had directed the Petitioner to approach this Hon'ble Commission within a period of 4 weeks from date of disposal of the Petition, i.e. 18.07.2017 and the Respondent will not be permitted to raise the issue of limitation. In this context, it is respectfully submitted that the present Petition was to be filed on or before 18.08.2017. However, a perusal of notice issued by this Hon'ble Commission shows that the present Petition was received on 03.11.2017. Thus, the present petition is time-barred and the same is liable to be dismissed on delay and laches as the concession given by the Hon'ble High Court was only upto 18.08.2017. In view of the above, the period of limitation is now to be counted from the date of release of electricity connection to the Petitioner, i.e. 17/10/2007.
- f) Without prejudice to foregoing, it is submitted that that the Petitioner applied for electricity connection in respect of HT Industrial Category by way of an application to the Respondent. The Petitioner, in the said application had specifically requested for release of connection from the Urban feeder Kalanwali-I instead of nearby Taruana Rural feeder. The Petitioner also agreed to bear all charges with respect to same. In view of the said application, the CGM/Commercial, DHBVN, Hisar vide memo dated 07.09.2007 gave approval for

release of HT connection to the Petitioner from Urban Feeder instead of Rural Feeder subject to the condition that the then applicable Sales circular No. D-21/2005 may be followed strictly while releasing the connection from the Urban Feeder. The relevant condition of sales circular no. D- 21/2005, reads as under

"The industrial connection are to be released from nearby feeder, it may be urban or rural feeder. However, in case the industrial consumes makes request to release his connection from the urban feeder instead of nearby rural feeder, then the applicant would be asked to deposit the full cost against deposit amounts as well as service connection charges as applicable."

- g) In view of the above stated condition of the circular, the Respondent levied following charges to the account of the Petitioner - 1) Advance consumption deposit- Rs. 229080/-, 2) Processing charges- Rs. 8300/, 3) Service Connection charges- Rs.273750/- 4) Voucher fee- Rs.200/-, the total of which amounted to Rs. 511130/-.

Thus, the Service Connection Charges were charged from the Petitioner on the basis of the then applicable sales circular no. D-21-2005.

- h) The Petitioner has wrongly relied upon the order of this Hon'ble Commission dated 17.08.2011 in the matter of Suo moto proceedings for revision of Schedule of General and Miscellaneous charges approved by the Commission in its ARR and tariff order dated 22.12.2000 in respect of distribution and retail supply for the financial year 2000-01. In this regard, it is pertinent to bring to the kind notice of this Hon'ble Commission that the said order is not applicable to the instant case as the Petitioner was allotted electricity connection in the year 2007 and the order of the Hon'ble Commission dated 17.08.2011 was applicable w.e.f. 1.09.2011. The Petitioner had requested for release of the electricity connection from the urban feeder Kalanwali-I and accordingly, was obligated to pay all charges in view of the then applicable sale circulars no. D-21/2005. Thus, the reliance of Petitioner on the order of this Hon'ble Commission is of no avail. The Petition is liable to be dismissed on this count as well.

- i) The Petitioner has wrongly referred provision of Section 142 of the Electricity Act, 2013. It is denied that Respondent has violated any instructions or provisions. In view of the submissions made above, the Respondent acted strictly in terms of the conditions of the sales circular of the Respondent. Thus, the Respondent cannot be penalized in view of Section 142 of the Act.

Proceedings

- 3.1 The matter was first heard on 12/09/2018. No one appeared present on behalf of the Petitioner. The Ld. Counsel Smt. Sonia Madan presented appearing on the behalf of the Respondents has more or less reiterated the written submissions in the matter. She argued on the maintainability of the Petition being barred by the law of limitation. She further contended that the charges were recovered from the Petitioner in accordance with Sales Circular No. D-21/2005 dated 18.10.2005 prevailing at that time. On hearing the matter, the Commission directed the Respondents to file written submissions as to whether the ibid Sales Circular issued by the Respondent Nigam is in line with the then HERC Regulations and whether duly approved by the Commission or not? Liberty was also granted to the Petitioner to file rejoinder, if any.
- 3.2 The matter was again heard on 02/04/2019 and 29/05/2019 but no one appeared again on behalf of the Petitioner.
- 3.3 The Ld. Counsel Smt. Sonia Madan informed the Commission that DHBVN has submitted their replies to the Commission and further added that due to nonappearance of the petitioner or its representative on three dates, the case has to be dismissed in default.

Commission's Analysis and Order

- 4.1 The Commission has taken a note of the fact that no one appeared on behalf of the Petitioner in both the hearings held in the matter. The Commission has carefully examined the contents of the Petition, Respondent's reply, arguments made during hearings and the material placed on record by the parties and observes as follows: -

- 4.2 The Petitioner's firm had applied for electric connection in the name of Sh. Rajender Bansal M/S Balaji Cotton Industries Village Taruana (Sirsa) in the office of Respondent No. 4 and deposited inter alia an amount of Rs. 273750/- towards service connection charges with the respondent Nigam on dated 01.08.2007
- 4.3 The Petitioner's firm knowing that the connection has to be released from nearby Rural feeder represented to the respondent Nigam qua release of an electric connection in favour of the Petitioner's firm from the Urban Feeder and the Petitioner's firm further submitted undertaking to bear the necessary expenses required for release of an electric connection to the Petitioner's firm from the Urban Feeder.
- 4.4 The respondent Nigam had prepared an estimate amounting of Rs. 337000/- for supplying of an electricity to the Petitioner's firm from the 11KV kalanwali Urban Feeder. They deposited the requisite amount of Rs. 337000/- with the respondent Nigam on dated 14.09.2007 and Nigam released electric connection dated 11/10/2007.
- 4.5 The petitioner vide its representation dated 13.01.2010 had requested to the respondent Nigam to refund an amount of Rs. 273350/- so deposited on account of service connection charges explaining that Respondent can recover either Service connection Charges or cost of Deposit Estimate and the respondent Nigam after in receipt of a representation from the Petitioner's firm had justified their action of retaining an amount of Rs. 273350/- vide its Memo No. CA/RA/IAR-289/L-9/222 dated 12.03.2010 wherein, it has been clarified that in case of industrial consumer makes a request to release his connection from Urban feeder instead of nearby Rural feeder than the applicant would be asked to deposit the full cost against deposit estimate as well as service connection charges as applicable as per the provision of sales circular No. 21/2005.
- 4.6 Aggrieved with the decision of the Respondent, the petitioner filed a civil Writ Petition before the Hon'ble High court of Punjab and Haryana having CWP no. 18133 of 2010 (O&M). The Hon'ble High Court vide its order dated 18/07/2017 disposed of the petition. The operational part of the order is reproduced as under:

“In view of the aforesaid, this petition is disposed of with liberty to the petitioner to challenge the order dated 12.03.2010 before the Haryana Electricity Regulatory Commission. In case the appropriate application/petition is filed before the commission within a period of four weeks from today, the issue regarding limitation shall not be raised by the respondents because the petitioner has been litigating before this court.”

4.7 As such, the Petitioner has filed this petition before the Commission and prayed that the Respondent may be directed to refund an amount of Rs. 273350/- along with interest @ 18% p.a. and the Respondent may be penalised for non-compliance of the settled principles of the Act.

4.8 The Respondent has submitted as under: -

- i) The Petition filed by the Petitioner is untenable in its present form. The Petitioner has made a vague reference to Section 142 of the Electricity Act, 2013, which in no form is applicable to the instant case.
- ii) That the nature of grievance stated above is by all means a 'Consumer Dispute'. It is a matter of fact that a Regulatory Commission being a quasi-judicial authority could exercise jurisdiction, only when the subject matter of adjudication falls within its competence and the order that may be passed is within its authority and not otherwise.
- iii) It may be noted from Section 86(1)(f) of the Act that the Hon'ble Commission has only power to adjudicate upon disputes between licensees and generating companies. Therefore, the Hon'ble Commission cannot adjudicate disputes relating to grievances of individual consumers.
- iv) The Commission cannot adjudicate disputes relating to grievances of individual consumers.
- v) The present Petition is barred by the law of limitation and liable to be dismissed on delay and laches as the concession given by the Hon'ble High Court was only up to 18.08.2017. In view of the above, the period of limitation is now to be counted from the date of release of electricity connection to the Petitioner, i.e. 17/10/2007.

vi) Without prejudice to foregoing, it is submitted that the Petitioner, in the said application had specifically requested for release of connection from the Urban feeder Kalanwali-I instead of nearby Taruana Rural feeder. The Petitioner also agreed to bear all charges with respect to same. The CGM/Commercial, DHBVN, Hisar vide memo dated 07.09.2007 gave approval for release of HT connection to the Petitioner from Urban Feeder instead of Rural Feeder subject to the condition that the then applicable Sales circular No. D-21/2005. The relevant condition of sales circular no. D- 21/2005, reads as under

"The industrial connection are to be released from nearby feeder, it may be urban or rural feeder. However, in case the industrial consumes makes request to release his connection from the urban feeder instead of nearby rural feeder, then the applicant would be asked to deposit the full cost against deposit amounts as well as service connection charges as applicable."

vii) Further, it has been submitted that:

- a) The Sales Circular no. D- 21/2005 was issued by DHBVN with an objective to ensure better power-supply position and reduction of HT/LT ration and line losses by facilitating shifting of industrial connection from rural to nearest urban/industrial/mixed feeder.
- b) The said circular was duly approved by Board of Directors of DHBVN. Such shifting was allowed subject to deposition of full estimated cost along with service connection charges as applicable. The Circular do not violate any Commission's Regulations and are in conformity with the same.

4.9 The Hon'ble APTEL in its judgement dated 19/01/2017 in Appeal No. 282 of 2014 has ruled that in absence of any regulatory provisions, various circulars/guidelines issued by the licensee are in order. The relevant extract of the said judgment is as follows:

"v. The situation has arrived in absence of any regulatory provisions to levy charges by the Appellant for such nature of jobs in the state of Haryana. The Board of Directors of the Appellant has tried to fill the void to perform its duties under section 39 of the Electricity Act, 2003 and after considering similar type of arrangements prevailing in other states/utilities in the

country. Thus, we are of the view that the Appellant was acting in accordance with section 39 of the Electricity Act, 2003 and its various circulars and guidelines while collecting supervision charges from the consumers.”

4.10 The Commission after considering all above facts is of the view that the respondent has levied the aforesaid service connection charges rightly in line with provisions of sale circular No. D-21/2005 for shifting of Industrial load from rural to urban feeder and release of upon finds that the aforesaid charges are leviable from the Petitioner and hence, the Industrial connection from urban feeder instead of rural feeder whereas rural feeder is near to the premises of industrial units.

4.11 Hence, the Commission does not find it appropriate to direct the Respondent to refund the charges.

Accordingly, the Petition is disposed of.

This Order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 29/05/2019.

Date: 29.05.2019	(Naresh Sardana)	(Pravindra Singh)	(Jagjeet Singh)
Place: Panchkula	Member	Member	Chairman