

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION**

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

**Case No. HERC/RA – 12 of 2019**

DATE OF HEARING : 29.05.2019

DATE OF ORDER : 07.06.2019

**IN THE MATTER OF:**

Petition seeking withdrawal of Advance Consumption Deposit instructions, not to charge kVAh arrears, to treat the electricity connection up to 100 kW as LT connection and to allow more than one electricity connection in one premise (floor wise or separately marked area) for the purposes of LT/HT, provided two or more industries to operate from the same premises as permitted by HSIIDC/HUDA or any other local body.

**Review Petitioner**

Dakshin Haryana Bijli Vitran Nigam, Vidyut Sadan,  
Vidyut Nagar, Hisar, Haryana.

**Respondent**

Gurgaon Industries Association

**PRESENT**

On behalf of the Petitioner:

1. Shri Ashutosh K. Srivastava, Advocate, DHBVN
2. Shri Samir Malik, Advocate, DHBVN
3. Smt. Rekha, XEN (RA), DHBVN
4. Shri Sachin Yadav, XEN, Sub urban, Gurugram,  
DHBVN

**QUORUM**

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

## ORDER

### Brief background of the Case:

1.1. The Review Petitioner has submitted that:

- a) The present Petition is being filed seeking review of Order dated 05.04.2019 (“Impugned Order”) passed by this Hon’ble Commission in Case No. HERC/PRO – 16 of 2019 filed by the Gurgaon Industrial Association (“GIA”/“Respondent”).

The Respondent had filed the said Petition seeking: -

- i) Withdrawal of Advance Consumption Deposit instructions;
- ii) Not to charge kVAh arrears;
- iii) To treat the electricity connection up to 100 kW as LT connection; and
- iv) To allow more than one electricity connection in one premise (floor wise or separately marked area) for the purposes of LT/HT.

- b) The Commission while disposing of the said Petition vide the Impugned Order has inter-alia observed that the grounds raised by the Respondent were liable to be rejected as misconceived. However, this Hon’ble Commission observed that the lapse on the part of the Review Petitioner in revision of bills/demand of the arrears has been in-explicably delayed. Consequently, this Hon’ble Commission imposed a fine of Rs.6000/-each bill, to each erring officer/official who were responsible for delay so caused in issuing the bills with respect to the Respondent, as under: -

*“4.6 The Commission further observes that the lapse on the part of the Distribution Licensee in revision of bills/demand of the arrears has been in-explicably delayed. Consequently, the Commission imposes a fine of Rs.6000/-each bill, to each erring officer/official who is/are responsible for delay so caused in issuing the bills with respect to the Petitioners. The amount of fine would be deposited in the office of the Commission and the compliance report shall be furnished along-with certification from Drawing & Disbursing Officer (DDO) of the Commission, within two (2) months, failing which appropriate proceedings in terms of Section 142/ 146 of the Electricity Act,2003 shall be initiated.”*

c) They are constrained to seek review of the aforesaid finding as contained in the Impugned Order. It is submitted that the Review Petitioner was not provided an opportunity to present its case and explain the reason for delay in raising the bills/arrear bills. In this regard, the following factual background and submissions would establish that the delay caused in raising the bills were not attributable to the employees of the Review Petitioner: -

- i) There was a change in the billing software due to which the data was being migrated from the former software. There was delay in raising bills as there were technical difficulties in implementing the new software. The same has been explained in detailing the factual background of the present Petition;
- ii) There was a change in billing methodology in terms of the Sales circular D-13/2015 dated 18.05.2015 ("Circular") which was issued in compliance with this Hon'ble Commission's Tariff Order dated 07.05.2015 on True Up of the ARR for the FY 2013-14, Annual Performance Review for the FY 2014-15 and determination of Distribution and Retail supply tariff for the FY 2015-16 applicable from 01.04.2015 ("Tariff Order"). In terms of the Sales Circular and the Tariff Order, the energy charge of Non-Domestic Category having connected load above 20kW (LT and HT) and LT Industry Category- upto 50kW were revised to kVAh billing from KWH billing. The delay due to compliance of the above Circular and Tariff Order has been explained in detail in the factual background of the present Petition.
- iii) Considering huge number of consumers, it took considerable time to reconcile the arrear bills with the new billing methodology.

### **Factual Background**

- d) On 07.05.2015, this Hon'ble Commission passed the Tariff Order for the Review Petitioner for True Up of the ARR for the FY 2013-14, Annual Performance Review for the FY 2014-15 and determination of Distribution and Retail supply tariff for the FY 2015-16. This Hon'ble Commission, by the said Order, inter-alia, directed the Review Petitioner to revise the billing from KWH to kVAH.

- e) On 18.05.2015, the Review Petitioner issued Sales circular D-13/2015 in compliance of the above mentioned Tariff Order. In terms of the Sales Circular and the Tariff Order, the energy charge of Non-Domestic Category having connected load above 20kW (LT and HT) and LT Industry Category- upto 50kW were revised to kVAh billing from KWH billing.
- f) During the year 2015, the billing was done on the basis of the software prepared by M/s Tech Mahindra. However, the Review Petitioner was in the process of implementing the Restructured-Accelerated Power Development and Reforms Programme ("R-APDRP") Scheme. To effect the implementation, new software prepared by HCL Ltd. was brought into form. The Review Petitioner decided to consider the implementation of the R-APDRP scheme in the Gurgaon Circle in the Month of June 2015.
- g) In the meanwhile, the process of data migration of Gurgaon consumers from the old software to the new software was going on. Due to the same, all consumers related activities and billing were put on hold for 2 months. Therefore, up to September 2015, no billing activity was done due to process of data migration and adaptation of the new software. As a result, approximate revenue of Rs. 450 Crores was kept on hold.
- h) Therefore, to bring the revenue and billing back on track, the Review Petitioner engaged its human resources in recovery and billing on a priority basis. It took a period of 3-4 months to bring the recovery of bills back on track.
- i) During the months of January-February 2016, in compliance of the Tariff Order and the Sales Circular, the Review Petitioner tried to revise the bills of industrial and Non-Domestic Supply Consumers on the basis of kVAH instead of KWH. However, to implement the same, the new software based on R-APDRP required some amendments. Further, the attributes of the energy meters were to be changed to make it compatible with the new software.

- j) Accordingly, to change the attributes, it was decided to feed dummy Meter Change Orders (“MCO”) so that it becomes compatible with the new software and the billing can be done on kVAH basis. In the said dummy MCO, attributes like serial no., energy reading, make, capacity etc. were required to be punched. The same required site verification of all the cases.
- k) The above process of changing energy meter was a very lengthy. The same was due to the fact that the employees of the Review Petitioner had to personally go to the meter premise and change the attributes physically in the meter as per the acceptability of the new software. This consumed a lot of time.
- l) Accordingly, around the month of April 2017, after completion of the above task, the process of reconciliation of the difference of tariff, i.e., 6.60 in case of kVAH billing &Rs. 6.00 in case of KWH billing was initiated. The difference of both billing units and tariff were required to be evaluated. This was also a tedious process as it required manual calculation of each case. After reconciliation of each case the amount was changed in respective account nos. during the months of September/October/November 2018.
- m) The whole process took considerable amount of time due to physical engagement of the employees of the Review Petitioner at the premises where the meters were installed. Further, since there were a huge number of consumers involved there was further delay in implementing the whole scheme and conduct reconciliation.
- n) It is evident from the above that the delay caused in raising the bills/arrear bills was due to reasons beyond the control of the employees of the Review Petitioner.

### **Legal Submissions**

- o) The Impugned Order has been passed by this Hon’ble Commission without considering the aforesaid facts and submissions made by the Review Petitioner. Further, it is pertinent to note that the issue of delay in raising bills/arrear bills was raised for the first time during the arguments. The said issue was neither raised by the Petitioner in the Petition nor did it form part of any of the pleadings filed before the Hon’ble Commission.

- p) On a perusal of the above factual background, it is amply clear that the delay in raising the bills/arrear bills were due to change in the software regime and technical difficulties involved therein. However, despite the same, the Review Petitioner made its best effort to overcome the difficulties and raise the bills on a priority basis.
- q) The delay could have been explained by the Counsel of the Review Petitioner if an opportunity was provided to the Review Petitioner. However, since the issue was raised for the first time during the final hearing, the Review Petitioner could not provide the details due to which the delay was caused. It is therefore humbly prayed before this Hon'ble Commission to review the Impugned Order passed by this Hon'ble Commission.
- r) In view of the above, it is submitted that a petition for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some inadvertent mistake or for any other sufficient reason. In this context, the following judgments are noteworthy:-
- (a) In *Board of Control for Cricket, India and Anr. vs. Netaji Cricket Club and Ors.*, [2005] 4 SCC 74, the Hon'ble Supreme Court observed as under:-  
*"Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason".*
- (b) In *State of Maharashtra vs. RamdasShriNivasNayak*, AIR [1982] SC 1249, the Hon'ble Supreme Court held that:-  
*"If a party thinks that the happenings in Court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error."*

(c) In *TNEB v. TNERC*, 2009 ELR (APTEL) 412, the Hon'ble Appellate Tribunal for Electricity relied upon the Hon'ble Supreme Court's judgment in *Board of Control for Cricket, India and Anr. vs. Netaji Cricket Club and Ors.* and held that:-

“11. In our opinion, the failure to adhere to the procedure for passing a tariff order is an error apparent and can be set aside in review. Secondly, as mentioned above, sufficient opportunity to represent its case was not given to the appellant. This has resulted in failure of justice to the extent the principal order dated 20th March, '06 has ignored all revenue implications for the appellant. The impugned order can therefore, be said to be suffering from apparent error. In any case, this lapse can be covered by a third ground for review namely 'any other sufficient reason'. In the case of *Board of Control For Cricket in India And Anr. v. Netaji Cricket Club and Ors.* in case No. MANU/SC/0019/2005, the Supreme Court, inter alia, observed the following:

90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words "sufficient reason" in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminemgravabit.

12. In this judgment, the Supreme Court also said that justice is a virtue that transcends all barriers and rules or procedures or technicalities of law cannot stand in the way of administration of justice. The Supreme Court observed if the court finds that an error pointed out was such that an earlier judgment would not have been passed but for erroneous assumptions and that its perpetration would result in miscarriage of justice, it can be rectified by the court under its power of review.”

s) In view of the above, it is humbly submitted before this Hon'ble Commission to kindly consider the above facts and amend the Impugned Order to forego the fine

imposed upon the employees of the Review Petitioner. Any such fine imposed would be unfair and onerous due to the reason that the delay is not attributable to them. Further, in view of the facts and submissions made herein above, there is ample reason to review the Impugned Order and forego the fine imposed upon the employees of the Review Petitioner.

1.2. In light of the aforesaid facts and circumstances, the Review Petitioner has prayed as follows:

- (a) *Admit the present Review Petition;*
- (b) *Review the Order dated 05.04.2019 in Case No. HERC/PRO – 16 of 2019 in terms of the submissions made in the present Review Petition; and*
- (c) *Pass such order as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.*

### **Proceedings**

2.1 The matter was listed for hearing on 29/05/2019. The Ld. Counsel appeared on behalf of the Petitioner and briefed their case to the Commission, mainly summarising their written submissions.

2.2 Further, the Ld. Counsel placed on record judgment of Hon'ble APTEL in Appeal No. 61 & 62 of 2012 dated 28/11/2014 wherein he submitted that the Hon'ble APTEL was of view that the commission should not indulge in micro-management of the Licensee day to day . Similarly, in the present case also, levy of penalty to the erring officers/officials of the Petitioner is indulgent in micro-management of the Review Petitioner by this Commission which is contrary to the judgment of Hon'ble APTEL.

### **Commission's Analysis & Order**

3.1 The prime contention raised by the Review Petitioner is with respect to the justification being offered for the delay in implementation of the order passed by the Commission. Further, the legal arguments with regard to punitive orders having been passed without affording an opportunity and alleging micro-management at the ends of the Commission have been raised. The aforesaid submissions made by the Review Petitioner has been considered. Invariably, the justification being sought to be offered is lacking in material particulars. The



Review Petitioner has laid emphasis about the difficulties in the software provided by M/s Tech Mahindra and also the delay in the process of data migration of the consumers from the old software to the new software. In the absence of any supporting correspondence to the said effect, it cannot be accepted that any such difficulty existed and the Commission has reasons to believe that the same is an after-thought.

- 3.2 In any case, the circumstances, that posted actual difficulty, it was incumbent for the Distribution Licensee to have brought the same to the notice of the Commission at the relevant stage and to seek such necessary modifications/extensions as was necessary for the smooth transaction. However, failure on the part of the licensee to initiate any such action leads to an inference that no such exigency actually existed.
- 3.3 Further, dealing with the issue of opportunity of being heard, the Commission has passed order against the Distribution Licensee after noticing that the licensee was in default. The Distribution Licensee was a party to the proceedings and was granted all opportunities to defend itself. No order to the prejudice of any specific person has been passed by the Commission and as such there was no necessity for granting any opportunity of hearing to any individual. The imposition of penalty in exercise of powers under Section 142 of the Electricity Act, 2003 (hereinafter referred to as "Act") is against the Distribution Licensee and further rider has been granted to the Distribution Licensee to ascertain the official(s) default and to initiate action against any such official/officials. Hence, any such person who is prejudiced or aggrieved would have an ample opportunity to lead and establish his case before the Distribution Licensee. Hence, there was no force in the argument that an opportunity of personal hearing was required to be provided to the Review Petitioner or any person even though no specific order against him in his individual capacity has been passed.
- 3.4 Further, while dealing with the argument in reference to the Micro-Management being alleged against the Commission, it is submitted that micromanagement as defined in Oxford dictionary - the practice of controlling every detail of a business, especially your employees' work and as defined in Wikipedia - *micromanagement* is

a management style whereby a manager closely observes and/or controls the work of his/her subordinates or employees. Hence, at a plain understanding of Micro-management, it relates to management of day-to-day affairs of men and machinery of the licensee. The process of implementation of the order passed by the Commission in exercise of powers conferred under the Electricity Act, cannot be equated as micro-management. This is an instance of implementation of the order passed by the Commission under the provisions of the Electricity Act, 2003. The process of implementation cannot be equated to that of micro-management. The argument is thus misconceived and ill founded.

- 3.5 The Commission also brings to the notice of the Review Petitioner that various Electricity Regulatory Commissions including CERC, HPERC etc. have even levied personal penalty to senior officers of the utilities for violation of the Commission's directions. However, in the present case, this Commission has provided liberty to the Review Petitioner to impose fine on the concerned officer/officials who is/are responsible for delay so caused in issuing the bills. The relevant extract of few such Orders are as follows:

**HPERC Order dated 25/05/2009 in Case No. 255/2007**

*“The Commission is not convinced with the reasons put forth by the Chief Accounts Officer for delay or non-submission of the report asked for by the Commission. All-the-more, the delay in submission/report, asked for, has led to delay the issuance of further appropriate directions to the Board for its speedy decisions on the matters concerning public interest as well as the tariff determination. This Commission taking, however, extremely lenient view and considering the nature and extent of non-compliance and relevant factors as per regulation 62(3) of the HPERC (Conduct of Business) Regulations, 2005 and the overall provisions of Section 142 of the Electricity Act, 2003 determines the quantum of fine to be imposed, and imposes on Sh. S.R. Mehta, a fine of Rs. 5000/- only.”*

**CERC Order dated 15/03/2009 in Case No. 54/2008**

1. Bihar State Electricity Board, Patna
2. Shri Swapan Mukherjee, Chairman,

.....

22. To conclude, we hold the respondents guilty of the offence of contravention of and non-compliance with the directions of the Commission and impose penalty of Rs one lakh on the first respondent and penalty of Rs five thousand on the second respondent, payable by 31.3.2009, through Demand Draft/Bank Draft in the name of Assistant Secretary of the Commission.

...

24. We also direct that a copy of this order be sent to the Principal Secretary, Energy Department, Government of Bihar for his information and for appropriate action.”

3.6 Further, on perusal of materials placed on record, the Commission observes as follows:

- a) As per Section 56 (2) of the Act, no sum due from any consumer shall be recoverable after the period of two years from the date when such sum became first due unless shown continuously as recoverable as arrear. The said section of the Act is as follows:

*“(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity:”*

- b) In the present matter, as submitted by the Review Petitioner itself, the Review Petitioner issued Sales Circular D-13/2015 on 18/05/2015 in compliance of the Tariff Order dated 07/05/2015 wherein the revision of billing from kWh to kVAh was mandated. However, due to operational constraints at Review Petitioner end, the process of revision of billing from kWh to kVAh and reconciliation was completed during the months of September – November 2018.

c) Hence, the Review Petitioner has violated above rule of the Act for not indicating as arrear in the electricity bills of the consumer for year, 2015-18.

3.7 The Commission observes that during Public Hearing held for the Tariff Order for ARR of FY 2019-20 of the Review Petitioner, various stakeholders expressed their concern regarding faulty bills, very high loss and theft of electricity in certain areas. The stakeholders submitted that burden of inefficiency of the Review Petitioner is being borne by them through higher tariff and unreliable power supply which defeats the mission of 24X7 Power. Further, it was grievance of the various stakeholders that no punitive action has yet been taken by the Commission on the officers/officials of the Distribution Licensees due to their inefficiency in bringing down the loss levels at faster pace even after approval of desired CAPEX, in issuing wrong bills, in delaying the electricity connections etc.

3.8 Also, The Haryana Right to Service Act, 2014 mandates to provide for the delivery of services to eligible person within notified time period. Therefore, in the instant case, taking cue from this Act also there is violation of time limits in raising the corrected bills.

3.9 Having heard the difficulties which caused delay in issuance of bills by the Review Petitioner as submitted by the counsel of Petitioner, the Commission feels that if any exigency arisen then the Petitioner should have brought the same to the notice of the Commission at the relevant stage and sought necessary modifications/extensions as was necessary for the smooth transaction. The argument of the Review Petitioner that levy of penalty to the erring officers/officials is indulgent in micro-management of the Utility by this Commission is misconceived and does not hold good. Officers/officials of the Review Petitioner miserably failed to discharge duty to render the correct electricity bill.

3.10 Further, Regulation 78 of the *Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2004*, empowers the Commission to review its order under any of the three circumstances as under:-

*“(2) The Commission may review its orders or decisions if:*

*(a) there exists an error apparent on the face of the record; or*

*(b) any new and important matter of evidence was discovered which after the exercise of due diligence, was not within the knowledge of or could not be produced by the party concerned at the time when the order or decision was made; or  
(c) for any other sufficient reason.”*

3.11 A perusal of the same shows that for the purposes of exercising review jurisdiction, there is a necessity of existence of any error apparent on the face of the record, which in our considered opinion is not made out from the pleadings and arguments advanced by the review petitioner. Secondly, the power of review to be exercised upon discovery of any new and important matter of evidence. Evidently, the only justification being sought to be offered was the delay on account of technical problems but such technical problem has not been substantiated to establish the failure on the part of officers/licensee that was beyond its control. Invariably, the distribution licensee/officials involved were fully aware of any technical difficulties being faced and could have moved appropriate application before the Commission in the event of their being unable to meet the prescribed time line. The Commission is prima facie of the opinion that the reason being cited by the delinquent officials is an after-thought as it is lacking in all material particulars and fails to substantiate existence of any such factum. Thirdly, power of review could be exercised for any sufficient cause to the satisfaction of the Commission could be shown mandating review of the order. No such cause has been established by the review petitioner. The only submission being urged that imposition of penalty would amount to micro-management of the affairs of the distribution licensee. Even though the Commission has already held that exercise of powers under Section 142 of the Electricity Act, 2003 and imposing punishment/penalty upon the distribution licensee does not amount to micro management especially when the authorities had been vested upon the distribution licensee to inquire into the lapses committed by the officials and disciplinary proceedings be initiated against the same for determination of the liability. However, in the event the review petitioner does not feel satisfied with the reasoning given by the Commission, the same cannot be the ground for seeking review and would rather be a ground to raise a challenge to the order before an Appellate Forum. Consequently, even for the said reason, the review petition is not made out and there is no justification for invoking the powers vested under Regulation 78.

3.12 The Commission after taking into cognizance that there were certain operational constraints which have now been submitted by the Review Petitioner and providing one-time relaxation to them, waives off the penalty as was imposed in the Order dated 05/04/2019. However, the fact that there has been abnormal delay in implementation of the Commission's directives cannot be ignored and such the Distribution Licensee is warned to be careful in future. Further the Distribution Licensee has its liberty to initiate disciplinary action against the concerned delinquent officer/officials in the matter.

3.13 The Commission further directs the Review Petitioner to implement the directions of the Commission diligently as per the provisions of the Act and Regulations framed thereunder.

3.14 In view of above, the Review Petition is allowed to this extent.

This Order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 07/06/2019.

**Date: 07.06.2019**

**(Naresh Sardana)**

**(Pravindra Singh)**

**(Jagjeet Singh)**

**Place: Panchkula**

**Member**

**Member**

**Chairman**