

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION**

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

**Case No. HERC/PRO – 26 of 2018**

DATE OF HEARING : 08.05.2019

DATE OF ORDER : 18.06.2019

**IN THE MATTER OF:**

Complaint under Section 142 read with 146 of Electricity Act, 2003 for imposing penalty u/s 142 and punishing u/s 146 of Electricity Act, 2003 on account of Non-Compliance of Direction issued by Hon'ble HERC as well as continuing failure to comply with the direction dated 03.10.2017 by respondents.

**Petitioner**

Rachit Garg, T 7-703, Park View Residency

**V/s.**

**Respondent**

1. The Managing Director, DHBVNL, Vidyut Sadan, Vidyut Nagar, Hisar.
2. Park View Residency, Condonium Association (RWA), Palam Vihar, Sector 3, Gurgaon-122017.

**PRESENT**

On behalf of the Petitioner:

Shri S.K. Bajaj, Advocate

On behalf of the Respondent:

1. Shri Manuj Kaushik, Advocate, DHBVN
2. Shri Sachin Yadav, XEN, DHBVN
3. Smt. Rekha Rathee, XEN (RA), DHBVN
4. Shri Jitendra Yadav, Asst. Facility Manager (Technical), RWA

**QUORUM**

**Shri Jagjeet Singh, Chairman**

**Shri Pravindra Singh, Member**

**ORDER**

**1. Background of the Case:**

1.1 The Petitioner has submitted that:

- a) They have filed Petition PRO 5 of 2016 wherein an Order was passed by the Commission on 3/10/2017 with the following directions:

*“v) The Commission directs the Respondent No 4 (DHBVNL) to get the above directions of the Commission implemented through Respondent No. 2 (RWA) and submit a compliance report to the Commission within 2 months from the date of issue of this order. In case of non-compliance of the above orders/directions of the Commission, action under section 142 of the Electricity Act, 2003 shall be initiated against the Respondents.”*

- b) As per direction issued by the Commission compliance to direction had to be ensured by DHBVN by submitting a compliance report within 2 months but no compliance report has been submitted by them. Respondent No.1 (RWA) is issuing the bills at inflated rate as it had been issuing prior to direction issued by the Commission. Thus, there is not only non-compliance of direction issued by the Hon'ble Commission but there is continuing failure to comply with directions of the Commission by the respondents.

1.2 In view of above, the Petitioner has prayed as follows:

- i. To impose penalty on respondents under- Section 142 of Electricity Act, 2003.*
- ii. To punish respondents under section 146 of Electricity Act, 2003 for failure to comply with direction dated 03.10.2017 as well as continuing failure to comply with directions.*
- iii. To award the penalty imposed on respondents in favour of the complainant - petitioner.*
- iv. To allow any other relief deemed proper.*

### **Proceedings, Commission's Analysis and Order**

2.1 The matter was heard on 26/04/2019. The representative of Respondent No.1 submitted that they held numerous meetings with RWA regarding implementation of the above-mentioned directive. However, the same has yet not been implemented.

- 2.2 The Commission in its Interim Order dated 26/04/2019 was of the view that a last opportunity be provided to Respondents for the compliance of the Order dated 3/10/2017, accordingly, it was directed to XEN (Sub Urban Div., Gurugram) to get implemented the directions through Respondent No. 2 immediately and the compliance report in this regard be submitted within 7 (seven) working days.
- 2.3 Accordingly, SDO (Op.), S/Div., Maruti, DHBVN vide his Memo No. 19586 dated 29/04/2019 directed RWA President to comply with the directions as mandated in the Commission's Order dated 3/10/2017 and submit its compliance report to DHBVN for onward submission to the Commission.
- 2.4 Further, XEN, Sub. Urban Div., DHBVN vide his Memo No. 7063/69 dated 2/05/2019 directed RWA President to be present along-with his members on 4/05/2019 for conducting meeting related to compliance of directions as mandated in the Commission's Order dated 3/10/2017.
- 2.5 The matter was next heard on 8/05/2019. The representative of DHBVN submitted copy of Minutes of Meeting held at Park View Residency, Palam Vihar, Gurugram held on 5/05/2019, wherein the representatives of Respondents including President & Secretary of RWA and the Petitioner himself was present. It was decided as follows:

<b>Sr. No.</b>	<b>Description</b>	<b>Decision passed by the Commission</b>	<b>Remarks</b>
1.	Regarding charging of higher tariff rates	Regarding charging of higher tariff rates from the Petitioners, the Commission acknowledges that the Regulation 5.5 of Single Point Supply Regulations provides that GHS / Employer / Developer / RWA will not charge the residents for electricity supply by the Distribution Licensee at a tariff higher than the rates for Domestic Supply (DS) recorded by the category approved by the Commission from time to time. The Regulations further provides that the residents aggrieved, with charging of tariff rates, can jointly file a complaint against such GHS / Employer / Developer / RWA with the Commission through a petition of redressal of their grievance.  The Commission therefore directs the Respondent No. 2&3 to levy electricity charges from the residents / user of the	RWA is found to generate the electricity bill to the residents as per their actual consumption recorded by the energy meter in view of HERC Regulation No. 5.5 of Single Point Supply, 2013 which clearly showing the energy consumed and tariff applicable including all relevant details.

Sr. No.	Description	Decision passed by the Commission	Remarks
		energy consumed and society / complex strictly as per Regulation no. 5.5 of HERC Single Point Supply Regulations (Regulation No. HERC / 27 / 2013). The electricity bill served to the residents / users should clearly show the energy consumed and tariff applicable including all the relevant details.	
	Regarding charging of service tax & separately specify the charges for Grid Supply used for common area	<p>Regarding charging of service tax on electricity bill @ 14%, a) the Commission on scrutiny of the electricity bill served I upon Shri Rachit Garg by the Respondent no. 2, it has been observed that RWA is charging service tax on the common area maintenance charges only. Thus the petitioner is incorrect to say that the service tax is being levied on electricity bill.</p> <p>The Commission however directs the Respondent No.2 &amp; 3 to separately specify the charges for Grid Supply used for common area in the Common area Maintenance Charges CAM charges and no service charges on this Grid Supply component be charged.</p>	<p>a) RWA admitted that no service Tax have been charged from the residents in their electricity bills since Aug. 2017</p> <p>b) RWA agreed to generate the separate bill for Grid Supply used for the common area</p>
	Regarding disconnection of electricity supply	Regarding disconnection of electricity supply of the residents of the society / complex, the Commission is of the view that disconnection of electricity should not normally be done on account of nonpayment of charges other than Grid Supply charges i.e. on account of Maintenance charges, Backup Supply charges and other Misc. charges etc. The Commission directs Respondent NO.2 & 3 to take remedial measures to ensure disconnection of grid Supply shall not take place, if the Petitioners or residents or users pay the electricity bill raised by the Respondent for DHBVNL units i.e. units supplied via Grid Supply.	RWA agreed not to disconnect the supply of the residents of Park View Residency in case the amount towards electricity bill is already paid by the resident and will not disconnect the individual electricity Connection on account of nonpayment of charges other than Grid Supply charges i.e. on account of Maintenancecharges, Backup Supply charges and other Misc. charges etc.
	Regarding charging of re -connection / RCO	Regarding charging of re -connection / RCO fee by the. Respondent No. 2 & 3, the Commission observes that the re -connection / RCO fee @ 1000/- is being charged from the residents in contrary to the RCO fee / charges of Rs. 100/- approved by the Commission in its General and, Miscellaneous charges applicable to the licensee w.e.f. 1st September, 2011 (As 'per Commission's order dated 17.08.2011). The Commission	RWA agreed to collect the fee of RCO as per rates approved by the Hon'ble Commission.

Sr. No.	Description	Decision passed by the Commission	Remarks
		directs the Respondents No. 2& 3 not to charge re-connection / RCO fee or any other charges in contrary to what specified under General and Miscellaneous charges for distribution licensee.	
	Regarding calibration of meters installed	Regarding calibration of meters installed in the society / Complex, the Commission observes that the Single point Supply regulations provides that the distribution licensee will extend the facility of testing of individual meters of the residents for accuracy/calibration and sealing, in case so requested by the RWA on payment of requisite charges. In for meter testing, in case, the resident / user is not satisfied with the accuracy case the meter is of the energy. meter, he may represent to the Respondent challenged by the RWA. The RWA will get the meter accuracy checked from the DHBVNL and testing charges in this regard shall be borne by the consumer.	RWA agreed to refer the meter of the resident to DHBVN after depositing the requisite DHBVN fee for meter testing, in case the meter is challenged by the resident for calibration of his meter.

2.6 The Ld. Counsel on behalf of the Petitioner submitted during the hearing that with reference to the decisions taken in the above said meeting, there is no further dispute in the matter.

2.7 Having heard both parties, it is observed that the matter has been settled. It is further observed that the Respondent i.e., Park View Residency, Condonium Association (RWA) delayed compliance of the direction as mandated in its Order dated 03/10/2017.

2.8 The officers/officials who were responsible for compliance of the Order dated 03/10/2017 are already in breach of the directions. No satisfactory explanation has been provided for non-compliance. It is therefore presumed that such non-compliance was voluntary & illegal.

2.9 The proceedings in the instant case had been initiated under Section 142 of the Electricity Act, 2003 which by its very nature is a punishment for non compliance of the directions of the Commission. The response was filed by the respondents being the RWA as well as the official respondents wherein no satisfactory explanation was furnished by them for the purpose of non compliance of the order dated 3/10/2017 passed by this Commission. The mandate of Section 142 of the

Electricity Act, 2003 requires opportunity of hearing to the person concerned. 'Person' has been defined under section 2(49) of the Electricity Act and reads thus:-  
2.(49) "person" shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person;"

2.10 The RWA is thus a person within the meaning of Section 142 read with Section 2(49) of the Electricity Act, 2003. Since the notice was duly served upon the RWA and they have appeared before this Commission and have also filed response wherein they have miserably failed to assign any cogent and satisfactory reason for non compliance of the order passed by this Commission. Hence, the mandate of granting an opportunity of hearing as contemplated under section 142 is duly complied with. There is no provision under the Scheme of the Electricity Act that an opportunity of hearing is also required to be issued to a 'person' for the purposes of imposing the quantum of punishment. Hence, I am of the view that there is compliance of the statutory requirement of granting opportunity of hearing and no separate show cause notice is required to be issued for the purposes of imposing punishment.

2.11 Even otherwise considering it from the other perspective as well, it is pertinent to point out that in case person is to be seen independent of the Association, even in such eventuality the Commission is not imposing any penalty upon any concerned individual and is rather imposing the penalty upon the body corporate/officers and not ascertaining their individual liability. Accordingly, in the absence of any penalty being imposed upon any individual, there is no necessity for issuing any show cause notice to any individual when no order to the prejudice of such individual is being passed.

2.12 So far as the Distribution Licensee is concerned, it is at liberty to initiate such disciplinary proceedings as it may deem appropriate and to determine the liability of any concerned individual official/officers on which this commission is not commenting. Imposing of any such penalty by this commission by conducting the summary proceedings against any officers and holding him liable would be prejudicial to the rights of an employee and the procedure as prescribed under the HCS(Punishment & Appeal) Rules, 2016 wherein a detailed procedure for assessing the lapses and responsibilities has been prescribed. Hence, the question of individual hearing and existence of sufficiency of cause and valid reason and to

determine the identity of officers who were at fault, is left to the Distribution Licensee. The Commission would rather refrain from entering in such array of disciplinary inquiries against individuals and attempt to ensure compliance of its directions by the distribution licensees irrespective of who may be at fault. Even otherwise, determination of any such liability against an individual official/officer and fixing such responsibility would tantamount to micro-management of the affairs of the distribution licensee, which in my considered opinion is beyond the scope of the functions to be discharged by the Commission.

2.13 However, a lenient view is taken in the matter and a fine of Rs. 1 lakh is imposed on the Distribution Licensee and a fine of Rs. 6,000/- per day up to maximum of Rs. 1 lakh is imposed on the President & Secretary of the Respondent No. 2 then responsible for implementation of the Order dated 3/10/2017. However, the Distribution Licensee is at liberty to recover such fine from the concerned officers/officials. The Distribution Licensee shall ensure that amount of such fine shall not be claimed in any head of their ARR Petition.

2.14 The officers who have complied the Order now, if they have not been present earlier at the relevant time, are however exempted from such fine. The amount of fine from Drawing & Disbursing Officer (DDO) of the Distribution Licensee and President & Secretary of RWA 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.

**Date: 10.05.2019**

**(Jagjeet Singh)**

**Place: Panchkula**

**Chairman**

2.15 I agree with the Order passed by the Chairman.

2.16 However, in my considered opinion the penalty by way of imposing fine cannot be levied without giving an opportunity for hearing to the concerned officers/officials since vide Interim Order dated 26/04/2019 by taking a lenient view a last opportunity was provided to respondents for compliance of Order dated 3/10/2017 and now it is recorded the matter has been settled. However,

no explanation what so ever has been provided by Respondent No. 2 as to why the direction given by the Commission in the Order dated 3/10/2017 has not been complied even after a period more than one and half year. The delay in compliance has not been explained.

2.17 Therefore, in the fitness of things the proper procedure would be to issue notice to Respondent No. 2 and concerned officers/officials of Respondent No. 3 who were posted there at relevant point of time, to appear before the Commission and explain as to why a fine may not be imposed on them for non-compliance of the Commission's directions in Order dated 3/10/2017.

2.18 The only dissenting view of the Member is regarding procedure to be adopted before imposing fine. The Member agrees with Chairman that there has been lapse on part of concerned officers/officials of the Respondents for non-compliance of the Commission's directions in Order dated 3/10/2017.

**Date: 18.06.2019**                      **(Pravindra Singh)**  
**Place: Panchkula**                      **Member**

**In terms of Section 92 (3) of the Electricity Act, 2003, the Order of the Chairman shall be the Order of the Commission.**

**Date: 18.06.2019**                      **(Pravindra Singh)**                      **(Jagjeet Singh)**  
**Place: Panchkula**                      **Member**                                      **Chairman**