

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT
PANCHKULA**

Case No. HERC/RA-15 of 2019

Date of Hearing : 18.12.2019

Date of Order : 18.12.2019

In the Matter of

REVIEW PETITION UNDER SECTION 94 (1) (F) OF THE ELECTRICITY ACT, 2003
READ WITH REGULATION 78 OF THE HARYANA ELECTRICITY REGULATORY
COMMISSION (CONDUCT OF BUSINESS) REGULATIONS, 2004.

Review Petitioner

Dakshin Haryana Bijli Vitran Nigam Limited

V/s

Respondents

Wellington Estate Condominium Association, Gurgaon & Anr. Respondent

Present: -

On behalf of the Petitioner: 1. Shri Samir Malik, Advocate for Petitioner.

On behalf of the Respondent: 1. Shri B.P. Agarwal, Advocate for Wellington Estate
Condominium Association.

QUORUM

Shri D.S. Dhesi, Chairman

Shri Pravindra Singh, Member

Shri Naresh Sardana, Member

Order

1) Brief Background of the Case

1.1 The Review Petitioner has submitted that:

The present Petition is being filed seeking review of Order dated 08.05.2019 (“**Impugned Order**”) passed by this Hon’ble Commission in Case No. HERC/PRO – 14 of 2019 filed by the Wellington Estate Condominium Association, Gurgaon (“**Respondent**”). The Respondent Association had preferred the said Petition stating that even after passing of the order dated 15.07.2005 in PRO – 10 of 2004 by the Ld. Commission, the Respondent Association is in continuous touch with the Petitioner till date for seeking refund of Rs. 5,00,000/- which was deposited towards service connection charges or cost of 11 kv feeder, whichever is less and primarily prayed inter-alia the following:-

- (a) *Initiate an enquiry against the respondents, every person who at the same time the offence was committed was in charge of company and was responsible to the company for the conduct of the business of the company for violating Electricity Act, 2003, and take action against them under section 142, 146 and 149 of Electricity Act, 2003 and;*
- (b) *Direct the respondents to issue refund/ adjust the amount as directed by this Hon’ble Commission vide order dated 15.07.2005 along with interest @ 18% from the expiry of one month of the date of order dated 15.07.2005 and;*
- (c) *Award the compensation and costs of the present proceedings in favour of Complainant and against the Respondent and;...*

1.2 This Hon’ble Commission while disposing of the said Petition vide the Impugned Order has inter-alia observed that order of refund was passed on 15.07.2005 and that the said order was not complied by the officers/officials who were responsible for compliance of the said order at that relevant time (August, 2005 to January, 2006). It was further noticed by the Hon’ble Commission that no explanation has been provided for such non-compliance by the concerned officers/officials but considering the inordinate delay of nearly 14 years in filing of instant petition and possibility of the officers to have superannuated, this Hon’ble Commission imposed fine to tune of Rs. 1 lakh on the Review Petitioner. Pertinently, the Hon’ble Commission while considering the prayer for grant of interest @ 18% p.a. observed that same would not be viable in view of the fact that even claim for the principal amount does not survive being hopelessly time barred. For ease of reference relevant paragraphs from the order dated 08.05.2019 are reproduced hereunder:

3.3. The Commission has noticed that Order of refund was passed on 15/07/2005 and that the said Order was not complied by the officers/officials who were responsible for compliance of the said order at

that relevant time (August 2005 to January 2006). No explanation has been provided for such lapse. Ordinarily, the Commission would have taken serious view of non-compliance by the concerned officers/officials but considering the inordinate delay of nearly 14 years in filing of instant petition and possibility of the officers to have superannuated, the Commission imposes fine of Rs. 1 lakh on the Distribution Licensee. However, 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. The Drawing and Disbursing Officer (DDO) of the Distribution Licensee shall deposit the amount of fine in the office of the Commission and the compliance from drawing & Disbursing Officer (DDO) of the Commission, within two (2) months.

3.4. It is further noted by the Commission that officers/officials acted in an irresponsible manner by not awaiting the outcome of the present petition. Once the issue was pending adjudication before Commission, it was the responsibility of the officers/officials either to await outcome of the proceedings or to have sought prior approval for any course of action desired to be taken. For reasons best known, the appropriate course of action has not been followed. The Commission further observes that officers have refunded the amount of Rs. 5 lakh after having retained the same for about 14 years. The Commission notices that the Distribution licensee was not entitled to retain the said amount and was bound to return the same after the specific order had been passed in this regard. The non-compliance of the said order would entail consequences under Electricity Act, 2003. However, while responding to the prayer of refund, the Commission notices that the petition is highly belated having been filed after nearly 14 years of the Order. Even if the order passed by the Commission is equated to a decree of Civil Court, the prescribed period for execution of decree as per Limitation Act, 1963 would be 12 years. However, considering that the utilities has already refunded the aforesaid amount, the Commission refrains from passing any further order thereupon. So far as the question of payment of any interest on the aforesaid amount is concerned, the same would not be tenable since in view of the Commission even the Claim for principal amount does not survive any further as being barred by limitation. Hence, the prayer of the petitioner for being awarded interest @ 18% p.a. is thus rejected.

3.5. Even though the action of the officers/officials in directing refund of the amount during the pendency of the petition before the Commission, is an act over-reach the Commission, however, considering that the authorities had acted in the interest of consumer, we refrain from passing any severe action against officials. They are however, warned to be

cautious in future and to obtain requisite permission/approval before taking such action in the matters that are pending before the Commission. In view of above, the Petition is disposed of.

1.3 Pertinently, the Review Petitioner is constrained to seek review of the aforesaid findings as contained in the Impugned Order. It is submitted that the Review Petitioner was not provided with an opportunity to present its case and explain the reasons for non-compliance of order dated 15.07.2005 and delay as there was none, in refunding the said amount. In this regard, the subsequent factual background and submissions would establish that questions of non-compliance of order dated 15.07.2005 and delay in refunding the amount does not subsists as alleged by Respondent No. 1.

1.4 In view of above, the Review Petitioners have prayed as follows:

- (a) *Admit the present Review Petition;*
- (b) *Review the Order dated 08.05.2019 in Case No. HERC/PRO – 14 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.*

2) **Commission's Analysis and Order:-**

2.1 The matter was heard on 18.12.2019, as scheduled. The counsels of both parties were present during the hearing.

2.2 The Ld. counsels of both parties admitted that the order dated 29.03.2006 passed by APTEL was not in their knowledge at the time of pleadings of PRO No. 14 of 2019. Keeping in view, the undisputed fact that order dated 15.07.2005 stands set aside by APTEL, the prayer made by petitioner is accepted and order regarding penalty of Rs. 1(one) lac is withdrawn.

2.3 In view of above, the Review Petition is disposed off accordingly.

This Order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 18.12.2019.

Date: 18.12.2019	(Naresh Sardana)	(Pravindra Singh)	(D.S. Dhesi)
Place: Panchkula	Member	Member	Chairman