

BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION

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

Case No. HERC/PRO – 14 of 2019

DATE OF HEARING : 08.05.2019

DATE OF ORDER : 08.05.2019

IN THE MATTER OF:

Complaint under Section 142, 146 and 149 of Electricity Act, 2003 for Non-Compliance of the order dated 15.07.2005 passed by this Hon'ble Commission in HERC/PRO-10 of 2004

Petitioner

Wellington Estate Condominium Association,
Gurgaon.

V/s.

Respondent

1. Haryana Vidyut Prasaran Nigam Limited through the Managing Director, Panchkula
2. Dakshin Haryana Bijli Vitran Nigam, through the Managing Director, Hisar

PRESENT

On behalf of the Petitioner:

Shri B.P. Aggarwal, Advocate

On behalf of the Respondent:

Shri Rajesh Goel, XEN, HVPNL
Shri Sachin Yadav, XEN , DHBVN
Smt. Rekha Rathee, XEN, RA, DHBVN
Shri Vijay Upadhyay, AE, HVPNL

QUORUM

Shri Jagjeet Singh, Chairman

Shri Pravindra Singh Chauhan, Member

ORDER

Brief background of the Case:

1.1. The Petitioner has submitted that:

- a) They are an Association of Apartment Owners of Wellington Estate Complex and is managing the administration of the complex and Ajay Jain is the

Secretary of the Association, who is competent to file the present complaint on behalf of the Association.

- b) They have obtained an electricity connection from the respondent through Account No- 1605840000, K No- 2121058281 with Sub Division- G21-DLF, Gurgaon for Tariff Category Bulk Supply – Domestic with the Sanctioned Load of 1800 KW at 11 KV Supply Voltage.
- c) They have filed an application for Domestic bulk Supply connection for the complainant Estate and have also deposited an amount of Rs.1,54,000/- vide demand draft No. 806131 dated 22.10.2002 and the application was accepted on 13.11.2002 vide receipt bearing No. A & A No. 15684/BS/DS but the connection was not energized and hence the complainant was forced to file a complaint before this Hon'ble Commission vide complaint No. PRO-10 of 2004.
- d) They have also paid an amount of Rs. 24,71,100/- vide demand draft no. 105624 dated 22.02.2005 during the pendency of the complaint, which includes an amount of Rs. 5,00,000/- towards the service connection charges. They have erected the feeder for which the Petitioner/DLF has invested huge amount which is more than Rs.5,00,000/-. The connection was released by the Respondent after more than 2 years of filing the Petition before this Hon'ble Commission and did not refund/adjust the service connection charges as the feeder was erected by the complainant.
- e) On 15/07/2005, the Commission passed an Order the relevant portion of the same is reproduced herein and reads as under:-

“14.3.1 The petitioners, as per the instructions of the respondents have erected the feeder and also deposited the Service Connection charges. The respondents, even after about 2 ¼ years of the submission of application for connection by the petitioner have termed the release of connection as temporary arrangement and have given this argument to deny refund/adjustment of the Service Connection charges. In the demand notice (issued by the respondents) and the sanction letter for release of load, the respondents have nowhere mentioned that the load feeding arrangement of

the petitioners was temporary. Subsequently, the respondents, with reference to a query by the Commission, during the hearing on 31st May, 2005 have admitted that the connection released was not temporary.

14.3.2 The respondents cannot resort to charging the Service Connection charges and also get the 11 KV feeder erected through the consumer. The HERC Order on Distribution and Retail Supply ARR and Tariff – 2000, specifies under Annexure 3 -Schedule of General and Miscellaneous Charges that “In case due to non-availability of material with the licensee, the applicant supplies the material, due credit of the cost of material supplied shall be given to the applicant from the Service Connection Charges as worked out above. The rates of material would be worked out on the basis of the issue rates as fixed by the Controller of Stores or the actuals on which it is purchased by the applicants, whichever is lesser.” Similar provision has also been mentioned in the brochure of the respondents for applicants of the H.T. Bulk Supply connection.

14.3.3 Since the petitioners have deposited Rs.5,00,000/- as Service Connection charges and also erected the 11 KV feeder, the respondents are directed to refund the Service Connection charges or cost of feeder erected by the petitioners, whichever is less, within one month of issue of the order. In case of shifting of the feeding arrangement of the electricity connection at a later date from 220 KV Sector 52-A substation to the proposed 66 KV substation in DLF Phase –V, Gurgaon to be erected by the petitioners, the cost of such shifting will be borne by the petitioners as already agreed to by them in their filing dated 20th May, 2005.”

- f) Even after passing of the order the complainant is in continuous touch with the respondents to seek refund of the aforesaid amount of Rs.5,00,000/-or cost of feeder, whichever is less. Hence the complainant was forced to issue a legal notice through the counsel dated 04.10.2017 by way of speed post but yet no action was taken by the respondents to refund/adjust the aforesaid amount.

- g) All the respondents are bound by the order passed by this Hon'ble Commission and are bound to comply with the order but the respondents have failed to comply with the order without assigning any valid legal reason, whereas the order was to be complied with within the period of one month from the date of passing the order. The relevant provision is reproduced as under:-

“Section 142. (Punishment for non-compliance of directions by Appropriate Commission):

In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made there under, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.

Section 146. (Punishment for non-compliance of orders or directions):

Whoever, fails to comply with any order or direction given under this Act, within such time as may be specified in the said order or direction or contravenes or attempts or abets the contravention of any of the provisions of this Act or any rules or regulations made thereunder, shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to one lakh rupees, or with both in respect of each offence and in the case of a continuing failure, with an additional fine which may extend to five thousand rupees for every day during which the failure continues after conviction of the first such offence:

Provided that nothing contained in this section shall apply to the orders, instructions or directions issued under section 121.”

- h) Since the respondent is charging 18% interest on the delayed payment and hence the respondent is also liable to pay the interest @ 18% to the

complainant, this Hon'ble Commission has allowed interest in many cases and hence the complainant is entitled for the interest as claimed aforesaid.

- i) The cause of action for filling the complaint arose in favour of the complainant and against the respondent when the complainant deposited the aforesaid amount of Rs.5,00,000/-, again when this Hon'ble Commission directed the respondent to refund Rs.5,00,000/-or cost of feeder whichever is less within one month of passing the order, cause of action again arises every time the complainant contacts the respondents and lastly when the complainant served the legal notice to the respondent but no action was taken by the respondents. Cause of action is still continuing.

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

- a) *Initiate an inquiry against the respondents , every person who at the 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 the 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 the interest @ 18 % from expiry of one month of the date of order date 15.07.2005 and;*
- c) *Award the compensation and costs of present proceedings in favour of Complainant and against the Respondent and;....*

Respondent No. 1 Replies

2.1 HVPNL vide it's Memo No. Ch-6/SE/RAU/F-163 dated 6/05/2019 submitted its reply on the said Petition in response to the Commission's Memo No. 5364-65/HERC/Technical dated 10/04/2019.

2.2 HVPNL has submitted that they have filed an Appeal No. 141 of 2005 before Hon'ble APTEL against the Commission's Order dated 15/07/2005 in Case No. HERC/PRO-10 of 2004. The Hon'ble APTEL in it's judgment dated 29/03/2006 has ruled as follows:

*“23. Taking up the third point for consideration, there is no controversy that the DHBVNL is the area distributing licensee and HVPNL on reorganization no longer could be proceeded by the contesting Respondents. **Legally, action, if at all, could be only against DHBVNL and not against HVPNL. HVPNL is no longer the Discom and no action is maintainable against it.** On this short ground the contesting Respondents cannot maintain an action against HVPNL. The third point is answered in favour of appellants in appeal No. 141 to 149 of 2005.”*

2.3 Accordingly, HVPNL submitted that there is no merit in the present Petition.

Proceedings, Commission’s Analysis and Order

- 3.1. The case was heard on 08/05/2019 as scheduled. The representatives of the Petitioner and the Respondents were present during the hearing.
- 3.2. Sh. Sachin Yadav-XEN S/U Division Gurugram stated that the amount to the tune of Rs. 5,00,000/- has been refunded to the Petitioner vide SC&AR No 62/11-R dated 06/05/2019 in compliance with the Commission’s Order dated 15/07/2005. He also intimated further that the Secretary, Wellington Estate Condominium Association Gurugram and the counsel of the Petitioner have been intimated accordingly vide his letter memo no. 7253 dated 06/05/2019. The copy of the letter was also submitted by him to the Commission. The counsel of the Petitioner responded in affirmative.
- 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, 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. The Drawing & Disbursing

Officer (DDO) of the Distribution Licensee shall deposit the amount of fine 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.

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 the 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 the 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 to over-reach the Commission, however, considering that the authorities had acted in the interest of the consumer, we refrain from passing any severe action against the 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.

This Order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 08/05/2019.

Date: 08.05.2019

(Pravindra Singh Chauhan)

(Jagjeet Singh)

Place: Panchkula

Member

Chairman