

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION**

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

**Case No. HERC/RA – 21 of 2019**

DATE OF ORDER : 20.09.2019

**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 HERC as well as continuing failure to comply with the direction dated 03.10.2017 by respondents.

**Review Petitioner**

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

**Respondent**

Shri Rachit Garg

**QUORUM**

**Shri D.S. Dhesi, Chairman**

**Shri Pravindra Singh, Member**

**Shri Naresh Sardana, Member**

**ORDER**

**Brief Background of the Case**

1) The Petitioner has filed the present Review Petition against the Commission's Order dated 18/06/2019 and the submissions are briefed as follows:

- a) The Hon'ble Commission while affording last opportunity to the Nigam for compliance of order dated 03.10.2017 ordered the XEN (Sub Urban Div., Gurugram) to get the directions implemented through RWA as mandated in order dated 03.10.2017 and a compliance report to this effect be submitted within seven days from receipt of order. Further, the Hon'ble Commission while affording last and final opportunity to the Petitioner categorically stated that only in the

event of failure to comply with the directions concerned XEN and President/Secretary, RWA shall be liable to pay fine individually.

- b) The Hon'ble Commission while disposing of the said Petition vide the Impugned Order has inter-alia observed that primarily it is the RWA who has delayed the compliance of the direction issued vide order dated 03.10.2017. The Hon'ble Commission further observed that the officials/officers of the Petitioner are already in breach the directions and it was erroneously presumed that the non-compliance was voluntary and illegal on the part of Review Petitioner. Furthermore, the Hon'ble Commission while adopting a lenient view imposed fine to tune of Rs. 1 lakh on the Review Petitioner while affording liberty to recover such fine from the concerned officers/officials.
- c) The Hon'ble Member (Law) of this Commission while giving the dissenting note categorically stated that 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 while adopting a lenient view last opportunity was provided to the Respondents to comply with the order dated 3/10/2017. Pertinently, the Order of the Commission was complied with and the matter stands settled and as such penalty ought not to have been imposed upon the Review Petitioner.
- d) 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 03.10.2017. In this regard, the subsequent factual background and submissions would establish that questions of non-compliance on the part of Distribution Licensee of order dated 03.10.2017 does not subsists and entire delay which has been caused solely lies on the R.W.A.
- e) During the Month of April, 2017, the review Petitioner introduced and carried out performance-based transfer policy for both the Distribution Licensees i.e, UHBVN and DHBVN. Subsequently, after implementing and exercising an exhaustive procedure, transfers were carried out at mass level/across the Department at XEN and SDO Rank Officers/Officials. Pertinently, all the transfers which were being made were directed to take charge of their respective offices (Divisions / Sub-Divisions) with immediate effect.
- f) After the transfers were being carried out, Charge of Office of Xen (Sub-Urban) was taken over by Mr. Sachin Yadav from Mr. Manoj Yadav and Charge of Office of SDO (Maruti Sub-Division) was taken over by Mr. O.K Bhardwaj from Mr. Vikas Yadav. Pertinently and as a consequence of aforesaid transfers all the Officers who were being transferred were directed to hand over the charge immediately and were further directed to join their new offices with immediate effect from the date of issue of transfer order.

- g) The aforesaid transfer process was an administrative decision and while handing over and taking over charge at the concerned office some of the office files/cases were mistakenly left out to be taken over including but not limited to that of Respondent. Further, it is only in the month of April, 2019 when this Hon'ble Commission granted last opportunity to the Petitioner to get the compliance done from the RWA of order dated 03.10.2017 and also directed to furnish compliance report, the Xen Concerned became aware of non-compliance of order dated 03.10.2017. It is pertinent to state here that due to said communication gap nobody appeared on behalf of the Petitioner before the Hon'ble Commission on 03.10.2017 and as such the Petitioner was never apprised of the directions issued. The above stated omission on the part of Petitioner was neither intentional nor deliberate but only due to the foregoing circumstances.
- h) The Impugned Order passed and penalty imposed by this Hon'ble Commission was without considering the aforesaid facts and submissions made by the Review Petitioner. Further, it is pertinent to note that non-compliance of order dated 03.10.2017 neither intentional nor deliberate but solely due to the lapse on the part of RWA as they were well aware of the directions issued.
- i) On a perusal of the above factual background, it is amply clear that by way of PRO No. 26 of 2018 the Respondent misled this Hon'ble Commission in passing of order dated 18.06.2019 by way of which penalty has been imposed upon the Review Petitioner despite of the fact that prima facie there has been no fault on the part of Review Petitioner.
- j) The entire issue and factual background could have been explained by the Counsel of the Review Petitioner. However, the Nigam and the officer concerned in their bona-fide act was under impression that only in the event of failure to comply with the order dated 26.04.2019 penalty shall be imposed. Since, the issue of non-compliance of order dated 03.10.2017 was brought to the notice of XEN concerned for the first time in April, 2019; the Review Petitioner could not provide the aforesaid details. It is therefore humbly prayed before this Hon'ble Commission to review the Impugned Order passed by this Hon'ble Commission.
- k) 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.
- l) The various judgments in this regard are as follows:
- (a) In Board of Control for Cricket, India and Anr. vs. Netaji Cricket Club and Ors.,

- (b) In State of Maharashtra vs. Ramdas Shrinivas Nayak, AIR [1982] SC 1249,
- (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

m) In view of the facts and submissions made herein above, there are ample reasons to review the Impugned Order and forego the fine imposed upon the Review Petitioner or allow the Review Petitioner to claim the disputed amount by way of ARR Petition.

n) In view of the submissions made above, this Hon'ble Commission may admit the present Review Petition and review/clarify/modify the Order dated 18.06.2019 passed by this Hon'ble Commission in Case No. HERC/PRO – 26 of 2018 filed by the Respondent in the interest of the Review Petitioner and its consumers.

2) Accordingly, the Review Petitioner has prayed as follows:

*“(a) Admit the present Review Petition;*

*(b) Review the Order dated 18.06.2019 in Case No. HERC/PRO – 26 of 2018 in terms of the submissions made in the present Review Petition;*

*(c) Withdraw the penalty imposed to the tune of Rs. 1 Lac; and*

*(d) Pass such order as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.”*

### **Commission's Analysis and Orders**

1) As per Regulation 57 (1) of *Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2019* all relevant provisions relating to review of the decisions, directions and orders as provided in the Code of Civil Procedure 1908, shall apply for review of the decisions, directions and Order of the Commission, as follows:

*“Review of the decisions, directions, and orders*

*57 (1) All relevant provisions relating to review of the decisions, directions and orders as provided in the Code of Civil Procedure 1908, as amended from time to time, shall apply mutatis mutandi for review of the decisions, directions and order of the Commission.”*

2) The Order XLVII – Review as mandated under Code of Civil Procedure 1908 is as follows:

*“ORDER XLVII-REVIEW*

*1 . **Application for review of judgment—** (1) Any person considering himself aggrieved—*

*(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,*

*(b) by a decree or order from which no appeal is allowed, or*

*(c) by a decision on a reference from a Court of Small Causes,*

*and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.”*

3) Accordingly, the Commission has analyzed the present Review Petition and is of the view that there is no “error apparent” and no other grounds of review established by the Review Petitioner, as mandated in relevant Regulations for review of the Commission’s Order dated 18/06/2019.

4) In view of above, this Review Petition deserves to be dismissed in limine.

This Order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 20/09/2019.

**Date: 20.09.2019**

**(Naresh Sardana)**

**(Pravindra Singh)**

**(D.S. Dhesi)**

**Place: Panchkula**

**Member**

**Member**

**Chairman**