

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

**Case No. HERC/PRO-60 of 2020**

**Date of Hearing : 15.12.2020**

**Date of Order : 07.01.2021**

**In the Matter of**

**APPLICATION SEEKING SUITABLE DIRECTIONS UNDER S. 46 OF  
ELECTRICITY ACT, 2003 READ WITH HARYANA ELECTRICITY  
REGULATORY COMMISSION (DUTY TO SUPPLY ELECTRICITY ON  
REQUEST, POWER TO RECOVER EXPENDITURE INCURRED IN  
PROVIDING SUPPLY AND POWER TO REQUIRE SECURITY) REGULATIONS,  
2016, AND THE ORDER PASSED BY HON'BLE COMMISSION IN SUO MOTO  
PROCEEDINGS DATED 04.09.2012.**

**Petitioner:**

Shyam Communication Systems, Sector 74-A, Gurgaon

**VERSUS**

**Respondents:**

1. Dakshin Haryana Bijli Vitran Nigam Ltd., Vidyut Nagar, Hisar through its Chairman-Managing Director.
2. Haryana Vidyut Prasaran Nigam Limited, Shakti Bhavan, Sector 6, Panchkula through its Managing Director

**Present**

**On behalf of the Petitioner**

Sh. R.K Jain, Advisor

**On behalf of the Respondents**

Sh. Raheel Kohli, Advocate

**QUORUM**

**Shri Pravindra Singh, Member (in chair)**

**Shri Naresh Sardana, Member**

## **ORDER**

### **1. Brief Background of the Case**

The Petitioner has submitted as under:

- 1.1 That M/s Shyam Communication Systems (Partnership Firm) office at A-60 Naraina Industrial Area Phase-1, New Delhi-110028 and site office at Tower A, Sky View Corporate Park, National Highway-8, Sector 74-A, Narsingpur, Gurugram Haryana and is having its Commercial Property at Village Narsingpur, Sector 74-A, Gurugram, Haryana (hereinafter referred to as "Petitioner"). It has authorized Sh. Subhash Arora, Authorized signatory of the Petitioner, to file the present petition before this Hon'ble Commission vide a validly passed resolution. Otherwise also Sh. Subhash Arora is fully conversant with the facts and circumstances of the present case.
- 1.2 That the Petitioner is owner of large Commercial Building and is large supply industrial consumer of Respondent No.1 with consumer A/c No. G31-BSHT-0064. The sanctioned load of the Petitioner Company is 4,000 kW with a sanctioned Contract Demand of 4,444 kVA, which makes it one of the important HT industrial consumers of the State.
- 1.3 The Petitioner is contributing a huge amount per annum to the State and National Exchequer in the form of Sales Tax, Income Tax, Central Excise and Goods & Service Tax, etc.
- 1.4 That the Hon'ble Commission notified Haryana Electricity Regulatory Commission (Duty to supply electricity on request, Power to recover expenditure incurred in providing supply & Power to require security) Regulations, 2005 on 26.07.2005 followed by 1st Amendment to the Regulations on 09.09.2009 and 2nd Amendment on 24.09.2013. These Regulations were replaced with HERC/34/2016 Regulations notified on 11.07.2016.
- 1.5 That the Petitioner was sanctioned a load of 4,000 kW with Contract Demand of 4,444 kVA vide Chief Engineer/Commercial, Memo. No. Ch. 3/SE/C/SOL-67 dated 31.03.2015. This load was to be released on 33 kV through an independent line emanating from 220 kV Substation, Sector-72, Gurugram.
- 1.6 That the proposal was examined by Respondent No. 2 and approved by CE/Planning, HVPNL, Panchkula vide Memo. No. R-1381/Ch.-92/NCR/CRG-109-A dated 05.02.2016 which was conveyed by SE/TS Circle, HVPNL, Gurgaon vide Memo. No. Ch.-122/TSG-426/Vol.II dated 21.03.2016 to the SE/Op. Circle, DHBVN, Hisar. The ultimate load demand of the Petitioner Company was estimated as 13,658 kW with corresponding Contract Demand of 15,176 kVA.
- 1.7 That as per the above communication, Petitioner was to be released connection on 33 kV level, through an independent 33 kV feeder to emanate from 220 kV Substation, Sector-72, Gurgaon and the

Petitioner Company was required to bear the cost of 1 No. 33 kV outgoing bay and proportionate cost as per the ultimate demand of 15,176 kVA for providing additional 1x100 MVA, 220/33 kV T/F at 220 kV Substation Sector-72, Gurgaon. A deposit estimate was sanctioned by CE/TS, HVPN, Hisar vide Estimate No. CETS-311-CETSE-25/A/2015-16 for an amount of Rs.2,58.85,100/-, which included cost of 33 kV bay, proportionate share cost, supervision charges, M&P testing charges and Service Tax, etc. This letter further mentioned about the deposit of this amount as per Rules/Regulations of HVPNL/DHBVNL before release of connection.

- 1.8 That Respondent No.1 vide Memo. No. Ch.-73/PC-GC-321 dated 28.03.2016 directed the Petitioner Company to deposit Rs.2,58,85,100/- towards bay cost, proportionate share cost, supervision charges, M&P testing charges & Service tax, etc. The Petitioner Company replied to this demand letter vide letter dated 23.08.2016. In this letter, the demand raised by the Respondents was countered giving reference to the latest revised norms circulated by Respondent No.1 vide Memo. No. Ch.-10/Forum-1352/HSR dated 08.07,2016. The Respondent No. 1 was requested to waive off above charges and release electricity connection at the earliest.
- 1.9 That while the above representation of the Petitioner Company was still pending for consideration and the project of the Petitioner Company was getting delayed for want of electricity connection, the demanded amount of Rs.2,58,85,100/- was **deposited under protest** by the petitioner Company vide DD No. 749413 dated 30.08.2016 drawn on HDFC Bank, Gurgaon.
- 1.10 That the above Receipt, issued by Respondent No.1, towards payment of demanded amount was forwarded to SE/Op., DHBVNL, Gurgaon vide letter dated 30.08.2016. Some of the main contents of this letter were as under,
- I. *As the demanded amount was not to be borne by the consumer, payment was being made under protest,*
  - II. *Since the Petitioner Company was facing lot of problem without electricity, the instant payment was being made;*
  - III. *The Petitioner Company reserved right to take refund of the said amount, as it was entitled for the same under the rule of the law.*
  - IV. *Request to release the connection at the earliest.*
- 1.11 That the Petitioner Company regularly pursued the matter with Respondent No.1 vide letter dated 26.02.2019 (addressed to CE/Op., DHBVN, Gurgaon ) and letter dated 06.012020 (addressed to SE/Op., DHBVN, Gurgaon ) but as there has been no response from Respondent No.1 to these references, the present petition is being filed for kind consideration of the Hon'ble Commission.

1.12 That in support of the above request being made by the Petitioner Company, following provisions of the Electricity Act, 2003 and other relevant Regulations framed by Hon'ble Commission thereunder, are being submitted for kind consideration of the Hon'ble Commission,

I. S.39(2) of Electricity Act, 2003, casts primary responsibility on the Transmission Licensee to plan and lay the transmission network for evacuation of available power to the load center. The Act reads as under,

**S. 39(2) - The functions of the State Transmission Utility shall be-**

- i. to undertake transmission of electricity through intra-State transmission system;
- ii. to discharge all functions of planning and co-ordination relating to intra-State transmission system with ----
- iii. to ensure development of an efficient, co-ordinated and economical system of intra-State transmission lines for smooth flow of electricity from a generating station to the load centres;

II. Part IV of the Electricity Act, 2003 relates to 'Distribution of Electricity' and deals with 'Provisions with respect to distribution licensee'. Thus it is clearly relating to the Distribution Licensee and nothing to do with the Transmission Licensee.

III. S.43 of Electricity Act, 2003 casts a universal obligation of the Distribution Licensee to give electric supply as per the application of the electricity consumer. The relevant provision under the Act read as under,

**S.43. Duty to supply on request: ---**

(1) *Save as otherwise provided in this Act, every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:*

*Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:*

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1) :

*Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.*

(3) *If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.*

IV. S.46 of Electricity Act, 2003 specifically directs Distribution Licensee to charge from a person requiring supply of electricity any expenses reasonably incurred in providing equipment used for giving power supply. This part of the Act reads as under,

**Section 46. Power to recover expenditure:**

*The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.*

V. Following Clauses of HERC/34/2016 Duty to Supply Regulations need to be mentioned for better understanding of this case,

*Reg. 2.3(21) - “**Extension of Distribution System**” means the system of wires and associated facilities, required to be erected and/or extended for giving supply to the applicant, between the delivery points on the transmission lines or the generating station connection and the points of connection to the installation of the applicant;*

*Reg. 2.3(41) - “**Service Connection charges**” means expenditure, the licensee is authorized to recover from the applicant, on account of Extension of Distribution System for giving supply of electricity to the premises and calculated in accordance with these Regulations;*

*Reg. 3.4 - It shall be the responsibility of the licensee to have necessary arrangements with the respective transmission licensee(s) to ensure that the required supply at High Tension above 33 KV is made available within the timeframe specified under Regulation 4 of the Electricity Supply Code.*

**Reg. 4. POWER TO RECOVER EXPENDITURE**

Reg. 4.1 Subject to the provisions of the Act and these Regulations and subject further to such directions, orders or guidelines issued by the Commission, every distribution licensee is entitled to recover from an applicant requiring a supply of electricity or modification in existing connection, any expenses reasonably incurred by the distribution licensee in providing any electric line or electrical plant used for the purpose of giving that supply. The service connection charges or the actual expenditure to recover such expenses shall be computed in accordance with these Regulations.

4.3 The licensee shall be responsible for ensuring that its distribution system is upgraded, extended and strengthened to meet the demand for electricity in its area of supply including future growth of such demand.

4.4 The licensee shall bear the cost of such strengthening, augmentation, up-gradation and extension of the distribution system to meet the existing demand and future expected growth of demand through its annual revenue requirements (ARR) and such cost shall be allowed to be recovered through tariff after prudence check by the Commission. However, for individual consumers, the provision of Regulation 4.6 shall apply.

4.5 The licensee shall also not claim any payment or reimbursement from the applicant for any expenditure incurred or to be incurred by the licensee in terms of or under any scheme approved by the Commission or when such expenditure is otherwise allowed to be recovered through tariff by the licensee as a part of the revenue requirements of the licensee.

4.6 The cost of extension of distribution main and/or its up-gradation up to the point of supply for meeting the demand of a consumer, whether new or existing, and any strengthening/augmentation/up-gradation in the system starting from the feeding substation for giving supply to that consumer, shall be payable by the consumer or any collective body of such consumers as per these Regulations.

4.7 However, cost of augmentation of substation or creation of a new substation or cost of augmentation of the line feeding the substation from where the supply is to be given shall not form part of cost to be recovered from the consumer or collective body of consumers as per Regulation 4.6.

VI. We may also refer to the following clauses of the HERC (Electricity Supply Code) Regulations, 2014, which provide for the following definitions of point of supply or point of connection of the consumer and read as follows,

*Regulation 2.3(18) “**connection point**” means a point at which the consumer’s installation and/or apparatus are connected to distribution licensee’s distribution system;*

*Regulation 2.3(46) “**point of supply**” means the point at the incoming terminals of switchgear installed by the consumer;*

Therefore, it is clear that the point of supply/connecting point for Petitioner Company being 33 kV breaker of the Petitioner at its factory premises, the distribution/transmission system beyond the 33 kV switchgear installed at the incoming terminal of the Petitioner Company is the responsibility of the Licensee as per the provision under the HERC/34/2016 Regulations and no cost for its construction/augmentation is to be charged to the consumer/Petitioner Company.

1.13 That on conjoint reading of the above legal provisions, following points would be amply clear;

- I. While the Transmission Licensee is responsible for development of an efficient, coordinated and economical system of intra-State transmission lines for smooth flow of electricity to load centres, the Distribution Licensee has a universal obligation to provide electricity connection to any applicant and to do so it is responsible to provide electric plant or electric line for giving electric supply to the premises of the applicant within the prescribed time.
- II. For giving this supply, if there is need to extend the distribution mains, or commissioning of new substations, the Distribution Licensee will carry out such works and give connection to the applicant.
- III. Ss. 43-60 of Electricity Act, 2003 deal with Distribution of Electricity and the provisions covered thereunder are with respect to distribution licensees.

- IV. The Distribution Licensee can recover only that part of the expenses which are reasonably incurred in providing equipment i.e. electric line or electrical plant used for giving power supply.
- V. The Distribution Licensee can recover Service Connection Charges on account of 'Extension of Distribution System' for giving supply to the premises.
- VI. Extension of Distribution System means the system of wires and associated facilities between the delivery points of the transmission lines and the point of connection to the installation of the applicant.
- VII. The Licensee is to bear the cost of strengthening, augmentation, up-gradation and extension of distribution system to meet the existing demand and future expected growth of demand through its ARR and such cost will be allowed by the Commission through tariff.
- VIII. The consumer is not to bear the cost of augmentation of substation or creation of a new bay at 220 kV Substation of Respondent No.2 for connecting 33 kV line feeding power supply to the Petitioner Company.

- 1.14 That as per the estimate sanctioned by Respondent No.2, the Petitioner Company is to bear the proportionate cost of providing additional 1x100 MVA, 220/33 kV T/F at 220 kV Substation, Sector-72, Gurgaon and that too corresponding to the ultimate load of 13658 kW/ demand of 15176 kVA, which is not in sight at the moment. The Petitioner Company has not applied for that load as yet and the present load under consideration was only 4000 kW. Therefore, raising demand for the proportionate cost for an imaginary load, which is almost 4 times the load applied for, is not supported by any part of the Electricity Act or any Regulations framed thereto.
- 1.15 That firstly no such estimated cost relating to the construction/augmentation of transmission system is to be borne by the Petitioner Company as per the prevailing law/Regulations, and moreover, even if any such amount was **deposited under protest** by the Petitioner Company, in the wake of mounting power demand, such unlawful amount recovered should have been refunded to the Petitioner Company. The Respondents have failed to refund this illegal amount got deposited, inspite of repeated request made by the Petitioner Company to the senior officers of the Respondent Companies.
- 1.16 That in view of the aforesaid facts and supporting provisions under the existing laws, the Petitioner most humbly requests the Hon'ble



Commission for kind intervention and providing consequential reliefs hereunder sought for.

**Prayer:**

- 1.17 It is, therefore, most humbly prayed that the Petition may kindly be considered in the light of the submissions made above and Hon'ble Commission may kindly be pleased to grant following reliefs to Petitioner,
- I. To kindly accept the instant petition in the present form;
  - II. To give suitable directions to the Respondents to withdraw illegal demand raised towards payment of estimated cost of Rs.2,58,85,100/- regarding bay cost, proportionate share cost, etc. for the ultimate load/demand, which has not been applied or sanctioned/released;
  - III. To refund the amount of Rs.2,58,85,100/-, **deposited by the Petitioner under protest** through DD No. 749413 dated 30.08.2016;
  - IV. To give suitable directions to the Respondents to pay interest @ 12% per annum on the extra amount got deposited from the Petitioner Company from the date of deposit to the date of actual refund;
  - V. Pass such other order(s) as may be deemed just and proper in the facts and circumstances of the case.

**2. Reply Dated: 14.12.2020 from DHBVN (Respondent No.1):**

- 2.1 The present reply is being filed on behalf of Dakshin Haryana Bijli Vitran Nigam Limited (**Respondent No. 1**) in response to the captioned petition preferred by Shyam Communication Systems ("**Petitioner**"). By way of the present petition, the Petitioner is challenging the demand to the tune of INR 2,58,85,100 (Rupees Two Crores Fifty-Eight Lakhs Eighty-Five Thousand One Hundred) raised by the Respondent No. 1 in terms of demand notice dated March 28, 2016 ("**Demand Notice**"). It is submitted that the allegations made by the Petitioner are denied in totality and the same may be treated as a denial in seriatim. Further, all the contentions and arguments have been taken in the alternative without prejudice to each other.

**Preliminary Objections**

- 2.2 It is submitted that before advancing submissions on the merit of the case, the Respondent No. 1 would like to raise the following preliminary objections regarding the jurisdiction of this Hon'ble Commission to entertain the present petition and the claim sought being time barred.
- I. It is utmost relevant to mention that the Petitioner has raised a dispute by impugning the Demand Notice and accordingly has sought refund of INR 2,58,85,100 (Rupees Two Crores Fifty-Eight Lakhs Eighty-Five Thousand One Hundred). Therefore, by

virtue of Section 42(5) of the Electricity Act, 2003 and Haryana Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2020, the Petitioner is precluded from approaching this Hon'ble Commission with a prayer to adjudicate the subject dispute with the Respondents. It is submitted that the jurisdiction of this Hon'ble Commission has been erroneously invoked by the Petitioner. Therefore, this Petitioner deserves to be dismissed by this Hon'ble Commission on this ground alone.

- II. It is submitted that, pursuant to the Demand Notice, the Petitioner deposited the demand amount on August 30, 2016. However, the present petition has been preferred by the Petitioner in the month of October 2020 i.e., approximately one (1) year after the expiry of the statutory period. Hence, the Petitioner's claim is barred by the Limitation Act, 1963 and thus deserves to be rejected.

### **Reply on Merits**

2.3 It is submitted that the Petitioner applied for high tension electricity connection vide application dated September 24, 2014 in terms of Power to recover expenditure incurred in providing supply & Power to require security) Regulations, 2005 ("**2005 Regulations**").

2.4 Pursuant thereto, the Petitioner application was scrutinized by the concerned wing and the ultimate load demand of the Petitioner Company was estimated as 13,658 kW with corresponding Contract Demand of 15,176 kVA. Thereafter, a load of 4,000 kW with Contract Demand of 4,444 kVA was sanctioned on March 31, 2015. As supply of electricity to the Petitioner required enhancement of existing capacity, the Demand Notice in consonance with 2005 Regulations was issued and Petitioner was asked to deposit the requisite amount. Pursuant thereto, on August 30, 2016 the Petitioner deposited the requisite amount. For ease of reference the relevant provisions of the 2005 Regulations which empowered the Respondent No. 1 to raise the Demand Notice are reproduced below:

**“4.5 After receipt of application for supply of electricity, the Licensee shall issue a demand note to the applicant informing him of the details of Service Connection Charges on account of the following: -**

*4.5.1 Cost of service cable for length in excess of 30 meters in case the distance between the terminal pole and the metering cubicle is more than 30 meters and the cost of terminal and metering arrangements (excluding the cost of the meter) at the premises of the consumer.*

*4.5.2 Where supply of electricity requires any extension of distribution system to be carried out by the licensee, the charges for such work calculated in accordance with or supervision charges calculated in accordance with regulation 4.9 in case the applicant opts for execution of work at his own cost.*

4.5.3 *In case the applicant requests for supply of electricity through an independent feeder, the charges of Controlling Circuit Breaker, metering cubicle complete with CTs & PTs and Meter and Terminal Equipment required at the substation-end, Electric Line up to the metering cubicle, Electric Plant and metering cubicle complete with CTs, PTs & meter at the consumer-end.” **Emphasis Supplied***

## **“2. High Tension Supply**

2.1 *In case of an applicant where there is a need to enhance the capacity of existing power transformer or provide new power transformer or erect or extend the electric line for extending supply to the applicant, the Licensee shall charge the cost of enhancing the capacity of existing power transformer or providing new power transformer, with or without bay extension, along with associated equipments and the cost of erecting or extending such line, calculated as per part I.*

2.2 *In case of an applicant where there is a need to erect a new 33/11 KV sub-station in order to extend supply to the applicant, the Licensee shall charge the cost of providing such a sub-station. If such a sub-station is created to cater to more than one applicant, the cost of its creation will be shared by the applicants in proportion to their connected load. **Emphasis supplied***

2.5 From the bare perusal of the above reproduced provisions, it is evident that the Respondent No. 1 was adequately empowered to raise the Demand Notice. In addition, the Petitioner’s reliance on HERC (Duty to supply electricity on request, Power to recover expenditure incurred in providing supply & Power to require security) Regulations, 2016 (“**2016 Regulations**”), is misplaced, as the same was not in operation when the electricity connection as applied by the Petitioner. Hence, 2005 Regulation, which entitled the Respondent No. 1 to raise the Demand Notice, is applicable in the present case. Therefore, the present petition has no merit and therefore deserves to be dismissed.

That in light of the above-mentioned submission it is respectfully submitted that this Hon’ble Commission may be pleased to dismiss the present petition.

## **3. Reply from HVPNL (Respondent No.2), Dated: 14.12.2020**

3.1 The present reply is being filed on behalf of Haryana Vidyut Prasaran Nigam Limited (“**HVPNL**”/ “**Respondent No. 2**”) in response to the captioned petition preferred by Shyam Communication Systems (“**Petitioner**”). By way of the present petition, the Petitioner is primarily seeking refund of INR 2,58,85,100 (Rupees Two Crores

Fifty-Eight Lakhs Eighty-Five Thousand One Hundred) deposited by the Petitioner pursuant to a demand notice dated March 28, 2016 (“**Demand Notice**”) issued by Dakshin Haryana Bijli Vitran Nigam Limited (“**DHBVN**”/ “**Respondent No. 1**”).

- 3.2 It is submitted that the allegations made by the Petitioner are denied in totality and the same may be treated as a denial in seriatim. Further, all the contentions and arguments have been taken in the alternative without prejudice to each other.
- 3.3 In response to the present petition, HVPNL would like to draw the attention of this Hon’ble Commission on the fundamental legal issues involved in the matter, which are as follows:
- I. Petitioner has wrongly invoked the jurisdiction of this Hon’ble Commission, instead of approaching Consumer Grievance Redressal Forum (**CGRF**), and
  - II. Petitioner’s claim is time-barred.

**Re: Petitioner has wrongly invoked Jurisdiction of this Hon’ble Commission.**

- 3.4 It is submitted that it is Petitioner’s case that the Demand Notice has been issued contrary to what has been permitted by the 2016 Regulations. Therefore, the Petitioner is entitled to refund of the amount which was deposited on August 30, 2016 in compliance of the Demand Notice. For ease of reference, the relevant paragraph of the Petition is reproduced below:

*“15. That firstly no such estimated cost relating to the construction/augmentation is to be borne by the Petitioner Company as per the prevailing law/ Regulations, and moreover, even if any such amount was deposited under protest by the Petitioner Company, in the wake of mounting power demand, such unlawful amount recovered should have been refunded to the Petitioner Company. The Respondent have failed to refund this illegal amount got deposited, inspite of repeated request made by the Petitioner Company to the senior officers of the Respondent Companies.”*

- 3.5 It is utmost relevant to mention that the Petitioner has raised a dispute by impugning the Demand Notice and accordingly has sought refund of INR 2,58,85,100 (Rupees Two Crores Fifty-Eight Lakhs Eighty-Five Thousand One Hundred). Therefore, by virtue of Section 42(5) of the Electricity Act, 2003 and Haryana Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2020 (**CGRF Regulations**), the Petitioner is precluded from approaching this Hon’ble Commission with a prayer to adjudicate the subject dispute with the Respondents. For ease of reference the relevant provisions of the CGRF Regulations are reproduced below:

**“DEFINITIONS**

*1.5 In these Regulations, unless the context otherwise requires:-*

- (a) ... ..
- (b) ... ..
- (c) ... ..
- (d) ... ..
- (e) “complaint” means any grievance in writing made by a complainant that :
  - i. an unfair trade practice or a restrictive trade practice has been adopted by the licensee in providing electricity service;
  - ii. the electricity services hired or availed of or agreed to be hired or availed of by him suffer from defect or deficiency in any respect;
  - iii. a licensee has charged for electricity services mentioned in the complaint, a price in excess of the price fixed by the Commission;
  - iv. electricity services which are hazardous to life and safety when availed, are being offered for use to the public in contravention of the provisions of any law for the time being in force or of any licence;
  - v. violation has occurred of any law or licence requiring the licensee to display the information in regard to the manner or effect of use of the electrical services; or
  - vi. breach has occurred of any obligation by the licensee which adversely affects any consumer or which the Forum may consider appropriate to be treated as a complaint.”

**Emphasis Supplied**

**“JURISDICTION**

2.24 The Forum shall have the jurisdiction to entertain all the monetary/nonmonetary complaints/grievance filed by the complainants or to take up the matter suo-moto with respect to the electricity services provided by the distribution licensee if the same fulfils the requirements specified in subregulation (e) read with subregulation (g) of Regulation 1.5 or against the decision of a Dispute Settlement Committee constituted under CCHP.”

**Emphasis Supplied**

- 3.6 Form the bare perusal of the above reproduced regulations, it is evident that in the event a licensee is charging in excess of what has been approved by this Hon’ble Commission, the consumer aggrieved by the same at the first instance is only entitled to approach CGRF for redressal of its monetary grievance. Similar view has been adopted by the Hon’ble Apex Court in case titled **MSEDC Vs. Lloyd Steel Industries Ltd numbered AIR 2008 SC 1042**, wherein it has been held that all the individual grievances of the consumers have to be raised before the Grievance Redressal Forum and the Ombudsman only. The State Electricity Regulatory Commission cannot decide about the disputes between the licensees and the consumers. In addition, HERC (Duty to supply electricity on request, Power to recover expenditure incurred in providing supply & Power

to require security) Regulations, 2016 (**“2016 Regulations”**) [**which is not applicable in the present case and have been adeptly replied upon by the Petitioner**] also provides for a complaint redressal system, wherein the aggrieved consumer, at the first instance, has to approach CGRF for adjudication of its dispute with the licensee.

- 3.7 Considering the above, it is humbly submitted that the jurisdiction of this Hon’ble Commission has been erroneously invoked by the Petitioner. Therefore, this Petitioner deserves to be dismissed by this Hon’ble Commission on this ground alone.

**Re: Petitioner’s claim is time-barred**

- 3.8 Without prejudice to the submission made in paragraph 3.1 to 3.4 above, it is submitted that, pursuant to the Demand Notice, the Petitioner deposited the demand amount on August 30, 2016. However, the present petition has been preferred by the Petitioner in the month of October 2020 i.e. approximately one (1) after the expiry of the statutory period. Hence, the Petitioner’s claim is barred by the Limitation Act, 1963 and thus deserves to be rejected.

That in light of the above-mentioned submission it is respectfully submitted that this Hon’ble Commission may be pleased to dismiss the present petition.

**4. Proceedings:**

Case was heard by the Commission on 15.12.2020, as scheduled, through video conferencing in view of Covid-19 Pandemic. The Commission heard the parties at length Hearing was concluded and order reserved.

**5. Commission’s Analysis and Order**

The matter was heard on 15.12.2020 through virtual mode. The Commission has carefully examined the contents of the Petition, reply made by the Respondents, averments made by the representatives of both the parties during the hearing. In order to determine the issues raised by the petitioner by way of present petition, it is necessary to consider the same in the context of the factual background which has given rise to the present claim. The factual matrix of the case makes it amply clear that the petitioner, having deposited the demanded amount under protest, is now seeking a refund of the same. Effectively, the present case is a claim for money sought to be recovered by invoking the jurisdiction of this Commission. Apart from the legal correctness of the claim for money, another issue that requires consideration is the correctness and propriety of invocation of the jurisdiction of this Commission which is primarily a regulatory body established under a statute which stipulates the contours of the powers that the Commission can exercise.

It will not be out of place here to refer to the status of the petitioner as a consumer of the Licensee which has the effect of bringing into operation the specific regulations which prescribe the attributes of this relationship of consumer-licensee as above. Being a consumer, the petitioner has been afforded remedy for redressal of its grievances under applicable Regulations which provide that all kinds of grievances, monetary as well as non-monetary, can be considered only by the Consumer Grievance Redressal Forum. It is in view of this above that the Commission must draw the inevitable conclusion that the present claim ought to have gone before the said authority established by statute for the said purpose.

This Commission is a statutory body established to discharge regulatory functions relating to the electricity affairs of the State. As such, the present petition, if entertained, would reflect usurpation by the Commission of a jurisdiction which has been specifically conferred upon another body, namely CGRF.

In view of the reasons stated above, this Commission deems it appropriate to deny the relief claimed in the petition by dismissing the same. Reference is due to be made at this point to the judgment rendered by the Hon'ble Supreme Court in the case CA No. 3551 of 2006 titled "The Maharashtra State Electricity Distribution Company Ltd. Vs Lloyds Steel Industries Ltd.", decided on 14.08.2007.

On the closing note, the present consideration also deserves further contemplation on account of the issue of limitation especially in view of the above fact that the petition has been determined in the preceding paragraph to be deserving of dismissal on the issue of jurisdiction. However, in the fitness of things, even though the Commission would have considered granting the concession of referring the petitioner to the appropriate forum but such course of action appears to be foreclosed for the Commission in view of the issue of limitation which in the opinion of the Commission does a disservice to the cause of the petitioner. The present being a claim for money to be recovered from the licensee, it would have to be deemed to have all the trappings of a suit for recovery and as such as also on account of the rulings of the Hon'ble Supreme Court on this issue, the claim is hit by the principles of limitation with the effect of turning it into something that is barred and barren. In this aspect of the matter, this Commission is fortified in its view by the observations made by the Hon'ble Supreme Court in the case titled A.P. Power Coordination Committee and Ors Vs Lanco KondaPalli Power Ltd. & Ors" decided on 16.10.2015 in its paragraph nos. 29

& 30 which are reproduced hereinafter for convenience and reference:

*“29. The only other weighty contention of Mr. Giri that there is nothing in the Electricity Act 2003 to create a right in a suitor before the Commission to seek claims which are barred by law of limitation merits a serious consideration. There is no possibility of any difference of opinion in accepting that on account of judgment of this Court in Gujarat Urja (supra) the Commission has been elevated to the status of a substitute for the Civil Court in respect of all disputes between the licencees and generating companies. Such dispute need not arise from the exercise of powers under the Electricity Act. Even claims or disputes arising purely out of contract like in the present case have to be either adjudicated by the Commission or the Commission itself has the discretion to refer the dispute for arbitration after exercising its power to nominate the arbitrator. It is in view of such far reaching judicial powers vested in the Commission that in the case of PPN Power Generating Co. (P) Ltd. (supra) this Court advised the State to exercise enabling power Under Section 84(2) to appoint a person who is/has been a Judge of a High Court as Chairperson of the State Commission. In such a situation it falls for consideration whether the principle of law enunciated in State of Kerala v. V.R. Kalliyankutty (supra) and in the case of New Delhi Municipal Committee v. Kalu Ram (supra) is attracted so as to bar entertainment of claims which are legally not recoverable in a suit or other legal proceeding on account of bar created by the Limitation Act. On behalf of Respondents those judgments were explained by pointing out that in the first case the peculiar words in the statute - "amount due" and in the second case "arrears of rent payable" fell for interpretation in the context of powers of concerned tribunal and on account of aforesaid particular words of the statute this Court held that the duty cast upon the authority to determine what is recoverable or payable implies a duty to determine such claims in accordance with law. In our considered view a statutory authority like the Commission is also required to determine or decide a claim or dispute either by itself or by referring it to arbitration only in accordance with law and thus Section 174 and 175 of the Electricity Act assume relevance. Since no separate limitation has been prescribed for exercise of power Under Section 86(1)(f) nor this adjudicatory power of the Commission has been enlarged to entertain even the time barred claims, there is no conflict between the provisions of the Electricity Act and Limitation Act to attract the provisions of Section 174 of*



*the Electricity Act. In such a situation on account of provisions in Section 175 of the Electricity Act or even otherwise the power of adjudication and determination or even the power of deciding whether a case requires reference to arbitration must be exercised in a fair manner and in accordance with law. In the absence of any provision in the Electricity Act creating a new right upon a claimant to claim even monies barred by law of limitation, or taking away a right of the other side to take a lawful defence of limitation, we are persuaded to hold that in the light of nature of judicial power conferred on the Commission, claims coming for adjudication before it cannot be entertained or allowed if it is found legally not recoverable in a regular suit or any other regular proceeding such as arbitration, on account of law of limitation. We have taken this view not only because it appears to be more just but also because unlike Labour laws and Industrial Disputes Act, the Electricity Act has no peculiar philosophy or inherent underlying reasons requiring adherence to a contrary view.*

*30. We have taken the aforesaid view to avoid injustice as well as possibility of discrimination. We have already extracted a part of paragraph 11 of the judgment in the case of State of Kerala v. V.R. Kalliyankutty (supra) wherein Court considered the matter also in the light of Article 14 of the Constitution. In that case the possibility of Article 14 being attracted against the statute was highlighted to justify a particular interpretation as already noted. It was also observed that it would be ironic if in the name of speedy recovery contemplated by the statute, a creditor is enabled to recover claims beyond the period of limitation. In this context, it would be fair to infer that the special adjudicatory role envisaged Under Section 86(1)(f) also appears to be for speedy resolution so that a vital developmental factor – electricity and its supply is not adversely affected by delay in adjudication of even ordinary civil disputes by the Civil Court. Evidently, in absence of any reason or justification the legislature did not contemplate to enable a creditor who has allowed the period of limitation to set in, to recover such delayed claims through the Commission. Hence, we hold that a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the civil court. But in appropriate case, a specified period may be excluded on account of principle underlying salutary provisions like Section 5 or 14 of the Limitation Act. We must hasten to add here that such limitation upon the Commission on account of this decision would be only in respect of its judicial power under Clause (f) of subsection (1) of Section 86 of the*

*Electricity Act, 2003 and not in respect of its other powers or functions which may be administrative or regulatory.”*

Accordingly, the present petition is dismissed for the reasons stated above.

This Order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 07/01/ 2021.

**Date: 07.01.2021**

**(Naresh Sardana)**

**(Pravindra Singh)**

**Place: Panchkula**

**Member**

**Member**

HERC