

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION
BAYS No. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA**

Case No. HERC/PRO – 2 of 2021

**Date of Hearing : 10.06.2021
Date of Order : 28.06.2021**

IN THE MATTER OF:

Petition under S. 142 & 146 of the Electricity act, 2003 read with HERC/25/2012 Open Access Regulations, HERC/40/2017 RE Regulations and HERC/47/2019 Conduct of Business Regulations, as amended from time to time.

Petitioner

M/s. Chanderpur Renewal Power Co. Pvt.

Respondents

1. Haryana Vidyut Prasaran Nigam Ltd (HVPNL), Panchkula
2. Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL), Panchkula

Present On behalf of the Petitioner, through Video Conferencing

1. Shri R.K. Jain

Present On behalf of the Respondents, through Video Conferencing

1. Shri Samir Malik, Advocate, for Respondents

Quorum

**Shri R.K. Pachnanda
Shri Naresh Sardana**

**Chairman
Member**

ORDER

1. The present Petition has been filed by M/s. Chanderpur Renewal Power Co. Pvt. Ltd, under Section 142 & 146 of the Electricity Act, 2003 read with HERC/25/2012 Open Access Regulations, HERC/40/2017 RE Regulations and HERC/47/2019 Conduct of Business Regulations, as amended from time to time.
2. The Petitioner herein has sought action under section 142/146 for non-compliance of the Commission's Order dated 11.03.2020 w.r.t. non-payment of interest amounting to Rs. 75,619.73 on delay in refunding the distribution wheeling charges and adjustment of captive power drawn through open access in the electricity bill of the same month by the Respondent Nigam i.e. UHBVNL.
3. Additionally, the Petitioner has prayed that they may be allowed adjustment of captive power and given banking facility without the need for giving day ahead schedule to the DISCOM, in relaxation of the relevant clauses of HERC Open Access Regulations, 2012 and HERC RE Regulations, 2017, as amended from time to time.

4. Brief facts of the case are as following:

- i. That the Petitioner owns and operates 1 MW bio-mass based Captive Power Plant located at Village Sohana, Distt. Ambala, Haryana. This Project was set up as a Research & Development (R&D) Project of the Government of India with active support of HAREDA, MNRE and IREDA (through KfW Germany). The basic purpose of setting up this Project was to demonstrate the process of gasification of biomass and to popularize the technology for the common benefit of rural masses and overall national environment.
- ii. That the Petitioner had filed Petition No. HERC/PRO-41 of 2019 in this Commission, seeking directions against UHBVNL primarily for refund of distribution wheeling charges deducted from the bills of the Petitioner Company since January 2019 along with interest @ 12% per annum, to give adjustment of the captive power transmitted through open access in the electricity bill for same month, to purchase the surplus RE power injected into the Grid after adjusting the quantum of power consumed by the petitioner and to calculate ACD amount on the net energy drawn by the petitioner company.
- iii. That the Commission had recognized Petitioner's efforts to make use of Municipal Waste and even Polythene for power production. Accordingly, in exercise of the powers vested under HERC OA Regulations, clause nos. 55 and 59, the Commission exempted the petitioner from the levy of distribution wheeling charges, in larger public interest, subject to the condition that 75% of the fuel used by it shall be wheat/ paddy straw, polythene or municipal solid waste.
- iv. That the Commission vide its order dated 11.03.2020 directed Respondent No.1 i.e. UHBVNL (Respondent No. 2 herein) to refund the distribution wheeling charges already deducted from the bills of the Petitioner, since January, 2019 within 15 days from the date of receipt of this Order, failing which they shall be liable to pay interest @ 12% p.a.
- v. That the Commission further observed that the issue raised by the Petitioner regarding adjustment of captive power transmitted through open access in the electricity bill of the same month, has already been settled by the Commission in its earlier Order dated 21.05.2018 (HERC/PRO-70 of 2017 and HERC/PRO-47 of 2017) in the matter of M/s. DCM Textile and M/s. Jindal Stainless Steel, wherein it was held that adjustment for energy drawn through Open Access by an embedded consumer, out of billed energy, has to be given during the same month.
- vi. The Respondent No. 1 i.e. UHBVNL (Respondent No. 2 herein) was directed to strictly comply with the ibid Orders of the Commission.

5. The following are the submissions of the learned counsel for the petitioner:

- i. That in compliance to the above directions given by the Commission, Respondent No. 1 was required to refund the distribution wheeling charges already deducted from the bills

of the Petitioner since Jan. 2019 within 15 days from the date of receipt of this order, failing which Respondent No. 1 was liable to pay interest @ 12% p.a. Accordingly, the Respondent No. 1 was required to refund the distribution wheeling charges already deducted from the bills of Petitioner since Jan. 2019 by 26.03.2020, failing which interest @ 12% was also to be paid.

- ii. That the Respondent No. 1 had made deductions of Rs. 8.20 Lac since January 2019 from the bills of the Petitioner. The Respondent No. 1 gave adjustment of Rs. 8.20 Lac only in the bills of Nov. 2020 payable in Dec. 2020. Thus, the Respondent No. 1 has given adjustment of only principal amount of the deductions made from the bills of the Petitioner after over 9 months and that too without payment of interest allowed by the Commission through the above order. Thus, the Respondent No. 1 is yet to make payment of interest for the delayed period, which works out to Rs. 75,619.73 ending December 2020.
- iii. That the Petitioner has been pursuing with Respondent No. 1 and issued a series of letters, but the Respondent No. 1 has failed to comply with the above order of the Commission even though a period of over 9 months have elapsed.
- iv. That the Respondent No. 1 has not complied with the directions given by Commission for giving adjustment of captive power transmitted through open access in the electricity bill of the same month since July 2019. The adjustments which have not been given so far and others which were given after 2-3 months.
- v. That due to non-adjustment of captive power drawn through open access, the Petitioner was subjected to Delayed Payment Surcharge on monthly bills.
- vi. That from the above facts it is amply clear that the Respondent No. 1 has failed to comply with the orders/directions of the Commission, which has made Respondent No. 1 liable for punishment as per the provisions of Section 142 & 146 of Electricity Act, 2003,
- vii. That the Respondent has violated the directions given by the Commission causing huge financial loss to the Petitioner. The Petitioner is pained to report that the Respondent has forced the Petitioner to close the power plant as Respondent has stopped giving adjustment of the captive power in the electricity bills since July 2019. This has resulted in the forced closure of the RE Power Plant of the Petitioner.
- viii. That in the meanwhile, Petitioner is under constant pressure from various Municipal Corporations for lifting the Municipal Waste, which is creating lot of civic nuisance to the residents of Municipal Areas. The Petitioner has also been approached by different authorities and the State administration to use Paddy Straw for power production. To promote the Biomass Gasification Technology, even the Govt. of India has announced special subsidy to such projects upto 50% of the cost of the project.

- ix. That the Respondents have raised the issue of scheduling of power from the Petitioner's power plant for the first time on 25.09.2020. However, the Respondent stopped giving adjustments since July 2019. It will not be practical also for the Petitioner to give scheduling for the past period of 14 months when no such scheduling was asked for by the Respondent from us.
- x. That the Petitioner has all along submitted about the special nature of the power plant which was also recognized by the Commission in the order dated 11.03.2020. The normal power generation from the project is hardly 1 lac units a month and even this generation is not on regular/continuous basis. No scheduling can be given for such intermittent power generation for this demonstration R&D project.
- xi. That the issue of non-adjustment of captive power on the ground of scheduling was never raised by the Respondents during the hearings on this Petition. Had it been done by them, the matter would have been brought for the kind consideration and adjudication by the Commission and the Petitioner would not have been forced to shut down the power plant on this account.
- xii. That the unique operational problems associated with the use of Indian MSW have to be understood and need to be appreciated by the Respondents. While using MSW, there is serious problem of clinkerisation of fuel in reactors. In fact, MSW contains lot of inert substance and the quality of MSW varies widely which causes many problems. On one side Petitioner is doing R&D to solve this problem, so that this problem can be solved and the power generation will become continuous with less stoppage, so scheduling is not possible.
- xiii. That the Petitioner has, in the meantime, approached the Respondent Nigam to allow Banking of power generated by the captive power plant but that would be viable only if the Petitioner is not insisted upon to give advance scheduling, which is even otherwise not possible in a plant of the magnitude and type of tiny R&D project based on Biomass Gasification Technology.
- xiv. That the Petitioner has all along prayed that looking at the micro size of the power plant. Hence, it should not be clubbed with other large beneficiaries like Discoms, STU, large Generators, etc. and exempted from traditional open access charges i.e. long-term transmission charges, etc. This is a tiny project having totally insignificant exportable power of 640 kW or 0.075 MUs/month (75,000 units/month) and being compared with giants having transmission capacity of 20,000 MW or over 4000 MUs/month. In the above context the Petitioner requests the Commission to consider any of the following future course of action:-
- a) To disassociate the project of the Petitioner with other Long-Term open access beneficiaries of STU system, or

- b) To allow the Petitioner to use the Long-Term Open Access for transmission of Captive power without giving any day ahead scheduling to DISCOM.
 - c) To allow the Petitioner for availing the Banking Facility from Discom without giving any day ahead scheduling.
6. The Respondents filed their reply, under affidavit dated 09.06.2021. The submissions of the learned counsel for the Respondents are as under: -

Re: Payment of interest on delayed payment

- i. That pursuant to the Order dated 11.03.2020 passed in PRO 41 of 2019, the Respondent has already given adjustment of the principal amount of Rs. 8.20 Lac to the Petitioner in the bills of Nov. 2020. It is imperative to bring to the notice of this Commission that Respondent has filed an appeal before the Appellate Tribunal for Electricity challenging the Order dated 11.03.2020. Having said that the said charges were deducted in accordance with the provisions of applicable OA Regulations and the LTOA Agreement with the Petitioner, it is submitted that this issue of grant of interest towards refund of distribution wheeling charges has also been raised in the Appeal. The said Appeal being DFR 206 of 2020 is pending adjudication before the Hon'ble Appellate Tribunal.
- ii. Notwithstanding the same, it is submitted that the interest is not payable to the Petitioner for the refund of deducted distribution wheeling charges considering that the Commission itself has, after a detailed analysis, held in the Order dated 11.03.2020 that distribution wheeling charges are applicable to the power plant of Petitioner, yet, the same has been exempted for the Petitioner in exercise of powers of relaxation. Thus, it cannot be the case of the petitioner that the distribution wheeling charges were wrongly deducted as until order dated 11.03.2020, there was no such exemption for the petitioner and the relevant clause no. 19(3) of the OA Regulations applied to them.

Re: Withdrawal of delayed payment surcharge levied in the past bills of the Petitioner due to non-adjustment or delayed adjustment of the captive power wheeled through open access along with interest

- iii. That while adjudicating on the claim of Petitioner for refund of late payment surcharge, the Commission held that the said issue regarding adjustment of captive power transmitted through open access in the electricity bill of the same month, has already been settled by the Commission in its earlier Order dated 21.05.2018 (HERC/PRO-70 of 2017 and HERC/PRO-47 of 2017) in the matter of M/s. DCM Textile and M/s. Jindal Stainless Steel, wherein it was held that adjustment for energy drawn through Open Access by an embedded consumer, out of billed energy, has to be given during the

same month. Thus, the Commission directed the Respondent to comply with the said orders of the Commission.

- iv. That the said directions have been passed without appreciating the ground realities and in ignorance of the sales instructions issued by the Respondent in this regard. It is submitted that though the total energy consumption of the open access consumer is billed to it regularly every month; however, due to administrative reasons and practical difficulties involved, the adjustment sheets of open access power are being done in the next month.
- v. However, to tackle the hardships faced by the consumers in cases where the adjustment data of the consumers was being received even after the aforementioned period, the Respondent No.1 issued a Sales Instruction no. U-07/2018 dated 16.08.2018 and decided that in case the Open Access adjustment sheets are received after the issuance of regular energy bills but prior to due date of payment, then the reduced amount may be accepted from the consumer, and upon payment of such reduced amount by the consumer on or before the due date, entry for refund of adjustment and surcharge be made in the SC & AR register and posted in the consumer account and incorporated in the energy bill for the next month. However, if any consumer defaults in making any part of the payment by the due date, then the entry for refund of adjustment and its surcharge component is only made and posted in the next energy bill.
- vi. Thus, the Respondent was issuing bills to Petitioner after adjustment of Open Access Power and applicable surcharge, if any, in accordance with the above Sales Instruction no. U-07/2018. It is pertinent to note that the Order dated 21.05.2018 was passed by the Commission much before the issuing of the Sales Instruction no. U-07/2018 dated 16.08.2018. However, while passing of Order dated 11.03.2020 and relying on its earlier Order dated 21.05.2018 passed in HERC/PRO-70 of 2017 and HERC/PRO-47 of 2017, the Commission did not consider the said Sales Instruction no. U-07/2018 dated 16.08.2018 issued by the Respondent or the practical difficulties faced by the Respondent due to which it is not possible to give adjustment to the open access consumer within the same month.
- vii. That the said issue and the difficulty faced by the Respondent is also part of the Appeal filed before the Appellate Tribunal which is pending for adjudication.
- viii. In the given facts and circumstances, it is submitted that there is no willful disobedience of the Commission's directions. The Respondent in exercise of its legal right to appeal has challenged certain findings of the Commission before the Hon'ble Appellate Tribunal which is pending adjudication. In the meanwhile, the Respondent has already

paid the principal amount to the Petitioner in compliance of the Commission's directions.

Re: Relaxation prayed for exemption from providing day ahead scheduling for availing LTOA and Banking facility for the Captive Power Plant of the Petitioner on account of its special nature

- ix. The Petitioner has prayed that considering the micro size of their plant, they may be allowed to use LTOA for captive power and avail banking facility without giving any day ahead scheduling. It is submitted that the said prayer is ex-facie illegal as the same goes beyond the applicable regulations. The Petitioner is required to provide the day ahead schedule in terms of Regulation 42 and 45 of the HERC OA Regulation and the LTOA granted to them by the Respondent.
- x. That the HERC OA Regulations were amended on 03.12.2013. By way of the said amendment, Regulation 42 was amended and a mandatory obligation was cast on the embedded consumer (who were willing to avail open access) to submit to the distribution licensee (the Respondent herein) a schedule of power through open access for all 96 slots by 10:00 AM of the day preceding the day of transaction. Relevant is reproduced as under: -

“The Consumer shall submit to the distribution licensee a schedule of power through open access for all the 96 slots by 10:00 AM of the day preceding the day of transaction and this will be considered as confirmed schedule for working out the slot-wise admissible drawl of the consumer from the licensee with reference to his sanctioned contract demand. For example, if an embedded consumer with a contract demand of 10 MW has scheduled 4 MW power through open access in any time slot of the succeeding day as per the schedule submitted by him at 10 AM, then his admissible drawl from the licensee in that time slot will be 6 MW.”

- xi. That the condition of intimating day-ahead scheduling to the Respondent was introduced by way of an amendment as this Commission acknowledged the difficulties being faced by the Respondent when the consumers were not intimating the schedule. Therefore, the procedure prescribed under Regulation 42 is not just an empty formality. The same is necessary for claiming adjustment under Regulation 43 of the OA Regulation. This Commission vide order dated 17.12.2019 passed in PRO 72 of 2017 (“Order dated 17.12.2019”) and other similar matters has held that compliance of Regulation 42 is mandatory. Relevant portion of the Order dated 17.12.2019 is reiterated below for ease of reference:

“The Commission observes that all the provisions of the Regulations notified by the Commission in its legislative capacity, have the force of law behind it. Hence a

statute has to be construed according to the intent of the legislation, as the same, as reflected in the 'objectives' is to make the dispensation effective and workable.

...

In view of the above discussion and the case laws cited by the Respondent, the Commission answers this issue in affirmative i.e. the requirement under Regulation 42 of the HERC OA Regulations is mandatory and binding”

- xii. The LTOA agreement signed by the Petitioner also stipulates as under:
- “11. Parties agree to provide long term Open Access required by Long term Open Access customer as per the details mentioned above and in accordance with the Regulations under the Haryana Electricity Regulatory Commission Regulations 2012, Dec 2013 amendments and conditions specified by HERC from time to time. However, during the tenure of this agreement if any of the covenants and conditions recited in this agreement found inconsistent with the provisions of the Electricity Act 2003 and/or applicable notifications/ rules/ regulations issued either by HERC as per the provisions of the Electricity Act then notwithstanding anything contained in the agreement referred to above, the said rules and regulations shall prevail.”*
- xiii. In view of the above-mentioned provisions, it is submitted that it is mandatory for the Petitioner to provide the day ahead schedule of injection and drawing of power to ensure compliance of the HERC OA Regulations as well as the agreement between the parties. The argument of the Petitioner that the Respondent has raised the issue of scheduling of power from the Petitioner's power plant for the first time only on 25.09.2020 is also irrelevant considering that the said requirement arises out of an express provision of the HERC OA Regulation. The Commission in Order dated 17.12.2019 (PRO 72 of 2017) has already held that such statutory conditions cannot be waived off or modified by the DISCOM.
- xiv. Likewise, the Commission in Order dated 26.02.2021 passed in PRO 73 of 2020 has upheld the requirement of day ahead banking schedule as stipulated in the Procedure/guidelines of banking of RE Power approved in the Order of the Commission dated 13.05.2019. The Hon'ble Commission observed that obligation of the Petitioner to submit day ahead banking schedule was not dependent upon the formal signing of banking agreement or communication of format by the Respondents. The requirement of the same was enshrined in the Procedure/guidelines of banking of RE Power approved in the Order of the Commission dated 13.05.2019 (HERC/PRO-22 of 2019).
- xv. Accordingly, the Respondent vide email dated 28.09.2020, 01.10.2020, 24.11.2020 requested the Petitioner to provide the day ahead schedule. However, the Petitioner neglected to provide the said schedule and is now illegally seeking an exemption from providing the day ahead schedule which is not permitted in law. So far as the Banking

day ahead schedule is concerned, it is pertinent to clarify that so far, no application for banking of RE Power has been received by the Respondent for the Petitioner's captive power plant.

- xvi. Recently, the Commission in its Suo Moto Order dated 27.04.2021 has while passing the Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2021 held that "*Banked energy not drawn as per schedule, shall be considered as dumped energy & shall lapse*". This has accordingly been included in Regulation 66 (3) of the said RE Regulations 2021. Thus, it once again reflects the need of the day ahead schedule for injection and drawl of Banked Power.
- xvii. It is submitted that grant of any such exemption as sought for by the Petitioner is impermissible in law as the same would amount to amending the regulation itself. It is a settled law that 'power to relax' conferred on the Commission cannot be exercised to amend the regulations in effect, and substitute it with a new provision/regulation. Though the power of relaxation can be exercised by the Commission in public interest and upon reasons to record in writing, the said power is not unfettered, and it is subject to certain qualifications, as under:
- a. Power of relaxation must be exercised sparingly and in exceptional cases;
 - b. Though the said power is discretionary, it should not be exercised arbitrarily;
 - c. It should be exercised reasonably and with circumspection;
 - d. The said exercise of power must be consistent with the principles of justice, equity and good conscience, keeping in mind the facts of a case;
 - e. the said power should not be exercised if the circumstances for claiming relaxation are attributable to the party claiming the same;
 - f. exercise of power of relaxation should not result in amendment of the rules/regulations.
 - g. This power cannot be exercised when difficulty to a party arises due to applicability of the Regulations.
- xviii. The law in this regard is well settled by this Hon'ble Appellate Tribunal in the case of ***Tata Power Company Limited v. Jharkhand State Electricity Regulatory Commission, reported in [2012] APTEL 154***, in which it was held that *there has to be sufficient reason to justify relaxation which has to be exercised only in the exceptional case where non-exercise of the discretion would cause hardship and injustice to a party. The party who claims relaxation of the norms shall adduce valid reasons to establish to the State Commission that it is a fit case to exercise its power to relax such*

Regulation. In the absence of valid reasons, the State Commission cannot relax the norms for mere asking.

- xix. It has been held by this Hon'ble Tribunal in ***Ratnagiri Gas and Power Private Ltd. Uttar Pradesh v. Central Electricity Regulatory Commission, 2011 ELR (APTEL)*** that, power to remove difficulties is to be exercised when there is difficulty in effecting the Regulations and not when difficulty is caused due to application of the Regulations
- xx. The aforesaid view has further been followed by the Hon'ble APTEL in the case of ***BSES Yamuna Power Limited v. Central Electricity Regulatory Commission***, reported in ***2015 SCC OnLine APTEL 164***, whereby it has held that it is the settled law that the power to remove difficulties is conferred upon the Commission to remove trivial difficulties and does not include the power to amend the Regulations. In addition to above, the said power to remove difficulty can only be exercised to the extent necessary only for giving effect to a particular Regulation. In other words, the said power cannot be exercised when the difficulty arises due to the application of Regulation in question.
- xxi. As reflected in the above-stated judgments, it is necessary that the circumstances requiring relaxation are not created due to act of omission or commission attributable to the party claiming the relaxation. It is submitted that the alleged closure of the power plant of the Petitioner is owing to circumstances created by itself and not by the Respondents. The Petitioner was well aware, at the time of entering the LTOA Agreement as well as from the Regulations, that it is required to provide the day ahead schedule for drawl and injection of power. Now, due to such statutory requirements, Petitioner cannot claim difficulty in functioning of its power plant and cannot shift the onus of this alleged difficulty upon the Respondents.
- xxii. Therefore, it is submitted that the above-stated provisions of the HERC OA regulations are to be construed strictly and in the absence of any exemption under the OA Regulations, no exemption as sought by the Petitioner ought to be granted by this Commission as it is not legally sustainable.
- xxiii. Accordingly, the request of the Petitioner to disassociate project of the Petitioner with the other long-term open access beneficiaries of STU system is also not tenable. In this regard, this Commission has already clarified in in order dated 21.05.2020 passed in case no. PRO 66 of 2019 that specific benefits / relaxation ought not to be extended on case to case basis and the dispensations in the ARR/Tariff Order has to necessarily be within the four corners of the Act/ Statue and the Regulations framed thereunder.
- xxiv. It is submitted that in view of what has been stated hereinabove, the prayers sought for by the Petitioner are denied and the instant petition is liable to be dismissed.

Proceedings in the Case

7. The case was heard through Video conferencing on 10.06.2021, as scheduled, in view of COVID-19 pandemic. Shri R.K. Jain, appearing on behalf of the Petitioner mostly reiterated the contents of the Petition, which for the sake of brevity, are not being reproduced.
8. At the onset, the Commission observes that it has reiterated earlier that all replies, rejoinders etc. that have to be filed in the Commission shall be necessarily filed at least three days prior to the date of hearing. Any violation of the ibid timeline shall be viewed very seriously and the Commission shall be constrained to impose penalty on the defaulting party. In the present case, the Respondent, despite the above, has filed reply just a day before the date of hearing. Shri Samir Malik, Ld. Advocate appearing for the Respondents apologized profusely for filing the reply on 09.06.2021 citing difficulties being faced on account of the ongoing COVID-19 pandemic.
9. Shri Malik submitted that a statutory appeal against the Order of the Commission dated 11.03.2020, has been filed in Hon'ble Appellate Tribunal for Electricity (APTEL), vide DFR No. 206 of 2020. Without prejudice to the above, in compliance with the Order of the Commission dated 11.03.2020, the applicable distribution wheeling charges already deducted from the bills of the Petitioner, have been refunded. However, implementation of the Order on other issues i.e. interest on delayed refund and adjustment of captive power drawn in the same months, have been kept in abeyance till the decision of appeal filed on these issues in the Hon'ble APTEL.
10. Shri Malik further argued that the other issue raised by the Petitioner seeking exemption from providing day ahead scheduling for availing LTOA and Banking facility for the Captive Power Plant of the Petitioner on account of its special nature, in relaxation of the Regulations, cannot form part of the present petition filed seeking action under Section 142/146 of the Electricity Act, 2003. Notwithstanding the preliminary objection, Shri Malik submitted that the grant of any such exemption sought by the Petitioner is impermissible in law as the same would amount to amending the Regulations itself. It is a settled law that 'power to relax' conferred on the Commission cannot be exercised to amend the Regulations in effect, and substitute it with a new provision/regulation. Though the power of relaxation can be exercised by the Commission in public interest and upon reasons to record in writing, the said power is not unfettered, and it is subject to certain qualifications.

Commission's Analysis and Order

11. The Commission has heard the arguments of the parties at length as well as perused the filings placed on record by the parties.

12. At the outset, the Respondent is advised to file their reply/rejoinder at least three days before the date of hearing and failure to do so shall be considered as non-compliance of the Orders of the Commission, making the party liable for action under Section 142/146 of the Electricity Act, 2003.
13. The Commission, from the averment made by the Respondent Nigam, observes that statutory Appeal has been preferred by them in the Hon'ble Appellate Tribunal for Electricity, against the Order of the Commission dated 11.03.2020, the implementation of which has been sought in the present Petition. The Commission has also perused the judgement of Hon'ble Supreme Court of India dated 05.02.2004, passed in case of Union of India & Others v/s West Coast Paper Mills Ltd. & Another (Civil Appeal Nos. 1061-62 of 1998) cited by the Respondent Nigam. The relevant paragraphs of the said Judgement are reproduced hereunder: -

“14. Article 136 of the Constitution of India confers a special power upon this Court in terms whereof an appeal shall lie against any order passed by a Court or Tribunal. Once a Special Leave is granted and the appeal is admitted the correctness or otherwise of the judgment of the Tribunal becomes wide open. In such an appeal, the court is entitled to go into both questions of fact as well as law. In such an event the correctness of the judgment is in jeopardy.

15. Even in relation to a civil dispute, an appeal is considered to be a continuation of the suit and a decree becomes executable only when the same is finally disposed of by the Court of Appeal.”

The ratio of above judgement is squarely applicable in the present case. Even otherwise, any order that the Commission may pass at this stage may become futile in case the Hon'ble APTEL passes any Order to the contrary. Hence, the Commission is of the considered view that execution of the Order dated 11.03.2020 passed by the Commission cannot be sought till the Appeal against said Order is disposed of by the Hon'ble APTEL.

The Commission has taken note of the fact that without prejudice to the decision in the Appeal, the Respondent has already refunded the distribution wheeling charges deducted from the bills of the Petitioner. What remains is just the interest component for the delayed payment. Hence, the Commission holds that Respondents have complied with the substantive part of the Commission's Order and also preferred statutory appeal against the ibid Order in the Hon'ble APTEL. Consequently, the Commission does not find sufficient grounds for proceeding against the Respondents U/s 142 and 146 of the Act as prayed for by the Petitioner.

As far as the issue of relaxation in Regulations sought by the Petitioner is concerned the same ought not to form part of a petition for complaint against the Respondents for non-compliance of the Commission's Order and seeking action for non-compliance by the Respondents under Section 142/146 of the Electricity Act, 2003. The Petitioner may, if so desires, file a separate Petition seeking relaxation in the applicable Regulations or seek appropriate remedy in a Court of competent jurisdiction for challenging the Regulation(s) in vogue.

14. In terms of the above Order, the present petition is disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 28.06.2021.

Date: 28.06.2021
Place: Panchkula

(Naresh Sardana)
Member

(R.K. Pachnanda)
Chairman