

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

**APPEAL NOS. 188 of 2014, 189 of 2014, 190 of 2014, 191 of
2014, 192 of 2014, 194 of 2014 and 195 of 2014**

Dated: 18th December, 2015

**Present: Hon'ble Mr. Justice Surendra Kumar, Judicial Member
Hon'ble Mr. T. Munikrishnaiah, Technical Member**

IN THE MATTER OF

Appeal No. 188 of 2014

M/s Hi-Tech Industries

Trilokpur Road, Kala Amb,
Distt Sirmour

..... Appellant

Versus

- 1. Himachal Pradesh Electricity Regulatory Commission
Through its Secretary, Khalini, Shimla-171002**
- 2. Himachal Pradesh State Electricity Board Ltd.
Through its Executive Director (Personnel),
Shimla - 171004** Respondents

Appeal No. 189 of 2014

M/s Asian Concretes and Cement (P) Ltd.

(formerly known as M/s Asian Cement (P) Ltd.)

Regd. Office : SCF 270, Motor Market,
Mansadevi Road, Manimajra, Chandigarh

..... Appellant

Versus

- 1. Himachal Pradesh Electricity Regulatory Commission
Through its Secretary, Khalini, Shimla-171002**
- 2. Himachal Pradesh State Electricity Board Ltd.
Through its Executive Director (Personnel),
Shimla - 171004** Respondents

Appeal No. 190 of 2014

M/s Parvati Steel Alloy

Head Office : 348, 1st Floor,
Tarun Enclave, Pitam Pura, Delhi

..... Appellant

Versus

- 1. Himachal Pradesh Electricity Regulatory Commission
Through its Secretary, Khalini, Shimla-171002**
- 2. Himachal Pradesh State Electricity Board Ltd.**
Through its Executive Director (Personnel),
Shimla – 171004 Respondents

Appeal No. 191 of 2014

M/s Akorn India Private Limited

Village And Post Office: Nihalgarh,
Ponta Sahib, Distt. Sirmour,
Himachal Pradesh

..... Appellant

Versus

- 1. Himachal Pradesh Electricity Regulatory Commission
Through its Secretary, Khalini, Shimla-171002**
- 2. Himachal Pradesh State Electricity Board Ltd.**
Through its Executive Director (Personnel),
Shimla – 171004 Respondents

Appeal No. 192 of 2014

M/s S.P.S. Steel Rolling Mills Ltd.

Regd. Office : Elegant Towers, 224-A,
J.C. Bose Road, Kolkata-700017

..... Appellant

Versus

- 1. Himachal Pradesh Electricity Regulatory Commission
Through its Secretary, Khalini, Shimla-171002**
- 2. Himachal Pradesh State Electricity Board Ltd.**
Through its Executive Director (Personnel),
Shimla – 171004 Respondents

Appeal No. 194 of 2014

M/s Suraj Fabrics Industries Ltd.

Regd. Office : Elegant Towers, 224-A, J.C.

Bose Road, Kolkata-700017

..... Appellant

Versus

1. **Himachal Pradesh Electricity Regulatory Commission
Through its Secretary, Khalini, Shimla-171002**

2. **Himachal Pradesh State Electricity Board Ltd.**

Through its Executive Director (Personnel),

Shimla – 171004

.... Respondents

Appeal No. 195 of 2014

M/s Him Chem Ltd.

Village Khera, Nalagarh,

Distt. Solan, Himachal Pradesh

..... Appellant

Versus

1. **Himachal Pradesh Electricity Regulatory Commission
Through its Secretary, Khalini, Shimla-171002**

2. **Himachal Pradesh State Electricity Board Ltd.**

Through its Executive Director (Personnel),

Shimla – 171004

.... Respondents

Counsel for the Appellant

...

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Mr. Ajay Chaddha, Jt. Director
HPERC/R-1

Ms. Shikha Ohri

Mr. Tushar Nagar for R-1

(In Appeal No. 188 of 2014)

J U D G M E N T

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

1. This batch of Appeals, being Appeal Nos. 188 of 2014, 189 of 2014, 190 of 2014, 191 of 2014, 192 of 2014, 194 of 2014 and 195 of 2014, under Section 111 of the Electricity Act, 2003, have been preferred by the aforesaid Appellants, against the Clarificatory Order (Impugned Order), dated 2.5.2011, passed by the Himachal Pradesh Electricity Regulatory Commission (in short the '**State Commission**') on the strength of letter as communicated by the Himachal Pradesh State Electricity Board Ltd. (in short, '**The Board**')/Respondent No.2, dated 8.4.2011, without issuance of notice and without observing the principles of natural justice and also without affording any reasonable opportunity of hearing to the Appellants/industrial consumers and decided the matter in an arbitrary and mechanical way without adhering to the well settled law.

2. The Board/Respondent No.2, vide its letter, dated 8.4.2011, addressed to the State Commission, had sought clarification regarding mechanism for adjustment of advance cost share towards Infrastructural Development Charges (IDC) at the rate of Rs.1000 per kW/kVA of load applied as per para 3.2.2 read with para 3.2.5 of H.P. Electricity Supply Code, 2009 on the ground that there is no provision under the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, regarding Infrastructural Development Charges and adjustment/recovery thereof.

3. By the impugned order, dated 2.5.2011, the learned State Commission, in this matter of clarification sought by the Board regarding adjustment of advance cost share, has observed as under:

"9. Even though the term "Infrastructural Development Charges" has not been defined in the said Supply Code or in the aforesaid Regulations, the adjustable advance amount to be paid by the applicants on the aforesaid account at the time of obtaining PAC can be aptly

termed as *Infrastructural Development Charges*. The amount so collected by the licensee is however, required to be adjusted by the licensee at the time of issuance of the demand notice in accordance with para 3.1.4 of the Supply Code, against the estimated amount payable as per the various provisions and the spirit enshrined in the HPERC (*Recovery of Expenditure for Supply of Electricity Regulations, 2005* as described above. In this connection it is worth mentioning that in addition to such common works forming one part of the infrastructural works to be provided at the cost of applicants, the licensee has also to make arrangements for the upstream systems for which funds are normally required to be arranged by the licensee by including the same in the investment plan.

10. From the harmonious reading of various provisions of the aforesaid Regulations read with the provisions of Supply Code as well as Section 46 of Electricity Act, 2003, it is amply clear that the amount of Rs. 1000 per kW/kVA payable by the applicant at the time of obtaining power availability certificate is an adjustable advance amount to be given by the applicant to the licensee at a fixed rate so as to enable the licensee to meet the cost of infrastructural works i.e. transformer, sub-station, line etc. (excluding extension of line from existing net-work to the consumer premises, being a dedicated work) as are normally required to be taken up in anticipation of receipt of applications from the applicant and preparation of estimates for individual applicants keeping in view the overall requirement. Since the applicant is one of the beneficiaries, he is liable to share proportionate cost of such infrastructure. As described above, the Regulations further provide for sharing the balance cost of such infrastructure, whether invested by the original applicant or by licensee through the approved investment plan, by the subsequent applicants on the same principles.

11. For adjustment of such amount, it is essential that when the applicant applies for supply of electricity to the premises, the estimate has to be prepared and communicated to him after adjustment of Rs. 1000 per kW/kVA, indicating recoverable part/recoveries thereupon from the applicant. Within 3 months after release of connection, the licensee has to render to the applicant consumer, the account of expenditure showing the excess deficit in relation to initial estimated amount and any refund to the consumer in the event of deficit expenditure or recoveries in the event of excess expenditure shall be regulated as per the regulation 6(2) of the HPERC (*Recovery of Expenditure for Supply of Power*) Regulations, 2005 and final

adjustment shall be done accordingly. However, if the applicant fails to submit the application for supply of power within the validity period of the PAC or declines to take the supply, the said amount of Rs. 1000 per kW/kVA shall be regulated as per para 3.2.6 of the Supply Code.

Commission clarifies accordingly.”

4. The main grievances of the Appellants in the respective appeal are:
- (a) that the impugned clarificatory order has been passed by the State Commission without issuance of notice and without observing the principles of natural justice and further without affording any reasonable opportunity of hearing to the Appellants/industrial consumers and decided the matter in an arbitrary and mechanical way without adhering to the well settled law.
 - (b) that the Respondent Board had issued the demand notice to the respective Appellant on account of infrastructural development charges on this clarificatory order that too with retrospective effect and without following the State Commission Regulations, 2005. The Respondent Board had sought to levy the charges with retrospective effect where the clarificatory impugned order came into force in the state of Himachal Pradesh on 2.5.2011 and, further, the new normative rates which have been notified only in the year 2012 by way of regulation 419 of 2012. There being no provision under the Act for imposition of these charges with retrospective effect, the levy /imposition of IDC is liable to be set aside as being contrary to the provisions of the Electricity Act, 2003 and law.
5. Since, all these Appeals have emanated from the common impugned order, they have been heard together and are now being decided by this common judgment.

6. We have heard the learned counsel for the respective parties and also gone through the material on record. We have deeply gone through the evidence and other material available on record including the impugned clarificatory order passed by the State Commission.

7. A careful and deep scrutiny of the impugned order makes it evidently clear that though each of the Appellants is an industrial consumer, they had not been given any notice and, further, no opportunity of hearing had been given to the Appellants. Apart from this, no public notice had ever been issued by the State Commission while initiating hearing on the letter, dated 8.4.2011 of the Respondent Board seeking clarification regarding adjustment of the advance cost share and the stakeholders had never been issued any notice and the impugned order had been passed without issuance of the notice and without observing the principles of natural justice and also without affording any reasonable opportunity of hearing to the Appellants or to the stakeholders of the State of Himachal Pradesh or to the public. Thus, the industrial consumers like the Appellants had never been given any opportunity of hearing and the impugned order had been passed by the State Commission in complete violation or total disregard to the principles of natural justice.

8. We do not find even an iota or any kind of indication in the impugned order to infer that a notice had ever been issued to the Appellants or to the public or to the industrial consumers of the State of Himachal Pradesh or that they had been given any reasonable opportunity of hearing. The impugned order is absolutely reticent about any kind of notice having been issued to the Appellants or about any kind of reasonable opportunity of hearing having been offered to the Appellants or to the public or to the stakeholders. This fact has not been disputed before us by any of the counsel appearing for the Respondents. Thus, we hold and fully observe that the impugned order had been passed by the State Commission without issuance of notice and without observing the principles of natural

justice and, further, without affording any reasonable opportunity of hearing to the Appellants or to the industrial consumers of the state of Himachal Pradesh or to the stakeholders. Thus, all the provisions of natural justice and law had been totally violated by the State Commission while passing the impugned order. Consequently, the impugned order appears to be illegal, whimsical, arbitrary and mechanical without applying judicial mind and principles of natural justice and such kind of order cannot be allowed to stand. The approach of the State Commission is not judicial one and is also not appreciable.

9. The Hon'ble Supreme Court in *Commissioner of Sales Tax, U.P. vs. R.P. Dixit Saghidar*, reported at (2001) 9 Supreme Court Cases 324, observed that when principles of natural justice are stated to have been violated, it is open to the appellate authority, in appropriate cases, to set aside the order and remand the case for decision afresh. In case of violation of principles of natural justice, the Administrative Law does not bar the decision of the case on merits afresh after quashing of the impugned order. In the reported case, the Hon'ble Supreme Court, on finding the violation of the principles of natural justice, allowed the appeals while setting aside the order challenged there-under and directed the matter be decided de novo.

10. The Hon'ble Supreme Court in *Muniyallappa vs. B.M. Krishnamurthy and Others*, reported at 1992 Supp (3) Supreme Court Cases 26, while observing the violation of the principles of natural justice allowed the appeal, set-aside the order under challenge and remitted the matter for fresh disposal on merit and in accordance with law and, further, making it clear that the Tribunal will decide the matter without being influenced by any of the observations made in the impugned order.

11. Such kind of approach by any State Regulatory Commission cannot be allowed to be continued in future because it gives a wrong signal to the

consumer at large. What we expect from the State Commission is that the State Commission should candidly and honestly observe the principles of natural justice and if the provisions of law require the issuance of notice, such notice should be issued to the persons who are likely to be affected and the affected persons or the public at large or the consumers of the State, like industrial consumers in the present Appeals, should be afforded reasonable opportunity of hearing and only, thereafter, judicial order/quasi-judicial order should be passed and not otherwise.

12. We, further, hold and clearly observe that since the impugned clarificatory order, dated 2.5.2011, is in complete derogation or violation of principles of natural justice by ignoring all the judicial principles, all these Appeals are liable to be allowed and the impugned clarificatory order, dated 2.5.2011, is liable to be set-aside and all the consequential acts like issuance of demand notices or the bills raised and recovery of any kind of infrastructural development charges on the strength of the impugned clarificatory order, dated 2.5.2011, are also liable to be set-aside or quashed.

ORDER

All the instant Appeals, being Appeal Nos. 188 of 2014, 189 of 2014, 190 of 2014, 191 of 2014, 192 of 2014, 194 of 2014 and 195 of 2014 are hereby allowed and the impugned clarificatory order, dated 2.5.2011, along with findings recorded therein is hereby set-aside. All the consequential actions or the subsequent orders or the consequential demand notices or bills raised by the Respondent Board on the strength of the aforementioned impugned clarificatory order, dated 2.5.2011, are also hereby quashed or set-aside. We hereby direct the State Commission to issue notices to the Appellants and other industrial consumers of the state of Himachal Pradesh and also issue public notice seeking their objections or comments and, thereafter, giving reasonable opportunity of hearing to such kind of

consumers including the Appellants to pass the order afresh without being influenced in any way with the findings recorded in the impugned clarificatory order, dated 2.5.2011. We hope and trust that the learned State Commission shall abide by the principles of natural justice and then pass the order in a judicial and judicious way without being influenced by any of the findings recorded in the aforesaid impugned clarificatory order. In the facts and circumstances of the matter, we do not propose to impose any costs.

PRONOUNCED IN THE OPEN COURT ON THIS 18TH DAY OF DECEMBER, 2015.

(T. Munikrishnaiah)
Technical Member

(Justice Surendra Kumar)
Judicial Member

√ **REPORTABLE/NON-REPORTABLE**

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