

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

**Appeal No. 75 of 2020 &
IA No. 1237 OF 2019 & IA No. 18 OF 2020**

Dated: 6th March, 2020

**Present: Hon`ble Mr. Ravindra Kumar Verma, Technical Member(Electricity)
Hon`ble Mr. Justice R.K. Gauba, Judicial Member**

In the matter of:

**Zamil Infra Private Limited
Registered Office: 126, B.D. Chambers, 10/54
D.B. Gupta Road, Karol Bagh, New Delhi –
110 005
Through Rajesh Kumar Verma, Authorised
Signatory**

....Appellant

Versus

**1. Haryana Power Purchase Centre (HPPC)
Through Chief Engineer
Shakti Bhawan, Sector – 6, Panchkula – 134
108**

...Respondent No.1

**2. The Chief Engineer
Haryana Power Purchase Centre
Shakti Bhawan, Sector – 6
Panchkula – 134 108**

...Respondent No.2

**3. Dakshin Haryana Bijli Vitran
Nigam Limited
Through Chief Engineer
Near Vidhyut Sadan, Vidhut Nagar
Hisar (Haryana) 125 005**

...Respondent No.3

4. **Uttar Haryana Bijli Vitran Nigam Limited**
Through Chief Engineer
Plot No. C-16, Vidhyut Sadan, ...Respondent No.4
Sector – 6
Panchkular – 134 109
5. **Haryana Electricity Regulatory Commission**
Bays No. 33-36, Sector -4, Panchkula ...Respondent No.5

Counsel for the Appellant(s) : Mr.Vishal Garg Narwana
Mr. Tushar Chhabra

Counsel for the Respondent(s) : Ms. Ranjitha Ramachandran
Ms. Poorva Saigal
Ms. Anushree Bardhan
Mr.Shubham Arya
Mr.Arvind Kumar Dubey
For Res1

Mr.Sandeep Kumar Mahapatra
For Res5

JUDGMENT (ORAL)

PER HON'BLE MR. JUSTICE R.K. GAUBA

The dismissal of the claim brought before the Haryana Electricity Regulatory Commission (the Commission) under Section 86(1)(f) of the Electricity Act, 2003 for recovery of Rs. 76,61,606/- on account of "deemed generation" against the Respondent Discom, registered as case No. HERC/PRO-69 of 2017 "*for want of prosecution*" by order dated 16.01.2019, followed by dismissal of the prayer for

restoration of the said case by order dated 25.04.2019, has led to the present appeal being instituted before us.

We have heard the learned counsel on all sides and have gone through the record. We are of the view that the appeal must be allowed. We set out our reasons hereinafter.

The record would show that the claim case of the Appellant came up before the Commission, after being instituted on, over 18.09.2017, over several dates i.e. 13.12.2018, 19.12.2018, 07.01.2019 and 16.01.2019. The Appellant did not show any interest as its counsel either would not appear or would appear only to seek adjournment. The Commission was not happy with this trend. When the matter came up for hearing on 16.01.2019, initially none would appear. Midway the proceedings, a proxy counsel did appear, but only to make another request for adjournment. It appears that the Commission did not ask the reasons for request as the facts in this regard are remiss in the proceedings of 16.01.2019.

The Commission proceeded to dismiss the petition "*for want of prosecution*", adding a direction, apparently for future discipline to be maintained, that in a case the parties intended to seek adjournment in matters which had been scheduled for hearing, such request for such adjournment must come at least three days prior to the date of hearing with justification or reasons. Apparently, the regime thus created will not bind the Appellant at least for the day on which such direction were issued after his claim having been dismissed.

When the Appellant moved application for recall of the above said order, some explanation was offered viz. the marriage of the sister of the counsel representing the Appellant for which certain ceremonies were to be begin from 20.01.2019. The Commission rejected the prayer for restoration finding the justification offered to be an after thought and unacceptable.

In our opinion, since a proxy counsel was present before the Commission, it cannot be said that there was no

appearance. In these circumstances, the case of the Appellant could not and should not have been dismissed "*for want of prosecution*". The Commission would have been within its power and jurisdiction to decide the case on merits, it having afforded the opportunity for hearing as was necessary in law. But then, having declined the request for adjournment, it was improper to dismiss the case for want of prosecution. In the impugned order dated 16.01.2019 there is no mention whatsoever of the facts of the case or the issues that arose between the parties, much less opinion of the Commission in that regard.

Though in view of the above, the impugned order must be set aside and the matter restored on the file of the Commission for further proceedings in accordance with law, such relief ought not to be granted unconditionally. After all, the Appellant has been neglectful in assisting the Commission for expeditious adjudication.

We set aside the impugned order and restore the case of the Appellant for consideration and adjudication by the

State Commission in accordance with law subject to cost of Rs. 25,000/- (Rupees twenty five thousand only) being paid by deposit in Chief Ministers' relief fund within two weeks hereof. The parties are directed to appear before the State Commission for further proceeding on 03.04.2020.

The appeal and pending applications are disposed of in above terms.

(Justice R.K. Gauba)
Judicial Member

(Ravindra Kumar Verma)
Technical Member

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