

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No.287 OF 2017
APPEAL No.396 OF 2017
APPEAL No.397 OF 2017

Dated: 28.05.2025

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

APPEAL No.287 OF 2017

Ambuja Cement Limited.

Village Navagraon, P.O Jajhra
The. Nalagarh, Distt Solan
Himachal Pradesh - 174001

...Appellant

Versus

1. Himachal Pradesh Electricity Regulatory Commission

Keonthal Commercial Complex, Khalini,
Shimla, Himachal Pradesh – 171002
Through its Secretary

2. The HP State Electricity Board Ltd.

Vidyut Bhawan,
Shimla – 171 004

... Respondent (s)

Counsel on record for the Appellant(s) : S. S. Ahluwalia
Mohit Bangwal

Counsel on record for the Respondent(s): Pradeep Mishra for Res. 1

APPEAL No.396 OF 2017

1. **M/S S.P.S. Steel Rolling Mills Ltd.**
Having its Registered office at
Elegant Towers,
224-A, J.C. Bose Road,
Kolkata - 700017
2. **M/S Suraj Fabrics Industries Ltd.**
Having its Registered office at
Elegant Towers,
224-A, J.C. Bose Road,
Kolkata - 700017
and its unit at Goalthai, Industrial Area,
Distt Bilaspur (H.P.)
3. **M/S Hi-Tech Industries**
Trilokpur Road, Kala Amb,
Distt Sirmour (HP)
4. **M/S Parvati Steel & Alloy**
Trilokpur Road, Kala Amb,
Distt Sirmour (HP)

...Appellants

Versus

1. **Himachal Pradesh Electricity Regulatory Commission**
Through its Secretary
Khalini, Shimla – 171002
2. **The Himachal Pradesh State Electricity Board Ltd.**
Through its Executive Director (Personal)
Kumar House, Shimla – 170004

... Respondent (s)

Counsel on record for the Appellant(s) : Ajay Vaidya for App. 1 to 4

Counsel on record for the Respondent(s) : Pradeep Mishra for Res. 1

Anand K. Ganesan
Swapna Seshadri
Parichita Chowdhury for Res. 2

APPEAL No.397 OF 2017

1. M/S Asian Concretes and Cement (P) Ltd.

Registered office at SCF270, Motor Market,
Mansadevi Road, Manimajra,
Chandigarh and Works at Village Bir Palasi,
P.O. Manjholi, Nalagarh,
Distt Solan (H.P) 1720021

2. M/S Ruchira Papers Ltd.

its Registered office at Trilok Pur Road
Kala Amb, Distt Sirmour
(HP) Pin - 173025

3. Kala Amb Chamber of Commerce and Industry

Trilokpur Road, Kala Amb,
District Sirmour
(HP) Pin – 173025

...Appellants

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)
Kumar House, Shimla – 170004

... Respondent (s)

Counsel on record for the Appellant(s) : Manik Sethi
Sarthak Gaur
Anwasha Padhi
Nehul Sharma
Ajay Vaidya
Sanya Dua for App. 1

Ajay Vaidya for App. 2 & 3

Counsel on record for the Respondent(s) : Pradeep Mishra for Res. 1

Anand K. Ganesan
Swapna Seshadri
Parichita Chowdhury
for Res. 2

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. This batch of three appeals arises out of the order dated 05.10.2016 passed by 1st respondent Himachal Pradesh Electricity Regulatory Commission (hereinafter referred to as "the Commission") thereby providing the mechanism for adjustment of charges paid by the consumers under clause 3.2.2 of Himachal Pradesh Electricity Supply Code 2009 against the other charges payable by the consumers and refund of the balance, if any, to the consumers.

2. Brief facts giving rise to these three appeals are enumerated hereunder.

3. The Appellants are large supply consumers of electricity in the State of Himachal Pradesh.

4. The Commission had notified Himachal Pradesh Electricity Supply Code 2009 (hereinafter referred to as “2009 Supply Code”) on 29.05.2009. Clause 3.2.2 of the 2009 Supply Code provides that consumer shall apply for the grant of Power Availability Certificate (PAC) on payment of Advanced Cost Share (ACS) towards Infrastructure Development Charges (IDC) calculated at the rate of Rs.1000/KVA of the contract demand applied for.

5. It appears that vide letter dated 08.04.2011, the 2nd respondent Himachal Pradesh State Electricity Board (in short “HPSEB”) sought clarification regarding the mechanism for adjustment of Advanced Cost Share towards Infrastructure Development Charges paid by consumers as per clause 3.2.2 read with clause 3.2.5 of the 2009 Supply Code stating that there was no specific provision for adjustment/recovery of IDC under the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 (hereinafter referred to as “Recovery of Expenditure Regulations, 2005”), then in force.

6. Accordingly, the Commission issued a detailed clarification on this aspect vide order dated 02.05.2011. Thereafter, Recovery of Expenditure

Regulations, 2005, were replaced by HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 (hereinafter referred to as “Recovery of Expenditure Regulations, 2012”).

7. The clarificatory order dated 02.05.2011 was set aside by this tribunal vide judgment dated 18.12.2015 in appeal nos.188 of 2014, 189 of 2014, 190 of 2014, 191 of 2014, 192 of 2014, 194 of 2014 and 195 of 2014 with the direction to the Commission to issue notices to the appellants in these appeals as well as other industrial consumers in the State of Himachal Pradesh and also to issue public notice seeking objections/comments and to pass a fresh order after giving reasonable opportunity of been heard to such consumers.

8. In pursuance to the order dated 18.12.2015 of this Tribunal, the Commission issued a letter dated 05.04.2016 to HPSEB asking it to submit a formal self-contained reference indicating the points on which clarification is sought along with the views of the Board thereon. Accordingly, on such reference having been made by HPSEB, the Commission registered *suo motu* case number 25/2016 and by invoking the provisions contained in clause 9.5 and 9.6 of 2009 Supply Code proposed a mechanism for adjustment of amount received from prospective consumers as per clause 3.2.2 of the said Code for grant of PAC. Thereafter, public notice was issued in the newspapers

on 25.05.2016 inviting objections/suggestions on the said proposed mechanism. Letters dated 27.05.2016 were also issue to major stakeholders in the State of Himachal Pradesh inviting comments/suggestions in relation to the said proposed mechanism. Notably, such notices were issued to all the appellants who had earlier approached this Tribunal by way of appeal nos.188, 189, 190, 191, 192, 194 and 195 of 2014. Public hearing was also held by the Commission on 03.09.2016 to elicit the views of stakeholders as well as other interested persons.

9. Upon considering the submission (oral as well as written) made by the stakeholders during the public hearing, the Commission issued the order dated 05.12.2016 thereby providing mechanism for adjustment of ACS towards IDC received from the prospective consumers for grant of PAC at the rate of Rs.1000/kVA as per para 3.2.2 of 2009 Supply Code as under :-

“16. Commission’s Views:

After taking into consideration the written submissions made/referred in para-12 and oral submissions made, by the stakeholders in the public hearing, the observations/findings of the Commission thereon are as under:-

(i) The present regulatory process is initiated for limited purpose i.e. to clarify the mechanism of adjustment of Advance Cost Share, received by the distribution licensee as per the provisions of the Supply Code, 2009. The submissions made by the stakeholders are not relevant in this case and are not in conformity with the main purpose of the proposed mechanism under consideration. It does not tend to impose any new charges, but only made the provisions for the adjustment of the amount received for grant of Power Availability Certificates (PAC). The rationalization of the PAC rates/charges are beyond the scope of the present proposal. If any consumer is aggrieved by the wrong implementation of the provisions of the Recovery of Expenditure Regulations of 2005, the consumer can invoke the mechanism, set-up for redressal of his grievances under the Electricity Act, 2003 in the form of the Consumers Grievances Redressal Forum, established under Section 42 of the

Act. The Ombudsman is yet another Forum which can be approached, in case of the Consumers Grievances Redressal Forum (CGRF) does not satisfy the consumers. In this regard, the Commission, in its earlier Orders, disposing the petitions filed before it, has also already held that a complete mechanism has been provided in sub-sections (5) and (6) of Section 42 of the Electricity Act, 2003, for Redressal of Grievances of the individual consumers in the form of Consumer Grievances Redressal Forum (CGRF), set-up and Ombudsman appointed under Section 42 of the Electricity Act, 2003.

(ii)As regard the submissions that this mechanism be applicable after the enforcement of the Supply Code, 2009, the Commission points out that the proposed mechanism relates to adjustment of the amount received per para 3.2.2 of the Supply Code, 2009 and shall obviously be applicable only from the commencement of the said Code.

(iii) On the issue of demand notices, issued by the distribution licensee for the recoveries of Infrastructural Development Charges on the strength of the Commission's clarificatory Order dated 02.05.2011, it is pointed out that the Hon'ble APTEL in their order dated 18.12.2015 have set-aside the said order, alongwith findings recorded therein that all the consequential actions or the subsequent orders or the consequential demand notices or bills raised by the Respondent Board on the strength of aforementioned impugned clarificatory order, dated 02.05.2011, have also been quashed or set-aside. This adequately settles the points raised by some of the stakeholders. However, this shall in no way debar the distribution licensee to make recoveries in accordance with the provisions of the Recovery of Expenditure Regulations, 2005 or the Recovery of Expenditure Regulations, 2012 as may be relevant.

(iv) With regard to suggestion of distribution licensee i.e. HPSEBL to elaborate the term "various lump-sum

amounts” used in the proposal (refer item A (i) under Category –II in para-9 of this Order), the Commission likes to clarify that this term would include all the amounts recoverable by the distribution licensee, except for the cost of service line or payment of monthly installments under the Recovery of Expenditure Regulations, 2005.

In light of the foregoing discussions, the Commission, by invoking the provisions contained in paras 9.5 and 9.6 of the Supply Code, 2009, hereby orders that the amount received or to be received as per para 3.2.2 of the Supply Code, 2009 for grant of the Power Availability Certificate (PAC) in respect of the Contract Demand applied by consumers/applicants be adjusted in accordance with the mechanism proposed in para-9, read with item (iv) under para-16 of this Order.

It is so ordered.”

10. This order of the Commission has been assailed by the three industrial consumers namely M/s Ambuja Cement Limited, M/s SPS Steel Rolling Mills Limited and M/s Asian Concretes and Cement Private Limited by way of the present three appeals bearing no.287 of 2017, 396 of 2017 and 397 of 2017 respectively.

11. We have heard learned counsels for the appellants as well as learned counsels for the respondents. We have also perused the impugned order as well as the written submissions filed by the learned counsels. We note here that the appellants in appeal no.396 of 2017 and 397 of 2017 have not filed any written submissions.

12. The appellants in appeal nos.396 of 2017 & 397 of 2017 are assailing the impugned order dated 05.10.2016 of the Commission on following grounds: -

“i) Whether the Commission is right to declare the term 'Infrastructural Development Charges' in relation to the recovery of expenditure for providing supply of electricity to a Consumer? When regulation 419/2005 does not permit to do so,

ii) Whether the Commission is right by applying the Supply code 2009 as benchmark for the recovering the amount which is not otherwise recoverable from the Appellant?

iii) Whether the State commission is justify for recovering the amounts on account of Infrastructural Development Charges on the strength of the impugned order dated 05.10.2016?

iv) Whether the State commission is justified to allow the Respondent Board to recover the amount of IDC with out first submitting the details of Audited Expenditure to the Appellant of expenditure showing the excess or deficit in relation to initial estimated amount within giving details of item wise estimation and actual expenditure along with the item wise figures of variance in terms of Regulation 6 (2) of Regulations, 2005?

v) Whether the State commission is justified to allow the Respondent Board to recover the amount of IDC with out first adhering to the regulation render to the applicant/consumer the account of expenditure showing the excess or deficit in relation to initial estimated amount within three months after release of connection giving details of item wise estimation and actual expenditure along with the item wise figures of variance to the extent possible and, if applicant requires any additional information, the distribution licensee shall furnish the same within ten days of receipt of such requisition.”

13. The grounds raised by the appellant in appeal no.287 of 2017 are as under:-

“A. Whether the impugned order passed by the HPERC is arbitrary, illegal and has been erroneously passed and as such the same is liable to be set-aside being bad in law?

B. Whether the impugned order is in violation of the order dated 18.12.2015 passed by this Hon'ble Tribunal since the directions issued by this Hon'ble Tribunal vide the said order have been flouted and objections called by the Respondent No. 1 was merely an eye wash as it has not considered the objections on merits and mechanically passed the impugned order on the same lines of order dated 02.05.2011 which was struck down by this Hon'ble Tribunal?

C. Whether the Respondent No. 1 ought to have appreciated the fact that the huge amount of money collected by the board on account of IDC has been held to be illegal and as such is liable to be returned to the consumers and not adjusted in such an arbitrary manner?

D. Whether the Appellant is entitled to receive back the huge amount of money illegally extracted from

them by the Board and as such adjustment of the same towards other charges and monthly bills is arbitrary and against the settled position of law?

E. Weather the Appellant is entitled to recover interest on the excess amount paid by it on the illegal demands of the Board and the Respondent No. 1 ought to have considered this valid concern and fall for adjusting the huge amount in future bills?

F. Weather the impugned order is bad in law and as such liable to be set aside?”

14. Clause 3.2 of 2009 Supply Code reads as under:-

“Power Availability Certificate.-

3.2.1 Where the new or additional load exceeds 100 kW, the applicant will submit the feasibility clearance i.e. Power Availability Certificate (PAC) along with the Application and Agreement form. The form of

application for feasibility clearance/PAC will be available free of cost in the designated offices of the licensee and on its website.

3.2.2 The consumer shall apply, for grant of Power Availability Certificate, on payment of

(i) the earnest money equivalent to the 10% of the initial security as specified is the Himachal Pradesh Electricity Regulatory Commission (Security Deposit) Regulations, 2005; and

(ii) advance cost share, towards infrastructural developmental charges, calculated @ Rs. 1000 per. kW/kVA of the load applied for.

3.2.3 The licensee will grant the Power Availability Certificate within forty five days from the receipt of request or such extended period as approved by the Commission.

3.2.4 The Power Availability Certificate mentioned in para 3.2.3 shall be valid for a period as may be mutually agreed by the licensee and the applicant, but not exceeding three years Provided that the validity period may be extended from time to time as may be mutually agreed upon the applicant and the licensee.

3.2.5 The applicant may, after grant of Power Availability Certificate mentioned in para 3.2.3, submit the application to give supply of electricity to the premises and the licensee shall adjust the amount of the earnest money towards initial security payable under the Himachal Pradesh Electricity Regulatory Commission (Security Deposit) Regulations, 2005 and the advance cost share towards initial estimated amount payable under the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005.”

15. It is to be noted that the said Electricity Supply Code has been issued by the Commission in exercise of its powers conferred by section 50 and clause (x) of sub-section (2) of section 181 of the Electricity Act, 2003 in discharge of its regulatory functions. Therefore, the Code is in the nature of regulations issued by the Commission under Section 181 of the Electricity Act, 2003. As per clause 3.2.2 of the Code, a consumer seeking new or additional load exceeding 100KW is required to first apply for grant of PAC on payment of earnest money equivalent to 10% of initial security as specified by the Commission and ACS towards IDC calculated as per rate of Rs.1000/KW/kVA of the load applied for. As per clause 3.2.5, the distribution licensee is required to adjust the amount for earnest money as well as ACS towards IDC after the submission of application for supply of electricity by the consumer.

16. Manifestly the Supply Code does not provide any mechanism for adjustment of these charges by the distribution licensee. It is for this reason that upon request for the 2nd respondent HPSEB, the Commission had issued clarificatory order dated 02.05.2011 specifying the mechanism for adjustment/recovery of IDC. However, since the said order was issued without calling for suggestions/objections from the stakeholders and without hearing them, it was set aside by this Tribunal vide order dated 18.12.2015 passed in

appeal nos.188 of 2014, 189 of 2014, 190 of 2014, 191 of 2014, 192 of 2014, 194 of 2014 and 195 of 2014. The relevant portion of the said order of this Tribunal is extracted hereinbelow: -

“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.”

17. Accordingly, the Commission issued a fresh order dated 05.10.2016 (which has been impugned in these appeals) after issuing notices to all the stakeholders, the general public and also upon hearing their views/submissions during public hearing, which has been impugned in these appeals.

18. We have already reproduced the relevant portion of the impugned order hereinabove.

19. It is evident that the impugned order does not impose any new charges but only has provided mechanism for adjustment of ACS received by the

distribution licensee from prospective consumers as per clause 3.2.2 of 2009 Supply Code, which was missing in the Supply Code as well as the Recovery of Expenditure Regulation, 2005. Therefore, patently the impugned order also has been issued by the Commission in exercise of its regulatory functions under Section 181 of the Electricity Act, 2003 and not in exercise of its adjudicatory functions under Section 86(1)(f) of the Act.

20. We have already extracted hereinabove the grounds on which the impugned order has been assailed by the appellants in these appeals. It is limpid that the appellants are challenging the legality/validity of the clause 3.2.2 of the 2009 Supply Code as well as the mechanism evolved by the Commission vide impugned clarificatory order dated 05.10.2016 for adjustment of ACS received by the distribution licensees from prospective consumers under the said clause 3.2.2 of the Code. It is well settled that the legality and validity of regulations or the orders issued by State Electricity Commission in exercise of its regulatory functions cannot be assailed before this Tribunal by way of appeal under Section 111 of Electricity Act, 2003. A reference may be had to the judgment of the Supreme Court in PTC India Limited V/s CERC 2010 4 SCC 603 wherein it has been held as under: -

“93. For the aforesaid reasons, we answer the question raised in the reference as follows:

The Appellate Tribunal for Electricity has no jurisdiction to decide the validity of the Regulations framed by the Central Electricity Regulatory Commission under Section 178 of the Electricity Act, 2003. The validity of the Regulations may, however, be challenged by seeking judicial review under Article 226 of the Constitution of India.”

21. Therefore, the appeals are not maintainable in so far as the appeals are challenging the legality and validity of the relevant clause of 2009 Supply Code as clarified vide the impugned clarificatory order dated 05.10.2016. We may hasten to had that one of the grounds of challenge to the impugned order raised in appeal no.287 of 2017 is that the same has been issued in violation of order dated 18.12.2015 passed by this Tribunal previously in appeal nos. 188 of 2014, 189 of 2014, 190 of 2014, 191 of 2014, 192 of 2014, 194 of 2014 and 195 of 2014, as the objections called by the Commission were merely an eye wash. The appeal can be maintained on this ground. However, we are of the considered opinion that the said ground of challenge to the impugned

order is absolutely devoid of any merit and does not survive at all. The perusal of impugned order clearly reveals that the same has been issued after inviting suggestions/objections from general public by way of public notice dated 25.05.2016 as well as from major stakeholders including the appellants in the above noted appeals by issuing letter dated 27.05.2016 to them and also upon holding a public hearing on 03.09.2016. It is not disputed that the appellant M/s Ambuja Cement Limited in appeal no.287 of 2017 had participated in the public hearing and had also filed its written submissions which have been noted in paragraph 15.3 of the impugned order. Therefore, it cannot be said that the impugned order has been passed by the Commission in violation of principle of natural justice and in non-compliance of the directions contained in order dated 18.12.2015 of this Tribunal.

22. In view thereof, we hold that the appeals are not maintainable and are dismissed as such.

Pronounced in the open court on this the 28th day of May, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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REPORTABLE / NON-REPORTABLE

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