

**HARYANA ELECTRICITY REGULATORY COMMISSION  
SCO 180, SECTOR – 5, PANCHKULA- 134109, HARYANA**

**CASE NO. HERC/PRO - 8 OF 2005  
DATE OF HEARING : 8.11.2005  
DATE OF ORDER : 12.12.2005**

**IN THE MATTER OF :**

Undue harassment and imposition of penalty not maintainable under provisions of the Electricity Act, 2003 and tariff order dated 22.12.2000.

**AND**

**IN THE MATTER OF :**

1. Sh. Veer Sagar, Selectronic Equipment & Services Pvt. Ltd., 106, Phase 6, Udyog Vihar, Guragon. Petitioner

**Versus**

1. SDO (OP) DHBVNL, Industrial Area, Sector 31, Gurgaon, Respondent No. 1
2. XEN (OP), DHBVNL, City Division, Gurgaon, Respondent No. 2
3. SE (OP), DHBVNL, Mehrauli Road, Gurgaon Respondent No.3

**Present :**

1. Lt. Col. (Retd.) Raghbir Singh, Chairman, HERC
2. Sh. T.R. Dhaka, Member, HERC
3. Sh. T.S. Tewatia, Member, HERC

**On behalf of Petitioners :**

1. Sh. Veer Sagar, President, Selectronic Equipment & Services Pvt. Ltd.
2. Smt. Surbhi Sagar, Director, Selectronic Equipment & Services Pvt. Ltd.
3. Smt. Alka Vijh, GM/Comml., Selectronic Equipment & Services Pvt. Ltd.

**On behalf of Respondents :**

1. Sh. D.S. Yadav, S.E. (OP), DHBVNL, Gurgaon
2. Sh. A.K. Jain, XEN (OP), City Division, DHBVNL, Gurgaon
3. Sh. S.S. Sangwan, SDO, Industrial Area Sub-Division, DHBVNL, Gurgaon

## ORDER

- 1 The petition dated 28.7.2005 of Sh. Veer Sagar, Selectronic Equipment & Services Pvt. Ltd., 106, Phase – VI, Udyog Vihar, Gurgaon was received in the Commission on 29.7.2005, against the respondents, in the matter of undue harassment and imposition of penalty not maintainable under provisions of the Electricity Act, 2003 and tariff order dated 22.12.2000. The petitioner has stated that :
  - 1.1 I have a sanctioned load of 69.621 KW against my A/c No. DMS-106.
  - 1.2 During periodical checking on 25.11.2004, M&P team recorded the p.f. to be 0.70. A sum of Rs.26,990/- was charged by the 'OP' Industrial Area, S/Div. Gurgaon in the next bill for the period 16.11.2004 to 16.12.2004 as sundry charges. On enquiry, SDO Industrial Area S/Div Gurgaon intimated that the amount has been charged on account of penalty for not installing the capacitors. The capacitor + penalty charges continued to be charged on us in the subsequent bills i.e. amounts of Rs.2003 for the period 16.12.2004 to 15.1.2005 Rs.2195/- for the period 16.11.2004 to 16.12.2004, Rs.1926/- for the period 15.1.2005 to 15.2.2005 and Rs.1759/- for the period 15.2.2005 to 15.3.2005 were charged on us. In total, we have been charged a sum of Rs.34,873/-, towards non-installation of capacitors. On our sustained follow-ups, vide our letter Nos. dated 24.12.2004, 28.12.2004 and 20.1.2005, Shri Abdul Majid, CA approached us and demanded Rs.6000/- for facilitating the refund of the penalty already deposited by us. We refused to oblige him by paying the amount. Para 3 (vii b) of HERC order on ARR & Tariff Distribution for Retail Supply applicable w.e.f. 1.1.2001 requires that the licensee shall serve registered notice, in case the shunt capacitors have not been installed or where these are found missing or inoperative or damaged, for providing the desired quantity of healthy shunt capacitors. In our case, no such notice has been served by the licensee. [It is to be noted that capacitors were in fact installed. When the DHBVNL got our premises re-inspected, the capacitors were found to be installed].

As such the licensee has failed to act in accordance with the directions issued by HERC and no penalty is leviable upon us. It is prayed that a sum of Rs.34,873/- already deposited toward non-installation of capacitors may kindly be refunded along with interest 24% from the date of deposit to the date of actual refund.
  - 1.3 On 6.7.2005, a representative of DHBVNL visited our premises to take the meter reading. He did not meet any responsible person except the security guard. On being informed by the security guard about the visit of DHBVNL representative, our electrician Shri Mohammed Hasan inspected the meter and found two numbers seals of the CT chamber broken. Immediately our office through letter dated 6.7.2005 tried to bring the matter to the notice of SDO I/A S/Divn. Gurgaon. SDO I/A S/Divn. Gurgaon was not available in his office. No body in S/Div office acknowledged the receipt of our complaint. As a

result, we were forced to approach the DHBVNL City 'Op' Div. Gurgaon for lodging the complaint.

- 1.4 No action was taken on 6.7.2005 itself. However, a team of officers/officials of DHBVNL visited our premises on 7.7.2005. They refused to make the entry in the visitor register kept with the security, even on persistent request by the security guard.
- 1.5 On 8.7.2005, XEN/Enforcement, DHBVNL Faridabad along with XEN City 'Op', XEN M&P, SDO I/A, AE M&P visited our premises at 13.00 hours and made the remarks as under.

“(1) Visited the premises alongwith SDO I/A, XEN City, XEN M&P and AE M&P GGN to check the meter, position of seals broken and load etc. as intimated verbally by SDO I/A that seals of CT chamber were broken. (2) On inspecting the metering equipment i.e. MCB and CT chamber, it was found that two numbers seals of CT chamber bearing Seals No. AOM-108 with seal GGN-56456+57 (as per record) found missing as shown in sketch. With missing of these seals, the CT Chamber is openable. However seals on MCB are found intact and genuine. (3) With missing seals of CT Chamber, the CT chamber is openable and as per the instructions of Nigam, it should be a case of theft of energy. However since the inspection was carried out on intimation of consumer regarding his broken seals, the team is of the view that it needs to be referred to GM/Commercial DHBVNL, Hisar alongwith full investigation report by SDO of I/A GGN/XEN City GGN / SE 'OP' GGN indicating consumption of consumer since the date of connection, for taking a final decision as to whether this is a theft case or not and charges should be done by SDO 'OP' I/A after receiving the decision of GM/Comm. as this is a peculiar case of instruction by the consumer himself. (4) Supply disconnected by SDO 'OP' staff (5) Metering equipment/MCB signed by consumer and checking party. (6) temper register of meter of the consumer meter are full”.

It is not out of place to mention that the team of DHBVNL refused to make the entry in the visitor's register, available with the security guard even on 8.7.2005.

It is submitted that seals might have been broken by the representative of DHBVNL, who visited our premises on 6.7.2005 for recording the meter reading as we refused to oblige Shri Majid Khan CA of S/Div. or seals might have broken due to rusting. The fact that we are not involved in the breakage of seal as corroborated by the consumption pattern for the last four years.

In light of the above, we do not understand that what we stand to gain, by breaking the seals of the CT chamber, as alleged in the checking report.

- 1.6 Vide letter No. 5014 dated 9.7.2005, SDO I/A raised the demand for Rs.14 lakhs on account of penalty, without waiting for the decision of GM/Commercial, DHBVNL, Hisar as pointed out in the checking report.

- 1.7 A representation against the disconnection of the meter and the illegal demand raised by the SDO I/A vide his letter No. 5014 dated 9.7.2005 was made to the Managing Director DHBVNL, Hisar on 12.7.2005.
- 1.8 In response to above, General Manager/Commercial DHBVNL, Hisar, Camp at Gurgaon, vide Fax message dated 16.7.2005, called us to appear before him at 11.00 hours on 16.7.2005. We complied with the directions and explained the facts of the case in person. However, written statement dated 16.7.2005 was filed, as per his directions, by us on 18.7.2005.
- 1.9 We were surprised to see the police personnel at our premises in compliance to FIR No. 360 dated 20.7.2005, lodged by the SDO, I/A, GGN.
- 1.10 Prayer:  
In view of the above, it clearly established that this is the case of undue harassment under the garb of alleged theft of electricity. It is humbly prayed to:
- i) Direct the representative to refund a sum of Rs.34,873/-, deposited on account of penalty for non-installation of capacitors, in contravention of Para 3 (VIIIb) of HERC order on ARR & Tariff (distribution of Retail Supply) implemented w.e.f. 1.1.2001, along with interest @ 24% from the date of deposit to the actual date of refund.
  - ii) Direct the respondents to withdraw FIR No. 360 dated 20.7.2005, lodged against me.
  - iii) Direct the respondents to withdraw the penalty amounting to Rs.14 lakhs, demanded vide letter No. 5014 dated 9.7.2005.
  - iv) I pray here that I am a law abiding honest citizen of India. But to the harassment meted out to me by DHBVNL officials, false charges have been framed against me. I am being treated as a thief and an FIR has been lodged against me. I have been running from pillar to post to get the justice, but all in vain. I have lost my mental peace in the process. My business is getting affected. My staff is also suffering as they are working without air conditioners in peak summer and are losing their efficiency, thereby causing me heavy financial losses.
  - v) Pass any other appropriate order as the Honourable Commission deems fit.
2. Vide notice dated 4.8.2005, the Commission directed the respondents to file the reply to the petition by 30.8.2005. However, the respondents failed to submit their reply within prescribed period, as such, they were directed again on 5.9.2005, by the Commission, to file the reply to the petition before 15.9.2005 positively. The reply on behalf of DHBVN, duly approved by the Whole Time Directors of DHBVN was received vide SE/RA, DHBVN filing dated 6.9.2005. Meanwhile the notice to Respondent No. 3 was returned undelivered by the postal authorities as the address at which notice was sent (in accordance with the address mentioned in the petition) was not correct. As

such, the correct address was ascertained and the notice-dated 19.9.2005 was again issued to the Respondent No. 3, at the correct address. Vide this notice, the Respondent No. 3 was directed to file his reply, if any, within 15 days of receipt of the notice. No separate reply was received from the Respondent No. 3 within the stipulated period. In para-wise reply, the respondents, vide their filing dated 6.9.2005 sent through SE/RA, DHBVN have stated as under :

- 2.1 It is submitted that the electric connection in the name of Sh. Veer Sagar A/c. No. DMS-106, with the Sanctioned load of 69.621 KW was released on dated 20.08.1998
- 2.2 It is submitted that the connection of the consumer was checked by M&P staff in the presence of authorized representative of the consumer on 25.11.2004. During this periodical checking it was found that there was no capacitor installed, as per prevailing practice additional charges on account of non installation of capacitor were levied for the last six months @ 10% of the SOP vide sundry item No. 23. These charges continued to be levied up till 3.02.2005 when it had come to the notice, as per representation of the consumer, that capacitor of required capacity had already been installed/connected on dated 24.12.2004. Accordingly, the excess charges so recovered were refunded vide sundry item No. 267. Thereafter no representation/complaint as alleged in the appeal is forth coming in record. The consumer just to increase the gravity of the appeal is linking this issue unnecessarily, which does not have any substance so the capacitor charges were rightly charged and recoverable from the consumer.
- 2.3 It is submitted that consumer is misrepresenting about noticing and informing the Nigam Office regarding breaking of M&P seals. In fact Sh. Ram Singh, AFM along with Sh. Rajinder, ALM while recording the monthly reading of the consumer in the presence of representative of consumer, have noticed missing of 2 Nos. CT chamber seals. Accordingly, Xen M&P was informed through telephone message on the same day. The consumer just to show his ignorance from his side put a representation in the office of Xen City (OP) Divn. Gurgaon mentioning that the seals in the lower box have broken possibly due to being rusty.
- 2.4 In reply it is submitted that no further checking was carried out on 7.07.2005 in the absence of concerned AE/M&P (who possess the concerned record of previous checking).
- 2.5 It is submitted that the officers pointed out at Sr. No. 1 (Para 1.5) by the petitioner that the premises was checked on 8.7.2005 as per the inspection report of Xen/Enforcement, Gurgaon vide LL-1 No. 06/2619 dated 8.7.2005 recorded the observations/remarks as pointed out by the petitioner as above.

- 2.6 It is stated that with the missing of CT chamber seals, the CT chamber was openable, therefore, as per instructions of the Nigam SDO I/A Gurgaon dealt the case as theft of energy case by taking into custody material/evidence and by charging theft charges of Rs.14.00 lac vide sundry charges Item No. 337 dated 8.7.2005 and issued a notice to deposit the said amount vide SDO I/A Gurgaon memo No. 5014 dated 9.7.2005. An FIR was lodged vide his office Memo. No. 360 dated 20.7.2005.
- However, the checking team was in the impression that the checking was carried out on the information of the consumer regarding his broken seals therefore the team was further of the view that the case be referred to GM/Commercial, Hisar alongwith full investigation report by SDO I/A, Gurgaon, Xen City (OP) Gurgaon and SE (OP) Circle Gurgaon indicating the consumption of the consumer since the date of connection, for taking final decision as to whether this is a theft case or not.
- On investigation by GM/Commercial, DHBVNL, Hisar and clarification sent by him vide his Memo No. Spl.1 dated 16.7.2005. "The consumption data of the consumer is uniform but is not commensurate with the connected load and maximum demand recorded in electronic meter of the consumer". The consumer gave no satisfactory reason during investigation. From this it is inferred that the declarence of the consumer as theft of energy case is in order. Therefore, the case was rightly dealt as theft of energy case. We would like to submit that the matter is sub-judice and the same is to be decided by Court of Law.
- 2.7 It is submitted that as per instructions of the Nigam the concerned SDO (OP) is empowered to deal with the theft of energy case. The consumer was at liberty to make any correspondence with higher authorities as stated in the petition. It is a matter of record.
- 2.8 Replied vide Para-6.
- 2.9 It is submitted that being theft of energy case SDO I/A Gurgaon lodged FIR in Sadar Thana, Gurgaon vide his memo No. 360 dated 20.7.2005.
- It is humbly requested that as per the Indian Electricity Act 2003 to decide such like cases jurisdiction is with the Civil Courts and not in the jurisdiction of the HERC. In the end we would like to submit that complaint may please be filed.
3. The issues raised by the petitioner in his petition and the respondents' para-wise reply were examined in the Commission. It was observed that the petition was with regard to matter concerning two different issues viz. (i) Refund of penalty amounting to Rs.34,873/- deposited by petitioner for non-installation of capacitors and (ii) Theft of electricity case filed against the petitioner due to broken seals of CT Chamber, in respect of which FIR had been lodged with the police and penalty amounting to 14 lacs imposed. Since the matter at (ii) above related to Theft of Electricity, as such, it did not

qualify for presentation before the Commission, as per the provisions of the Electricity Act, 2003. Accordingly, the Commission vide its notice dated 3.10.2005 intimated the petitioner and respondents that the matter of the petition mentioned at (i) above, pertaining to refund of penalty amounting to Rs.34,873/- deposited by petitioner for non-installation of capacitors, shall only be heard on 8.11.2005. The hearing of the case was held on the scheduled date. During hearing the respondents admitted that when the capacitors were found missing at the consumer premises on 25.11.2004, the then officers concerned of DHBVN should have issued a 'one month registered notice' to the petitioner for installing healthy shunt capacitors of required capacity, in accordance with the directive given in Section 3 (vii) (b) of Annexure-3 (Schedule of Tariff for Supply of Energy) of HERC Order on Distribution and Retail Supply ARR and Tariff –2000. With reference to another query by the Commission, the respondents were unable to specify the authority under which they had imposed surcharge on the petitioner for non-installation of capacitors, for a period of six months prior to the date when the capacitors were found missing.

#### 4. COMMISSION'S VIEW AND ORDER

After going through the record and hearing the petitioner as well as respondents, on the issue of imposition of surcharge on the petitioners by the respondents for non-installation of capacitors, the Commission observes as under :

- 4.1 The Section 3 (vii) of Annexure-3 (Schedule of Tariff for Supply of Energy) of HERC Order on Distribution and Retail Supply ARR and Tariff –2000 dated 22.12.2000, lays down stipulations regarding 'Capacitor Surcharge' under title 'L.T. Industrial Power Supply'. It states at sub-section (b) that –

*'In case of existing consumers where the shunt capacitors have not been installed or where these are found missing or in-operative or damaged, one month registered notice shall be served on such consumers to provide the desired quantity of healthy shunt capacitors and in case of non-compliance, a surcharge of 10% of SOP amount shall be levied and it shall continue to be levied till the prescribed capacity of shunt capacitors are installed by the consumers. The intimation of installation of shunt capacitors shall be required to be given by the consumer through the submission of Test Report, which would be duly verified and accepted by the SDO concerned.'*

- 4.2 It is observed that the capacitors were initially installed by the petitioner at his premises in 1998 when the connection to his premises was released.

- 4.3 During periodical checking on 25.11.2004 the M&P team reported that the capacitors were not found installed at the premises and the power factor was recorded as 0.70.
- 4.4 On the basis of the report of M & P team, the Respondent No. 1, without caring for the stipulation regarding imposition of Capacitor Surcharge, as per above cited HERC Order on Distribution and Retail Supply ARR and Tariff–2000, levied on the petitioner, additional charges amounting to Rs.26,990/- for the previous six months @10% of SOP in the bill for 16.11.2004 to 16.12.2004 as sundry charges for not installing the capacitors.  
**Since, there is no provision in the above cited order of the Commission for imposing capacitor surcharge on the consumer, for a period of previous six months from the date the capacitors are found missing at consumer's premises, its imposition on the petitioner is not valid.**
- 4.5 The petitioner vide letter dated 24.12.2004 addressed to the Respondent No. 1, represented against levying of sundry charges for not installing the capacitors.  
Taking action on the representation of the petitioner that the capacitors were installed by them way back in the year1998 (when their connection was released and the bill for purchase of the capacitors was also supplied to the respondent as proof of the same), the site was got re-inspected by the Respondent no. 1. As a result of this inspection, it was reported that the capacitors were found installed at the premises of the petitioner.
- 4.6 The Respondent No. 1 found the capacitors installed at the premises within one month of these being reported missing by the M&P staff during its checking on 25.11.2004, though he failed to issue the registered notice to the petitioner in this regard, as was required, in accordance with the above cited order of the Commission.  
**As such, no surcharge was required to be levied for the subsequent period from the date (25.11.2004) when the capacitors were reported missing, as there existed no case of non-compliance of the HERC's order, by the petitioner.**
- 4.7 However, the respondents continued to levy surcharge for non-installation of capacitors in the monthly electricity bills of the petitioner from the day these were reported missing by the M & P team, for a subsequent period of four months starting from 16.11.2004 to 15.3.2005 and a total sum of Rs.34,873/- (including surcharge of Rs.26,990/- for the previous six months) was charged from the petitioner on this account. Even on confirmation of the fact that the capacitors were existing at the premises (with reference to a representation dated 24.12.2004 of the petitioner), the respondents approved refund of Rs.3,685/-, corresponding to period 15.1.2005 to 15.2.2005 (Rs.1926/-) and 15.2.2005 to 15.3.2005 (Rs.1759/-).

**4.8 In view of the facts brought out, the action of the respondents in imposing capacitor surcharge totaling to Rs.34,873/- on the petitioner, is invalid. The Commission, therefore, directs the respondents to refund to the petitioner, within one month of the date of issue of this order, the total amount of capacitor surcharge levied on him i.e. Rs.34,873/-. The refund, if any, on account of capacitor surcharge, already made to the petitioner, may be deducted from the total amount mentioned above.**

**The Commission has viewed with concern the indifferent approach of the respondents (officers of the utility) in implementing the HERC Order on Distribution and Retail Supply ARR and Tariff-2000. Had the respondents taken care to act in accordance with the directives of the Commission, the grievance of the consumer would not have arisen at all. This would have avoided the eventuality of consumer filing a petition with the Commission and thus saving lot of time and energy of the petitioner, respondents and the Commission. The Commission directs the respondents to be careful in future and resolve the genuine grievances of the consumers at their own level expeditiously, in accordance with the orders of the Commission.**

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 12<sup>th</sup> December, 2005.

T.S Tewatia  
Member

T.R.Dhaka  
Member

Lt.Col. (Retd.) Raghbir Singh  
Chairman