

**BEFORE THE ADJUDICATING OFFICER
SIKKIM STATE ELECTRICITY REGULATORY COMMISSION
AT GANGTOK, SIKKIM**

Adjudicating Case No. P-02/Adj/2023.

IN THE MATTER OF: Petition under Section 27 of the Energy Conservation Act, 2001 for adjudication of penalty under Section 26 of the Energy Conservation Act, 2001.

And in the matter of:

Bureau of Energy Efficiency (BEE). Petitioner

Versus

Power Department, Government of Sikkim Respondent

CORAM

Shri. K.B. Kunwar, Adjudicating Officer cum Chairperson.

Date of Petition : 22nd December 2023

Date of Hearing : 19th June 2024

Date of order : 4th July 2024

Parties Present:

For the Petitioner : Mr. Kartikey Nayyar, Advocate and Shri. Rajendra Sharma, Sector Expert (Legal)

For the Respondent : Mr. Tenzing Thinlay Lepcha, and Miss. Tamanna Chhetri, Advocates and Mr. Dilip Kumar Sharma, Principal Chief Engineer.

The Petitioner- Bureau of Energy Efficiency has filed a petition under section 27 of the Energy Conservation Act, 2001 for adjudication of penalty under section 26 of the Energy Conservation Act, 2001 by the Adjudicating Officer and for directions to Power Department, Government of Sikkim to make payment of penalty as adjudicated by the Adjudicating Officer.

The relevant Sections are reproduced herein below:-

Section 27 in The Energy Conservation Act, 2001

“27. Power to adjudicate. -

(1) For the purpose of adjudging under section 26, the State Commission shall appoint any of its members to be an adjudicating officer for holding an inquiry in such manner as may be prescribed by the Central Government, after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

- (2) *While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry, and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the clauses of the sections specified in section 26, he may impose such penalty as he thinks fit in accordance with the provisions of any of those clauses of that section:*

Provided that where a State Commission has not been established in a State, the Government of that State shall appoint any of its officer not below the rank equivalent to a Secretary dealing with legal affairs in that State to be an adjudicating officer for the purposes of this section and such officer shall cease to be an adjudicating officer immediately on the appointment of an adjudicating officer by the State Commission on its establishment in that State:

Provided further that where an adjudicating officer appointed by a State Government ceased to be an adjudicating officer, he shall transfer to the adjudicating officer appointed by the State Commission all matters being adjudicated by him and thereafter the adjudicating officer appointed by the State Commission shall adjudicate the penalties on such matters.

Section 26 in The Energy Conservation Act, 2001

26. Penalty. -

- (1) *If any person fails to comply with the provisions of clause (1) or clause (2) or clause (4) or clause (5) of section 14 or clause (c) or clause (7) of section 15, he shall be liable to a penalty which shall not exceed ten lakh rupees:*

Provided that in the case of continuing failures, the person shall be liable to an additional penalty which may extend to ten thousand rupees for every day during which such failures continue.

- (2) *Notwithstanding anything contained in this Act or any other Act for the time being in force, if any person fails to comply with the provisions of clauses (c) and (d) of section 14, he shall in addition to the penalty of ten lakh rupees, be also liable to pay additional penalty which shall not exceed five thousand rupees per appliance or equipment in relation to which the non-compliance has occurred, but shall not be lower than two thousand rupees:*

Provided that where such non-compliance relates to any industrial unit or vessel, he shall also be liable to an additional penalty which shall not exceed twice the price of every metric ton of oil equivalent consumed in excess of the prescribed norms:

Provided further that if the manufacturer of a vehicle fails to comply with the fuel consumption norms, he shall also be liable to pay an additional penalty per unit of vehicles sold in the corresponding year, as follows, namely: —

- (i) *twenty-five thousand rupees per vehicle for non-compliance of norms up to 0.2 litres per 100 kms;*
 - (ii) *fifty thousand rupees per vehicle for non-compliance of norms above 0.2 litres per 100 kms.*
- (3) *If any person fails to comply with the directions issued under clauses (8) and (x) of section 14, he shall be liable to a penalty which shall not exceed ten lakh rupees for each such failure: Provided*

that he shall also be liable to an additional penalty which shall not exceed twice the price of every metric ton of oil equivalent prescribed under this Act, which is in excess of the prescribed norms.

- (4) *If a person fails to comply with the provisions of sub-section (/) of section 13A or fails to provide any information under section 52, he shall be liable to a penalty which may extend to fifty thousand rupees on first such non-compliance or failure: Provided that for every subsequent non-compliance or failure, he shall be liable to pay an additional penalty which shall not exceed ten thousand rupees per day of such non-compliance or failure.*
- (5) *Any amount payable under this section, if not paid, may be recovered as if it were an arrear of land revenue.”*

1. The prayers of the Petitioner are as under: -

- (a) Direct the Adjudicating Officer for holding an enquiry for the purpose of adjudicating the penalty under section 26 of the Energy Conservation Act, 2001 for failure on the part of the Respondent to comply with the provisions of the Regulations notified by the Petitioner under the Energy Conservation Act, 2001.
- (b) Direct the Respondent to make payment of penalty as adjudicated by the Adjudicating Officer,
- (c) Direct the Respondent to comply with the Regulations notified by the Petitioner and submit the requisite Energy Audit reports/forms as provided in the Regulations,
- (d) Pass any such other and further orders as are deemed fit and proper in facts and circumstances of the case.

2. Submissions of the Petitioner:

- i. That the Petitioner, Bureau of Energy Efficiency (hereinafter called as “BEE”), was established on 01.03.2002 under the Energy Conservation Act, 2001. The principal objective of the Petitioner is to assist in developing policies and strategies with a thrust on self-regulation and market principles, within the overall framework of the Energy Conservation Act, 2001 and with the primary objective of reducing energy intensity of the Indian economy.
- ii. That the Respondent i.e. Power Department, Government of Sikkim, is responsible for generation, distribution and transmission of electricity in the state of Sikkim and has been notified as a Designated Consumer under the Energy Conservation Act, 2001, vide statutory order No.3445 (E) dated 28.09.2020 and published in the Gazette of India dated 1st October 2020.
- iii. The Petitioner, with the approval of the Union of India, and in exercise of the powers conferred by Clause (g) of sub-Section 2 of Section 58, r/w Clause (q) of sub-Section 2 of Section 13 of the Energy Conservation Act, 2001 (52 of 2001) notified *"The Bureau of Energy Efficiency (Manner and Interval for Conduct of Energy Audit in Electricity Distribution Companies) Regulations,*

2021” (hereinafter called “ Regulations 2021”) to regulate energy audits in DISCOMs.

- iv. The Regulations 2021 framed by the Petitioner for energy audit in Electricity Distribution Companies (“DISCOMs”) provides broad framework for conduct of annual energy audit and quarterly energy accounting with necessary pre-requisite and reporting requirements. The relevant clauses of the Regulations 2021 are given below:

“3. **Intervals of time for conduct of annual energy audit.** –

- (1) *Every electricity distribution company shall conduct an annual energy audit for every financial year and submit the annual energy audit report to the Bureau and respective State Designated Agency and also made available on the website of the electricity distribution company within a period of four months from the expiry of the relevant financial year:*

Provided that on the commencement of these Regulations, the first annual energy audit of every electricity distribution company shall be conducted within six months from the date of such commencement, by taking into account the energy accounting of electricity distribution company for the financial year immediately preceding the date of the commencement of these Regulations.

- (2) *Where a new electricity distribution company is established after the commencement of these Regulations, such electricity distribution company shall conduct its first annual energy audit on completion of the first financial year from the date of being notified as designated consumer.*

Explanation. — If any entity created as a result of merger, demerger, slump sale, acquisition, change of control or any other corporate restructuring of, or involving, any existing electricity distribution company, such entity shall not be considered as a new electricity distribution company for the purposes of this sub-Regulation.

4. **Intervals of time for conduct of periodic energy accounting.** –

- (1) *Every electricity distribution company shall —*

(a) ensure that all feeder wise, circle wise and division wise periodic energy accounting shall be conducted by the energy manager of the electricity distribution company for each quarter of the financial year; and

(b) submit the periodic energy accounting report to the Bureau and respective State Designated Agency and also made available on the website of electricity distribution company within forty-five days from the date of the periodic energy accounting.

- (2) *After the commencement of these Regulations, every electricity distribution company shall, notwithstanding anything in sub-Regulations (1), —*

(a) conduct its first periodic energy accounting, for the last quarter of the financial year immediately preceding the date of such commencement; and

(b) conduct its subsequent periodic energy accounting for each quarter of the financial year for a period of two financial years from the date of such commencement, and submit the periodic energy accounting report within sixty days from the date of periodic energy accounting.”

- v. That due to the lack of a dedicated framework for energy auditing in distribution utilities, the Petitioner developed the above regulations to guide DISCOMs in conducting annual energy audits and quarterly energy accounting to identify areas of energy loss and improve efficiency.
- vi. Under Section 14(i) of the Energy Conservation Act, 2001, the Union of India, can direct designated consumers like the Power Department to conduct energy audits by accredited energy auditors.
- vii. The main objectives of the Regulations 2021 include quantifying energy consumption and losses, identifying inefficiencies, facilitating independent energy audits, and improving efficiency to reduce transmission and distribution losses.
- viii. The Regulations 2021 mandate electricity distribution companies to conduct annual energy audits and submit reports to the BEE and designated state agencies within specified timeframes. Additionally, periodic energy accounting must be conducted quarterly and reported within designated timeframes. The same is also to be uploaded in the web-sites maintained by the DISCOMs.
- ix. The Regulations 2021 require the Respondent to conduct periodic energy accounting and annual energy audits by in-house Energy Managers and accredited energy auditors (Third-Party agency) respectively. The Regulations 2021 also required the Respondent to create a Centralized Energy Accounting and Audit Cell with adequately qualified personnel. The aim being to establish an intervention-free auditing system to identify loss pockets and enable remedial measures accelerateting the reduction of AT&C losses.
- xx. The Petitioner organized region-wise webinars/workshops for DISCOMs to create awareness and facilitate compliance with the Regulations 2021 by sending invitations to DISCOMs via email dated 15.11.2021. The timeline of the Regulations was shared with the Respondent in the same email.
- xi. That the Respondent had to comply with Regulations 2021 as per the timeline mentioned herein below:-
 - i. The **First Perodic Energy Accounting Report** (Quarter-II) from the period 01.07.2021 to 30.09.202, was to be submitted by 06.12.2021.
 - ii. The **Subsequent Perodic Energy Accounting Report** (Quarter-III) from period 01.10.2021 to 31.12.2021 was to be submitted by 01.03.2022.

- iii. The **Subsequent Periodic Energy Accounting Report** (Quarter-IV) from period 01.01.2022 to 31.03.2022 was to be submitted by 30.05.2022.
- iv. **The Annual Energy Audit Report for F.Y. 2020-2021** was to be submitted by 06.04.2022.
- v. **The Subsequent Annual Energy Audit Report for F.Y. 2021-2022** was to be submitted by 31.07.2022.
- xii. Under the powers conferred by Section 14 (i) of the Energy Conservation Act, 2001, the Union of India (Ministry of Power) issued a letter dated 27.10.2021 to all State Governments and UTs, informing them of the Regulations 2021 and directing all distribution companies governed by the Act to conduct their 1st Energy Audit by an accredited energy auditor by 06.04.2022 and periodic energy accounting by 06.12.2021.
- xiii. The Petitioner, through a letter dated 18.11.2021, informed the Respondent about the requirement to establish a Centralized Energy Accounting and Audit Cell comprising of a Nodal Officer, Energy Manager etc as per Clause 5(g) of the Regulations 2021 and requested for details of the Energy Audit Cell (EAC) in the prescribed format.
- xiv. Via letter dated 09.12.2021, the Petitioner reminded the Respondent about the requirement to comply with the Regulations 2021 and requested the submission of the 1st Annual Energy Audit Report and Periodic Energy Accounting Reports.
- xv. In addition to previous communications, the Petitioner, vide letter dated 28.01.2022, reiterated its request for the submission of the 1st Periodic Energy Accounting Report, emphasizing the importance of compliance and warning of potential penal actions.
- xvi. Through letter dated 22.02.2022, the Petitioner reminded the Respondent of the deadline for submitting the 2nd Periodic Energy Accounting Report, cautioning about non-compliance and its consequences.
- xvii. That after numerous reminders and failure on the part of the respondent to submit the required information, a show-cause notice dated 04.03.2022 was issued to the Respondent for non-compliance of the provisions of the Regulations 2021 and failure to submit the 1st Energy Accounting Report. The Petitioner further directed the Respondent to submit its response to the show-cause within seven days, along with a copy of the report explaining the reasons for non-compliance, failing which action as per the Energy Conservation Act, 2001 would be initiated.
- xviii. Through letter dated 23.05.2022, the Petitioner informed the Respondent about the non-submission of 1st and 2nd Energy Accounting Reports, demanding reasons for the delay and submission of the reports by 31.05.2022, failing which penal action would be initiated.

- xix. The Respondent was vide letter dated 23.08.2022 again reminded about submission of the energy accounting reports of Q2, Q3, and Q4 of F.Y. 2021-2022 and first and second annual energy audit report of F.Y. 2020-2021 and F.Y. 2021-2022 duly explaining the reasons for non-submission of the same.
- xx. Further, a show-cause notice dated 19.01.2023 was issued by the Petitioner, directing the Respondent to submit a response explaining non-compliance with the Regulations 2021 and non-submission of reports, along with the requisite reports within seven days.
- xxi. That despite repeated communications and reminders, the Respondent failed to comply with the provisions of the Regulations 2021 and submitted periodic reports much beyond the stipulated dates and failed to submit 1st and 2nd Energy Accounting Reports. As a result, the Petitioner seeks to invoke penalty provisions under Section 26 of the Energy Conservation Act, 2001, due to the Respondent's casual behavior and non-compliance.
- xxii. The Petitioner has filed the present petition under Section 27 of the Energy Conservation Act, 2001, seeking adjudication of penalties for the Respondent's non-compliance with the Regulations 2021 and failure to adhere to the Union of India's directives. This action is also in accordance with Notification No. S.O.6027(E) dated 23.12.2022, and letter dated 30.01.2023, issued by the Ministry of Power, Government of India, empowering the Petitioner to file petitions for non-compliance with the Regulations 2021.

3. Submission of the Respondent.

- i. The Respondent submitted that the periodic energy accounting and annual energy audits reports could not be submitted nor the Energy Audit Cell (EAC) could be established within the stipulated timeframe due to financial constraints and time taken to get the necessary approval from the competent authority.
- ii. The respondent further submitted that since there were no certified Energy Manager or Accredited Energy Auditor firms based in the state of Sikkim, the process of identifying, selecting and appointing of the auditor firms based outside the State took considerable time leading to delay in preparing the reports. The firms were based far from Sikkim and there was reluctance on their part to come to Sikkim and even those who agreed quoted exorbitant rates making it financially unviable for the Respondent to use their services. Thus, the Respondent had to repeat the tendering process more than one occasion to obtain reasonable 'rates/quotations/offers' from the firms, which further delayed the entire process.
- iii. The Respondent tried to impress upon this Commission that since the Periodic Energy Accounting Report for F.Y. 2020-2021 of Q2, Q3 and Q4 along with the Annual Energy Audit Reports for the F.Y. 2020-2021, 2021-2022 and 2022-2023 were already enclosed as ANNEXURES with their reply and vide Office Order dated 17.05.2023, the Energy Audit Cell has been established by the Respondent, the provisions of Regulations 2021 have been complied with. The delay in the non

compliance of the Regulations was neither wilful nor intentional, the Respondent submitted.

- iv. The Respondent in their synopsis of arguments have prayed that this Commission excuse the delay in sending the Periodic Energy Accounting Report, and Annual Energy Audit Reports for the period prior to the Notification bearing No. S.O. 6027(E), Dated 23rd December, 2022 issued by the Ministry of Power, Government of India. They have relied upon the observations made in Para 79-80 by the Hon'ble Jharkhand State Electricity Regulatory Commission in the case of Bureau of Energy Efficiency (BEE) VERSUS Jharkhand Bijli Vitran Nigam Ltd. (JBVNL). (Adjudicating Case No. 1 Of 2023, arising out of Case No 15 of 2023). The same has not been reproduced for the sake of brevity.
- v. The Respondent further submitted that the BEE did not send the correspondences/communications/directives to the correct official address nor to the concerned official and therefore denied receipt of the same.
- vi. The Respondent admits that there has been delay in the compliance on their part but prays that the Commission take a lenient view as the Regulations 2021 is a new enactment and the delay was due to the various factors as submitted. They further prayed that the Commission dispose this matter with directives to the Respondent to be punctual in complying with the Regulations 2021 and to penalise the Respondent with minimum notional penalty, if need be.

4. Rejoinder of the Petitioner:

- i. The Petitioner submitted a rejoinder dated 18/03/2024 to the reply filed by the Respondent in compliance of the interim order dated 12.03.2024 of the Hon'ble Commission.
- ii. The Petitioner submitted that upon bare perusal of the reply, it is evident that it has been based on frivolous premises with the intention to deviate the issue at hand and hence deserves to be set aside.
- iii. It is admitted by the Respondent that there was delay in sending of the reports and the reasons given for the delay are frivolous and without any basis.
- iv. The submission of the Respondent that the delay was due to unavailability of certified Energy Manager or Accredited Energy Auditor in the State are baseless as the list of Accredited Energy Auditor/firms are always readily available on the website of the Petitioner at: <https://beeindia.gov.in/en/programmesnational-certification-examination/accredited-energy-auditors>.

5. Observations:

1. Heard both the Parties verbally at length and having perused the synopsis of arguments submitted, it is evident that there was delay in complying with the provisions of the Regulations 2021. The Regulations 2021, was enacted to see that a finite and valuable resource like electrical energy is utilized in the most efficient and proper manner and to formulate guidelines to minimize its loss.

2. The reasoning given by the Respondent for the delay cannot be condoned but it has to be seen that in most of the states, distribution of electricity is handled by private companies/boards headed by few individuals with the mandate to take prompt decisions and are run with the objective of profit making where delay of any kind is viewed in the form of monetary loss. Whereas in the present case, the Respondent being a State Government Department has its limitations and difficulties, so far as taking prompt decision is concerned. A Government Department/Organisation has its own way of functioning with bureaucratic hierarchy with the need for proposals to pass through several channels before taking a concrete decision, which often leads to delay in taking prompt actions by State Government Department/Board in comparison to their private counterparts.
3. The oft-repeated submission of the Respondent that the correspondances sent by the Petitioner was not properly addressed cannot aid the case of the Respondent as even if we assume for once, that being the case, it is an admitted fact that the Respondent were in receipt of the letter dated 27.10.2021 issued by the Ministry of Power, Government of India mentioning the timelines to be followed in sending the reports, (marked as ANNEXURE P-4), so their defence of not having received the directives is not tenable/acceptable. As a responsible 'public authority' dealing with basic and prime necessity like electricity, the Respondent ought to have taken proactive actions for complying with regulations/directives of the BEE. The Respondent is seen to have failed in performing their duties on the above observations.
4. It is also an admitted fact that the Periodic Energy Accounting Reports and Annual Energy Audit Reports have been submitted to the Petitioner at the time of filing of reply by the Respondent. An Energy Audit Cell as mandated by the Regulations 2021 has also been established, thereby fulfilling the requirements of the Regulations 2021 albeit with a delay and as rightly pointed by the Petitioner there is no provision in the Energy Conservation Act, 2001 nor in the Regulations 2021 for condoning such delay.
5. The Adjudicating Officer is aware of the fact that Sikkim being a mountainous state with very erratic road connectivity hampered by natural calamities like flood, land slides etc it is very difficult for the organisation like Power Department to collect reports from various corners of the State. It being a small State with very limited business scope, not many firms functioning in specialised fields set up their offices here unlike in big metros, so it is but natural to sometimes have difficulty in complying with the mandate of laws like the Regulations 2021.

Having observed the above, it is not lost to the Adjudicating Officer that non compliance of any law for whatever reasons is not permitted.

6. In the present scenario, there is a collective effort to optimize the use of power, particularly generated through natural resources, necessitating enactment of laws for its better conservation. The Government of India,

notably through various legislation is making commendable efforts in this direction.

7. The establishment of a statutory body like the BEE by the Union Government of India displays its commitment to the cause of energy conservation. This noble endeavour will come to naught if all or any of the stakeholders fail in their duty, and it is only through collaborative efforts of all in conserving energy and adopting energy efficient practices across all sectors, that we may one day achieve the targeted energy independence by 2047, as envisaged by the Union of India.
8. It is true that the Respondent has failed in complying with the Regulations 2021 but at the same time it is not lost on the Adjudicating Officer that the Regulations 2021 is a new law and the fact that the Respondent has complied with the Regulations 2021 albeit belatedly and I feel that it is fair jurisprudence that both the parties should feel that justice was done.
9. Having made the above observations, the Adjudicating Officer hereby gives the following Orders:

ORDER

- i. Directs the Respondent to strictly follow and comply with the Regulations 2021 in letter and spirit.
- ii. The Respondent is penalized with a notional penalty of ₹1,00,000/- (Rupees One Lakh Only) under Section 26(1) of the Energy Conservation Act, 2001 and is warned that any future discrepancies will not be shown such leniency.
- iii. The penalty amount should be given to BEE within three months of this Order. The failure to pay the penalty within the stipulated time will attract penalty @ 9 % per annum till the time such payment is made.

This petition is disposed of, accordingly.

Sd/-
(K.B. Kunwar)
Adjudicating Officer cum Chairperson