

**LPA-2352-2025 (O&M) and connected cases****1****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****LPA-2352-2025 (O&M)****Date of Decision: September 15, 2025****Jindal Stainless Ltd.****.... Appellant****Versus****State of Haryana and others****.... Respondents****LPA-2364-2025 (O&M)****DCM Textile****.... Appellant****Versus****State of Haryana and others****.... Respondents****LPA-2365-2025 (O&M)****Hisar Metal Industries****.... Appellant****Versus****State of Haryana and others****.... Respondents****LPA-2500-2025 (O&M)****M/s Punjab General Industries Pvt. Ltd.****.... Appellant****Versus****State of Haryana and others****.... Respondents****LPA-2538-2025 (O&M)****M/s Asahi India Glass Ltd.****.... Appellant****Versus****State of Haryana and others****.... Respondents**

LPA-2539-2025 (O&M)

M/s BSL Casting Pvt. Ltd.

.... Appellant

Versus

State of Haryana and others

.... Respondents

LPA-2540-2025 (O&M)

M/s Neel Metal Products Ltd.

.... Appellant

Versus

State of Haryana and others

.... Respondents

LPA-2584-2025 (O&M)

M/s New Alle Berry Works

.... Appellant

Versus

State of Haryana and others

.... Respondents

LPA-2589-2025 (O&M)

M/s Star Wire (India) Ltd.

.... Appellant

Versus

State of Haryana and others

.... Respondents

LPA-2590-2025 (O&M)

M/s Jai Bharat Maruti Ltd.

.... Appellant

Versus

State of Haryana and others

.... Respondents

LPA-2592-2025 (O&M)

M/s JBM Industries Limited

.... Appellant

Versus

State of Haryana and others

.... Respondents

LPA-2593-2025 (O&M)

M/s JBM Auto Limited

.... Appellant

Versus

State of Haryana and others

.... Respondents

LPA-2594-2025 (O&M)

M/s Jai Bharat Maruti Limited

.... Appellant

Versus

State of Haryana and others

.... Respondents

LPA-2595-2025 (O&M)

M/s Star Wire (India) Limited

.... Appellant

Versus

State of Haryana and others

.... Respondents

LPA-2684-2025 (O&M)

M/s Sadhu Forging Limited

.... Appellant

Versus

State of Haryana and others

.... Respondents

**CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI
HON'BLE MR. JUSTICE VIKAS SURI**

Present: - Mr. Chetan Mittal, Senior Advocate with
Mr. Rose Gupta, Advocate,
Mr. Prateek Garg, Advocate,
Mr. Himanshu Gupta, Advocate,
Ms. Shaifalli Goyal, Advocate and
for the appellants.

Mr. Sandeep Chhabra, Addl. General, Haryana.

Mr. Vishal Gupta, Advocate for respondent No.2-HERC.

Mr. Sanjeev Kaushik, Advocate,
Mr. Divyanshu Kaushik, Advocate,
Ms. Simran Sharma, Advocate and
Ms. Mannreet Kaur, Advocate
for respondent Nos. 3 to 5.

HARSIMRAN SINGH SETHI, J. (ORAL)

1. The challenge in the present appeals is to the order dated 24.07.2025 passed by learned Single Judge by which, the writ petitions filed by the appellant herein have been dismissed on the ground that remedy of appeal before the Appellate Tribunal is available to the appellant qua the grievance raised, which should be availed.

2. Learned Senior counsel for the appellant argues that the grievance which was raised before the learned Single Judge, was that upon the remand of the matter back to the H.E.R.C. by the appellate authority, the H.E.R.C. has reviewed the tariff already fixed, which

review of the tariff has been done without giving any opportunity of hearing to the appellants who are consumers and as the rules of natural justice has been violated while reviewing the tariff by Short Term Open Access, the said fixation of the STOA, is liable to be set aside and the same should be ascertained again by giving due opportunity of hearing to the appellants whereas, the learned Single Judge has dismissed the writ petition so as to relegate the appeals to avail the alternate remedy of appeal against the fixation of the tariff by ignoring that the writ petition will be maintainable against an order which has been passed by violating the principles of natural justice.

3. Certain facts may be noticed for correct appreciation of the issue in hand. The appellant (s) purchase electricity for the operation of their respective unit through the Short Term Open Access (hereinafter referred to 'STOA') wherein, the electricity required by the appellant units, which is generated outside the State of Haryana and the same is directly purchased by the appellant (s) but the said electricity is received by the consumers through the infrastructure of the Distribution Company for which due payment is to be made to the Distribution Company by fixing STOA.

4. In consideration of the services provided, Short Term Open Access charges are fixed to be paid to the Distribution Company and for the year 2014-15, the same was fixed at 0.33/ kWh.

5. It may noticed that a true up petition for financial year 2014-15 and the performance review for the year 2015-16 was

initiated by the Distribution Licensee and after duly serving a public notice an order dated 31.03.2016 was passed by the H.E.R.C. fixing the STOA charges @ of Rs. 0.33/kWH for the financial year 2016-17. It is essential to notice here that before passing the said order, a public notice was duly issued for hearing and after hearing the objections the said order dated 31.03.2016 was passed fixing the STOA @ Rs.0.33/kWH.

6. After passing of the said order dated 31.03.2016, a review petition was filed by the Distribution Licensee for the revision of the charges to Rs.0.43/kWH instead of Rs.0.33/kWH but, the said review petition was dismissed by the H.E.R.C. vide order dated 08.11.2016.

7. Against the said order dated 31.03.2016 as well as the order passed in review on 08.11.2016 by the H.E.R.C. the Distribution Licensee i.e. Haryana Vidyut Prasaran Ltd. filed an appeal before the Appellate Tribunal. The said appellate authority, after considering all the facts, passed an order dated 28.08.2019 remanding the case back to the Haryana Electricity Regulatory Commission (hereinafter referred to 'H.E.R.C.) for fresh adjudication qua the issue of fixing of the STOA charges for the financial year 2014-15 and performance review for the year 2015-16.

8. It may be noticed that by the time the said order dated 28.08.2019 was passed, the STOA charges applicable upon the appellants for the subsequent period had already been passed on the

same analogy keeping in view the order dated 31.3.2016 which was ultimately set aside by the appellant authority on 28.08.2019.

9. After the case was remanded back for fresh adjudication by the appellate authority to the H.E.R.C., without giving any notice qua the said proceedings to the appellants, straight away, fresh short term charges were fixed at the rate of Rs.0.4743/ kWh for the same period, which has been described hereinbefore.

10. Even, for the subsequent year, without giving any opportunity of hearing to the affected party i.e. the appellant, the said charges were enhanced to 0.47/kWH, for the financial year 2017-18 instead of Rs.0.36/kWH which rate was fixed earlier, Rs.0.50/kWH instead of Rs.0.336/kWH for the year 2018-19 and Rs.0.37kWH for the year 2019-20 instead of Rs.0.2/kWH,

11. It may be noticed that while fixing the said revised STOA charges, which were made applicable upon the appellant, no opportunity of hearing was given to the appellant (s) and the appellants were required to pay charges in accordance to the said freshly assessed charges.

12. The demand notice sent to appellant to pay the electricity charges in accordance to revised rates, and the revised STOA charges was challenged by the petitioner before learned Single Judge, by filing a writ petition on the ground that the said rates have been revised without giving any opportunity of hearing to the concerned parties i.e. the appellants but the learned Single Judge has dismissed

the writ petition on the ground that since remedy of appeal is available with the appellants qua the fixing of STOA and therefore, the same cannot be interfered with. Hence, the present appeals have been filed by the appellants aggrieved by decision of learned Single Judge and orders qua revision of STOA charges passed by the respondents.

13. The only question which needs to be decided in the present bunch of appeals is whether, there has been a violation of the principles of natural justice at the hands of respondent-H.E.R.C. which would enable the appellants to directly approach to this Court by way of filing a Civil Writ petition rather than availing the remedy of preferring an appeal.

14. From the facts which have been narrated hereinbefore while adjudicating the issue with regard to fixing of the STOA charges, the respondent H.E.R.C. had already given notice to all the concerned parties firstly on 28/29.11.2015 and thereafter again on 12.01.2016, which notices are already annexed to the paper book of these appeals. The said fact has also been conceded by the learned counsel for the H.E.R.C. That being so, once the STOA charges @ Rs.0.33/kWH were fixed only after giving the opportunity of hearing to the concerned parties, who were to be affected by the fixation of the said STOA charges, and in case, the said STOA charges are to be reviewed so as to enhance the same, the opportunity of hearing has to be given to the appellants as, a right gets accrued in favour of the appellant for hearing before change of STOA charges.

15. Further, it may be noticed that the Distribution Licensee filed a review before the HERC against the assessment of STOA charges @ of Rs. 0.33/ kWh, which review application was dismissed and thereafter, an appeal was preferred but the Appellate Authority wherein, the matter was remanded back to H.E.R.C. for fresh decision after setting aside the STOA charges which were fixed at 0.33/kWH. Once, at the initial stage of fixing the STOA charges, opportunity of hearing was provided to the concerned parties, the propriety and the rules of natural justice demands that the appellant (s) should have been given an opportunity of being heard before arriving at the decision of enhanced STOA charges as the same was to effect the payment which the appellant (s) was required to make qua STOA to the Distribution Company.

16. Concededly, after the cases were remanded back by the appellate authority to the respondent-H.E.R.C. to decide afresh, upon the issue of STOA charges no opportunity of hearing was given so as to allow the appellant (s) to raise their objection qua the reasons/ action plan for enhancing the said STOA charges of the same were initially finalized by H.E.R.C. though set only by the appellate authority. This has caused prejudice to the appellants, especially when, the demand raised against the appellant (s) upon the re-fixation of STOA charges, is in the amount of crores as one of the appellant M/s Jindal Stainless Ltd., has been asked to pay a sum of more than Rs.21 crores.

17. Learned counsel appearing on behalf the appellant (s), argues that respondent-H.E.R.C. has relied upon certain orders passed by the Hon'ble Supreme Court of India to reach upon the conclusion the fixation of STOA charges is a delegated legislative function and therefore, no opportunity of hearing needs to be given to any of the effected party.

18. The reliance is being placed upon the judgments of Hon'ble Supreme Court of India in Civil Appeal No. 4037 of 2002 decided on 03.10.2022 **W.B. Electricity Regulatory Commission Vs. CESC Ltd. Etc.** reported in **2002 (8) SCC 715** by the counsel for the respondent-H.E.R.C. to underpin the assertion that since fixation of said charges is a delegated legislative function, thus, there is no need of providing the opportunity to be heard to the appellants.

19. The said judgment, though states that fixing of the STOA charges is a delegated legislative function but the same only relates to the passing of a detailed order while fixing the STOA charges. In the said case, non passing of the detailed order while fixing the charges was being challenged on the ground that same has violated the principles of natural justice, which was not accepted. In the present case, the facts are different as it is a conceded position that while fixing the STOA charges initially the respondent-H.E.R.C gave notice of the said fact to all the concerned, which process was not followed later on after the case was remanded to the H.E.R.C for re-considering upon the fixation of such STOA charges. Hence, the said judgment,

upon which reliance is being placed by the respondents will not be applicable in the present case keeping in view the facts and circumstance of the present case. Further, in the said judgment, in paragraph 40, the Hon'ble Supreme Court has said that if the statute confers a right upon the consumer to be heard in a matter pertaining to determination of tariff which will affect such consumers then the same is to be effectively done. Once, the respondent adopted the procedure of granting the opportunity of hearing while fixing the STOA charges at the initial stage, upon the remand of the same by appellate authority a different process could not have been adopted.

20. A further reliance is being placed by the learned counsel for the H.E.R.C. upon the judgment of Hon'ble Supreme Court of India in Civil Appeal No.8350 of 2009 decided on 20.02.2020 **Kerala State Electricity Board Rep. by Its Secretary and another Vs. Principal Sir Syed Institute For Technical Studies & another** reported in 2020 AIR (SC) 4494. Learned counsel for the H.E.R.C. places reliance upon para 11 of the aforementioned judgment wherein it has been stated that the act of fixing of tariff is a quasi-legislative act only and disclosure of the reason for imposing the tariff is not essential.

21. It may be noticed that in the said case also the order was impugned qua the issue of non-disclosure of the reasons while imposing a particular tariff, which is not the case in the present case as the claim of the appellant is that before refixing the tariff, after the

matter was remanded back for afresh adjudication, an opportunity of hearing should have been given so as to allow the appellants to present their case which needs to be taken in consideration for fixing the tariff which is to be paid by the appellants to the Distribution Company.

22. Further, in the aforementioned case, the Commission had issued notice inviting objections and suggestions from the general public, which factor was also kept in mind while passing the said order. Hence, the issue before the Court in **Kerala State Secretary's case (supra)** was different than the one raised in the present set of appeals.

23. The reliance is being placed by learned counsel for the respondent-HERC on the judgment passed in by the Hon'ble Supreme Court of India in Civil Appeal No. 2104 of 2006 decided on 17.08.2007 titled as **Central Power Distribution Co. and Others Vs. Central Electricity Regulatory Commission and another reported in 2007 (8) SCC 197.** Learned counsel has placed reliance on paragraph 20 of the said judgment. It may be noticed that in the said judgment, the Hon'ble Supreme Court did not set aside the impugned order of fixing of the tariff even though opportunity of hearing was not given on the ground that the said order has already been implemented and was duly accepted by the consumer concerned, whereas in the present case, the enhanced rates were never been accepted by the appellant and were rather challenged immediately

upon the demand raised by the H.E.R.C. and the same is yet to be considered with by the appellants.

24. Further, it is a conceded position that the review against an order passed by H.E.R.C. needs to be decided in accordance to the Haryana Electricity Regulatory Commission, (Conduct of Business) 2019. The regulations 58 and 59 are as under:-

“58. The Commission may on its own motion or on the application of any party correct any clerical or arithmetical errors in any order passed by the Commission.

59. An application for such review shall be filed and dealt with in accordance with Chapter II of these Regulations.”

25. A bare perusal of the above mentioned regulations would show that in case the review is filed, the same is to be dealt with in accordance to Chapter II of these regulations and as per Chapter II of the Regulations, the matter has to be looked into with the participation of person/groups of person to the extent possible by the Commission. A conjoint reading of 2019 Regulation also calls upon the grant of opportunity of hearing to the extent possible by the Commission, hence, the appellants are entitled to be heard, once the matter was remanded back by the appellate authority to H.E.R.C to decide afresh qua the issue of fixation of STOA charges for the relevant years.

26. Keeping in view totality of the facts and circumstances, mentioned hereinabove, as there has been a violation of the principles of natural justice, despite there being availability of a remedy of preferring an appeal, the present appeals are being dealt with.

27. Further, the direction which is being given while disposing of the present appeals is that, only those appellant (s) who have raised grievance with regard to non-hearing while fixing STOA charges, may be given an opportunity of hearing by the respondent-H.E.R.C within a period of eight weeks from the date of receipt of certified copy of this order. The said hearing can be a joint hearing of all the concerned parties by the H.E.R.C and after conclusion of said hearing, the points which may be raised by the appellant (s), be taken into consideration so as to decide whether the STOA charges which have been enhanced, needs a reconsideration at the hands of H.E.R.C or not. In case, as per the argument raised by all the appellant (s), the H.E.R.C. reaches to a conclusion that the STOA charges fixed vide impugned order needs to be revised, an action be taken accordingly by the H.E.R.C. Further, in case the charges which have been fixed by the H.E.R.C., by the impugned order are in accordance with law, appropriate order be passed on the said issue. It is noticed that in case the enhanced STOA charges are upheld by the H.E.R.C even after hearing the appellant (s), the Distribution Licensee will be entitled to recover the amount for which the demand has already been raised against the appellant (s).

28. Till any such fresh order is passed by respondent-H.E.R.C, the Distribution Licensee will not pursue the demand of money from appellants qua revised and enhanced charges which has already been raised.

29. All the present appeals are disposed of accordingly.

30. Pending applications, if any, shall also stand disposed of.

**(HARSIMRAN SINGH SETHI)
JUDGE**

**(VIKAS SURI)
JUDGE**

**September 15, 2025
archana**

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No