

**BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY
COMMISSION, SHIMLA**

Appeal No. 149/07

Appeal against the order dated 7th April, 2007 passed in case No. 13 of 2006, by the H.P. Electricity Ombudsman

(Date of decision 17.11.2007)

The H.P. State Electricity Board
Appellant

Through Sh. Bimal Gupta
Advocate

V/s

M/s Amar Roller Flour Mills,
30, Industrial Area, Sector-1,
Parwanoo, Distt. Solan (H.P.)

Through Sh. Rahul Mahajan
Advocate

Respondent.

ORDER

[This appeal was last heard on 27.10.2007 and the
decision thereon was reserved]

This is an appeal filed by the H.P. State Electricity Board (in short “the Board”) against the order dated 7th April, 2007, passed in case No. 13 of 2006 by the H.P. Electricity Ombudsman. M/s Amar Roller Flour Mills, Parwanoo (in short “the Firm”) aggrieved by the decision dated 26.6.2006 in complaint No. 1421305004 passed by the Forum for Redressal of Grievances of Consumers (in short “the Forum”) set up under the H.P. Electricity Regulatory Commission (Guidelines for Electricity of Forum for Redressal of Grievances of Consumers) Regulations, 2003, (in short “the said regulations”) moved a representation to the Electricity Ombudsman under regulation 13 of the said regulations.

Facts of the Case

2. The brief facts, as gathered from the documents produced before this Commission, are that the complainant Firm has been provided with an electricity connection by the licensee viz. the Board. An Application and Agreement Form was executed on 20.2.1981 by the Board and the complainant Firm, wherein both the parties agreed to a 435 KW contract demand.

3. As per this Commission directions, the account of respondent firm was overhauled w.e.f. 1.11.2001, taking into account the contract demand of 435 KW, which was applied by the respondent firm and sanctioned by the appellant Board, initially at the time of release of electricity connection. On 11.5.2005, demand

charges of Rs. 9,09,284/- were raised by the Board against the respondent Firm, taking into account the contract demand of 435 kVA.

4. The Firm challenged the demand of Rs. 9,09,284, before the Forum, praying for setting aside the demand charges and for directing the Board to levy demand charges on the basis of contract demand of 300kVA as per respondent Firm's letter dated 16.11.2001 to the AEE Parwanoo. The Forum, after hearing both the parties, held that the account of the Firm be overhauled w.e.f 1.11.2001 to Feb., 2003; by considering the contract demand at 300kVA, for the billing months of Nov., 2001 & Dec., 2001; and 352 kVA for billing months of January, 2002 onwards upto the date of disconnection i.e. Feb., 2003.

5. The Board challenged the Forum's order stating that the directions of the Forum to overhaul the accounts on the basis of the contract demand at 300 kVA for 11/2001 & 12/2001; and at 352 kVA for 1/2002 to 2/2003, is wrong, illegal and is based on surmises and conjectures. It is alleged that the Forum has misread and misinterpreted the letter dated 16.11.2001 and it has come to the conclusion that the Firm had revised the contract demand as 300 kVA in this letter. In fact the letter dated 16.11.2001 was for enhancement of load to 452 KW with contract demand of 300kVA. Though the load was enhanced to 452 KW but contract demand was not revised. Even then the Forum has take the contract demand of the Firm at 300 kVA w.e.f November, 2001 onwards. The Forum though observed that the contract demand of the Firm was sanctioned at 435 kVA and rejected the pleas of the Firm that it had not filled the contract demand in A&A Form dated 20.2.1981, but still on assumptions and presumptions and misinterpretation of documents, has wrongly, in slipshod manner, allowed the complaint.

6. In addition to the submissions, as set out in the proceeding para, the Board prayed for condonation of delay in filing the representation before the Electricity Ombudsman, stating that the copy of the Forum's order dated 26.6.2006 was received by the Counsel for the Appellant on 26.6.2006 and the copy of the same was sent on the next day to respondent No.2 i.e. the Superintending Engineer (Op) Circle, HPSEB, Solan (H.P.) on 27.6.2006. The matter was examined at various levels in the office (including the Legal Cell) of the Board and after going through the said process, the Board decided to agitate the matter further in appeal before the Electricity Ombudsman. The final decision to file the appeal is stated to have been taken in the last week of the month of Oct., 2006 and the relevant papers including the copy of the impugned order, was sent to the Counsel for preparation of appeal. The appeal in question was prepared on 7.11.2006 and was

stated to be sent to the Legal Cell of Board for vetting. After vetting, the appeal was redrafted and filed before the Electricity Ombudsman on 29.11.2006. The Board further submits that the delay in filing the appeal was neither intentional nor willful but was due to reasons stated above and the Board has gained nothing by making the appeal time barred.

7. Prior to proceeding with the appeal on merits, the Electricity Ombudsman felt itself duty bound to decide the application for condonation of delay in filing the appeal before it. While deciding the application for condonation of delay the following issues were framed:-

Issue No. 1. Whether the provisions of the Limitation Act would apply to the Quasi-judicial or statutory authority like Ombudsman adjudicating the matter?

Issue No.2. Whether the application for condonation of delay made under Section 5 of the Limitation Act before the authority such as H.P. Electricity Ombudsman can be converted and taken as “a petition for condonation of delay for filing the appeal as per Regulations framed by the HPERC”?

Issue No3. Whether the HPSEB is a State under Article 12 of the Constitution of India and is to be treated at par with other litigants/private individuals, or being a State is to be given a separate treatment because of its being a body impersonate and prone to the functioning under a beaurocratic and file pushing culture?

Issue No.4. Is the word “satisfaction” mentioned in the Regulation while seeking extension for the period of delay is synonymous with the word “sufficient cause” mentioned in the Limitation Act and would apply mutatis mutandis?

8. After hearing the arguments the Electricity Ombudsman concluded that the provisions of the Limitation Act would not apply for seeking extension of time period, for filing the petition before the H.P. Electricity Ombudsman because the Electricity Ombudsman is not a court defined as such and draws its authority from the Regulations framed by the Commission. Satisfactory explanation for the cause of delay is a condition prescribed for exercise of the extra-ordinary discretion vested in the Electricity Ombudsman under the Regulations. What count is not the length of the delay but the satisfactorily explanation of delay to be taken into account while exercising this discretion. The true guide for the authority to exercise the discretion is whether the applicant has acted with reasonable diligence in prosecuting the appeal. The plea that the application made under section 5 of the Limitation Act, 1963 should not be applicable to the H.P. Electricity Ombudsman and should be rejected on the ground that it has been made under the Limitation Act and not under the Regulations framed by the Commission for seeking extension of time in delay for filing the appeal cannot be accepted. There is no doubt that the Govt. decisions are taken by the Officers at a

slow pace and incumbent process of pushing the files from one table to another and keeping it on the table for considerable time causing delay due to procedural red-tape in the process of their taking decision is a common known feature. Even the liberal consideration for condoning the delay cannot absolve the Govt. from its duty by making appeal in time and also explaining the delay to the satisfaction of the authority which has got powers to condone it. The Board is essentially and basically a commercial organisation which should be run on the sound commercial principles of efficiency and promptness and not on the file pushing culture. To the Ombudsman plea of liberal construction of the explanation i.e. "Sufficient cause" as advanced by the Board appeared to ignore totally the public policy on which the law of Limitation is founded and thereby to defeat the very purpose of the law of Limitation. Therefore, the authority must at least be satisfied that the party has shown the existence of certain facts and circumstances which constitute a cause which can liberally be held to be the sufficient cause for condoning the delay.

9. The conclusion reached by the Electricity Ombudsman is that the reason for condonation of delay is very vague and not convincing and the Board has failed to satisfy him regarding the diligence and efforts in filing the appeal in time. The delay of 5 months and 3 days in filing the appeal even by taking a lenient view is not condonable, especially when the Board has failed to satisfy him regarding the reasons for the delay except by mentioning some vague office procedure.

10. The present appeal has been moved by the Board to set aside the order dated 7th April, 2007 passed by the Electricity Ombudsman and to condone the delay for moving an application before the Electricity Ombudsman and remanding the matter to the Electricity Ombudsman for deciding appeal in accordance with the law.

Discussion and Analysis

11. In the Memorandum of appeal, filed before this Commission, the Board has added nothing more than which has already been stated before the Electricity Ombudsman excepting that Sh. Bimal Gupta, Advocate, appearing for the Board, orally supplements that in this case petition could not be filed before the Electricity Ombudsman in time for the reasons that the said Advocate himself failed to take timely action in drafting and filing the petition. He argues that on account of his inaction (i.e. lawyer's fault) the damage will be caused to the public interest and public funds if the application for condonation of delay is not allowed. The said Learned Counsel, therefore, prays that by taking a liberal view,

delay in filing the petition may be condoned, as substantial public amount is involved.

12. The mistake of Counsel may in certain circumstances be taken into account in condoning delay although there is no general proposition that mistake of a Counsel by itself is always sufficient ground. It is always a question whether mistake was bonafide or was merely a device to cover an ulterior purpose such as laches on the part of the party to the proceedings or an attempt to save limitation; and it is for the Court to see whether in a particular case the mistake of the Counsel can be accepted as a sufficient reason for condoning delay. The settled position of law is that any and every mistaken advice/inaction of the Counsel cannot be recorded as a sufficient cause. The mistake alleged must be bonafide, that is, it must have emerged inspite of due care and attention being paid. To give benefit to the litigant, on account of mistakes, committed by his or her legal advisor, the conduct of the lawyer must be examined and scrutinized carefully and this must be determined with reference to the facts and circumstances of each particular case. It is also a well settled law that the party is not completely absolved of all its responsibilities and not automatically becomes entitled to protection, merely by entrusting all its work to a very worthy lawyer. The initial burden is upon the person, who wants extension in limitation to show that he acted with due care and attention and was not negligent or careless. Moreover, the court is to examine and scan the conduct of the lawyer. If on scrutiny, it is found that the conduct of the lawyer was palpably negligent and the plaintiff is to suffer for the conduct of the Counsel, the condonation of delay can be considered.

13. On the totality of the facts and circumstances of the case and from the relevant dates, it is evident that the Forum decided the complaint on 26.6.2006 and the copy of the order was received by the Counsel for the Appellant Board on the same day and the copy of the order was sent to respondent No.2 i.e. the Superintending Engineer (Op) Circle, Solan, on the next day i.e. on 27.6.2006 and the decision to file the appeal was taken by the Board officers in the last week of the month of Oct., 2006 i.e. approximately after the expiry of 4 months, i.e. to say the matter has already badly become time barred. In view of this, the question of any dereliction on the part of the Board's Counsel does not arise at all and the statement made by him does not corroborate with the pleadings before the Learned Electricity Ombudsman as well as the contents of the Memo of Appeal filed before this Commission. There can be no dispute with the proposition that expression "sufficient cause" is required to be interpreted liberally. But that cannot be construed to mean that the Commission should ignore and overlook the negligence, inaction and want of bonafide by a party wanting to invoke its

jurisdiction. A claimant is expected to be prompt in pursuing his cause. In this case the copy of the judgment was also sent, on the very next day when it was announced, to the officers of the Board. The date of communication of the order becomes the date of knowledge of the Order. The sufficiency of the cause and reliability of cause are two different things. In this case cause shown is not entirely credible.

14. The petition/representation to the Electricity Ombudsman has been made under Regulation 13 of the said Regulations, which reads as under:-

“13. Representation to the electricity Ombudsman:- Any person aggrieved by an order made by the Forum may make a representation for the redressal of his grievance to the Electricity Ombudsman within a period of forty days from the date of the order, in such form and manner as may be specified by the Commission:

Provided that the Electricity Ombudsman may entertain a representation after the expiry of the said period of forty days if he is satisfied that there was sufficient cause for not making the representation within that period:

Provided further that the Electricity Ombudsman shall not entertain the representation made by any party, which is required to pay any amount in terms of an order of the Forum, unless the person making the representation has deposited, in the manner as may be specified by the Commission, fifty per cent of that amount.

15. The Electricity Act, 2003 is a special law. Sub-section (2) of section 29 of Limitation Act, 1963 provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 5 of the Limitation Act shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law. In a case the Punjab State Electricity Board Versus Radha Steel Rolling Mills Mandi (AIR 2000 P&A 94 at page 97) it has been concluded that a preposition of law which emerges from the decisions is that provisions of the Limitation Act, 1963 apply to the proceedings in the Courts not to the appeals, applications etc., filed before tribunals and quasi judicial authorities notwithstanding the fact that such tribunals and authorities may be vested with certain powers under the Code of Civil Procedure or the Code of Criminal Procedure and their proceedings may be akin those of the Courts. Therefore, it hardly makes any difference whether the application has been moved under section 5 of the Limitation Act, 1963 or under proviso to regulation 13 of the Regulations (ibid). To obtain the extension in time by invoking the said

provisions, the party seeking the extension has to satisfy the Court (the authority) that it had sufficient cause for not filing appeal within the prescribed period. There is no denying in that the court is required to take a broad view in the matter of condonation of limitation so as to advance the cause of justice. However, the very enactment of laws relating to limitations postulates that the parties concerned are supposed to follow their matters with due diligence. Organizations which are commercial entities should be more vigilant in prosecuting their claims/causes. The Apex Court in its verdict given in the West Bengal Versus Administrator Howrah Municipality AIR 1972 SC 749 , have also laid that the word “sufficient cause” should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bonafide is imputable to the party. In the present case the element of negligence or inaction on the part of the authorities of the Board is not ruled out at all. Thus on the plea of the liberal interpretation, the law of limitation cannot be set at naught. In a recent case S.R.Batra V/s Taruma Batra, ARR 2007 SC 1118, the Hon’ble Supreme Court, have reiterated that it is well settled that any interpretation which leads to absurdity should not be accepted. While disposing of the similar issue in appeal case No. 91/07. HPSEB V/s M/S Super Plateck Pvt. Ltd. decided on 26.5.2007 this Commission has already declined to condone the delay.

Conclusion

In light of the above it can be safely concluded that the learned Electricity Ombudsman has not committed any error which could be said to be in exercise of the jurisdiction, illegality or with material irregularities. Hence the Commission finds no reasons to interfere with the impugned order dated 7th April, 2007 and dismisses the appeal.

Announced in the open court.

File be consigned to the record room.

(Yogesh Khanna)
Chairman.