

BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION,
SHIMLA

(Appeal No. 230/07 decided on 4th Jan., 2008)

In re:

M/S Auro Spinning Mills
(A Unit of Vardhman Textiles Ltd
formally known as Mahavir Spinning Mills Ltd.
with its Registered Office at Chandigarh Road,
Ludhiana, Punjab)
Sai Road, Baddi, Tehsil Nalagarh,
Distt. Solan, Himachal Pradesh,
Through its Authorised Signatory Sh. Satish Mehta

... Appellant.

Versus

1. The Himachal Pradesh State Electricity Board,
Kumar House, Shimla-171004
(through its Secretary)
2. The Chief Engineer (Op) South,
HPSEB, Vidyut Bhawan, Shimla-171004
3. The Superintending Engineer (Op) Circle,
HPSEB, Solan, H.P.
4. The Senior Executive Engineer,
HPSEB, Parwanoo, H.P.
5. The Assistant Executive Engineer,
Electrical Sub Division,
Baddi/Barotiwala, Distt. Solan, H.P.

... Respondents

Counsels for Appellant

Sh. Rakeshwar Lal Sood
Sh. Rajesh Kashyap
Sh. Vikas Rajpur
Sh. Sanjeev Kumar
Sh. Arun Lal,
Advocates

Counsel for Respondents

Sh. Bimal Gupta,
Advocate

Order

This appeal under regulation 12-A of the Himachal Pradesh Electricity Regulatory Commission (Electricity Ombudsman) Regulations, 2004 is directed against the order dated 22nd Sept., 2007 (hereinafter referred as “the impugned order”) passed by the H.P. Electricity Ombudsman in case No. 11 of 2006 i.e. representation made to the Electricity Ombudsman by the HPSEB and its officers (hereinafter referred as “the respondents”) under regulation 13 of the HPERC (Guidelines for Establishment of Forum for Redressal of Grievances of Consumers) Regulations, 2003, whereby the Electricity Ombudsman has set aside the decision of the H.P. Forum for Redressal of Grievances of Consumers (hereinafter referred as “the Forum”) given on the complaint made by M/S Auro Spinning Mills Limited (hereinafter referred as “the appellants”)

2. The appellant (M/S Auro Spinning Mills Ltd) is a registered Large Supply Consumer of electricity with the respondent Board and has been provided with an electrical connection under account No. BS-I, with contract demand of 17446 KVA and was having permission of peak load exemption to the extent of 1.924 MVA. In the energy bill issued on 7.2.2006, demand charges of Rs. 68,87,068 (after adjusting Rs. 10,86,680, which was lying with the respondent Board) was created as sundry charges of the respondent Board on account of PLVC for overdrawal during peak load hours from July, 2000 to Dec., 2000, on the basis of MRI data of the meter installed at the sub-station on the dedicated feeder supplying power to the appellant firm. The appellant challenged before the Forum the demand of Rs. 79,73,748 (including adjustment of Rs. 10,86,680) on account of overdrawal of load during peak hours, for 7/2000 to 12/2000 on the basis of meter at the sub-station installed on the dedicated feeder supplying power to the appellant firm. The Forum, after hearing both the parties, held that the Board has levied energy consumption charges only on the basis of meter installed at the consumer premises and as such it was justified in levying PLVC based upon sub-station meter readings for the first month of alleged violation only in July, 2000, for the reason that it could detect peak load violations only after a period of one month when normally meter readings are taken. The claim of the respondent

Board for subsequent months of peak load violations i.e. Sept., 2000 to Dec., 2000 was disallowed, as it had failed to inform the appellant through proper notice that it, in the absence of such facility at the meter installed at the appellant's premises, intended to rely on the meter readings of sub-station meter for alleged peak load violation, and thus affording the appellant an opportunity to control/restrict his load and avoid peak load violation charges. Thus in the result the Forum allowed the claim of PLVC only for first month of alleged violations i.e. 7/2000 amounting to Rs. 11,14,093 and disallowed the claim for PLVC for other subsequent months. The respondent Board further was directed to withdraw the sundry charges in the energy bill dated 7.2.2006, amounting to Rs. 68,87,068.

3. Aggrieved by the order dated 4.8.2006 of the Forum, the respondent Board made representation to the Electricity Ombudsman for setting aside the directions given by the Forum. The Learned Electricity Ombudsman, after going through the petition, rejoinder, Forum's order and the arguments of both the parties in the hearings, vide his order dated 22.9.2007 set aside the Forum's order dated 4.8.06 and upheld the demand of PLVC of Rs. 68,87,068/-, raised by the respondent Board for the period July, 2000 to Dec., 2000. The present appeal before this Commission is directed against the said Order of the Learned Electricity Ombudsman.

4. Sh. Rakeshwar Lal Sood, Learned Counsel for the appellant has submitted that the impugned order is bad in law, as under sub-section (6) of section 42 of the Electricity Act, 2003 (hereinafter referred as "the Act") the Board had no right of appeal. Consequently the appeal was neither maintainable nor could be entertained by the Ombudsman. Although the Ombudsman had framed an issue whether the appeal was maintainable or not, yet the Electricity Ombudsman failed to adjudicate upon the same. Moreover, the cross objections filed by the appellant, before the Ombudsman have also not been considered by him.

5. Sh. Bimal Gupta, Learned Counsel for respondent though sought time, yet has preferred not to file the Board's response.

6. The basic question which arose for consideration of the Learned Ombudsman was whether the respondent Board can approach the Learned Ombudsman under sub-section(6) of section 42 of the Act to set aside the

order of the Forum set up under section 42(5) of the Act. The question has already been considered and decided by Division Bench of the Delhi High Court in cases of Suresh Jindal V/s BSES Rajdhani Power Ltd; and Dheeraj Singh V/s BSES Yamuna Power Ltd; (2006) DLT 339 (DB) approved by the Hon'ble Supreme Court in its decision given in civil appeal No. 3551 of 2006 the Maharashtra State Electricity Distribution Co. Ltd V/s Lloyds Steel Industries Ltd JT 2007 (10) SC 375. A complete machinery has been provided in sub-section (5) & (6) of section 42 of the Act, 2003 for redressal of grievance of individual consumers. Thus where a Forum/Ombudsman have been created the consumers can only resort to these bodies for redressal of their grievances. Aforesaid decisions lay down the law when an individual consumer has a grievance he can approach the Forum created under sub-section (5) of section 42 or he, when is still aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for redressal of grievance to the Ombudsman under sub-regulation (6) of section 42 of the Act. On the face of the express provisions of the Act, the Learned Ombudsman, should have considered and decided the question of maintainability of appeal, raised before him and should also have disposed of the cross objection filed by the appellant firm.

In the result, the Commission remits this matter to the Learned Electricity Ombudsman for his reconsideration in the light of the provision of sub-section (5) & (6) of section 42 of the Electricity Act, 2003 and the disposal of cross objections raised by the Appellant.

Pronounced in open Court on the 4th Jan., 2008.

(Yogesh Khanna)
Chairman.