

BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY  
COMMISSION, SHIMLA

Appeal No. 91/07

Appeal against the order dated 3.3.2007 passed in case No. 10/2006 by the Himachal Pradesh Electricity Ombudsman

(Date of decision 26.05.2007)

The HP State Elec. Board, Shimla  
Appellant

Through Sh. Bimal Gupta,  
Advocate.

V/S  
M/ Super Plateck Pvt. Ltd  
Respondent

Through Sh. O.C. Sharma  
&  
Sh. R.S. Thakur, Advocates

**ORDER**

This is an appeal filed by the State Electricity Board ( in short “the Board”) and its officers against the order dated 3.3.2007 passed in case No. 10/2006 by the HP Electricity Ombudsman. M/S Super Plateck Pvt. Ltd. Parwanoo (in short “The Firm”), aggrieved by the decision of 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.

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, under the category of the LS. An Application and Agreement Form was executed by Board and the complainant Firm, wherein both parties agreed to a 488 KW of contract demand. The extension of load was also allowed from 255KW to 480 KW with contract demand of 480KW on 25.5.2005. On 27.5.2005 demand charges of Rs. 11,83,000/- were raised by the Board against the Firm and the said amount was

reflected as sundry charges in the month of June, 2005 of the energy bill issued on 6.7.2005. The Firm approached the Forum for setting aside the demand charges and directing the Board to levy the demand charges on the basis of maximum recorded demand w.e.f. 1.11.2001 or in the alternative to levy the demand charges based upon contract demand of 300 KVA and to refund the excess amount charged by the Board. The Forum after hearing the both parties held that the account of the Firm be overhauled w.e.f 1.11.2001 to May, 2003 by considering the contract demand at 533 KVA and from June, 2003 onwards, the same may be considered at 267 KVA and demand charges be levied by considering the maximum recorded demand in KVA and 80% of the contract demand whichever is higher as per the tariff applicable at the relevant time.

3. 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 533 KVA is wrong, illegal, based upon surmises and conjectures. The Firm has itself entered into a contract demand of 488 kw in A&A Form which was duly sanctioned by the Board on 3.8.2000 wherein extension of load was allowed from 255KW to 480 KW with contract demand of 480KW. The Firm has at no point of time applied for contract demand, save and except, in the month of March, 2004, when it was applied for 267 KVA. The Board has further stated that Forum has wrongly come to the conclusion that since prior to 1.12.2001, there was no provision of contract demand in KLW, as such the Board should have asked the Firm for contract demand in KW after revised tariff w.e.f. 1.11.2001. The Forum has also erred in not appreciating the fact that the A&A Form was filled in by the Firm on 3.8.2000 and from this date till the date of filing of the complaint before the Forum on 8.8.05 the firm has never raised this issue.

4. In addition to the submissions, as set out in preceding para, the Board prayed for condonation of delay in filing the representation before the Electricity Ombudsman, stating that the copy of the Forum order dated 17<sup>th</sup> December, 2005 was received by the Counsel of the Board on 7.3.2006 and the copy of the same was sent to the Superintending Engineer, (Operation Circle), HPSEB, Solan i.e. respondent No.2 on 10.3.2006. 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 month of October, 2006 and the relevant papers including the copy of the impugned order was sent to the Counsel for preparation of appeal, which was prepared on 29.10.2006 and was stated to be sent to the legal cell of the Board for vetting. After vetting the appeal was redrafted and filed before the Ombudsman. The delay in filing the appeal was neither intentional nor willful but due to reasons stated above. The Board has gained nothing by making the appeal time barred.

5. Prior to proceeding with the appeal on merits, the Electricity Ombudsman felt itself duty bound to decide the application for condonation of delay in filling 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?

6. 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 encumbent process of pushing the files from one table to another and keeping it on the table for considerable time causing delay of procedural red-tape in the process of their taking decision is a common known feature. Even the liberal consideration for condoning the delay by the Govt 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 of condoning the delay.

7. The Electricity Ombudsman has reached to the conclusion that the reason for condonation 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 8 months and 3 days in filing the appeal even by taking the lenient view is not condonable especially when the Board has failed to satisfy him for the reasons for the delay except by mentioning some vague office procedure.

8. The present appeal has been moved to set aside the order dated 3.3.07 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 of the law.

9. With the back ground, as set out in the preceding paragraphs, the matter has been listed for admission hearing before this Commission today. Sh. Bimal Gupta the learned Advocate appearing for the Board has added nothing more than which has already been stated before the Electricity Ombudsman. 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.

10. 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 3 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 (abid). 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 prescribed period. There is no denying in that 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. The organization 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.

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 3<sup>rd</sup> March, 2007 and it declines to entertain it.

Announced in the open court.

File be consigned to the record room .

(Yogesh Khanna)  
Chairman.