

HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA

In the matter of draft amendments of the Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) (First Amendment) Regulations, 2019.

CORAM

Sh. S.K.B.S. Negi

Chairman

Sh. Bhanu Pratap Singh

Member

ORDER

The Himachal Pradesh Electricity Regulatory Commission notified the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 on 23rd January, 2013 and the same were published in the Rajpatra on 28th January, 2013 (hereinafter referred as “the Principal Regulations”). The said regulations came into force from 28th day of January, 2013;

2. The CGRF and Ombudsman expressed some difficulties being faced by them in disposing the grievances under the provisions of the said regulations;
3. M/s Parwanoo Industries Association also apprised the Commission about the need to rationalise some of the provisions of the said regulations especially in relation to the rate of interest in cases where the licensee is required to refund the amount unduly recovered from the Complainant;
4. The Commission also found it appropriate to fix some fees to be paid by the Complainant while making a representation to the Ombudsman for the redressal of his grievance;
5. Taking into consideration the above, the Himachal Pradesh Electricity Regulatory Commission in exercise of the powers conferred under Clauses (r) and (s) of sub-section (2) of section 181, read with sub-sections (5) to (8) of section 42, of the Electricity Act, 2003 (36 of 2003) and all other powers enabling it in this behalf, proposed draft regulations to amend the Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013;
6. As required vide sub-section (3) of the section 181 of the Act read with Rule (3) of Electricity (Procedure of Previous Publication) Rules, 2005, the Commission invited public objections and suggestions on the draft amendment regulations by way of insertions in two News papers i.e. “Divya Himachal” and “The Tribune” on 28th September, 2019. The full text of the draft amendment

regulations was also made available on the Commission's website: www.hperc.org;

7. The Commission, vide letter dated 28.09.2019, also sent copies of the public notice to the major stakeholders, including Industries Associations, State Government, Directorate of Energy and Distribution Licensee and requested them to send their objections/suggestions;
8. The Commission received the comments/suggestions, on the aforesaid draft amendment regulations from the following stakeholders:-
 - i) M/s Parwanoo Industries Association
 - ii) Himachal Pradesh State Electricity Board Limited.

After going through the written submissions, we proceed to analyse the various suggestions which has been considered to be relevant to the amendments proposed in the draft regulations as follows:-

(I) Amendment of regulation 17:

The Comments of M/s Parwanoo Industries Association are as under:-

They have stated that even though the proposed amendment to the effect that the complainant should file the complaint in triplicate, is not being objected to by them, other states such as Punjab, Haryana and Delhi do not require the complaint to be filed in triplicate.

They have further submitted that even though the present regulation does not require that the consumer should send the copies of the complaint to respondents also, the Forum does not accept a complaint unless and until the complainant has submitted a proof of dispatch of copies of complaint to the concerned sub-division and other parties and the Executive Director of HPSEBL. It has also been mentioned that none of the other states insist on this procedure and that the Forum have to themselves seek reply from the concerned respondents, whom they think would be connected depending upon the nature of the complaint. The onus of deciding the respondents does not lie with the complainant. They have suggested that there should be a clear regulation in this regard.

Commission's View:

We are given to understand that in the absence of specific provisions about the number of copies of the grievance/complaint to be submitted, the Forum was insisting for three numbers of copies. The modification has been proposed to facilitate adoption of uniform procedure in this regard.

As regards the matter regarding supply of the copies directly to respondents, we feel that the objection raised by M/s Parwanoo Industries Association is reasonable to some extent. Accordingly, we feel that the Complainant should submit the copies of grievances/complaint in triplicate to CGRF, apart from one additional copy for each Respondent. The CGRF will further supply the copies of the grievance to the Respondent(s). The Complainant shall mention the complete detail of the Respondent(s) to whom such copies shall have to be supplied.

In view of the above, we decide to make the following notification in sub-regulation (1), namely:-

“(a) for sub-regulation (1), the following sub-regulation (1) shall be substituted, namely:-

“(1) The complainant may submit his grievance, either in person or through post, e-mail or fax or online through the website of the Forum, giving the particulars of his grievance as specified in ANNEXUR-II:

Provided that the Complainant shall, apart from three copies of his complaint/grievance for the use of the Forum, also submit to the Forum one additional copy for each of the respondents to be included as parties, either by Post or in person, even in cases where the representation is originally submitted through e-mail, fax or online :

Provided that all the copies of the complaint/grievance to be submitted in aforesaid manner shall be complete in all respects, including the Annexure etc. :

Provided further that the Forum shall take cognizance of the grievance based on merits of the case and will not reject any grievance for the sole reason of its not having been submitted in the specified format”; and

(b) in clause (b) of proviso to sub-regulation (4), after words “or fax” and before the sign “,” the words “or online through the website of the Forum” shall be inserted.”

(II) Amendment of regulation 18:

No comments have been received in this regard. As such, we decide to finalise the proposal made in the draft amendment regulations without any change.

(III) Amendment of regulation 23:

The Comments give by M/s Parwanoo Industries Association have been reproduced as under:-

“The proposed amendment seeks to specify the minimum cost of Rs. 1000/- for each adjournment, when a party approaches for

adjournment after the first adjournment without any sufficient cause. In the present regulation also, there is a provision for adjournment with cost, which is usually not exercised. The objector has apprehensions that even the fixation of minimum cost vide this amendment is not going to effect the delay in disposal of the complaints as the parties will continue to find reasons that will allow the Forum to grant such adjournment. We suggest that rather than providing for cost, it would be better for speedy disposal of complaints, to allow the Forum to stick to the time frame specified under the Regulations and proceed with decision on the basis of record and material available before them. Such a step can speed up the disposal of the complaints.”

Commission’s View:

The proposed Amendment now makes it mandatory for the Forum to charge minimum cost of Rs. 1000/- for each adjournment (except for the first request from either party) even though it was not mandatory to do so as per the Principal Regulations. This however, neither makes it mandatory for the Forum to allow the adjournment nor debars the Forum to charge higher cost. This also does not supersede, in any way, the provisions appearing in sub-regulation (3) of this regulation to the effect that no adjournment shall ordinarily be granted by the Forum, unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Forum. We agree that the charging of this minimum cost alone cannot ensure expeditious disposal of the cases but the same may certainly help in some cases. As such, the proposed amendment is only a positive step in the desired direction over and above the provisions already existing in the said regulations, according to which the cases are required to be disposed expeditiously.

In view of the above and also to provide more clarity, we decide to substitute the sub-regulation (4) of this regulation with the following, namely:-

“(4) In cases where the Forum decides to grant the prayer made by any of the party for adjournment, it shall also make an order as to the cost, occasioned by the adjournment, which shall not be less than Rs. 1,000/- for each adjournment, to be paid by the defaulting party to the non-defaulting party and /or to the Forum:

Provided that in case where the adjournment is sought by any party for the first time, no such cost shall be awarded.”

(IV) Amendment of Regulation 26:

a) M/s Parwanoo Industries Association have submitted as under:-

- (i) The amendment proposed in sub-regulation (2) in relation to interest rate payable by HPSEBL seems to be an effort to synchronize the rate of interest in reference with other Regulations. Hence, no comments.
- (ii) The amendments proposed in sub-regulation (5) in relation to timelines are a matter of record and need no objection/suggestion. Hence, no comments.
- (iii) The proposed Amendment in sub-regulation (7) is merely a shuffling of words and does not change the meaning of the regulations presently in force in any manner. However, we suggest that no review shall be allowed, except for a corrigendum in case of errors and typographic mistakes. The Regulations of other states i.e. Punjab, Haryana and Delhi, do not provide for any review. Review is another way of delaying the implementation of orders of the Forum.

b) Comments of HPSEBL :-

In relation to the proposal that the undue charges to the complainant shall be returned with the simple interest of 15 % per annum, HPSEBL has opined that the proposed rate is significantly high and instead of fixed interest rate, this rate may be aligned to MCLR of SBI.

Commission's View:

- a) No comments have been received in relation to the proposal for amendment in relation to sub-regulations (2) & (5) of regulation 26. The suggestion of M/s Parwanoo Industries Association with regard to the proposed amendment in the provision of sub-regulation (7) at item a (iii) above, we observe that the proposed provision has been made only for more clarity in the existing regulations. The review of the order passed by an authority, wherever warranted under certain specific situations, cannot be totally banned. As such, we decide to retain the provision of the draft regulations without any changes. In fact, such provision can benefit either party and is not aimed against any single category.

- b) As regards the comment made by HPSEBL about the rate of interest, The interest rate of 15% per annum proposed in draft amendment is in conformity with the provision made in para 5.7.3 of Himachal Pradesh Electricity Supply Code (second amendment) Regulations, 2018, issued vide notification dated 31st July, 2018. However, in case this rate is considered to be unduly higher, the HPSEBL can submit proposal to rationalise the relevant provisions in relation to all the situations where the amount is refundable/recoverable to/from the consumer under various situations.

Accordingly, we decide to finalise the proposals relating to this regulation, as made in the draft amendment regulations, without any change.

(V) Amendment of regulation 27:

Comments given by M/s Parwanoo Industries Association have been reproduced as under:-

“The omission of words “Non- Compliance of the order of the Forum shall be treated as violation of the Regulations of the Commission and accordingly liable under section 142 of the Act”, shall practically does not change anything as even in the absence of these words the non-compliance of orders of Forum would amount to non-compliance of the Regulations and shall become liable for action under section 142 of the Act. Compliance of orders is the major issue and cause of concern to the consumers nowadays. The consumers are presently facing a great deal of difficulty in getting the orders issued by the Forum implemented by the officers of the licensee. The officers keep shifting the responsibility of compliance from one level to the other level, each of them maintaining that they are not the competent authorities to decide whether to implement the order of CGRF or not. The exercise takes a lot of time seeking approval of different levels upto the level of Chief Engineer and finally the legal cell, who gives the legal opinion. Even after obtaining legal opinion months pass in processing the payment /refund to the consumers.

There is a need to notify a mechanism for implementation of the orders of the CGRF and Ombudsman as the officers of the licensee draw a blank when it comes down to deciding who is the competent authority who will authorize the payment of any refund ordered by CGRF/ Ombudsman. A detailed circular detailing the procedure to be adopted when a decision is issued is the need of the hour. As consumers, we

feel that the authority of the CGRF is in no way less than the authority of another Chief Engineer of the Board. Therefore, there should be no need of taking further approvals on implementation of orders, which is the actual reason of causing delays in implementation. Or else the consumers will be required to approach the Commission time and again to institute enquiries/ investigations into non-implementation of the orders of CGRF/Ombudsman.”

Commission’s View:

The intention to omit the related provision from regulation 27 is to remove the possibility of contradiction with the existing provisions of regulation 28 of the principal regulations. We find it appropriate that the person/complainant who is aggrieved with non implementation of CGRF orders should, in the first instance, prefer a representation before the Ombudsman appointed/designated by the Commission. In case he is not satisfied with the action of Ombudsman, the complainant may approach the Commission under section 142 of the Act.

As regards the delays in implementation of CGRF /Ombudsman orders, which are stated to be due to the internal processes of HPSEBL, we observe that the Commission has already advised the HPSEBL to prepare uniform procedure for early disposal of the orders of CGRF and ombudsman and now also expect them to take appropriate steps expeditiously in this regard. However, the suggestion does not have any direct relevance with the proposed amendments.

Accordingly, we decide to finalise the proposal made in the draft amendment regulations without any change.

(VI) Amendment of Regulation 32:

The Comments given by of M/s Parwanoo Industries Association are reproduced as under:-

“The proposed amendment seeks levy of fees for filing a representation before the Electricity Ombudsman. We strongly object the levy of such fee as it shall have a discouraging effect on the consumers to seek justice on the matters decided by the Forum. The very purpose of consumer advocacy shall get defeated by enforcing such fees. There should be no fee for making a representation. The neighbouring states of Punjab, Haryana and Delhi have not levied any fee for filing representation before the Ombudsman. We suggest that the proposal of levying fee may not be allowed as it is not pro-consumer.

In addition to above, we have to submit that if any fee is allowed to be paid for filing of representation, then the electronic mode of payment i.e. NEFT must be allowed.”

Commission’s View:

We feel that the proposed fee is very nominal and justified. As regards the suggestion that the fee should be allowed to be deposited through NEFT, we observe that the provision to deposit the fee through electronic mode has already been made in the draft amendment regulations.

In view of the above, we decide to finalise the proposal made in the draft amendment regulations without any change.

(VII) Amendment of Regulation 37:

The Comments of M/s Parwanoo Industries Association are as under:-

They have submitted that the Amendment in sub-regulation 37 proposed is merely a shuffling of words and does not change the meaning of the regulations presently in force in any manner. They have also suggested that no review should be allowed, except for a corrigendum in case of errors and typographic mistakes.

Commission’s View:

We observe that a similar issue in relation to review of orders of the CGRF has already been discussed in sub-para (IV)- ‘Amendment of regulation 26’ of this para of this order. For the reasons similar to those discussed in the said sub-para, we decide to finalise the proposal made in the draft amendment regulations without any change.

(VIII) Amendments of Annexure-I, Annexure-II :

No comments have been received in this regard. As such we decide to finalise the proposal made in the draft amendment regulations without any change.

(IX) Amendments of Annexure-IV :

Even though no comments have been received on this item, we feel that it may not be necessary to carry on the amendment proposed in the draft amendment regulations in this regard.

The amendment regulations are finalized and approved as such and be notified accordingly.

Sd/-
(Bhanu Pratap Singh)
Member

Sd/-
(S.K.B.S. Negi)
Chairman

Place: Shimla.
Dated:23rd November, 2019.