

HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
SHARMA SADAN, BEHIND KEONTHAL COMPLEX, KHALINI, SHIMLA-171002

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Case No.04 of 2019

In the matter of:

M/s .Milestone Gears (P) Ltd.

Applicant/Representationist

Versus

1. **The Executive Director (Personnel)** H.P.State Electricity Board Ltd.,Vidyut Bhawan, Shimla-4
2. The Asstt. Engineer, Electrical Sub Division HPSEBL, Barotiwala (H.P.).
3. The Sr. Executive Engineer, Electrical Division, HPSEBL, Baddi (HP).

.....Respondents

And

In the Matter of

Representation under Regulation 28 of HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulation 2013 against the Order dated 22.10.2019 passed by the Consumers Grievances Redressal Forum of HPSEBL, Shimla-9 (H.P.) in Complaint No.1454/2/19/015, titled as **M/s .Milestone Gears (P) Ltd.V/s HPSEBL** through their Counsel.

Present for:

Applicant: Sh.Rakesh Bansal

Respondent: Sh. Er.Parvinder Singh, SDO.HPSEBL. Barotiwala

(ORDER)

(Last Heard on 30.12.2019)

Heard.Taking into consideration, the arguments exchanged by representatives of both the parties during the course of hearing and the Application/ Petition and Additional submission in support of Review petition/ application filed by the Applicant/ Respondent Board in context of the Order dated 22.10.2019 passed by the Consumers Grievances Redressal Forum of HPSEBL, Shimla-9(H.P) in Complaint No.1454/2/19/015, titled as **M/s .Milestone Gears (P) Ltd.V/s HPSEBL** through their Counsel.

Complainant's Contention:

1) On 07.06.2012, M/s Milestone Gears (P) Ltd. purchased land and building at Village Jharmajri, Baddi-Barotiwala Road, Baddi, in an auction, from UCO Bank, Barotiwala, who had acquired the same under SARFAESI Act from the earlier owner of the Plot i.e. M/s S R Forgings Ltd. The bank auction letter is placed at Annexure C1 of complaint filed with Forum. The complainant, thereafter, started taking steps for setting up his manufacturing unit for manufacturing of steel Forgings, gears, tractor parts etc. and applied for a power connection to the respondents and a sanction was accorded by the respondents for 950KW with 950 KVA of contract demand vide the respondents' sanction letter dated 14/01/2013 (Annexure C2 of complaint) after completing the codal formalities. During the process of load sanction, the SE(OP), Solan, made an observation that a sum of Rs.22,17,901/- which was laying due from the earlier owner/ occupier of the property. i.e. S.R. Forgings Ltd. and the same could be recovered from the complainant who had approached for a fresh connection on the same property/premises. The complainant paid the said dues of M/s S R Forging amounting to Rs. 26,00,489/-, including interest under protest on 06.12.2012 (Annexure C3). The respondents contravened the provisions of the Supply Code, 2009, which clearly restricts the respondents from recovering the due of previous occupier of a property from the next occupier. The complainant waited for a long time and wrote several letters, even upto the level of Chairman of the HPSEBL, but there was no redressal in the matter.

The complainant, amongst other grounds, sought redressal of his grievance as undue recovery has been made from him by the respondents, specifically on the following grounds;

i) The respondents had contravened the provision 5.2.13 of the Supply Code, 2009, which is reproduced as under;

The respondents were bound under the law as the provisions of the Supply Code, 2009 were notified by Himachal Pradesh Electricity Regulatory Commission under the powers conferred to it by the Electricity Act, 2003.

ii) The respondents had used their monopolistic position while providing power connection, being the sole electricity distributor in the region as the complainant was left with no option, once he had made the huge investments.

iii) The Forum in similar cases had earlier given relief, one such instance of which was attached at Annexure C4 of this complaint. In complaint number 1453/1/17/018 M/s Alaina Healthcare Pvt. Ltd Vs HPSEBL, the Forum held that as per Clause 5.2.13 of the Supply Code, the dues of previous occupier cannot be recovered from next occupier. The dues of the original defaulter be recovered from the original defaulter by way of recovery suit in the competent court. The complainant pleaded that he was also entitled for similar relief in the interest of natural justice.

2) The complainant filed grievance with the Consumer Grievance Redressal Forum of HPSEBL seeking relief as follows.

a) To quash and set aside the recovery of outstanding dues of Rs. 26,00,489/- previous occupier i.e. S R Forgings Ltd.

- b) To pass orders that the amount of Rs. 26,00,489/-, deposited by the complainant under protest be refunded along with interest as per provisions of Regulation 5.7.3 of the Supply Code and Regulation 26 of the CGRF Regulation, 2013.
- c) Cost of the complaint amounting to Rs. 1,00,000/-.
- d) Call for the record of the case.
- e) Any other or Further orders which this Hon'ble Forum may deem fit and proper, in the facts and circumstances of the case may kindly be passed in favour of the complainant company and against the respondents/ distribution licensees.

3) The CGRF ordered relief as per para a) of the prayer, but have not addressed the other reliefs sought by the complainant company particularly the interest on extra amount charged in the electricity bills as per 5.7.3 of the Supply Code 2009 and towards cost of the complaint. There is no specific reference to the payment of interest or cost in the orders passed by the Forum. The CGRF should not have ignored the provisions of the Supply Code, 2009, particularly Para 5.7.3. of the Supply Code, 2009 which is applicable in this case. The consumers are liable to payment of interest / surcharge @ 2% per month any such delayed payment of the bills, whereas the refund of excess charges claimed by the respondents without any interest will amount to unfair trade practice and also in contravention of the Regulations.

Respondents Contention:

1. The contents of this para admitted to the extent that the complainant has purchased the premises in an auction from UCO Bank. The complainant has applied for the power connection with 950 KW connected load and 950 KVA contract demand. Prior to issuing of this power connection, a power connection to same premises with 420 KW connected load was issued in favour of M/s S.R Forging. M/s S.R Forging made default in the payment of energy charges which accumulated to the tune of Rs.2600489/- and the complainant filed the complaint before the Ld.CGRF. Rest of the contents are wrong hence denied.
2. That the contents of this para are admitted. It is submitted that the representation of the applicant/complainant is not maintainable and same is liable to be dismissed, because the Forum has passed the order in the complaint after gone through the record pertained to the applicant/complainant.
3. It is submitted that the Ld. Forum has passed reasoned order keeping in view the provisions of the supply code, regulations and on the basis of the record placed before the Forum. That the present representation has been filed by the applicant with ulterior motives just to harass to the replying respondent and to evade the decision of the Ld. Forum. The applicant has not shown any error apparent on face of record of the order dated 22-10-2019 passed by the Ld. Forum. It is further submitted that the applicant has not shown at all by way of pleading in the application and has not at all made out a case of representation against the order dated 22-10-2019. The application as moved by the applicant does not satisfy the parameters on which this representation can be entertained and the applicant is entitled for interest on the amount. The matter was duly heard and same has been decided on merit. Even otherwise as per the replying respondent, the applicant is not entitled for the relief which is granted to the applicant by the Ld. Forum. Because the complaint of the applicant was

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timed barred in view of the regulation no. 19(c) of the HPERC (CGRF) 2013 as the complainant had deposited this amount on 6-12-2012 vide receipt no. 649957 and the complaint has field after 7 years and therefore the same was time barred as per the provision of regulation 19(c) of HPERC (CGRF) 2013 as the period of limitation for filling the complaint against any grievances is 2 years as such the complaint is not maintainable and same is liable to dismissed. This amount of Rs. 2600489 has been deposited in the account of the M/s S.R Forging has been cleared and the replying respondent has not filed any recovery suit against the M/s S.R. Forging. It is further submitted with due respect that the Regulation No. 10 of the HPERC(recovery of Expenditure for the supply of Electricity) Regulation 2012 has also since been amended by the Hon'ble HPERC, vide HPERC (recovery of Expenditure for the supply of Electricity) (with amendment) Regulations 2018, which override the last sentence of sub Para 5.2.13 of the Himachal Pradesh Electricity Supply Code 2009 and the complainant is liable to make the payment of the outstanding amount of the previous electricity connection to the same premise. Therefore, the Ld. Forum rightly passed the order dated 22-10-2019, which is reasoned order and the same has been passed on the basis of the record placed before the Forum.

Order of CGRF:

1. The grievance has been made by the complainant against by the Respondent Board for raising Demand Notice for a sum of rs.26,00,489/- being a liability of previous occupier i.e. M/s S.P. Forgings Ltd. The brief history of the case is that the present Complainant had purchased land and building in an auction from the UCO Bank, Barotiwala which has acquired the same under Sarfaesi Act, from the earlier owner of the plot i.e. M/s S.R. Forgings Ltd., on 07.06.12 (Annexure C-1). During the process of Load Sanction the respondent Board made an observation that amount in question which as lying due from the previous owner/ occupier of the property i.e. M/S S.R. Forgings Ltd. should be recovered from the earlier owner/ occupier of the property i.e./S S.R. Forgings Ltd. The complainant vide (Annexure C-3) made a payment under protest for Rs.26,00,489/- (including Interest) against M/S S.R. Forgings Ltd. After this the Complainant wrote several letters to Respondent Board against this realisation, but to no avail. Hence, this present complaint before this Forum.
2. The Respondent Board in their reply and specifically in Para 8.3 stated that in view of the amendments approved by the HPERC, the Complainant is liable to make the payment of the outstanding amount of the previous Electricity Connection. The Complainant in its rejoinder rebutted that as per Para 5.2.19 of the Supply Code 2009, the Respondent Board shall not been titled to require payments of such amount of the next occupier of the Premises.
3. Now the moot question to decide is whether the present Complainant is liable to pay the Electricity Charges of the previous occupant of the premises or not?
4. We have gone through the Para 5.2.13 of the Supply Code of 2009 which states as follows:-

" If a consumer vacates any premises to which electricity has been supplied by the licensee without paying all charges due from him in respect of such supply, or for the provision of an electricity meter, electric line or electrical plant, the

license may refuse to give him supply at any other premises until he pays the amount due. It shall be obligatory on the part of each licensee to publish the identity of such defaulting consumers for information of other licensees. The licensee will not be entitled to require payments of such amount from next occupier of the premises.

5. The Ld. Counsel of the Respondent Board could not show us any amendment of the above regulation which was contrary to the claim of the Complainant.
6. Therefore, the Forum holds that the present Complainant is not liable to pay the Electricity arrears of the previous occupant i.e. M/S S.R. Forgings Ltd. as it was against the approved norms of Supply Code of 2009. The Forum further orders that a sum of Rs. 26,00,489/- deposited by the present Complainant with the Respondent Board may be refunded by adjusting it in future bills of energy bills of the Complainant.

The case is decided in favour of Complainant and against the Respondent Board.

Electricity Ombudsman findings and order:

The complainant through present representation/ application prays to direct the respondents to pay interest till the actual date of refund as per para 5.7.3 of supply Code 2009. The applicant is satisfied with the rest of the relief ordered by the CGRF in complaint No.1454/2/19/015 titled as 'M/s Milestone Gears (P) Ltd.V/s HPSEB limited'. In reply the respondent Board submitted that applicant does not satisfy the parameters on which this representation can be entertained and matter has been duly heard and decided by Id.CGRF on merit. Hence the applicant is not entitled for interest on the amount to be refunded.

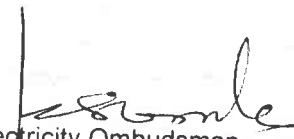
The CGRF vide its order dated 22.10.2019 ordered that the applicant is not liable to pay the Electricity arrears of the previous occupant i.e. M/s S.R. Forgings Ltd. by invoking Para 5.2.13 of supply Code of 2009. The Forum further orders that a sum of Rs.26,00,489/- deposited by the present complainant with the Respondent Board may be refunded by adjusting it in future energy Bills of the complainant. The CGRF did not mention anything about interest. whereas Para 5.7.3 of supply Code 2009 further amended by HPERC notification (HPERC/438) dated 11 June 2014 and Regulation 26 of CGRF Regulations say that the licensee will pay to such consumer interest on the excess amount/undue charges for the period for which the disputed amount has been withheld by the licensee.

In view of above the prayer of the complainant is allowed and the Respondent Board is directed to proceed as per provision of Clause 5.7.3 of supply Code 2009 and further amended by HPERC notification No.HPERC/438 dated 11 June 2014 and Regulation 26 of Regulations of CGRF.

The compliance of the order be reported within a month from the issue of this order.

Dated 02.01.2020




Electricity Ombudsman