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

PHONE 0177-2624525
Mail -ombudsmanelectricity 2014@gmail com

Case No.01 of 2019

In the matter of:
M/s Cosmo Ferrites Ltd Vill-Jabli Distt-Solan (173220)

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 HPSEBLParwanoo (H.P.)
3 The Sr. Executive Engineer, Electrical Division, HPSEBL, Parwanoo (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 **29.05.2019** passed by the Consumers Grievances Redressal Forum of HPSEBL, Shimla-9 (H.P.) in Complaint **No.1421/2/18/034**, titled as M/s Cosmo Ferrites Ltd. Vill-Jabli Distt-Solan (173220) V/s HPSEBL through their Counsel **21.08.2019**

Present for:

Applicant Rakesh Bansal.

Respondent Er.Chatter Singh Dehal,AE
Sh. Anil Kumar God, Advocate

(ORDER)

(Last Heard on 21.08.2019)

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 Oder dated 29.05.2019 passed by the Consumers Grievances Redressal Forum of HPSEBL, Shimla-9(H.P) in Compaint No. 1421/2/18/034, titled as M/s Cosmo Ferrites Ltd. Vill-Jabli Distt-Solan (173220) V/s HPSEBL through their Counsel 21.08.2019

Complainant's Contention.

1) The complaint has two units engaged in the Ferrites used in electronic components. The unit I was set up many years before the regulated tariffs came into force sometime in the 1980s with a sanctioned connected load of 2509 KW and contract demand of 1600 KVA, which we have never extended till now and was given supply at 11KV.with effect from April 2007 the complainant set up another unit i.e. unit 2. with a separate connection of 1250kw and 1100KVA of contract demand, which in any way does not fall in to the ambit of LVSS as the standard supply voltage as well as the actual supply voltage were both11KV.

As per tariff order, the standard supply voltage applicable to our unit-1 on the basis of connected load up to the 31.07.2014 was 33or 66KV, and thereafter the standard supply voltage was changed to 11kv due to amendments in the supply Code, 2009 and the tariff order applicable w.e.f 01.08.2014. The supply was provided at 11kv since the inception of unit. When the connection was released to our unit, no LVSS (Low Voltage Supply Surcharge) was applicable to our unit. For the first time, in the Tariff Order for the year 2005-06 the LVSS was defined in the Annexure2 part-I 'General' of the Tariff Order. But even during that year the LVSS was not made applicable as per Para 6 of Schedule-Large Industrial Power Supply (including mini steel mills)(LS) where it was clearly written that the LVSS was not applicable to this category. During the period of next Tariff Order i.e FY.06-07 also the same status was maintained by the Commission as there was no change in any provisions related to LVSS.in the tariff Order 07-08, the LVSS was made applicable in the LS Tariff Schedule HPSEBL,therefore started charging LVSS was in the energy bills issued to us for Units-1 and we kept paying the LVSS as charged in the energy bills. LVSS charges continued to remain applicable on our Unit-1 as per tariff orders up to 31.03.2011.In the tariff order for FY 2011-12, the complainant's unit-1 was exempted from LVSS as the HT consumers were already existing on 01.12.2017 were exempted from LVSS and the standard Supply Voltage, as per note 2 of Clause-1 of the part-I General of the Tariff Order, which reads as under:

2) LVSS shall not be applicable to such HT consumers (11KV or 15KV or 22KV or 33KV) or to such EHT consumers (66kv and above) who were already existing on date 01.12.2007 and had been given electricity connection at a voltage less than the specified Standard Supply Voltage. However in case any extension of load is sanctioned in such cases after 01.12.2007 the Standard "Supply Voltage" and consequently the LVSS shall

be applicable as specified" Similar provision continued up to 31.03.2016 in the respective tariff orders notified from time to time. As we had not extended any load since 01.12.2007, the LVSS should have stopped from being charged in the energy bills. But HPSEBL. Continued to charge for eight months during April,2011 to Nov. 2011, even after this provision came into force. Thereafter, the charging of LVSS was stopped and was not charge up to 31.03.2016. Also with effect from 01.08.2014, the applicability of standard Supply Voltage was amended by HPERC and the limit for 11kv Voltage was increased to 3000 Kw and our standard voltage changed to 11kv. Therefore, no LVSS was chargeable or charged after that. The complainant wrote letters to the Sub Division as well as the Parwanoo Division staking our claim. The LVSS account was reconciled with the Parwanoo Division and a sum of Rs.3, 27,802/- was found claimed in excess from the complainant on account of LVSS.

2) That the respondent in the month of July 2016 started charging low voltage Supply surcharges (LVSS) in both the bills, despite of the fact that the standard the supply voltage of both the units was 11KV as per provision of the supply code 2009. On enquiry from the respondents offices it was found that the LWSS was being charged on the basis of assumption that the load of both the units of the company are clubbed into a single load by adding the connected loads and contract demand of both the units. The standard supply voltage was thus worked out on the basis of the resultant load after clubbing of loads, which was found to be higher than 11KV and thus the LVSS was charged in the bills of both the units. The respondents, but still continued to issue two separate electricity bills for each unit thereafter even up to this date. The complainant aggrieved by the action of the respondents approached the Consumers Grievances Redressal Forum for the redressal of their grievances. The complainant approached the Consumer Grievance Redressal Forum vide separate complaints for both units vide complaint number 1421/2/16/039 and 1421/2/16/040 against the charging of LVSS on both the units after 01.04.16. The Forum ordered that the claim of the Board in terms of LVSS is not justified unit and unless the two units of the complainant are actually clubbed. Since, the claim of the Board was held to be unjustified, the LVSS charged from 01.04.16 up to the date of decision was automatically eligible for refund to the complainant , as the complainant had actually paid a sum of Rs.18,30,815/-, which was held unjustified by the learned Forum

3) The complainant wrote letters to the respondent to adjust the amount due to him on account of LVSS i.e. 3,27,802/- and Rs. 18,30,815/- against the demand on account of

slow meter, but the respondent never refunded/ adjusted the amounts the complainant had prayed to the Forum for adjustment of these amounts in the total liability occurring due to slow metering. But the Forum denied vide their orders dated 29.05.2019 that the matter was sub-judice and hence the decision of the High Court be awaited for the refund. The Forum failed to notice that the matter of clubbing for the past period was never sub-judice. The respondents after the decision of CGRF in the complainant No 1421/3/16/039 and 40 issued a letter dated 01.05.2018 stating that a single meter will be forcibly installed if the complainant on its own did not apply for clubbing of the two units. The respondent also stated in the letter that if not clubbed, the will install a meter on the common line of the two units and will commence billing thereafter as if they are clubbed. The whole matter now was to club the two units of the complainant for future and had nothing to do with the liability arising out of LVSS for the past period. The complainant approached the High Court against the coercive action taken by the respondent vide CWP Number 1138 of 2018. The Hon'ble High Court ordered that status quo be maintained by the parties. The status quo ordered by the Hon'ble High Court was only in respect of proposed attempt of the respondents for future clubbing and was not in any manner, related to the past liability/ refund that were due to the complainant. The complainant had not approached the Hon'ble High Court asking for refund of the said amount. The CGRF mis-interpreted the stay orders of the Hon'ble High Court and thus did not order the refunds due to the complainant.

4) This representation is being filed in respect of the orders of the forum, on the following grounds:

   a) That the amounts due for refund to the complaint are in no way connected/ related to the status quo orders by the Hon'ble High Court. The status quo issued by the High Court is particularly staying the letter dated 01.05.2018 issued by Sr.XEN, HPSEBL Parwanoo for future clubbing.

   b) That in the case that the Hon'ble High Court decides the matter against the complainant, the respondent as a result will be able to club the two units of the company from the date of letter i.e. 01.05.2018. The amounts of refund that were sought by the complainant were pertaining to the past period and were not in content.

   c) That the respondents have not approached the High Court challenging the orders of the Forum in the complainants decided regarding the clubbing of the two units. The order of the Forum in complaint Number 1421/3/16/039 and 40 were never challenged and are still valid.

Respondent's contention:

The complainant is the owner of Cosmo Ferrites unit I and II and consuming the Electricity for its both units on the same premises. The complainant is manufacturing and dealing in the production of Ferrites in both these both these units and the business is being run by same beneficiary / owner due to which LVSS were charged in the month of July, 2016 which is in accordance with the provision of sales circular No.5/2001 issued by the Chief Engineer, Commercial HPSEBL, Shimla. The complainant is concealing the material facts from this Hon'ble Forum, as the complainant had submitted its application and agreement form for clubbing of load along with application for reduction of load. The A & A form was forwarded to the higher office for further processing and action.

Para No. 2 & 3:

The respondents had issued various notices to the complainants from time to time but complaint is using different baseless remedies to toss the matter heather and thither. The complaint is only accepting partial favorable part of the orders of Ld. FRGC and delaying the implementation of order in its letter sprit to avoid the financial implications, though in the order it is not mentioned to refund the LVSS amounting to Rs. 2,88,704/-(Rs.1,63,209/- Unit-I) + Rs.1,25,498/-(Unit-II) Specifically. It is further submitted that the complainant had not pleaded for the refund of Rs 2,88,70/- just to avoid the deposition of 1/3rd amount. if the LVSS were recovered , respondents have no objection to allow the refund it is very much clear from the orders passed by the Ld. Forum below that the respondent can claim LVSS only after clubbing of Industries and accordingly notice complainant approached the Hon'ble Court of HP by way of CWP No.1138/2018 tiled M/s. Cosmo Ferrites V/s. HPSEBL and the Hon'ble High Court vide order dated 22.05.2018 has directed the parties to maintain the status quo as of today and has also directed not to take any coercive action shall be taken against the complainant. The intention of complainant is clear that on the one hand they are giving the reference of FRGC orders that HPSEBL cannot claim LVSS before clubbing the load and on other hand approached Hon,ble High Court for staying the notice by this office Previously, also notice for clubbing of load was issued vide, AE,ESD,HPSEB, Parwanoo letter bearing No.640-43 dated 04.08.2016 was issued, but complainant has created deadlock situation where neither they wants to club the load and neither they want to pay the LVSS charges.

The complainant is trying to create the sequence of confusion as complainant himself has approached the Hon,ble High Court of HP by way of CWP No.1138/2018 tiled, M/s. Cosmo Ferrites V/s. HPSEBL and the Hon'ble High Court vide order dated 22.05.2018 has

directed the parties to maintain the status quo as of today and has also directed not to take any coercive action shall be taken against the complainant. The respondents are duty bound to follow the directions of Hon'ble High and cannot violated the same. However as far as the orders passed by the Ld. CGRF both cases complaint No.1421/3/039 and 040,(Unit-I & II) titlte M/s. Cosmo Ferrites V/s. HPSEBL, as per order of Ld. FRGC dated 08.05.2018 the respondents can claim the LVSS and should have clubbed the load of both the units immediately, for which respondents are pressing hard on complainant from time to time to club the load as explained above. Accordingly consumer may kindly be directed to deposit the total outstanding amount of this utility without any further delay. The replying respondent cannot take any action till the pendency of the CPW as stated supra. So far as the levying of LVSS on and w.e.f 01.04.2016 is concerned same is in accordance with the Schedule of tariff.

Order of FRGC

1 i. That wrong calculations has been relied upon by the Respondent with regard to account of less energy consumption by the Complainant.

ii. That the Respondent has not complied with the decision of the CGRF order date 07.03.2018, whereby it was held that the respondent can claim low voltage surcharge service only after the clubbing of load of industries, as per the provision of Sales Circular 5/2001. Respondent has not refunded LVSS charges already, deposited by the Complainant which works out to Rs.18,30,815/-

2. The Respondent in their reply stated that in order to examine the slowness of the energy meter, a check meter was installed vide SJO No.1038 dated 05.08.2018. A copy of inspection conducted on 31.07.2018 . In the meanwhile , the matter was referred to M/s YMPl for checking and testing of H.T. connection. The said company accordingly checked the premises and found the meter recording-36.538% less energy consumption.Therfore,a notice bearing No.1766-68 dated 03.02.2018(a-3) was issued by the AE,ESD, Parwanoo to the complainant to deposit outstanding amount of Rs.47,23,926/- on this score. The slowness of meter was calculated by YMPL, and is not questionable, as the said firm fulfils all parameters of quality check and confirms in all respects of CEA metering Regulation /IEC Standings. Hence the observation of the company that PT is completely missing and other 2 PTs are not found within the premises limit resulting in overall system slowness(-)36.538%.

3. With regard to LVSS amount, the Respondent Board replied that the matter already stands admitted in Hon.ble High Court,Shimla who vide order dated 22.05.2018 has directed

th parties to maintain Status-Qua as of today and no action coercive was to be taken against the petitioner/consumer.

4. The Forum has gone through the case file carefully and heard the parties at length. It has transpired that the complainant has reported to the Respondent board vide their letter dated 31.07.2017 that their meter was reporting less consumption that what it usually used to record for similar volume and nature of activities, and they have some doubts about the correctness of meter readings. The complainant again reminded the Respondent Board on 18.09.2017 to take suitable action in the matter. Acting on this, the Respondent Board installed a check meter, duly tested by M&T Lab Solan, parallel to the existing meter. Meanwhile, checking by the outsourced agency, as discussed above was also in progress which reported that the meter was recording less energy. Accordingly Respondent Board , vide letter dated 03.02.2018, asked the complainant to pay an amount of Rs.4,23,926/. On account of missing PT of the meter. One phase missing of the meter, keeping in view slowness 36.54% w.e.f. 29.06.2017 to 26.10.2017. The complainant vide his letter dated 21.02.2018 has asked the Respondent Board to share with him the method of calculation that was adopted for adapting the slowness 36.54% and also the dated from which the meter turned defective. The Respondent failed to furnish this information, but added the amount in Sundry Charges in the bill issued in the month May.2018.

5. During the course of the argument the representative of Respondent Board orally stated that the check meter installed in the said premised is duly tested by M&T Solan & is still being used for recording of energy consumption.

6. Therefore, the Forum orders the Respondent to overhaul the account in question on the basis of energy recorded by check meter within a period of three weeks.

7. As regards the refund of LVSS charges, it is an admitted fact that the complainant has now approached the Hon'ble High Count of H.P questioning the attempt of the Respondent Board to club the two connections which would also attract LVSS charges. Thus rendering the issue sub-judice. Therefore, the Forum feels that the outcome of the decision of Hon'ble High Court may be awaited. No orders to cost.

Electricity Ombudsman findings and Order:

After going through submissions, written as well as oral, and arguments of both parties, it is clear that CGRF s order dated 07.03.2018 in complaint Nos1421/3/16/039 & 1421/3/16/040 was passed in complainant's favour. In the

bove order CGRF ordered that " the claim of Board is not justified till the load is clubbed. So the case is decided in favour of the petitioner & against the Board." It simply means LVSS was not chargeable till the two units of the consumer are clubbed and hence, any amount paid by consumer as LVSS would stand refundable. However, despite this order the refund was not processed by the respondent. Further, the complainant approached the Hon'ble High Court of HP seeking interim stay on the notice dated 01.05.2018 issued by the respondent regarding clubbing of unit-I & II of the complainant.

The Hon'ble High Count vide their interim order dated 22.05.2018 ordered that -

"Notice in the aforesaid terms. In the meanwhile parties are directed to maintain status quo as of today and no coercive action shall be taken against the petitioner" Carefully examining the contents of the application for interim stay and of CWP, especially the prayer, it is clear that the Hon'ble High court directed to maintain status quo as of today and not to take any coercive action proposed in notice dated 01.05.2018 ONLY and nothing else.

Furthermore, the Board has not challenged the orders of CGRF in complaint no.1421/3/16/039 and 1421/3/16/040. Had the Board agitated the orders of the CGRF, the refund of LVSS would have become sub-judice.

In view of above, I here by order as

That the matter of refund of LVSS amount has wrongly been termed as sub-judice by the CGRF in its order dated 29.05.2019, whereas it is only the notice dated 01.05.2018 issued Sr. Executive Engineer, Elect. Division, HPSEBL, Parwanoo, which has been stayed by Hon'ble High Court. The finding of the CGRF that the LVSS refund is sub-judice is incorrect.

Dated 27-8-2019

Electricity Ombudsman