



HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
SHARMA SADAN, BEHIND KEONTHAL COMPLEX, KHALINI, SHIMLA-171002
PHONE:0177-2624525

In the matter of:

Case No. 60/2018

M/s Kundlas Loh Udyog, Village Balyana, P.O. Barotiwala, Tehsil Baddi, Distt. Solan (HP)
through its authorised representative Sh. Rakesh Bansal and Rahul Mahajan, Advocates.

Applicant/Representationist

Versus

1. The Executive Director (Personnel), HPSEB Ltd., Vidyut Bhawan, Shimla-171004
2. The Asstt. Executive Engineer, Electrical Sub- Division, HPSEBL, Barotiwala.
3. The Addl. Superintending Engineer, Elect. divn, HPSEBL, Baddi, Distt. Solan (HP)
4. The Sr. Executive Engineer, Elect. System Division, HPSEBL, Solan (HP).

..... Respondents

And

In the matter of:

Representation under Regulation 28 (1) & (2) and 33 of HPERC (Guidelines for Establishment of Forum for redressal of Grievances of the Consumers) Regulations 2013 against the Order date 08.05.2018 passed by the Consumers Grievances Redressal Forum of HPSEBL, Shimla-9 (H.P.) in Complaint No.1453/2/17/028 titled as M/s Kundlas Loh Udyog, Village Balyana, P.O. Barotiwala, Tehsil Baddi, Distt. Solan (HP) through its authorised representative Sh. Rakesh Bansal and Rahul Mahajan, Advocates.

26.09.2018

Presentfor:

Applicant: Sh. Rakesh Bansal, Advocate

Respondent: Sh. Bhagwan Chand, Advocate

Sh. Jeet Ram Verma, Sr Asstt. ED Baddi.

ORDER

(Last Heard on 26.09.2018)

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 the Order date 08.05.2018 passed by the Consumers Grievances Redressal Forum of HPSEBL, Shimla-9 (H.P.) in Complaint No.1453/2/17/028 titled as M/s Kundlas Loh Udyog, Village Balyana, P.O. Barotiwala, Tehsil Baddi, Distt. Solan (HP) through its authorised representative Sh. Rakesh Bansal and Rahul Mahajan, Advocates.

Complainant's Contention:

1. The complainant is a industry having connected load of 4000 kW, which has recently been increased to 7400 kW. The complainant initially applied for a load of 3300 kW with 3665 kVA of contract demand which was sanctioned in the year 2006. At the time of PAC the complainant was asked to pay a sum of Rs.8.0 lakhs at the rate of Rs.200 per kW. The complainant was asked to shift to 66 kV as per condition in the initial sanction, and therefore, a proposal for 66 kV underground cable line was proposed by the respondents for a group of consumers on cost sharing basis. The complainant was asked to deposit a sum of Rs.10.00 Lacs as advance cost share, which was deposited by the complainant in the year 2007. Meanwhile, the complainant and the other few consumers, who were part of the proposal for the underground line, approached the Board to allow solid tap from the 66 kV Parwanoo-Barotiwala line. The no respondent Board allowed the solid taps and the complainant was also provided connection at 66 kV from this line. The proposal for underground 66 kV composite cable line was no more required and was consequently ought to be dropped and the amount paid as advance was to be refunded to the complainant as no work was carried out in this line. Rather than refunding the amount of Rs. 10 Lacs, the respondents continued to press for further demand for construction of a line which was not required anymore, consequently to the decision of the Board to allow solid taps. The complainant approached the forum for refund of Rs.800 Lacs paid as advance cost share at the time of PAC as well as the amount of Rs. 10.00 Lacs paid as advance towards the underground line. The forum observed that these amounts were refundable to the complainant as per the prevailing Regulations. However, the Forum further observed that mandatory charges if any out of the amount of Rs.10.00 Lacs, if any, may be deducted while refunding this amount.
2. While the complainant is totally satisfied by the relief ordered by the forum in respect of Para 9(a) and 9(b) of the Prayer in the complainant,

against which this representation is not being made. But, the complainant is aggrieved by the orders of the forum as the forum neither denied, nor allowed interest on the refunds due to the complainant sought by the complainant vide para 9(c) of the prayer. The Forum's order is also silent towards the relief sought for cost of complaint to an extent of para 9(d) of the prayer. The complainant is fully satisfied by the decision in respect of relief sought vide other paras of the prayer.

3. Grounds of Appeal:

M/s Kundlas Loh Udyog i.e. appellant/complainant company is aggrieved against the findings of the CGRF whereby it has remained silent towards the relief sought by the complainant in paras 9 (c) and 9(d) of the complaint, and is thus filing the said appeal inter-alia on the following amongst other grounds:-

- a) That the impugned order dated 08.05.2018 passed by the CGRF in complaint number 1453/2/17/028 is bad in law and is liable to be modified in respect of interest due, as the money recovered by the respondents, which was not due from the complainant, was lying and was used by the respondents for more than a decade. The complainant has suffered monetary loss in terms of interest paid by him to the financial institutions on borrowed capital for setting up their project. Had the respondents refunded these amounts well in time, the question of interest would not have arisen.
- b) That the impugned order dated 08.05.2018 passed by the CGRF in complainant number 1453/2/17/028 is bad in law and is liable to be modified in respect of interest due to the complainant in terms of Regulation 6(1) of the HPERC (Recovery of Expenditure for Supply of electricity), Regulations, 2005. This Regulation provides for payment of interest @8% compounded annually, in the case of refunds due to the consumers. The Regulation 6(2) further provides for settlement of final account within 3 months after the release of connection, which makes them further liable to payment of interest after the expiry of the period of three months.

- c) That the impugned order dated 08.05.2018 passed by the CGRF in complaint number 1453/2/17/028 is bad in law and is liable to be modified in respect of interest as the HPERC Supply Code, 2009 Regulations also provide for payment of interest on excess amount recovered from consumers at twice the SBI's short Term PLR prevalent on the first of April of the relevant year from the date of payment till such time the excess amount is adjusted.
- d) That the impugned order dated 08.05.2018 passed by the CGRF in complaint number 1453/2/17/028 is bad in law and is liable to be modified in respect of the cost of litigation. The complainant had approached the Forum first time vide a separate complaint, when the complaint was disposed undecided as the matter was stated to be sub-judice before APTEL. The complainant had to approach the forum second time, for which the complainant had to incur additional cost. The complainant is therefore, justified in praying for relief in terms of cost of complaint as there was not fault of the complainant for delaying the refund.
4. That the appeal may kindly be allowed and the findings of the Consumers' Grievances Redressal Forum of HPSEB Consumer detailed in orders dated 08.05.2018 passed in Complaint No.1453/2/17/028 in complaint titled as Kundlas Loh Udyog vs HPSEBL whereby the LD Forum has decided the complaint in partially in favour of the complainant and partially in favour of the respondents, is bad in law and deserve to be modified suitably or further orders which this Hon'ble Electricity Ombudsman may deem fit and proper, in the facts and circumstances of the case may kindly be passed in favour of the appellant/complainant company and against the respondents/distribution licensee.

Respondents Contention:

1. That the content of Para 1.1 of the representation are admitted to the extent that the present appeal has been filed through Sh. Rajiv Singhla. However the rest of the content of this para are totally false, incorrect wrong and as such are denied. It is specifically denied that the replying

- respondent have failed to adhere to the provision of the regulations issued by HPERC.
2. That the content of para 1.2 of the representation are admitted to the extent that the complainant is an industry having connected load of 4000kW which has recently been increased to 7400 kW. It is submitted here that the IDC charges has been levied against the appellant as per mechanism given by the commission in the sumoto petition no.25/2016 on 05.10.2016. Since PAC as well as connection to the appellant was released during 4/2016 on 11 kV supply voltage the amount on account of IDC @ Rs 200 per kW for Rs.8,00,000/- was recovered in accordance with HPSEBL Mechanism. This amount was recovered prior to enforcement of HPERC Regulation 419/2005 and supply code of 2009 and as per the decision taken by HPSEBL in accordance with Chief Engineer Commercial order dated 17.11.2013. After the implementation of HPERC 419/2005 and as per the order passed by the Hon'ble HPERC commission dated 30.10.2016 and HPERC order dated 05.10.2016 the office of the respondent issued demand notice for recovery of expenditure for supply of electricity for remaining IDC amount of Rs. 22,09,981/- only. Out of Rs. 22,09,981/- the appellant has only deposited 1/3rd amount i.e. Rs. 7,37,000/- with the replying respondent as per the interim order passed by the Hon'ble Forum on 15.02.2018. As such the appellant is liable to deposit the balance IDC Rs. 14,72,981/-. Through the HPSEBL has issued the notice in accordance with above order as such no refund can be given to the appellant. As per the petitioner the appellant has deposited Rs.10,00,000/- as advanced cost share on account of lying 66 kV underground cable. Since the 66 kV line maintained by the replying respondent as such detailed reply shall be given by the respondent no.4.
 3. That the content of this para are totally baseless and as such are denied. The complainant was fully satisfied with the order passed by the forum below. The forum has passed legal and genuine order in favour of appellant. The appellant is not entitled for any kind of the interest whatsoever claimed by the appellant in the petition before the Forum below. The appellant is also not entitled for claiming any cost from the answering respondents.
 4. That the contents of para (a) of the representation are false, incorrect, wrong and as such are denied. It is denied that the replying respondents recovered the amount as per mechanism. As the connection of the complainant released during 4/2006 at 11 kV supply voltage. The complainant shifted his supply voltage from 11 kV to 66 kV voltage during 7/2009. The consumer runs his connected load on 11 kV supply voltage almost three years and three months. The appellant not eligible for any refund on account of IDC charges as these charges are recovered as per mechanism and not eligible for interest.
 5. That the content of para (b) of the representation are false, incorrect, wrong and as such are denied. It is specifically denied that appellant has born the cost of solid tap and feeling line. The appellant deposited

Rs.10,00,000/- for the work of underground cable line and he was also requested to deposit the balance 56.76 towards cost share but till date this amount has not been deposited. The replying respondent has laid underground cable line for the benefit of the appellant and as such the replying respondent claim 56.70 lacs from the appellant. Out of this amount the appellant had only deposited Rs.10,00,000/- . Under these circumstances the interest upon Rs.10,00,000/- cannot be awarded to the appellant since the work has been done by the replying respondent.

- 6. That the content of para © of the representation are false, incorrect, wrong and as such are denied.
- 7. That the content of para (d) of the representation are false, incorrect, wrong and as denied. This Hon'ble Court has also passed order in such type of case earlier. There is no stay granted by the APTEL and as such this Hon'ble Authority has power to impose cost share charges upon the appellant and as such this Hon'ble Authority cannot awarded any interest or cost to the appellant in any manner.

Forum's Order:

The complainant has filed a complaint that load of his industry was sanctioned for 3300 kW with 3665 kVA Contract Demand on 11 kV Supply Voltage vide Chief Engineer, Operation (South), HPSEBL, vidyut Bhawan, Shimla-4 vide office order No 8093-94 dated 20.09.2005. Which was later extended to 4000 kW with Contract Demand 4442 kVA vide PAC dated 15.09.2006 issued by the chief Engineer (Comm.), HPSEBL, Vidyut Bhawan, Shimla-4 at 66 KV Supply Voltage. The complainant was given supply at 11 kV as a temporary/interim arrangement as the final supply voltage was bound to be 66 kV. When the adequate arrangement for supply from Barotiwala-Parwanoo line was carried out, the whole load was shifted to 66 kV Barotiwala-Parwanoo line after operating for a few month on 11 kV. Rs. 8.00 Lac paid on account of IDC charges is not payable by him. He has also paid Rs.10.00 Lac for the work for underground cable line which was never laid, Respondent Board is demanding additional Rs. 56.76 Lac on account of cost share of 66 kV underground line. Instead of asking for deposit of this amount, Board should have refunded even Rs.10.00 Lac already paid by him. Total amount Rs. 18 Lac paid on account of IDC may be refunded.

The Board has replied that it is wrong that complainant has borne the cost of solid tap and feeding line. The complainant has deposited only Rs.10.00 Lac and he was requested to deposit the balance 56.76 lac towards cost share, but till date this amount has not been deposited. The complainant was given supply at 11 kV supply voltage and as per regulation 2005 he liable to pay an amount of Rs. 30,09,981/- towards cost share of EHV Jhar Majari Sub-Station.

The Forum observed that the Complainant was fed from the existing available load on 132/11 kV Transformer at Barotiwala sub-Station which was further augmented during December,2006. This was a temporary arrangement and then the Whole load of the consumer was shifted on 66 kV supply voltage through Barotiwala-Parwanoo 66 kV Line.

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The Forum Order that the IDC charges should be recovered from the complainant as per mechanism given by the Commission in the suo-moto petition No.25/2016 on dated 05.10.2016 further endorsed by Chief Engineer (Comm), HPSEBL, Shimla vide his office letter endorsement No. HPSEBL/CE(Comm)/APTEL/Volum-1/2016-10021-10135 dated 01.11.2016. The complainant is not liable to pay augmentation of 132/11 kV Sub-Station Barotiwala as it was commissioned in December, 2006 after the release of original power connection of the complainant, Rs. 10.00 Lac as paid by the Complainant for construction of underground 66 kV line may be refunded after recover of mandatory charges, if any, as this work was never carried out.

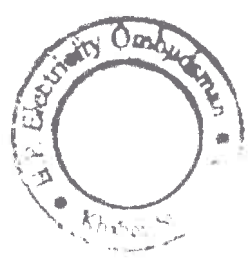
The order is passed partially in favour of Complainant and partially in favour of Respondent Board.

Electricity Ombudsman findings and Order:

The applicant M/s Kundlas Loh Udyog, aggrieved against the order dated 08.05.2018 passed in complaint No 1453/2/17/028 titled M/s Kundlas Loh Udyog, Village Balyana, P.O. Barotiwala, Tehsil Baddi, Distt. Solan (H.P.) V/s HPSEBL & Others sought relief by allowing interest on the amount refundable as compensation for the delay in refund. From the complainant's application, reply submitted by the Respondent and listening to the arguments it comes out that the load to the complainant to be released on 66 kV supply voltage was initially released on 11 kV supply voltage as interim/temporary arrangement. The order dated 08.05.2018 of CGRF is upheld and be implemented in true letter and spirit. Further, the complainant's contention regarding interest on refund is not justified as for releasing power on 11 kV supply voltage during interim arrangement any kind of extra charges have not been taken by the Respondent.

The compliance be reported within one months from the issue of the order.

Dated: 29.09.2018



[Handwritten Signature]
Electricity Ombudsman