



**HIMACHAL PRADESH ELECTRICITY OMBUDSMAN**  
**SHARMA SADAN, BEHIND KEONTHAL COMPLEX, SHIMLA-171002**  
Phone: 0177-2624525, email: [ombudsmanelectricity.2014@gmail.com](mailto:ombudsmanelectricity.2014@gmail.com)

In the matter of:

M/S Sturdy Industries Ltd, Village Bhatolikalan, PO Baddi, Tehsil Baddi, Distt Solan HP-173205  
– Complainant

Vs

1. Executive Director (Personal), HPSEBL, Vidyut Bhawan, Shimla-HP-171004
  2. Assistant Executive Engineer (E), Electrical Sub-Division, HPSEB Ltd, Baddi, Distt Solan HP - 173205
  3. Sr Executive Engineer (E), Electrical Division, HPSEB Ltd, Baddi, Distt Solan HP-173205
- Respondents

Complaint No. 16/2020, Registered on 17/03/2020

Decided on 10/09/2020

CORAM

K L Gupta  
HP Electricity Ombudsman

Counsel for:

Complainant: Sh. Rakesh Bansal  
Respondents No. 1,2 & 3: Mr Anil Kumar God, Advocate

Order

*(Case previously heard on 25/07/2020 and Reply sought by 07/08/2020 and Rejoinder by 14/08/2020)*

Although the case was last listed for 27/03/2020 but due to Covid-19 Pandemic lockdown enforced w.e. from 23/03/2020 onwards, the case could not be heard. The delay caused in deciding the case was beyond control. The case was finally listed for 25/07/2020 and the Respondents were directed to submit their reply by 07/08/2020. The Complainant was also directed to submit their Rejoinder by 14/08/2020. No further hearing in the case was done. The reply by the Respondents was filed on 04/09/2020 and Rejoinder by the Complainant on 08/09/2020, hence the delay.

A – Brief Facts of the Case:

1. M/S Sturdy Industries Ltd, Village Bhatolikalan, PO Baddi, Tehsil Baddi, Distt Solan HP-173205 has filed this application through Sh. M. L. Gupta (hereinafter referred as the Complainant).



K Gupta  
10/09/2020



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The Complaint has been filed under regulation No. 28 (c) of the Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. The Complainant has prayed to direct the Respondents to comply with the orders of the Consumer Grievances Redressal Forum dated 25/07/2019 in Complaint No.1454/3/18/055, dated 25/09/2018 and on non-compliance of same, report the matter to Himachal Pradesh Electricity Regulatory Commission.

**B – The Complainant's Submissions:**

1. The Complainant submits that on 25/09/2018 they filed grievance with the Consumer Grievances Redressal Forum of HPSEBL viz: Complaint No. 1454/3/18/055 in response to the notice served by the Respondents towards IDC. On 25/07/2019, the Complaint were disposed in favour of the Complainant directing the Respondents to work out the exact IDC as per Regulations in a transparent manner.
2. The Complainant submits that as per Regulation 27 of the HPERC Regulations, 2013, the orders of the Forum are to be complied within 21 days of the orders or such shorter period as may be directed by the Forum. In the present Complaint, the Forum had given a time period of six months to overhaul the account and to determine the cost actually recoverable from the Complainant as provided in the Regulations. The Complainant waited for the period of six months from the date of orders and have also waited for another month or so, but so far no such overhauling has been carried out. No communication have been received from the Respondents after the date of orders of the Forum in the concerned matter of dispute.
3. The Complainant further submits that Regulation 27 has been amended on 26/11/2019 in order to remove the contradiction between Regulation 27 and Regulation 28 of the HPERC Regulations, 2013 as it was not clear earlier whether to approach HPERC for non-implementation of Forums orders or to approach the Electricity Ombudsman. Regulation 27 has not been suitably amended and the Complainant is filling the representation here seeking condonation of delay in filling on the grounds amendment of the Regulations.
4. **Prayer:** The Complainant has prayed that without prejudice to the rights of the Complainant to initiate action under Section 142 of the Electricity Act, 2003, the representation may kindly be allowed in the interest of justice, particularly in respect of the following:
  - a) To condone the delay in filling this representation in view of the removal of contradiction between regulations vide a recent amendment as explained in Para 3 above and the extra period of six months provided by the Forum for compliance;
  - b) To direct the Respondents to comply with the orders of the Forum completely in letter and spirit in respect of the Complaint;







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- c) To report the extent of Non-compliance to the HPERC;
- d) Call for the record of the case.
- e) Any other or further orders which this Hon'ble Ombudsman may deem fit any proper, in the fact and circumstances of the case may kindly be passed in favour of the Complainant Company and against the Respondents/Distribution Licensee.

**C – The Respondents Submissions:**

1. The Respondents submits that the load of with 260 kVA Contract Demand has been sanctioned in favour of the Complainant vide letter No. 10367-69 dated 11/11/2008 with condition that firm will make the payment towards recovery of expenditure for supply of electricity as per HPERC regulations No. 419/2005 as and when demanded by HPSEBL (**Annexure R-I & R-II**).
2. The Respondents submits that after the order passed by the CGRF in Complaint 1454/3/18/055 titled as M/s Sturdy Industries Vs HPSEBL, a meeting was held on 06/01/2020 by the Ld. Ombudsman in the chamber of Sr. Executive Engineer, Electrical Division, HPSEBL Baddi in the Presence of Sr. Executive Engineer, Electrical Division, HPSEBL Nalagarh & Sh. Rakesh Bansal (Counsel). The case of IDC were discussed in detail & it was directed by the Ld. Ombudsman that the sub-station wise expenditure be taken from the ES Wing Nalagarh & same be sent to the higher authority for taking further decision in the matter. Accordingly the detail of expenditure of sub-station has been provided to the consumer. The detail of expenditure attached as (**Annexure-R-III**)
3. Moreover in accordance with the Section 43 of the Act, the cost of extension and up gradation of the system for meeting demand of new consumer(s) is recoverable from the new consumers(s) through system loading charges/ strengthening charges/ infrastructure development charges (by whatever name called) and approved by the Commission.
4. They further submitted that Section 46 of the Act Provides that the State Electricity Regulatory Commission may by regulations authorize a distribution licensee to charge from a person requiring supply of electricity, in pursuance of Section 43, any expenses, reasonably incurred on providing electric line or electrical plant used for the purpose of supplying electricity.
5. The Respondents submits that the estimates are prepared as per provisions of the regulations and on the basis of the charges approved by the Commission. The said regulations laid down the procedure for recovery of expenditure incurred and also refund of the differential of the amount deposited and the actual expenditure incurred. In order words the Licensee is to commence the work after the applicant deposits the full amount of the estimate.







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6. They further submitted that in areas where distribution mains does not exist, the cost of installation of new distribution mains is normally recovered from the State Government or local body or any collective body of the consumers. The licensee may also install new distribution mains from the surplus available with the Licensee after meeting all expenditure.
7. The Respondents submitted that as per provisions of Section 45 (5) of the Act, the Licensee is to recover the charges fixed in accordance with the provision of the Act, and the Regulations framed there under the Sub-Regulation (3) of regulation 6 of the Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for supply of Electricity) Regulation, 2005.
8. They submitted that in accordance with HPERC regulation HPERC/dis/479 Shimla dated 01/04/2011 & subsequent amendment dated 30/03/2012, for principal amount of asset expenditure is excluded while calculating ARR for capital subsidies/ grants & consumer contribution. This 66/11 Sub-Station cost share is part of consumer contribution & has been charged in accordance with HPERC 419/2005. Moreover depreciation also cannot be claimed in ARR for assets funded by capital subsidies/ grant & consumer contribution as per Section 23 of HPERC/dis/479 dated 01/04/2011 & subsequent amendment dated 30/03/2012.

**D – The Complainant's additional submissions through rejoinder:**

1. The Complainant submits that he never denied the applicability of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, but any expenditure over and above the allowed expenditure by the Regulations is not admitted by the Complainant. The merits have already been deliberated before CGRF and this reply cannot be entertained on merits, which has already been considered by the CGRF.
2. The Complainant submits that the statement of the Respondents that a meeting was held on 06/01/2020 by the Ld. Ombudsman at Baddi in the presence of authorized representative of the Complainant in the present case is accepted and it is further stated that this meeting was held in order to sensitize the field staff of the Respondents to implement the decisions of CGRF/ Ombudsman in various cases and create awareness among the Respondents, the gravity of cases of non-compliance. The present case was also discussed and since the period of six months as provided by the CGRF to comply with the orders had not expired and the meeting was general in nature and has no legal standing in the matter. The methodology as to how to implement the orders passed by the CGRF was not at all deliberated in the meeting. However, general guidance was given by the Ld. Ombudsman to create awareness and encourage compliance. If the Respondents have derived any such meaning/ interpretation which is contrary to the orders passed by the CGRF has no legal standing in the matter as such orders cannot be changed in such meetings. It was in no way a reconciliation meeting and should not have come up in the reply as it has no bearing on the present matter. It is pertinent to mention here that in the reply it has been stated that *"sub-station wise expenditure be taken from the ES Wing Nalagarh and same be sent to the higher authority for taking further decision in the matter."* No such forwarding to higher authorities and any decision of such authority has been attached in order to support the compliance. **It is denied that the detail of expenditure has been provided to the Complainant any-time before this reply.** The Annexure R-III attached by



*Accepted*  
*10/09/2020*





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the Respondents in the reply is merely the detail of the scheme cost. Although this detail would form the basis out of which the part that may be claimable from the Complainant is required to be worked out as per provisions of HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, particularly the Regulations 3, 4, 5 and 6 of the said Regulations. The Respondents has still not worked out the liability of the Complainant as per regulations. Merely providing details of the scheme cost does not prove compliance on the part of the Respondents.

3. The Complainant submits that the present representation is not filed to contest on merits, the reply in this para is not relevant in the present Complaint as the present Complaint is only about the proper implementation of the orders passed by CGRF. Respondents has quoted the provisions of section 43 of the Electricity Act, empowering the Respondents to recover such charges as Infrastructure Development Charges, but it also requires to be approved by the Commission. The regulations notified by the Commission have to be complied with.
4. The Complainant submits that he has only prayed for implementation of the orders. Still it is a matter of record that the Respondents have not produced any document to establish that the relevant cost have not been taken into account in ARR.

**Written Arguments:**

5. The important operative part of the orders of the CGRF are individually discussed and argued below:

*"Since, the initial estimate and later on, the account of the expenditure was not conveyed to the Complainant by the Respondent Board, therefore, we feel that the procedure laid down has been vitiated. Accordingly, we hold that the Respondent Board has erred on this account and we, therefore, order the Respondent Board to provide the initial estimate and subsequent account of expenditure to the Complainant which was mandatory under the Regulations, and decide within the next six months, whether the estimated cost had increased or decreased and take action in finalizing the exact liability of the Complainant, as provided in the Regulations in question."*

6. The Complainant submits that in order to calculate the liability of the Complainant as per Regulation 6, first of all it is necessary to establish whether the Baddi 66/11 kV substation was a part of the investment plan of the Respondents in the relevant year or not. It is only in the case where, the investment plan does not permit, the balance cost can be recovered from the Complainant. Huge CAPEX was allowed in the period between 2005 to 2012 by HPERC, wherein the said sub-station also was a part. The detailed information is not available in public domain and is only available with the Licensee. Thereafter, it is required to deduct the amounts received in grant or subsidies, if any as per Regulation 6 (3). After arriving at such value only, if any balance remains has to be reduced by disallowing the expenditure in excess of 3% as per regulations 6 (2) (a). The Respondents cannot recover the cost twice, once through ARR as a part of tariff and thereafter from individual consumers.

7. The Complainant submits that in the applicant's case, there was no need to erect a power transformer as the transformers in the said substation were augmented in the year 2005 and 2007. The Complainant was released connection from the existing transformers in 2009. As

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per Regulation 4 a) there was already sufficient capacity in the transformers and only HT line was to be extended and the cost of line only could have been recovered from the Complainant. The Respondents has demanded recovery on the basis of overall scheme cost, which is not permissible under the Regulations.

8. The Complainant further submits that the Respondents had completed the augmentation in 2007, and if at all, the amount was recoverable, the same could have been recovered in 2009, when the load of the Complainant was sanctioned and released. The cost already stood incurred. The Respondents did not even provide and estimate at that point of time as per regulations and have failed in procedure laid down in the regulations miserably. The Respondents, thereafter, kept silent for a number of years and served a notice in 2018.
9. The Complainant submits that it is highly unimaginable that after an initial recovery of Rs. 200 per kW, (which can be considered as an estimate) the Respondents overshot to a level of 1878 per kVA, whereas the allowance on the upper side was allowed only to the extent of 3%.

**Non-Compliance**

10. The Complainant submits that the Respondents have miserably failed to implement the Regulations of 2005. No estimate was given to the Complainant regarding his overall liability towards IDC, which was the duty of the Respondents under the regulations.
11. He further submits that the Respondents have failed to address the issues that have been observed and the directions that were issued by the CGRF, and are prima facie maintaining the same status as it was before the orders were passed by the CGRF. The only change is that they have come up with a detail of the expense of the scheme, which is only a small part of the overall procedure that was to be adopted. The orders of the CGRF, therefore remain non-complied. The Respondents have still not calculated the exact liability of the Complainant as per regulations.
12. The Complainant submits that the delay for overshooting the time allowed in the regulations for implementation of orders is also contravention on the part of Respondents. The orders were to be implemented within 21 days after the expiry of period allowed by the Forum which expired on 25<sup>th</sup> January, 2020.

**E – CGRF orders:**

1. Since, the initial estimate and later on, the account of the expenditure was not conveyed to the Complainant by the Respondent Board, therefore, we feel that the procedure laid down has been vitiated. Accordingly, we hold that the Respondent Board has erred on this account and we, therefore, order the Respondent Board to provide the initial estimate and subsequent account of expenditure to the Complainant which was mandatory under the Regulations, and decide within the next six months, whether the estimated cost had increased or decreased and take action in finalizing the exact liability of the Complainant, as provided in the Regulations in question. The demand as raised by the Respondent Board, in question, does not hold good, in view of the above discussions and requires to be visited again. In view of the peculiarity of the dispute, we further order that, in the eventuality of any amount, that is found payable to the

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Complainant, out of the funds already deposited by him with the Respondent Board, the same may be adjusted in the future energy bills of the Complainant/Consumer and in case of deficit amount, if any, the same may be recovered from the Consumer as per the laid down procedure. The instruction conveyed by Chief Engineer (Comm.) HPSEBL, Shimla vide letter No. HPSEBL/CE(Comm.)/APTEL/Vol-1/2016-10021-10135 dated 01.11.2016 may also be kept in mind wherever applicable.

**F – Analysis of the Complaint:**

1. The case file at Consumer Grievances Redressal Forum have also been requisitioned and gone through.
2. The Complaint is about non-implementation of the orders of the Consumer Grievances Redressal Forum passed on 25/07/2019 in Complaint No. 1454/3/18/055, dated 25/09/2018 wherein the CGRF have ordered the Respondents to provide the initial estimate and subsequent account of expenditure to the Complainant within next six months which was mandatory under the regulations and decided whether the estimated cost had increased or decreased and take action in finalizing the exact liability of the Complainant.
3. The Consumer Grievances Redressal Forum have further given adjustment procedure to be followed if the amount is payable by the Complainant or to be refunded by adjustment in future energy bills.
4. The Respondents in their reply filed on 04/09/2020 have not touched the issue whether they have complied with the orders of the CGRF or not. They have given the provisions under which the Infrastructural Development Charges is to be charged and also details of awareness meeting held at Baddi wherein the Counsel for the Complainant was also present.
5. The Respondents have however, attached an entire scheme cost of 66/11 kV Baddi sub-station supplied by Sr Executive Engineer, ES Division, Nalagarh with their reply. The scheme cost is not an account of expenditure as required under regulation 6 (2) of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005.
6. The Respondents have still not complied with the orders passed by Consumer Grievances Redressal Forum on 25/07/2019.

**G – Issues in question:**

1. **Issue No. 1:** There is only one issue whether the Respondents have complied with the orders passed by the Consumer Grievances Redressal Forum on 25/07/2019 in Complaint No. 1454/3/18/055, dated 25/09/2018 or not?

**H – Findings on the Issue:**

1. **Issue No. 1:** As is evident from the analysis above, the Respondents have not complied with the orders dated 25/07/2019 of the Consumer Grievances Redressal Forum in letter and spirit in Complaint No. 1454/3/18/055, dated 25/09/2018. They have only supplied a copy of the entire scheme cost received through Sr Executive Engineer, ES Division, HPSEB Ltd Nalagarh.



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The scheme cost is not an account of expenditure as required under regulation 6 (2) of Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005.

**I – Order:**

1. The orders passed by the Consumer Grievances Redressal Forum on dated 25/07/2020 in Complaint No. 1454/3/18/055, dated 25/09/2018 have not been complied by the Respondents within the time frame specified therein.
2. It is fit case to be reported to the Himachal Pradesh Electricity Regulatory Commission being non-compliance of the orders passed by the Consumer Grievances Redressal Forum on 25/07/2019 in Complaint No. 1454/3/18/055, dated 25/09/2018..
3. The Complaint filed by M/S Sturdy Industries Limited is hereby disposed off.

Issued under my hand and Seal of the Office.



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Electricity Ombudsman 18/09/2020