



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

In the matter of:

M/S Mahamaya Infrastructure Pvt Ltd, Hotel Taj, Bana, Theog, District Shimla-171201
– Complainant

Vs

1. Executive Director (Personal), HPSEB Ltd, Vidyut Bhawan, Shimla-171004
2. Sr Executive Engineer (E), Electrical Division, HPSEB Ltd, Theog, Distt Shimla, HP-171201.
3. The Assistant Executive Engineer (E), Electrical Sub-Division, HPSEBL, Theog, Distt Shimla, HP 171201.

- Respondents

Complaint No.: 25/2020, Registered on 11/08/2020
(Decided on 15/10/2020)

CORAM

K L Gupta
HP Electricity Ombudsman

Counsel for:

Complainant: Sh. O.C. Sharma, Advocate
Respondent: Mr Anil Kumar God, Advocate

Order

The Complaint was registered on 11/08/2020 and listed for admission hearing on 29/08/2020. Respondents filed their reply on 29/08/2020 and the Complainant was to file their rejoinder by 19/09/2020 which was filed on 17/09/2020. The case was listed for final arguments on 26/09/2020. Orders were reserved on 26/09/2020.

A – Brief facts of the case:

1. M/S Mahamaya Infrastructure Pvt Ltd, Hotel Taj, Bana, Theog, District Shimla-171201 has filed a Complaint through Sh. Kapil Verma (hereinafter called 'The Complainant') under Regulation 28 (1) (b) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 against the orders passed on 13/07/2020 in Complaint No. 1241/3/19/046 dated 21/09/2019.



Kapil Verma
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B – The Complainant's submissions:

1. The Complainant submits that he is a Private Limited Company duly incorporated under the Companies Act and is having its works at Hotel Taj, Bana, Theog, District Shimla, H.P.. The Complainant Company is a body corporate by the name aforesaid, having perpetual succession and common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract and can by the said name sue or be sued. Shri Kapil Verma is its Authorized Representative /Admin HR and is a competent person to file, sign and verify the present representation, applications and other pleadings on behalf of the Company. He is competent person to depose on oath as to the facts of the present representation.
2. He further submits that the Respondent no. 1 is a Licensee and has provided permanent electricity supply connection at 22 kV Supply voltage on 02/01/2018 having Connected Load of 900 kW with a Contract Demand of 900 kVA under the category Commercial supply (Two part tariff). The Respondents No. 2 and 3 are its officers and their offices are situated at Theog, District Shimla for regulating the electricity supply of Consumers and issuance of energy bills etc.
3. The Complainant submits that the appellant Consumer applied to the Respondents for the issuance of PAC for permanent supply connection having Connected Load of 900 kW with a Contract Demand of 900 kVA for the proposed Five Star Hotel Project at village Mohal Janog Doyam, Tehsil Theog, District Shimla, H.P. at supply voltage of 22 kV. The Respondent Board accordingly issued PAC dated 20/06/2013 for Connected Load of 900 kW with Contract Demand of 900 kVA at 22 kV supply voltage from 66/22 kV Gumma Sub-Station. The appellant Company was required to deposit IDC amount of Rs. 9 lacs and earnest money of Rs. 31,500/-.
4. He further submits that the appellant Company could not deposit the IDC amount of Rs. 9 lacs and earnest money amounting to Rs. 31,500/- within the validity period of PAC due to some unavoidable circumstances and as such, applied for extension of demand note. The Respondents considered the request of the appellant Consumer and issued PAC/ extension of demand note dated 14/06/2016 and also demanded therein the late fee of Rs. 3,78,000/- alongwith IDC charges of Rs. 9 lacs and earnest money amounting to Rs. 31,500/-. In terms of said fresh PAC dated 14/06/2016, the appellant Consumer was also required to submit the complete case file alongwith requisite documents. The appellant Consumer deposited the late fee charges of Rs. 3,78,000/- on 21/06/2016.
5. The Complainant submits that the Respondents issued demand notice dated 27/07/2017 and demanded therein security deposit of Rs. 6,30,000/- and IDC amount of Rs. 7,69,069/- (Rs. 16,99,000/- - Rs. 9,00,000/-) totaling to Rs. 13,99,000/-. The appellant Consumer has deposited the said amount of Rs. 13,99,000/- on 05/08/2017.



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He further submits that the appellant Consumer has also deposited the estimated cost of supply line with the Respondents.

6. The Complainant submits that after substantial compliance made by the appellant Consumer by way of deposit of IDC at normative rate for Rs. 16,69,000/- and security deposit of Rs. 6,30,000/-, the Respondents issued office order dated 24/08/2017 and thereby sanctioned permanent supply connection in favour of appellant Consumer for Connected Load of 900 kW with Contract Demand of 900 kVA on 22 kV (HT) line. He further submits that there is no reference in the office order dated 24/08/2017 that the Connected Load of 900 kW with Contract Demand of 900 kVA so sanctioned is under "temporary metered supply" category.
7. The Complainant submits that subsequent to the issuance of office order dated 24/08/2017 and sanction of Connected Load of 900 kW with 900 kVA Contract Demand on permanent basis, the Complainant submitted the requisite A&A form, approved wiring contractor test report accompanied by other requisite documents i.e. letter for approval of building plan, change of land use dated 19/09/2017 and letter dated 04/10/2017 issued by Assistant Town Planner, Division Town Planning Office Kasumpti, Shimla for sending duly compounded map. The appellant/ Consumer also submitted to the Respondents the said duly compounded map of Hotel site and NOC to the Respondents forthwith after its receipt from the said department. He further submits that the original NOC from TCP as submitted to the Respondents was placed on the record of Consumer file. The Respondent No. 2 herein recommended the case for sanction of 900 kW Connected Load to the Deputy Chief Engineer, (OP) Circle, HPSEBL Shimla on 09/08/2017 by sending the complete case file in triplicate. The Deputy Chief Engineer (OP) Circle Shimla accordingly sanctioned the permanent supply connection for Connected Load of 900 kW with Contract Demand of 900 kVA at 22 kV Supply voltage under the category Commercial Supply (2 part tariff).
8. The Complainant submits that the Respondents provided permanent supply connection for Connected Load of 900 kW with Contract Demand of 900 kVA under the category Commercial Supply (two part tariff) on 02/01/2018.
9. The Complainant submits that the factum of submitting the NOC from TCP by the appellant Company to the Respondents is evident from the check list annexed with the A&A form.
10. The Complainant further submits that the Respondents issued demand notice dated 22/08/2019 and stated therein that the AG Audit has found that appellant failed to produce NOC from Statutory body (TCP, Panchayat or whatever name called) while applying for SCO. The Respondents have called upon the appellant Company to deposit a sum of Rs. 17,47,128/- on account of non-compliance to the statutory provision while



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release of service connection. The Respondents have further added in the said demand notice that the connection of the appellant will be considered temporary in future. In the aforesaid notice, the appellant has been called upon to deposit the amount within 30 days. The appellant Company obtained fresh NOC dated 05/09/2019 from TCP subsequent to receipt of demand notice dated 22/08/2019 and submitted the same to the Respondents.

11. The Complainant further submits that the Respondents further issued letter dated 12/09/2019 and thereby intimated that the appellant Company has not followed the statutory provision as per the check list attached with the A&A form and has not submitted the Test report of Wiring contractor and Consumer I.D. and in absence of the same, the supply connection of the appellant Company will be considered temporary till the codal formalities are fulfilled.
12. The Complainant submits that the Respondents issued monthly energy bill dated 12/09/2019 and demanded therein an amount of Rs. 17,47,128/- as sundry charges apart from the current charges. The Respondents have also levied the energy charges and demand charges as applicable to the temporary metered supply category in the aforesaid bill dated 12/09/2019. He further mentioned that after the release of service connection and till the date of issuance of demand notice dated 22/08/2019, the Respondents have raised all the monthly energy bills by applying the tariff of commercial supply category and not the tariff applicable to temporary metered supply category.
13. He further submits that the appellant Consumer challenged the aforesaid demand notice dated 22/08/2019 and the letter and bill dated 12/09/2019 before the Ld. C.G.R.F. Shimla by filing a Complaint. The Respondents filed reply to the Complaint before the Ld. C.G.R.F.
14. The Ld. C.G.R.F. dismissed the Complaint filed by the Complainant Consumer in terms of Oder dated 13/07/2020 by making the following observations:

"We have also perused & carefully gone through the amended provisions of Supply Code, 2009 notified by the Hon'ble HPERC on 03.12.2018. the examination of amendment reveals that in absence of NOC from concerned authorities, the Licensee shall not refuse electricity connection to applicant seeking such connection. It further provides that release of connection to applicant shall be on submission of undertaking/declaration to the extent that the Licensee may disconnect the electricity connection under reference, in the event of a legally binding order issued by the Statutory Authority (ies) for disconnection of supply owing to any default/non-compliance of statutory provisions. The said amendment in clear terms also specifies that however, such connection shall

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be regularized by the Licensee only on the submissions of the sanction letter of concerned statutory authority of the area. Thus, the amendment clearly states that till the sanction letter of concerned statutory authority, no such connection shall be regularized by Licensee. This means that till submissions of required NOC of concerned department, the connection so released shall not be regularized and shall be treated under temporary category, as per prevalent procedure and norms of Respondents.

In the present Complaint in hand, the fact is not denied that the NOC from the TCP was required to be given to regularize the connection released to the Complainant by the Licensee. The facts on the record goes on to demonstrate that the NOC Annexure C-6 was issued on 05.09.2019, in favour of the Complainant by the TCP Department H.P. and as such the connection is to be treated as regularized from the date of submission of NOC by the Complainant to the Respondent Company. Till then, in view of the amended provisions of Supply Code, 2009 referred above, the connection shall be treated under temporary category and the Auditors have also rightly pointed out and categorized it as to be covered under Temporary Connection Category.

We find no substance in the contention of the Complainant raised in the Complaint beforehand, specifically in the light of facts on record and provisions of Supply Code, 2009 as amended, statutory requirement of NOC from concerned Authority etc. Thus, we find no illegality in the demand Notice Annexure C-2 Dated 22.08.2019, Annexure C-3 dated 12.09.2019 and C-4 12.09.2019 and issued against the Complainant by Respondent Company.

In view of the discussion made hereinabove, the Complaint preferred before this Forum by the Complainant is found to be devoid of any substance and merits and hence dismissed. The Complaint is disposed off accordingly today i.e. on 13.07.2020 in the presence of the parties at Kasumptati. The parties are left to bear their own costs".

15. Feeling aggrieved and dissatisfied with the impugned order dated 13.07.2020 passed by the Ld. Forum in Complaint No. 1241/3/19/046, the appellant assails the same inter-alia on the following grounds:

GROUND OF REPRESENTATION:

16. The impugned order dated 13/07/2020 passed in Complaint No. 1241/3/19/046 by the Ld. C.G.R.F. Shimla is perverse, unjust, illegal, unsustainable, unreasonable and arbitrary.

17. That the Ld. Forum below has not appreciated the material legal aspect of the matter that the A&A form executed with the Respondent Board by the appellant Company is for Connected Load of 900 kW with Contract Demand of 900 kVA at 22 kV Supply voltage

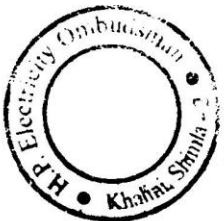


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under the commercial supply category and the same is not under the temporary metered supply. The Ld. Forum below has not appreciated the material fact that the check list annexed with the said A&A form clearly demonstrates that the receipt of NOC from TCP has been acknowledged by the Respondents therein and the said acknowledgement has been duly signed by the Respondents. The Respondents cannot resile from their own acknowledgement and violate the terms and conditions stipulated in the A&A Forum accompanied by check list and further unilaterally change the category of appellant Consumer from commercial supply to temporary metered supply category for the purpose of billing for consumption of energy. The Respondents cannot levy the tariff under the category of temporary metered supply in absence of A&A form (contract) executed by the appellant Consumer with the Respondents to this effect, more particularly, when the appellant Consumer has been categorized in the A&A form as commercial supply Consumer and the same is still in force and has not been rescinded by the Respondents. The Ld. C.G.R.F. has not appreciated that the Assistant Audit Officer while conducting the audit of ESD Theog has not properly and cautiously inspected the entire record of the Consumer case file of the appellant Consumer with respect to the N.O.C. from TCP and Wiring Contract Test Report submitted to the concerned Sub-Division. The Assistant Audit Officer has taken escape of the material fact that there is acknowledgement for the receipt of NOC from TCP in the check list annexed with the A&A Form made by the concerned Assistant Engineer, Electrical Sub-Division, HPSEBL, Theog. The report of the Assistant Audit officer dated 26.07.2019 regarding non-submitting of NOC from TCP by the appellant Consumer to the Board prior to release of supply connection and making the notification No. 438/Supply Code dated 03.12.2018 applicable and further directing thereby to raise the bill under Temporary category and further pointing out of alleged amount of Rs. 17,47,128/- for the period of December, 2018 to June 2019 are absolutely wrong, illegal and unsustainable. The Ld. C.G.R.F. has gravely erred in appreciating the audit report of the Assistant Audit Officer and as such the Order dated 13.07.2020 passed by the Ld. C.G.R.F. suffers from material illegality and irregularity. The Ld. C.G.R.F. has further gravely erred in making the notification No. 438 dated 03.12.2018 of Supply code applicable in the present set of facts and thereby arriving at a conclusion that in absence of NOC from concerned authorities the Supply connection of the appellant is to be treated as Temporary connection Supply. The Ld. C.G.R.F. has failed to fairly and judiciously redress the grievances of the appellant Consumer by not perusing the entire record of the Consumer case file of Supply connection of the appellant Consumer, more particularly, the A&A form and the check list annexed therewith and as such the order dated 13.07.2020 and the observations made therein deserves to be quashed and set-aside.



18. The Complainant submits that the Ld. Forum below has failed to appreciate that the appellant Consumer had applied for issuance of PAC for permanent supply connection

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for a Connected Load of 900 kW with a Contract Demand of 900 kVA for proposed Five Star Hotel project and the PAC dated 24/06/2013 was accordingly issued for the same by the Respondent Board. The office order for sanction of Connected Load of 900 kW with Contract Demand of 900 kVA dated 24/08/2017 has also been issued for the Hotel/ Resort of the appellant Company for permanent supply connection and not for temporary supply and as such the order dated 13/07/2020 deserves to be quashed and set-aside.

19. He further submits that the Ld. C.G.R.F. has not appreciated the service connection order dated 02/01/2018 which clearly demonstrate that the connection has been released to the appellant Consumer under commercial supply (two part tariff) and the same has not been released under the category temporary metered supply.
20. The Complainant submits that the Ld. Forum below has gravely erred in not appreciating the material fact that the Respondents have not cancelled the previously issued PAC dated 20/06/2013, office order dated 24/08/2013, A&A Forum alongwith check list annexed therewith and the service connection order dated 02/01/2018 after the issuance of demand notice dated 22/08/2019 and the same are in existence and in force for the purpose of billing the appellant Consumer under the category of commercial supply. The Respondents can only resort to treating and considering the category of the appellant Consumer under temporary metered supply after cancellation of all the previously issued PAC, Office Order, A&A form and check list annexed therewith and the service connection order and inviting the appellant Consumer to apply afresh for permanent supply connection by making compliance of all the codal formalities. The Respondents at no point of time issued any letter or communication to the appellant Consumer intimating thereby that the previously issued office order, executed A&A forum, SCO dated 02/01/2018 stands cancelled or rescinded as far as the same are for commercial supply category and that the present status of the category of the appellant Consumer would be as that of under temporary meter supply. In other words, the category of the appellant Consumer is still existing on record of the Respondents under commercial supply and not under the temporary metered supply and as such, the Respondents cannot bill the appellant Consumer under the category of temporary metered supply. The subsequent monthly energy bills so raised by the Respondents by way of applying tariff of temporary metered supply are absolutely wrong, arbitrary and unjustified. The Ld. Forum has not appreciated the said material aspect of the matter while passing the impugned order dated 13/07/2020 and the same deserves to be set-aside by this Hon'ble Authority.

21. The Complainant further submits that the Ld. Forum has not appreciated that the opinion of Assistant Audit officer is merely an opinion and the Respondents ought not



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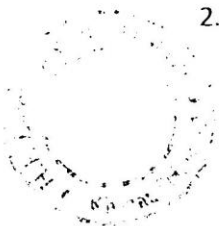
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to have reiterated the demand as pointed out by the Audit party by way of issuance of demand notice to the appellant Consumer without physically verifying the entire record justifying the conversion of category from commercial supply to temporary metered supply and as such the impugned order deserves to be set-aside by this Hon'ble Authority.

22. The Complainant submits that the findings and conclusions so arrived at by the Ld. C.G.R.F. are palpably wrong, absurd and deserves to be set-aside and quashed more particularly in the situation when the same are based on surmises and conjectures. There is no application of mind by the Ld. C.G.R.F. to the grievances of the appellant.
23. The Complainant submits that there is no representation by the appellant/ Complainant Company, in respect of the same grievances, pending in any proceedings before any Court or Tribunal or Arbitrator or any other authority and no representation was earlier made in respect of the same subject matter before this Hon'ble Authority.
24. The Complainant submits that the present appellant is not satisfied with the redressal of grievances by the Ld. Forum below as the reliefs prayed for in the Complaint were not granted in favour of the present appellant.

C – The Respondents' submissions:

1. The Respondents submits that the Complainant applied for power Availability Certificate for 900 kW of load with 900 kVA of Contract Demand and the same was issued to the Complainant on 29/08/2016 and thereafter the load was also sanctioned on 24/08/2017 subject to submitted No Objection Certificate from authorities and the replying Respondent released the electricity connection on commercial basis. The replying Respondent asked No Objection Certificate to the Complainant many times and when the Complainant fails to produce Permanent NOC issued from the competent authority therefore, the replying Respondent issued demand notice dated 12/09/2019 and for recovery of Rs. 17,47,128/- because the Complainant has not submitted permanent NOC. As per prevalent practice and terms and conditions of Power Availability Certificate and load connection orders, permanent power connections are released on production of No objection certificates (NOC) from Pollution Control Board, Director General (POLICE) cum Director fire services and town and Country Planning Department HP. And the connection was issued to the Complainant purely in terms of the PAC conditions and the appellant has accepted the same.
2. They submitted that electricity connection issued to the appellant on the basis of the PAC conditions meaning thereby the connection issued by the appellant was temporary



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because the appellant has not submitted the NOC from TCP. Further submits that the A & A submitted is not approved by the wringing contractor.

3. The Respondents submits that on 27/07/20019, the RAO after gone through the Complainant file and no objection found that service connection order in the favour of the Consumer was issued by the office of the replying Respondent on 02/01/2018 despite non submission of NOC from TCP Department and till date the Complainant has not submitted NOC. The connection of the Complainant has been released under commercial category and has been charged as per the tariff applicable for ibid category. Therefore the Complainant is being charged tariff under Temporary category as per HPERC Regulations and Sales Manual. The Respondents submitted that the field unit had released the extended load of 900 kW with CD of 900 kVA under permanent category resulting in wrong categorization of 900 kW with CD of 900 kVA under permanent category resulting in wrong categorization of Consumer and charging/ loss of revenue to the extent of Rs. 17,47,128/-.
4. The Respondents submits that the Forum has passed the order in the Complaint after gone through the record pertained to the applicant/Complainant, as the appellant has not complied with the conditions of PAC and release order and failed to submit the required NOC of the competent authority, despite several oral and written request also, therefore the connection released to the appellant was temporary, in view of the specific nature of the NOC taken by the appellant from the competent Authority, meaning thereby till submission of required NOC of concerned department, the connection so released shall not be regularized and shall be treated under temporary category as per prevalent procedure & norms of the replying Respondent.
5. The Respondents submits that when the Complainant applied for power supply and submitted A & A form and accepted these terms and as per these terms the Complainant is bound to pay the future amount if any arose. Further though in sanction order it is not specifically mention the word temporary, but the connection released to the appellant was temporary, in view of the specific nature of the NOC taken by the appellant from the competent Authority, meaning thereby till submission of required NOC of concerned department, the connection so released shall not be regularized and shall be treated under temporary category as per prevalent procedure & norms of the replying Respondent. The Complainant has not complied with the conditions of the PAC & release order and not submitted that NOC of competent Authority, therefore the connection released to the Complainant was also temporary basis because the NOC taken by the Complainant from competent authority specific. That the appellant is taking the un-due advantage of the Regulations, as one point of time replying Respondent helped the Complaint on his oral request that the Complainant will submit



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the NOC after some time. Now the Complainant cannot denied to pay the due which was well knowledge of the Complainant.

D – CGRF Orders:

1. We have heard both the parties and have gone through the case file carefully. It has been admitted by both the parties that the instant Demand Notice was issued on 28/08/2019 and subsequent notice dated 12/09/2019, which are placed on record by the Complainant as Annexure C-2 and Annexure C-3., keeping in view the audit of the Respondent company. The Auditors found that the Consumer has not submitted the required NOC of the TCP Department HP. till June, 2019 and hence required to be billed under Temporary Category till compliance to the statutory requirements, in view of amendment to the Supply Code, 2009 issued by the HPERC vide notification dated 03/12/2018.
2. We find substance in the submissions of replying Respondents that the Complainant has not complied with the conditions of PAC and release order and failed to submit the required NOC of the competent authority, despite several requests. Therefore, the connection released to the Complainant was also on temporary basis, in view of specific nature of the NOC taken by the Complainant from Competent Authority and the amendment issued by HPERC in supply Code, 2009 on 03/12/2018.
3. We have also perused & carefully gone through the amended provisions of Supply Code, 2009 notified by the Hon'ble HPERC on 03/12/2018. The examination of amendment reveals that in absence of NOC from concerned authorities, the licensee shall not refuse electricity connection to applicant seeking such connection. It further provides that release of connection to applicant shall be on submission of undertaking/declaration to the extent that the licensee may disconnection the electricity connection under reference, in the event of a legally order issued by the Statutory Authority (ies) for disconnection of supply owing to any default/non-compliance of statutory provisions. The said amendment in clear terms also specifies that however, such connection shall be regularized by the Licensee only on the submission of the sanction letter of concerned Statutory Authority of the area. Thus, the amendment clearly states that till sanction letter of concerned statutory Authority of the area, no such connection shall be regularized by the Licensee. This means that till submissions of required NOC of concerned department, the connection so released shall not be regularized and shall be treated under temporary category, as per prevalent procedure & norms of Respondents.
4. In the present Complaint in hand, the fact is not denied that the NOC from the TCP was required to be given to regularize the connection released to the Complainant by the



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Licensee. The facts on the record goes on to demonstrate that the NOC Annexure C-7 was issued on 05/09/2019, in favour of the Complainant by the TCP Department HP. and as such the connection is to be treated as regularized from the date of submission of NOC by the Complainant to the Respondent Company. Till then, in view of the amended provisions of Supply Code, 2009 referred above, the connection shall be treated under temporary category and the Auditors have also rightly pointed out and categorized it as to be covered under Temporary Connection Category.

5. We find no substance in the contention of the Complainant raised in the Complaint beforehand, specifically in the light of facts on record & provisions of Supply Code, 2009 as amended, statutory requirement of NOC from concerned Authority etc., Thus, we find no illegality in the demand raised through Demand Notice Annexure C-2 dated 22/08/2019, Annexure C-3 dated 12/09/2019 & C-4 12/09/2019 & issued against the Complainant by the Respondent Company.
6. In view of the discussion made herein above, the Complaint preferred before this forum by the Complainant is found to be devoid of any substance and merits and hence dismissed. The Complaint is disposed off accordingly today i.e, on 13/07/2020 in the presence of the parties at Kasumpti. The parties are left to bear their own costs.

E – The Complainant's submissions through rejoinder:

1. The Complainant denies that the load was sanctioned on 24/08/2017 subject to furnishing the NOC from the authorities concerned and that the Respondents asked the appellant for NOC many times after the release of permanent supply connection under category "Commercial Supply". There was no occasion for the Respondents to ask the appellant Consumer to submit NOC as the same stood already supplied and submitted alongwith the A&A form and this material fact is evident from the check list annexed with the A&A form. The Complainant further submitted that there is not even a single correspondence made by the Respondents requiring the appellant Consumer to submit NOC after release of permanent supply connection under the category "Commercial Supply". The alleged stand taken by the Respondents is absolutely false, baseless and consequently the demand notice dated 12/09/2019 for Rs. 17,47,128/- allegedly at the instance of RAO is arbitrary, illegal, wrong, unjustified and the same deserves to be set-aside and quashed by this Hon'ble Authority by allowing the present representation and consequently the Order passed by the C.G.R.F. also deserves to be quashed and set-aside. The Complainant further submitted that the appellant Consumer has complied with all the requisite terms and conditions of PAC and there is no infraction or violation whatsoever by the appellant Consumer.

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2. The Complainant submits that the electricity supply connection released by the Respondents under Commercial Supply category is on permanent basis and the same was not released under temporary metered supply category and this factum is evident from all the documents executed by the present appellant. The Complainant further submitted that in case the signatures of the Wiring Contractor in the Wiring Test Report were not appended or put, in that eventuality the Respondents could have required the Wiring Contractor concerned to put his signatures on the Wiring Contractor Test Report as was submitted by the appellant Consumer in order to cure the irregularity. The Respondents are themselves careless and negligent in performing their part of the duties and no blame or liability can be rested upon the appellant Consumer.
3. The Complainant submits that there is no wrong categorization of the appellant Consumer under commercial supply category after release of supply connection under the category commercial supply that too on permanent basis.
4. The Complainant submitted here that the Order dated 13/07/2020 passed by Ld. C.G.R.F. lacks proper reasoning, application of mind to the records produced and has passed the impugned non-speaking order and the same deserves to be quashed and set-aside by this Hon'ble Authority by allowing the present representation.
5. The Complainant therefore prayed that the reliefs as has been prayed for in the representation may kindly be allowed and the order dated 13/07/2020 passed by the Ld. C.G.R.F. may kindly be set-aside and quashed in view of the grounds taken in the present representation, in the interest of justice.

F – Written submissions by the Complainant:

1. The Complainant have not filed any written submissions by 09/10/2020.

G – Written submissions by the Respondents:

1. The Respondents have not filed any written submission even after specifically directing them to do so alongwith any additional record related to various letters written to the Complainant for submission of NoC as contended in their reply dated 29/08/2020.

H – Analysis of the Complaint:

1. The case file at Consumer Grievances Redressal Forum have also been requisitioned and gone through.



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15/10/2020



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2. The Complainant was issued a PAC on 20/06/2013 for Connected Load of 900 kW and with 900 kVA Contract Demand at 22 kV from 66/22 kV Gumma Sub-Station by CE Operation (South) Shimla. Condition No. 10 of the PAC dated 20/06/2013 states:

*"The Power will be made available subject to the production of **No Objection Certificate** from Himachal Pradesh State Environment Protection and Pollution Board **and also from competent authority to the effect that the civil works construction carried out by the Consumer is an authorized one as per Town and Country Planning act 1977 in Compliance of HPERC regulations (Licensee's Duty to Supply of Electricity on request), 2004.**"*

3. The demand note date was extended by Dy CE Shimla on dated 14/06/2016 with advise to deposit the Earnest money amounting to Rs 31,500/- and Infrastructural Development Charges amounting to Rs 9,00,000/-. The amounts were deposited by the Complainant 05/08/2016.
4. The Complainant further deposited Rs 13,99,000/- (Rs 16,69,000/- IDC plus Rs 6,30,000/- Security Deposit and adjustment of Rs 9,00,000/- IDC already paid) on 05/08/2017 on demand from Respondent No. 3 on dated 27/07/2017.
5. The Complainant was further issued a sanction for Connected Load of 900 kW and with 900 kVA Contract Demand by Dy CE Shimla on 24/08/2017 for setting up a Hotel/ Resort at Theog. Condition 21 of the sanction states:

*"The Consumer be asked to submit **No Objection Certificate** from Himachal Pradesh State Environment Protection and Pollution Board to this effect that the industry is approved with regard to stipulation of pollution and **a certificate from competent authority to the effect that the construction is authorized one within one month after the release of connection or the same will be disconnected.**"*

6. The Complainant submitted A&A Form alongwith wiring test report which was recommended for load sanction under Commercial category by Respondent No. 3 on 07/08/2017 and further endorsed by Respondent No. 2 on 09/08/2017 sanctioned by Dy CE Shimla on 24/08/2017. The check list, duly authenticated by the Respondent No. 3 acknowledged NoC from TCP/MC/NP/other ULBs under item B (ii).
7. The regular 3Ø electricity connection to the Complainant was released on 02/01/2018 vide SCO dated 27/12/2017 and bills were raised accordingly under CS two part tariff category.



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8. On 26/07/2019, Assistant Audit Officer for AG Audit party issued a Memo No. 8 for non-compliance of statutory provisions in respect of the Complainant and recommended that despite non-submission of NoC till date (June 2019), the connection was released on 02/01/2018, the 3rd amendment in Himachal Pradesh Electricity Supply Code, 2009 dated 03/12/2018 was applicable and the Consumer may be billed under temporary category till compliance of statutory requirement and additional energy charges to the tune of Rs 17,47,128/- is chargeable from the Consumer.
9. The Respondent No. 3 on dated 22/08/2019 raised demand for Rs 17,47,128/- (Since December 2018 till June 2019) from the Consumer on account of non-compliance of statutory provisions while release of connection.
10. Aggrieved by the demand, the Complainant filed a Complaint at CGRF on 21/09/2019 vide Complaint No. 1241/3/19/046. The Forum passed the orders on 13/07/2020 and disposed off the same being devoid of any substance and merits after finding no illegality in the demand raised by the Respondents on 22/08/2019.
11. Aggrieved by the decision of the Forum, the Complainant filed the present Complaint.
12. Now after scrutiny of the PAC dated 20/06/2013 as well as sanction dated 24/08/2017 and conditions specified therein, there is no mention of NoC from TCP/MC/NP/ other ULBs. Condition No. 10 of PAC dated 20/06/2013 and condition No. 21 of sanction dated 24/08/2017 mentioned above states only either **certificate from competent authority to the effect that the civil works construction carried out by the Consumer is an authorized one as per Town and Country Planning act 1977** or **certificate from competent authority to the effect that the construction is authorized one within one month after the release of connection or the same will be disconnected** respectively.
13. Further, the A&A form contains a check list wherein under head B (ii), Identity/ Ownership and further under proof of ownership outside TCP/MC/NP/other ULB areas, the NoC from TCP/MC/NP/ other ULBs have been acknowledged and signed by the Respondent No. 3.
14. The purpose of conditions mentioned in PAC dated 20/06/2013 and sanction of load dated 24/08/2017 is clear that the construction should be authorized one. There is no condition of NoC for release of electricity connection in both communications prior to release of connection.
15. The document submitted by the Complainant under Annexure P-8 dated 19/09/2017 prior to release of electricity connection on 02/01/2018 contains approval of Building Plan/ Change of Land Use issued by Assistant Town Planner, Kasumpti Shimla which



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clearly demonstrate that the Construction has been authorized by the TCP much prior to release of regular electricity connection.

16. Further, the documents submitted at Annexure P-9 dated 04/10/2017 prior to release of electricity connection on dated 02/01/2018 is also from the Assistant Town Planner of TCP Kasumpti wherein permission has been granted for compounding of offences alongwith compounded map clearly demonstrating that the Construction is authorized by TCP.
17. The Audit memo dated 26/07/2019, issued by the Assistant Audit Officer of AG Shimla have ignored the TCP checklist available with A&A form and probably also the condition that the Construction should be authorized one mentioned in PAC dated 20/06/2013 and sanction dated 24/08/2017.
18. The Audit memo dated 26/07/2019, issued by the Assistant Audit Officer of AG Shimla have also ignored the fact that the Respondent No. 2 and 3 have recommended sanction of load under the applied Commercial category in favour of the Consumer only after proper verification of record by them only.
19. The Audit memo dated 26/07/2019, issued by the Assistant Audit Officer of AG Shimla have also probably ignored the documents issued by TCP dated 19/09/2017 and 04/10/2017 which have authorized the construction. He has also ignored the fact that there is no condition of NoC for release of electricity Connection but instead there is conditions that the construction should be authorized one.
20. The Audit memo dated 26/07/2019, issued by the Assistant Audit Officer of AG Shimla have also probably ignored the fact that the amendment No. 3 in Himachal Pradesh Electricity Supply Code, 2009 issued on 03/12/2018 and applicable w.e. from 05/12/2018 (Date of publication in HP Gazette) is not applicable in the instant case since the same states as under:

“3.1.2.1 In case of a new connection, where an applicant is unable to produce “No Objection Certificate” for seeking electricity connection, from the Statutory Authority (ies) like the Panchayat, Municipality or the Town and Country Development Authority (by whatever name called), the licensee shall not refuse electricity connection to an applicant seeking electricity connection, only for want of such “No Objection Certificate” and shall, release the electricity connection to such applicant on the submission of the undertaking/declaration to the extent that the licensee may disconnect the electricity connection under reference, in the event of a legally binding order issued by the Statutory Authority (ies) for disconnection of supply owing to any default/non-compliance of statutory provisions. However, such connections shall be regularized by

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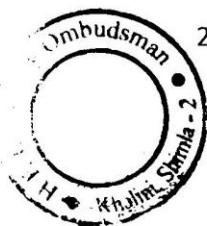
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the Licensee only on the submission of the sanction letter from the concerned statutory authority of the area. This shall be without prejudice to any other rights of the licensee including that of getting its payment due as on the date of disconnection

21. Further, Audit memo dated 26/07/2019, issued by the Assistant Audit Officer of AG Shimla have also ignored the facts that the amendment No. 3 in Himachal Pradesh Electricity Supply Code, 2009 is applicable for **release of new connection** only and is not applicable for the existing connections as in this case which was released on 02/01/2018 much prior to the amendment No. 3 in Himachal Pradesh Electricity Supply Code, 2009.
22. From the amendment it is very much clear that the connection shall be regularized on the submission of the sanction letter from the concerned statutory authority of the area and there is no requirement of NoC for release of regular electricity connection. The Contention of the audit of amendment No. 3 in Himachal Pradesh Electricity Supply Code, 2009 applicable w.e. from 05/12/2018 through memo dated 26/07/2019 is totally out of place. The documents dated 19/09/2017 and 04/10/2017 were available for authorization/ regularization of the construction prior to release of the electricity connection on 02/01/2018 besides NoC which was also submitted by the Complainant and duly acknowledged by the Respondent No. 3.
23. These facts has also not been contested by Respondent No. 3 before audit for their satisfaction and dropping the audit para despite the documents available with him to suggest that the construction is authorized one and the amendment is applicable for release of new connection only and Instead he has acted arbitrarily and issued a demand note to the Complainant for the amount calculated by the Audit without applying his mind to the facts before him.
24. The contention of the Respondents that they have requested many times verbally and through written communication to the Complainant have not been proved by them despite specific directions on 26/09/2020 to do so through written submissions. However, the same is irrelevant in this case having facts that NoC was submitted by the Complainant at the time of submissions of the A&A Form and Test report and duly acknowledged by the Respondents No. 3. The wiring and test report having not attested by the Consumer, as pointed out by audit as one of the reasons, does not carry any sense since the Respondent No. 3 have authenticated the same by putting his signatures having confirmed of checking, may be at site also.
25. The contention of the Respondents that the electricity connection was issued to the Complainant on the basis of PAC conditions and was temporary if NoC was not submitted from TCP is also out of place since there is no such condition in the PAC dated 20/06/2013.



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26. The contention of the Respondent that the load was sanctioned subject to NoC from authorities is also out of place since there is no such condition in the sanction dated 24/08/2017.
27. The contention of the Respondents that the connection released was temporary is also wrong since regular Commercial Supply two part category connection was released to the Complainant on 02/01/2018 without any pre-conditions after satisfying the statutory requirements.

I-Issues in question:

1. **Issue No. 1:** Whether the Complainant had submitted requisite documents for release of regular electricity connections as desired by the Respondents?
2. **Issue No. 2:** Whether the contention of the Audit vide memo No. 8 dated 26/07/2019 is correct in recommending the electricity connection to be billed under Temporary category till compliance of statutory requirements?
3. **Issue No. 3:** Whether the orders passed by Consumer Grievances Redressal Forum on dated 13/07/2020 in Complaint No. 1241/3/19/046, dated 21/09/2019 are in line with relevant provisions?

J – Findings on the issues:

Issue No. 1:

1. From the analysis done above, it is evident that the Complainant had submitted the NoC although not desired by the Respondents at stage of PAC dated 20/06/2013 and also at the stage of sanction dated 24/08/2017, which was duly authenticated by the Respondent No. 3. Accordingly, the regular electricity 3Ø connection was recommended on 07/08/2017 by Respondent No. 3 and further recommended by Respondent No. 2 on 09/08/2017 and sanctioned as applied for Commercial Supply under two part category was issued by the Dy CE Shimla on 24/08/2017 without any preconditions for submissions of NoCs.
2. The conditions in PAC dated 20/06/2013 and sanction dated 24/08/2017 only require that the construction should be authorized. The TCP had already authorized the constructions on dated 19/09/2017 and further compounded alongwith map on dated 04/10/2017, much prior to release of electricity connection on 02/01/2018.



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Issue No. 2:

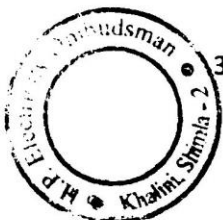
1. From the analysis done above, it is evident that the audit memo No. 8 dated 26/07/2019 was not in line with the condition No. 10 of the PAC dated 20/06/2013 and condition No. 21 of sanction dated 24/08/2017.
2. The audit memo was also not correct and the audit ignored the fact that although not required, the NoC was also submitted by the Complainant duly authenticated by the Respondent No. 3 in Check List at B (ii) submitted alongwith A&A form.
3. The contention of the audit through Memo No 8, dated 26/07/2019 applying the amendment No. 3 of Himachal Pradesh Electricity Supply Code, 2009 applicable w.e. from 05/12/2018 was also wrong since the same was applicable for release of new connection only whereas the Complainant's electricity connection was already released under Commercial Supply two part category as regular connection on 02/01/2018.
4. From the analysis done above, it is evident that the contention of the audit through Memo No. 8, dated 26/07/2019 was totally wrong interpretation of the amendment No. 3 of Himachal Pradesh Electricity Supply Code, 2009 applicable w.e. from 05/12/2018.

Issue No. 3:

1. As is evident from the analysis done above, the orders passed by the Consumer Grievances Redressal Forum on dated 13/07/2020 in Complaint No. 1241/3/19/046, dated 21/09/2019 are not in line with the requirements of the PAC, sanction, other documents on record and also not in line with the provisions of the Himachal Pradesh Electricity Supply Code, 2009, amended provisions vide amendment No. 3 applicable w.e. from 05/12/2018.

K – Order:

1. The orders passed on dated 13/07/2020 by Consumer Grievances Redressal Forum in Complaint No. 1241/3/19/046, dated 21/09/2019 are quashed and set aside.
2. The demand note dated 22/08/2019 issued by Respondent No. 3 is quashed and set aside.
3. The Respondent No. 1 is hereby advised to comply the directions issued in Case No. 09/2019 titled M/S Manjholi Stone Crushers Vs HPSEB Ltd issued on 10/08/2020, which is very much relevant to the present case also, to apprise the field officers



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specifically the AEs/ AEEs of the Operation Sub-Divisions of the relevant Rules, Regulations and tariff orders by way of regular trainings in order to defend the wrong decisions taken by Audit at the time of audit itself so as to avoid the unnecessary litigations in future.

4. The Respondents are hereby directed to overhaul the Consumer account w.e. from December 2018 till June 2019 or for the period during which the Complainant has been billed under Temporary Metered Supply {TMS} category by treating as regular electricity connection under Commercial Supply Category covered under two part tariff.
5. The Respondents are further directed to refund the amount deposited with them by the Complainant during the pendency of his Complaint at Consumer Grievances Redressal Forum and Electricity Ombudsman by adjustments in future energy bills.
6. The Respondents are further directed to report Compliance within a period of 21 days.
7. The Complaint filed by M/S Mahamaya Infrastructure Pvt Ltd, Hotel Taj, Bana, Theog, District Shimla-171201 is hereby disposed off.
8. No cost to litigation.



Given under my hand and seal of this office.

Leupto
Electricity Ombudsman 15/10/2020