



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 Milestone Gears (P) Ltd (Unit-V), Plot No. 20-24, Sector-1, Parwanoo, Tehsil Kasauli,
Distt Solan, HP-173220

- Complainant

Vs

1. Executive Director (Personal), HPSEB Ltd, Vidyut Bhawan, Shimla-171004
2. The Assistant Executive Engineer (E), Electrical Sub-Division, HPSEBL, Parwanoo, District Solan HP-173220
3. Sr Executive Engineer, Electrical Division, HPSEBL, Parwanoo, HP-173220

- Respondents

Complaint No. 32/2020, Registered on Dated: 22/08/2020
(Decided on 12/10/2020)

CORAM

K L Gupta
HP Electricity Ombudsman

Counsels for:

The Complainant: Sh. Rakesh Bansal
The Respondents: Sh. Anil Kumar God, Advocate

Order

The case was received and registered on 22/08/2020. The case was listed for admission hearing 11/09/2020. The Respondents were given time to file their reply by 26/09/2020 and the Complainant was to file their rejoinder by 03/10/2020. The Respondents have further sought time to file their reply. The rejoinder has also not been filed by the Complainant in absence of reply.

A – Brief facts of the case:

1. M/S Milestone Gears (P) Ltd (Unit-V), Plot No. 20-24, Sector-1, Parwanoo, Tehsil Kasauli, Distt Solan, HP-173220 has filed an application (Hereinafter known as the Complainant) under regulation 28 (c) and 33 (E) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 for non-



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implementation of the orders passed by Consumer Grievances Redressal Forum on 13/07/2020 in Complaint No. 1421/4/19/065, dated 17/12/2019.

B – The Complainant's submissions

1. The Complainant submits that on 12/12/2019, he filed a grievance with the Consumer Grievances Redressal Forum of HPSEBL viz: Complaint No. 1421/4/19/065 in the matter of final settlement as well as refund on account of sub-metering. On 13/07/2020 the Complaint was disposed in favour of the Complainant directing the Respondents:
 - a) To refund the advance cost share towards IDC of Rs. 9,50,000/- deposited by the Complainant;
 - b) To also pay interest on refund amount at a rate prescribed in para 5.7.3 of Supply Code, 2009;
2. He further submits that as per regulation 27 of the HPERC (Consumer Grievances Redressal Forum & Ombudsman) Regulations, 2013, the order of the Forum are to be complied within 21 days of the orders or such shorter period as may be directed by the Forum. The Complainant has received a sum of Rs. 9,50,000/- as adjustment in the energy bills. Interest has not been paid so far.
3. He 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 (Consumer Grievances Redressal Forum & Ombudsman) Regulations, 2013 as it was not clear earlier whether to approach HPERC for non- implementation of Forums orders or to approach the Electricity Ombudsman.
4. The Complainant submits that the representation is being filed well within the time period allowed in accordance with Regulation 28 (c) of the HPERC (CGRF and Ombudsman) Regulation, 2013.
5. **Prayer:** The Complainant prayed that the without prejudice to the right 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;
 - a) to direct the Respondents to comply with the orders of the forum completely in letter and spirit in respect of the Complaint;
 - b) to report the extent of non-compliance to the Himachal Pradesh Electricity Regulatory Commission;
 - c) to direct the Respondents to pay interest at a rate decided by Ld. Ombudsman for delay period in refunding the amount due to the Complainant;
 - d) call for the record of the case;
 - e) any other or further orders which this Hon'ble Ombudsman may deem fit and proper, in the facts and circumstances



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of the case may kindly be passed in favour of the Complainant company and against the Respondents/ Distribution Licensees.

C - The Respondents' submissions:

1. The Respondents submitted that they regret the inconvenience caused to this Hon'ble Forum on account of alleged dis-obedience of the orders dated 13/07/2020. They submits that this Hon'ble Forum has issued Notice dated 25/08/2020 which has been received on 28/08/2020.
2. The Respondents submits that he is a law abiding citizen and holds the orders and or directions of all Courts/ Forums including this Hon'ble Forum in its highest esteem. There has been no intent, purpose, motive and or design to disobey and or disrespect the orders and or directions passed by the Id. Forum in any way or in any manner, nor can the Replying Respondents ever dream of the same. The Replying Respondents has also not done anything wittingly or unwittingly which could be termed as lowering the majesty or grandeur of Id. Forum or of this Hon'ble Forum or which could be termed as violative of the Order dated 13/07/2020 passed by the Id. Forum in Complaint No. 1421/4/19/065. Should, however, this Hon'ble Forum comes to the conclusion that Replying Respondents has been remiss and negligent in any way or in any manner, such negligence which was absolutely unintended, may very kindly be excused and condoned.
3. The Respondents submits that the Complainant –M/s Milestone Gears (P) Ltd. had filed a Complaint before the Id. CGRF at Shimla on 17/12/2019, which was registered as Complaint No. 1421/4/19/065, stating therein that the HPSEBL has raised Demand Notices for Service Connection Charges / Line Cost Share/ Infrastructure Development Charges dated 17/12/2019 amounting to Rs.9,50,000/- and further deposit estimate cost of common line 10,13,402/-. It was further alleged that the aforesaid action of the Respondents is illegal, unjustified etc. A copy of the Complaint filed by the Complainant Company before the Id. CGRF is annexed hereto as **Annexure-R-1** for kind perusal of this Hon'ble Forum. They further submitted that the reply in opposite to the Complaint aforesaid was filed by the Respondents on 24/03/2020 contesting therein the claim of the Complainant-Company. A copy of the reply filed on behalf of the Respondents is annexed hereto as **Annexure-R-2** for kind perusal of this Id. Forum.
4. They submits that the Complaint was taken up for further hearing on 13/07/2020 when the following orders/directions came to be passed:-

In view of the discussions made herein above, the Complaint preferred before this Forum by the Complainant is allowed to the extent that the advance cost share towards IDC of Rs.9, 50,000/- deposited by the Complainant, is directed to be refunded in pursuance of



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the order passed by the Hon'ble HPERC in Suo Moto petition No. 25 of 2016 decided on 05.10.2016 and admission of Respondents. The refund also entails the interest to be calculated at the rate as prescribed in para 5.7.3 of the Supply Code, 2009. The Complaint is disposed off accordingly today i.e. on 13.07.2019 in the presence of the parties at Kasumpti. The parties are left to bear their own costs

5. The Respondents submits that the perusal of the order dated 13/07/2020 goes to show that on the said date the Id. CGRF had directed to refund the advance cost share towards IDC of Rs.9, 50,000/- deposited by the Complainant, in pursuance of the order passed by the Hon'ble HPERC in Suo Moto petition No. 25 of 2016 decided on 05/10/2016 and admission of Respondents. The refund also entails the interest to be calculated at the rate as prescribed in para 5.7.3 of the Supply Code, 2009.
6. They submitted that in the instant case the IDC has been refunded to the Complainant in accordance with the order passed by the Hon'ble HPERC in Suo Moto Petition No. 25 of 2016 decided on 05/10/2016 by the replying Respondents before the order in question was passed by the Id. CGRF. The Id. CGRF has wrongly concluded that the Complainant is entitled to interest on the refunded amount of IDC by relying on Para No. 5.7.3 of the HP Electricity Supply Code 2009. The Para No. 5.7.3 is not applicable in the present case, because, the para No. 5.7.3 deals with the payment of the disputed bills and provides that if on examination of a Complaint, the licensee finds a bill to be erroneous, a revised bill will be issued to the Consumer indicating a revised due date of payment, which will not be earlier than ten days from the date of delivery of the revised bill to the Consumer. If the amount paid by the Consumer under para 5.7.1 is in excess of the revised bill, such excess amount will be refunded through adjustment first against any outstanding amount due to the licensee and then against the amount becoming due to the licensee immediately thereafter. The licensee will pay to such Consumer interest on the excess amount 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. The Para No. 5.7.3 is not applicable in the present case and the HPSEBL shall not be liable to pay interest on the refunded amount of IDC as the dispute in the Complaint is with respect to the refund of IDC and not payment of disputed electricity bill and the case of the Complainant shall be governed by the provisions of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 and not by the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 and Para No. 5.7.3 of the HP Electricity Supply Code 2009. The matter has been examined by the competent authority of the replying Respondents and it has been decided to challenge the order passed by the Id. CGRF on 13/07/2020 to the extent of imposing interest in accordance with the provisions of the clause No. 5.7.3 of the Electricity Supply Code 2009, before the Hon'ble High Court of HP by filing CWP as is evident from **Annexure RA-3**. The matter has been examined at different level and due to which matter is delayed. The matter is also delayed due to COVID 19 restriction

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imposed by the Govt. and this Ld. Forum may take the judicial notice of the same. Therefore, it cannot be said that the replying Respondents has violated any orders/directions passed by the Id. CGRF in any way or in any manner.

7. The Respondents submits that as per provisions of the Regulations 27 of the H.P. Electricity Regulatory Forum (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 stood amended by the H.P. Electricity Regulatory Forum (Consumer Grievances Redressal Forum and Ombudsman) (First Amendment) Regulations 2019 whereby the words, sign and figure "Non-compliance of the order of the forum shall be treated as violation of the Regulations of the Forum and accordingly liable for action under Section -142" of the Act stands omitted amending thereby that the Complainant has only the right to assail the order by way of representation before the Id. Ombudsman. They further submitted that the Respondents No. 2 was infected by the COVID -19 and went to home isolations and office of the Respondents no. 2 was closed for preventing spread of COVID 19 pandemic and case file was lying in his office due to which the matter in question was delayed and could not filed the CWP before the Hon'ble High Court of HP against the order passed by the Ld. CGRF on 13/07/2020 as such the delay in the present case is not intentional one but due to above mentioned to reasons and this Hon'ble Forum may take judicial notice of this situation as such the Complaint of the Complainant is not maintainable and the same is liable to be dismissed.

D – The Complainant's additional submissions through rejoinder:

1. The Complainant repeated, reiterated and confirmed all the statements and averments made by him in the Complaint and denied all the statements and averments made in the said reply unless and until the same are specifically admitted by him.
2. **The Complainant submits that he strongly objects to the reply of the respondent as they have tried to enter into the merits of the case once again, even when the present Complaint has never sought any decision on merits from the Ld. Ombudsman.** The present Complaint is only with respect to implementation of the orders passed by CGRF and nothing beyond can be entertained in the proceedings beyond the subject of the representation.
3. He further submits that additional comments are being made by the Complainant are accepted to the extent that Advance Cost Share of Rs. 9.50 lakhs has been refunded to the Complainant. He denies that the CGRF has relied on Para 5.7.3 of the Supply Code, 2009. The CGRF has only picked up the rate of interest from Para 5.7.3. of the Supply Code, 2009, but the CGRF has not relied on the said para. Even the CGRF has not stated in their orders that Para 5.7.3 is applicable in the present case. The rate picked up by the CGRF which from para 5.7.3 which is simple interest @ 15 % is the same rate as is defined

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in the Regulation 26 of the HPERC (CGRF and Ombudsman) Regulations, 2013, which also is 15% p.a. The reference of para 5.7.3 of the Supply Code, 2009 or Regulation 26 of the HPERC (CGRF and Ombudsman) Regulations does not have any impact on the amount of refund for which the Complainant is eligible as per regulations. The Ld. Forum has acknowledged and passed directions for payment of interest for the time the excess amount was withheld by the Respondents.

4. He further submits that the respondent has stated that they are going to challenge the orders of CGRF before the Hon'ble High Court of HP, which may be well within their rights. But, nothing stops the Ld. Ombudsman from dealing with the representation for non-implementation filed by the Complainant as the delay already stands established. The contravention in terms of delay already stands proven as is evident from the date of legal opinion. The Respondents have not respected the timelines notified by the HPERC for compliance of the orders passed by CGRF. Also, the Respondents have not implemented the part relevant to the interest that was allowed by the CGRF. There is no interim stay issued by any court of law that stops the Ld. Ombudsman to proceed further in the matter of representation.
5. The Complainant submits that the Respondents have cited the amendment in the HPERC (CGRF and Ombudsman) Regulations, 2013, which now provides a clear path in the cases of non-implementation. The contradiction has been removed by the said amendment as earlier the consumers has started approaching the HPERC without going to the Ld. Ombudsman for implementation of the orders of CGRF. It was only this contradiction which was removed by deleting the words quoted in this para of reply. The Complainant has rightfully approached Ld. Ombudsman in the matter of non-implementation of the orders as per provisions of the HPERC (CGRF and Ombudsman) Regulations, 2013.
6. The Complainant prayed that action may be recommended to HPERC to initiate contempt / penal proceedings for non-compliance, particularly for non-complying the part of the order and also for delayed action on the part of the Respondents in taking the decision to agitate against the orders passed by CGRF.

E – CGRF order:

1. We have heard both the parties and have gone through the case file & relevant provisions of Supply Code, 2009 regulations etc., carefully. It is an admitted fact that the Complainant had deposited a sum of Rs. 9,50,000/- towards advance cost share on 4.11.2009 and subsequent a sum of Rs. 10,13,420/- towards estimated cost for providing additional 11 kV feeder (No.6) on dated 17/03/2019, which are placed on record by the Complainant as Annexure C-2 and C-3., keeping in view the estimate of the Respondents Company. The Respondents in their reply admits the fact that the Complainant is entitled

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for refund of IDC to sum tune of Rs. 9,50,000/-. The fact is also not denied that the relevant provision of Supply Code, 2009 contained in Para 3.2.6 provide for adjustment of advance cost share towards the amount recoverable under HPERC (Recovery of expenditure for supply of electricity) Regulation 2012.

2. Again relevant provisions of Supply Code, 2009 contained in para 5.7.3 provides for simple interest @ 15% p.a to the Consumers and regulation 6 of IDC Regulations, 2005 which also provided for provides for payment of interest @ 8% compounded annually on the amount eligible for the refund. The record produced us during the course of hearing by the parties establish the fact that the advance cost share towards IDC or Rs. 9,50,000/- deposited by the Complainant required to be refunded in pursuance of the order passed by the Hon'ble HPERC in Suo Moto petition No. 25 of 2016. The refund also entails the interest to be calculated at the rate as prescribed in para 5.7.3 of the Supply Code, 2209.
3. As far as the amount of Rs. 10,12,402/- paid by the Complainant towards estimate cost for providing additional 11kV feeder(No.6) on dated 17/3/2019 is concerned, we find no substance in the plea of Complainant raised in Complaint & rejoinder in view of the facts on record that this amount has been unitized for the construction of Parwanoo 6th feeder emanating from 66/11 kV S/Stn Parwanoo & the same fact is not controverted by the Complainant. Thus, we find substance in the submissions of the replying Respondentss that a separate feeder was erected for load lifting to provide/release the maximum load available to the Complainant.
4. Further as per terms and condition of PAC issued to the Complainant vide Chief Engineer (OP) South Annexure RA-1, it has been specifically provided at sr. No. 7 that the entire cost of dedicated feeder along with bay and associated terminal equipment(s) to be installed at both ends and metering arrangement will have to borne by Complainant. It is further evident from record that as per condition No.16 of Load sanction orders issued by the Chief Engineer, (OP) South vide order No. CEO/M& C/-42(SL) 2008-29428-29 dated 02/01/201/, wherein it has been clearly mentioned that the cost of 11 kV dedicated indicated / joint feeder or augmentation of existing feeder along with bay and associated equipments at both ends, if required will have to be borne by the firm/Complainant.
5. Thus, it is clear from record that Complainant was well aware of the terms & conditions of PAC & Load sanction & Rs. 10,13,402/- was recovered & utilized from the Complaint, as advance cost/ estimate cost share for construction of 11kV Parwanoo 6th feeder emanating from 66/11 Kv S/STN. Parwanoo and as such this amount cannot be refunded to the Complainant & this claim of the Complainant is found to be futile and same is according dismissed.



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6. In view of the discussion made herein above, the Complaint preferred before this Forum by the Complainant is allowed to the extent that the advance cost share towards IDC of Rs. 9,50,000/- deposited by the Complainant, is directed to be refunded in pursuance of the order passed by the Hon'bles HPERC in Suo Moto petition No. 25 of 2016 decided on 05/10/2016 and admission of Respondentss. The refund also entails the interest to be calculated at the rate as prescribed in para 5.7.3. of the Supply Code, 2009. 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.

F – Analysis of the Complaint:

1. The case file at Consumer Grievances Redressal Forum have also been requisitioned and gone through.
2. The Complainant has filed representation for non-implementation of the part orders of the Forum. HE has confirmed that the refund as ordered by the Forum have been refunded to them as adjustment in energy bills. He has contended that the part of the order, where the interest, as ordered by the Forum has not been implemented and this is the reason he has filed this representation/ Complaint.
3. The Respondents have now submitted the reply after extended time i.e. 09/10/2020 and have confirmed that Rs 9,50,000/- has been refunded and they have again replied on the merits of the case presented at Consumer Grievances Redressal Forum that the Interest is not applicable. They have further submitted that they are going to assail interest part of the orders of the Forum before Hon'ble High Court of HP.
4. The Respondents have yet not implemented the interest part of the Forum's orders dated 13/07/2020 in Complaint No. 1421/4/19/065, dated 17/12/2019.

G - Issues in question:

1. **Issue No.1:** There is only one issue whether the Respondents have fully implemented the orders of the Forum dated 13/07/2020 in Complaint No. 1421/4/19/065, dated 17/12/2019 or not?

H - Findings on issues:

1. **Issue No. 1:** As is evident from the analysis above and from the reply submitted by the Respondents, they have only implemented first part of the orders of the Forum dated 13/07/2020 in Complaint No. 1421/4/19/065, dated 17/12/2019 i.e. made refund of Rs 9,50,000/- through adjustment in the energy bills of the Complainant as also confirmed by the Complainant in its Complaint and rejoinder. The Respondents have not





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implemented the interest to be paid to the Complainant on Rs 9,50,000/-, as ordered by the Forum, as is evident from their reply also.

I - Order:

1. Since part orders of the Forum dated 13/07/2020 in Complaint No. 1421/4/19/065, dated 17/12/2019 pertaining to the interest part has not been implemented by the Respondents, the Respondents are hereby directed to fully implement the orders of the Forum dated 13/07/2020 within a period of 15 days from the date of issue of this order.
2. The Respondents are further directed to report Compliance on or before 30th October 2020 positively failing which the matter shall be reported to the Hon'ble Commission in line with regulation 37 (6) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 for appropriate action by the Commission under the provisions of the Act (Electricity Act, 2003).
3. The orders shall also be made available on website of Himachal Pradesh Electricity Regulatory Commission by today evening and also shall also be sent by e-mail to all concerned separately.
4. No cost to litigation.

Given under my hand and seal of this office.



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Electricity Ombudsman 12/10/2020