



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 Manjholi Stone Crushers, Village Barson, PO Manjholi, Tehsil Nalagarh, District Solan HP
– Complainant

Vs

1. Executive Director (Personal), HPSEBL, Vidyut Bhawan, Shimla-171004
 2. Assistant Executive Engineer, (E) ESD-1, HPSEB Ltd Nalagarh, District Solan HP-174101
- Respondents

Complaint No. 42/2020, Registered on 08/10/2020
(Decided on 18/11/2020)

CORAM

Er. K.L. Gupta
HP Electricity Ombudsman

Counsel for:

The Complainant: Sh. O.C. Sharma, Advocate
The Respondents: Sh. Anil Kumar God, Advocate

Order

The case was received on 26/09/2020 but since the requisite fees as per Regulation 33 (1) (h) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 was not received, the case was registered on 08/10/2020 after confirmation of submission of requisite fee vide communication dated 05/10/2020, received on 08/10/2020. The case was first listed for 07/11/2020 for admission hearing and the Respondents were directed to file their reply by 29/10/2020 vide notice dated 08/10/2020 which was received during the course of hearing on 07/11/2020. The Complainant was requested to file his rejoinder by 17/11/2020 and orders were reserved.

A – Brief facts of the case:

1. M/S Manjholi Stone Crushers, Village Barson, PO Manjholi, Tehsil Nalagarh, District Solan HP has filed an application through Ms Madhuri Saini, Sole Proprietor (hereinafter called 'The Complainant') under Regulation 37 (6) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 for passing necessary orders or the directions to the Respondents to make compliance of



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orders dated 10/08/2020 passed by HP Electricity Ombudsman in Case No. 09/2019. Further the Complainant has requested to refer the case to Himachal Pradesh Electricity Regulatory Commission for initiating appropriate proceedings under Section 142 of Electricity Act, 2003 in case of non-compliance.

B – The Complainant's submissions:

1. The Complainant submits that the facts of the case are that Applicant/ Complainant is a sole proprietorship concern and is having its works at Village Berson, P.O. Manjholi, Tehsil Nalagarh, District Solan, H.P. Smt. Madhuri Saini is its sole proprietor and is a competent person to sign, file and verify the present representation and other pleadings on behalf of the firm having competent person to depose on oath as to the facts of the present representation.
2. The Complainant submits that the Respondent No. 1 is a Licensee and has provided electricity connection to the Applicant under account No. 100012000777 and the said connection has been provided at 11 kV Supply voltage. The Connected Load of the Applicant is 198 kW with a Contract Demand of 90 kVA. The Respondent No. 2 is its officer and his office is situated at Nalagarh.
3. The Complainant submits that the Respondents initially sanctioned Connected Load of 96 kW with a Contract Demand of 96 kVA and thereafter got the same sanctioned /extended up to 194.845 kW Connected Load with a Contract Demand of 197.845 kVA on 18/08/1999. The Applicant revised the Contract Demand from 194.845 kVA to 130 kVA on 20/10/2005. The Applicant further revised its Contract Demand from 130 kVA to 180 kVA on 07/04/2010.
4. The Complainant further submits that the Applicant applied for the reduction/ revision of Contract Demand from 180 kVA to 90 kVA on 06/08/2013 and also deposited the processing charges for Rs. 2,250/- on 01/07/2013.
5. The Complainant submits that the Executive Engineer recommended the case of the Applicant on 03/10/2013 to S.E. (OP) Circle for reduction/ revision of Contract Demand and the S.E. (OP) Circle Solan accordingly revised / reduced the Contract Demand from 180 kVA to 90 kVA.
6. He further submits that the Respondents acted upon the office order dated 17/06/2014 and thereafter raised the demand charges in all the subsequent monthly energy bill based on 90 kVA Contract Demand.



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7. The Complainant submits that the Respondents issued notice dated 22/06/2018 and thereby created demand for Rs. 93,060/- on account of difference of 11 kVA Contract Demand for the period May 2017 to November 2017. The Respondents have stated in the said notice that the demand charges ought to have been raised on 101 kVA Contract Demand instead of 90 kVA.
8. The Complainant further submits that the Respondents raised bill dated 07/01/2019 and thereby demanded an amount of Rs. 6,360/- as sundry charges in the same. The Respondents further raised bill for the month of February 2019 and thereby demanded Rs. 94,221/- as an arrears. The Respondents further raised bill for the month of March, 2019 and demanded Rs. 97,315/- as arrears by way of levying the surcharge on the initial demand of Rs. 93,060/-.
9. He further submits that the aforesaid demands were challenged before C.G.R.F. Shimla and the Ld. C.G.R.F. has passed the following order:

"2. The Respondent Board in their reply stated that as per Regulation 3.10 of the Himachal Pradesh State Electricity Supply Code (1st Amendment Regulation, 2014) pertaining to Temporary Revision to Contract Demand, it has been provided that the Consumer shall not reduce the Contract Demand to lesser than 50% of the total Sanctioned Contract Demand subject to a further condition that the Contract Demand shall not be reduced below the lowest limit of Contract Demand as per the Tariff Category applicable to him. Therefore, the demand by the was justified leviable.

3. We have heard the Counsels for both the parties at length and have gone through the case file carefully. The provision of the Supply Code discussed in the preceding para, was published in the State Rajpatra on 16/06/2014 and thus came into force from that day. On the other hand order of the Superintending Engineer, Operation Circle, HPSEB, Solan vide which he wrongly approved the revised contract demand of the Complainant at 90 kVA was issued on 17/06/2017, which is violative of the provisions of the Para 3.10 of the H.P. State Electricity Supply Code, 2014 pertaining to Temporary Revision of Contract Demand. Therefore, the Forum feels that the demand of Rs. 93,060/- all together, as arrears by the Respondent Board was justified and leviable. Consequently the complaint is rejected and stand of the Respondent Board is upheld."

10. The Complainant submits that feeling aggrieved and dissatisfied with the impugned order dated 27/11/2019 passed by the Ld. Forum in complaint No. 1431/2/19/012, the Applicant assailed the same before this Hon'ble Authority. The said representation of the Applicant was registered as complaint No. 09/2019 on 30/12/2019. This Hon'ble Authority has been pleased to set-aside the Order passed by the Ld. C.G.R.F. Shimla by passing Order dated



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10/08/2020. This Hon'ble Authority has been pleased to return its findings on Issue No. 4 as under:

"As is evident from the analysis of the case at H-1 to H-11, the orders of Consumer Grievances Redressal Forum in complaint No. 1431/2/19/012 dated 19.06.2019 issued on 27/11/2019 asserting the contention of the Audit party are not in line with the provisions of the Tariff Schedule and Supply Code prevalent at that time. In fact on introduction of kVA based category in tariff schedule was effective from 01/08/2014 onwards and since he was already having 90 kVA Contract Demand w.e.f. 06/09/2013, his tariff category should have been changed from Large Industrial Power Supply to Medium Supply having kVA range of 50 kVA to 100 kVA".

11. The Complainant submits that this Hon'ble Authority has further been pleased to return its finding in para K of Order dated 10/08/2020 as follows :

"The Respondents are hereby directed to change the category of the Complainant from Large Industrial Power Supply to Medium Supply w.e.f. 01/08/2014 onwards till the Consumer maintains Contract Demand at 90 kVA i.e. within 50 kVA and 100 kVA".

"The Respondents are further directed to overhaul the account of the Complainant within a period not later than 30 days from the date of issue of this order and intimate the Complainant giving details of overhauling of his account and also indicate net amount to be charged or to be refunded with compliance to this office".

"The amount already deposited with the Respondents against the dispute, if any, may be refunded to the Complainant by way of adjustments in energy bills of the Complainant in three equal monthly installments starting from next energy bill to be issued"

12. The Complainant further submits that the Respondents have failed to make compliance of order dated 10/08/2020 passed in Complaint No. 09/2019 despite the fact that the copy of the said order has duly been served upon the Respondents. The Respondents have failed to make compliance of the Order dated 10/08/2020 till date.

13. The Complainant submits that the Respondents have willfully, deliberately and intentionally disobeyed the order dated 10/08/2020 and are continuing to do so.

14. The Complainant submits that the present Applicant is not satisfied with the redressal of grievances as the Respondents have failed to make compliance of the order dated 10/08/2020 passed in complaint No. 09/19 by the Hon'ble H.P. Electricity Ombudsman in letter and spirit.



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15. He further submits that the present representation for non-compliance of Order dated 10.08.2020 is within the statutory period of limitation as the Respondents have not till date complied with the aforesaid order.

16. **Nature of Relief sought from the Ombudsman:** a) The Respondents may kindly be directed to make compliance of Order dated 10.08.2020 passed in complaint No. **09/2019** by Hon'ble H.P. Electricity Ombudsman Shimla in letter and spirit by way of making refund of demand charges charged in excess in the monthly energy bills w.e.f. 01/08/2014 to 31st August, 2020 amounting to Rs. 6,59,340/- alongwith 12% interest thereupon from the date of each deposits till the date of actual payment to the Applicant and in case of default, the case may be referred to the Hon'ble H.P.E.R.C. for initiating appropriate proceedings under Section 142 of the Electricity Act 2003, in the interest of justice; b) the Respondents may be directed to make adjustment in the monthly energy bill of the Applicant consumer or in alternate to refund an amount of Rs. 32,500/- deposited on 06.05.2019 as 1/3rd amount of Rs. 97,315/- and in case of failure to make compliance, the matter may be referred to Hon'ble H.P.E.R.C. for initiating appropriating proceedings under Section 142 of the Electricity Act 2003

C – The Respondents' submissions:

1. The Respondents submits that in compliance to order of Hon'ble Electricity Ombudsman vide point No.2 the request for change of category from Large Industrial Power Supply (LIPS) to Medium Industrial Power Supply (MIPS) has been sent to SE (IT), Shimla but same could not be effected as the consumer is having TDCO status due to orders of mining authority. As soon as orders of mining authorities are vacated/ withdrawn as applicable, change of category as per orders of Hon'ble Electricity Ombudsman from LIPS to MIPS shall be effected accordingly. Meanwhile benefits on account of demand charges to MIPS category has been given in the form of Sundry amount to Rs. 1,170/- only.
2. The Respondents further submits that in compliance to order vide point No. 3 of Hon'ble Electricity Ombudsman, as per legal opinion of the legal authorities of HPSEBL, it has been recommended to prefer an appeal in the Hon'ble High court of HP. Hence the process to file the case in Hon'ble High Court is under process.
3. The Respondents submits that in compliance to orders vide point No. 4 of Hon'ble Electricity Ombudsman, the disputed amount deposited by the consumer has been refunded in the monthly bill of Sep. 2020.
4. The Respondents further submits that in compliance to order vide point No. 5 of Hon'ble Electricity Ombudsman, the instructions has already been passed by the Sr. Executive Engineer, Electrical Division, Nalagarh to all the AEs/AAs working under this division vide



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his office letter No. HPSEBL/ND/CS-2/2020-21-4278-82 dated 05.10.2020 to avoid any such litigation in future.

D – The Complainant's additional submissions through rejoinder:

1. The Complainant has not submitted any rejoinder in the case by 17/11/2020 as requested vide Interim Orders dated 07/11/2020.

E – Analysis of the Complaint:

1. Since the case pertains to non-implementation of the orders of the HP Electricity Ombudsman, the case file 09/2019 have also been gone through.
2. The Complainant have submitted the present case under Regulation 37 (6) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 being non-compliance of directions passed in orders dated 10/08/2020 by HP Electricity Ombudsman in Case No. 09/2019.
3. The case does not require to be discussed on merit since the case stands decided on 10/08/2020 and the Complainant has filed this case since the same has not been complied by the Respondents till the date of filing.
4. The orders and the specific directions passed in Case No. 09/2019 were as under:
 - 1) *The orders passed by Consumer Grievances Redressal Forum in Complaint No. 1431/2/19/012, dated 19/06/2019 issued on 27/11/2019 are hereby quashed and set aside.*
 - 2) *The Respondents are hereby directed to change the category of the Complainant from Large Industrial Power Supply to Medium Supply w.e from 01/08/2014 onwards till the Consumer maintains Contract Demand at 90 kVA i.e. within 50 kVA and 100 kVA.*
 - 3) *The Respondents are further directed to overhaul the account of the Complainant within a period not later than 30 days from the date of issue of this order and intimate the Complainant giving details of overhauling of his account and also indicate net amount to be charged or to be refunded with compliance to this office.*
 - 4) *The amount already deposited with the Respondents against the dispute, if any, may be refunded to the Complainant by way of adjustments in energy bills of the Complainant in three equal monthly installments starting from next energy bill to be issued.*



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5) The Respondent No. 1 is hereby directed to apprise the field officers 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 and report compliance of the steps taken/ to be taken within a period of 30 days from the date of this order positively.

5. The compliance period in the orders dated 10/08/2020 was 15 days as per Part-II 5) of Annexure-I of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 but for direction at Sr No. 3 for which the compliance period was given as 30 days for overhauling of the account since 01/08/2014 onwards till the Consumers maintains the Contract Demand at 90 kVA i.e. between 50 kVA and 100 kVA.
6. The Respondents have submitted that they have tried to comply with the directions at Sr No. 2 of the Orders to change the category of the Complainant from LIPS to MIPS and have sent the same to their IT cell but the same couldn't be effected since the Complainant have TDCO status due to orders of the mining authorities. As soon as the same is vacated/ withdrawn, the change of category from LIPS to MIPS shall be effected.
7. Further, for the direction at Sr No. 3, the Respondents have submitted that their legal unit have advised them to prefer an appeal at Hon'ble HP High Court and the same is in process.
8. The Respondents have submitted that for compliance to direction at Sr. No. 4, they have refunded the amount deposited with them during the pendency of the earlier Complaint at Consumer Grievances Redressal Forum and Electricity Ombudsman amounting to Rs 1,42,796/- in the energy bills of the Complainant for the month of September 2020 and have attached a copy of the same.
9. Since the Respondents didn't reported compliance of orders passed on 10/08/2020 by 10/09/2020, a communication on dated 24/09/2020 was sent to the Respondents to comply the same by 12/10/2020.
10. Still there was no report on Compliance of the directions passed in orders dated 10/08/2020 by 12/10/2020, the case was reported to the Hon'ble Commission on 13/10/2020 being non-compliance of directions of the HP Electricity Ombudsman under Regulation 37 (6) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013.



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11. The Complainant have prayed to issue directions to the Respondents to comply with the directions of orders passed on 10/08/2020 or send the case to the Commissions for initiating proceedings under Section 142 of the Electricity Act, 2003.
12. Being non-compliance of the directions in orders passed on 10/08/2020 in Case No. 09/2019 titled M/S Manjholi Stone Crushers, Village Barson, PO Manjholi, Tehsil Nalagarh, District Solan HP Vs HPSEB Ltd & others and filed under Regulation 37 (6) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, the HP Electricity Ombudsman lacks jurisdiction to decide on the case which is the domain of the Himachal Pradesh Electricity Regulatory Commission as per said provisions stated below:

"Non-Compliance of the Ombudsman's orders shall be deemed to be a violation of these regulations and shall be liable for appropriate action by the Commission under the provisions of the act."

13. Further, the case already stands reported to the Commission on 13/10/2020 under Regulation 38 (2) (e) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 being non-compliance under Regulation 37 (6) for appropriate action by the Commission under the provisions of the Act.

F – Issues in question:

- 1) **Issue No. 1:** There is only one issue whether the HP Electricity Ombudsman have the jurisdiction to entertain the case or not?

G – Finding on the Issue:

Issue No. 1:

- 1) From the analysis done above it is evident that the HP Electricity Ombudsman lacks jurisdiction in the present case under the provisions of Regulation 37 (6) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 being the domain of the Himachal Pradesh Electricity Regulatory Commission.
- 2) Further, the case already stands reported to the Hon'ble Commission on 13/10/2020 under Regulation 38 (2) (e) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 being non-compliance of the directions passed in orders of the HP Electricity Ombudsman dated 10/08/2020 in Case No. 09/2019 titled M/S Manjholi Stone Crushers, Village Barson, PO Manjholi, Tehsil Nalagarh, District Solan HP Vs HPSEB Ltd & others.



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H – Order:

- 1) The HP Electricity Ombudsman lacks jurisdiction in the present case under Regulation 37 (6) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013.
- 2) The Complainant may approach the Hon'ble Commission for appropriate action under the provisions of the Electricity Act, 2003.
- 3) The Compliant filed by M/S Manjholi Stone Crushers, Village Barson, PO Manjholi, Tehsil Nalagarh, District Solan HP is hereby disposed off.
- 4) No cost to litigation.



Given under my hand and seal of this office.

Leupke
Electricity Ombudsman 18/11/2020