



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 Sunnox International, Village & Post Office Panjhera, Tehsil Nalagarh, District Solan, HP-174101
- Complainant

Vs

- 1. Executive Director (Personal), HPSEB Ltd, Vidyut Bhawan, Shimla-171004**
- 2. The Assistant Executive Engineer (E), Electrical Sub-Division No. 2, HPSEBL, Nalagarh, District Solan HP-174101**
- 3. The Sr Executive Engineer, Electrical Division, HPSEB Ltd, Nalagarh, District Solan, HP-174101**
- 4. The Sr Executive Engineer, Electrical System Division, HPSEB Ltd, Nalagarh, District Solan, HP-174101**
- Respondents

Complaint No. 43/2020

(Decided on 19/01/2021)

CORAM

Er. K.L.Gupta
HP Electricity Ombudsman

Counsel for:

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

Order

The case was registered on 23/10/2020. The case was sent for reconciliation under Regulation 34 of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 to be returnable by 07/11/2020. The Respondent No. 4 sought time on 04/11/2020 for 15 days as reconciliation was in progress between the parties which was extended till 23/11/2020. On 20/11/2020, the Respondent No. 4 communicated that the parties have agreed for a refund as per Minutes of Meeting dated 20/11/2020.

The case was listed for admission hearing for 19/12/2020 which was re-fixed for 21/12/2020 after the announcement of five-day week by Govt of Himachal Pradesh w.e. from 01/12/2020. On 21/12/2020, both parties confirmed of having reached a settlement vide Minutes of Meeting dated 20/11/2020. The Respondents were given time for filing their reply by 11/01/2021 and rejoinder, if any by the Complainant by 18/01/2021. Orders were reserved. The



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Respondents submitted their reply on dated 11/01/2021. There is no rejoinder from the Complainant by 18/01/2021. Hence the delay.

A – Brief facts of the case:

1. M/S Sunnox International, Village & Post Office Panjhera, Tehsil Nalagarh, District Solan, HP-174101 have filed an application through Sh. H.R. Suman (hereinafter referred to as 'The Complainant') under Regulation 28 (1) (b) & (c) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 for implementation of the orders of the Consumer Grievance Redressal Forum passed on dated 18/08/2020 in Complaint No. 1432/1/20/001, dated 13/01/2020. The Complainant has further prayed for interest as per Clause 5.7.3 of Himachal Pradesh Electricity Supply Code 2009 since the implementation of the orders of the Forum has been delayed.

B – The Complainant's submissions:

1. The Complainant submits that this representation is being filed in accordance with the HPERC (CGRF & Ombudsman) Regulations, 2013 as the Applicant/ Complainant is aggrieved by non-implementation of the orders dated 18/08/2020 passed by the Ld. Forum in the Complaint No. 1432/1/20/001 titled as Sunox International v. HPSEBL and others, whereby the Forum directed that

"4. In view of this submissions of the parties made before us today and the prayer of the Complainant, the Respondent Board is directed to provide the complete details of the expenditure incurred on the said work to the Complainant, as per closing Report/NAS within a period of one month from the date of decision of the Complaint, to facilitate the reconciliation and settlement of the grievance for good.

In the aforesaid terms, the present Complaint stand disposed of without expressing any opinion on the merits of the case. The parties are left to bear their own costs."

2. The Complainant submits that he applied for 66 kV connection for 6000 kW with 2500 kVA of Contract Demand in the year 2010. The connection involved the construction of a 66kV line through which the supply was to be made available. His construction of line got delayed due to disputes regarding land involved for construction of towers. Meanwhile he, after a long wait applied for release of 600 kW/ 600 kVA of connection at 11 kV till the completion of construction of 66 kV line, as a part of his original sanction of 6000 kW/ 2500 kVA. The same was allowed by the Respondents. The Respondents then got the full load of 2500 kVA released on 66 kV on 11/04/2018 which is continuing till now.



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19/04/2021*



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3. The Complainant submits that besides other charges paid by him, the Respondents served a demand notice dated 15/07/2011 vide which a sum of Rs. 107.13 lakhs was demanded. The demand notice also mentioned that the amount was being charged on provisional basis and the actual expenditure could differ. His supply at 66 kVA was released, but the amount of Rs. 107.13 lakhs paid provisionally by the Complainant has still not been settled as per Regulations.
4. The Complainant submits that he approached the CGRF in the form of Complaint No. 1432/1/20/001, which was disposed vide final orders passed by the Forum on 18/08/2020 without going into merits of the case. During the proceedings before the CGRF, it was clarified by the Respondents that the estimate of 717.75 lakhs also included the estimated cost of the 66 kV line on which departmental charges were claimed 11% and service tax was charged @ 10.30 % on the departmental charges. He thereafter limited his Complaint to the settlement of the amount that was paid to the Respondents for the infrastructure and works to be executed by them, which amounted to Rs. 29.47 lakhs in the estimate as he also demanded a bill for service tax for claiming adjustment in his tax liabilities.
5. The Complainant submits that he waited for the implementation period of 21 days to expire and also waited further. He neither received refund, nor any communication from the Respondents. As the time period allowed for approaching the Ld. Ombudsman for non-implementation of the orders passed by the Forum came near the end, he was left with no other option than to approach the Hon'ble Ombudsman to redress his grievance of non-compliance.
6. The Complainant submits that meanwhile, Respondent No. 4 wrote a letter dated 03/10/2020 asking him to submit the expenditure as per Para 2 of the order. He wrote letter dated 15/10/2020 in response to the letter dated 03/10/2020.
7. The Complainant submits that the time period of approximately two months had already passed but the Respondent has not implemented the orders dated 18/08/2020 passed by the CGRF in Complaint No. 1432/1/20/001. A time period of only 21 days is allowed for compliance in such matters under the Regulations, which clearly has expired. The Respondents have contravened the provisions of HPERC (CGRF and Ombudsman) Regulations, 2013 and is liable to be dealt under section 142 and 149 of the Electricity Act, 2003.
8. The Complainant submits that the Respondent No. 4, instead of providing details of the amount spent by them out of the amount deposited by him, besides the departmental charges, demanded the detail of expenditure from him citing para 2 of the order. The detail of cost of self-executed line has no concern to the Respondents. The operative part of the orders dated 18/08/2020 passed by CGRF are stated above. The Respondents were to



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provide the detail of such expenditure him which they have failed to provide. Instead they are trying to justify the delay by writing absurd letters like the one written on 03/10/2020.

9. The Complainant submits that he must be compensated for interest on the amount refundable to the Complainant @ 15% p.a. as per Clause 5.7.3 of the Supply Code, 2003 or some other relevant regulations applicable in the present case, from the date of actual payment of the disputed amount to the actual date of refund including the delay in implementation, failing which the action for non-compliance be initiated against the Respondents.
10. The Complainant prayed that the representation may kindly be allowed and the directions be issued to the Respondents to comply with the orders passed by the CGRF. He further prayed a) to direct the Respondents to comply with the orders passed by the CGRF in Complaint No. 1432/1/20/001 in true letter and spirit, directing them to provide the detail of actual expenditure incurred against the estimate for the works which has been carried out by the Respondents, along with interest as per Clause 5.7.3 of the Supply Code, 2009 w.e.f. the such date as is allowed in the regulations. He further prayed that the interest be ordered to be paid till the date of actual payment/ refund including the delay in implementation of the orders; and / or b) to report the matter of non-compliance to the Himachal Pradesh Electricity Regulatory Commission, recommending action u/s 142 and 149 of the Electricity Act, 2003; c) cost of Complaint to an extent of Rs. 1,00,000/-; d) call for the record of the case and e) any other or further orders which this Hon'ble Ombudsman may deem fit and proper, in the facts and circumstances 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 submits that the Hon'ble CGRF has passed order in complaint No.1432/1/20/001 titled as Sunnox International Vs. HPSEBL and others where by the forum directed that:

"In view of this submission of the parties made before us today and the prayer of the Complainant, the Respondent Board is directed to provide the complete details of the expenditure incurred on the said work to the Complainant, as per closing Report/ NAS within a period of one month from the date of decision of the complaint, to facilitate the reconciliation and settlement of the grievance for good.

In the aforesaid terms, the present complaint stand disposed of without expressing any opinion on the merits of the case. The parties are left to bear their own costs."

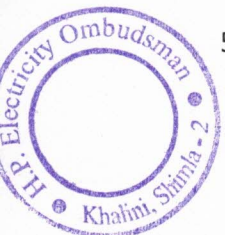


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2. The Respondents submits that a demand notice was issued to the Complainant vide office letter No. D/B-2/11-12-3223-24 dated 09/08/2011 of amount 107.13 lacs, as departmental charges only as the work of line was executed by the firm "On Self Execution Basis". The departmental charges can only be settled based upon the amount to be intimated by the firm which has executed the work and therefore the actual expenditure is to be intimated by the firm/ Complainant itself which has still not been intimated. They further mention that they have written various time to the Complainant to provide the actual expenditure incurred as work was executed on self-execution basis to settle the departmental and service tax charges accordingly.
3. The Respondents denied that the Hon'ble CGRF has disposed the Complainant without going into the merits of the case. The Complainant during proceeding of CGRF has never given in writing that the Complaint is limited to the settlement of the infrastructure works included in the estimate. As far as the settlement of amount of Rs. 29.47 lakhs is concerned as mentioned by the Complainant, a reconciliation meeting was held as per interim orders of Hon'ble Ombudsman on 19/11/2020 in the office of Sr. Executive Engineer ES Division HPSEBL Nalagarh in the presence of Mr. Sandeep Sharma representative of M/s Sunnox International in which the utilization of amount deposited by the firm for Infrastructure works i.e. 29.47 lacs was discussed. The representative of M/s Sunnox international agreed to the utilization of 16.90 and cost share of 5.42 of M/s Ambuja cement. Only an amount of 6.94 lacs stands un-utilised for extension of control room building, the Respondent has already agreed to refund this un-utilised amount of 6.94 lacs + 3% contingency in MOM submitted to Hon'ble Ld. Ombudsman vide Sr. Executive Engineer ES HPSEBL Nalagarh letter No. HPSEBL/ESDN/E-23(Court case)/2020-3420-21 dated 20/11/2020 and sanction for refund of Rs. 7,01,482/- to adjust the amount in energy bills of the consumer has been issued by Superintending Engineer ES Circle Shimla vide o/o No. HPSEBL/ESCS/W-Court case/2020-21-4835-42 Dated 07/12/2020.
4. The Respondents submits that Hon'ble CGRF in its order passed on 18/08/2020 vide No. 1432/1/20/001-544-548 dated 01/09/2020 has given a period of one month to provide the complete details of the expenditure to facilitate the reconciliation and settlement of the grievance. The Respondent has communicated the Complainant to provide detail expenditure incurred against the estimate of 717.13 lacs work executed on self-execution basis vide this office letter No. HPSEBL/ESDN/E-23/2020-21-2199-2201 dated 03/10/2020 as it is already mentioned in reply that the actual expenditure is to be intimated by the firm/ Complainant which has erected the line on self-Execution basis.
5. The Respondents submits that they have communicated to the Complainant to provide detail expenditure incurred against the estimate of 717.13 lacs work executed on self-execution basis vide letter No. HPSEBL/ESDN/E-23/2020-21-2199-2201 dated 03/10/2020 well before the Complainant approached to this Hon'ble forum.

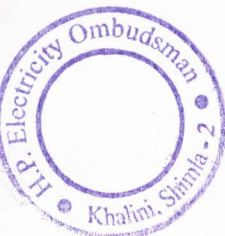


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6. The Respondents denied that the Complainant has written letter to the Respondent on 15/10/2020 in response to the letter dated 03/10/2020. Instead of responding to above referred letter, the Complainant prefer to approach this Hon'ble forum. The Complainant reverted back to this office letter No. HPSEBL/ESDN/E-23/2020-21-2199-2201 dated 03/10/2020 vide their letter dated 11/11/2020 intimating that the matter of overhauling of the amount paid as service line estimate is pending before Hon'ble Ombudsman for non-compliance.
7. The Respondents submits that they have given compliance on 03/10/2020 vide letter No. HPSEBL/ESDN/E-23/2020-21-2199-2201 to the Hon'ble CGRF. Therefore they have not contravened any regulation and further intimated that the 'Regulation 27' of the HPERC (CGRF-9 ombudsman) Regulation 2013 stood amended by HPERC (first amendment) Regulation 2019 where by the word sign and figure "Non Compliance" of the order of the forum shall be treated as violation of the Regulations of the commission and accordingly liable for action under "Section-142" of act stands omitted amending thereby that the Complainant has only the right to assail the order by way of representation before Hon'ble Ombudsman which remedy has since been availed by him and the matter is pending consideration before the Hon'ble Ombudsman.
8. The Respondents Submits that the Complainant during proceeding of CGRF has never given in writing that the Complaint is limited to the settlement of the infrastructure works included in the estimate. The Complainant responded to the letter dated 03/10/2020 vide his office letter dated 11/11/2020 to the Sr. Executive Engineer ES that the matter of overhauling of the amount paid on service line estimate is pending before Hon'ble Ombudsman and requested to overhaul the amount paid on items other than departmental charges. The Reconciliation meeting was held on 19/11/2020 in the office of Sr. Executive Engineer ES Division HPSEBL Nalagarh in the presence of Mr. Sandeep Sharma representative of M/s Sunnox International in which the utilization of amount deposited by the firm for Infrastructure works i.e. 29.47 lacs was discussed. M/s Sunnox has agreed that to the utilization of 16.90 and cost share of 5.42 of M/s Ambuja cement. Only an amount of 6.94 lacs stands un-utilised for extension of control room building the Respondent agreed to refund this un-utilised amount of 6.94 lacs + 3% contingency in MOM submitted to Hon'ble Ld. Ombudsman vide Sr. Executive Engineer ES HPSEBL Nalagarh letter No. HPSEBL/ESDN/E-23(Court case)/2020-3420-21 dated 20/11/2020 and sanction for refund of Rs. 7,01,482/- to adjust the amount in energy bills of the consumer has been issued by Superintending Engineer ES Circle Shimla vide o/o No. HPSEBL/ESCS/W-Court case/2020-21-4835-42 Dated 07/12/2020.
9. The Respondents further submits that the representative of M/s Sunnox has agreed for refund of Rs. 6.94 + 3% contingency charge during reconciliation meeting held on



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19/11/2020 and total amount of Rs. 7,01,482/- will be adjusted in the next energy bill generated to the Complainant M/s Sunnox International.

10. The Respondents prayed that the Complaint filed by the Complainant may kindly be dismissed with cost.

D – The Complainant’s additional submissions:

1. The Complainant has not submitted any rejoinder to the reply filed by the Respondents on 11/01/2021 as requested vide Interim Order dated 21/12/2020.

E – CGRF Order:

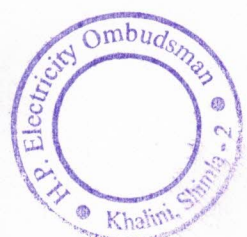
1. The operative part of the orders passed by the Forum is as under:

“4. In view of this submissions of the parties made before us today and the prayer of the Complainant, the Respondent Board is directed to provide the complete details of the expenditure incurred on the said work to the Complainant, as per closing Report/ NAS within a period of one month from the date of decision of the Complaint, to facilitate the reconciliation and settlement of the grievance for good.

In the aforesaid terms, the present Complaint stand disposed of without expressing any opinion on the merits of the case. The parties are left to bear their own costs.”

F – Analysis of the Complaint:

1. The case file at Consumer Grievance Redressal Forum have also been requisitioned and gone through.
2. The Complainant applied for power connection for Connected Load of 6000 kW and Contract Demand of 2500 kVA in 2010 which involved construction of 66 kV dedicated transmission line to his premises. The 66-kV transmission line was to be constructed by the Complainant himself under self-execution basis under the supervision of the Respondents. Till the line got constructed, the Complainant was given connection at 11 kV for 600 kW/ 600 kVA load. The Complainant’s full load was released on 11/04/2018 on 66 kV on its completion.
3. The Respondents demanded Rs 107.13 Lac on 15/07/2011 on account of cost estimate for Supply of Power to the Complainant for some works to be done by the Respondents at sub-station as well as cost sharing of existing 132 kV S/C line on D/C Towers of M/S Ambuja Cement on tower 1 & 2 up to sub-station.



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4. Even after release of connection on 66 kV, the amount of Rs 107.13 Lac deposited by the firm on 20/08/2011 with Respondent No. 4 was not settled as per regulations.
5. The Complainant approached the Consumer Grievance Redressal Forum in Complaint No. 1432/1/20/001, dated 13/01/2020. The Forum passed orders on the Complaint of the Complainant on 18/08/2020 directing the Respondents to provide complete details of the expenditure incurred on the said works of the Complainant within a period of one month.
6. Since the Respondents didn't complied with the orders of the Forum, the Complainant approached HP Electricity Ombudsman on 23/10/2020 and his Complaint was registered as Complaint No. 43/2020.
7. The Complainant has prayed for implementation of the orders of the Forum besides interest @ 15% on account of delay in refund as per Clause 5.7.3 of the Himachal Pradesh Electricity Supply Code 2009 or any other relevant regulations.
8. The case was sent for reconciliation on 23/10/2020 to be returnable by 07/11/2020 which was extended till 23/11/2020 on request from the Respondent No. 4 since the reconciliation was in process. Both parties, in a meeting held on 19/11/2020, agreed for a refund of Rs 6.94 Lac plus 3% contingencies on account of un-utilized amount.
9. In the meanwhile, on 03/10/2020, the Respondent No. 4 requested the Complainant to provide detail of expenditure for construction of 66 kV transmission line by the firm to ascertain the 11% departmental charges to which the firm didn't agreed to being not relevant with the present case since they have not contested the same and intimated their position on 11/11/2020.
10. The Superintending Engineer, ES Circle, Totu, Shimla sanctioned an amount of Rs 7,01,482/- in favour of the Complainant on 07/12/2020 as agreed to in the meeting between the parties on 19/11/2020. However, the 3% contingency on 6,94,000/- works out to Rs 20,820/- and the total amount works out to Rs 7,14,820/- instead of Rs 7,01,482/- sanctioned by the Superintending Engineer, ES Circle Totu. However, it is not clear on which amount, the contingency @ 3% has not been applied.
11. However, the Complainant has filed his Complaint under Regulation 28 (1) (b) & (c) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and have also asked for either interest @ 15% as per Clause 5.7.3 of the Himachal Pradesh Electricity Supply Code 2009 or any other provisions under relevant regulation.

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12. Both the parties, in a meeting on 19/11/2020, have not discussed the matter of delay in refund and interest thereupon.
13. Since the matter has been reconciled between the parties in a meeting held on 19/11/2020 for which the Minutes were signed by both the parties on 20/11/2020 and the amount has also been sanctioned for release by the Superintending Engineer, ES Circle, Totu Shimla on 07/12/2020, there is nothing to be discussed on merits of the case as prayed for by the Complainant in his application. The simple interest prayer made by the Complainant in his original application, before the reconciliation process has not been discussed between the parties during reconciliation meeting on 19/11/2020 and need not to be discussed further. The orders of the Consumer Grievance Redressal Forum dated 18/08/2020 have been complied with by the Respondents.

G – Issues in question:

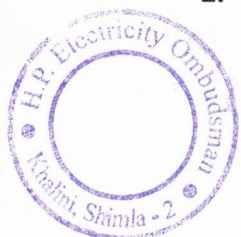
1. There is only one issue whether the orders of the Consumer Grievance Redressal Forum passed on 18/08/2020 in Complaint No. 1432/1/20/001, dated 13/01/2020 have been complied with by the Respondents?

H – Findings on the issues:

1. As is evident from the analysis done above, the matter stands reconciled between the parties. The parties have already agreed for a refund of Rs 6.94 Lac plus 3% contingencies and the Superintending Engineer, ES Circle, Totu, Shimla has also sanctioned a refund of Rs 7,01,482/- although same works out to Rs 7,14,820/-.
2. The Respondents have now complied with the orders of the Forum passed on 18/08/2020 in Complaint No. 1432/1/20/001, dated 13/01/2020, although with a delay of more than 30 days given by the Forum and through reconciliation process between the parties on recommendation of the HP Electricity Ombudsman vide communication dated 23/10/2020.

I – Order:

1. The orders passed by the Consumer Grievance Redressal Forum on dated 18/08/2020 in Complaint No. 1432/1/20/001, dated 13/01/2020 have been complied by the Respondents and need no modification.
2. The Respondents are directed to recheck the calculation of refund to be made to the Complainant and intimate the exact amount to be refunded to the Complainant as agreed to in the reconciliation meeting held on 19/11/2020.



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3. The Respondents are directed to refund the amount after rechecking the calculations (Rs 6.94 Lac plus 3% Contingencies) as agreed to in the reconciliation meeting held between the parties on 19/11/2020 through adjustment in the energy bills of the Complainant within a period of 15 days from the date of issue of these orders.
4. The Respondents are directed to report direction wise compliance alongwith supportive documents within a period of 21 days from the date of issue of these orders.
5. The Complaint filed by M/S Sunnox International, Village & Post Office Panjhera, Tehsil Nalagarh, District Solan, HP-174101 is hereby disposed off.
6. No cost to litigation.

Given under my hand and Seal of the Office.



Leapt 19/04/2021
Electricity Ombudsman