



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 Sunoxx International, VPO Panjhera, Tehsil Nalagarh, Distt 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. Sr Executive Engineer, Electrical Division, HPSEBL, Nalagarh, HP-174101
- Respondents

Review Application No. 48/2020, Registered on 19/11/2020
(Decided on 20/01/2021)

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 19/11/2020. Since the case was related to review of orders in Case No. 31/2020 decided on 28/10/2020, the case was listed for admission hearing for 19/12/2020 and later re-fixed for 21/12/2020 due to five-day week announced by HP Govt since 1st December 2020. The Respondents filed their reply during the course of hearing on 21/12/2020. On request from the Counsel for the Respondents, since they had filed the reply on merit of the earlier case No. 31/2020, they were given time for additional submissions/ reply by 11/01/2021. The Complainant was to file his rejoinder by 18/01/2021. The Respondents filed their additional submissions through email dated 12/01/2021. The Complainant filed its rejoinder on 19/01/2021 (Extended time). Hence the delay.

A – Brief facts of the case:

1. M/S Sunoxx International, VPO Panjhera, Tehsil Nalagarh, Distt Solan, HP-174101 filed a review application through Sh. H.R. Suman, Admin HR (hereinafter referred to as 'The Complainant') in the orders of the HP Electricity Ombudsman passed on dated 28/10/2020



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in Case No. 31/2020 under Regulation 37 (8) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. He has prayed to review the orders and treat the earlier application under Regulation 28 (1) (b) instead of 28 (1) (c) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013.

B – The Complainant’s submissions:

1. The Complainant submits that this application is being filed in accordance with the regulation 37 of the HPERC (CGRF & Ombudsman) Regulations, 2013 as the Applicant is aggrieved by the orders dated 28/10/2020 passed by the Ld. Ombudsman in the Case No. 31 of 2020 titled as Sunoxx International v. HPSEBL and others, whereby the Hon’ble Electricity Ombudsman has not decided the case on merits, but has only dealt with the issue of non-compliance of orders of the CGRF by the Respondents. The Complainant had filed the representation titled as Sunoxx International versus HPSEBL in Case No. 31, besides being aggrieved with the non-compliance of partial relief ordered by CGRF, had also prayed for additional relief being not fully satisfied with the orders passed by the CGRF. The Ld. Ombudsman is appellate authority in both the circumstances as has been notified under regulation 28 of the HPERC (CGRF & Ombudsman) Regulations, 2013. Hence, a combined representation had been filed by the Complainant seeking remedy as per regulations 28 (b) and 28(c) before the Hon’ble Ombudsman. Regulation 38 allows for review of the orders passed by the Ombudsman under specific circumstances, the detailed text of the regulations being reproduced below:

37. (8) “The Ombudsman, either on its own motion or on an application moved, within 30 days of the order, by any of the parties to the original proceedings, may, after affording an opportunity of being heard, review its order on-

- (i) the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his knowledge, or could not be produced by him at the time the order was made;*
- (ii) on account of some mistake or error apparent from the face of record;*
- (iii) for any other sufficient reasons “*

2. The Complainant submits that as the relief / decision on the merits as prayed by the Complainant has not been dealt by the Hon’ble Ombudsman due to errors/ omissions / mistakes which are on record, but the meaning of the representations being conveyed in its true sense, makes the present application justified for review within the purview of the regulations. The deliberations are further elaborated in this application.

3. The Complainant submits that the observation made by Ld. Ombudsman in para 13 of section H of the order dated 28/10/2020 that the Complainant has mentioned regulations

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16, 17 and 18 of HPERC (CGRF and Ombudsman) Regulations, 2013 was an inadvertent error and typographic mistake in the title of "Memo of Parties", which primarily only provides the detailed particulars of the parties in the case and it actually has no relevance to the subject of the appeal. The subject of appeal which is mentioned in the Preamble i.e. Para 1 of the details of the representation filed by the Complainant is clear to the extent that the Complainant is seeking additional relief on merits, besides the relief already ordered by the CGRF. It has expressly been stated in this Para that:

"The Complainant is not satisfied by the orders passed by the Forum as some of the issues raised by the Complainant have been left unaddressed in the orders."

4. The Complainant submits that Regulation 28(1)(b) of the HPERC (CGRF and Ombudsman) Regulations, 2013 allows the Complainant to approach the Ld. Ombudsman if the Complainant is not satisfied with the orders passed by the Forum. ***The non-mention of the Regulation 28(1)(b) merely cannot be taken as reason for rejecting the claim of the Applicant on merits.***

5. The Complainant submits that Regulation 33 (3) specifies the circumstances under which the Hon'ble Ombudsman can reject a representation, which are

"(a) frivolous, vexatious, malafide;

(b) without any sufficient cause;

(c) there is no prima facie loss or damage or inconvenience caused to the Complainant:

Provided that the decision of the Ombudsman in this regard shall be final and binding on the Complainant and the distribution license:

Provided further that no representation shall be rejected in respect of sub-clauses (a), (b) and (c) unless the Complainant has been given an opportunity of being heard.

6. The Complainant submits that merely the non-mention of regulation 28(b) cannot be taken as reason for partially rejecting the representation filed by the Complainant seeking relief on merits.

7. The Complainant further submitted that representations which are technically or legally deficient should have been rejected at the admission stage and not after complete proceedings including the arguments in the case. The reason for which the Complaint has been rejected was never argued at any stage. The Complainant would have argued the same had he been given an opportunity during the proceedings and would have taken corrective steps at that instant itself.



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8. The Complainant submits that in Para 18 of the orders the Hon'ble Ombudsman has concluded that the representation has been made under 28(1)(c) of the HPERC (CGRF and Ombudsman) Regulations, 2013 and there was no reason for this office to go beyond the provision of the said regulation.
9. The Complainant submits that it is on record that that 28(1)(c) has been only mentioned in para 3.1, which para is relevant to the contention of the Complainant for non-implementation of the orders of the Forum. Whereas para 3.2 totally deals with contentions seeking relief on merits and nowhere in this para has 28(1)(c) has been mentioned.
10. The Complainant submits that in section 4 of the representation paras 4.1, 4.3, 4.4 and 4.6, the Complaint has clearly sought relief in terms of merits. Ignoring the contentions of the Complainant merely because of non-mentioning of the specific regulation, is not in the interest of justice and is equivalent to justice denied. The Office of the Ld. Ombudsman has been created primarily for protection of Consumer interest. The Consumers cannot be expected to be well versed with the specific regulations and is not expected to possess legal expertise while approaching the Electricity Ombudsman. The Electricity Act, 2003 and the HPERC (CGRF and Ombudsman) Regulations, 2013 specifically casts the duty and onus on the Electricity Ombudsman for delivering justice to the Consumers. Rejecting the applications merely on insignificant and frivolous reasons and also clerical/ typographical mistakes does not deliver justice to the Consumers.
11. The Complainant submits that the Preamble of the HPERC (CGRF and Ombudsman) Regulations, 2013 reads as

"AND WHEREAS after coming into force of the said regulations, there has been significant changes in the Distribution Performance Standards of the licensee and in the Consumer grievance redressal mechanism and the recommendations in relation thereto have been made by the Forum of Regulators (FOR) in its Report on "Protection of Consumer Interest" which have been endorsed and approved by the Hon'ble Appellate Tribunal for Electricity for implementation vide its Order dated 15.4.2010.

AND WHEREAS, with a view to simplify the process for registration and resolution of Consumer Complaints, the Himachal Pradesh Electricity Regulatory Commission recognizes the urgency and need to revise and modify the existing regulations framed by the Commission;"

12. The Complainant submits that the very purpose and spirit of the HPERC (CGRF and Ombudsman) Regulations, 2013 is defeated if the representation and Consumer grievances are rejected on account of minor irregularities such as incorrectly mentioning the relevant



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section of HPERC (CGRF and Ombudsman) Regulations, 2013 under which the Complaint is filed.

13. The Complainant prayed to review the orders dated 28/10/2020 passed in case no 31 in respect of a) to review and pass speaking orders be passed on merits of the Complaint representation, particularly in respect of the para 4.1, 4.3, 4.4, and 4.6 of the prayer section of the original representation; b) to ignoring the clerical mistake of mentioning incorrect regulation 16, 17 and 18 which sections of the HPERC (CGRF and Ombudsman) Regulations, 2013, were applicable to CGRF and were inadvertently mentioned in the "Memo of Parties" in the Complaint and also the mention of 28(c) in place of 28(1)(c) in the representation; c) to ignore the non-mention of Regulation 28(1)(b) anywhere in the Complaint even though it has been made everywhere in the Complaint that the Complainant was not satisfied with the orders passed by the Consumer Grievance Redressal Forum; d) in case it is considered, appropriate by the Ld. Ombudsman to review and modify the previous orders passed in case No. 31 of 2020, to grant liberty to the Complainant to file afresh under Regulation 28(1)(b) , while condoning the delay; to grant opportunity of being heard in the matter as per provisions of Regulation 33(8) of HPERC (CGRF and Ombudsman) Regulations, 2013; 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.

B – The Respondents' submissions:

1. The Respondents submits that they are feeling aggrieved with the decision of Hon'ble Ombudsman as well as Hon'ble CGRF and preferring appeal in Hon'ble High Court but the Applicant has made contrary submissions wherein the Hon'ble Ombudsman has entertained all the submission made by the Applicant.
2. The Respondents submits that the Applicant himself has agreed that he had failed to seek relief on the basis of relevant regulations in his original application. As such decision beyond scope of application could not be extended just on the basis of merit and goodwill.
3. The Respondents submits that the Complaint filed before the Ld. Forum & representation before this Ld. Authority by the Applicant/ Complainant on twisted and distorted facts which are far off from the reality and additional relief which the Applicant is seeking by way of present review application cannot be granted because of the reason that the same have earlier been denied to the Applicant by this Ld. Authority as well as Ld. Forum also.
4. The Respondents submits that the amount calculated are wrong hence denied. The Complainant has wrongly calculated the amount up to 2018-19 as per his convenience whereas the ACD amount of Rs. 25,00,000/- stand already adjusted in the month of May. 2017. Further the penal interest calculated since 2010 to 2018-19 but the connection of the

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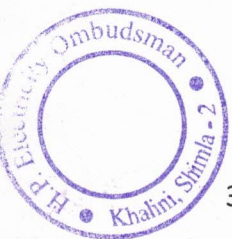
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Consumer was released on 11/04/2018. As per regulation, the interest is to be given annually in the energy bill but the connection of the Consumer did not exist due to delay pertaining to Complainant itself. So, the energy bill was not being generated at that time (for the period of claim) to the Consumer and there is no other provision in the system to credit due interest to the Consumer. As such the claim placed by the Complainant is totally arbitrary, fictitious and need to be set aside. The Respondents further mentions that the Consumer is trying to take undue advantage of some of the loop holes/ deficiency of the system/ regulations, which otherwise are for facilitating the Consumers. Further the present review Applicant is nothing but goes abuse of process of law as such no review of the order 28/10/2020 such is warranted and the present Application deserves to be dismissed.

5. The Respondents prayed that the present review application filed by the Applicant/ Complainant may kindly be dismissed in the interest of justice.

C – The Respondents's additional submissions:

1. The Respondents submits that the petition is not maintainable and emphatically denied that Applicant is aggrieved by the order dated 28/10/2020 in any manner. The Respondents submitted that this Court has passed the order dated 28/10/2020 after gone through the representation and record pertained to the Applicant case. The Respondents further mentions that the Applicant filed the representation for non-compliance of the order dated 15/7/2020 and this Ld Authority has set out all reasons for all finding in the order dated 28/10/2020 and there is no mistake or error aperient on the face of record and this Authority passed well-reasoned order and discussed all the submissions made by the Applicant. The Respondents further submitted that the regulation 37(8) of HPERC, Regulation, 2013 empowers and permits this Ld. Authority to review its own orders in the application disclosure or dis-cover new and important evidence or fact after the exercise of due diligence was not with in the knowledge of the material mistake or error aperient from the face of record, therefore the instant review Applicant does not disclose the same.
2. The Respondents submits that the Complaint filed before the Ld. Forum & representation before this Ld. Authority by the Applicant/ Complaint on twisted and distorted facts which are far off from the reality and additional relief which the applicant is seeking by way of present review application cannot be granted because of the reason that the same have earlier been denied to the Applicant by this Ld. Authority as well as Ld. Forum also, Further the present review Applicant is nothing but gross abuse of process of law as such no review of the order 28/10/2020 such is warranted and the present Applicant deserves to be dismissed.
3. The Respondents prayed that the present review application filed by the Applicant/ Complainant may kindly be dismissed in the interest of justice.



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C – 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. The objections raised by the Respondents are lacking merit.
2. The Complainant submits that the Respondents submitted their reply during the hearing held on 21/12/2020, and whereas the Respondents were directed to submit additional submission in respect of the review sought by the Complainant. Further since, the admissibility of the review application is in question at this stage, rejoinder to the reply on merits is not being submitted by the Complainant at this stage and the arguments on merits already stand submitted in original case No. 31 of 2020.
3. The Complainant submits that the Respondents’ statement that he is not aggrieved by the orders passed is not correct. The Complainant while filing the representation No. 31 for seeking further relief in the matter inadvertently erred by not mentioning regulation 28(1)(b) in the representation. The entire contents of the petition make it clear that the Complainant was seeking for further relief that what was ordered by CGRF.
4. The Complainant submits that there is no abuse of process of law. The relief sought is well within the scope of the Regulations. Justice cannot be denied merely for a clerical/typographical error.
5. The Complainant prayed that the orders passed in Case no. 31 be reviewed and passed in view of merits. HE prayed that alternatively the review be disposed giving liberty to the Complainant to approach the Hon’ble Ombudsman afresh under relevant applicable regulations.

D – Earlier orders in case No. 31/2020:

1. The orders passed by Consumer Grievances Redressal Forum on dated 15/07/2020 in Complaint No. 1432/4/19/064, dated 17/12/2019 are upheld and require no further modifications.
2. It is a fit case of non-compliance by the Respondents of the orders of the Forum passed on dated 15/07/2020 in Complaint No. 1432/4/19/064, dated 17/12/2019.
3. The Respondents are directed to comply with the orders of the Forum passed on dated 15/07/2020 in Complaint No. 1432/4/19/064, dated 17/12/2019.





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4. The Respondents are further directed to report compliance within a period of 15 days from the date of this order failing which the matter shall be reported to the Commission under provisions of 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 Electricity Act, 2003.
5. The Respondents are further directed to reflect the full security deposit amount on the energy bills of the Consumer in two parts, in cash and in Bank Guarantee separately.

E – Analysis of the Complaint:

1. The case file in case No. 31/2020 have also been gone through.
2. The Complainant has filed review application in Case No. 31/2020 passed on 28/10/2020 under Regulation 37 (8) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. The provisions under Regulation 37 (8) states:

"The Ombudsman may, at any time, after affording an opportunity of being heard, review his Order, either on his own motion or on an application of any of the parties to the proceedings, within 30 days of the Order on –

- (i) *the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his knowledge, or could not be produced by him at the time the order was made;*
- (ii) *on account of some mistake or error apparent from the face of record;*
- (iii) *for any other sufficient reasons."*

3. The original application in case No 31/2020 was filed by the Complainant under Regulation 28 (1) (c) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 for non-implementation of the orders of the Consumer Grievance Redressal Forum passed on 15/07/2020 in Complaint No. 1432/4/19/064, dated 17/12/2019. The provisions under Regulation 28 (1) states:

(1) *A complainant may prefer a representation before the Ombudsman appointed/designated by the Commission under the following circumstances: -*

- (a) *if the complainant is aggrieved by the non-redressal of the grievance by the Forum within the period specified,*



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(b) if the complainant is not satisfied with the order passed by the Forum, and

(c) if the complainant is aggrieved by the non-implementation of the Forum's order, by the licensee

4. The contention of the Complainant is that by mistake he has quoted Regulation 28 (1) (c) due to inadvertent error and typographical mistake although he had stated that he is not satisfied with the orders of the Forum and had also sought additional relief.
5. The Complainant has also mentioned Regulation 33 (3) and prayed that non-mention of Regulation 28 (1) (b) can't be the reason for partially rejecting the representation. The provisions under Regulation 33 (3) states:

(3) The Ombudsman may reject the representation at any stage if it appears to him that the representation is -

(a) frivolous, vexatious, malafide;

(b) without any sufficient cause;

(c) there is no prima facie loss or damage or inconvenience caused to the complainant:

Provided that the decision of the Ombudsman in this regard shall be final and binding on the complainant and the distribution licensee:

Provided further that no representation shall be rejected in respect of sub-clauses (a), (b) and (c) unless the complainant has been given an opportunity of being heard.

6. From the face of the record of the review application, it is clear that there is neither discovery of new and important matter of evidence nor any mistake or error apparent on the face of record in the order dated 28/10/2020 nor any sufficient reasons. All the issues raised under the original application has been dealt with under the relevant provisions of the Regulations.
7. Further, he has been given opportunity of being heard and being devoid of merit, I don't find any sufficient reasons to review and entertain his original application under Regulation 28 (1) (b) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 .
8. The Respondents had submitted their reply dated 21/12/2020 on merits of the original case and have submitted additionally on 12/01/2021 that the review can't be granted because the same have earlier been denied and there is no mistake apparent from the face of record.



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F – Issues in Question:

1. There is only one issue whether the review application in Case No. 31/2020 filed by M/S Sunoxx International, VPO Panjhera, Tehsil Nalagarh, Distt Solan, HP-174101 under Regulation 37 (8) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 need to be entertained or not?

G – Findings on the issues:

Issue No. 1:

1. As is evident from the analysis above, there is neither any discovery of new and important matter of evidence nor any mistake or error apparent in the order dated 28/10/2020 nor any sufficient reasons to entertain this review application filed by M/S Sunoxx International, VPO Panjhera, Tehsil Nalagarh, Distt Solan, HP-174101. The review application is devoid of any merit.
2. The original application has been dealt under the relevant provisions of Regulation 28 (1) (c) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 under which the Complainant had filed his application and all the observations raised therein have also been properly addressed.

H – Order:

1. The review application filed by M/S Sunoxx International, VPO Panjhera, Tehsil Nalagarh, Distt Solan, HP-174101 in Case No. 31/2020 orders of which were issued on 28/10/2020 is not maintainable and is hereby dismissed.
2. The Respondents are directed to report compliance in original application No. 31/2020 orders of which were passed on 28/10/2020 within a period of 15 days from the date of issue of this order failing which the case shall be reported to the Commission under provisions of 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 Electricity Act, 2003.

Given under my hand and seal of this office.



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