



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 Prime Steel Industries Pvt Ltd., Village Bated, Baddi-Barotiwala Road, Barotiwala, District Solan, HP-174103

- Complainant

Vs

1. Executive Director (Personal), HPSEB Ltd, Vidyut Bhawan, Shimla-171004
 2. The Assistant Executive Engineer (E), Electrical Sub-Division, HPSEBL, Barotiwala, District Solan, HP-174103
 3. Sr Executive Engineer, Electrical Division, HPSEB Ltd, Baddi, District Solan, HP-173205
- Respondents

Complaint No. 09/2021 (Registered on 29/04/2021)
(Decided on 07/08/2021)

CORAM

Er. K.L.Gupta
HP Electricity Ombudsman

Counsel for:

The Complainant: Sh. Rakesh Bansal

The Respondents: Sh. Anil kumar God Advocate, Sh. Kamlesh Saklani, Law Officer

Order

The case was received through e-mail on 24/04/2021 and registered on 29/04/2021. The case was first listed for 29/05/2021 and the Respondents were to file their reply by 15/05/2021 and the Complainant was to file his rejoinder by 22/05/2021. Due to Covid 19 Pandemic Lockdown, announce by the Govt of HP w.e. from 07/05/2021 till 29/05/2021, the hearing was postponed.

The case was again listed for 26/06/2021. The Respondents were to file their reply by 23/06/2021 and the Complainant was to file his rejoinder by 26/06/2021. The Respondents failed to file their reply by scheduled date and requested through email dated 23/06/2021 for extension in time by 15 days. On the next date of hearing, the Respondents were directed to file their reply by 03/07/2021 and the Complainant was to file his rejoinder by 09/07/2021. The case was further listed for 15/07/2021. The Respondents filed their reply on 06/07/2021. The Complainant filed his rejoinder through email dated 13/07/2021 and provided original copy on the



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next date of hearing i.e. 15/07/2021. The Orders were reserved after arguments on 15/07/2021. Hence the delay.

A – Brief facts of the case:

1. M/S Prime Steel Industries Pvt Ltd., Village Bated, Baddi-Barotiwala Road, Barotiwala, District Solan, HP-174103 has filed an application through Sh. Megh Raj Garg (hereinafter referred to as 'The Complainant') under the provisions of Regulation 28 (1) (b) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 against the orders passed by the Consumer Grievance Redressal Forum on dated 24/03/2021 in RA No. 1453/1/21/053, dated 22/02/2021 in OA No. 1453/1/20/005. The OA was decided by the Forum on 20/08/2020.
2. Earlier the Complainant had filed an application registered as Case No. 44/2020 which was registered on 23/10/2020 under provisions of Regulation 28 (1) (c) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 which was disposed off on 16/02/2021.
3. The RA application filed by the Complainant was disposed off by the Forum on 24/03/2021 rejecting the same being time barred. The Complainant has now prayed to modify the orders passed by the Forum on 22/08/2020 to the extent of interest on late refund made by the Respondents and also to quash and set aside the RA passed on 24/03/2021.

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 the orders dated 20/08/2020 passed by the Ld. Forum in the Complaint No. 1453/1/20/005 and the orders dated 24/03/2021 passed in the review application 1453/1/21/053 titled as Prime Steel Industries Pvt. Ltd. v. HPSEBL and others.
2. The Complainant submits that the Forum in the orders dated 20/08/2020 passed in Complaint No. 1453/1/20/005 whereby the Forum directed that

"7. In view of the observations and discussions made here in above, the present Complaint is decided in favour of the Complainant. The Respondent Board is directed to refund the demand charges paid by the Complainant Consumer during the period of 01.11.2019 to 18.11.2019 when the erratic power supply due to frequent tripping on 132 KV line due to faulty relay in HPSEBL Sub-Station is established from the above submissions and the log sheet placed on record of the M/s Prime Steel Pvt. Ltd. for the month of 01.11.2019 to 30.11.2019. The amount so calculated to be refunded by the Respondent Board by way of adjustment in the future energy/ electricity bills of the Consumer/ Complainant."



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3. The Complainant submits that although, it was binding on the Forum as per Regulation 26 to order the refundable amount along with interest @ 15% p.a. specified in the said regulation, there was no specific directions for payment of interest in the orders passed on 20/08/2020. As such the Respondents took advantage of the same and refunded the amount ordered by the Forum without interest during the proceedings before the Hon'ble Ombudsman in Case No. 44 of 2020. The Complainant had not approached the Forum for review as it was understood to be deemed that the refund will be given alongwith the interest as per regulation 26 of the HPERC (CGRF and Ombudsman) Regulations, 2013. The Complainant approached the Hon'ble Ombudsman for implementation of the orders passed by the Forum as till that the matter was only the implementation, seeking refund as well as the deemed interest on such refund as per provisions of the Supply Code, 2009 while the same rate of interest is also specified in Regulation 26 of the HPERC (CGRF and Ombudsman) Regulations, 2013.
4. The Complainant submits that the Hon'ble Ombudsman in its orders dated 16/02/2021 in Case No. 44 of 2020 denied the modification of the orders dated 20/08/2020 passed in Complaint No. 1453/1/20/005 and instead observed that the Complainant has the option to file a review before CGRF under regulation 26 (7) of the HPERC (CGRF and Ombudsman) Regulations, 2013 for claiming interest on delayed refund. The Complainant filed a review with the Forum, who rejected the same vide its orders dated 24/03/2021, primarily on the grounds that the review was time barred.
5. The Complainant submits that the present representation is being filed seeking relief in terms of interest on the amount ordered to be refunded to the Complainant.

FACTS OF THE CASE

6. The Complainant submits that he is a large EHT Consumer getting supply at 132 kV voltage, with a Contract Demand of 12700 kVA obtained after purchase of the factory which was in the name of M/s Rama Steels Ltd. The power connection to the Complainant M/S Prime Steel Industries Private Limited was connected on 01/11/2019.
7. The Complainant submits that the position of power supply remained highly erratic in the month of November 2019, which was repeatedly brought to the notice of the Respondents vide letters dated 06/11/2019 and 13/11/2019. There were frequent trippings in the system whenever he tried to put load resulting in huge loss to him due to wastage of material. No action was taken by the Respondents to remedy the situation.
8. The Complainant submits that as a result the Complainant could not run his factory for most of time during the month of November, 2019. The same is evident from a very low consumption during the said month. Vide his Memo dated 11/11/2019, the Executive



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Engineer/ ES Division HPSEBL, Solan confirmed that there was some problem with the relay system at Barotiwala sub- station and advised his counterpart to take remedial measures. On 23/11/2019, observing no improvement in the power supply position he again wrote a letter to the Respondent that unless power supply can be improved no demand charges shall be paid by him as he was not able to use the Contract Demand. Thereafter the supply position improved in the beginning of December, 2019 as some corrective action may have been carried out by the Respondents since a shutdown was taken on the 132 kV dedicated line by the Respondents which probably could have been for carrying out repairs and maintenance.

9. The Complainant submits that the Respondents issued the energy bill for the consumption of November 2019, in which the demand charges were charged on 11430 kVA i.e. 90% of the sanctioned Contract Demand of 12,700 per kVA, amounting to Rs. 48,57,750/-.
10. The Complainant submits that he paid the bill, but approached the CGRF in the form of Complaint No. 1453/1/20/005, which was disposed vide final orders passed by the Forum on 20/08/2020 after going through the data of the sub-station, directing the Respondents to provide reasonable relief to him.
11. The Complainant submits that he wrote a letter dated 27/08/2020 to the AEE, Barotiwala to implement the orders of the CGRF within the notified period of 21 days and also attached the calculations in the letter demanding a refund of Rs. 29,14,650/- alongwith interest as per Clause 5.7.3 of the Supply Code, 2009.
12. The Complainant submits that 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, the Complainant was left with no other option than to approach the Hon'ble Ombudsman to redress his grievance of non-compliance.
13. The Complainant submits that in view of the time limit of 30 days provided in the Regulation 28 (2) of the HPERC (CGRF and Ombudsman) Regulations, 2013, the Complainant filed Case No. 44 of 2020 before the Hon'ble Ombudsman for issuance of directions to the Respondents to refund the principle amount alongwith interest.
14. The Complainant submits that during the proceedings before the Hon'ble Ombudsman, the Respondents refunded the principle amount refundable to him amounting to Rs. 29,14,650/-, but did not pay any interest for the period during which such amount was withheld by the Respondents.



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15. The Complainant submits that the Ld. Ombudsman observed that the orders of the CGRF in Complaint No. 1453/1/20/005 stood complied. However, it was observed by the Hon'ble Ombudsman that the Complainant has the option to file review before the CGRF under Regulation 26 (7) of the HPERC (CGRF and Ombudsman) Regulations, 2013 in Para 2 of Issue No 2 of the Order.
16. The Complainant submits that he, therefore, approached the CGRF and filed a review application as Complaint no. 1453/1/21/053, seeking review of the orders seeking interest as per Regulation 26 (2) (a) (ii) further corroborated by Clause 5.7.3 of the Supply Code, 2009. He also filed an application for condonation of delay before the Forum stating that the limitation period would commence only from the date of actual refund without interest, because of which the Complainant had to file for review. But, the Forum rejected the application for condonation of delay thus rejecting the review application as time barred.
17. The Complainant submits that aggrieved by the orders passed by the CGRF rejecting the review application Complaint No. 1453/1/21/053 and the orders dated 20/08/2020 passed in Complaint No. 1453/1/20/005, the Complainant is approaching the Hon'ble Ombudsman in the form of this representation challenging the orders of the Forum, only to the extent of applicability of interest on the amount of refund eligible to him.

CONTENTIONS OF THE APPELLANT/ COMPLAINANT

18. The Complainant submits that legitimate relief has been denied to the Complainant while passing orders in Complaint no. 1453/1/21/053, **merely on account of technical reasons on the ground of limitation**. The correction/ modification of order dated 20/08/2020, was sought from the CGRF, in respect of the interest on refundable amount in the review application 1453/1/21/053. Such relief was part of the original Complaint No. 1453/1/20/005 that was filed with CGRF. It was a mistake and error on the part of CGRF that it did not pass any orders, to deny the payment of interest on refundable amount or to allow the payment of interest. Therefore, the CGRF should have condoned the delay in filing the review, which was justified.
19. The Complainant submits that had the Respondents implemented the decision of the CGRF in Complaint no. 1453/1/20/005 within the time period of 21 days as per HPERC (CGRF and Ombudsman) Regulations, 2013, he would have approached the Hon'ble Ombudsman under regulation 28 (1) (b) of the HPERC (CGRF and Ombudsman) Regulations, 2013 within the stipulated time of 30 days for filing the review. It was during the course of proceedings before the Hon'ble Ombudsman under 28 (1) (c) that the implementation was carried out, which were found to be deficient. Therefore, he immediately approached the CGRF in the form of review as the Hon'ble Ombudsman did not modify the orders, the representation before him being under regulation 28(1) (c).



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20. The Complainant submits that he is being made to suffer on account of mistake and error on the part of CGRF as is apparent from the face of record. He has to indulge in repetitive litigation/ grievance redressal due to error/ lapse on the part of CGRF for passing an incomplete order, adding to his inconvenience and incurring of litigation cost.

21. The Complainant submits that as per the Regulation 26 (2) (a) (ii), it is mandatory for the CGRF to order the refund along with simple interest @ 15% p.a., the relevant extract being reproduced below:

*"26(2) If, after the completion of the proceedings, the Forum is satisfied that the allegations contained in the grievance are correct, it **shall** –*

(a) issue an order to the distribution licensee directing it to do one or more of the following things in a time-bound manner, namely:-

(i) to remove the cause of grievance in question;

¹("(ii) to return to the Complainant the undue charges paid by the Complainant along with the simple interest at the rate of 15 percent per annum, or at such rate as may be fixed by the Commission, for the actual number of days for which the undue disputed amount was withheld by the licensee; or"); ¹ Substituted

22. The Complainant submits that this is a mandatory provision as it is specifically the word "**shall**" has been used, which has been overlooked by the Forum. The CGRF has thus failed to comply with the HPERC (CGRF and Ombudsman) Regulations, 2013 both in Complaint No. 1453/1/20/005 and Complaint No. 1453/1/21/053.

23. He further submits that even Clause 5.7.3 of the Supply Code, 2003 provide for payment of simple interest @ 15% p.a. on the amount overbilled or claimed extra from him for period till the date of actual refund of the disputed amount.

24. The Complainant submits that both the above said provisions of the Regulations maintain that the Consumers have right to claim interest, irrespective of the fact, whether the same has been demanded by the Consumer or not.

25. The Complainant submits that he, in this representation is not raising any additional claim, which had been relinquished in the past. In the previous Complaint filed before the Hon'ble Ombudsman vide Case No. 44 of 2020 also, he has sought implementation of the orders of CGRF, along with interest. As such, no fresh claim is being raised in the present representation.



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26. **Prayer:** The Complainant thus prayed that the representation may kindly be allowed and the directions be issued to the Respondents to comply with the orders passed by the Consumer Grievance Redressal Forum; **a)** to modify the orders passed by the CGRF in Complaint No. 1453/1/20/005 so as to include the payment of interest @ 15% per annum on the refund amount of Rs. 29,14,650/- from the due date of the bill in which it was overcharged up till the date of actual refund of the amount; and /or **b)** to quash and set aside the orders passed in Complaint No. 1453/1/21/053, in view of the submissions in this representation and modify the orders passed by the CGRF in Complaint No. 1453/1/20/005; and / or **c)** to direct the Forum to entertain the review and issue modified orders in view of the Regulation 26 (2) (a) (ii) of the HPERC (CGRF and Ombudsman) Regulations, 2013 that has been overlooked by the Forum; **d)** cost of Complaint to an extent of Rs. 50,000/-; **e)** call for the record of the case; **f)** 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 his favour and against the Respondents/ Distribution Licensees.

C – The Respondents' submissions:

1. The Respondents submits that the Complainant has preferred the instant representation under Regulation 28 (1) (b) of the HPERC (CGRF & Ombudsman) Regulations, 2013 on the following inter alia reliefs:

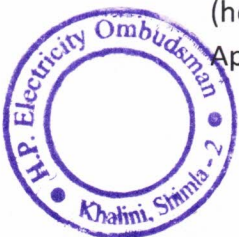
"a. To modify the orders passed by the CGRF in Complaint No. 1453/20/005 so as to include the payment of interest @ 15% per annum on the refund amount of Rs 29,14,650/- from the due date of the bill in which it was overcharged up toll the date of actual refund of the amount; and/or

b. to quash and set aside the orders passed in Complaint No 1453/1/21/053, in view of the submissions in this representation and modify the orders passed by the CGRF in Complaint No 1453/1/20/005; and /or

c. to direct the Forum to entertain the review and issue modified orders in view of the Regulation 26(2) (a) (ii) of the HPERC (CGRF & Ombudsman) Regulations, 2013 that has been overlooked by the Forum;"

Preliminary submissions:

2. The Respondents submits that they crave to make the preliminary submissions that the representation/ Complaint of the Complainant is not maintainable in the eyes of law hence, liable to be dismissed. They submitted that the Id Consumer Grievances Redressal Forum (herein after referred as CGRF) has rightly returned to the finding that the Review Application bearing No. 1453/1/21/053 as preferred by the Complainant in the Complaint



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No 1453/1/20/005 is hopelessly time barred. They further submitted that regulation 26 of the HPERC(CGRF & Ombudsman) Regulations, 2013 provides for the issuance of order and sub-regulation (7) of Regulation 26 contains the provision of review which reads as under:

“(7) the forum may at any time, after affording an opportunity of being heard, review its Order either on its own motion or an application of any of the parties to the original 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 the record;

(iii) For any other sufficient reasons”

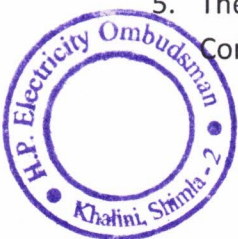
3. The Respondents further submits that the bare reading of the above regulation leads to the conclusion that the Forum has power to review its order within 30 days of the order. But the Complainant had preferred the review application against the order dated 20/08/2020 after the lapse of more than 7 months. Hence, the order dated 24/03/2021 in Complaint No 1453/1/21/053 titled as M/S Prime Steel Industries Pvt. Ltd versus HPSEBL is just and proper and need not any interference from this Id Electricity Ombudsman.
4. The Respondents further submits that the Electricity Act, 2003 is a comprehensive legislation in itself and the Consumer Grievances Redressal Forum and Electricity Ombudsman are the creature of the statute, established for the Redressal of the grievances of the consumers as per sections 42 (5) and 42 (6) of the Act read with HPERC (CGRF & Ombudsman) Regulations, 2013. It is settled law that adjudicatory body which is a creature of special statute does not have power to travel beyond the powers vested in it by virtue of the legislation or the sub-ordinate legislation. Reliance is placed on judgments of Hon'ble Supreme Court in case titled as Chhattisgarh state electricity Board versus Central Electricity Regulatory Commission and others Civil Appeal No 37598 of 2007; (2001) 8 SCC 470; (2008) 3 SCC 70 and (2009) 5 SCC 791. Hence, in view of the position of law as settled by the Hon'ble Apex court, the present representation is liable to be dismissed.

Reply on merits

DETAILS OF REPRESENTATION, FACTS GIVING RISE TO THE REPRESENTATION.

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5. The Respondents submits that the Id CGRF has rightly returned to the finding in the Complaint No 1453/1/21/053 and hence, interference of this Id Electricity Ombudsman is



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not warranted keeping in view of the position of law and facts of the case, as such the Complaint deserves dismissal only.

FACTS OF THE CASE

6. The Respondents submits that as submitted in the preliminary submission supra, Complainant is not entitled to any kind of relief from this Id Electricity Ombudsman and as such the representation as preferred by the Complainant under Regulation 28 (1) (b) of the HPERC (CGRF & Ombudsman) Regulations, 2013, deserves only dismissal. They further submit that since the order dated 20/08/2020 passed by the Id CGRF stands complied in its letter and spirit, Complainant has failed to make out the case for the payment of interest, hence, the present representation is afterthought of the Complainant which is liable to be dismissed.
7. The Respondents submits that it is admitted that Complainant had approached this Id Electricity Ombudsman in Case No 44 of 2020 under regulation 28 (1) (c) of the HPERC (CGRF & Ombudsman) Regulations, 2013 for in implementation of the order of the Id Forum in case No 1453/1/20/005, making it clear that he was fully satisfied with the order of Forum. Now at this time, it is not permissible for the Complainant to come up with the plea that he is still aggrieved by the order of CGRF wherein interest was not granted. The representation of the Complainant is liable to be rejected on the principle of estoppel. Moreover, under regulation 28 (2) (b) of the HPERC (CGRF & Ombudsman) Regulations, 2013, only 30 days period is provided. Hence, in this score also, the representation is liable to be dismissed.

CONTENTIONS OF THE APEELANT/ COMPLAINANT

8. The Respondents submits that the Id CGRF has passed a very reasonable order on the Complainant No 1453/1/21/053 and interference of this Id Ombudsman is not warranted in any way.
9. The Respondents submits that it is wrongly alleged that Respondents have prevented the Complainant to prefer challenge to the order dated 20/08/2020 passed by the Id CGRF in Complaint No. 1453/1/20/005, wherein Id CGRF has declined the relief of interest on the demand charges. Further, since 30 days time has been provided in the regulations, representation of the Complainant is liable to be dismissed.
10. The Respondents submits that it is wrong to allege that the Complainant has been suffered on account of mistake and error on the part of CGRF. Moreover, it is crystal clear from the detailed order of the Id CGRF that there was enormous delay to file and maintain the review against the original order in Complaint No 1453/1/20/005 and as per plain provision of the



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Regulation 26 (7) of the HPERC (CGRF & Ombudsman) Regulations, 2013, the Complainant was non-suited by the Id Consumer Grievance Redressal Forum

11. The Respondents submits that the Complainant is trying to portray wrong picture just to gain the undue advantage. It is up to the satisfaction of the Forum, and the Forum was not satisfied to the extent of payment of interest to the Complainant. Since the order of the Forum is very reasoned one and the Complainant did not lay challenge to it at the relevant point of time which is provided in the Regulations, the representation/ Complaint of the Complainant is liable to be dismissed.
12. The Respondents submits that Id CGRF has applied its mind and up to his satisfaction, interest was not payable to the Complainant. However, as submitted in the foregoing paras, the Complainant deliberately did not prefer representation under Regulation 28 (1) (b) of the HPERC (CGRF & Ombudsman) Regulations, 2013 and came up before the Id Ombudsman for the implementation of the order dated 20/08/2020 passed in Complaint No. 1453/1/20/005 by leaving there no room for the challenge. Hence, the representation is liable to be dismissed accordingly.
13. **PRAYER:** The Respondents prayed that keeping in view the facts and circumstances narrated herein above, representation filed by the Complainant against the order dated 24/03/2021 in Complaint No 1453/1/21/053 may very kindly be dismissed with cost.

D – The Complainant’s additional submissions through rejoinder:

1. The Complainant submits that at the outset he repeats, reiterate and confirm 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.

Preliminary Submissions:

2. The Complainant submits that the rejection of review application by the CGRF in Complaint number 1453/1/21/053 is not justified under the law. Although the regulations provided for a period of 30 days during which the Complainant could have approached the CGRF for review of the orders in Complaint No. 1453/1/20/005, but the overview of the whole picture was very important, which the CGRF overlooked by rejecting the review application. He further submits that it is on apparent on the face of record that due to non-addressing of the part of the prayer for interest on the refund eligible to the Complainant on the refund amount, the Consumer is being denied the natural justice. The CGRF and the Electricity Ombudsman are to be principally guided by the natural justice rather than going into much deeper legal aspects of the matters. The Consumers by and large are not expected to have



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the knowledge of law. The CGRF being the first grievances redressal body is not a court of law but it is only an organ of the licensee to address the grievances that may arise during the normal course of business. Regulation 26 (2) (a) (ii), clearly imposed the liability of interest on the licensee in the cases of refund. Also, the Clause 5.7.3 of the Supply Code, 2009 entitles the Complainant for interest on the refund amount. Instead of delivering justice, the CGRF acted in a manner that is contrary to law. The Complainant had approached the Ld. Ombudsman earlier in representation No. 44 of 2020, to address the issue of the non-compliance of the orders of CGRF. It was only during the course of the proceedings before the Hon'ble Ombudsman, the Respondents fearing proceedings u/s 142, implemented the decision of the CGRF half-heartedly. They took advantage of the fact that the interest was not specifically ordered. The Complainant further submits that the applicability of interest was neither denied by CGRF in its orders dated 20/08/2020. The Consumer is being made to run from pillar to post because of the lapses on the part of CGRF. The statement that the order of CGRF are just and proper is simply based on the suitability to the Respondents.

3. The Complainant submits that it is accepted that the Electricity Act, 2003 is a comprehensive Act and the enabling regulations read together with the Act, forms a complete law to address the various issues. The Act as well as the Regulations, clearly gives powers of adjudication to the Hon'ble Ombudsman to challenge the orders of the CGRF, which is primarily owned and managed by the licensee themselves. CGRF is merely a grievance redressal body and not a jurisdictional Court of law, to deliver redressal at the primary level. The responsibility of giving proper justice to the Consumer lies with the Hon'ble Ombudsman. Even, the preamble of the HPERC (CGRF and Ombudsman) Regulations, 2013 it has been mentioned that the said regulations were notified pursuant to the observations of the Forum of Regulators (FOR) in its report on 'Protection of Consumer Interest'. The whole objective stands defeated, if the Consumer interest is not protected, particularly the issues which are well within the ambit and purview of the applicable regulations.

Para wise Comments on Reply on merits:

4. The Complainant submits that the submission of the Respondents that the CGRF has rightly acted in the matter is denied. The CGRF has not reviewed its orders because it the review was questioning their own lapse in the previous orders passed by them in Complaint No. 1453/1/20/005. Rejection of genuine claims of the Consumers merely on trivial reasons is not in line with Consumer protection and natural justice to the Consumers.



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Contentions of the appellant/ Complainant

5. The Complainant submits that the statement/ submissions of the Respondents in the reply are denied as a case was no required to be made out for interest, when it was rightly prayed for in writing. He further points out that the prayer for interest was never objected to by the Respondents in the proceedings before the CGRF in the original Complaint No. 1453/1/20/005.
6. The Complainant submits that it was only when the implementation of the orders of CGRF took place during the non-compliance proceedings before the Hon'ble Ombudsman that the issue came up. The Respondents while refunding the amount extra charged in the bills, did not pay-up the interest as per clause 5.7.3. of the Supply Code, 2009 or the Regulations 26 (2) (a) (ii) of the HPERC (CGRF and Ombudsman) Regulations, 2013. Till then it was understood fact that the refund shall automatically be implemented alongwith interest @ 15% p.a. notified in both of the above said regulations. The doctrine of estoppel is applicable in the present case as the Respondents and the regulations lead the Complainant to believe that the refund will be executed alongwith the interest. It is only when the interest was not paid, the cause of action arose for filing review.
7. The Complainant submits that had the orders of CGRF been implemented in the notified period of 21 days without interest, the Complainant would have been in a position to file a review within 30 days of the receipt of orders of the CGRF. The onus for delay in filing of review also lies on the Respondents.
8. The Complainant denied the sub missions made by the Respondents as he is still suffering on account of non-payment of interest as per rules and regulations. The onus of delay in filing review lies on the Respondents as they did not implement the orders of the CGRF in 21 days. If they would have implemented in same manner within 21 days, the review could have been filed within the time frame of 30 days provided in the regulations.
9. The Complainant submits that the award of interest is mandatory provision and not a selective one as the word '**shall**' has been used. Had the word '**may**' been used the situation would have been different. There is no choice with the CGRF, whether or not to award interest on the refund amount.
10. The Complainant submits that there is no mention on the subject of interest, whereas the CGRF is required to pass a speaking order as per the regulations. There is no mention anywhere that the CGRF has discussed or given an opinion on the matter if interest in the entire proceedings. The only reason why the Complainant is being made to run from pillar to post is the lapse on the part of the CGRF. Had the issue been addressed in the orders the matter would settled there and then.



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11. The Complainant thus submits that in view of his above submissions, he pray to allow the representation on merits and averments made in the Complaint as well as this rejoinder.

E - CGRF Order:

Passed on dated 20/08/2020 in Complaint No. 1453/1/20/005, dated 18/03/2020

1. In view of the observations and discussions made here in above, the present Complaint is decided in favour of the Complainant. The Respondent Board is directed to refund the demand charges paid by the Complainant Consumer during the period of 01/11/2019 to 18/11/2019 when the erratic power supply due to frequent tripping on 132 KV line due to faulty relay in HPSEBL Sub-Station is established from the above submissions and the log sheet placed on record of the M/S Prime Steel Pvt. Ltd. for the month of 01/11/2019 to 30/11/2019. The amount so calculated to be refunded by the Respondent Board by way of adjustment in the future energy/ electricity bills of the Consumer/ Complainant.

Passed on dated 24/03/2021 in RA No. 1453/1/21/053 dated 22/02/2021 in OA No. 1453/1/20/005, dated 18/03/2020.

1. The Ld. Counsel for the complainant did not specifically controverted the arguments of the Board and stated that the time period spent in pursuing the appeal before the Ld. Ombudsman may be condoned to allow the complaint. We have the parties on limitation and perused the case file. The HPERC (CGRF and Ombudsman) Regulations, 2013, clearly stipulates the time limit of 30 days to file a review under Regulation 26(7) from the date of order. It is not disputed that the present review application has been filed on 20/02/2021 i.e. after a delay of more than 6 months. Even condoning the time spent by complainant before the Ld. Ombudsman in appeal, the present review petition is beyond limitation as prescribed in Rules ibid. Moreover, the Ld. Ombudsman vide its order dated 16/02/2021 has categorically held that the order passed by the CGRF dated 20/08/2020 in complaint No. 1457/01/20/005 have already been complied by the Respondents.
2. In view of the observation made here-in-above, we find no plausible reason to condone delay as prayed for; hence the application for condonation of delay is rejected being devoid of any merits. Resultantly the instant review application is found to be hopelessly time barred in view of the express provisions of Regulations 26 (7) of Regulations, 2013 ibid and disallowed accordingly. The parties are left to bear their own costs.



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E – Analysis of the Complaint:

1. The case files at the Consumer Grievance Redressal Forum in Complaint No. 1453/1/20/005, dated 18/03/2020 and in RA No. 1453/1/21/053, dated 22/02/2021 have been requisitioned and gone through. The case file No. 44/2020 have also been referred to.
2. The Complainant had earlier filed an application in this court under Regulation 28 (1) (c) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 registered as Complaint No. 44/2020 for non-implementation of the orders of the Forum dated 20/08/2020 in Complaint No. 1453/1/20/005, dated 18/03/2020. The Complaint was disposed off vide orders dated 16/02/2021.
3. Now let us discuss the contention of both parties.
4. The Complainant contended that the Respondents have complied with the orders of the Forum only during the proceedings of his appeal in this court and he was not aware that the Respondents are releasing the refund without interest and he had approached this court initially for implementation of the orders of the Forum. He had also prayed in his Complaint for interest part also.
5. After passing of orders in Case No. 44/2020, the Complainant approached the Forum again for modification of the orders in line with provisions of the regulations but the same was denied to him by the Forum and his review was disposed off being beyond limitation counted from 20/08/2020 whereas his limitation starts from the date of orders of this court.
6. The Complainant contended that this was a mistake on the part of the Forum not to include payment of interest on refundable amount or to allow the payment of interest and they should have condoned the delay which was justified. His further contention is that had the Respondents implemented the decision of the Forum within 21 days, he would have approached this court under 28 (1) (b) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 for modifications in respect of interest part but since that was not the case, he filed the case within 30 days for non-implementation of the orders of the Forum under the provisions of Regulation 28 (1) (c).
7. The Complainant contended that he is being made to suffer on account of mistake on the part of the Forum for not including interest in line with provisions of Regulation 26 (2) (a) (ii) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. He further contended that there is word "shall" in the Regulations 26 (2) and the same has been overlooked by the Forum. He further



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contended that it is not a matter of choice for the Forum whether to award interest or not and the Forum had not given any opinion in the matter of interest in the entire proceedings before them.

8. The Complainant has also contended that the orders passed by the Forum on 24/03/2021 is not justified under the law and the Forum should have allowed the review since the same was within a period of 30 days after this court passed the orders. Further the Respondents have complied with the orders of the Forum only during the proceedings before this court and after fearing action under Section 142 of Electricity Act, 2003. He further contended that he is being made to run from pillar to post because of lapse on the part of the Forum.
9. The Complainant further contended that the said regulations have been framed by the Commission pursuant to observation of the Forum of Regulators in its report on 'Protection of Consumer Interest' and he is being denied his legitimate dues of interest in line with provisions of Regulation 26 (2) (a) (ii) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and also in line with Clause 5.7.3 of Himachal Pradesh Electricity Supply Code 2009.
10. The Complainant contended that the Forum has not reviewed its orders because the same was questioning their own lapse in orders dated 20/08/2020 and rejection of claim merely on trivial reasons are not in line with Consumer Protection and natural justice to the Consumers. He further contended that the Respondents have never objected to the payment of interest in their pleadings before the Forum.
11. The Complainant has prayed further to modify the orders of the Forum dated 20/08/2020 to the extent of interest and to quash and set aside the orders passed on 24/03/2021.
12. The Respondents besides stating the facts defended the decision of the Forum dated 24/03/2021 since power to review was within 30 days only. They have further contended that they have fully complied the orders of the Forum in letter and spirit.
13. The Respondents has also contended that since they were fully satisfied with the orders of the Forum dated 20/08/2020, they had approached this court for non-implementation only under Regulation 28 (1) (c). this was also the verbal arguments advanced by the Law Officer for the Respondents.
14. The Respondents have further contended that it is up to the satisfaction of the Forum and the Forum was not satisfied to the extent of payment of interest to the Complainant. They further contended that the Forum has applied its mind to his satisfaction and interest was not payable to the Complainant.



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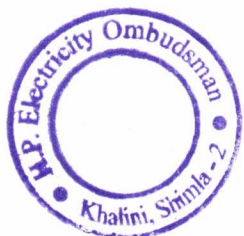
15. Now let us analyze the Complaint keeping in view the submissions by the parties and provisions of the relevant Regulations/ Codes.
16. The Forum had passed an order on 20/08/2020 to refund the demand charges paid by the Complainant during the period 01/11/2019 to 18/11/2019 by way of adjustment in the future energy/ electricity bills of the Consumer/ Complainant. However, the orders passed by the Forum was silent on the interest part.
17. The provisions under Regulation 26 (2) (a) (ii) (*Read with first amendment notified on 26/11/2019*) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 states that:
- "(ii) to return to the complainant the undue charges paid by the complainant along with the simple interest at the rate of 15 percent per annum, or at such rate as may be fixed by the Commission, for the actual number of days for which the undue disputed amount was withheld by the licensee; or";*
18. The provisions under Clause 5.7.3 states 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" the words "simple interest on the excess amount @ 15 percent per annum, or where the rate is fixed by the Commission at the rate so fixed, on daily basis."*
19. The Forum was bound to order the refund including the interest part in line with the provisions stated in the above quoted Regulation and Supply Code but they failed to quote so in their orders dated 20/08/2020 which is a serious lapse on their part defying the provisions under the Regulations/ code and denying the legitimate dues of the Complainant. It was not their choice to make whether the refund is to be given with interest or not. It was the mandatory provisions under the Regulations which they failed to provide.
20. Since, the Respondents had not implemented the orders of the Forum at the time of filing the Complaint No. 44/2020 on 23/10/2020 to refund the demand charges paid by the Complainant during the period 01/11/2019 to 18/11/2019, the Complainant had no option except to file for its implementation part and approached this court under prevailing Regulation 28 (1) (c) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013.



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21. Since the Complainant had approached this court under the provision of Regulation 28 (1) (c) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, and the Respondents during the proceedings in the case refunded the amount of Rs 29,14,650/- through sundry credit given in energy bill issued on 08/01/2021, his prayer for interest part was not acceded to and the Complaint was disposed off.
22. The Respondents had complied with the orders of the Forum only after filing of the Complaint No. 44/2020 at this court and after a mandatory period of 21 days, the interest part was not paid by the Respondents since the same was not specifically mentioned in the orders of the Forum dated 20/08/2020 as they have submitted in their pleadings/submissions.
23. While disposing the Complaint No. 44/2020, on the prayer of the Complainant for interest also, it was observed that *"However, the Complainant have option to file a review at Consumer Grievance Redressal Forum under provisions of Regulation 26 (7) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 for claiming interest on delayed refund."*
24. Since the interest part was denied by the Forum in order dated 20/08/2020 as well as by the Respondents on the plea that the same is not specifically mentioned in the Order, the Complainant approached the Forum again on 22/02/2021 for review of the orders dated 20/08/2020 and allow interest as per prevailing regulations/ code which they had failed to mention.
25. The Forum disposed off the Complaint of the Complainant being grossly time barred counting the period w.e. from the date of order i.e. since 20/08/2020 but failed to recognize that the Respondents had not implemented the orders of the Forum within the time period of 21 days specified in the Regulations and that too when the case was pending for non-implementation of the orders of the Forum at this court.
26. Further, I agree with the contention of the Complainant that the Respondents refunded the amount on 08/01/2021 fearing that they may attract provisions under Section 142 of Electricity Act, 2003 for non-compliance of the directions/ orders of the Forum/ this court.
27. Now let us discuss the limitation. In my considered opinion, the limitation period would have started after orders dated 16/02/2021 of this court since during this period, the Complainant had filed Complaint of non-implementation of orders of the Forum with payment of interest also and the same was pending adjudication. The contention of the Respondents is wrong that the Complainant was satisfied with the orders of the Forum but



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they failed to note that the interest payment was preyed by the Complainant in his submissions both at Forum as well as at this court.

28. First, the Forum failed to include interest part in their orders as per provisions of the Regulation 26 (2) (a) (ii) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and also in line with provisions under Clause 5.7.3 of Himachal Pradesh Electricity Supply Code 2009 and then in order to hide their own mistake of not including interest part in the orders dated 20/08/2020, dispose off the Complaint of the Complainant based on limitation counting from the date of their orders.
29. The Forum should have considered limitation w.e. from the date of issue of orders of this court in Case No. 44/2020 i.e. w.e. from 16/02/2021 onwards. The Complainant approached the Forum on 22/02/2021 i.e. within the time frame of 30 days after the orders of this court keeping in view the facts that the Respondents have complied the orders but have not given any interest and he was very much entitled.
30. The Respondent Board even could have made payment of interest in line with Clause 5.7.3 of Himachal Pradesh Electricity Supply Code 2009 on their own without intervention of the Forum or this court for which they do not require any specific orders to be passed. The Respondent Board denied the legitimate dues of the Complainant.
31. The Complainant was also entitled to be heard on merit of the case and get his legitimate dues of interest part also in line with provisions of Regulations 26 (2) (a) (ii) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 as well as of Clause 5.7.3 of Himachal Pradesh Electricity Supply Code 2009 which the Forum has failed to provide.
32. The Complainant have also prayed for litigation cost. Although, I agree that the Consumer have been dragged unnecessarily in litigation due to faulty orders of the Consumer Grievance Redressal Forum passed on dated 20/08/2021 but since the refund has already been made by the Respondents on 08/01/2021, the Respondent Board should not be penalized for the action of the Consumer Grievance Redressal Forum but this time only even the same is also part and parcel of the Respondent Board created under the Statutory provisions of Electricity Act, 2003.
33. In my considered opinion, the Consumer Grievance Redressal Forum should have reviewed its own order dated 20/08/2020 in line with provisions available under Regulation 26 (7) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 either on their own or even while the



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Complainant filed the review on dated 22/02/2021 and the default might not have escaped their notice.

34. Fact remains that the legitimate due of the Complainant have been denied by the Consumer Grievance Redressal Forum vide orders dated 20/08/2020 and 24/03/2021 in line with provisions under Regulation 26 (2) (a) (ii) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and even by the Respondent Board which they could have released on their own in line with provisions under Clause 5.7.3 of Himachal Pradesh Electricity Supply Code 2009.

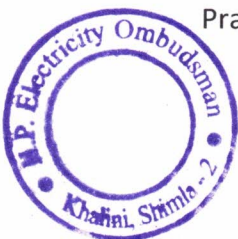
F – Issues in question:

1. **Issue No. 1:** Whether the Consumer Grievance Redressal Forum was right in disallowing interest on the refund due to the Complainant in orders passed on dated 20/08/2020 in Complaint No. 1453/1/20/005, dated 18/03/2020?
2. **Issue No. 2:** Whether the Consumer Grievance Redressal Forum was right in disposing off the review application of the Complainant based on limitation on dated 24/03/2021 in RA No. 1453/1/21/053 dated 22/02/2021?
3. **Issue No. 3:** Whether the Complainant is entitled for payment of Interest in line with provisions under Regulation 26 (2) (a) (ii) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 on refund ordered by the Forum in its order dated 20/08/2020?

G – Findings on the Issues:

Issue No. 1

1. As is evident from the discussion and analyses done above, the Consumer Grievance Redressal Forum was not right in disallowing the interest which they have failed to include in their orders passed on dated 20/08/2020 in Complaint No. 1453/1/20/005, dated 18/03/2020.
2. It was not the choice at the disposal of the Consumer Grievance Redressal Forum to disallow the interest part on refund in defiance of provisions under the Regulation 26 (2) (a) (ii) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and also available in Clause 5.7.3 of Himachal Pradesh Electricity Supply Code 2009.



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Issue No.2:

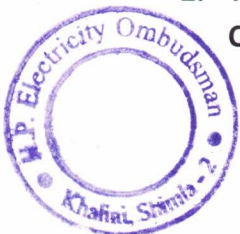
1. As is evident from the discussions and analysis done above, in my considered opinion, the limitation period would start from the date of orders of this court passed in Complaint No. 44/2020 on dated 16/02/2021 and the Complainant filed the review at Forum on 22/02/2021 which was within the limitation period.
2. It appears that the Forum, in order to hide its defect in the orders dated 20/08/2020, have disposed off the review without proper application of mind and have not gone in the merits of the case.
3. Furthermore, how the Complainant was to know that the Respondents will implement the orders of the Forum during proceedings of the case on 08/01/2021 that too without interest and he had earlier approached this court just for implementation of the orders of the Forum.
4. Even the Respondent Board could have made payment of interest on their own in line with specific provisions under Clause 5.7.3 of Himachal Pradesh Electricity Supply Code 2009 which they denied.

Issue No. 3:

1. As is evident from the discussions and analysis done above, the Complainant is very much entitled for payment of interest on the refund from the date the refund became due till actually paid/ adjusted in the energy bills.
2. The provisions under Regulation 26 (2) (a) (ii) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 as well as under Clause 5.7.3 of Himachal Pradesh Electricity Supply Code 2009 entitles the Complainant for payment of interest on refund which was mandatory provision and not choice of the trial court.

H – Order:

1. The orders passed by the Consumer Grievance Redressal Forum on dated 24/03/2021 in RA No. 1453/1/21/053 dated 22/02/2021 in OA No. 1453/1/20/005 dated 18/03/2020 are quashed and set aside.
2. The orders passed by the Consumer Grievance Redressal Forum on dated 20/08/2020 in Complaint No. 1453/1/20/005, dated 18/03/2020 are modified to the following extent:



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- a) The Respondents are directed to make payment in respect of interest on refund ordered by the Consumer Grievance Redressal Forum vide orders dated 20/08/2020 with simple interest @ 15% per annum for the actual number of days for which the undue amount has been withheld by them till actually paid within a period of 15 days from the date of issue of this order or latest by 21/08/2021 positively.
3. The Respondents are further directed to report compliance of the direction at Sr. No. 2 above within a period of 21 days from the date of issue of this order or latest by 28/08/2021 positively failing which the matter shall be reported to the Hon'ble Commission for violation of directions under 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.
4. The Consumer Grievance Redressal Forum is advised that while issuing future orders for refund to the Consumers, they should keep in mind the mandatory provisions under Regulation 26 (2) (a) (ii) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 as well as that of Clause 5.7.3 of Himachal Pradesh Electricity Supply Code 2009.
5. The Complaint filed by M/S Prime Steel Industries Pvt Ltd., Village Bated, Baddi-Barotiwala Road, Barotiwala, District Solan, HP-174103 is hereby disposed off.
6. No Cost to litigation

Given under my hand and seal of this office.



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07/08/2021
Electricity Ombudsman