



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 Vardhman Ispat Udyog, Village Bathri, Tehsil Haroli, Near Tahliwal, District Una, HP-174301
- Complainant

Vs

- 1. Executive Director (Personal), HPSEB Ltd, Vidyut Bhawan, Shimla-171004**
 - 2. The Assistant Executive Engineer (E), Electrical Sub-Division, HPSEBL, Tahliwal, District Una, HP-174301**
 - 3. The Sr Executive Engineer, Electrical Division, HPSEB Ltd, Gagret, District Una, HP-177201**
- Respondents**

Complaint No. 22/2022 (Registered on 16/11/2022)
(Orders reserved on 28/01/2023, Passed on 20/02/2023)

Counsel for:

The Complainant: Sh. Rakesh Bansal Authorized Representative
The Respondents: Sh. Anil Kumar God Advocate, Sh. Kamlesh Saklani Law Officer

CORAM

Er. K.L.Gupta
HP Electricity Ombudsman

Order

The case was received and registered on 16/11/2022. The case was first listed for admission hearing on 23/12/2022. The Respondents were to file their reply by 07/12/2022 and the Complainant was to file his rejoinder by 17/12/2022. The reply was filed by the Respondents on 19/12/2022 and the Complainant was to file his rejoinder by 30/12/2022. The case was listed for arguments on 21/01/2023.

The rejoinder was filed on 16/01/2023 but both parties sought time for arguments and hence the case was listed for arguments on 28/01/2023. The arguments were concluded and orders were reserved. Hence the delay.

A - Brief facts of the case:

1. M/S Vardhman Ispat Udyog, Village Bathri, Tehsil Haroli, Near Tahliwal, District Una, HP-174301 has filed an application through Sh. Pradeep Garg (hereinafter referred to as 'The Complainant') under the provisions of Regulation 28 of Himachal Pradesh Electricity



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Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 against the orders passed by the Consumer Grievance Redressal Forum at Kasumpti on 17/10/2022 in Complaint No. 3325/2/22/16, dated 04/06/2022. The Complainant prayed for quashing and setting aside the orders passed by the Forum below and to decide the matter on merit besides refunding Rs 63,51,300/- overcharged from them and apply tariff based on standard supply voltage.

B - The Complainant's submissions:

PROLOGUE/ BACKGROUND:

1. The Complainant submits that he is filing the said Complaint through Sh. Pradeep Garg, partner of the firm, who has been authorized vide resolution to sign, institute, verify swear affidavits, suits, Complaints, appeal and other proceedings to protect the interest of Vardhman Ispat Udyog and to engage counsel(s)/ Advocate (s)/ representatives (s). He is filing the said Complaint under Regulation No. 28 of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulation 2013. His company is a Consumer under the Electricity Act, 2003 i.e. Section 2 sub-Section 15 and the Respondents are Distribution Licensee under Section 2 sub-section 17 of the Electricity Act, 2003. His company is also a Consumer under Section 3 (d) of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulation 2013. The Respondents/ non-applicants have failed to adhere to the provisions of tariff orders notified from time to time by the Himachal Pradesh Electricity Regulatory Commission under the Electricity Act, 2003 and is charging wrong tariff from him while issuing the electricity bills. Further, he approached the Consumer Grievances Redressal Forum of HPSEBL, for redressal of his grievance, who, in the end of the proceeding rejected the Complaint as not being maintainable, without going into merits of the case.

Facts of the Case

2. The Complainant submits that he has a sanctioned Connected Load of 15000 kW at 33 kV and is engaged in manufacture of steel castings. Further, he earlier had a connected load of 5997.40 kW with 6653 kVA of Contract Demand. He applied for additional load and increased his load to 14000 kW with Contract Demand of 12000 kVA w.e.f. January, 2021. The load was further increased to 15000 kW with Contract Demand of 14000 kVA w.e.f. June, 2021.
3. The Complainant further submits that his standard supply voltage remained at 33 kV based on his Connected Load and Contract Demand till the time his Connected Load was up to 12 MW and Contract Demand was up to 10 MVA as per clause 2.1.6 of the Electricity Supply Code, 2009 (Annexure C-2 of the Complaint before CGRF). But as soon as he crossed both or either of these two limits his standard supply voltage changed to 66 kV w.e.f. January 2021 and it changed to 132 kV when the load was finally revised to 15 MW with 14 MVA of Contract Demand in the month of June, 2021.



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4. Further, that his supply is through a 33 kV dedicated feeder constructed for his sole use, the expenditure on which has been incurred by the Consumer. The entire load of 15 MW/ 14 MVA is being supplied through this 33 kV dedicated line since a very long time.
5. The Complainant submits that the Respondents started charging Low Voltage Supply Surcharge (LVSS) @ 1% over and above on the energy charges in the monthly bills issued since the energy bill issued for the consumption period of January, 2021 for a period of five months. Further, that from June, 2021 when his load was increased again, the LVSS was charged @ 2 % from thereon on the energy charges component of the electricity bills **(Annexure C1 of the Complaint filed with CGRF)**. The LVSS @ 2 % is being charged continuously and is expected to be charged in the future bills also as per provisions of the tariff. The rates of LVSS are further defined in General Conditions of Tariff **(Annexure- C4 of the Complaint filed with CGRF)**.
6. Further, that the tariff for LS category is applicable to him. Different rates of energy charges are applicable to different sub-categories based on the load and voltages. Similarly, different rates of demand charges have been notified in the tariff for different categories of Consumer **(Annexure C3 of the Complaint filed with CGRF)**.
7. The Complainant submits that he approached the CGRF vide his Complaint in the month of May 2022 vide his Complaint dated 30/04/2022. After the submission of the reply dated 27/06/2022, he filed a rejoinder dated 09/07/2022. Thereafter, the matter was listed for arguments on several dates. On 15/09/2022, the Respondents raised a new issue, which was never raised earlier in the reply/ submissions by them stating that a writ petition on similar issue has also been filed by him before the Hon'ble High Court. The Ld. CGRF directed the Respondents to apprise on the factual position to enable the Forum to proceed further in the matter accordingly.
8. The Complainant submits that the Respondents on 30/09/2022, submitted a copy of the CWP No. 2788 of 2022 titled as Vardhman Ispat Udyog versus HPSEBL after which the CGRF did not hear his arguments on merit and rejected the Complaint as being not maintainable in pursuance of the provisions of sub-regulation 19 (a) of the HPERC (Consumers Grievances Redressal Forum and Ombudsman) Regulations, 2013 vide its orders dated 17/10/2022.
9. The Complainant submits that he not being satisfied by the final decision of the Ld. CGRF, has approached the Hon'ble Ombudsman under Regulation 28 of the HPERC (Consumers Grievances Redressal Forum and Ombudsman) Regulations, 2013 vide this representation.



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Contentions of the Complainant:

Orders passed by the Forum:

10. The Complainant submits that the regulation 19 (a) of the HPERC (Consumers Grievances Redressal Forum and Ombudsman) Regulations, 2013 is reproduced below:

"19. Limitations/ pre-conditions for submission of grievance. - The Forum may reject the grievance at any stage under any or more of the following circumstances:-

*(a) in cases where proceedings in respect of the **same matter** and between the same Complainant and the licensee are pending before any court, tribunal, arbitrator or any other authority, or a decree or award or a final order has already been passed by any such court, tribunal, arbitrator or authority;....."*

11. He further submits that the Ld. Forum has wrongly concluded that the Regulation 19 (a) is applicable in the present case as the matter before the Hon'ble High Court is different are distinct from the matter lying before the CGRF. The Ld. Forum has erred in rejecting the Complaint stating that a **similar matter** is pending before the Hon'ble High Court, whereas the regulation only allows if the **same matter** is lying before different courts. The matter before is High Court is an independent matter challenging the constitutional validity of the Para 2.1.6.1 (A) and 2.1.6.1 (B) of the Supply Code, 2009, whereas the present grievance is basically a tariff issue. The matter of present grievance which was before the CGRF on the applicability of correct tariff based on the Standard Supply Voltage. He in the present grievance had held that wrong rates of energy charges and demand charges were being levied from him, which are contrary to the tariff order. Annexure C7 of the Complaint before the CGRF is clear that the complainant is not seeking refund of LVSS.

12. The Complainant submits that it is also amply clear from the CWP filed before the Hon'ble High Court of Himachal Pradesh that he has nowhere challenged the wrong categorization of the tariff category. Therefore, the matter cannot be treated as same matter as is required for the application of Regulation 19 (a) of the HPERC (Consumers Grievances Redressal Forum and Ombudsman) Regulations, 2013. Merely, **the mention of LVSS in both the cases does not tantamount to the matters are same** being the same. The Hon'ble High Court has not yet decided the constitutionality of the provisions levying LVSS or has not even stayed the matter and levy of LVSS is on this date a valid law, the support of which can be taken in this representation. **It is the settled law that unless a law has been declared bad or stayed, the validity of the same would still survive.** Further, that the charging of LVSS is still legal as on date and it is being levied in the bills issued by the Respondent to him. Levy of LVSS in the energy bills, has been only used as one of the grounds in order to differentiate between the voltage wise tariff and it is not the only ground in the grievance. Moreover, it



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is a fact that the LVSS is being charged from him. **The Respondents have not stopped charging LVSS because the it is under challenge before the Hon'ble High Court.**

13. Further, that mere perusal of the prayer in the two cases clearly differentiates the two cases, whereas he has challenged before the Hon'ble High Court the constitutional validity of the provisions related to LVSS and the detailed provision therein and sought refund of LVSS, in case LVSS is held to be unconstitutional by the Hon'ble High Court. It is for the Hon'ble High Court to decide whether or not the levy of the LVSS was constitutional, while simultaneously the table of load limits and its rationale has been challenged by him. The present Complaint before the Hon'ble Ombudsman never seeks any refund of LVSS or the alteration/ modification/ justification of the load limits for each voltage.
14. The Complainant submits that the CGRF has failed to appreciate that payment of LVSS was taken by him as one of the arguments and it was not the only argument to support his case.

The tariff of wrong category is being charged from the complainant, whereas he has been charged HT Tariff based on actual supply voltage instead of tariff applicable of standard supply voltage:

15. The Complainant submits that the tariff itself does not mention anywhere that the actual supply voltage shall be considered for the purpose of levy of respective tariff. He is of strong view that the tariff is to be levied on the basis of standard supply voltage rather than the actual supply voltage. Had it been mentioned in the tariff order that actual supply voltage shall be considered for the purpose of levy of tariff, he would not have filed this grievance.
16. He further submits that for the sake of argument it can be safely said that the Respondent is getting compensated twice, firstly in terms of charging a tariff for lower voltage, which is a higher tariff and secondly by way of surcharge in the form of LVSS, which is not fair on him. Further, that the Respondents are applying the tariff in a wrong manner so as to gain double on same account, particularly based on the quantum of T & D losses. Further, that the Respondent should have charged energy rate of Rs. 4.30 per kVAh since January, 2021 and Rs. 4.25 per kVAh from June, 2021 onwards. They have instead charged an energy rate of Rs. 4.35 per kVAh which is applicable to HT-2 category of industrial Consumers. Also, the Respondents have undercharged the demand charges @ Rs. 400 per kVA in place of Rs. 425 per kVA. He in all has been overcharged in overall terms of tariff by Rs. 63,51,300/- upto the bills issued upto 31/03/2022. The Respondents are continuing to charge the same tariff even after 31/03/2022 and the amount overcharged has grown further till this date. The HPERC has fixed the energy charges @ Rs. 4.35, Rs. 4.30 and Rs. 4.25 for the standard supply voltage of 33 kV, 66 kV and 132 kV respectively. The gradual decrease in tariff has been considered and approved by the Commission on the basis of lower transmission and distribution losses if the supply voltage is higher. It is obvious that the tariff has to be charged on standard supply voltage basis until and unless the LVSS provisions is disbanded.



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17. The Complainant further submits that the as far as feeding line losses are concerned, the Respondents has nothing to worry as the bills are being issued to him on the consumption at the substation, where the metering is carried out.

18. The Complainant submits that he is also entitled for interest on the amount refundable to him, and which has been overcharged by the Respondents in the bills issued. The entitlement of interest is well defined in Clause 5.7.3 of the Supply Code, 2009 as well as the Regulation 26 (2) (a) (ii) of the HPERC (Consumer Grievances Redressal Forum & Ombudsman) Regulations, 2013

"5.7.3 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 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 from the date of payment till such time the excess amount is adjusted."

19. **Prayer:** The Complainant this in view of above prays: **a)** to quash and set aside the orders dated 17/10/2022 passed in Complaints No. 3325/2/22/16 as the same are contrary to the provisions of the HPERC (Consumers Grievances Redressal Forum and Ombudsman) Regulations, 2013; **b)** to decide the grievance on merits of the matter; **c)** to direct the Respondents to refund an amount of Rs. 63,51,300/- already overcharged by the Respondents as submitted above in the Complaint and also such amounts overcharged in the subsequent bills; **d)** to direct the Respondents to issue future bills on the basis of tariff applicable on the basis of standard supply voltage i.e. 132 kV in the future; **e)** to direct the Respondents to pay interest on the amount charged in excess and the amount that is refundable to the complainant, at simple interest @ 15% p.a. on daily basis, from the date of payment till the excess amount is refunded/ adjusted by the Respondents as per Sub-regulation 5.7.3 of the Supply Code, 2009 or the Regulation 26 (2) (a) (ii) of the HPERC (CGRF and Ombudsman) Regulations, 2013 as the Hon'ble Forum may consider appropriate out of the two regulations; **f)** to direct the Respondents to compensate him towards cost of the Complaint amounting to Rs. 1,00,000/-. **g)** to Call for the record of the case and; **h)** any other or further orders which this Hon'ble Forum 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.



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C - The Respondents' submissions:

Preliminary Submissions:-

1. The Respondents submit that the representation of the Appellant is not maintainable against them. The Respondents further submit that they are acting on behalf of the HPSEBL and order passed by the Ld. CGRF is in accordance with rule of law as well as Rules and Regulations framed by the Hon'ble HPERC. The Appellant is also well aware about the rule of law, as well as rules and regulations; hence the representation filed by the Appellant is liable to be dismissed.
2. The Respondents submit that the Appellant has not come to this Hon'ble Ombudsman with clean hands and has suppressed and concealed the material facts from this Hon'ble Ombudsman and has filed the present representation/ appeal on twisted and distorted facts which are far off from the reality and same is liable to be dismissed.
3. They further submit that the Appellant has no locus standie to file any such representation against them. Further, that the Appellant has entered into an agreement with the HPSEBL at the time of sanctioning/ release of the electric connection to him, wherein he has agreed to comply with the conditions of the agreement viz. PAC and has agreed to pay the dues/ charges as per tariff/ Rules and Regulations applicable from time to time, hence the representation filed by the Appellant is liable to be dismissed.
4. The Respondents submit that the order of the Ld. CGRF dated 17/10/2022 is legal one in the eyes of law since the CWP No. 2788 of 2022 has already filed by the Appellant before the Hon'ble HP High Court, wherein he has already challenged the LVSS issue and the said petition is still pending adjudication before the Hon'ble High court hence as of now the Order passed by the Ld. CGRF deserves no interference from this Hon'ble Ombudsman as such the instant representation is liable to be dismissed in limine.

On Merits

5. The Respondents submit that the representation of the Appellant is not maintainable and same is liable to be dismissed, since the Ld. Forum below has passed a well reasoned order which is based on record and same warrants no interference of this Hon'ble Forum hence the instant representation is liable to be dismissed.

Reply to grounds of Representation:-

6. The Respondents further submit that the Appellant has misread/ misunderstand the relevant provisions of clause 2.1.6 viz. Standard Supply Voltage, as the limits are provided for maximum Connected Load and Contract Demand for 33kV are 12MW and 10 MVA and



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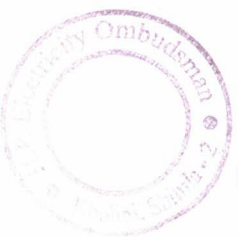


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the Appellant has already exceeded those limits. Further, that as per clause of 2.1.6 of Supply Code, if any Consumer avails supply on three phase on 66 kV, then his Connected Load should be 14 MW and demand would be 12 MVA. Here in present case the Connected Load of the Appellant is 15 MW, and Contract Demand is 14 MVA from 132 kV sub-station Gurplah. But as per regulation, the Appellant can use the Contract Demand upto 10MVA with maximum load 12 MW on 33 KV supply voltage. Therefore, under these circumstances the Appellant is liable pay LVSS @ 2% of energy charges, as its Contract Demand is more than 10 MVA. Moreover, the tariff order issued by the Hon'ble HPERC is very clear.

7. The Respondents further submits that the contents of this sub-para are admitted to the extent that the load of 15 MW/ 14MVA is being supplied from 33 kV dedicated line. Further, that previously the supply to M/S H.N Steel (previous owner) was from 33/11 kV Sub Station Taliwal being an interim measure which was later on shifted to 132/33 kV Sub Station Gurplah/ Taliwal, copy of letter dated 16/12/2010 written to Chief Engineer (Comm.) is annexed as **Annexure-R-2** and in lieu of above stated letter the Chief Engineer (Comm.) has accordingly replied to the Chief Engineer (North), copy of letter dated 29/12/2010 is annexed as **Annexure-R-3**. Accordingly, an SJO dated 27/05/2021 has been issued for an interim measure, copy whereof is annexed as **Annexure-R-4** for the kind perusal of this Hon'ble Ombudsman. Further, it is relevant to mention here that this line was constructed by the previous owner.
8. The Respondents submit that the Appellant is deliberately misconstruing and misinterpreting the provisions of Supply Code and tariff orders duly notified by the Hon'ble HPERC. As per regulation, the Appellant can use the Contract Demand upto 10 MVA with maximum load 12 MW on 33 kV supply voltage. In present case the Appellant had used the Contract Demand upto 14 kVA with connected load of 15 MW and under these circumstances the Appellant has to be charged with LVSS @ 2% of energy charges. Moreover, that earlier the Appellant was charged with LVSS @ 1% of energy charges, as the electricity was supplied through joint dedicated feeder with M/S Pritika Auto Cast, resultantly LVSS @ 1% from January 2021 to May, 2021 was charged. However, after the SJO dated 27/05/2021 when the Appellant has been sifted to dedicated feeder with extension of load for Contract Demand upto 14 MVA with Connected Load of 15 MW from 132/ 33KV Substation Gurplah, whereas the connection has been released on 33 kV supply voltage, which is two step below therefore the Appellant has to be levied with the LVSS charges @ 4% (2%+2%) of the energy charges, but in case of dedicated feeder, the rebate of 50% is also available hence the Appellant has been charged LVSS @ 2% of energy charges. Under these circumstances the replying Respondents have rightly and legally charged LVSS @ 2% from the Appellant as per the relevant provisions.
9. The Respondents denied the contents of sub-para are wrong and submit that as the Appellant is drawing 33 kV supply, hence, the Appellant would be considered in HT-2 category for applicability of tariff, moreover the Contract Demand of the Appellant is more



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the 1 MVA, therefore the Appellants falls under HT-2 category not EHT category, as claimed by the Appellant in his instant sub-para. Hence, the representation deserves dismissal.

10. The Respondents submit that the Ld. CGRF has rightly rejected the Complaint filed by the Appellant, since he has already filed the CWP No. 2788 of 2022 wherein also he is challenging the applicability of LVSS. Hence, the instant representation deserves dismissal.

Reply to the Contentions of the Complainant:

11. The Respondents submit that the order passed by the Ld. CGRF is law full as well as a reasoned order which deserves no interference from this Hon'ble Ombudsman. Moreover, the detailed submissions qua applicability of tariff order/ LVSS is already made in paras supra which may kindly be read as part and parcel to this para for the sake of brevity.
12. They further submit that the matter is pending adjudication before the Hon'ble HP High Court, wherein the Appellant is challenging the constitutionality of LVSS hence the instant representation deserves dismissal in limine.
13. The Respondents submit that in the prayer clause of this representation, the petitioner is himself claiming refund of Rs. 63,51,300/- which in fact is charged as LVSS charges from the Appellant. Since, the pleading of the petitioner is contrary to the factual position hence the instant representation deserves dismissal.
14. Further, that the the detailed submissions made in paras supra may kindly be read as part and parcel to this para for the sake of brevity.
15. The Respondents submit that they are charging LVSS from the Appellant as per the provision 2.1.6 Supply Code, 2009, hence the instant representation deserves dismissal since the averments made by the Appellant in the instant para of the representation is based on the own hypothesis of the Appellant.
16. They further submit that the copy of tariff order applicable in the instant matter is already annexed as **Annexure-R-1** with instant reply which may kindly be read as part and parcel to this para for the sake of brevity.
17. The Respondents submit that the detailed submissions made herein above qua applicability of tariff may kindly be read as part and parcel to this para for the sake of brevity. Moreover, that on the similar lines a petition is pending before the Hon'ble high court wherein constitutionality of LVSS has been challenged by the Appellant. Hence the instant petition deserves dismissal, moreover copy of Observation of the Hon'ble HPERC on the similar lines are annexed as **Annexure-R-5** for the kind perusal of this Hon'ble Ombudsman.



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18. The Respondents submit that the Regulation stated in this para of the representation are not applicable in the instant matter.
19. The Respondents submit that the prayer clause of the petitioner is wrong and incorrect hence denied.
20. **The Respondents thus submit that the present representation may kindly be dismissed with cost in the interest of justice and equity.**

D - The Complainant's additional submissions through rejoinder:

1. The Complainant submit that he repeats, reiterates and confirm all the statements and averments made by him in the Complaint and deny all the statements and averments made in the said reply unless and until the same are specifically admitted by him.

PARA-WISE SUBMISSIONS AGAINST THE REPLY:

Preliminary Objections:

2. The Complainant submits that the Respondent is wrong in saying that the present representation is not maintainable before the Hon'ble Ombudsman. He has rightfully approached the Ld. Ombudsman, not being satisfied by the orders passed by the CGRF.
3. Further, that there is nothing that have been concealed and the Respondent is merely making a statement which has no basis, whatsoever. He has a bona fide grievance for which he has approached the Hon'ble Ombudsman.
4. The Complainant submits that he is well within his rights under the rights conferred to him under the Electricity Act, 2003 and relevant regulations enacted under the said Act. His agreement with the Respondent cannot be extended to the levy of unlawful charges that are not permitted by the law. He, in fact is seeking relief in terms of notified tariffs and nothing beyond that.
5. The Complainant submits that the orders passed by the Ld. CGRF are not legal in the eyes of law since the CWP No. 2788 of 2022 is distinct from the current representation and it seeks a totally different relief than what is being sought in the present representation. The impugned orders passed by the Ld. Forum deserves to be quashed and set aside.

REPLY ON MERITS

6. The Complainant submits that Para 1-12 have been accepted by the Respondents being matter of record, therefore, no comments.



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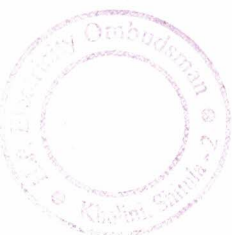


REPLY TO GROUNDS OF REPRESENTATION

7. He further submits that there is no misunderstanding / misreading of the relevant provisions of Clause 2.1.6 viz. Standard Supply Voltage as the same thing is being put forward in different manner by the Respondents. While he simply cited out the factual situation in the chronological order, while his present load is 15 MW with 14 MVA of Contract Demand. Different rates of LVSS were charged by the Respondents as applicable as per Clause 2.1.6 of the Supply Code. He, in the present representation has no where sought relief in terms of LVSS nor is he aggrieved by the rate/ slabs of LVSS charged from him from time to time. Further, that the moot question in this representation is to precisely determine as to which tariff is to be charged from him in the given scenario.
8. The Complainant submits that the contents of Reply are of no consequence and are more or less irrelevant to the context of the present representation. Whether, the line was constructed by previous occupier or whether supply was released at 11 kV on interim basis are irrelevant in the present matter. The present Complaint seeks redressal in terms of applicable slabs of tariff in the existing scenario, while the supply is being given through dedicated feeder at 33 kV, which is an undeniable fact.
9. He further submits that the Respondents reply is not to the point, but is digressing to justify the levy of LVSS and the rates being charged, which is nowhere being challenged in the present representation. The Respondents have mis read the representation and are simply trying to justify the levy of LVSS as per applicable rules, which has not been denied by him.

Reply to the contentions of the complainant:

10. The Complainant submits that the reply to the para is denied and he maintains his stand on the contents of the this para in the representation.
11. The Complainant submits that the Respondents have mislead the Forum and are now trying to mislead the Hon'ble Ombudsman that the same matter is pending for adjudication before the Hon'ble High Court. LVSS which is under challenge before the High Court of Himachal Pradesh in CWP 2788, is not the only basis on which the questions in this grievance is raised. However, the levy of LVSS, among other grounds has only been taken one of the grounds to justify his stand. Moreover, even if levy of LVSS is struck off by the Hon'ble High Court on being unconstitutional in future as the result of pending litigation, it is a valid levy as on this date. The Hon'ble Ombudsman is bound to act in the present scenario, where LVSS is still applicable and not have been stayed or struck off by the Hon'ble High Court.



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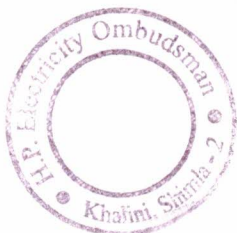


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12. Further, that even if he is successful in the High Court, then only one of the grounds in this representation can be nullified, whereas rest of the grounds shall still remain.
13. The Complainant submits that the Respondent is totally wrong in stating that the complainant is seeking refund of Rs. 63,51,300/- towards refund of LVSS. The refund being sought by him is on account of tariff difference but not the LVSS. The LVSS has been included as payable by him while computing the amount of Rs. 63,51,300/- upto 31/03/2022. However, the said amount has grown since then.
14. Further, that he maintains his statements in the said paras of representation and the Respondents are again and again stating that they are charging LVSS correctly as per applicable provisions, which is not a dispute at all in this representation.
15. Further, that it is the same tariff which he also has attached as Annexure C3 and C4 of the Complaint filed before CGRF.
16. The Complainant submits that the contents of the observations of HPERC in order to support the LVSS are not a matter of relevance in the present representation. The stakeholders in one of the tariff orders had objected to the levy of LVSS, whereas the Respondents had replied that LVSS should be retained for maintaining the discipline of standard supply voltage. The Hon'ble HPERC had decided to continue with LVSS and concluded it to be reasonable. Similar observations and views have also been taken in the tariff order for 4th MYT Control Period (FY20-FY24) a copy of which is attached at **Annexure C9** to this rejoinder. But, since the applicability of LVSS is not a question to be decided by the Hon'ble Ombudsman, the same must not confuse the matter altogether.
17. Further, that the applicability of rules and regulations notified for applicability of interest on refunds cannot be ignored and is definitely applicable if refund accrues from this representation.
18. In view of above, the Complainant prayed that the Complaint be allowed in totality thereby ordering the refund of amounts due to him along with interest and costs as per applicable Regulations and other reliefs prayed for.

E - CGRF Order:

1. The Forum has gone through the civil writ petition CWP 2788 of 2022 filed by the Complainant in the Hon'ble High Court of Himachal Pradesh. It is observed by the Forum that the ibid writ petition is also with regard to implications/working of Lower Voltage Supply Surcharge (LVSS) as provided in code 2.16 of HP Electricity Supply Code, 2009, 1st amendment, 2014 notified on 11.06.2014. This Forum further observes that the matter



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raised in the present complaint filed before us also has a similar basis with regard to implications/working of LVSS as provided in ibid code 2.16.

2. The Forum views seriously the fact that the Complainant has approached the Forum simultaneously in a matter with similar basis which is also subjudice before the Hon'ble High Court. The Complainant has not come before this Forum with clean hands and has suppressed material facts by not disclosing the factum of the CWP filed before the Hon'ble Court as referred above. Thus, Forum is of the view that the complaint at this stage cannot be proceeded in view of provisions of Sub- Regulation 19(a) of HPERC Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. The said regulation clearly states that Forum may reject a grievance at any stage under the circumstance, where proceedings in respect of same matter between the same Complainant and licensee are pending before any Court.
3. Therefore, in view of the express provisions of ibid Regulations, this Forum cannot hear the instant complaint especially given the fact of writ petition CWP 2788 of 2022 on the matter having been filed in the Hon'ble HP High Court, which is pending adjudication. This Forum, therefore, without going into the merits of the case, rejects the instant complaint as not being maintainable in pursuance to provisions of sub-regulation 19(a) of HPERC (Consumers Grievances Redressal Forum and Ombudsman) Regulations, 2013 ibid. Accordingly the Complaint is disposed of in aforesaid terms.

F – Analysis of the Complaint:

1. The case file in respect of Complaint No. 3325/2/22/16, dated 04/06/2022 orders on which were passed on 17/10/2022 by the Consumer Grievance Redressal Forum at Kasumpti have also been requisitioned and gone through.
2. The arguments made by both parties and documents, averments made on record by both the parties have also been gone through.
3. The Complainant have filed the representation under the provisions of Regulation 28 of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. He has not quoted any further specific sub-provisions but since he has sought quashing and setting aside the orders passed by the Forum below besides other relief against their order, the representation has to be treated with sub-provision (b) of Regulation 28 of said regulations.
4. The Consumer Grievance Redressal Forum at Kasumpti have disposed off the Complaint at their end after rejecting the same without going in to the merits of the case. The grounds taken by them are that since the Complainant had filed a CWP bearing No. 2788/2022 at the HP High Court on the matter and hence the same is liable for rejection under the



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provisions of Regulation 19 (a) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013.

5. In this Appellate Forum, the issue was also raised by the Respondents on maintainability and the case was not discussed on merits. However, the Respondents have also replied on merit since the Complainant had prayed to decide his grievance on merits of the case.
6. However, since first the maintainability issue was to be decided first, the case was argued on maintainability only and not heard on merits. The moot question arises whether the CWP No. 2788/2022 filed at HP High Court by the Complainant is on similar or same matter as has been concluded by the Forum below in their orders dated 17/10/2022 or not.
7. The merits of the case, as represented by the Complainant are also not being discussed here. The contention of the Complainant is that the CWP No. 2788/2022 filed by them at HP High Court is regarding challenging the constitutional validity of the Para 2.1.6.1 (A) and Para 2.1.6.1 (B) of the Himachal Pradesh Electricity Supply Code 2009 whereas the present grievance filed by him is basically a tariff issue.
8. The Para 2.1.6.1 (A) and Para 2.1.6.1 (B) of the Himachal Pradesh Electricity Supply Code 2009 amended through first amendment published in the HP Gazette on 16/06/2014 specifies in (A) the Standard supply voltage for Maximum Connected Load and Maximum Contract Demand. The Para (B) specifies the applicability of LVSS besides other parameters.
9. The contention of the Respondents is that the Complainant has already filed a CWP bearing No. 2788/2022 at HP High Court on similar lines wherein he has challenged the LVSS issue and the matter is still pending for adjudication. However, they also agree in their reply (Para 2.1.2 and 2.2.2 of reply) that the Complainant have challenged the constitutional validity of LVSS and have also sought refund towards LVSS amounting to Rs 65,51,300/- charged by them in the present representation (Para 2.1.3 of reply).
10. The Respondents further contention is that they are charging LVSS strictly as per Tariff schedule from the Complainant. They have tried to justify the applicability of LVSS since the Complainant is being fed at 33 kV and his Connected Load and Contract Demand are permissible under higher voltage of 132 kV.
11. The Complainant's further contention is that they have never challenged that the Distribution Licensee is charging wrong LVSS or LVSS is not applicable. They have only represented that based on their Connected Load and Contract Demand, since higher voltage of 132 kV is applicable to them, they should be charged for tariff applicable under relevant category for 132 kV standard supply voltage.



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12. Further, his contention is that in the CWP No. 2788/2022 he has challenged that LVSS should not be applicable wherein the load of Consumer is to be released at higher standard supply voltage. They have in fact challenged the applicability of the Para 2.1.6.1 (A) and (B) of the Himachal Pradesh Electricity Supply Code 2009.
13. Now let us examine the CWP filed by the Complainant at HP High Court a copy of which is also available on record. The opening para of CWP states that they are challenging the LVSS levied by the Respondent Board and additionally the enabling provisions 2.1.6.1 (A) and 2.1.6.1 (B) of Supply Code 2009. They had further stated that since their sanction Contract Demand is now at 14 MVA for which the standard supply voltage is 132 kV or 220 kV, they were being forced to lay 132 kV line for just 14 MVA which can carry a much higher load. They have been allowed to use the load at 33 kV but LVSS is being charged.
14. In the said petition he has stated that present supply voltage can sustain total 15050 kVA out of which 14000 kVA is already running and their demand to levy LVSS or establish a 132 kV infrastructure for consumption of additional load puts an unreasonable impediment for him. Further, laying of 132 kV line from nearest 132 kV sub-station alongwith bays involves expenditure in several crores of rupees which is not required and is prejudice to him wherein present line has enough capacity to sustain the total load of 15050 kVA.
15. He has further pointed out that there is contradiction in Para 2.1.6.1 (A) and Para 2.1.6.1 (B) wherein for common feeder the load limits are 18 MW and 14 MVA instead of 12 MW and 10 MVA and common feeder can accommodate more load on same voltage line which is arbitrary.
16. His prayer at HP High Court is that the Paras 2.1.6.1 (A) and Para 2.1.6.1 (B) may be declared ultravires and delete the column restricting the Connected Load in kW which has no relevance. Further, he has prayed that Respondents may be directed to fix the load limits at 33 kV voltage level after technically evaluating the capacity of the line and release 15050 kVA on 33 kV existing line supplying to him.
17. Now let us examine the representation at Consumer Grievance Redressal Forum at Kasumpti and this Appellate Forum. His contention at Forum below is that he is being supplied a load of 15 MW/ 14 MVA on 33 kV for a quite long time. Till he was connected at 12 MW/ 10 MVA, his standard supply voltage was 33 kV as per Clause 2.1.6.1 of Himachal Pradesh Electricity Supply Code 2009. But as soon as he increased his load, first his standard supply voltage was changed to 66 kV in January 2021 and then to 132 kV when he changed his load to 15 MW / 14 MVA in June 2021.
18. His further contention is that the entire load is being supplied at 33 kV for a very long time and the Respondents started charging LVSS @ 1% since January 2021 and @ 2% since June 2021 as per tariff provisions. His further contention was that since his standard supply



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voltage is now at 132 kV and he is being charged for HT based tariff on actual supply voltage instead of tariff applicable for standard supply voltage of 132 kV which falls in HT-2 Category.

19. His further contention was that the Respondent Board is charging more tariff and less demand charges from him and they have overcharged Rs 65,51,300/- in the energy bills issued up to 31/03/2022. Further, that he is being penalized twice, first by charging LVSS and second by applying higher tariff.
20. Now his prayer at Consumer Grievance Redressal Forum at Kasumpti is that a refund of Rs 65,51,300/- be made to him since the same has been overcharged by the Respondent Board in tariff from him and not LVSS as being claimed by the Respondents and to direct the Respondents to charge tariff based on standard supply voltage instead of actual voltage.
21. Now let us examine the arguments made by both the parties at this Appellate Forum. The Complainant made clear during arguments that they are being charged twice first by levying LVSS and secondly applying higher tariff based on actual supply voltage of 33 kV instead of lower tariff applicable on standard supply voltage of 132 kV applicable to them based on their load. Their arguments were more or less as per their averments made in the representation.
22. Further, he had argued that for many hearings at Forum below, the matter was discussed on merit and the question of maintainability was never raised and then in one hearing the Respondents cited the CWP No. 2788/2022 and the Forum below without looking in to the matters at both places, declared that the since the matter at both places has a similar basis and dismissed the same without taking their arguments in to account for having different matter at HP High Court and before the Forum below.
23. The Respondents first raised issue under 33 (1) (c) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 of representation pending for same matter at HP High Court and questioned maintainability issue. Further, the Law Officer for the Respondent Board read out both the prayers at HP High Court as well as in the present case. He could not however establish that the matter at HP High Court and the present petition is same.
24. Now the scrutiny of both the matters at HP High Court and this Appellate Forum as well as at the Forum below, as discussed above, clearly distinguish that the matter is not same. At HP High Court, the Complainant have questioned the constitutional validity of Para 2.1.6.1 (A) and Para 2.6.1.1 (B) and prayed that the same may be declared ultravires and also delete the column restricting the Connected Load in kW which has no relevance. Further, he has prayed that Respondents may be directed to fix the load limits at 33 kV voltage level after



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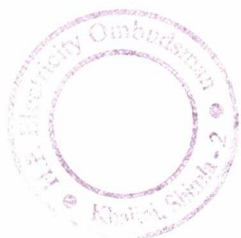
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technically evaluating the capacity of the line and release 15050 kVA on 33 kV existing line supplying to him.

25. The averments and prayer made by him at Consumer Grievance Redressal Forum at Kasumpti and this Appellate Forum are that he is being penalized twice by levying LVSS on one hand and on other hand by charging higher tariff at actual supply voltage wherein as per load his standard supply voltage is 132 kV and he should be charged tariff applicable for same.
26. From the scrutiny of the both matters, it can be clearly established that both the matters are different. He has never challenged the levy of LVSS by the Respondent Board at any stage and the refund being sought is due to application of wrong tariff to him and not for LVSS.
27. Now let us examine the Orders passed by the Forum below on 17/10/2022. The Consumer Grievance Redressal Forum at Kasumpti simply relected the Complaint under the provisions of Regulation 19 (a) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 citing that thee matter at HP High Court and before them has a similar basis.
28. From the record it appears that without going in to the averments made at both places, the Forum below have declared the representation non-maintainable and rejected the same.
29. From the above discussed, it is clear that since the matter at HP High Court and at Forum below were different, the Forum below have rejected the representation in haste based on the reply/ arguments of the Respondent Board alone without going in to the details.
30. From the discussions above, it is clear that the present representation filed by the Complainant in this Appellate Forum is maintainable and need to be remitted back to the Consumer Grievance Redressal Forum at Kasumpti for decision on merits of the case.

G - Issues at hand:

1. **Issue No. 1:** Whether the representation filed by the Complainant in this Appellate Forum is maintainable or not?
2. **Issue No. 2:** Whether the orders passed on 17/10/2022 in Complaint No. 3325/2/22/16, dated 04/06/2022 by the Consumer Grievance Redressal Forum at Kasumpti have rightfully rejected the representation under provisions of Regulation 19 (a) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 or not?



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H - Findings on the Issues:

Issue No.1:

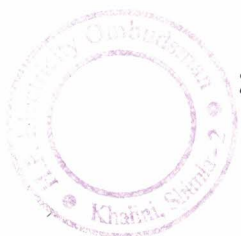
1. As is evident from the analysis done above and documents on record/averments/arguments of the parties, the case file by the Complainant at HP High Court vide CWP No. 2788/2022 is distinct from the case filed at Consumer Grievance Redressal Forum at Kasumpti and at this Appellate Forum.
2. As is also evident from the discussions above under analysis of the Complaint, the representation filed by the Complainant is maintainable at this Appellate Forum.

Issue No. 2:

1. As is evident from the analysis done above and the documents/ averments/ arguments on record, the orders passed by the Consumer Grievance Redressal Forum at Kasumpti on 17/10/2022 in Complaint No. 3325/2/22/16, dated 04/06/2022 does not fall under the provisions of Regulation 19 (a) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 since the matter at HP High Court and Forum below are different.
2. Similarly, the matter does not fall under the provisions of 33 (1) (c) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013.
3. At HP High Court, the Complainant have challenged the constitutional validity of the Para 2.1.6.1 (A) and Para 2.1.6.1 (B) of Himachal Pradesh Electricity Supply Code 2009 and for direction to Respondent Board to fix the load limits at 33 kV level after technically evaluating the capacity of the line and release load of 15050 kVA to them on existing 33 kV supply whereas at the Forum below and at this Appellate Forum, they have represented against the wrong application of tariff category based on standard supply voltage of 132 kV instead of actual supply voltage of 33 kV.

I - Order:

1. The orders passed by the Consumer Grievance Redressal Forum at Kasumpti on 17/10/2022 in Complaint No. 3325/2/22/16, dated 04/06/2022 are hereby quashed and set aside.
2. The case is remitted back to the Consumer Grievance Redressal Forum at Kasumpti for decision on merits of the case after reviving the Complaint No. 3325/2/22/16, dated 04/06/2022 without any application for revival from any of the parties.



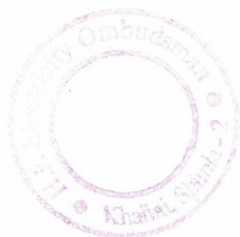
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3. The Consumer Grievance Redressal Forum at Kasumpti is further directed to decide the matter on merits of the case after affording an opportunity of being heard to both the parties within the provisions under Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and other relevant Regulations/ Codes.
4. The case filed by M/S Vardhman Ispat Udyog, Village Bathri, Tehsil Haroli, Near Tahliwal, District Una, HP-174301 is hereby disposed off.
5. No cost to litigation.

Given under my hand and seal of this office.



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