



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 Kundlas Loh Udyog, Village Balyana, PO Barotiwala, Tehsil Baddi, District Solan, HP-174103
– Complainant

Vs

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

- Respondents

Application No. 23/2022 In OA No. 20/2020

(Registered on 28/11/2022)

(Orders reserved on 28/01/2023 and passed on 03/03/2023)

Counsel for:

The Complainant: Sh. Rakesh Bansal Authorized Representative

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

CORAM

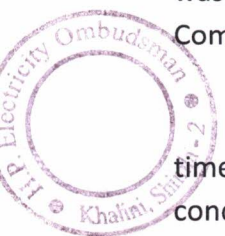
Er. K.L. Gupta

HP Electricity Ombudsman

Order

The case was received and registered on 28/11/2022 on the directions of Hon'ble HP High Court on application from M/S Kundlas Loh Udyog. The case was listed for admission hearing on 23/12/2022. The Respondents were to file their reply by 17/12/2022 and the Complainant was to file his rejoinder by 22/12/2022. Since the reply was not filed by the Respondents by due date, the case was listed for 21/01/2023. The Respondents were to file their reply by 07/01/2023 and the Complainant was to file his rejoinder by 13/01/2023.

Reply and rejoinder were filed on 07/01/2023 and 17/01/2023 but both parties sought time for arguments. The case was listed for arguments on 28/01/2023. The arguments were heard, concluded and closed on 28/01/2023 and the orders were reserved. Both parties were asked to submit their written arguments, if any. The Complainant filed his written arguments on 28/02/2023



Er. K.L. Gupta
03/03/2023



HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
SHARMA SADAN, BEHIND KEONTHAL COMPLEX, SHIMLA-171002

Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com

through email and hard copy by post on 02/03/2023 wherein the Respondents informed on 02/03/2023 informed through email to consider their reply and verbal arguments during the course of hearing. Hence the delay.

A - Facts and Analysis of the case:

1. M/S Kundlas Loh Udyog, Village Balyana, PO Barotiwala, Tehsil Baddi, District Solan, HP-174103 have filed a representation through Sh. Rakesh Bansal, Authorized representative (hereinafter referred to as 'The Complainant') for revival of Case No. 20/2020 which was decided by this Appellate Forum on 23/09/2020. Hon'ble HP High Court, in CWP No. 2219/2021, had remitted back to this Appellate Forum to decide the matter afresh. The Respondent No. 1 at HP High Court i.e. Complainant in the present matter was allowed to make a formal application to revive the case which they had done on 28/11/2022. The Hon'ble HP High Court had observed that without going in to the question of maintainability of the Complaint, the said complaint was entertained.
2. On a request from the Complainant on 28/11/2022, the case was revived as directed by the Hon'ble HP High Court in CWP No. 2219/2021. The Respondents also applied to revive the case on 19/11/2022 but the same became infructuous after the revival application was received by this Appellate Forum from the Complainant on 28/11/2022.
3. The Respondents made additional submissions on 17/01/2023 wherein they raised the issue of maintainability of Case No. 20/2020 decided on 23/09/2020. They submitted that earlier the Consumer Grievance Redressal Forum at Kasumpti had decided the Complaint No. 1453/2/17/028 and findings were affirmed by this Appellate Forum on 29/09/2018 in Case No. 60/2018.
4. The Respondents further stated that aggrieved by the orders of this Appellate Forum in Complaint No. 60/2018, the Complainant approached the HP High Court vide CWP No. 2096/2020 which is still pending adjudication and the next date of hearing is 13/03/2023 alongwith connected matter in CWP No. 241 & 242/2019. Further, since the matter was adjudicated by the Forum below and this Appellate Forum, the Complainant approached the Forum below vide Complaint No. 1453/4/19/049 on the same issue. The relief sought was same as in 1453/2/17/28 and now the Complainant is only aggrieved by not granting interest on the amount which was ordered to be refunded by the Forum below.
5. The Complainant has also given a fact matrix and his rejoinder. As per fact matrix, he approached Consumer Grievance Redressal Forum at Kasumpti on 22/03/2017 vide Complaint No. 1453/2/17/028 regarding overhauling of the IDC and demanded refund of Rs 10.00 Lakh paid and also a refund of Rs 8.00 Lakh as ACD alongwith interest. IDC were demanded from him for augmentation of 66/11 kV Barotiwala sub-station from which his supply was not operating.



Accepted
02/03/2023



HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
SHARMA SADAN, BEHIND KEONTHAL COMPLEX, SHIMLA-171002
Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com

6. Further, on 08/05/2018, the Consumer Grievance Redressal Forum at Kasumpti disposed off the Complaint and observed that the Complainant is not liable to pay augmentation of 132/11 kV sub-station Barotiwala as the same was commissioned in December 2006 after the release of power connection to him and ordered that Rs 10.00 lakh be refunded and no directions were passed for the part of interest.
7. The amount of Rs 10.00 Lakh was refunded to him without interest. The Complainant then approached this Appellate Forum vide Complaint No. 60/2018 for interest part. The orders of the Forum were upheld and the interest part was denied vide orders dated 29/09/2018.
8. The Complainant applied for extension in load by 998 kVA of Contract Demand and the Respondent Board again issued a demand notice for balance IDC for 132/11 kV sub-station at Barotiwala.
9. The demand notice was first issued on dated 28/09/2019 for IDC on entire load (4442 kVA) including additional load amounting to Rs 14,97,186/- after adjusting Rs 15,36,700/- already deposited. The rates were charged @ Rs 683/- per kVA on 4442 kVA for additional of 132/11, 25/31 MVA transformer at 132 kV sub-station at Barotiwala.
10. The demand note was further revised for original load of 3665 kVA on 02/11/2019 amounting to Rs 9,66,495/- after adjusting Rs 15,36,700/- already deposited. The reason given for revision was that IDC amount for 132/66/11 kV Sub-station Jharmajri is non-recoverable. The rates were again charged @ Rs 683/- per kVA for augmentation of 132/11, 25/31 MVA transformer at 132 kV sub-station at Barotiwala.
11. Vide revised demand note dated 02/11/2019, the Respondents charged the rates for augmentation of 132/11 kV sub-station Barotiwala for which the Consumer Grievance Redressal Forum at Kasumpti, in Complaint No. 1453/2/17/028 had already ordered on 08/05/2018 that the Complainant is not entitled to pay the augmentation of 132/11 kV sub-station Barotiwala as it was commissioned in December 2006, after release of original power connection of the Complainant.
12. The Complainant approached the Consumer Grievance Redressal Forum at Kasumpti again against the demand vide Complaint No. 1453/4/19/049 which denied any relief vide orders dated 18/03/2020 stating that the matter stands adjudicated by them already.
13. The Complainant then approached this Appellate Forum vide Complaint No. 20/2020 for implementation of the orders passed by the Forum below in Complaint No. 1453/2/17/028. He also prayed to quash the orders passed by the Forum on 18/03/2020 below in Complaint No. 1453/4/19/049 and refund of Rs 25,03,195/- excess charged and recovered from him alongwith interest.



Kasumpti
03/03/2023



HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
SHARMA SADAN, BEHIND KEONTHAL COMPLEX, SHIMLA-171002
Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com

14. From the orders passed by the Consumer Grievance Redressal Forum at Kasumpti in Complaint No. 1453/2/17/028 it was clear that the Respondents can't charge for the augmentation of the 132/ 11 kV, 25/ 31.5 MVA sub-station at Barotiwala wherein vide revised demand dated 02/11/2019, which was the cause of action at Consumer Grievance Redressal Forum at Kasumpti in Complaint No. 1453/4/19/049, the Respondents again demanded the IDC for same scheme/ works. The Consumer Grievance Redressal Forum at Kasumpti refused to entertain the said Complaint and rejected for want of jurisdiction as the same matter between same parties stands adjudicated by them in Complaint No. 1453/2/17/028.
15. The Respondent Board filed their reply dated 17/07/2020 and the Complainant also filed his rejoinder dated 21/08/2020. The case was never argued even once by both the parties on maintainability issue. The Respondents even replied on the merits of the case stating that the charges are recoverable as ordered by the Consumer Grievance Redressal Forum at Kasumpti on dated 08/05/2018 in Complaint No. 1453/2/17/028 further stating that the IDC should be recovered as per mechanism given by the Commission in suo moto petition No. 25/2016 and as per Himachal Pradesh Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005. They justified the revised demand of Rs 9,66,495/-. The said demand was also deposited by the Complainant on 04/11/2019.
16. Somehow, the case was purely discussed on merits and the maintainability issue was not argued/ contested by the Respondents before this Appellate Forum therefore, the matter was decided on merits of the case.
17. The revised demand note dated 02/11/2019 issued by the Respondents for Rs 9,66,495/- for augmentation of 132/11 kV 25/31.5 MVA transformer at Barotiwala sub-station was not in order since the Forum below had rejected the Board's contention on same vide Complaint No. 1453/2/17/028 on 08/05/2018.
18. The Respondent Board is not entitled to recover IDC for augmentation of 132/11 kV 25/31/5 MVA sub-station at Barotiwala from the Complainant as already decided by the Consumer Grievance Redressal Forum at Kasumpti in Complaint No. 1435/2/17/028.

B – Issues at hand:

1. **Issue No. 1:** Matter before this Appellate Forum is that whether the Complaint filed by the Complainant i.e. M/S Kundlas Loh Udyog against the orders passed by Consumer Grievance Redressal Forum at Kasumpti on 18/03/2020 in Complaint No. 1453/4/19/049 dated 04/10/2019 is maintainable or not.



Kasumpti
03/03/2023



HIMACHAL PRADESH ELECTRICITY OMBUDSMAN
SHARMA SADAN, BEHIND KEONTHAL COMPLEX, SHIMLA-171002

Phone: 0177-2624525, email: ombudsmanelectricity.2014@gmail.com

C – Findings on the issues:

Issue No. 1:

1. From the above discussions and documents on record it is clear that the Complaint filed by the Complainant i.e. M/S Kundlas Loh Udyog against the orders passed by Consumer Grievance Redressal Forum at Kasumpti on 18/03/2020 in Complaint No. 1453/4/19/049 dated 04/10/2019 is not maintainable. The same is hit by the principal of Res Judicata and hence liable to be rejected.
2. The revised demand raised by the Respondent Board on 02/11/2019 for Rs 9,66,495/-, which was the cause of action in Complaint No. 1453/4/19/049, was for the augmentation of 132/11 kV, 25/31.5 MVA sub-station at Barotiwala which was disallowed by the Forum below earlier.
3. The matter has already been adjudicated by the Consumer Grievance Redressal Forum at Kasumpti on 08/05/2018 in Complaint No. 1453/2/17/028 wherein they have ordered that the Complainant is not liable to pay for the augmentation of 132/11 kV sub-station at Barotiwala as it was commissioned in December 2006 after the original power connection of the Complainant.
4. The Respondent Board is not entitled to recover IDC for augmentation of 132/11 kV 25/31/5 MVA sub-station at Barotiwala from the Complainant as already decided by the Consumer Grievance Redressal Forum at Kasumpti in Complaint No. 1435/2/17/028.
5. The matter before this Appellate Forum is hit by the principal of Res Judicata and hence liable to be rejected.

D – Order:

1. The Complaint filed by M/S Kundlas Loh Udyog, Village Balyana, PO Barotiwala, Tehsil Baddi, District Solan, HP-174103 is hereby rejected being not maintainable before this Appellate Forum since the same is hit by the principal of Res Judicata.
2. No cost to litigation.

Given under my hand and seal of this office.



Leupth
03/03/2023
Electricity Ombudsman