

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI, SHIMLA-9.

No. CGRF/Complaint No. 1451/02/22/13

Dated:-

Complaint No.: - 1451/02/22/13
Date of Admission: - 22.04.2022
Quorum: - Er. Tushar Gupta, Chairman.
Er. Vikas Gupta, Member I,
Sh. K.S. Dhaulta, Member II.

M/s Him Teknoforge Ltd,
Village Kishanpura, P.O Manpura,
Tehsil Nalagarh through
Mr. Rakesh Bansal, Athorised Representative

Complainant

V/s.

1. The Executive Director (Pers.),
HPSEBL, Vidyut Bhawan,
Shimla-171004.
2. The Sr. XEN Nalagarh Electrical Division,
HPSEBL, Nalagarh.
3. The Assistant Engineer,
Electrical Sub-Division HPSEBL,
Manpura, (HP).
4. The Sr. XEN Baddi Electrical Division,
HPSEBL(H.P.)

Respondents

Final hearing:-

04.06.2022

Present for:-

Complainant

1 None.

Respondent

1. Sh. Anil Kumar God, Advocate

Date of Decision: -

04.06.2022

ORDER

The present complaint was listed for hearing / reply on 04.06.2022. During the course of hearing this Forum was apprised of an Interim Direction / Order dated 27.05.2022 by Ld. Ombudsman on the Representation stated to be preferred by the present Complainant before the Ld Ombudsman against the Interim Order dated 22.04.2022 on the issue pending adjudication before this Forum.

At the time of filing the Complaint, the consumer complainant M/s Him Technoforge Ltd had prayed for Interim Relief by way of Application accompanying the main Complaint. In the Complaint the impugned Demand Notice issued by the Respondent HPSEBL dated 12.06.2017 (Annexure C1) required that balance amount of Rs 48,46,200/= was to be paid. The remaining amounts of Rs 1,19,38,800/= already having been deposited prima facie pertain to previous Demand Notices from the Respondent HPSEBL which have not been placed on record and are not under challenge. As the complaint is in its initial stages of process and has not been determined, those Demand Notices that are not under challenge, in all probability may be time barred and covered under provisions of 'Limitation/ pre-conditions for submission of grievances' contained in sub regulation (c) of regulation 19 of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulation, 2013, thus preventing their 'direct' challenge by the complainant but challenge in 'disguise' by challenging the amounts pertaining to Demand Notices not under challenge and which were already deposited. This Forum cannot take cognizance of such challenges in disguise for the purpose of determination of the complaint.

In pursuance to the Application for Interim Relief filed by the Complainant/ Applicant, Interim Relief was granted vide Forum Interim Order dated 22.04.2022. The relief granted was in accordance with provisions of regulation 25 of HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulation, 2013 with regard to regulations on 'Interim Order' specifying therein the deposit of 1/3 rd of the disputed amount and this disputed amount is Rs 48,46,200/= as specifically Demanded in the Demand Notice raised in the Impugned Notice dated 12.06.2017 and no other Notice. Regulation 25 reads as follows:-

Quote

25. Interim Order. – *Upon request of the complainant, the Forum may issue such interim orders pending final disposal of the grievance*

Provided that

Provided further that, except where it appears that the object of passing the interim order would be defeated by delay,.....1/3rd of the disputed amount is deposited in cash with the licensee.....

Un Quote

Confronted with this situation, the Forum after going through the Interim Orders of Ld Ombudsman and the contentions of the Respondent Board, the Forum finds that a similar cause of action has been raised by the Complainant before the Ld Ombudsman on the same issues which are sub-judice before this Forum in terms of extant provisions of HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. It is settled position of law and the express provisions of CGRF regulations, 2013 that a similar or same cause of action cannot be raised before two different authorities/courts. Once the Ld Ombudsman has taken cognizance of the cause of action of the complaint despite well-knowing the fact that the same is pending adjudication before this Forum, in that eventuality this Forum has no option but to dispose of the Complaint being raised before two different Forums simultaneously and to let the Ld Ombudsman pass appropriate Orders on the same in pursuance of the provisions of the Regulations.

The Forum observes that the Complainant by abusing the process of law has indulged in avoidable litigation while preferring a representation on the Interim Order of this Forum dated 22.04.2022. It is also observed that instead of complying with the mandatory directions of this Forum, the Complainant in gross disregard to the lawful Orders has indulged in abusing the process of law, to raise a similar issue before the Ld. Ombudsman. We are constrained to further observe that Ld Ombudsman instead of either referring the representation of the Complainant to this Forum for appropriate action or asking the Complainant to withdraw the Complaint from this Forum, the matter being sub judice, went on to pass another Interim direction / Order to this Forum to put the proceedings on hold till its decision. It appears that the Ld Ombudsman has failed to appreciate the express provisions of CGRF Regulations, 2013 and the settled exposition of law on the issue that no similar cause of action can be agitated simultaneously before two authorities as expressly stipulated pre-condition / limitation for entertaining complaints, by CGRF under Regulation 33(1)(c) of CGRF Regulations *ibid*. The LD Ombudsman appears to have lost sight of the above regulations or settled law on the issue or erroneously accepted a representation when the Grievance before the Forum was pending adjudication in pursuance of

the Regulations *ibid*. The Ld Ombudsman at the same time has done away with the requirement of deposit of 50% of amount assessed by the Forum that would arise out of Redressal of grievance and final decision and this is against sub-regulation (g) of Regulation 33(1). The relevant extract of the Regulation 33 (1) are reproduced below-

Quote

33. Pre-condition /limitations for entertaining complainant's representation

(1) The representation may be entertained by the Ombudsman only if all of the following conditions are satisfied :-

.....

(b) the complainant has, before making a representation to the Ombudsman , approached the Forum..... for redressal of grievance;

(c) the representation by the complainant, in respect of the same grievance, is not pending in any proceedings before any court, Any other authority

.....

(e) the complainant is not satisfied with the redressal of his grievance by the Forum or the Forum has rejected the grievance or has not passed the order within the time-limit specified.....

.....

(g)the complainant has deposited with the Ombudsman, an amount equal to 50% of the amount assessed by the Forum

Unquote

This Forum is now faced with a situation to either ask the Complainant to withdraw its Representation before the Ld. Ombudsman so as to proceed further in the matter as per regulations or to dismiss the present Complaint so as to facilitate disposal of the Representation before the Ld Ombudsman. This has created an avoidable and un-warranted situation which may set a bad precedent in future, if same cause of action is allowed to be agitated simultaneously before two Authorities. Moreover, such action in the matter is not envisaged by the Hon'ble HPERC in the *ibid* CGRF regulations, 2013 nor conducive to proper effective and speedy adjudication of the Complaints by the Forums under Regulations *ibid*.

In foregoing terms to uphold the sanctity of directions of the Ld Ombudsman Office and in order to prevent duality of proceedings as same matter being agitated before two Authorities simultaneously in violation of the settled exposition of law and Regulations *ibid*; this Forum is constrained to 'Dismiss' the Complaint without going into its merits, to facilitate its further effective adjudication, by the Ld Ombudsman, in terms of Interim Order dated 27.05.2022. The Interim Order of this Forum dt. 22.04.2022 stood vacated and all accompanying pending Applications if any, shall stand disposed off accordingly.

Copy of the Complaint be retained and consigned to the record room along with this order. The original case file record pertaining to the Complaint be sent under proper receipt to Ld. Ombudsman in compliance to the directions issued vide Interim Order dated 27.05.2022. Parties left to bear their own costs.

The file is consigned to the record room along with original copy of the order.
Certified copies of this order be supplied to both the parties.

Place:-Shimla
Dated:-04.06.2022

Sd/-
(K.S.Dhaulta)
(Member)

Sd/-
(Vikas Gupta)
(Member)

Sd/-
(Tushar Gupta)
(Chairman)

Notice

Registered

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI SHIMLA-171009.

No.CGRF/Complaint No. 1451/02/22/13

Dated:-

M/s Him Teknoforge Ltd,
Village Kishanpura, P.O Manpura,
Tehsil Nalagarh through
Mr. Rakesh Bansal, Authorised Representative

Complainant

V/s.

HPSEBL & Others.

Respondents

Complaint No. 1451/02/22/13

1. The Executive Director (Pers.),
HPSEBL, Vidyut Bhawan,
Shimla-171004.
2. The Sr. XEN Nalagarh Electrical Division,
HPSEBL, Nalagarh.
3. The Assistant Engineer,
Electrical Sub-Division HPSEBL,
Manpura, (HP).
4. The Sr. XEN Baddi Electrical Division,
HPSEBL(H.P.)

Respondents

The Certified copy of final order dated 04.06.2022 passed by the Hon'ble Forum in the aforesaid complaint is enclosed find herewith for further necessary action at your end please. The compliance be reported/intimated within one month after the receipt of order in the office.

DA:-As above.

Secretary,
Consumers Grievances Redressal Forum,
HPSEBL, Kasumpti Shimla-171009.