

CONSUMER GRIEVANCES REDRESSAL FORUM, SHIMLA

Complaint No 1421/1/23/02

M/s Swastik Industries

Vs

Himachal Pradesh State Electricity Board Ltd and Ors

BRIEF FACTS OF CASE–

- (1) Complaint is filed under Regulations 16, 17 and 18 of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 by M/s Swastik Industries, Plot No 41-42, Sector-1, Industrial Area, Parwanoo, District- Solan (HP) ;
- (2) Complainant is a Large Industrial Power Supply (LIPS) Consumer of Respondent HPSEBL, bearing Consumer ID 100012000705;
- (3) The Complainant is aggrieved by the non-refund of the advance cost share of Rs 7,00,000/= towards Infrastructure Development Charges (IDC) after the release of its load / power connection in the year 2010, which was paid by the Complainant on 10.02.2010;
- (4) On 20.02.2023, the Office of Respondent namely Superintending Engineer, Operation Circle, HPSEBL, Solan issued Office Order (Placed on record along with Reply) for the refund of the aforementioned amount of Rs 7,00,000/-;
- (5) The payment / settlement of the said amount of Rs 7,00,000/- has been confirmed by the Counsel appearing on behalf of the Respondent and by the Authorized Representative appearing on behalf of the Complainant and the fact was recorded in the Interim Order passed by the Forum on 15.03.2023.

COMPLAINANT –

- (6) That, the Power Availability Certificate (PAC) (**Annexure C1**) was issued on 08.03.2010 after it had deposited on 10.02.2010

(**Annexure C2**) the amount of Rs 7,00,000/= demanded towards advance cost share of Infrastructure Development Charges (IDC);

- (7) That, the Complainant's load was released on 11 kV from Parwanoo Substation during the applicability of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 and the advance cost share towards IDC was recovered by the Respondent in accordance with code 3.2.2 of the HP Electricity Supply Code, 2009 and paid by the Complainant vide receipt dated 10.02.2010 (**Annexure C2**);
- (8) That, even after the clarificatory Order dated 05.10.2016 was passed by the Ld HPERC (**Annexure C3**), the Respondents continued to hold the said money which was refundable;
- (9) That in fact, in the present case there was no need to recover advance cost share from the Complainant for the reason that the IDC of the Parwanoo Sub Station was never notified by the Respondent as no augmentation was carried out;
- (10) That, in accordance with the ibid HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, account of expenditure was to be rendered to consumer and in the event actual account is less than the estimated amount by more than 3%, then as per regulation 6, the excess amount shall be refunded with interest at the rate of 8% compounded annually;
- (11) That, the Forum in the past has passed Orders on the same issue which have been implemented and not assailed by the Respondent. The Orders passed by the Forum are dated 06.06.2018 in Complaint No 1421/02/018/007 titled M/s RS Polymer (Unit –II) Vs HPSEBL & ors (**Annexure C4**), dated 08.08.2020 in Complaint No 1421/4/19/061 titled M/s Kundan Precisions Component Pvt Ltd Vs HPSEBL & ors (**Annexure C5**) and dated 13.07.2020 in Complaint No 1421/4/19/065 titled M/s Milestone Gears (P) Ltd Vs HPSEBL & ors (**Annexure C6**);

- (12) Complainant, has inter-alia prayed for directions to Respondent to refund the advance cost share of Rs 7,00,000/= towards Infrastructure Development Charges (IDC) paid by the Complainant along with Interest thereon in accordance with para 5.7.3 of the Supply Code.

RESPONDENT –

- (13) That, the cause of action arose to the Complainant in the year 2010, when the advance cost share of Rs 7,00,000/= towards Infrastructure Development Charges (IDC) was demanded by the Respondent and paid by the Complainant;
- (14) That on 05.10.2016 vide clarificatory Order (**Annexure C3**), the Ld HPERC settled the controversy qua the said advance cost share towards Infrastructure Development Charges (IDC) under HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005;
- (15) That the present complaint / grievance filed in the year 2023 is hit by limitation under regulation 19 (c) of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and it is settled law that fence sitter is not entitled to relief granted in other cases who prosecuted defended their case in time bound manner;
- (16) Respondent has prayed for dismissal on grounds of the said limitation under regulation 19 (c) of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013.

ORDER

- (17) This Forum has examined the relevant provisions of the Electricity Act, 2003, various relevant Regulations framed by the HP Electricity Regulatory Commission (or the HPERC) including

relevant provisions of HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, HP Electricity Supply Code, 2009 notified by the HPERC, HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 and amendments thereto and record as facts along with pleadings of the parties. This Forum has heard the parties at length. The considered opinion of the Forum has been gathered after considering the fair facts, evidences and correspondence placed on record and arguments adduced by both the parties;

- (18) At the outset Forum observes that at that time the Complainant became a consumer of the Respondent, both the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 (hereinafter referred to as the 'RoE 2005, Regulations') and the HP Electricity Supply Code, 2009 (hereinafter referred to as the 'Supply Code, 2009') were in force. The HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 (hereinafter referred to as the 'RoE 2012, Regulations') came into existence on 18.05.2012 after the said RoE 2005, Regulations were repealed.
- (19) The Forum also observes that during the concurrency of the complaint, the Respondent has partially settled the grievance of the Complainant by refunding the amount of Rs 7,00,000/= recovered by it in the year 2010 as advance cost share towards Infrastructure Development Charges (IDC). This fact is evident from the Respondent's Office Order dated 20.02.2023 (Placed on record along with Reply) and further confirmed by the Counsel of the Respondent and the Authorized Representative appearing on behalf of the Complainant respectively, which was recorded in the Interim Order passed by the Forum on 15.03.2023. The fact was further reiterated on 26.09.2023 during the final hearing / argument stage by the Authorized Representative of the Complainant which was not denied by the Respondent. For reasons that it may have had

been wrongly refunded, it was still confirmed by the Forum that the said refunded amount had not been recovered;

- (20) In view of the aforesaid action of the Respondent to refund the said Rs 7,00,000/= to the complainant, the only limited issues remaining before the Forum for determination, are firstly the issue of limitation raised by the Respondent and secondly the issue of payment of Interest to Complainant for holding the said amount from the year 2010 by the Respondent;
- (21) On the issue of limitation as raised by the Respondent under regulation 19 (c) of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, the Forum is of the considered opinion that it was open for the Respondent to raise the issue of limitation, had the principal amount of Rs 7,00,000/= not been refundable and had it not been refunded. This is not the case here. The Respondent has not denied anywhere in its Reply that the said amount was not refundable or that it had been erroneously refunded. Once the said principal amount of Rs 7,00,000/= has been refunded by the Respondent, then there is clear admission on the part of the Respondent with regard to holding of a refundable amount ab-initio. Thus, for the Complainant the cause of action has always existed and would continue to exist till the Interest on the said principal amount is paid. Accordingly, the Forum does not find as tenable the arguments made by the Respondent that the complaint is hit by limitation of 2 years and thus rejects these as mere arguments. The Forum in unambiguous terms holds and concludes that once the said refund has been made by the Respondent, then there is clear admission of holding a refundable amount from the year 2010 and thus the cause of action to the Complainant has undoubtedly become of recurring and continuous nature, existing all the time and accordingly the instant complaint is not hit by limitation under the said regulation 19 (c);
- (22) Once the issue of limitation is decided and settled as forgoing, it becomes clear that for holding the aforementioned amount by the

Respondent from the year 2010 onwards, the Complainant, in accordance with the provisions of Regulations notified by the HP Electricity Regulatory Commission, automatically becomes entitled for the payment of Interest on the principal amount of Rs 7,00,000/= deposited by it on 10.02.2010 (**Annexure C2**);

- (23) The Forum observes that the Complainant has claimed Interest in accordance with para 5.7.3 of the Supply Code. However, from perusal of the provisions of HP Electricity Supply Code, 2009, the Forum finds that the said code 5.7.3 is applicable only to electricity billing disputes while the present matter is not one of disputed electricity bills. The advance cost share towards IDC may have been recovered by the Respondent in accordance with HP Electricity Supply Code, 2009, however, code 3.2.6 provides for the same to be adjusted under the HPERC Recovery of Expenditure Regulations, 2012. Thus, the Forum is of the considered opinion that in the matter, Recovery of Expenditure Regulations are applicable as follows -
- (24) With respect to Interest payable with effect from 18.05.2012 to the date of its actual payment, this Interest is to be payable in accordance with regulation 18 (3) of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2012 notified on 18.05.2012 and amendments thereto;
- (25) With respect to Interest payable with effect from 11.02.2010 to 17.05.2012, this Interest is to be payable in accordance with regulation 6 of the HPERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2005 notified on 01.04.2005 and amendments thereto;
- (26) Accordingly, the Respondent is directed to calculate the Interest, as stated in paras supra, on the said amount of Rs 7,00,000/= which was deposited by the Complainant on 10.02.2010 (**Annexure C2**), within a period of 10 days from the date of this Order and to make

the payment to the Complainant by way of adjustment in the next bill of the Complainant.

On aforesaid terms, the complaint is **Allowed** and is disposed accordingly.

Parties are left to bear their own costs.

Order is announced before the parties present today on 10.10.2023 at Shimla in open Forum.

Certified copies of this Order be supplied to the parties. The complaint along with this Order be consigned to record room for safe custody.

Date: 10.10.2023
Shimla

-Sd-
Anil Sharma
(Member)

-Sd-
Vikas Gupta
(Member)

-Sd-
Tushar Gupta
(Chairperson)

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI, SHIMLA-9.

Complaint No.: - 1421/1/23/02

Date of Admission: -31.01.2023

**Quorum: - Er. Tushar Gupta, Chairman
Er. Vikas Gupta, Member
Sh. Anil Kumar Sharma, Member**

In ref:-

M/s Swastik Industries,
Plot No. 41-42, Sector-1 Industrial Area,
Parwanoo, Distt, Solan (H.P).

Complainant

V/s.

HPSEBL & Others.

Respondents

1. The Executive Director (Pers.),
HPSEBL, Vidyut Bhawan,
Shimla-171004.
2. The Sr. Executive Engineer,
Electrical Division, HPSEBL,
Parwanoo, Solan (HP).
3. Assistant Engineer,
Electrical Sub-Division HPSEBL, Parwanoo,
District Solan, (H.P.)

Respondents

Final hearing:-10.10.2023.

Counsels:-

Complainant 1. Sh. Rakesh Bansal A.R.

Respondent 1. Sh. Rajesh Kashyap, Advocate
2. Sh. Kamlesh Saklani, U.S Law

Date of Decision: -10.10.2023.

Notice

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI SHIMLA-171009.

No.CGRF/Complaint No. 1421/1/23/02

Registered

Dated:-

M/s Swastik Industries,
Plot No. 41-42, Sector-1 Industrial Area,
Parwanoo, Distt, Solan (HP).

Complainant

V/s.

HPSEBL & Others.

Respondents

Complaint No. 1421/1/23/02

1. The Executive Director (Pers.),
HPSEBL, Vidyut Bhawan,
Shimla-171004.
2. The Sr. Executive Engineer,
Electrical Division, HPSEBL,
Parwanoo, Solan (HP).
3. The Assistant Engineer,
Electrical Sub-Division HPSEBL, Parwanoo,
District Solan, (H.P.)

Respondents

The Certified copy of final order dated 10.10.2023 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-9.