

BEFORE THE HIMACHAL PRADESH ELECTRICITY OMBUDSMAN, SHIMLA
PHONE: 0177- 2624525



CASE No. 34 of 2017

In the matter of:

M/s Mohan Meakin Limited, Solan Brewery, Solan (HP)-173214, by Shri H.N.Handa, Secretary, through its authorized representative Shri Rakesh Bansal.

....Applicant/Representationist

Versus

1. Executive Director (Personnel), H.P.S.E.B.Ltd., Vidyut Bhawan, Shimla-171004 (HP)
2. Sr. Executive Engineer, Electrical Division, HPSEBL, Solan-173212 (HP)
3. Asstt. Executive Engineer, Electrical sub Division, HPSEBL, Solan-173212 (HP)

.....Respondents

And

In the Matter of

Representation under Regulation 28 of HPERC(Consumer Grievances Redressal Forum and Ombudsman) Regulations,2013, against the Order dated 22.12.2016 in Complaint No.1411/1/16/002 titled as M/s Mohan Meakin Limited, Solan Brewery, Solan (HP)-173214 Vs. HPSEB Ltd. and others, passed by the Consumer Grievances Redressal Forum, Shimla.

In presence:

Applicant: Sh. Rakesh Bansal

Respondents: Sh. Bhagwan Chand, Advocate
Sh. Vipul Kashyap, Asstt. Engineer, ESD, HPSEBL, Solan

ORDER

(Last heard on 19.12.2017)

M/s Mohan Meakin Limited, Solan Brewery, Solan (HP)-173214 Vs. HPSEB Ltd. and others, passed by the Consumer Grievances Redressal Forum, Shimla, through its authorized representative Shri Rakesh Bansal, hereinafter to as **(the Applicant/ Representationist**) are Large Supply (HT1) (Connection No.BRI-1) consumers of the Electrical Sub Division, H.P. State Electricity Board Ltd., Solan, District Solan (HP) (hereinafter referred to as **"the Respondent Board"**) .

Complainant's contention

1. That the Applicant/Representationist feeling aggrieved and dissatisfied with the findings of the impugned Order 22.12.2016 in Complaint No.1411/1/16/002 and Order dated 30.06.2017 in RA No.1411/1/17/004, passed by the Consumer Grievances Redressal Forum, Shimla-171009, approached the Electricity Ombudsman and sought for the following relief:-
 - a) To quash the orders of the Forum;
 - b) To direct the respondents to refund the amounts Rs.33,37,347/-overcharged by the HPSEBL;
 - c) To direct the respondents to pay interest for the period of delay in refunding the excess amounts;
 - d) To direct the respondents to pay Rs.3.00 lakh as cost of litigation.
2. That the appellant firm filed four separate complaints before the Zonal Level Disputes Settlement Committee, Shimla (referred to as ZLDSC) on the different issues relating to the period 1995 onwards upto 2004. The appellant alleged that the proceedings in the matters gained momentum only in 2015,, when a circular dated 23.09.2015 to the effect was issued by the Chief Engineer(Comm.), HPSEBL, regarding dissolution of ZLDSC within a period of two months by 23.11.2015 and the matter were disposed vide their orders dated 02.12.2015 in all four complaints after expiry of two month, which was received by the appellant on 10.;01.2016. The respondents made refund to the appellant ordered by ZLDSC in bill issued on 06.02.2016 after the complaint was filed with CGRF on 07.01.2016. The Consumer Grievances Redressal Forum (referred to as CGRF) disposed off the complaint vide its Order dated 22.12.2016 and Review Application vide its Order dated 29.06.2017, upholding the orders of the ZLDSC. That the petitioner firm represented by Sh.Sudesh Kumar Vaidya during final hearing on 18.11.2015 by the ZLDSC, Shimla

Respondents contention:

1. That the appellant has filed representation before CGRF against order dated 22.12.2016 and 29.06.2017 passed by the CGRF, Shimla. In this appeal the appellant had assailed both the orders as stated above. It is relevant to state here that the appellant filed a complaint No.1411/1/16/002 dated 04.01.2016 before the CGRF and the said complaint was dismissed by the CGFR vide order dated 22.12.2016 and thereafter the appellant preferred review petitioner vide R.A.No.1411/1/17/004 of complaint No.1411/1/16/002 and the same was

dismissed by the CGRF vide its order dated 29.06.2017. Against both the orders the appellant preferred the present appeal/representation before the H.P.E.O.

2. That the respondents filed detailed reply to the appeal/representation and took specific stand that the present appeal is not maintainable simply for the reason that once the original order dated 22.12.2016 has already been reviewed by the order dated 29.06.2017, therefore the appeal is not maintainable in the eyes of law and thus representation should not be admitted and dismissed on the ground of maintainability.
3. That the present appeal is also not maintainable on the aspect being hopelessly time barred as the appeal has been filed beyond the prescribed period of limitation of 30 days from the date of the order. The appeal has been filed on 15.07.2017 against order dated 22.12.2016 which is time barred and this appeal should have been dismissed.
4. The premises of the complainant was checked on 05.07.1997 by the XEN, Flying Squad Unit-1, HPSEBL, Shimla and accordingly meter was found 4.31% slow and the AEE concerned intimated regarding slowness of meter to the firm and firm challenged the meter vide No.B/PNS.NR/1947 dated 19.08.1997. The AEE vide letter No.ESDD/W-7/1997-584-86 dated 30.08.1997 asked the firm to deposit Challenge fee Rs.300/- and in turn the firm deposited fee vide Receipt No.129972 dated 02.09.1997 and the matter was sent to Sr.XEN, M&T Division, Solan vide No.362-63 dated 27.6.2000 by the AEE concerned. The Sr.XEN M&T Division, Solan reported to the Addl.SE, HPSEBL, Solan, with the remarks that error in meter is within limit. After checking record as well as accounts of the complainant it has been observed that an amount of Rs.2,16,826/- by not considering 4.31% slowness is refundable to the complainant instead of Rs.9,23,057.15. Whereas, the metering equipment was defective for the period 4/1999 to 07/1999 and bill were issued by taking highest consumption of last 06 months i.e.1,49,480 kWh by the CE(Comm.), HPSEBL, Shimla, for billing purpose as the billing being issued by office of CE(Comm.), HPSEBL, Shimla. Thereafter the applicant requested to the respondents in order to consider the average consumption for 06 months. As per decision of the ZLDC the consumption of average period has been taken to be 1.32, 107 kWh @ 2.30 i.e. Rs.3,03,846/- only by taking 06 months average per Sales Manual Part-1, Instruction No.115 instead of highest Consumption. It is important to mention here that the request of the appellant was considered only after when the appellant requested to the respondents to consider the average consumption by taking 06 months average. The decision of ZLDSC passed in presence of the representative of the appellant and it has been agreed by the representative of the appellant with the decision of the Committee. Despite this fact,

the appellant filed the rejoinder before the ZLDSC, but the ZLDSC has not considered the rejoinder as the matter already stands reconciled. On the basis of reconciliation the refund of Rs.2,56,774/- was given to the appellant which was accepted by them before the ZLDC.

5. That the account of the appellant has already been overhauled by taking connected load of 2043 kW instead of 2193 kW as per decision passed by the ZLDSC on 01.01.2003 and refund of Rs.6,12,912/has already been give to the appellant in monthly energy bill of 08/2013. In the energy bill the power factor was applied as 0.85/0.90 whereas in the light of the direction of the HPERC given in the judgement in case of M/s Gujarat Ambuja cements Ltd. Vs. HPSEBL & others, the account of appellant has been overhauled w.e.f.11/2003, 2/2003 by taking actual power factor to be charged higher and Rs.2219/- on account of difference is calculated between connected load 2193 kW and 2043 kW as per order of ZLDSC dated 01.01.2003.and difference on account of excess demand charges deposited as claimed by the appellant is Rs.1,73,500/-. The reconciliation between the ZLDSC and the appellant, the amounts stand admitted and accepted and the respondents refunded Rs.1,73,500/- for the energy bill of 2016.
6. That in response to directions of the ZLDSC issued vide order dated 22.01.2014 the S.E.(OP.) Circle, HPSEBL, Solan vide letter dated 25.07.2014 fixed the date to reconcile the case as per directions by the ZLDSC vide order dated 16.6.2014 to examine the case of the petitioner as per the Sale Circular instruction No.3.2 for computation of load in the line with the judgement passed by the ZLDSC, Shimla on 01.01.2003 by considering the load of the petitioner firm as 2043.026 kW instead of 2192.980 kW. Accordingly, the case was reconciled and report was submitted to the ZLDSC by the SE (OP.) Circle, HPSEBL, Solan to ZLDSC vide letter dated 01.09.2014. As per report the premises of the petitioner firm was/were checked during April,1996 by the J.E.(Installation) of the Respondent Board and load was found 2192.980 kW against sanctioned load of 1242 kW and C.E.(comm.), HPSEBL served notice to the petitioner firm to deposit Rs.4,37,000/- on account of unauthorised extension of load vide No.6284-89 dated 08.07.1996 and the firm deposited the said amount vide receipt No.087738 dated 24.02.1996. The difference from 2192.98 kW to 2043.026 kW has been worked out by considering domestic rating for residential colony. Accordingly, calculated the refund of Rs.74,987/- (Rs.4,37,000 – 3,62,013) to the petitioner by considering 2043.026 kW instead of 2192.980 kW. After detailed discussion and deliberation during hearing held on 02.07.2015, reconciliation and calculation between both the parties, the ZLDSC directed the

respondents Board (SE, (Op.) Circle, Solan, to refund Rs.74,987/- to the petitioner, after completing all codal formalities.

Forum's observations:

7. That after going through all the details of the complaint and re- submitted by the respondents and all documents, the CGRF observed that the issue **(i)** Load regularisation charges has already been decided by the ZLDSC headed by the CE(MM) on 18.11.2015 vide order in case No.ZL/SZ-430 wherein refund of Rs.74,987/- was awarded in favour of the complainant after reconciliation of the issued between both the parties. It has also been observed that after reconciliation it is not proper for the complainant to agitate the matter in this forum; **(ii)** the issue of MMC, slowness and dead stop meter has already been decided by the ZLDSC on 18.11.2015 vide its order in case No.ZL/SZ-431, wherein ZLDSC allowed refund of Rs.2,16,816/- against the claim of Rs.9,23,057/- and revised energy charges to Rs.3,03,846/- by taking average consumption of 132107 kWh against earlier consumption of 149480 kWh. This was also done after reconciliation of the issue between both the parties. The complainant also submitted rejoinder to the ZLDSC on 28.09.2015, which was not accepted by the ZLDSC, being the issued already reconciled; **(iii)**

The issue regarding levy of excess demand charges has been decided by the ZLDSC on 18.11.2015 vide its order in Case No.ZL/SZ-437 wherein an amount of Rs.1,73,500/- has already been considered for refund; **(iv)** The issue of demand charges on 931 kVA instead of 500 kVA has also been decided by the ZLDSC on 18.11.2015 vide its order in Case No.ZL/SZ-438 wherein the amount of Rs.3,42,261/-was already refunded and the refund claim of Rs.3,29,645/- was not accepted by the ZLDSC. This was also done after reconciliation of the issues between both the parties.

8. The CGRF also finds that the decision of the ZLDSC were issued on 18.11.2015 and the complainant approached this Forum on 07.01.2016 i.e. beyond the allowed period of 30 days.

Electricity Ombudsman findings and Order:

In view of the above facts, contentions of the parties and examining the documents like replies/rejoinders and written arguments, it is observed that:-

That all the issues stated supra, such as **(i)** Load regularisation charges has already been decided by the ZLDSC headed by the CE(MM) on 18.11.2015 in case No.ZL/SZ-430 wherein

refund of Rs.74,987/- was awarded in favour of the complainant after reconciliation of the issues between both the parties; (ii) the issue of MMC, slowness and dead stop meter wherein ZLDSC allowed refund of Rs.2,16,816/- against the claim of Rs.9,23,057/- and revised energy charges to Rs.3,03,846/- by taking average consumption of 132107 kWh against earlier consumption of 149480 kWh. This was also done after reconciliation of the issue between both the parties.; (iii) The issue regarding levy of excess demand charges, wherein a refund of Rs.1,73,500/- has already been considered for refund; (iv) The issue of demand charges on 931 kVA instead of 500 kVA has also been decided, wherein the amount of Rs.3,42,261/-was already refunded and the refund claim of Rs.3,29,645/- was not accepted by the ZLDSC. This was also done after reconciliation of the issues between both the parties.

It is also found that the decision of the ZLDSC were issued on 18.11.2015 and the complainant approached this Forum on 07.01.2016 i.e. beyond the allowed period of 30 days.

It is pertinent to mention here that the complainant/applicant during the course of last hearings held on 15.11.2017 and 27.11.2017 denied to acknowledge the signing of Minutes of Meetings and reconciliation of accounts, computations made therein, between the respondents Board and appellant firm. Where-as on scrutiny of the copies of the Minutes of the meeting produced by the respondents Board and written arguments as well, it stands proved that the MoM are signed by the representatives of the appellant firm as a token of acceptance and consent to the reconciliation of accounts and computations thereof.

On the basis of the all above observations, I am of the opinion that once the issues have been reconciled mutually in the meetings convened between both the parties i.e. respondents Board and the appellant firm and accordingly the cases are decided by the ZLDSC on 18.11.2015 and whereas the applicant/representationist approached the CGRF, Shimla on 07.01.2016 beyond the allowed period of 30 days, particularly when the issues pertain to the period of 1995 to 2004-05 that too long beyond the prescribed time limit. It is not appropriate on the part of the applicant/representationist to agitate the matter again and again, as their complaint has also been dismissed on the similar grounds by the Forum.

It is thus, ordered that the appeal/representation of the applicant is not maintainable and dismissed.

The representation is disposed off in terms of the above Order.

Dated: 29.12.2017

ELECTRICITY OMBUDSMAN