



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

Case No. 41 of 2017

In the matter of:

M/s J.B.Rolling Mills (P) Ltd., Plot No.4, Industrial Area, Trilokpur Road, Kala Amb, Distt. Sirmour (HP), through its authorised representative Sh. Lavneesh Kanwar, Advotote.

Applicant/Representationist

Versus

1. The Executive Director (Personnel), HPSEB Ltd., Vidyut Bhawan, Shimla-171004
2. The Superintending Engineer (Op) Circle, HPSEBL Nahan, (HP).
3. The Asstt. Engineer, Electrical Sub- Division, HPSEBL, Kala Amb, Distt. Sirmour.

.....Respondents/Applicants

And

In the matter of:

Representation under Regulations 28(1) & (2) and 33 of HPERC (CGRF & Ombudsman) Regulations, against the Order dated 03.06.2017 in complaint No. 1515/3/16/030 & order dated 26.9.2017 passed by Consumer Grievances Redressal Forum of HPSEBL, Shimla-9 (H.P.) in Complaint No. 1515/3/17/055 titled as M/s J.B.Rolling Mills (P) Ltd., Plot No.4, Industrial Area, Trilokpur Road, Kala Amb, Distt. Sirmour (HP), through its authorised representative Sh. Lavneesh Kanwar, Advotote. Versus HPSEB Ltd. and others.

11.4.2018

Present for:

Applicant : Sh. Lavneesh Kanwar, Advocate

Respondents : Sh. Bhagwan Chand, Counsel
Sh.Wakib Hussain, Sr. Asstt., Kala Amb.

ORDER

(Last Heard on 11.4.2018)

Heard. Taking into consideration, the arguments exchanged by representatives of both the parties during the course of hearing and the Application/Petition and Additional submission in support of Review petition/application filed by the Applicant/Respondent Board in context of the Order dated 03.06.2017 in complaint No. 1515/3/16/030 & order dated 26.9.2017 passed by Consumer Grievances Redressal Forum of HPSEBL, Shimla-9 (H.P.) in Complaint No. 1515/3/17/055 titled as M/s J.B.Rolling Mills (P) Ltd., Plot No.4, Industrial Area, Trilokpur Road, Kala Amb, Distt. Sirmour (HP), through its authorised representative Sh. Lavneesh Kanwar, Advotote Versus HPSEB Ltd. and others.

Complainant's Contention:

1. That the complainant had filed a complaint against the respondents wherein it was alleged that the complainant company was provided power connection under large supply category with connected load of 5545 kW and 2500 kW with contract demand of 5545 kVA and 2778 kVA respectively for the steel plant of M/s Neel Kanth Ispat Udhyog and M/s J.B. Rolling Mills , Kala Amb through 33 kV composite feeder from 132/33 kV Sub-Station, Kala Amb (Johron). The cost of 33 kV composite feeder from the point of supply to the premises was deposited by the complainant company against the sanction estimate of Rs. 11,78,435/-. That in addition to this an additional demand of Rs. 7,27,580/- was also raised by the respondent as such, the complainant company, deposited a total sum of Rs. 19,06,015/- towards the cost of 33 kV Bay/Terminal and 33 kV terminal equipment/panels. The complainant company switched over to 132 kV supply and as a consequence thereof the 33 kV Bay/terminal was transferred to a new consumer and the cost of the 33 kV Bay/terminal was recovered by the respondents from the new consumer.
2. It would be necessary to point out here that the HP Electricity Regulatory commission Shimla has framed regulations, which are named s H.P. Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulations, 2005, herein to be referred as regulations. The regulation 4 relates to the provision for high tension supply and regulation 6(1) provides for the manner in which cost is to be recovered. That regulation 6 provides for refund of balance cost to the applicant as and when new connections are installed or given from the electricity plant and/or electricity line on prorata basis with the interest of 8% compounded annually.
3. The Reply was filed to the complainant by the respondents and thereafter a rejoinder to the reply was filed by the complainant. The Ld Forum vide order dated 5.6.2017 dismissed the complaint on the ground that the same is time barred as there is huge delay of 9 to 10 years in filing the complaint. The complainant thereafter, filed a review application which was registered as RA No.1515/3/17/055. In the review application it was pointed out by the complainant that no ground with regard to delay in filing the complaint was raised by the respondent. It was also stated in the review application that the complainant has been repeatedly requesting the respondents to refund the

amount and no order rejecting or accepting the claim was passed by the respondents and in this regard representation dated 20.9.2014 and 20.8.2015 were submitted to the respondents and since no order rejecting the case of the complainant has been passed therefore, it cannot be said that the complaint was barred by limitation. The review application was also dismissed vide order dated 26.9.2017.

4. In the present case since the Bay/terminal which was vacated by the transfer company was allotted to the new company and the cost of the same was deposited by it for the construction of 33 kV Bay/terminal. The complainant company had deposited a sum of Rs. 19,06,015/- and after the transferring of the Bay to another consumer the respondents were required to refund the amount. The complainant company which was earlier registered under the name and style of Neelkanth and M/s JB Rolling Mill had made a representation dated 3.1.2018 was sent to the Assistant Engineer but no action was taken on the same. That despite repeated request of the company no action was taken therefore, a complaint was filed for the refund of Rs. 19,06,015/-.
5. That the Ld Form while rejecting the complaint has miserably failed to take into consideration that the respondents while filing the reply had not raised any objection with regard to the delay in filing the complaint. The Ld form while rejecting the complaint has fallen in error by ignoring the fact that the respondents have never rejected the case of refund of amount therefore, the question of limitation did not arise. The period of limitation could have been calculated from the date the respondents would have rejected the case of the complainant but since in the present case there was no rejection of the claim of the complainant therefore, the question of limitation did not arise.
6. That the impugned orders dated 5.6.2017 & 26.9.2017 may kindly be quashed and set aside and the respondent Board be directed to refund the amount of Rs. 19,06,015/-/- alongwith 18% interest to the complainant on account of the vacating the 33 kV Bay/Terminal and line.

Respondents Contention:

1. The replying respondents submitted that the complaint company was provided connection under large supply category with connected load of 4000 kW with contact demand 444 kVA for manufacturing of M.S. Ingots, SS Flats and CI Casting at Kala amb on 11 kV volts through 11 kV Bay from 132/11 kV S/Stn. Johron.
2. The Regulations framed by the HPERC are not applicable in the present case. In the present case the initial connection to the complaint company was released during 21.08.2004 against the load sanction by the CE (Op) South vide his office order No. CEO/M&C/42(NHN)-2004-3851-52 dated 06.08.2004 and to M/s Neelkanth Ispat Udhyog during 28.08.2004 against load sanction by the CE (Op) South vide his office order No. CEO/M&C/42(NHN)-2004-3853-54 dated 06.08.2004 on 33 kV supply well before the regulation framed by the HPERC named of HP Electricity Regulatory Commission (Recovery of Expenditure for Supply of Electricity) Regulation 2005. Thus the companies utilized the infrastructure developed specially for them 4 years together which HPSEBL raised the demand on account of estimated cost to the tune of Rs. 19,06,615/-/- from the companies at the time of release of connection.
3. It is important to mention here that as per the office order issued in favour of the appellant it has been made clear that the bay/terminal line which is to be constructed at the cost of the appellant & Maintained by HPSEBL will remain the property of Board as soon as appellant transferred from 33 kV to 132 kV line. The appellant has no right to claim any refund of Rs. 19,06.615/- on account of bay which was constructed by the respondent at the cost of appellant. The appellant was very much aware of the fact that as the appellant transferred from 33 kV to 132 kV the right of the appellant on the 33 kV shall automatically come to an end and the appellant has no right, title upon the said bay.
4. The forum has rightly given its finding that the claim of the appellant is time barred and therefore the complaint was rightly dismissed by the forum. The appellant transferred from 33 kV to 132 kV the bay and feeder became surplus and the same becomes the property of the Board and Board shall have very right to transfer this bay to the other consumers.

This fact was very much within the knowledge of the appellant since it has been specifically prescribed in the office order when the initially load was sanctioned in favour of the appellant.

5. The order passed by the Forum is fully legal and justified and the same is not liable to be quashed and set aside, but it should be affirmed.

Forum's Observations dated 03.06.2017:

We have heard the arguments of both the parties and have gone through their claims and counter claims vis-à-vis copies of various details and documents filed with the complaint, reply thereafter. Thus the Forum observes as under:-

We have gone through the documents and listened to the arguments of both parties. We find that the complainant was initially given supply at 33 kV. The complainant deposited Rs. 11,78,435/- + Rs. 7,27,580/- with the respondents for deposit work of 33 kV feeder from 132/33 kV Sub-Station Kala Amb to his plant. On 29.06.2007, the complainant shifted their load at 132 kV and the 33 kV bay and feeder became surplus. Therefore, this 33 kV bay was allotted to other H.T. consumer. The complainants have demanded the refund of above said amount of Rs. 19,06,615/- on account of the cost of this bay/feeder as per Regulations issued by HPERC.

The Respondent have mentioned that the Board has right to use this service line/ equipment for extending power supply to other consumers. We find that the complainant is demanding refund and 18% interest w.e.f. 29.06.2007 i.e. almost after 10 years. The complainant/grievance should have been filed within two years from the date of cause of grievance. This forum is of the opinion that it will not be a good precedence to hear such huge time barred complaints otherwise many many similar cases shall follow which may be even much older. Because of this huge delay in filing of the grievance, we have not discussed the merits/demerits of the case. We thus direct as under :-

The complainant is dismissed as time barred as there is huge delay of 9 to 10 years in filing of the complaint. The case is decided in favour of the respondents.

Forum's Observations dated 25.09.2017:

The arguments for admission of the review were heard. This Forum is still of the view that the complaint is huge time barred and feel that the review application deserves to be rejected. We, therefore, direct as under.

The review application is rejected.

Electricity Ombudsman findings and Order:

In view of the above facts, contentions of the parties and examining the documents like replies/rejoinders and arguments, it comes out that appellant has represented against the CGRF order dated 05.06.2017 passed in complaint No.1515/3/16/030 and order dated 26.9.2017 passed in RA No.1515/3/17/055. The contention of the complainant M/s J.B. Rolling Mills is that as per Regulation issued by HPERC an amount of Rs. 19,06,015/- deposited with the respondent at the time of release of electric connection in the year 2004 may now be refunded back with 18% interest w.e.f. 29.6.2007 because the bay vacated by them has now been allotted to a new consumer. The cost of vacated bay/terminal as well as line was also recovered by the respondent from the transferee company i.e. new consumer. As such, the complainant is entitled for refund of Rs. 19,06,015/- as the same has been recovered from the new consumer. In response the respondent i.e. HPSEBL submitted that the complainant got shifted from 33 kV to 132 kV system and bay/equipment has been vacated by complainant. As per order of Chief Engineer (Op) South it has been made clear that cost of whole or part of service line/equipment paid by the consumer and maintained by HPSEBL and HPSEBL has the right to make the use of service line/equipment for extending power supply to consumer(s) in the vicinity or for any other purpose. HPSEBL further submitted that regulations cited by the complainant are not applicable in the present case. The HPSEBL has every right to transfer the bay/equipment to other consumer (s) as the complainant had vacated the same. The complainant has no right to claim refund of balance cost from the replying respondent and. CGRF vide its order dated 03.06.2017 dismissed the complainant as "time barred".

From the above, it is clear that the complaint or grievance has been filed after a period of almost 10 years from the date of cause of grievance. The complaint should have been filed within 2/3 years from the date of cause of grievance, due to this huge delay the complaint is now "time barred". Even on the merit of the case, the complainant has now no bonafied right to claim refund of balance cost because the complainant is not in use of this vacated bay. The complainant shifted to 132 kV system at its own, the vacated bay/equipment is being maintained by HPSEBL and has a right to make use of this bay/terminal for extending power supply to any consumer (s).

The compliance be reported within a month from the issue of this order

Dated: 19.04.2018

Electricity Ombudsman

