



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CMPMO No. 449 of 2023

Reserved on: 22.03.2024

Decided on: 27.03.2024

M/s Vardhaman Ispat Udyog ...Petitioner

Versus

HPSEB Ltd. & Anr. ...Respondents

Coram:

Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting? ¹ Yes.

For the Petitioner : Mr. Shrawan Dogra, Sr. Advocate with Mr. Manik Sethi, Advocate.

For the Respondents : Ms. Sunita Sharma, Sr. Advocate with Mr. Dhananjay Sharma, Advocate, for respondent No. 1.
Mr. Vivek Thakur, Advocate, for respondent No. 2.

Tarlok Singh Chauhan, Judge

The instant petition underscores the alarming conditions regarding the discharge and execution of quasi-judicial duties and functions by the quasi-judicial authorities constituted under the Electricity Act, 2003 (**Act**) like the Electricity Ombudsman and, more particularly, the Consumer Grievances Redressal Forum (**Forum**)

2. The minimal facts as are necessary for the adjudication of this petition filed under Article 227 of the

¹ Whether reporters of the local papers may be allowed to see the judgment? yes

Constitution of India are that the petitioner was released contract demand of 14 MVA and a load of 15 MW at 33 KV line in June 2021. The same was increased from a sanctioned contract demand of 10 MVA and a load of 12 MW. Initially when the load was 12 MW and contract demand was 10 MVA, the petitioner was fed through 33 KV dedicated feeder. Thereafter, the load/demand of the petitioner was increased to 15 MW/14 KVA, his standard supply voltage shifted to 132 KV. However, the petitioner was given supply through a 33 KV Joint Dedicated Feeder and Low voltage Supply Surcharge (LVSS) was being charged at 2% (half of 4% due to joint dedicated feeder.

3. The petitioner was charged the tariff category under LIPS (Large Industrial Power Supply) with sub-category "HT-2". At this juncture, the sub-categories under the LIPS Category tariff were as follows:-

Tariff Category under LIPS		
	Tariff Sub-category	Tariff sub-category
1.	EHT	i. 220 KV & Above ii. 132 KV iii. 66 KV
2.	HT-1	11 KV based on contract demand upto 1000 KVA
3.	HT-2	11 KV/33KV contract demand above 1000 KVA

4. The complaint filed by the petitioner against the tariff was rejected by the Forum vide order dated 17.10.2022 by according the following reasons:-

“Therefore, in view of the express provisions of ibid Regulations, this Forum cannot hear the instant complaint especially given the fact of writ petition CWP 2788 of 2022 on the matter having been filed in the Hon'ble H.P. High Court, which is pending adjudication. This Forum, therefore, without going into the merits of the case, rejects the instant complaint as not being maintainable in pursuance to provisions of sub-regulation 19(a) of HPERC (Consumers Grievances Redressal Forum and Ombudsman) Regulations, 2013 ibid. Accordingly, the complaint is disposed of in aforesaid terms.”

5. Aggrieved by the said order, the petitioner approached respondent No. 2 i.e. Ombudsman who vide its order dated 20.02.2023 allowed the complaint No. 22 of 2022 and passed the following directions:-

1. *The orders passed by the Consumer Grievance Redressal forum at Kasumpti on 17.10.2022 in Complaint No. 3325/2/22/16, dated 04.06.2022 are hereby quashed and set aside.*
2. *The case is remitted back to the Consumer Grievance Redressal Forum at Kasumpti for decision on merits of the case after reviving the Complaint No. 3325/2/22/16, dated 04.06.2022 without any application for revival from any of the parties.*
3. *The consumer Grievance Redressal Forum Kasumpti is further directed to decide the matter on merits of the case after affording an opportunity of being heard to both the*

parties within the provisions under Himachal Pradesh electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulation, 2013 and other relevant Regulations/Codes."

6. The Forum instead of acting upon the directions as given by the superior authorities i.e. Ombudsman, again reiterated its earlier order dated 17.10.2022, by observing as under:-

"11. Thus, in view of the foregoing stated position, the Forum after considering the complaint on merits, in unequivocal terms declines to pass orders on merits;

12. Otherwise also, in accordance with sub-regulation 19(a) of the PERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013, the Forum cannot decide the matter on merits once a concurrent CWP is pending before the Court in a similar matter.

13. In view of foregoing, the Forum concludes that it is neither proper nor lawful to pass any order on merits in the present complaint as the same/similar issues are pending adjudication before the Hon'ble High Court in CWP 2788 of 2022;

Seen from any angle, the complaint clearly deserves dismissal. On foregoing terms, the complaint is disposed of as dismissed."

7. Aggrieved by the dismissal, the petitioner was once again constrained to approach respondent No. 2 by filing a complaint No. 11/2023 and the Ombudsman again allowed the complaint by deciding the same on merits and following orders came to be passed:-

“J-Order:

- 1. The orders passed on 29/03/2023 by the Consumer Grievance Redressal Forum at Kasumpti in Complaint No. 3325/2/22/16-3325/1/23/11, dated 03/03/2023 is hereby quashed and set aside.*
- 2. The Respondents are directed to overhaul the account of the Complainant after correcting his tariff applicable for 132 kV sub-category instead of HT-2 sub-category under Large Industrial Power Supply (LIPS) Category.*
- 3. LVSS shall be applicable as per Tariff provisions since he is being supplied electricity at 33 kV instead of 132 kV entitlement.*
- 4. The Respondents are further directed to refund the excess amount charge, if any, on account of wrong application of tariff within a period of 30 days from the date of issue of this order but not later than 03/07/2023. In case of delay beyond 30 days, the interest @ 15% shall be applicable in line with Clause 5.7.3 of Himachal Pradesh Electricity Supply Code 2009.*
- 5. The Respondents are further directed to report Compliance of above directions within a period of 30 days of issuance of the orders or but not later than 03/07/2023 positively failing which the matter shall be reported to the Hon'ble Commission for violations of the directions under Regulation 37 (6) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 for appropriate action by the Commission under the provisions of the Act.*
- 6. The Complaint filed by M/S Vardhman Ispat Udyog, Village Bathri, Tehsil Haroli, Near Tahliwala, District Una, HP-174301 is hereby disposed off.”*

8. While deciding the complaint, the Ombudsman also made certain pertinent observations, as find mentioned, in G-5 & 6, which reads as under:-

"5. Earlier after dismissal of the original complaint by the Forum below, the case was registered as Complaint No. 22/2022 on dated 15.02.2023 and the case was remitted back to the forum below to decide the case further on the merits of the case. Maintainability issue was decided in order dated 15.02.2023 and further confirmed through interim Order dated 19.04.2023 in the current case. The Respondent Board filed their reply on the last hearing on 27.05.2023 after last opportunity after failing to file their reply by earlier hearings dated 06.05.2023 and 20.05.2023.

6. The Forum below again passed orders dated 29.03.2023 on earlier lines citing that the case is not maintainable and dismissed the Complaint again even defying the directions issued by this Appellate Forum which shows the attitude of the Forum below in deciding the matters even defying the directions of the higher office i.e. this Appellate Forum,. Hence the present appeal."

9. It is the specific allegation of the petitioner that after passing of the order dated 03.06.2023, the tenure of the earlier Ombudsman came to be retired and it was only then a review petition came to be filed by respondent No. 1 under Regulation 37(8)(i) of HPERC (CGRF & Ombudsman) Regulation, 2013 (for short the "Regulation") against the order dated 03.06.2023. Further, despite the questions having been specifically raised

and adjudicated by respondent No. 2, earlier it chose to entertain the review petition without considering the fact that scope of interference under the aforesaid provision was very limited and the petition otherwise did not satisfy the said requirement. It is the further contention of the petitioner that in the given facts and circumstances, respondent No. 2 could not have asked the parties to seek clarification on the prevalent Regulations/Code from the Himachal Pradesh Electricity Regulation Commission and keep the proceedings in abeyance as has been directed by respondent No. 2 vide order dated 27.07.2023

10. Learned counsel for respondent No. 1 has contested the petition mainly on the ground of maintainability contending that in absence of the proceedings before respondent No. 2 having concluded the instant petition is not maintainable. It is further contended that it is not that respondent No. 2 does not have the jurisdiction to entertain the review petition and once that be so, obviously it is for respondent No. 2 to decide the fate of the review petition and the petitioner cannot pre-empt this Court to pass an order at this stage.

11. As regards respondent No. 2, it has also chosen to file a separate reply wherein it has sought to justify its order by making following averments:-

“That during the adjudication of the matter an issue was raised by the Review Petition on the interpretation of the

tariff implementation which was discussed at length by both the parties and could not conclude anything concrete except arrived at the consensus that if the viewpoints of Review Petitioner (Respondent No.1) on the interpretation were to be implemented then in the instant case the change in category from HT. 2 to EHT was involved which was contrary to the order dated 03.06.2023. On the other hand, the Respondent (present Petitioner) had contrary views on the conception of Review Petitioner and their views were supporting the order dated 03.06.2023 of the Appellate Forum. After listening both the parties Respondent No.2 asserted that there is misconception on the part of both the parties on interpretation of Tariff and after observing contrary views of both the parties on the same issue, this forum held that in the absence of such basic consensus, it shall not be in the interest of justice to continue with the proceedings till this basic embargo on interpretation of the tariff is overcome. That it was not in the jurisdiction of this Ombudsman to remove the difficulty arising out of the provisions which lies in the powers of Hon'ble Himachal Pradesh Electricity Regulatory Commission, the tariff determining authority as per Regulation 39 of (Consumer Grievances Redressal Forum and Ombudsman) Regulation, 2013. That in order to run the process of proceedings smoothly, the replying Respondent No.2 on the vigorous prayer of Review Petitioner, preferred that the Review petitioner might seek clarification at his own from the Hon'ble Himachal Pradesh Electricity Regulatory Commission, the tariff determining authority in consonance with the Regulation 39 of (Consumer Grievances Redressal Forum and Ombudsman) Regulation, 2013. That in due cognizance to Regulation 36 (2) read with Regulation 39 and also regulation 37 sub clause 8 (iii) of (Consumer Grievances Redressal Forum

and Ombudsman) Regulation, 2013 the replying Respondent No.2 issued Interim Order dated (Annexure-P-4) and kept the Registrar 28.07.2023.

I have heard learned counsel for the parties and have gone through the material placed on record.

12. At the outset, it may be observed that the manner in which the Forum has passed the order dated 29.03.2022 not only leave much to desire, rather the Forum has committed gross impropriety, as is evident from the observations made by it in paras 11 to 13 of the order as quoted above. It cannot be disputed that it is of utmost importance that in disposing of quasi-judicial issues before them, the Forum is bound by the decision of the Ombudsman. The order of the Ombudsman is binding on the consumer forums working within its jurisdiction. The principal of judicial discipline requires that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities.

13. To my mind, the action of the Forum is clearly subversive to judicial discipline and amounts to gross impropriety. So long the orders of the Ombudsman directing the Forum to act and decide in a particular manner were operative and had attained finality, the Forum had no option but to give effect to the directions so passed.

14. Judicial discipline requires decorum known to law which warrants that the appellate directions should be followed in the hierarchical system by the Courts/quasi-judicial authorities, which exist in this country. It is, therefore, necessary for each lower tier to accept loyally the decision of the higher tier. The judicial or quasi-judicial system only works if someone is allowed to have the last word and if the last word, once spoken is loyally accepted.

15. Once the order rendered by the Ombudsman was absolutely clear and unambiguous, then judicial comity, discipline, con-committal, pragmatism, poignantly point, per force to observe constitutional propriety and adhere to the decision so rendered by the Ombudsman.

16. It is settled proposition of law that when a subordinate authority refuses to implement the judgment of the Appellate Authority, the situation is akin to anarchy and will result in complete breakdown of the judicial stem.

17. It would be apt to refer to some of the decisions of the Hon'ble Supreme Court relating to the principles laid down with regard to the necessity for the lower authority to comply with the directions given by the Appellate Authority. Those decisions are as under:-

(iii) *Union of India vs. Kamalkshi finance Corporation (1984) 2 SCC 324*

(ii) Smt. Kausalya Devi Bogra & Ors. vs. Land Acquisition Officer, Aurangabad & Anr. (1992) Supp (1) SCC 443

(i) Tirupati Balaji Developers (P) Ltd. vs. State of Bihar (2004) 5 SCC 1

(iv) Kishore Samrite vs. State of UP & Ors. (2013) 2 SCC 398.

18. The principles that can be culled out from these judgments are as follows:-

(a) There are two important postulates of constituting the appellate jurisdiction:

(i) the existence of the relation of superior and inferior court; and

(ii) the power in the former to review decisions of the latter. The superior forum shall have jurisdiction to reverse, confirm, annul or modify the decree or order of the forum appealed against. In the event of a remand the lower forum shall have to rehear the matter and comply with such directions as may accompany the order of remand.

(b) The appellate jurisdiction inherently carries with it a power to issue corrective directions binding on the forum below and failure on the part of the latter to carry out such directions or show disrespect to appeal or to question the propriety of such direction would-it is obvious-be destructive of the hierarchical system in the administration of justice.

(c) The principles of judicial discipline require that the order of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the subordinate authority cannot and should not be the ground for not following the said directions.

(d) The directions of the appellate authority is certainly binding on the courts subordinate thereto. Judicial discipline required and decorum known to law warrants that appellate directions should be taken as binding and followed.

(e) willful refusal to implement the judgment of the appellate authority not only subvert the rule of law but also constitute judicial impropriety.

(f) Judicial discipline and propriety are two significant facets of administration of justice. Every court is obliged to adhere to these principles to ensure hierarchal discipline on the one hand and proper dispensation of justice on the other.

19. It will be naive to mention that deciding the question of right, title and interest even in matter relating to the Electricity Act, Rules and the regulations framed thereunder involve complicated question, but nonetheless such power has been vested with the authorities under the Act. It has, therefore, to be accepted that such officers/authorities would be well equipped in law to factually adjudicate such question. Therefore, those entrusted or required to adjudicate such disputes should

have studied law or at least trained in law. A litigant entering into the precincts of the Court/quasi-judicial authorities should have the trust and confidence that the person who sit on the chair as an adjudicator/Judge is competent to appreciate and understand matter having regard to his knowledge and capability and is adequately equipped to decide. For such litigants high sounding designation is not of much worth, and it is only his confidence and trust what matters. For often one comes across instances where orders patently show lack of rudimentary and fundamental knowledge of law. It has to be remembered that people who go before the authority, go there with feeling that they are going to get substantive and effective justice and they should not come back with the feeling that the adjudicating machinery prosecuted under the act is a mockery.

20. At this juncture, it shall be apt to refer to a Division Bench Judgment of Hon'ble High Court of Orissa in **Raghnath Mukhi v. Chakrapani Mukhi (Dead) and after him Musa Bewa, 1992 (1) Orissa LR 191**, wherein it was observed as under:-

[3] Under the scheme of the Act, the revisional authority being the highest forum in the hierarchy adjudicating questions of facts and law should be a substitute in reality and not theoretically. Law is respected and obeyed when the people have trust and faith in it. Law is made for the weal of the people.

Hence, if the well being of the people is the object of the law, they should have trust not only in the contents of the law but also in its implementation by the agency entrusted therewith. If implementation is not commensurate with the object and purpose of the law, it fails to create confidence in the minds of the people and loses their trust. The result is disenchantment and chaos. It therefore behoves the implementing agency to implement the law not only in letter but also in spirit.

[4] This prologue is considered warranted having regard to our perception of the implementation of the scheme of the Consolidation Act by the Government.

[5] The consolidation authorities by the very nature of the jurisdiction vested in them are required to adjudicate civil right involving personal law and relating to immovable property and other civil rights. Even the questions that crop up and posed are of complicated nature. It, therefore, obligates the authorities to know the law before they assume and exercise jurisdiction to adjudicate in accordance with law and for the litigants, an ignorant judge is a devil's representative putting on the mask of an adjudicator. It is no doubt true that all adjudicators and Judges are not learned in law in all its branches. Law is a vast ocean. Study for a lifetime even would not be enough to make it. But those who are required to adjudicate civil rights including personal and property rights should have studied law or are trained in law. It is a trite saying that justice must not only be done, but seem manifestly to have been done. Hence a person involved in a civil dispute before he enters the precincts of the Court should have the trust and confidence that the person who sits on the chair as an

adjudicator. Judge is competent to appreciate and understand matters having regard to his knowledge and capability and is adequately equipped to decide. For him high sounding designation is not of much worth, his confidence and trust are what matters. When the people make laws through their representatives for their happiness and well-being, they intend that the authorities under the Act who are being made substitutes of the Presiding Officers in the Civil Courts and the High Court should also be competent by virtue of their ability to function truly as substitutes. Otherwise, it will be a fraud on the peoples' intention. Therefore, as we have said, the psychological factor in the mind of the litigant is more important than how a case is decided by the adjudicating authority. A person ignorant and innocent of law cannot create that trust nor is he capable of adjudicating by hearing both the sides. It is the duty of the Judge to utilise his own insight into law even where the parties have tumbled or failed. For adjudicating the case in accordance with law to the best of his judgment is his responsibility and obligation. To decide to the best of his judgment, he must be properly equipped in law to understand, appreciate and decide.

[6] Can one think of a highly eminent engineer or erudite Judge ignorant of human anatomy or surgery conducting operation on human body. It is unthinkable ; it is preposterous for someone not versed in surgery or anatomy of the body making an attempt. That is why specialities and super specialities abound. So also in the matter of administration of law, the person concerned should have the knowledge of law howsoever gathered-

either by courses in college or otherwise or should be trained in law.

[7] To call upon an administrative officer howsoever eminent or competent he might be in his own field but who does not have the knowledge of law or is not trained in law or does not have the judicial aptitude and acumen, is akin to a Judge being called upon to conduct a surgical operation. Hence it follows that as a Judge or an engineer cannot be appointed as a Professor of Surgery or even as a surgeon so too a person unversed in law; ignorant in law should not be entrusted with the responsibility of adjudicating questions of law for, that would amount to breach of trust that the people imposed on the implementing agency. They intended that competent and worthy persons capable of adjudicating civil rights involving questions of law-simple and complicated-should be appointed as adjudicators.

[8] So far as the Assistant Consolidation Officer is concerned, it is a different matter. Matters in which parties come to an amicable settlement are disposed of by him. But where the parties differ and are out for a fight, do not the people expect that the referee, the Judge, the adjudicator should be competent ? Now coming to the question of referee if a person does not know the rules of the game of football, can he be a competent referee ? Should such a 'person be appointed as a referee ? So also in matters of adjudication under the Consolidation Act.

[9] We are constrained to dilate at length because of our experience in the High Court day after day, month after month and year after year in regard to matters arising under the Consolidation Act. Very often we find persons adjudicating know not even the

rudiments of the laws and procedures. To appreciate questions of law presented by both the parties, it is necessary to appreciate, comprehend and then adjudicate. Therefore, to appreciate and comprehend, the adjudicator should know the fundamentals, the rudiments of law or must have been trained in law or must to have been involved in adjudication of legal matters for a number of years so as to clothe him with competence. We do not want to generalize because some Officers in the lower rung as well as at the highest level have displayed a good comprehension of the law and its application, and have brought to bear a judicial mind on matters in dispute but, as we said, the chair does not confer competence. It is the competence of the person that confers dignity and trust on the chair.

[10] *From our experience we can boldly say that while appointing the Commissioner or the revisional authority, the implementing agency, i. e., the Government, has not always kept this in mind. Law was not framed for the purpose of statistics. It was framed for the object and purposes depicted in the objects and reasons and the Preamble to the Act.*

[11] *The law may be inter vires but if it is implemented in a manner inconsistent with the objects and purpose, action could be challenged as ultra vires, as a fraudulent imposition. Hence appointment of an incompetent person to adjudicate legal matters can be challenged as ultra vires being contrary to the intendment.*

[12] *No doubt jurisdiction is vested in this Court under Arts. 226 and 227 of the Constitution to set right injustice, mistakes in proceeding before the consolidation authorities. But it should be borne in*

mind that such jurisdiction is discretionary and is not a matter of right and is otherwise also circumscribed. Besides the more important question is ; Why should not the people have faith in the adjudication by the consolidation authorities but have to rush to this Court with their grievances. Faith and faith alone in the adjudicator is the paramount consideration.

21. Conducting judicial business does require certain amount of acumen and judicial discipline, so as to lend credence to such adjudicatory process.

22. The very object of Constitution of adjudicatory authorities under the Electricity Act in the scheme of administrative justice is to provide an additional and speedy forum of adjudication. It is, therefore, of utmost importance to ensure that these authorities work in a proper, effective and efficacious manner while exercising their powers to hear and dispose of quasi-judicial matters, which require some basic knowledge of law. While making decisions, such authorities must not lack judicious approach.

23. The adjudicatory authorities are conferred with the discretion to adjudicate upon quasi-judicial matters and such discretion is governed by the maxim "*discretio est discernere per lagan quid sit justum*" (discretion consists in knowing what is just in law). Discretion in general is the discernment of what is right and proper. It denotes knowledge and prudence that discernment

which enables a person to judge critically of what is correct and proper, united with caution, to discern between falsity and truth, between shadow and substance, between equity and colourable glosses and pretences and not to do according to will and private affections or ill-will. It has to be done according to rules of reasons and justice, not according to private opinion. It has to be done according to law and not humour. It is not only to be arbitrary, vague and fanciful but legal and regular.

24. Understandably, the Authorities in umpteen cases have come up with a defence that it does not have the requisite number of officers who are well equipped in the field of law or have legal training and legal acumen, however, that by itself cannot be an excuse for playing havoc with the valuable rights of the litigants.

25. It is on account of repeated misdemeanour of the executive in exercise of its quasi-judicial functions that the Courts have understandably expressed intolerance in the investiture of essential judicial functions in the executive. More so, when they tend to erode the rights of a citizen conferred under the Constitution or the laws.

26. This Court in ***CWP No. 247 of 2018, titled as M/s Banjara Camps and Retreats Private Ltd. vs. Shiv Lal and Anr.***, decided on 18.09.2018, after noticing the state of affairs

prevailing in the Department of Cooperative, who too were adjudicating the matters, while exercising quasi-judicial powers, observed as under:-

44. This Court would only hope and trust that the State Government would conduct regular training for its Officers, especially, those who are handling adjudicatory process, so that the blunder as committed by the Deputy Commissioner is not repeated in future. It has to be remembered that the decisions by untrained adjudicators only add to the un-necessary pressure upon the Courts and consequently clog its dockets.

27. As already observed above, the manner in which the Forum adjudicated the complaint by sitting over the orders passed by the Appellate Authority i.e. Ombudsman, cannot be countenanced and such conduct is absolutely illegal and shocking. The conduct of both the members of the Forum to say the least is most unbecoming that of quasi-judicial authority and in my considered view both the members of the Forum as of now are absolutely unfit to discharge any such functions.

28. If this was not enough to garner such impression then I may refer to an order though not *inter se* the parties, but annexed with the petition as Annexure RP-1, which is far more revealing, wherein the Forum has left no stone un-turned to exhibit the scale of its defiance and gross impropriety by observing as under:-

“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 croneously 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 unwarranted 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."

29. Judicial decorum, legal propriety and judicial discipline on the bedrock of which the judicial system has been founded, have been thrown to the winds by the members constituting the Forum, namely, S/Shri Tushar Gupta-Chairman and Vikas Gupta-Member. The continuation of these officers as members of the Commission is subversive to judicial process. Judicial enthusiasm cannot obliterate the profound responsibility that is expected of an adjudicatory authority.

30. Clearly, in such circumstances, both the aforesaid members cannot be permitted to discharge their duties as Adjudicators till and so long they are not well acquainted with the principles regarding judicial decorum, legal propriety, judicial discipline and binding precedent in hierarchal system of adjudication.

31. Accordingly, the competent authority is directed to forthwith withdraw all the cases from the Forum and at the same time send both these members for judicial training in Judicial Academy at Ghandal and only after proper training and after satisfying itself, the competent authority may, if it finds these officers or any one of them, to be suitable, post them or any one of them as members of the Forum.

32. As stop gap arrangement, the competent authority, if found necessary, constitute a Forum of members, who are well conversant with not only the law as also other principles as set out above, so that the working of the Forum does not suffer and come to a grinding halt.

33. Now, advertent to reply of respondent No. 2, it is shocking that respondent No. 2 has chosen to defend its order before this Court by filing reply to the petition, little realising that as an adjudicatory authority, it is least concerned much less interested in the merits of the dispute in any sense and so the representation by law in such proceedings is not only wholly unnecessary but is even inappropriate.

34. The Hon'ble Supreme Court in **Syed Yakoob vs. K. S. Radhakrishnan & Ors AIR 1964 SC 477**, observed as under:-

"19. Mr. Ranganathan Cherry who appears for respondents 2 and 3 has asked for his costs. We do not think this request can be accepted. It may be that in such proceedings, the Authority and the Appellate Tribunal are proper and necessary parties, but unless allegations are made against them which need a reply from them, it is not usual for the authorities to be represented by lawyers in Court. In ordinary cases, their position is like that of courts or other Tribunals against whose decisions writ proceedings are filed; they are not interested in the merits of the dispute in any sense, and so, their representation by lawyers in such proceedings is wholly unnecessary and

even inappropriate. That is why we direct that respondents 2 and 3 should bear their own costs."

35. Similar reiteration of law can be found in judgment delivered by learned Single Judge of the Hon'ble Bombay High Court in **Asstt. Provident Fund Commissioner vs. Nirmitee Holidays (P) Ltd. (2011) 2 LLJ 469**, wherein it was observed as under:-

"An authority exercising judicial or quasi-judicial functions; is not even supposed to defend its own order when challenged before higher forum. In this connection, it would be appropriate to refer to the judgment of the Apex Court in the case of Syed Yakoob v. K.S. Radhakrishnan, AIR-1964 SC 477, in which the Apex Court has held that the Tribunals are not supposed to defend his own orders unless allegations are made against them. It is therefore well-settled that the Tribunal discharging quasi-judicial functions its not supposed to defend its action even when its order are challenged before the higher forum, as has been held in the case of Syed Yakoob (supra)."

36. Now advertent to the merits of the claim, it needs to be noticed that the review petition filed by respondent No. 1 was filed under Clause 37(8)(i) of the Regulations, which reads as under:-

"HPERC (CGRF & Ombudsman) Regulations 2013

37. Issuance of Order

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(8) The Ombudsman may, at any time, after affording an opportunity of being heard, review his order, either on his own motion or on an application of any of the parties to the proceedings, within 30 days of the Order on -

(i) the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his knowledge, or could not be produced by him at the time the order was made;

(ii) on account of some mistake or error apparent from the face of record;

(iii) for any other sufficient reasons.”

37. As regards the review petition, the same was filed on four specific grounds and the same have been numbered as (a) to (d). However, there is no whisper in the entire petition that despite exercise of due diligence, the discovery of new and important matter of evidence was not within the knowledge of respondent No. 1 or could not be produced by it at the time of the order that was made, which otherwise was a *sine qua non* and a condition precedent for filing a review petition. Rather, there is neither any allegation of discovery of any new and important matter of evidence nor was there any challenge and furthermore no additional material or evidence was produced alongwith the review petition.

38. For convenience, the grounds of review are produced herein-below:-

“a. That the jurisdiction of this Ld. Ombudsman is barred in terms of law laid down by the Hon'ble Appellate Tribunal

for Electricity (Appellate Jurisdiction) in Appeal No. 181 of 2010 decided on 22nd March 2011. since the category of Non applicant/complainant is a HT-LIPS consumer and as per the law, it is specifically provided that neither the CGRF nor the Ombudsman has no jurisdiction to entertain a petition from a HT consumer for change of one category, for the purpose of tariff determination, to another category. Hence, the order dated 3-6-2023 required to be reviewed.

b. That the non-applicant/ complainant is deliberately misconstruing and misinterpreting the provisions of Supply Code and tariff orders duly approved and notified by the Hon'ble HPERC. As per relevant regulation the non-applicant/complainant can use the contract demand upto 10MVA with maximum load 12 MW on 33 KV supply voltage only, whereas the non-applicant/ complainant had used the contract demand upto 14 KVA with connected load of 15 MW and under these circumstances the non-applicant/ complainant has to be charged with LVSS @ 2% of energy charges. Moreover, it is worth mentioning here that earlier the non-applicant/respondent was charged with LVSS @ 1% of energy charges, as the electricity was supplied through joint dedicated feeder with M/S Pritika Auto Cast, resultantly LVSS @ 1% from January 2021 to May, 2021 was charged. However, after the SJO dated 27.05.2021 when the non-applicant/ complainant has been shifted to dedicated feeder with extension of load for contract demand upto 14 KVA with connected load of 15 MW from 132/33KV Sub-Station Gurplah and the connection has been released on 33 KV supply voltage, which is two step below therefore the non-applicant/ complainant has to be levied with the LVSS charges @ 4%(2%+2%) of the energy charges, but in case of dedicated feeder, the rebate of 50% is also available,

consequently the non-applicant/ complainant has been charged LVSS @ 2% of energy. Hence, the order dated-3-6-2023 required to be reviewed .

(c) That the representation filed by the by the non-applicant/ complainant is baseless and inconsonance with the tariff order as well as provisions of the Supply Code duly notified by the Hon'ble HPERC. It is relevant to submit here that by filing the representation the non-applicant/ complainant has misled this Id. Authority as well as the Forum below despite knowing well that such submissions stand already rejected by the Hon'ble HPERC during Fourth APR Order of 3 MYT Control period(FY 15-FY 19). Hence, the order dated-3-6-2023is required to be reviewed.

d. That since he has already filed the CWP No. 2788 of 2022 wherein also he is challenging the applicability of LVSS, therefore the Ld. CGRF has rightly rejected the complaint filed by the non-applicant/ complainant Hence, the order dated-3-6-2023 required to be reviewed.”

39. As regards the ground (a), the same was already raised in appeal filed by the Ombudsman, as would be evident from para-5 of the respondents submissions, and reads as under:-

“5. The respondent submit that the representation of the Appellant is not maintainable and same is liable to be dismissed, since the Ld. Forum below has passed a well reasoned order which is based on record and same warrants no interference of this Hon'ble Forum hence the instant representation is liable to be dismissed.”

40. The same was answered in G-28, which reads as under:-

"28. From the record it appears that without going into the averments made at both places, the Forum below have declared the representation non-maintainable and rejected the same."

41. As regards ground (b), the same was raised in C-7, and reads as under:-

7. The Respondents further submits that the contents of this sub-para are admitted to the extent that the load of 15 MW/14MVA is being supplied from 33 kV dedicated line. Further, that previously the supply to M/S H.N Steel (previous owner) was from 33/11 kV Sub Station Taliwal being an interim measure which was later on shifted to 132/33 kV Sub Station Gurplah/ Taliwal, copy of letter dated 16/12/2010 written to Chief Engineer (Comm.) is annexed as Annexure-R-2 and in lieu of above stated letter the Chief Engineer (Comm.) has accordingly replied to the Chief Engineer (North), copy of letter dated 29/12/2010 is annexed as Annexure-R-3. Accordingly, an SJO dated 27/05/2021 has been issued for an interim measure, copy whereof is annexed as Annexure-R-4 for the kind perusal of this Hon'ble Ombudsman. Further, it is relevant to mention here that this line was constructed by the previous owner.

42. And the same was adjudicated in the following manner in G-23 to G-27, and reads as under:-

"23. The Respondents first raised issue under 33 (1) (c) of Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman)

Regulations, 2013 of representation pending for same matter at HP High Court and questioned maintainability issue. Further, the Law Officer for the Respondent Board read out both the prayers at HP High Court as well as in the present case. He could not however establish that the matter at HP High Court and the present petition is same.

24. Now the scrutiny of both the matters at HP High Court and this Appellate Forum as well as at the Forum below, as discussed above, clearly distinguish that the matter is not same. At HP High Court, the Complainant have questioned the constitutional validity of Para 2.1.6.1 (A) and Para 2.6.1.1 (B) and prayed that the same may be declared ultravires and also delete the column restricting the Connected Load in kW which has no relevance. Further, he has prayed that Respondents may be directed to fix the load limits at 33 kV voltage level after technically evaluating the capacity of the line and release 15050 kVA on 33 kV existing line supplying to him.

25. The averments and prayer made by him at Consumer Grievance Redressal Forum at Kasumpti and this Appellate Forum are that he is being penalized twice by levying LVSS on one hand and on other hand by charging higher tariff at actual supply voltage wherein as per load his standard supply voltage is 132 kV and he should be charged tariff applicable for same.

26. From the scrutiny of the both matters, it can be clearly established that both the matters are different. He has never challenged the levy of LVSS by the Respondent Board at any stage and the refund being sought is due to application of wrong tariff to him and not for LVSS.

27. Now let us examine the Orders passed by the Forum below on 17/10/2022. The Consumer Grievance Redressal Forum at Kasumpti simply relected the Complaint under the provisions of Regulation 19 (a) of Himachal Pradesh

Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 citing that the matter at HP High Court and before them has a similar basis.”

43. Likewise, ground (c) was raised in C-10, and reads as under:-

“10. The respondents submit that the Ld. CGRF has rightly rejected the Complaint filed by the Appellant, since he has already filed the CWP No. 2788 of 2022 wherein also he is challenging the applicability of LVSS. Hence, the instant representation deserves dismissal.”

44. And the same was adjudicated vide G-12, 13, 29, 28 & 29, and reads as under:-

12. Further, his contention is that in the CWP No. 2788/2022 he has challenged that LVSS should not be applicable wherein the load of Consumer is to be released at higher standard supply voltage. They have in fact challenged the applicability of the Para 2.1.6.1 (A) and (B) of the Himachal Pradesh Electricity Supply Code 2009.

13. Now let us examine the CWP filed by the Complainant at HP High Court a copy of which is also available on record. The opening para of CWP states that they are challenging the LVSS levied by the Respondent Board and additionally the enabling provisions 2.1.6.1 (A) and 2.1.6.1 (B) of Supply Code 2009. They had further stated that since their sanction Contract Demand is now at 14 MVA for which the standard supply voltage is 132 kV or 220 kV, they were being forced to lay 132 kV line for just 14 MVA which can carry a much higher load. They have been allowed to use the load at 33 kV but LVSS is being charged.

28. From the record it appears that without going into the averments made at both places, the Forum below have declared the representation non-maintainable and rejected the same.

29. From the above discussed, it is clear that since the matter at HP High Court and at Forum below were different, the Forum below have rejected the representation in haste based on the reply/arguments of the Respondent Board alone without going into the details.

45. Likewise, ground (d) was raised in C-11, and reads as under:-

"11. The Respondents submit that the order passed by the Ld. CFRF is law full as well as a reasoned order which deserves no interference from this Hon'ble Ombudsman. Moreover, the detailed submissions qua applicability of tariff order/LVSS is already made in paras supra which may kindly be read as part and parcel to this para for the sake of brevity."

46. And adjudicated while reasoning according in G-18, 21, 26 and 29, and reads as under:-

"18. His further contention is that the entire load is being supplied at 33 KV for a very long time and the Respondents started charging LVSS @ 1% since January 2021 and @ 2% since June 2021 as per tariff provisions. His further contention was that since his standard supply voltage is now at 132 KV and he is being charged for HT based tariff on actual supply voltage instead of tariff applicable for standard supply voltage of 132 KV which falls in HT-2 Category.

21. Now let us examine the arguments made by both the parties at this Appellate Forum. The complainant made

clear during arguments that they are being charged twice first by levying LVSS and secondly applying higher tariff based on actual supply voltage of 33 KV instead of lower tariff applicable on standard supply voltage of 132 KV applicable to them based on their load. Their arguments were more or less as per their averments made in the representation.

26. From the scrutiny of the both matters, it can be clearly established that both the matters are different. He has never challenged the levy of LVSS by the Respondent Board at any stage and the refund being sought is due to application of wrong tariff to him and not for LVSS.

29. From the above discussed, it is clear that since the matter at HP High Court and at Forum below different,, the Forum below have rejected the representation in haste based on the reply/arguments of the Respondent Board alone without going into the details.

47. Not only this, it would be noticed that the grounds taken in the review petition could at best be grounds for appeal, but do not qualify for being termed as “*sufficient grounds for a review*” given the limited scope under 37(8)(i) of the Regulations.

48. If at all, respondent No. 1 had grievance, it ought to have filed an appeal and the mere fact that the review petition has been entertained and is pending cannot be an impediment for this Court to do complete justice in the matter in exercise of its jurisdiction under Article 227 of the Constitution of India.

49. The instant petition is allowed and the order dated 27.07.2023, passed by respondent No. 2 in Complaint No.

18/2023 is quashed and set aside. Pending miscellaneous application, if any, also stands disposed of. Parties are left to bear their own costs.

(Tarlok Singh Chauhan)
Judge

27th March, 2024
(sanjeev)

High Court of J&P