

(2018) 12 SHI CK 0004

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 886 Of 2018

Executive Director (Pers), Himachal Pradesh State Electricity
Board Limited And Another

APPELLANT

Vs

M/S Virgo Aluminum Ltd

RESPONDENT

Date of Decision : 03-12-2018

Acts Referred:

Citation : (2018) 12 SHI CK 0004

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : O.C. Sharma, Tara Singh Chauhan

Final Decision : Dismissed

Judgement

Sandeep Sharma, J

1. Being aggrieved and dissatisfied with order dated 31. 7.2017 passed by the Consumers Grievances Redressal Forum at Kasumpti, Shimla-9, Himachal Pradesh (hereinafter, "Forum"), whereby complaint under Regulation 17 of the HP Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 (hereinafter, "Regulations"), having been filed by the respondent-complainant (hereinafter, "complainant") against the wrongful, illegal and arbitrary act of withholding and retention of a sum of Rs.56,66,869/- deposited against the proposed expenditure of works to construct 33 KV dedicated feeder on AB Cable alongwith 33 KV bay at 132/33 KV Sub-station to take off point M/s Virgo Aluminum Ltd. Alongwith interest at the rate of 12% per annum accrued thereupon, came to be allowed, petitioner-Board (hereinafter, "Board") has approached this court in the instant proceedings filed under Art. 226/227 of the Constitution of India, seeking therein following relief:

"In view of submissions made herein above and in the interest of justice, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to allow the petition and the impugned order dated 31.7.2017 passed by the Id.

Consumers' Disputes Redressal Forum at Kasumpti, Shimla-9 may kindly be quashed and set aside and the complaint may kindly be dismissed"

2. For having a bird's eye view, facts, as emerge from the record, are that the complainant, which is a private limited company duly incorporated under the Companies Act and is a consumer of the Board, applied for the release of electricity connection. Pursuant to its request, the complainant was provided with electricity connection with the connected load of 4500 KW on a common feeder. As per record, initially 4500 KW load was sanctioned in favour of the complainant by the Chief Engineer (OP) Shimla on the request having been made by the complainant (Annexure P-1), however, subsequently, the complainant, on account of interrupted supply, voltage fluctuation, tripping of common feeder and shut down etc., applied and requested to the Board for construction of separate 33 KV dedicated feeder. The Chief Engineer (Comm.), HPSEBL, Shimla, approved load of 4500 KW on 33 KV supply voltage through 33 KV dedicated feeder on AB Cable alongwith 33 KV bay at 132/33/11 KV Sub -station, Johron, Kala Amb. Necessary sanction for the aforesaid load was accorded by the C.E. (OP) Sought, Shimla on 8.3.2010. (Annexure P-2). After having prepared necessary estimates, for laying necessary cables etc., C.E. (OP), South, HPSEBL, vide letter dated 30.3.2010 (Annexure P-3), required the complainant to supply the material worth Rs.16,73,493 and deposit the balance cost of Rs.39,93,376/- with the Board. As per Board, since there were corridor constraints in Kala Amb industrial area, it proposed to string 120 mm 2 AB Cable on existing 33 KV Double Ckt. Line from Kala Amb to the proposed site of complainant Unit. Board made a provision of 8 metres long PCC poles of 200 kg working load to provide additional support AB Cable, where spans were lengthy and further provision of conversion of 2 pole structure to 4 pole was made at the take off point of the complainant. It is averred in the petition that the Board issued demand notice on 20.4.2010 for a sum of Rs.39,93,376/- as consumer share and also required it to deposit all the approved materials. The complainant deposited Rs.39,93,376/- with the Board on 3.6.2010.. It is also not in dispute that the Superintending Engineer (OP) Circle Nahan wrote a letter dated 11.6.2010 to the C.E. (OP) South, Shimla and requested for technical sanction of estimates under Serial No. 2(1) of revised DOCP 1997 and CE (OP) South, accorded the sanction on 24.6.2010. (Annexure P-6) It is also not in dispute that the complainant purchased 1722 Metres long AB Cables on 13.2.2011 and 14.2.2011 from M/s Disha Agencies, Chandigarh for Rs.15,19,540/- and deposited the same with the Board on 23.4.2011, which was duly acknowledged by the Board vide letter dated 23.4.2011. As per averments contained in the petition as well as documents annexed with the same, process of tendering of work for erection of 9 eight metre PCC poles and EXLPE Cable etc. was awarded to M/s Shakil Ahmed ("A" Class Contractor) vide letter dated 24.1.2013 (Annexure P-7), with the direction to complete the awarded work within a period of two months. Board has further averred in the petition that since the complainant was pressing hard for completion of work, therefore, Board repeatedly requested the contractor to complete the work. Board has further

averred that the right of way was to be provided/arranged by the complainant for the purpose of erection of poles and laying cables but since the complainant failed to do so, work could not be completed within stipulated time, which fact was seriously disputed by the complainant.

3. Since Board failed to accede to the request of the complainant for more than six years, complainant was compelled to file a complaint under Regulation 17 of the Regulations before the Forum below, praying therein for the following main relief:

"An order directing the respondents to refund the amount of Rs.56,66,869/- i.e. Rs.39,93,376/-deposited on 03.06.2010 in cash and Rs.16,73,493/-being cost of material deposited on 23.04.2011, alongwith compound interest @ 12% p.a. till its realization in favour of the complainant."

4. Board contested the claim of the complainant, citing therein reasons for non-execution of the work (Annexure P-10). Forum below vide order dated 31.7.2017, allowed the complaint and directed the Board to refund Rs.39,93,736/-to the complainant alongwith interest at the rate of 12% per annum since 4.6.2010 till the date of making the payment. Forum below further directed the Board to make payment of Rs.15,19,540/- on account of cost of cables provided by the complainant. However, the complainant was not held entitled to interest on this amount as this cable was not used for any purpose and observed that this cable could be used by the Board for use at any other location. Forum below also struck down the execution of deposit work and directed Board not to continue with the work. In the aforesaid background, Board has approached this court in the instant proceedings, praying therein to set aside the impugned order.

5. I have heard the learned counsel for the parties and gone through the record carefully.

6. Having heard the learned counsel representing the parties and perused material available on record vis-à-vis reasoning assigned by the learned Forum below in the impugned order, this court is not persuaded to agree with the contention raised by Mr. Tara Singh Chauhan, learned counsel representing the Board that the impugned order passed by the learned Forum below is not based upon correct appreciation of material available before it, rather this court has no hesitation to conclude that the Board has been callous and negligent while prosecuting the work and as such, learned Forum below has rightly observed that high-headed attitude of the Board is very dangerous for the system and consumers. It is not in dispute that request for providing separate corridor was made in the year 2013 but approval qua the same stood accorded on 8.3.2010. Similarly, there is no dispute that in response to the demand made by the Board, a sum of Rs.57,31,870/- was deposited in the year 2010, which is evident from Annexure P-4, but, astonishingly, till the filing of the complaint in the year 2016, no steps, whatsoever, were taken by the Board to ensure that a separate 33 KV

dedicated feeder is provided to the complainant in terms of the demand made by it. Though, Mr. Tara Singh Chauhan, learned counsel representing the Board made a serious attempt to persuade this court to agree with his contention that right of way was to be arranged by the complainant for the purpose of erection of poles and laying of cables, but this submission made by Mr. Chauhan, is not supported by any documentary evidence, if any, available on record, rather, the record available on file, itself suggests that the work in question was awarded to contractor, who despite repeated reminders failed to execute the work. Otherwise also, there is no document on record adduced by the Board to demonstrate that at any point of time, complainant was asked to provide/arrange for the way or place for erection of poles. Order passed by the learned Forum below clearly suggests that the complainant had not only deposited the money as was called for by the Board, rather, entire material, as was supposed to be supplied by the complainant, was also made available, well within stipulated time to the Board, but the Board, on one pretext or the other, failed to complete the job. Impugned order passed by the learned Forum below further suggests that even the learned Forum below, during the pendency of the complaint, provided ample opportunities to the Board to complete the work on the site, but it failed to avail of such opportunities as such, this court sees no illegality or infirmity in the order passed by the learned Forum below, which appears to be based upon proper appreciation of the material available on record.

7. It is very strange and shocking that the Board which is otherwise responsible for providing energy to the consumers failed to pay heed to the requests of its consumer, for almost eight years that too after having received a substantial amount i.e. Rs.57,31,870/-, as such, learned Forum below rightly held the Board guilty of unfair trade practices and allowed the complaint.

8. In the case at hand, complainant, which had applied to the Board for 33 KV dedicated feeder in the year 2010 and had deposited a sum of Rs.39,93,376, at the first instance on the demand of the petitioner-Board in the year 2010 itself, whereafter, it also supplied material worth Rs.16,73,493/-, which fact has not been disputed by the Board, was compelled to file a complaint before the learned Forum below in the year 2016, when despite best efforts put in by it, it failed to have the dedicated line. Complaint came to be decided by the learned Forum below after a period of one year, whereafter, Board, without there being any justifiable ground to lay challenge, approached this court in the instant proceedings and as such, complainant was again compelled to engage counsel to defend itself before this court.

9. Having perused the material, which has been otherwise discussed in detail and the reasoning recoded in the impugned order, this court has no hesitation to conclude that the present petition filed by the Board is a sheer abuse of process of law and complainant has been harassed to the hilt by the officials of the Board, taking undue advantage of their position and as such, present is a fit case, wherein costs deserve to be imposed upon the Board. Accordingly, cost of

Rs.1.00 Lakh is imposed upon the Board, to be paid to the complainant, within a period of a week from today, which in turn, shall be recovered from the salaries of the officials, in the helm of affairs and responsible for the harassment caused to the complainant.

10. In view of the detailed discussion made herein above, I find no merit in the present petition, which is accordingly dismissed alongwith all pending applications. Interim direction, if any, is vacated.