

CONSUMER GRIEVANCES REDRESSAL FORUM, SHIMLA

Complaint No 1515/2/23/18
Complaint No 1515/202308/30

M/s Shree Parvati Steel and Alloys
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 Shree Parvati Steel and Alloys, Village Kheri, Trilokpur Road, Kala Amb, District Sirmaur (HP) - 173030;
- (2) Complainant is a Large Industrial Power Supply (LIPS) Consumer of Respondent HPSEBL, bearing Consumer ID 100012002332;
- (3) In the matter the Complainant has preferred two separate complaints --
- (4) **Complaint No 1515/2/23/18:** The Complainant is aggrieved by the action of the Respondent to raise sundry amount of Rs 4,96,000/= for past period by way of electricity bill dated 12.06.2023 (**Annexure C1**) on grounds that the said amount is illegal, arbitrary, against procedure and time barred as per the Electricity Act, 2003 and is accordingly not payable;
- (5) **Complaint No 1515/202308/30:** The Complainant is aggrieved by the action of the Respondent to raise another sundry amount of Rs 33,12,400/= for past period by way of electricity bill dated 09.08.2023 (**Annexure C1**) on grounds that the said amount is also illegal, arbitrary, against procedure and time barred as per the Electricity Act, 2003 and is accordingly not payable;
- (6) Complainant has sought relief from this Forum in terms of declaring the ibid two sundries of Rs 4,96,000/= and Rs

33,12,400/= (total amounting to Rs 38,08,400/=) as wrong and illegal and for setting these aside;

- (7) On the other hand the Respondent in its Reply has submitted that the Complainant was served with two demand notices on 31.10.2022 and 31.03.2023 (**Annexure R1 Colly**) along with calculation sheet (**Annexure R2**) for the payment of Rs 38,08,400/=-, arising due to wrong punching of recorded maximum demand (MD in kVA) in the Complainant's electricity bills of October 2020 to July 2021. The ibid monetary demand raised further as sundry in electricity bills (**Annexure C1**) are legal and valid in terms of mandate of law under section 56 of the Electricity Act, 2003 and thus the Complainant cannot renege from the payment of the statutory amount. The Complainant cannot avoid the statutory demand. The complaint is accordingly liable to be dismissed with orders to complainant to pay the said amount of Rs 38,08,400/=-.

ORDER

- (8) The ibid two complaints being of same / similar cause of action arising to the Complainant, the Forum has tagged both the complaints and proceeds hereinafter to determine these on merits by way of single Order--
- (9) 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 and amendments thereto notified by the HPERC 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;

- (10) At the outset, Forum observes that the Complainant has neither denied the maximum demand (MD in kVA) availed by it nor has it raised any challenge to the correctness of the monetary demand of Rs 38,08,400/= as being in contravention, in any way, to the Tariff Orders passed by the Ld HP Electricity Regulatory Commission (or the Ld HPERC) or against the statute. The Complainant has simply argued, without any basis, that the impugned monetary demands of Rs 4,96,000/= and Rs 33,12,400/= (total amounting to Rs 38,08,400/=) raised by the Respondent (**Annexure C1**) are illegal, arbitrary, against procedure and time barred as per the Electricity Act, 2003 and is accordingly not payable;
- (11) On the other hand the Respondent has defended its action to raise the impugned monetary demands as past period arrears arising due to wrong punching of recorded maximum demand (MD in kVA) in the Complainant's electricity bills of October 2020 to July 2021. The Respondent has replied that the monetary demand raised by it are legal and valid in terms of mandate of law under section 56 of the Electricity Act, 2003 and thus the Complainant cannot renege from the payment of the statutory amount;
- (12) Thus the only issues before the Forum that require to be determined are whether the Respondent is entitled to raise the impugned monetary demand as past period arrears arising due to

wrong punching of recorded maximum demand (or MD in kVA) in the Complainant's electricity bills of October 2020 to July 2021 and whether the said monetary demand is or is not in any way against the provisions of section 56 of the Electricity Act, 2003?;

- (13) After examining the record, facts and settled position of law coupled with provisions of the Electricity Act, 2003 and Regulations notified by the Ld HPERC on the matter, it is established that in view of the settled position of law laid by the Hon'ble Apex Court in the matter titled as Assistant Engineer (D1) Ajmer Vidyut Vitaran Nigam Ltd and Anr Vs Rahamutullah Khan alias Rahamjula in Civil Appeal No 1672/2020 decided on 18.02.2020 and M/s Prem Cottex Vs Uttar Haryana Vijli Vitran Ltd in Civil Appeal No 7235 of 2009 decided on October 5, 2021, the issue of recovery of past dues of arrears by the DISCOM is no more res-integra;
- (14) In the instant matter, this Forum while delving into the issue of recovery of past dues of arrears by the DISCOM and on the condition of limitation under section 56(2) of the Act, observes that in Hon'ble Apex Court Judgment dated 18.02.2020 in Civil Appeal No 1672 of 2020, which has further relied upon other Apex Court cases while interpreting section 56(2) of the Electricity Act, 2003, it has been held that section 56(2) does not put any limitation for raising the past dues or arrears, if not discovered earlier due to any bona-fide mistake. Liability to pay arises on consumption of electricity and obligation to pay when bill is raised. Electricity charges would become first due only when bill / demand is issued by the licensee to the consumer quantifying therein the charges to be paid. Accordingly, the Hon'ble Court has held in clear terms

that the distribution licensee is entitled to recover arrears of past period arising due to bona-fide mistake or error and that limitation starts from the date the Bill/ Demand is raised which is when the sum becomes first due and it is from this date that the period of limitation of 2 years as provided in section 56(2) of the Electricity Act, 2003 shall start. Again Hon'ble Court has made it abundantly clear that it is from this date that the sum has to be continuously shown as recoverable as arrears during the limitation period. As a consequence, in addition to the date electricity is consumed, the liability to pay electricity charges is also created when meter reading is recorded or when meter is found defective or theft of electricity is detected and obligation to pay when Bill or Demand is raised;

- (15) In the *ibid* Judgment of the Hon'ble Apex Court dated 18.02.2020, which refers to other Judgments as well, electricity has also been held to be 'goods' by a constitution bench of the Hon'ble Apex Court in a case titled *State of Andhra Pradesh Vs National Thermal Power Corporation Ltd.* Further, as also referred to in the Judgment *ibid*, under the Sale of Goods Act, 1930, a purchaser of goods is liable to pay for it at the time of purchase or consumption and that the quantum and time of payment may be ascertained post facto either by way of an agreement or the relevant statute;
- (16) It is therefore clear from settled law that while the consumer uses electricity being a good, the distribution licensee charges for this electricity / good at the specified tariffs/ charges of electricity, which in the State of Himachal Pradesh are determined by the Ld HP Electricity Regulatory Commission (HPERC) vide its Tariff Orders passed in pursuance to Regulations framed under the

Electricity Act, 2003. Thereafter, these tariffs / charges are applied to the consumption of goods and thereafter a Bill or monetary demand is raised to the consumer;

- (17) Having gone through the instant case and having heard the matter by way of arguments extended by the parties, this Forum holds that there was mistake or bona-fide error by the Respondent HPSEBL in wrong posting of maximum demand (in kVA) in the Complainant's electricity bills from October 2020 to July 2021. This error caused the Complainant to be billed less in the said previous months and eventually resulted in the creation of past arrears / dues now recoverable from the Complainant. This fact has not been disputed by the Complainant;
- (18) This aforementioned fact not having been disputed by the Complainant, the Forum, on the anvil of ibid interpretation rendered by the Hon'ble Apex Court, also holds in the instant case that the Complainant as the purchaser of goods in the past, has consumed electricity and has availed maximum demand (in kVA) in the past, which were liable to be paid at the time of purchase or consumption in accordance with the prevailing statute and Tariff Orders passed by the Ld HPERC. The Respondent in the past had erred in not fully charging for this electricity / good at the specified tariffs/ charges of electricity. However, on this error being noticed later, the Respondent billed the Complainant as the purchaser of goods only for the shortfall arising due to wrong posting or punching of maximum demand (in kVA). Thus no fault can be found in the action of the Respondent to recover past dues as arrears of charges for electricity supplied;

- (19) Coming to the other issue, the Forum, in view of the settled position of law by the Hon'ble Apex Court referred to in paras supra, also does not find the impugned monetary demand to have been hit by the condition of limitation as provided under section 56 (2) of the Electricity Act, 2003. In the instant case the original monetary demands were raised on 31.10.2022 and 31.03.2023 (**Annexure R1 Colly**) and thereafter included in electricity bills dated 12.06.2023 and dated 09.08.2023 (**Annexure C1**). The Forum finds that the said monetary demands are still within the limitation period of 2 years as provided in the Act and as held by the Apex Court and the Respondent is well within its rights to raise the same. The condition of limitation only starts from the date the Bill/ Demand is raised, which is when the sum becomes first due and it is from this date that the period of limitation of 2 years as provided in section 56(2) of the Electricity Act shall start. The Forum is convinced that the impugned monetary demand is clearly not hit by the condition of limitation as provided under section 56 (2) of the Electricity Act, 2003, such having been raised in October 2022 and March 2023.
- (20) Thus on the anvil of the interpretations rendered vide ibid Hon'ble Apex Court Judgments referred supra on raising of past period arrears due to bona-fide error or mistake and also on the limitation given under section 56(2) of the Electricity Act, 2003, the Forum does not find any illegality in the impugned monetary demands raised by the Respondent and thus holds that the action by the Respondent HPSEBL is a legal one;
- (21) Further, this Forum is of the considered opinion that the Respondent HPSEBL being a distribution licensee cannot recover

any tariff / charges in excess of that specified by the Ld HPERC. These Tariff Orders lay out statutory charges. At the same time, it is also relevant in the context of the instant matter, that the Respondent HPSEBL being a distribution licensee, is bound to recover the cost / price of electricity consumed by a consumer, strictly as per tariffs /charges that are determined and specified by the Ld HPERC vide its Tariff Orders. Accordingly, the consumer is bound to pay for the electricity consumption at the determined tariffs / charges being of statutory nature. Any lapse, mistake or bona-fide error by the distribution licensee with regard to under recovery of actual tariff / cost / price of electricity, if not recovered from the respective consumer, who has availed the goods, may result either in permanent financial loss to the distribution licensee being a regulated public utility or with the burdening of this utility's loss upon other consumers. Both of these situations or eventualities are bad and against mandated provisions of Tariff Regulations on the matter;

- (22) The Forum is also of the considered opinion that wrong punching of availed maximum demand (in kVA) cannot allow free ride to consumer Complainant who is liable to make good any such loss to the Respondent and make payments towards this for the sole reason that electricity or power to that extent had actually been consumed and maximum demand (in kVA) availed by the consumer Complainant in the past. No one is entitled to adversely use the deficiencies in a system to their advantage, such as to cause loss in any way to the system. Not allowing such loss to be recovered likely results in malpractices and connivances which are detrimental to the system;

- (23) In the matter, this Forum concludes that the Respondent HPSEBL did make a bona-fide mistake / error in the past by missing to correctly raise statutory amounts in the original electricity bill arising out of non-punching / non-posting of availed maximum demand (in kVA), which resulted in less billing to the Complainant and which went unnoticed for some time. The Respondent is certainly within its legal rights to recover the statutory charges towards the maximum demand (in kVA) availed by the Complainant and to raise monetary demand towards past arrears or dues of statutory nature, not raised earlier due to any mistake as has been held in Hon'ble Apex Court Judgment dated 18.02.2020 in Civil Appeal 1672/2020 while interpreting section 56(2) of the Electricity Act, 2003. However, onus would still lie on the Complainant to show that such arrears have been calculated wrongly which is conspicuously missing on the part of the Complainant;
- (24) In view of foregoing, the Forum does not find force in both the complaints filed by the Complainant. No illegality is seen by the Forum in the impugned monetary demands of Rs 4,96,000/= and Rs 33,12,400/= (**Annexure R1 Colly**), total amounting to Rs 38,08,400/= raised by way of two demand notices dated 31.10.2022 and 31.03.2023 (**Annexure R1 Colly**) respectively along with calculation sheet (**Annexure R2**) further raised as sundry in electricity bills dated 12.06.2023 and dated 09.08.2023 (**Annexure C1**) respectively for the past period from October 2020 to July 2021, These monetary demands and respective sundries raised in said electricity bills are accordingly upheld by the Forum and the Complainant is liable to pay the same;

(25) In view of above, the Complainant is directed to pay the ibid impugned monetary demands, total amounting to Rs 38,08,400/=, in full within 10 days from this Order. In the event of non-payment of the same by the Complainant, the Respondent shall be at liberty to take action as per extant statute and Regulations governing the matter;

In aforesaid terms, the instant two complaints are decided on merits, in favour of the Respondents HPSEBL and against the Complainant. The complaints are accordingly **Dismissed** and disposed;

Parties are left to bear their own costs.

Order is announced before the parties present today on **05.12.2023** at Shimla in open Forum.

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

Date: 05.12.2023
Shimla

--Sd--

Anil Sharma
(Member)

--Sd--

Vikas Gupta
(Member)

--Sd--

Tushar Gupta
(Chairperson)

**CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI,
SHIMLA-9.**

Complaint No.: - 1515/2/23/18

Complaint No.:- 1515/202308/30

Date of Admission:-22.06.2023

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

In ref:-

M/s Shree Parvati Steel Alloys,
Village Kheri, Trilokpur Raod,
Kala Amb, Distt. Sirmour (HP)

Complainant

V/s.

HPSEBL & Others.

Respondents

1. The Executive Director (Pers.),
HPSEBL, Vidyut Bhawan,
Shimla-171004.
2. The Assistant Engineer,
Electrical Sub-Division HPSEBL, Kala Amb,
District Sirmour, (H.P.)

Respondents

Final hearing:- 21.11.2023.

Counsels:-

Complainant 1. Miss Narvada Kashyap, Advocate

Respondent 1. Sh. Rajesh Kashyap, Advocate

2. Sh. Kamlesh Saklani, U.S. Law

Date of Decision: -05.12.2023

Notice

**CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI
SHIMLA-171009.**

No.CGRF/Complaint No. 1453/202309/31

Dated:-

M/s Shree Parvati Steel Alloys,
Village Kheri, Trilokpur Raod,
Kala Amb, Distt. Sirmour (HP)

Complainant

V/s.
HPSEBL & Others.

Respondents

Complaint No. 1453/202309/31

1. The Executive Director (Pers.),
HPSEBL, Vidyut Bhawan,
Shimla-171004.
2. The Assistant Engineer,
Electrical Sub-Division HPSEBL, Kala Amb,
District Sirmour, (H.P.)

Respondents

The Certified copy of final order dated 05.12.2023 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.