

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI, SHIMLA-09
No. CGRF/Complaint No. 1522/2/22/12

Complaint No.:- 1522/2/22/12

Date of Admission:- 18.04.2022

Quorum:- Er. Tushar Gupta, Chairman
Er. Vikas Gupta, Member

In ref:-

M/s ATC Telecom Infrastructure Pvt. Ltd.,
25 KVA, Timbi 1313,
Tatiyana, Sirmaur,
173001, (HP).

Complainant

V/s.

HPSEBL & Others.

Respondents

1. The Executive Director (Pers.),
HPSEBL, Vidyut Bhawan,
Shimla-171004.
2. The Sr. XEN, Paonta Sahib,
Electrical Division,
HPSEBL, Sirmaur, H.P.,
3. The Assistant Engineer,
Electrical Sub-Division HPSEBL,
Shillai, Sirmaur(HP).

Respondents

Final hearing:-

31.01.2023

Present for:-

Complainant

1. Sh. Ravinder Singh Jaswal, Advocate.

Respondent

1. Sh. Anil Kumar, God, Advocate
2. Er. Ravishankar Chauhan, A.E. ESD, Shillai

Date of Decision:-

15.02.2023

ORDER

BRIEF FACTS OF THE CASE –

- (1) Complaint has been filed under the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 by M/s ATC Telecom Infrastructure Private Limited (in short referred to as M/s ATC Telecom or M/s ATC), 25KVA, Timbi 1313, Tatiyana-173001, District Sirmaur, Himachal Pradesh having registered Office at: B-320, 3rd Floor, Tower B, Bestech Business, Sector-66, Mohali (Punjab)-160062.

COMPLAINANT -

- (2) In its complaint, M/s ATC Telecom has submitted that it had entered into an Agreement dated 12.06.2019 with M/s Telecom Xcel (in short referred to as M/s Xcel) and taken over all its business including business at 25KVA, Timbi 1313, Tatiyana-173001, District Sirmaur, Himachal Pradesh. After taking over the business, M/s ATC was paying the electricity bills being generated by the Respondent Board and had never defaulted. M/s ATC further states that when the unit came into functioning in the year 2010, the previous company M/s Xcel had applied for a three phase connection. The Consumer ID of previous company M/s Telecom Xcel is 100002210567;
- (3) M/s ATC Telecom is aggrieved by the action of the Respondent HPSEBL to issue Sundry amount of Rs 12,83,629/= in impugned electricity Bill dated 17.11.2021 (Annexure C-1) in the name of M/s Telecom Xcel. M/s ATC submits that this amount has been raised at the behest of Audit-Report in respect of Internal Audit conducted for the Account period 04/2018 to 03/2020 (Annexure C-2 Colly). The Audit Report observes that there is a short assessment due to non levy of multiplication factor of 'three' (3), which should have been levied in energy bills, for the reason that electricity service

connection was released by installing 'single' (1) phase meter No. 043431 instead of 'three' (3) phase meter. This service connection was released vide SCO No. 0194793 dated 19/08/2010, effected on 25/08/2010, in the name of M/s Telecom Xcel;

- (4) In its Complaint as well as in the Rejoinder, M/s ATC has averred that even after the replacement of old meter with new meter in August 2020, there is no change in consumption vis-à-vis old meter and new meter is showing the same volume of consumption of units. When Bills were being raised on old meter for all the years since 2010, then who will be responsible for the mistake. That endeavors of Respondent Board reflect mala-fide approach, unfair trade practice and deficiency in service;
- (5) Further, in its Rejoinder, M/s ATC has submitted that, the fact of Agreement dated 12.06.2019 executed between M/s Xcel Telecom and M/s ATC is in the knowledge of the Respondent qua the unit in dispute along with other units of M/s Xcel Telecom. Hence M/s ATC has the right to file and maintain the present complaint against the Respondent HPSEBL. Further, M/s ATC is paying electricity bills of the Respondent even after the replacement of the old electricity meter with new meter by the Respondent in August 2020;
- (6) M/s ATC in its Rejoinder has further questioned the act of the Respondent to not replace the meter in all the past years since 2010 and that whether the said 3 phase meters remained in shortage in all these years and that the Respondent has not placed a single document on record before the Forum to prove their case. Further, the claim of the Respondent is beyond limitation in accordance with section 56(2) of the Electricity Act, 2003;
- (7) During the proceedings stage, M/s ATC also placed on record a letter dated 12.11.2009 by the Department of Telecommunication New Delhi, addressed

to M/s ATC, which is in terms of Department of Telecommunication taking on its record the change of name from M/s Xcel Telecom to M/s ATC;

- (8) M/s ATC has sought relief in terms of setting aside and quashing the ibid sundry amount of Rs 12,83,629/= in electricity Bill dated 17.11.2021 which is in the name of M/s Telecom Xcel.

RESPONDENT-

- (9) On the other hand, the Respondent HPSEBL has replied that M/s ATC has no cause of action and locus-standi to file the present complaint. Neither M/s Xcel Telecom nor M/s ATC have ever informed the Respondent about the change in ownership. As per consumer record, meter connection is still in the name of M/s Xcel Telecom. M/s XCEL Telecom had applied for three (3) phase connection in the year 2010 but due to non-availability of three (3) phase meter with the replying Respondent at that time, single phase meter was installed for which multiplying factor of 'three' (3) had to be applied as the consumer was availing / using 3 phase electricity supply. But inadvertently under a bona-fide mistake, the replying Respondent continued to issue bills till date without applying multiplication factor of three (3) which has caused huge financial loss. This mistake came into the knowledge of the Audit (RAO) party who had visited in the month of August 2020. Thereafter, vide Respondent's letter No 1048-49 dated 04.02.2021 (Annexure R Colly) addressed to M/s Xcel, a Notice for payment of Rs 12,83,629/= for the unbilled 2,33,048 units (or kWh) of electricity consumed, was issued. M/s ATC did not respond to this Notice. Due to ibid billing mistake of Respondent, the short assessment charges of Rs 12,83,629/= including current charges due to running bill, total amounting to Rs 12,94,788/= were charged vide Electricity Bill dated 17.11.2021 (Annexure C-1);

- (10) The Respondent has further replied that the demand raised is legal, justified and reasonable which is liable to be paid;
- (11) The Respondent HPSEBL has relied upon relevant clauses of the Sales Manual in support (Annexure R Colly);

FORUM

- (12) At the outset, the Forum observes that the complaint is opposed by the Respondent HPSEBL mainly on issue of its maintainability on grounds of M/s ATC locus-standi to raise grievance on behalf of M/s Xcel Telecom and file the instant complaint for the reason that as per consumer record, the meter connection is in the name of M/s Xcel Telecom and the Notice dated 04.02.2021 and impugned bill dated 17.11.2021 issued by the Respondent HPSEBL are also in the name of M/s Xcel Telecom;
- (13) Thus, as pointed out by Respondent HPSEBL, the Forum, before it can delve into the merits of the complaint, is constrained to verify the complaint and determine its admissibility and thus to first consider the issue of maintainability of the complaint on grounds of locus-standi of M/s ATC to raise a grievance and file and maintain the present complaint on behalf of M/s Xcel Telecom. Accordingly, the Forum hereinafter proceeds to examine the issue of maintainability of the instant complaint on grounds of locus standi of the Complainant to raise a grievance and file and maintain the instant complaint -
- (14) Forum observes that M/s ATC has not placed on record any document of Agreement, stated to be dated 12.06.2019, between them and M/s Telecom Xcel. During the proceedings in the case, several opportunities were afforded to the Complainant M/s ATC to place on record the ibid Agreement with the previous owner of the premises ie M/s Xcel Telecom, which the Complainant failed to comply and continued to delay the matter on one pretext or the other;

- (15) Forum also observes that Complainant M/s ATC has also not placed on record any Application to the Respondent HPSEBL or any Agreement between it and the Respondent HPSEBL in terms of Application and Agreement for new connection or for change in name / title. In the several opportunities afforded to the Complainant M/s ATC, the Complainant also failed to show to the Forum any such application or agreement which may exist with the Respondent HPSEBL;
- (16) However, the Complainant M/s ATC has relied upon a letter dated 12.11.2009 by the Department of Telecommunication New Delhi addressed to the Complainant. This letter was placed on record by the Complainant during the proceedings stages. The Forum finds and holds that this letter does not support the case of the Complainant, such pertaining to the year 2009 and written by the Department of Telecommunication to M/s ATC and not to the Respondent HPSEBL, whereas the Complainant has submitted in its complaint that it has taken over the business of M/s Xcel Telecom in Sirmaur district of Himachal Pradesh in the year 2019. The Forum therefore rejects the relevance of this letter in terms of the instant complaint preferred against the Respondent HPSEBL;
- (17) The Complainant M/s ATC has also relied upon an un-numbered, un-dated, un-signed letter (Annexure C2) to show that the Respondent HPSEBL was in knowledge of the M/s ATC. The Forum also rejects this contention of the Complainant as being baseless;
- (18) On examination of complaint, it is evident that the electricity connection, the Notice dated 04.02.2021 and the impugned electricity Bill dated 17.11.2021 containing the disputed sundry amount are all in the name of M/s Xcel Telecom and not in the name of M/s ATC;

- (19) The Forum is convinced that no Agreement for a new connection or for change of name / title, exists between M/s ATC and the Respondent HPSEBL. Apparently, since the year 2019, M/s ATC has not applied for new connection or change of name / title, while it may have been receiving electricity supply or may have also been paying for it as stated in the complaint. It is only after the impugned bill raised to M/s Xcel Telecom, that M/s ATC has awakened to file a complaint. The Forum is of the considered opinion that payment of bills raised by the Respondent is no proof to establish locus standi and further, that knowledge on the part of other party cannot be assumed. It is evident that M/s ATC is not recognized in the records of the Respondent;
- (20) On the other hand, the Respondent HPSEBL vide its Application dated 28.11.2022, has placed on record, the Application and Agreement (Annexure A Colly) with M/s Xcel Telecom, which depicts that a three (3) phase connection was applied by the applicant M/s Xcel Telecom which was approved by the Assistant Engineer and electricity connection released to M/s Xcel Telecom;
- (21) The Forum in unambiguous terms agrees with the Respondent HPSEBL that the complaint is not maintainable on grounds of locus standi of the Complainant M/s ATC to raise grievance and file and maintain the instant complaint on behalf of M/s Xcel Telecom and against the Respondent HPSEBL which has been filed in pursuance to impugned Bill dated 17.11.2021 (Annexure C-1) raised by the Respondent HPSEBL to M/s Telecom Xcel. Moreover, the electricity connection is also in the name of the M/s Xcel Telecom (Annexure R Colly), and the Notice dated 04.02.2021 (Annexure R Colly) is also in the name of M/s Xcel Telecom;
- (22) On foregoing terms, the Forum holds and concludes that the Complainant M/s ATC has failed to establish its locus standi to raise grievance and file and

maintain the present complaint on behalf of M/s Xcel Telecom. The Complainant has only woken up to prevent any adverse outcomes against a business;

(23) In view of foregoing, without going into the merits of the case or other issues which may have been raised by the Complainant, the complaint is decided against the Complainant on its maintainability on grounds of locus standi of Complainant to raise grievance on behalf of M/s Xcel Telecom and file and maintain the present complaint against the Respondent HPSEBL;

(24) In view of the locus standi not vested with the Complainant to file and maintain the present complaint, the Ad-Interim ex-parte Relief granted to the Complainant on 18.04.2022 stands vacated with immediate effect.

On aforesaid terms, the instant complaint filed by M/s ATC is Rejected. The complaint is decided on merits, in favor of the Respondents HPSEBL and against the Complainant.

Parties are left to bear their own costs.

Order reserved on 31.01.2023 is released today on 15.02.2023 in open Forum at Shimla, before the parties present.

Certified copies of this Order be supplied to the parties.

The original case file be consigned to record room along with this Order, for safe custody.

Place:-Shimla
Dated:-15.02.2023

-SD-

(Vikas Gupta)
(Member)

-SD-

(Tushar Gupta)
(Chairman)

Notice

Registered
CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI SHIMLA-171009.
No.CGRF/Complaint No. 1522/2/22/12 **Date:**

M/s ATC Telecom Infrastructure Pvt. Ltd.,
25 KVA, Timbi 1313,
Tatiyana, Sirmaur,
173001, (HP).

Complainant

V/s.

HPSEBL & Others.

Respondents

Complaint No. 1215/2/22/20

1. The Executive Director (Pers.),
HPSEBL, Vidyut Bhawan,
Shimla-171004.
2. The Sr. XEN, Paonta Sahib,
Electrical Division,
HPSEBL, Sirmaur, H.P.,
3. The Assistant Engineer,
Electrical Sub-Division HPSEBL,
Shillai, Sirmaur(HP).

Respondents

The Certified copy of final order dated 15.02.2023 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-171009.