

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI, SHIMLA-09
No. CGRF/Complaint No. 1413/3/19/027

Complaint No.: - 1413/3/19/027

Date of Admission: - 06.08.2019

Quorum: - Er. Satish Kumar Verma, Chairman.
Er. Vikas Gupta, Member
Sh. K.S Dhaulta, Member.

Sh. Randeep Singh S/o late Sh. Satinder Singh,
R/o Village Molo Kala, P.O. Oachghat,
Tehsil & Distt. Solan (HP).

Complainant

V/s.

HPSEBL & Others.

Respondents

1. The Executive Director (Pers.),
HPSEBL, Vidyut Bhawan,
Shimla-171004.
2. Sr. Executive Engineer,
Electrical Division, HPSEBL,
District Solan (HP).
3. Assistant Engineer,
Electrical Sub-Division No.III HPSEBL,
Tehsil & Distt. Solan (HP).

Respondents

Final hearing:-

26.02.2021

Present for:-

Complainant

1. Sh. O.C. Sharma, Advocate

Respondent

1. Sh. Kamlesh Saklani, Law Officer HPSEBL
2. Er. Dinesh Thakur, A.E.
3. Er. Yashwant Singh, J.E

Date of Decision: -

26.02.2021

ORDER

1. Briefly stated facts of the case are that the complainant is aggrieved with the allegedly wrongful, illegal, unjustified and arbitrary demand for Rs.69,680/- raised through demand notice dated 08.12.2017 by Respondent No.3 at the instance of RAO Audit Party Shimla on account of unauthorised extension of load under section 126 of Electricity Act, and thereafter raised through monthly energy bill dated 20.04.2018 for Rs.69,680/- and in the bills dated 16.05.2018 for Rs.72,396/- and thereafter again through demand notice dated 09.05.2019 for Rs.95,378.53 and presently raised in the monthly energy bill dated 15.07.2019 for Rs.99,757.77 Paisa by levying surcharge on the initially raised demand of Rs.69,680/-.
2. The complainant has submitted that the calculation and assessment of Rs.69,680/- for unauthorised extension of load for the period June 2016 to June, 2017 under section 126 of the Act by RAO is without jurisdiction and illegal. Ld. Counsel for the complainant vehemently argued that respondent No.3 has not made any inspection of the installations of the complainant and personally carried out any inspections of the records for detecting any unauthorised use of electricity or unauthorised extension of load. On the contrary it was made by J.E. who is not competent and an authorised "Assessing officer" designated by government.
3. The Respondent Board filed its reply rebutting the contents made in the complaint. The Respondent's counsel/Law officer argued that the demand notices have been issued strictly in terms of the regulations set forth by HPERC, Supply Code, sales manual and provisions of regulations, which clearly stated that in use of excess load, complainant/consumer is liable to pay energy and demand charges as per two part tariff. Thus, the demand raised by the Respondent Board is legal, justified and as per rules and regulations and complainant is liable to pay the same.
4. The Ld. Law officer of Respondent Board during the course of arguments referred to clause 6.1 of the supply code. 2009, dealing with unauthorised use of electricity and submitted that the issue is squarely covered under it. The respondent issued energy bills and levied surcharge on the initial demand as per the sales manual and supply code for unauthorised extension of load for the period June. 2016 to June, 2017. The checking/inspection was carried out by respondent's authorised Engineer in July, 2017 of the premises for connected load of commercial supply consumer being K. No. 1121B17862 (Sh. Randeep Singh) having sanctioned load of 18.06 KW. Respondent Board further submitted that during such checking it was found that the consumer had unauthorisedly extended connected load to his premises to 49.80KW. The consumer was found to have installed the additional appliances by itself for which no sanction of competent authority

was obtained. The complainant is thus able to pay energy and demand charges as per two part tariff applicable for the small industrial supply consumer.

5. The RAO Audit Party has also observed in its findings that extension of load bears no prior sanction of the competent authority, as such enhanced energy charges under the provisions of section 126 of the IEA, 2003 were also required to be levied and recovered till the either removal of the unauthorised extension or regularisation by the competent authority, Accordingly the account of consumer was overhauled during audit period June 2016 to June 2017 charged for and loss on account of non-levy of demand and energy charges, as per two part tariff and enhanced charges under section 126 of IEA, 2003 of Rs.69,680/-.
6. We have heard the parties and gone through the provision of IEA, 2003, Supply Code, 2009 and the record brought before us during the course of hearings.
7. We find force in the arguments of the Ld. Counsel for complainant that the fact on record is established regarding demand notice issued dated 18.12.2017 (C1) in pursuance of section 126 of IEA, 2003 and provisions of clause 6.1 of the Supply Code, 2009. The counsel further submitted that present demand notice has been issued without complying with the mandatory provisions of section 126 of IEA, 2003 by the Respondents.
8. Further the law provide for assessment and inspection of any place or premises by Assessing Officer to provisionally assess to best of his judgment, the unauthorised use of electricity and electricity charges payable by that person or any other person benefited by such use. Similarly the section 126 provide for revise of such provisional order upon the person in a manner, as may be prescribed, to facilitate to file objections etc., if any, against such assessment. The Ld. Counsel again submitted that the section 126 of IEA, 2003 provide explanation for “assessing officer” which clearly mean an officer of a State Government or Board or licensee, as the case may be, designated as such by the state government.
9. The notification dated 14.06.2011 issued by Pr. Secy. (Power) to the Government of Himachal Pradesh placed on record by the complainant regarding designation of officers of HPSEBL, as “Assessing Officers” in terms of section 126 of aforesaid Act, in the state of Himachal Pradesh for various categories of consumers. It clearly stated that for L.T. consumers the Assessing Officers shall be Assistant Engineer/ Assistant Executive Engineer/Executive Engineer with in their respective jurisdiction/Sr. Executive Engineer/Addl. Superintending Engineer of Head office flying squad unit in respect of the inspections caused out by him.
10. Thus, in the present case, as is evident from the record, and the objections raised by RAO Audit Party placed on record as Annexure-A that checking/ inspection was made in July, 2017 by the Junior Engineer, who was not competent for assessment of unauthorised use of electricity etc., as

per provisions of section 126 of IEA, 2003 and Supply Code 2009. The said demand thus, become illegal or arbitrary if issued in violation/non-compliance of the mandatory provisions of law on the matter.

11. We have also perused the clause 6.1 of the supply code, 2009 which specifically deals with unauthorised use of electricity. Clause 6.1.1 clearly provide for an “assessing officer”, designated as such by the State Government under section 126 of the IEA, 2003, who will, suo-moto or on receipt of information/complaint regarding “unauthorised use of electricity” shall promptly inspect such premises. In the present case we find no such inspection of the premises of the complainant made by an “assessing officer” for unauthorised use of electricity even after the report/checking of J.E. concerned in July, 2017. This major lapse or non compliance of the mandatory provisions of act ibid can't be ignored to sustain the demand notice issued against the complainant solely based on the objections of RAO Audit Party. We find it hard to accept the plea of the respondents that the demand notice has been issued as per provisions of supply code, HPERC regulations or sales manual provisions etc. It's settled proposition that no provisions of regulations/code etc. can override the provisions of IEA, 2003. It's mandatory for the Respondent Board to comply with section 126 of IEA, 2003 and provisions of clause 6.1 of Supply Code, 2009, while assessing un-authorized use of electricity by a consumer before levying any demand charges as per rules and norms on the matter.
12. It is established from the record and pleadings of the parties that no assessment for unauthorised use of electricity by complainant was made by any authorised/designated “Assessing officers”. The demand notice dated 18.12.2017 (C-1) and subsequent notices levying surcharge on initial demand notice have been found to be issued on objections raised by RAO Audit Party, which are based on checking by Junior Engineer made in July, 2017, who was not competent to assess, as per section 126 of IEA, 2003 and Supply Code 2009, for unauthorised use of electricity. Thus, the demand notice for Rs.69,680/- dated 18.12.2017 (C-1) for unauthorised use of electricity is found to be issued without complying with the provisions of section 126 of IEA, 2003 and clause 6.1 of the Supply Code, 2009 i.e. without carrying out inspection by designated “Assessing Officer” and assessment made thereof by said officer/ competent authority. Further there is no record of any additional appliances added by the consumer, as alleged or found to have been installed without the permission of competent authority, to establish the unauthorised use of electricity. The Ld Counsel for the complainant also cited case laws in support of his contentions. The Hon'ble High Court of H.P in CWP (T) No. 3563 of 2011-D titled M/s Kulja Industries Limited V/s HPSEBL, and others decided on 22.03.2012; has held that provisional assessment and revised assessment

carried out by the authorities, who have no authority or jurisdiction under law and these assessment are non-est. Accordingly the court quashed and set-aside such assessments.

13. In view of the discussions made here-in above, the instant complaint is allowed. The impugned demand notice dated 08.12.2017 (Annexure C-1) and subsequent bills raised by levying the surcharge on the initially raised demand of C-1 are quashed and set-aside, being made in violation or non-compliance of the provisions of the section 126 of Indian Electricity Act. 2003 and clause 6.1 of Supply Code, 2009. However, the liberty is reserved to the Respondents to proceed with the matter strictly in accordance with law.
14. With these observations/discussions made herein above, the present complaint stand disposed of, as also pending application(s), if any. Parties are left to bear their costs.
15. Announced before the parties present at Kasumpti, Shimla on 26.02.2021.

The File be consigned to record room after due completion. A copy of the order be kept in safe custody of folder of orders. The certified copy of these orders be supplied to both the parties.

Dated:-26.02.2021

Place:- Shimla

Sd/-
(K.S.Dhaulta)
(Member)

Sd/-
(Vikas Gupta)
(Member)

Sd/-
(Satish Kumar Verma)
(Chairman)

Notice

Registered
CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI SHIMLA-171009.

No.CGRF/Complaint No. 1413/3/19/027

Dated:-

Sh. Randeep Singh S/o late Sh. Satinder Singh,
R/o Village Molo Kala, P.O. Oachghat,
Tehsil & Distt. Solan (HP).

Complainant

V/s.

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Respondents

Complaint No. 1413/3/19/027

1. The Executive Director (Pers.),
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District Solan (HP).
3. Assistant Engineer,
Electrical Sub-Division No.III HPSEBL,
Tehsil & Distt. Solan (HP).

Respondents

The Certified copy of final order dated 26.02.2021 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.