

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI, SHIMLA-09
No. CGRF/Complaint No. 1421/1/20/003

Complaint No.: - 1421/1/20/003

Date of Admission: - 16.01.2020

Quorum: - Er. Sanjay Dewan, Chairman.
Sh. K.S Dhaulta, Member.

M/s Plato Industries Limited,
Plot No. 10, Sector 3, Industrial Area,
Parwanoo, Tehsil Kasauli,
District Solan (HP).

Complainant

V/s.

HPSEBL & Others.

Respondents

1. The Executive Director (Pers.),
HPSEBL, Vidyut Bhawan,
Shimla-171004.
2. The Sr. Executive Engineer,
Electrical Division HPSEBL, Parwanoo,
Teh. Kasauli, District Solan (HP).
3. Assistant Engineer,
Electrical Sub-Division HPSEBL, Parwanoo
Teh . Kasauli Distt. Solan (HP).

Respondents

Final hearing:-

20.08.2020

Present for:-

Complainant

1. Sh. O.C. Sharma, Advocate

Respondent

1. Sh. Anil Kumar God, Advocate
2. Sh. Dinesh Kumar, JOA, Parwanoo

Date of Decision: -

20.08.2020

ORDER

1. The present Complaint has been filed against the Respondent Board for raising Demand Notice dated 22.07.2019 amounting to Rs.3,89,727/- on account of un-billed Peak Load Violation Charges for the period 2004-2010 on the ground that it is time barred as per the provision of Section 56(2) of Electricity Act 2003.
2. The Respondent Board in their reply stated that an Audit was done in the year 2011-12 by RAO Party in respect of Electrical Sub-Division Parwanoo and it was pointed out by the RAO Party that the HPERC in its Tariff order applicable from time of time introduced the concept of two part Tariff which interlayer provide levy of Demand and Energy Charges besides Peak Load Violation Charges which is based on data down loaded from the meter by way of MRI as such the Complainant is liable to make the payment of Peak Load Violation Charges which comes to Rs. 3,89,727/-. The Respondent Board admitted that Notice dated 22.07.2019 was issued for unbilled amount Rs. 3,89,727/- pertaining to the period 2004 to 2010. The Respondent Board further stated that the present Notice is not time barred as the limitation period will start from the date when the Demand Notice was served upon the Complainant and not prior to that date. The Ld. Counsel for Respondent Board also referred to the latest law laid by Hon'ble Supreme Court of India in a case **Titled Assistant Engineer DI Ajmer Vidvut Vitran Nigam Limited and Anr. V/s Rahamatullah Alias Rahamjulla in SLP (CVR) No.5190 of 2019 decided on 18.02.2020.** The Hon'ble Apex Court has held that limitation period begins to run from the date when mistake is discovered for the first time. The Court also held that Section 56(2) of the Electricity Act, 2003 did not preclude the licensee company from raising on additional or supplementary demand after the expiry of the limitation period under section 56(2), in case of a mistake or bonafide error.
3. The Complainant in its Rejoinder stated that the provisions of the Tariff are not under challenge in his Complaint, but it is the timeliness of raising the Demand Notice and the correctness of the data and calculation of demand that is being questioned by him. The provisions of the Peak Load Violation were well known to the Respondent even at the time when the monthly bills were issued. The Respondents, have however, lost their right to claim such dues, if any, as they are hopelessly time barred.

4. We have heard both the Parties and have gone through the case file carefully. It has been admitted by both the parties that the instant Demand Notice was issued on 22.07.2019, keeping in view the RAO Report of the year 2011-12 vide which shortages pertaining to the year 2004 to 2010 were pointed out for the first time. It is also a fact that the arrears on account of unbilled Peak Load Violation Charges were never carried forward in the monthly bills during the period 2004 to 2010 and subsequent months till the demand of 22.07.2019 was raised by the Respondents.

5. Section 56 (2) of Electricity Act reads as follows:-

“Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this Section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

Para 5.6.2. of the Supply Code reads as follows:-

“Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this Code shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied.”

6. We have also perused the latest law on the matter as laid by the Hon'ble Supreme Court in a case **Titled Assistant Engineer DI Ajmer Vidyut Vitran Nigam Limited and Anr. V/s Rahamatullah Alias Rahamjulla in SLP (CVR) No.5190 of 2019 decided on 18.02.2020.** The Hon'ble Apex Court has held that limitation period begins to run from the date when mistake is discovered for the first time. The Court also held that Section 56(2) of the Electricity Act, 2003 did not preclude the licensee company from raising in additional or supplementary demand after the expiry of the limitation period under section 56(2), in case of a mistake or bonafide error. We are of the opinion that there is force in the contentions of the Respondent Board that the period of the limitation would start from 22.07.2019 when said notice was issued, is justifiable in view of the settled position of law on the matter as referred above. The Hon'ble Apex Court has clearly held

that Sec. 56 (2) of Electricity Act, 2003, did not preclude the licensee company from raising additional or supplementary demand after expiry of the limitation period under section 56(2), in case of a mistake or bonafide error.

7. Thus, the contention of the complainant on limitation and time barred demand as per section 56(2) and Para 5.3.2 of Supply Code, 2009 can't hold good after latest law laid by Hon'ble Supreme Court on the matter. Therefore, this Forum find no illegality in the demand notice on the plea raised by the complainant of limitation and being time barred, as per Section 56(2) of Act, 2003. We will go into the facts of the case to decide the complaint effectively.
8. The issued demand raised by the Respondents after above refund period on the basis of Audit report for the period 2004 to 2010 was examined on facts and record. The Respondents were asked to support the demand of previous years on (MRI) metering data for the relevant period. The authorised representative of the Respondent Board submits that no such data to establish and support the demand notice dated 27.07.2019 (Annexure C-1), for energy bills for the year 2004 to 2010, is available and its purely based on the Audit report dated 2011-12 conducted by RAO party. The audit party has also not calculated the amount of energy consumption charges consumed by complainant during peak load hours on the basis of meter reading (MRI) data for the relevant period, as is evident from the record and reply of Respondents. The demand of the Respondents is based upon the Audit report of 2011-12, which had calculated it in accordance with the relevant Tariff Order.
9. We find it hard and not plausible to agree to the arguments of the Respondent board to allow the demand raised that too without any supporting factual (MRI) data available for relevant period. Without any supporting record of actual consumption of electricity made by complainant during peak load hours during August, 2004 to December, 2010, how the demand can be justified purely on relevant tariff orders. The demand of Rs.3,89,727/- raised through demand notice dated 22.07.2019 and subsequently through monthly energy bill date 19.11.2019 on account of Peak Load Violation Charges (PLVC) for the period of August, 2004 to December, 2010, is found to be without any supporting MRI data relating to energy consumption, and thus, not legally and factually sustainable in the eyes of law.

10. The complainant consumer was levied charges during August 2004 to December 2010, for the quantum of load drawn, as per admission of Respondents in reply, for the consumption of 1419582 units during peak load hours. Thus, there is no justification and legality in the demand notice dated 22.07.2019 Annexure C-1 for Rs. 3,89,727/- on account of peak load violation charged w.e.f. 08/2004 to 12/2010, that too without any supporting (MRI) data of energy consumption during peak hours for said period to establish violation of peak load against complainant.
11. Accordingly the complainant is allowed. The demand notice dated 22.07.2019 Annexure C-1, raised against the complainant by respondent for Peak Load Violation Charges w.e.f. 08/2004 to 12/2010, is found to be illegal/wrong and quashed and set-aside accordingly. In aforesaid terms and on facts on record adduced during the course of hearing by the parties before this Form, the complaint is decided in favour of the complainant in the interest of justice. The Respondent Board is further directed not to disconnect the power supply connection of complainant qua aforesaid demand.
12. The Interim order, if any, shall also stand vacated. The parties are left to bear their own costs.

Announced before the parties present at Shimla on 20.08.2019.

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:-20.08.2020

Place:- Shimla

Sd/-
(K.S. Dhaulta)
Member

Sd/-
(Sanjay Dewan)
Chairman

Notice

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI SHIMLA-171009.

No.CGRF/Complaint No. 1421/1/20/003

Registered

Dated:-

M/s Plato Industries Limited,
Plot No. 10, Sector 3, Indst. Area,
Parwanoo, Tehsil Kasauli,
District Solan (HP).

Complainant

V/s.

HPSEBL & Others.

Respondents

Complaint No. 1421/1/20/003

1. The Executive Director (Pers.),
HPSEBL, Vidyut Bhawan,
Shimla-171004.
2. Sr. Executive Engineer,
Electrical Division HPSEBL, Parwanoo,
Teh. Kasauli, District Solan (HP).
3. Assistant Engineer,
Electrical Sub-Division HPSEBL, Parwanoo
Teh . Kasauli Distt. Solan (HP).

Respondents

The Certified copy of final order dated 20.08.2020 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.