

**CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI,
SHIMLA-09
No. CGRF/Complaint No. 1453/1/23/08**

Complaint No.: - 1453/1/23/08

Date of Admission: -20.02.2023

**Quorum: - Er. Tushar Gupta, Chairman
Er. Vikas Gupta, Member
Sh. K.S. Dhaulta, Member**

In ref:-

M/s Renny Steels
Village Kunjhal,
PO Barotiwala Tehsil Baddi,
Distt. Solan H.P.

Complainant

V/s.

HPSEBL & Others.

1. The Executive Director (Pers.),
HPSEBL, Vidyut Bhawan,
Shimla-171004.
2. The Sr. XEN, (E) Division Nahan,
HPSEBL, Baddi,
Distt. Solan, (H.P.)
3. The Assistant Engineer,
Electrical Sub-Division Barotiwala,
HPSEBL, District Solan (H.P.).

Respondents

Final hearing:-09.05.2023

Counsels:-

Complainant

1. Sh. Rakesh Bansal, (Auth. Rept.)

Respondent

1. Sh. Anil Kumar God, Advocate
2. Sh. Kamlesh Saklani, Under Secretary Law

Date of Decision: -09.05.2023

ORDER

Complaint No 1453/1/23/08
Complaint No 1453/1/23/10

M/s Renny Steels
Vs
Himachal Pradesh State Electricity Board Ltd and Ors

BRIEF FACTS OF THE COMPALAINTS –

- (1) Two (2) complaints have been filed by the Complainant M/s Renny Steels, Village Kunjhal, PO Barotiwalla, Tehsil Baddi, District Solan (HP)-174103, under regulation 16, 17 and 18 of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. The Complainant is a Large Industrial Power Supply (LIPS) category consumer of the Respondent HPSEBL, bearing Consumer ID 100012001923;
- (2) The ibid two complaints were filed in February 2023;
- (3) On examination of these complaints and Orders of the Hon'ble High Court, it is found that in these matters, Hon'ble High Court of HP has passed two (2) Orders on-
 - (i) 05.12.2022 (Annexure-C10 of Complaint 1 / Annexure-C5 of Complaint 2) in Civil Writ Petition CWP 8203 of 2022; and
 - (ii) 13.12.2022 (Annexure-C11 of Complaint 1 / Annexure-C6 of Complaint 2) in Civil Writ Petition CWP 3849 of 2019.
- (4) The Complainant has come before the Forum in compliance of the ibid Orders passed by the Hon'ble Court on 05.12.2022 and 13.12.2022;
- (5) The Hon'ble High Court in ibid Order dated 05.12.2022 (Annexure-C5), has directed this Forum to decide the matter on its own merits and in accordance with law and without being influenced by the said Order;
- (6) The Hon'ble High Court in its Order dated 13.12.2022 (Annexure-C6), has also directed the petitioner, now Complainant, to raise all contentions before this Forum;

- (7) In compliance of the Orders of the Hon'ble High Court, the Forum deem it expedient and proper to club the complaints and dispose both the complaints by way of this single Order recorded here-in-below—

COMPLAINANT:

(A) Complaint No 1453/1/23/08:

- (8) The Complainant has raised the following questions by way of arguments, to the Forum:-
- (a) Whether a lockout is covered under force majeure condition for application of tariff?;
 - (b) Whether the Complainants case fulfils the condition laid down in the definition of Force Majeure in the Tariff Order?;
 - (c) Whether the late payment surcharge applied progressively on the overcharged amount, which was not paid by the complainant justified?.
- (9) The ibid questions are in context of meaning of Force Majeure, a provision existing at clause 'E' of Annexure 1 of the Schedule "General Conditions of Tariff" in the Tariff Orders passed by the Ld HP Electricity Regulatory Commission (or the HPERC);
- (10) Briefly, the Complainant has submitted that where Notice of 3 days is mandated as per ibid clause, the Complainant served Notice of 18 days by way of letter dated 27.11.2019 (Annexure C3) upon concerned Assistant Executive Engineer, before shutting down the manufacturing operations from 15.12.2019 and this is evident from the energy bills and therefore no further evidence is required. Thus the Complainant is eligible for relief in terms of proportionate reduction of fixed charges or demand charges under the force majeure conditions;
- (11) The ibid Notice dated 27.11.2019 by way of letter addressed to the concerned Assistant Executive Engineer, is for the shutdown of the Complainant's unit from 15.12.2019 due to financial problem being out of control. Thereafter on 27.11.2020 (Annexure C3), Complainant intimated its intention of resuming production from December 2020 to the concerned the Assistant Engineer;

- (12) The Complainant has sought relief mainly in terms of directions by the Forum to the Respondent HPSEBL to reverse / reduce the excess demand charges to the extent of Rs 1,45,29,758.50 and further directions to Respondent to reduce the late payment surcharge on excess demand charges.

(B) Complaint No 1453/1/23/10:

- (13) In this complaint also, the Complainant has raised the following questions by way of arguments to the Forum:-

- (a) Whether the late payment surcharge is leviable for full month even when payment is late by part month, a single day or by a few days or for the actual period of delay on pro-rata basis ?;
- (b) Whether the Late Payment Surcharge can be compounded, meaning thereby that is the late payment surcharge allowed to be levied on late payment surcharge ?;
- (c) Whether 12% simple interest can be applied in the default cases ?.

- (14) The ibid questions are in context of meaning of provision of Late payment Surcharge (LPS) existing at clause J of Annexure 1 of the Schedule “General Conditions of Tariff” in the Tariff Orders passed by the Ld HP Electricity Regulatory Commission (or the HPERC);

- (15) The Complainant has also mentioned an Order by the Hon’ble Karnataka High Court and referred to some section 206C (7) with reference to the interest on income tax and section 8 of the Cess Act to interpret the ibid definition of late payment surcharge. However, no Order of Hon’ble High Court of Karnataka was found on record;

- (16) The Complainant has sought relief mainly in terms of directions by the Forum to the Respondent HPSEBL to overhaul the account of the arrears of the Complainant by charging late payment surcharge on the basis of actual delay period at the rate applicable or as an alternative directions to Respondent to levy 12% simple interest on the late payments due to financial hardship faced by it and further directions to Respondent to overhaul the arrears by segregating the principle due, late payment surcharges and other charges.

RESPONDENT:

(17) On the other hand the Respondent has replied as follows:-

(A) Complaint No 1453/1/23/08:

- (18) Complaint is barred by limitation, as the alleged lock out of premises took place in December 2019 and as per sub-regulation 19(c) of the HPERC(CGRF and Ombudsman) Regulations, 2019, complaint is not maintainable after 2 years;
- (19) Complaint is an afterthought, as it has been filed after receiving Demand Notice dated 07.11.2022 (Annexure C6) on account of non-payment of Rs 9,23,72,139/=;
- (20) That mere stating of financial difficulties cannot be considered Force Majeure and thus Complainant cannot claim benefit on account of this. As per condition of definition in HPERC Tariff Order, Force Majeure has to be considered by the Respondents, which factually has not been considered by the Respondents. The Complainant is bound to pay Demand Charges as per its Contract Demand and lock down is just an excuse to avoid payment of statutory liability. In accordance with the HPERC Supply Code, the Complainant had the option to reduce Contract Demand which was not exercised by it;
- (21) That Late payment Surcharge (LPS) is a statutory levy and its objective is to enforce or encourage timely payments which the Complainant is bound to pay;
- (22) Thus, complaint is liable to be dismissed.

(B) Complaint No 1453/1/23/10:

- (23) That alleged controversy put forth by the Complainant in the shape of complaint relates to interpretation of Tariff Order, which falls within the domain of the Hon'ble HP Electricity Regulatory Commission (or the HPERC), thus the complaint is not maintainable before the Forum in accordance with clause V of Part-I: General Conditions of Tariff;
- (24) Complaint is barred by limitation, as the issue pertains to the year 2019 and as per sub-regulation 19(c) of the HPERC(CGRF and Ombudsman) Regulations, 2019, complaint is not maintainable after 2 years;
- (25) The judgement rendered by the Hon'ble High Court of Karnataka, being referred by the Complainant, is even before the enactment of the

Electricity Regulatory Commissions Act, 1998. Tariff Orders are being issued by the Ld HPERC after this Act and after the enactment of the Electricity Act, 2003;

- (26) As per contention of the Complainant the Respondent is wrongly charging Late Payment Surcharge (LPS), whereas this provision exists since long in the Tariff Orders passed by the Ld HPERC. The Complainant has not filed objections and suggestions before the Ld HPERC during the time of issuance of Tariff Orders by the Ld HPERC with regard to this provision being raised in this complaint, which the Ld HPERC had sought from stake holders;
- (27) In view of above, the complaint is liable to be dismissed.

ORDER

- (28) The Forum has examined the instant two complaints on merits-
- (29) The Forum has also 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 notified by the HPERC, amendments thereto, the Tariff Orders passed by the Ld 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;
- (30) At the outset Forum finds that the Complainant has approached this Forum to answer argumentative questions reproduced supra and to consequently seek relief. These questions are in terms of provisions of Force-Majeure and Late Payment Surcharge contained in the yearly Tariff Orders passed by the Ld HPERC and thus these constitute the two issues for determination by this Forum;
- (31) The Forum is of the considered opinion that despite the fact that the Forum is not bound to answer questions raised by way of complaints, yet the Forum feels it necessary to briefly delve on these provisions of Force

Majeure and Late Payment Surcharge appearing respectively as clause/ para 'E' and 'J' under Part-1 in Annexure -1 General Conditions of Tariff and Schedule of Tariff contained in the Tariff Orders. These are reproduced here-in-after for the sake of clarity –

(i) Tariff Orders in general passed by the Ld HPERC:

Quote

E. Force Majeure Clause: In the event of lockout, fire or any other circumstances considered by the HPSEBL to be beyond the control of the consumer, he shall be entitled to proportionate reduction in demand charge or any other fixed charge, if applicable, provided he serves at least 3 day notice on the supplier for shut down of not less than 15 days duration.

Un-Quote

(ii) Tariff Order (MYT) dated 29.06.2019 and earlier passed by the Ld HPERC:

Quote

J. Late Payment Surcharge (LPS): Surcharge for late payment shall be levied at the rate of 2% per month or part thereof, on the outstanding amount excluding electricity duty/ taxes for all the consumer categories.

Un-Quote

(iii) Tariff Orders passed after 29.06.2019 passed by the Ld HPERC:

Quote

J. Late Payment Surcharge (LPS): Surcharge for late payment shall be levied at the rate of 1.5% per month or part thereof, on the outstanding amount excluding electricity duty/ taxes for all the consumer categories.

Un-Quote

(A) Complaint No 1453/1/23/08:

- (32) The Forum now takes up and delves on the first issue of Force Majeure raised by the Complainant and reproduced in paras supra, which is a general provision of the Tariff Orders passed by the Ld HP Electricity Regulatory Commission (or the HPERC) -
- (33) From examination of the complaint, the Forum finds that the Complainant seeks waiver of 'Demand charges' on grounds of Force Majeure. The Complainant has invoked the general provision of Force Majeure as existing in para / clause 'E' of Tariff Orders reproduced in paras supra, to seek waiver of ibid demand charges. These demand

charges along with other charges, are specified by the Ld HPERC in its Tariff Orders and are payable at the specified rates by the consumers of the State of Himachal Pradesh which includes the Complainant. These 'Demand charges' become payable based upon the demand (in kVA or MVA) contracted by the Complainant. The Forum further finds that whereas the Complainant could have exercised the right available to it to manipulate its Contract Demand (in kVA or MVA) for the reduction of its demand charges, this has not been done by the Complainant;

(34) After examining the Tariff Orders passed by the Ld HPERC, the Forum also finds that the fixed costs incurred by the Respondent distribution licensee are recovered by the Respondent HPSEBL by way of ibid demand charges as well as other charges, of fixed or variable nature, that are specified by the Ld HPERC. These are payable even if the consumer feels that it has not availed of the goods or services. This happens for the simple reason, that these are fixed costs incurred by the distribution licensee for putting in place a system of men, machinery and other assets to give service or goods to the consumer. These may not be apparent to the consumer. It is for this reason that these fixed costs is allowed by the Ld HPERC to be recovered from the consumers by way of tariffs specified in Tariff Orders passed by it. All the charges specified by the Ld HPERC are by way of Tariff Orders passed by the Ld HPERC in pursuance to the law laid down in terms of Electricity Act, 2003 and Regulations framed thereunder and are accordingly of statutory nature. These statutory charges are bound to be recovered by the Respondent distribution licensee. Not allowing these statutory costs to be recovered from a particular consumer may cause these to be recovered from other consumers or to cause permanent loss to the distribution utility, both of which eventualities are bad and against the mandated provisions of the law;

(35) Thus, once it becomes clear that tariffs in a Tariff Order are payable by all consumers in a category as may be specified by the Ld HPERC, the Forum holds that for a particular consumer to be charged a different tariff

- or to be exempt from paying the applicable tariff, a separate Order by the Ld HPERC under the law is sin-qua-non;
- (36) Further, in the context of Force Majeure, the Forum is of the considered opinion that conditions of Force Majeure have to be external and beyond the control of an entity purchasing goods / services from another entity and vice-versa and these conditions have to be such as to make it impossible at that time for the entity to meet its obligations towards the other entity. In general, conditions of Force Majeure for an entity have to be of the nature of natural calamities, an act of god or strikes / lockouts by the workers etc, all of which are external in nature and beyond the control of an entity;
- (37) The Forum is also of the considered opinion that conditions of financial crisis in the industry / organization, leading to disruption of its business, as is in the instant matter, is certainly not of external nature and certainly does not constitute Force Majeure for the simple reason that such financial crisis arising in an entity may have been gradually building up over years and may be due to its own mismanagement or its own acts of negligence. Similar is the condition under plant maintenance either of forced or of planned nature etc compelling a plant to shut down even for long periods. Assumption by any party of financial crisis or of plant maintenance being of internal nature, causing plant shutdown, are not seen anywhere by this Forum to mean Force Majeure. Further, Force Majeure certainly does not imply purchasing a good or a service by an entity which carries a cost to the other entity and then not paying for it later on the pretext of its inability to do so for whatever reason. Even under the condition of Force Majeure, the obligation merely tends to get deferred but does not cease. Assuming otherwise shall tend to be wrong and overly misplaced;
- (38) Further, the Forum observes that the provision of Force Majeure in Tariff Orders reproduced in paras supra is conditional in nature. In order to give effect to these conditions of Force Majeure and on its scope and implementation, the Forum finds that the scope and implementation of

- Force Majeure has not been left to whims and fancies of individual parties;
- (39) The Forum, also observes that the condition of the Force Majeure as provided in Tariff Orders has to be considered by the Respondent HPSEBL as one of that being beyond the control of the Complainant. The Forum after examining the record, finds that the Complainant has no-where brought on record before the Forum any such necessary consideration from the side of the Respondent HPSEBL and merely by virtue of its intimation (Notice dated 27.11.2019 - Annexure C3) to the Respondent HPSEBL, has on its own wrongly assumed and wrongly concluded that the conditions of financial crisis faced by the Complainant was that of Force Majeure fitting into the meaning of the provision of the Tariff Order reproduced supra and that therefore it was entitled to benefit and relief under it;
- (40) Accordingly, it becomes clear that the *ibid* provision casts obligation upon parties / businesses to come into specific Contract / Agreement on the scope and implementation of Force Majeure. Further, as held by Forum in para supra, once a Tariff Order becomes binding, waiver of any charge is not at discretion and can be done only with the explicit permission of the Ld HPERC, whereby an Order by the Ld HPERC is *sin-qua-non*;
- (41) In the complaint before it, the Forum does not find any specific legally binding Agreement / Contractual terms to exist between the Complainant and the Respondent so as to invoke and give effect to the condition of Force Majeure, including that on a financial crisis that may have been faced by it from December 2019 to December 2020 (Annexure C3);
- (42) In the complaint before it, the Forum also does not find any separate and specific Order having been passed by the Ld HPERC in favor of the Complainant, either for a separate tariff or for its waiver on or without the said grounds of Force Majeure;
- (43) In absence of any such legally binding Agreement between parties and in the absence of any Order ever having been passed by the Ld HPERC for a separate tariff or for its waiver in favor of the Complainant, on or

without the said grounds of Force Majeure, the Forum holds and concludes that the Complainant is bound to pay the tariffs including the 'Demand charges' and other fixed charges determined in the Tariff Orders passed by the Ld HPERC in respect of the consumer class or category to which the Complainant pertains. The Complainant is not entitled to any special treatment or to any relief whatsoever on grounds of Force Majeure from December 2019 to December 2020 (Annexure C3);

(B) Complaint No 1453/1/23/10:

- (44) The Forum now takes up and delves on the second issue of Late Payment Surcharge (LPS) raised by the Complainant, which is a provision contained in Tariff Orders passed by the Ld HP Electricity Regulatory Commission (or the HPERC) and reproduced in paras supra. The relevant provision of Late Payment Surcharge (LPS) has been reproduced in paras supra appearing at para / clause 'J' of the Tariff Orders -
- (45) At the outset, the Forum observes that the Complainants reliance on the Orders of the Hon'ble High Court of Karnataka (not placed on record) and Income tax laws and cess law, is utterly misplaced. The Forum cannot see as to how these are applicable in the context of the instant matter which is governed by its own applicable statute and merits. The instant matter is governed by the Tariff Orders passed by the Ld HPERC under the Electricity Act, 2003 and Regulations and Rules framed thereunder. It is an established preposition of law that each matter is to be decided on its own set of merits;
- (46) In the instant matter, as has been held by the Forum in paras supra, the Respondent licensee has incurred a cost on providing service or good to the consumers of the State including the Complainant. Further, the Ld HPERC allows the distribution licensee to recover these costs by way of tariffs / charges determined by it in its Tariff Orders. These tariffs / charges are of statutory nature. In order to recover these charges and prevent defaults or delayed payments by the consumers, deterrent provisions in terms of disconnections and Late Payment Surcharge (LPS) are specified by the Ld HPERC in its Tariff Orders passed in accordance with the extant laws governing the power sector;

- (47) The Forum after examining the bills raised by the Respondent to the Complainant and Late Payment Surcharge (or LPS) levied therein, find that the provision of Late Payment surcharge (or LPS) contained in the Tariff Orders has been applied correctly by the Respondent HPSEBL and is in line with the Tariff provisions. The Complainant is accordingly liable to pay the same and is not entitled to any relief what-so-ever on this count;
- (48) In the instant matter, the Forum further holds that Late Payment Surcharge (LPS) is not a bank Interest. Had it been so, the Ld HPERC would have referred it as such in its Tariff Orders and not as surcharge. This is a deterrent provision for non-payment or delayed payments by the consumers of dues of the licensee. Accordingly, the Forum concludes that the Complainant has wrongly questioned the applicability and implementation of the provision of Late Payment Surcharge (LPS) in the hands of the Respondent;
- (49) The Forum further finds that the questions raised by the Complainant to the Forum, reproduced in paras supra, directly or indirectly seek interpretation on provisions of Tariff Orders passed by the Ld HPERC. There is no doubt in the mind of the Forum that the Forum lacks jurisdiction to interpret Tariff Orders. The Forum agrees with the Respondent that it is not within Forum's jurisdiction to interpret Tariff Orders passed by the Ld HPERC;
- (50) The Forum is also in agreement with the Respondent that it was open to the Complainant to have raised objections before the Ld HPERC when the objections and suggestions may have been invited during the ongoing process of determination of tariffs prior to the passing of Tariff Orders, in so many years;
- (51) The Forum further observes that despite knowing and understanding the preposition of law on its retrospective effect, the Complainant seeks retrospective relief herein on tariffs or statutory provisions which have already attained finality, simply by way of interpretation to these by any authority. The Forum holds that while the cause of action may have arisen to the Complainant when the first bill was raised, it is the fault of

- the Complainant to not have approached the appropriate authority then for the interpretation and clarification on the Tariff Orders;
- (52) The Forum is of the considered opinion that even if any authority with which the jurisdiction to interpret is vested, were to clarify or interpret Tariff Orders passed by the Ld HPERC at a later date, it would still not cause to give retrospective effect to application of Tariff Orders. Thus the Complainant is not entitled to any relief, retrospective or other-wise, what-so-ever;
- (53) On examination of various Tariff Orders passed by the Ld HPERC, under Part-1 in Annexure -1 General Conditions of Tariff and Schedule of Tariff, the Forum also finds the following specific provision / para on interpretation of Tariff Orders which is reproduced for clarity—
“In case any dispute regarding interpretation of this tariff order and/or applicability of this tariff arises, the decision of the Commission will be final and binding.”
Accordingly, the Forum is convinced that giving Interpretation to Tariff Orders passed by the Ld HPERC, is not within its jurisdiction to do so.
- (54) The Forum concludes that the Complainant is not entitled to any special treatment or to any relief whatsoever for the defaults on its part and is liable to pay the Late Payment Surcharge for delayed payment or for non-payment of dues of the Respondent licensee as specified by the Ld HPERC in its Tariff Orders;

On the anvil of foregoing, the Forum concludes that the instant complaints filed before it are baseless and without any merit. These complaints are clearly of argumentative nature, merely raising therein questions on the interpretation of Tariff Orders passed by the Ld HPERC and at the same time being without any cause of action. The Complainant has not come before the Forum for redressal of its grievances but appears to have come to this Forum only to raise questions and issues mainly involving interpretations of the Tariff Orders passed by the Hon’ble Commission from time to time and involving therein no cause of action. Issues of Interpretations are beyond the scope of this Consumer Grievances Redressal Forum (or CGRF) mandate and irrelevant to complaints / grievance of Complainants.

Thus the present complaints are dismissed in aforesaid terms.

Parties are left to bear their own costs.

Order is announced before the parties present today on 09.05.2023 at Shimla in open Forum.

The Copy of this Order shall be placed on the case file of both these complaints. Certified copies of this Order be supplied to the parties. The complaint along with this Order be consigned to record room for safe custody.

Date: 09.05.2023

Shimla

Sd/-

**KS Dhaulta
(Member)**

Sd/-

**Vikas Gupta
(Member)**

Sd/-

**Tushar Gupta
(Chairperson)**

Notice

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI SHIMLA-171009.
No.CGRF/Complaint No. 1453/1/23/08

Registered

Dated:-

M/s Renny Steels
Village Kunjhal,
PO Barotiwala Tehsil Baddi,
Distt. Solan HP

Complainant

V/s.

HPSEBL & Others.

Respondents

Complaint No. 1453/1/23/08

1. The Executive Director (Pers.),
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Shimla-171004.
2. The Sr. XEN, (E) Division Nahan,
HPSEBL, Baddi,
Distt. Solan, (H.P.)
3. The Assistant Engineer,
Electrical Sub-Division Barotiwala,
HPSEBL, District Solan (H.P.).

Respondents

The Certified copy of final order dated 09.05.2023, passed by the Hon'ble Forum in the aforesaid complaint is enclosed herewith for further necessary action at your end please.

Sd/-

DA:-As above.

Secretary,
Consumers Grievances Redressal Forum,
HPSEBL, Kasumpti Shimla-9.