

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI, SHIMLA-09
No. CGRF/Complaint No. 1515/4/21/028

Complaint No.:- 1515/4/21/028
Date of Admission:- 15.11.2021
Quorum:- Er. Tushar Gupta, Chairman
Er. Vikas Gupta, Member
In ref:- Sh. K.S Dhaulta, Member

M/s H.M Steel Village Kheri,
Trilokpur Road Kala Amb,
Tehsil Nahan,
Distt. Sirmour (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,
Nahan Tehsil Nahan Distt Sirmour HP
3. The Assistant Executive Engineer,
Electrical Sub-Division HPSEBL,
Kala Amb, Tehsil Nahan Distt. Sirmour (HP).

Respondents

Final hearing:-

14.07.2022

Present for:-

Complainant

1. None

Respondent

1. Sh. Anil Kumar God, Advocate

Date of Decision:-

29.07.2022

ORDER

BRIEF FACTS OF THE CASE –

- (1) Complaint has been filed under regulation 17 of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. The Complainant is an existing consumer of the Respondent HPSEBL by the name HM Steels Ltd situated at Village Kheri, Trilokpur Road, Kala Amb, Tehsil Nahan, District Sirmaur, bearing Consumer ID 100012002352, categorized under the 'Large Industrial Power Supply' consumer category ;
- (2) The Complainant received a communication dated 14.10.2021 (Annexure- C1) from the Respondent No 3 being an office of the HPSEBL, intimating therein a short recovery of Rs 1,62,33,204/- as a result of improper uploading of metering-billing data in the past by the Respondent during computerization stages, also issuing Notice therein for deposit / payment of this demanded amount. Also annexed with this Notice is a month-wise break-up of short recovery from January 2019 to June-2021. The Complainant though not directly, has impugned this Demand Notice dated 14.10.2021 (Annexure- C1);
- (3) The improper uploading of metering-billing data had occurred due to register swapping which in simple technical parlance means that data existing in specific registers of the consumer Meter (i.e specific memory of meter for storing specific data) having been downloaded into the Meter Reading Instrument (or MRI) has wrongly been uploaded/ captured into an inter-face computer software file existing between the MRI software and the computer billing application, resulting in wrong computerized based billing.

COMPLAINANT

- (4) That the Respondents had raised correct energy bills from January 2019 to June-2021 which stand paid by the Complainant. There is no less recovery of energy charges due to register swapping and therefore the Respondents are not justified in raising the alleged additional demand which deserves to be quashed and set-aside as being wrong, illegal, arbitrary and not justified;
- (5) That the ibid Demand Notice dated 14.10.2021 for the period January 2019 to June-2021 is beyond the period of 2 years prescribed under section 56(2) of the Electricity Act, 2003;

RESPONDENT

- (6) The Respondent HPSEBL in their reply have submitted that IT Cell of the HPSEBL at Shimla on visit to the Electrical Sub-Division, have pointed out the fact that the meter-billing data was not uploaded properly at the time of data migration from HCL software to TCS software in the month of December, 2018 and onwards which was detected only in the month of April 2021 by the IT Cell whereby register swapping had occurred and this is a bona-fide mistake. This resulted in less recovery for the period January 2019 to June-2021. The Respondent has also placed on record the copy of computerized data (annexure R-1) along with details of calculation of short recovery;
- (7) That in accordance with catena of judgments by the Hon'ble Apex Court as well as various High Courts, provisions of section 56(2) of the Electricity Act, 2003 do not put any limitation for raising demand of past dues or arrears, if not discovered or pointed out earlier due to any mistake and liability to pay accrues when quantified and bill is raised. Hence, the Demand issued by the Respondent is a legal one, not barred by limitation and the Complainant is liable to pay the same accordingly. The Respondent has cited decisions by the Hon'ble APTEL and the Delhi High Court to justify that the ibid Demand is not hit by limitation under provisions of section 56(2) of the Electricity Act, 2003;
- (8) Vide Miscellaneous Application, the Respondent has also placed on record the MRI data with calculation sheet and copies of energy bills.

FORUM

- (9) This Forum has examined the relevant provisions of the Electricity Act, 2003, the Regulations in the matter issued by the Ld HP Electricity Regulatory Commission (or the HPERC) and amendments thereto, record as facts alongwith 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) The Complainant consumer has raised challenge to the impugned Demand Notice dated 14.10.2021 on the grounds that Respondent HPSEBL cannot raise this Demand being a fault of the Respondent and that it is against Section 56(2) of the Electricity Act, 2003;
- (11) At the outset this Forum observes that no-where in the complaint, has the Complainant challenged the correctness of the Demand as being in contravention of the Tariff Orders

issued by the Ld HP Electricity Regulatory Commission (or the HPERC) which essentially requires showing to the Forum the month-wise-item-wise consumption parameters, applicable tariff as per relevant Tariff Orders issued by the Ld HPERC and amounts due vis-à-vis that charged by the Respondent;

- (12) The moot issues as emerged for determination before this Forum are (1) whether the demand raised is time barred in terms of section 56(2) of the Electricity Act, 2003?, (2) whether the Complainant consumer, is or is not liable to make payments against the raised impugned Demand Notice by the Respondent for a mistake or bona-fide error of improper uploading of metering-billing data of Meter Reading Instrument (MRI) made by the Respondent at the time of migration of data from one software/ application to another, which has resulted in less recovery from or less billing to the consumer complainant?, (3) whether the less billing / recovery discovered and pointed out later in time by the IT Cell of the Respondent HPSEBL and where-after a Demand Notice was issued, is proper and justified or not?;
- (13) The Forum delves upon the issue No (1) after considering material placed on record and case laws on the issue in contention. It is evident from the settled law that while the consumer uses electricity being a good as has been held by a constitution bench of the Hon'ble Apex Court in a case titled State of Andhra Pradesh Vs National Thermal Power Corporation Ltd, the distribution licensee charges for this electricity / good at the specified tariffs/ charges of electricity, as are determined by the Ld HPERC under the Electricity Act, 2003 and Regulations framed there under. These tariffs / charges are applied to the consumption or good and thereafter a Bill or Demand is raised to the consumer. This Forum is also of the considered opinion that the HPSEBL being a distribution licensee cannot charge any tariff in excess of that specified by the Ld HPERC. At the same time, it is also relevant to mention that the distribution licensee HPSEBL is bound to recover the cost / price of electricity consumed by a consumer strictly as per tariffs / charges that are specified by the Ld HPERC vide its Tariff Orders and consumer is bound to pay these tariffs / charges accordingly. 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 good, may result either in permanent loss to the distribution licensee, being a public utility or with the burdening of this utility's loss upon other consumers, both of which are bad and against mandated provisions of Tariff Regulations on the matter;

- (14) In the instant matter, this Forum while dealing with the limitation, 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 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 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 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 shall start. Again 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) Having gone through the case and having heard the matter by way of arguments extended by the parties, on the anvil of interpretation on section 56(2) of the Electricity Act, 2003 rendered vide ibid Hon'ble Apex Court Judgment dated 18.02.2020, this Forum holds that there was mistake or bona-fide error in improper uploading of metering-billing data at the time of migration of data from one software/ application to another and this resulted in past arrears / dues. This fact not having been disputed by the Complainant, the Forum is of the opinion that the action by the Respondent HPSEBL is a legal one and is not hit by limitation of 2 years as provided in section 56(2) of the Electricity Act, 2003 as the Demand was raised on 14.10.2021 which is well within the limitation period of 2 years. Accordingly, the impugned Demand Notice dated 14.10.2021 issued by the Respondents is a legal one based on the interpretation / reasons as set out by the Hon'ble Apex Court in respect of section 56(2) of the Electricity Act, 2003. The issue No (1) is accordingly decided against the Complainant and in favour of the Respondent HPSEBL;
- (16) The issues (2) and (3) are examined and considered in the light of arguments adduced / pleadings of parties, facts on record and Regulations in the matter. There is no denying the fact that due to bona-fide error / mistake, the present discrepancy in the billing of consumer / complainant has crept in due to register swapping at the time of data

migration from the HCL software to TCS software in the month of December 2018. This has resulted in less recovery for the period January, 2019 to June 2021. The fact remains that Complainant has not laid any challenge to the correctness of the impugned demand on the basis of it being in contravention of the Tariff Orders issued by the Ld HPERC from time to time. The relevant Tariff Orders require reflecting month-wise and item-wise consumption parameters as per applicable Orders and amount due vis-à-vis that charged by the Distribution licensee / Respondent herein. Since Respondent has also placed on record the copy of computerized data (Annexure R-1) along with the details of the calculations of short recovery in respect of the complaint, we find no plausible reasons to reject these and therefore to allow the complaint. Accordingly, the issues (2) and (3) are also decided in favour of Respondent;

- (17) In view of foregoing, this Forum directs the Complainant to pay / deposit within 15 days of this Order, the amount of Rs 1,62,33,204/- in full as raised by the Respondent in impugned Demand Notice dated 14.10.2021. For the period beyond the 30 days Notice Period contained in this Demand Notice dated 14.10.2021 and the date of filing the instant complaint on 15.12.2021 which constitutes one (1) month, surcharge at the applicable rates shall also be payable by the Complainant along with the ibid payable Demand of Rs 1,62,33,204/-. For non-payment of these monies, the Respondent HPSEBL shall be at liberty to invoke the provisions of law on disconnection of electricity under Section 56(1) of the ibid Electricity Act, 2003 and the Regulations framed there-under along with additional late payment surcharge as may become applicable.

In the aforesaid terms, the instant complaint is disposed of on merits, in favour of the Respondents HPSEBL and against the Complainant. The Complaint is accordingly dismissed.

Parties are left to bear their own costs.

Order reserved is released before the parties present today on 29.07.2022 at Shimla in the open Forum.

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.

Sd/-

(Vikas Gupta)
(Member)

Sd/-

(Tushar Gupta)
(Chairman)

Notice

Registered

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI SHIMLA-171009.

No.CGRF/Complaint No. 1515/4/21/028

Dated:-

M/s H.M Steel Village Kheri,
Trilokpur Road Kala Amb,
Tehsil Nahan,
Distt. Sirmour (HP).

Complainant

V/s.

HPSEBL & Others.

Respondents

Complaint No. 1515/4/21/028

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3. The Assistant Executive Engineer,
Electrical Sub-Division HPSEBL,
Kala Amb, Tehsil Nahan Distt. Sirmour (HP).

Respondents

The Certified copy of final order dated 29.07.2022, passed by the Hon'ble Forum in the aforesaid complaint is enclosed herewith for further necessary action at your end please.

DA:-As above.

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